

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/06/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.565 of 1997

Periasamy ... Appellant /  
Accused.

-Vs-

State by  
Inspector of Police,  
Tharamangalam,  
Nangavalli Police Station,  
Salem District. ... Respondent.

Criminal Appeal against the judgment dated 21.07.1997 made in  
S.C. No.46 of 1997 on the file of Principal Sessions Judge, Salem.

!For appellant : Mr.K.N.Basha

^For respondent : Mr. A.N.Thambidurai,  
Government Advocate.  
(Crl. Side)

:J U D G M E N T

Appellant is the accused in S.C.No.46 of 1997 on the file of  
Principal Sessions Court, Salem. By the Judgment dated 21.07.1997, the  
Principal Sessions Judge, has convicted the Appellant / Accused under Sec.304  
Part II I.P.C. for causing the death of Chinnammal. The accused was  
acquitted of the murder charge under Sec.302 I.P.C.

2. The deceased Chinnammal, aged about 65 years was having 15  
cents of land immediately adjacent on the Northern side of her house. The  
accused Periasamy is living on the East of the house of deceased. The house  
of accused is adjacent to the land of the deceased also. On enjoyment of the  
boundary, there was frequent quarrel between the accused and the deceased and  
parties were inimically disposed towards each other.

3. Case of prosecution is that on 19.06.1996 - 9.00 a.m.,  
P.W.1 - Chenrayan was ploughing the lands of Chinnammal with Tractor. P.W.2 -  
Chinnapaiyan was also present. At that time, the accused has cut the  
Palmayrah trees, which were standing between the house of the accused and the

land of Chinnammal. Chinnammal objected for the same, which resulted in wordy quarrel between them. One Lakshmi intervened and pacified both of them and she went away. Again the accused continued his wordy quarrel. During the quarrel, the accused took a Half Brick (M.O.1) and voluntarily hit at the left side of the Temporal Region of Chinnammal with the intention of causing death. Chinnammal fell down. The accused ran away from the scene of occurrence. There was bleeding from the ear to nose and Chinnammal died on the spot.

4. Thereafter, P.W.1 - Chenrayan went and informed his relatives and brought them to the scene of occurrence. P.W.1 went to Nangavalli Police Station and gave Written Complaint - Ex.P.1 to P.W.8 - Grade I Police Constable, Nangavalli Police Station at 3.00 p.m. on 19.06.1996. On the basis of Ex.P.1 - Complaint, P.W.8 registered a case in Crime No.175 of 1996 under Sec.302 I.P.C. Ex.P.4 is the First Information Report.

5. Investigation. On receipt of the message about the registration of the case, P.W.9 - Inspector of Police had taken up the investigation. He went to the scene of occurrence at 3.45 p.m. Inspecting the scene of occurrence in the presence of P.W.3 (Subramaniam) - Village Administrative Officer, P.W.9 prepared Ex.P.2 - Observation Mahazar and Ex.P.12 - Rough Sketch. He arranged for taking photographs. M.O.1 - Half Brick, M.O.2 (series) - two Palmyrah Leaves and M. Os.5 and 6 were recovered from the scene of occurrence under Ex.P.3 - Seizure Mahazar.

6. Examining the witnesses in the presence of Panchayatdars, P.W.9

- I.O. held inquest on the body of Chinnammal. Ex.P.13 is the Inquest Report. After the inquest, the body was sent to Autopsy through P.W.6 - Head Constable.

7. Pursuant to the requisition from the Inspector of Police, P.W.5

- Dr.Viswanathan, attached to Mettur Government Hospital conducted Post-mortem on the body of the deceased Chinnammal. He has noted Lacerated Injuries over left temporal region and below the 1st injury to bone deep, which has caused internal laceration on left cerebral hemisphere. Haematoma was seen. P.W.5 opined that the deceased " died of shock and Haemorrhage due to head injury". Noting the injuries, P. W.5 issued Ex.P.5 - Post-mortem Certificate.

8. The accused was arrested on 20.06.1996 - 8.00 a.m. at Vanavasi Bus Stop. On completion of formalities of other investigation, P.W.9

filed the charge sheet against the accused alleging that he has committed the offence punishable under Sec.302 I.P.C.

