SUPREME COURT OF INDIA

Thangavelu

Vs.

State of Tamil Nadu

Crl.A.No.104 of 2002

(N Santosh Hegde and D M Dharmadhikari JJ.)

29.07.2002

JUDGMENT

Santosh Hegde, J.

1. The appellant abovenamed was chargesheeted by Erode Taluk Police Station for an offence under Section 302 IPC (on two counts) and Section 506 IPC before the Judicial Magistrate, Erode, for having committed the murders of Arisikarar alias Nachimuthu (D-1) and Beedikarar alias Nachimuthu Gounder (D-2) due to previous enmity and for further having threatened certain others who tried to intervene in the incident which led to the death of D-1 and D-2. Learned Sessions Judge, Periyar District, after trial, came to the conclusion that the prosecution has established that the appellant had committed the said murders, hence, found him guilty of offence punishable under Section 302 on two counts and convicted and sentenced him to life imprisonment on each of the said count and further held him guilty for an offence punishable under Section 506 IPC and convicted and sentenced him to undergo RI for a period of one year. He directed that all the sentences should run concurrently.

2. The appeal of the appellant before the High Court of Judicature at Madras being unsuccessful, the appellant is before us in this criminal appeal. The prosecution case, stated briefly, is as follows:

3. The family of the accused was originally staying in a village called Velayuthampalayam and moved about 25 years before the date of the incident from the said village to Thottanichatram. His family members were agricultural labourers. It is stated that the accused had 2 brothers and 2 sisters out of which Saraswathi also known as Sarasu, the elder sister, was doing the work of agricultural labourer. About 15 years prior to the incident in question, one of the sons of deceased D-1, namely, Muthusamy and another friend of his also known as Muthusamy @ Kidakarar son of Chinnappa Gounder had raped the said Sarasu. In regard to this incident, a Panchayat was called and there was a suggestion that either of the persons involved in the said rape incident should marry the said Sarasu which was not agreed to by D-1 and the latter had threatened the family of the appellant to banish the said Sarasu from the village because of her bad character. The appellant's family being helpless, had to

send her away to Madras where she lived for sometime and about 4 years before the date of the incident, she had come back to the village along with another person whom she claimed to have married and on coming to know of the said incident of rape, her husband is supposed to have taken her away to a place called Karaikudi. The further case of the prosecution is that thereafter about 2 years prior to the date of the incident, the said Saraswati again came back to the village alone and when D-1 came to know of the same, he called the appellant and warned him that if Sarasu has allowed to stay in the village, he would arrange for a boycott of the family by other villagers, therefore, he directed the appellant to take Sarasu away from the village because of which Sarasu had to go away. It is the case of the prosecution that since then the appellant entertained a grudge against D-1 and was off and on telling people that because of the deceased persons, his family had been ruined. With this incident in the background, according to the prosecution, the appellant wanted to take vengeance upon the deceased persons, hence, on 16.12.1990 at about 1.30 p.m. when the two deceased persons were working on a piece of land near about their house, he attacked them with a sickle, consequent upon which both the deceased died on the spot. It is stated that this incident was witnessed by PW-1 who is son of D-1, PW-2, Palanisamy, son of D-2, one Thulasi Ammal, wife of PW-2 and Rengasamy son of D-2. The further case of the prosecution is that the appellant after the attack took to his heels with the blood stained sickle in his hand. It is also stated that as he was running, he met PW-3, Chinnappa Gounder and one Papayee @ Periyammal wife of D-1. It is the case of the prosecution that the accused volunteered an extra- judicial confession of his assault on the deceased to these two persons, namely, PW-3 and Papayee and thereafter he ran further away. The prosecution states that after seeing his father and uncle dead, PW-1 went to the residence of PW-11 V.K. Subramaniam who was the Village Administrative Officer (VAO) and narrated the incident to him who recorded the statement of PW-1 as per Ex. P-1 and read the same over to PW-1 and obtained his signatures. Thereafter, PW-11 is alleged to have inspected the place of the incident and confirmed the statement of PW-1 to be correct and went to Erode Taluk Police Station along with PW-1 and submitted Ex. P-1 at about 4 p.m. to the Sub-Inspector (PW-13) along with a special report of PW-11. PW-13, the Sub-Inspector then prepared an FIR in the printed form in Ex.P-17 and sent the same to the jurisdictional Magistrate and other higher officials by which time PW-14, the Inspector of Police at the said Police Station came to the Station and took over the investigation. It is stated that PW-14 along with his other staff proceeded to the place of the incident. PW- 1 and PW-11 which is about 