9. To substantiate the charge against the accused, in the trial Court, prosecution has examined P.Ws.1 to 9. Exs.P.1 to P.13 are marked. M.Os.1 to 8 are produced. The accused was questioned about the

incriminating circumstances and evidence under Sec.313 CrI.P.C. Denying all of them, the accused had stated that a false case is foisted against him. On behalf of the accused, Ex.D.1 (Statement of P.W.2 - Chinnapaiyan recorded under Sec.164 CrI.P.C.) was marked.

10. Upon consideration of the evidence, the learned Sessions Judge rejected the defence version. The trial Court disbelieved the evidence of P.W.2 - Chinnapaiyan on the ground of irreconcilable contradiction of his version with his earlier statement in Ex.D.1. However, finding that the Solitary Testimony of P.W.1 is natural and acceptable, the learned Sessions Judge concluded that the prosecution has established that the accused is responsible for causing the death of Chinnammal. Pointing out that there was no premeditation for the occurrence and that the injuries were caused on the spur of moment, the learned Sessions Judge convicted the Appellant / Accused under Sec.304 Part II I.P.C. sentencing him as aforesaid in para No.(1).

11. Assailing the findings of the trial Court, the learned counsel Mr.K.N.Basha, appearing for the Appellant / Accused has contended that it would be unsafe to base the conviction on the uncorroborated testimony of P.W.1, when he is related to the deceased and also inimical towards the accused. It is further submitted that the evidence of P.W.1 suffers for want of corroboration from independent source, though 10 - 15 independent persons are said to have gathered after the occurrence. The main contention urged is the delay in lodging Ex.P.1 - Complaint, which according to the Appellant / Accused fatally affects the prosecution case. Raising other contentious points, the learned counsel urged for setting aside the conviction.

12. Repelling the arguments of the Appellant / Accused and taking me through the evidence of P.W.1, Mr.A.N.Thambi Durai, learned Government Advocate (CrI.Side) has submitted that the trial Court has rightly accepted the evidence of P.W.1, whose evidence is inspiring the confidence of the Court. Pointing out that the persons who are said to have gathered were only after the occurrence, the learned Government Advocate submitted that in that context non-examination of independent witnesses would not in any way affect the prosecution case. It is further submitted that P.W.1 has explained the reason for the delay in lodging the Complaint, which was rightly accepted by the trial Court as a reasonable one. Submitting that the conviction is based upon the evidence and materials on record, the learned Government Advocate urged that there is no reason warranting interference.

13. Is the appreciation of the evidence of P.W.1 by the trial Court suffers from any erroneous approach and whether the conviction under Sec.304 Part II I.P.C. and the sentence imposed warrants any interference ? is the short point arising for consideration in this appeal.

14. It is not disputed that the deceased owned 15 cents of lands on the Southern side of her house. From Ex.P.12 - Rough Plan, it is clear that the house of the Appellant / Accused (Serial No.3 in Ex.P.12) is on the Eastern side. The house of the deceased Chinnammal ( Serial No.2 in Ex.P.12) is on the Western side. The bghHp / Boundary is in the North South stretch. For a long time, there had been a dispute between the accused and

the deceased on enjoyment of the bghHp resulting in enmity between the parties.

15. On the date of occurrence - 19.06.1996 also the dispute arose only in connection with cutting of Palmyrah Trees standing on the bghHp by the accused. On the date of occurrence, P.W.1 - Chenrayan was ploughing the lands of deceased Chinnammal with Tractor. At about 9 .00 a.m., the accused had cut the Palmyrah Plants. Deceased Chinnammal objected to the same, which resulted in wordy quarrel between them. One Lakshmi intervened and pacified them and went away. Then the accused continued his wordy quarrel and all of a sudden, the accused took M.O.1 - Half Brick and hit Chinnammal on the left side of her Temporal Region. Eye Witness - P.W.1, who was ploughing the land of Chinnammal with the Tractor has clearly narrated about the occurrence.

16. P.W.2 - Chinnapaiyan is also alleged to have witnessed the occurrence and has spoken about the incident. Earlier statement of P.W.2 (under Sec.164 CrI.P.C.) was recorded by Judicial Magistrate, Mettur. In his earlier statement, P.W.2 has not stated that he has witnessed the occurrence. As per his earlier Statement (Ex.D.1), he left the Village on the morning of 19.06.1996 to Salem and returned to his house only in the evening at 7.30 p.m. and at that time, he was informed by his relatives that the deceased Chinnammal was murdered by her neighbour. Pointing out the irreconcilable inconsistency in the evidence of P.W.2, the learned Sessions Judge disbelieved the evidence of P.W.2.

17. Therefore, the prosecution case mainly revolves around the Solitary Testimony of P.W.1 - Chenrayan. Much arguments are advanced attacking his evidence and its reliability, viz.--

(i) P.W.1 being related to deceased Chinnammal and is her grand-son;

(ii) That there is a North-South bghHp between the house of the accused and the house of Perumayee, who is the mother of the accused. On enjoyment of that bghHp, the accused and the family of P.W.1 are inimical towards each other and are not in talking terms;

(iii) Unnatural conduct of P.W.1 in not coming to the rescue of deceased Chinnammal;

(iv) Despite the occurrence being witnessed by 10 - 15 persons, non-examination of independent witnesses and absence of corroboration from independent source fatally affects the prosecution case.

The above points were urged before the trial Court also. In the view of the learned Sessions Judge, that none of the above points either individually or cumulatively could affect the testimony of P.W.1.

18. There is no rule of law prohibiting the Court from acting

on the Solitary Testimony of the witness. If the evidence of the single witness is natural, inspiring the confidence of the Court, the conviction could be based upon his version. The trial Court, which had the opportunity of seeing and observing the demeanour of P.W.1, has noted that the version of P.W.1 inspires the confidence of the Court. There is no reason for this Appellate Court to take a different view.

19. P.W.1 - Chenrayan is said to be the grand-son of deceased Chinnammal. There is no provision in the law that a person, who is related to the deceased has to be termed as an unreliable witness. The evidence of the witness is not to be disbelieved simply because he is related to the deceased. The evidence is to be weighed whether the witness was present or not and whether he is telling the truth or not. All that the law requires is that the Court should approach their evidence with care and caution in order to exclude the possibility of false implication. By a perusal of the Judgment of the trial Court, it is clear that the learned Sessions Judge had that care and caution in the mind in appreciating the evidence of P.W.1.

20. The main question to be considered is whether P.W.1 - Chenrayan was present at the time of occurrence and whether his evidence is trustworthy and inspires the confidence of the Court. The house of P.W.1 is shown as Serial No.4 in Ex.P.12 - Rough Plan. He was ploughing the land with Tractor. P.W.1 has thus explained his presence. Being present, quite naturally P.W.1 would have witnessed the occurrence. There is nothing to doubt his presence nor his version.

21. Evidence of P.W.1 is attacked on the ground of unnaturalness that he has not immediately gone to the rescue of Chinnammal. The occurrence was in a sudden quarrel. The accused hit Chinnammal with Half Brick (M.O.1) on the left side of her Temporal Region. The attack must have persisted only for few seconds. P.W.1 who was on the Wheels in the Tractor, must have taken some time to stop the vehicle and reach the place to rescue Chinnammal. That he has not immediately come to the rescue of Chinnammal cannot be a ground to doubt his version. The conduct of P.W.1 as to why he has not acted in a particular way cannot be the reason to doubt his version.

22. One Lakshmi is said to have intervened and pacified the accused and deceased in the prelude wordy quarrel. The said Lakshmi was examined during the inquest; but not examined during the trial. No adverse inference could be drawn against the prosecution case for non-examination of the said Lakshmi. The Prosecutor who conducts the trial has the wide option and discretion in choosing the witnesses and cannot be faulted for non-examination of the said Lakshmi.

23. From Ex.P.12 - Rough Plan, it is seen that the scene of occurrence is surrounded by other houses. But there is nothing on record to show that others have witnessed to the occurrence. In his cross-examination, P.W.1 has stated ...(Vernacular Omitted).... Pointing out the same, the main point urged on behalf of the Appellant / Accused is that non-examination of those independent witnesses fatally affects the prosecution case and that the reasonable inference being the prosecution has not come out with true version.

In the above statement, P.W.1 has only stated that the 10 - 15 persons have gathered after the occurrence. As stated above, there is nothing on record to show that those persons witnessed the occurrence. It was not elicited from the Investigating Officer that any other persons have witnessed the occurrence. In the absence of any such material, it is not possible to hold that the evidence of P.W.1 suffers for want of corroboration from independent source.

24. It is not as if evidence of P.W.1 - Chenrayan stands in isolation. It is amply corroborated by the objective findings during the investigation. The Investigating Officer has inspected the scene of occurrence - front side of the house of the deceased Chinnammal and noted the following:-

(Vernacular Oimtted)

The fact that M.O.1 - Half Brick and M.O.2 - Palm leaves were found near the body of Chinnammal is also clearly exhibited in M.O.7 ( series) - Photographs. The fact that the body was lying near M.O.1 - Half Brick and the Palmyrah Trees strengthens the version of P.W.1 on the scene of occurrence and regarding the occurrence. The detection of Human Blood in M.O.5 - Blood Stained Mud seized from the scene of occurrence is yet another evidence of strong character corroborating the version of P.W.1.

25. The fact that medical evidence is also consistent with the oral evidence of P.W.1 lends assurance to the oral testimony of P.W.1 . P.W.5 - Dr.Viswanathan has noted the following injuries:-

External Injuries: 1. Lacerated injury over the left temporal region for 4 cm X 1 cm to bone deep.

2. Lacerated injury just 1 cm below the 1st injury 4 cm X 1 cm to bone deep.

Internal Examination. On opening Injury No.1 and 2 fracture of left temporal bone 4 cm X 3 cm. Fractured bone was seen as a piece. Left temporal muscle lacerated on cerebral hemisphere, Haematome was seen.

Only forcible hit on the head with M.O.1 - Half Brick must have caused the lacerated injury and the corresponding bone fracture. In the Cross-examination, it was elicited from P.W.5 that such an injury could have been caused by a fall on a Brick like M.O.1. On the strength of the answer elicited during the Cross-examination of P.W.5 , it is contended that the possibility of Chinnammal falling down and sustaining the injuries cannot be ruled out. On the possibility of the injury being caused by a fall, reliance

is placed upon 1993 (3) Crimes 75 3 (Makhan Singh & Anr. v. State of Haryana). Opinion as to the alternative possibility of the injury being caused is only the view of the individual Expert. Court is not bound to go by that opinion and discard the oral testimony. Evidence of the Eye witness has to be evaluated on its own merits and its credibility and it cannot be doubted merely on the ground of opinion evidence of the Medical Expert on the alternative possibility.

26. For the occurrence at 9.00 a.m., P.W.1 has gone to Nangavalli Police Station at 3.00 p.m. and lodged Ex.P.1 - Complaint on the basis of which the case was registered in Crime No.175 of 1996 at 3.00 p.m. It is contended that the delay in registration of the First Information Report is unreasonable affecting the prosecution case. No doubt there is a delay of nearly six hours in lodging Ex.P.1 - Complaint. But P.W.1 has clearly explained the reason for the delay. Even in his Chief-examination, P.W.1 has stated that after the occurrence he informed about the same to his relatives. Since P.W.1 missed the Bus, he walked from his Village Thazhayoor to Vanavasi, from where he travelled to Nangavalli in preferring the Complaint. That apart, Ex. P.1 - Complaint was a Written Complaint, which is said to have been written by a Retired Teacher. Necessarily, informing to the relatives and reducing Ex.P.1 - Complaint into writing and travelling from his Village to Nangavalli would have consumed some time and reasonable indulgence is to be shown on that score. The point of delay in lodging the Complaint was raised before the trial Court and the trial Court has found that the delay was well

explained by P.W.1 and that there was no delay. This Court is of the view that there is no delay in lodging the Complaint and even if there is any delay, it is properly explained by P.W.1.

27. The prosecution has well established that the accused is responsible for causing the injury to deceased Chinnammal. The accused hit Chinnammal on the left temporal region in a sudden quarrel on trivial issue. There was no premeditation. In a sudden fit of anger, the accused inflicted one heavy blow on the head of the deceased. The trial Court has rightly convicted the Appellant / Accused under Sec.304 Part II I.P.C. The conviction under Sec.304 Part II I.P.C. is to be maintained. The sentence of Rigorous Imprisonment of five years is also reasonable and the same is to be confirmed.

28. Therefore, the Judgment of Principal Sessions Court, Salem in S.C.No.46 of 1997 (Dated 21.07.1997) convicting the Appellant / Accused under Sec.304 Part II I.P.C. and the sentence of imprisonment are confirmed and this appeal is dismissed.

29. The trial Court is directed to take immediate steps for securing the accused to commit him to prison for serving the remaining period of sentence.

Index:Yes

Internet:Yes

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To

1. The Principal Sessions Judge,  
Salem.

2. The Superintendent,  
Central Prison, Salem.

3. The Inspector of Police,  
Nangavalli Police Station,  
Tharamangalam, Salem District.

4. The Public Prosecutor,  
High Court, Madras.

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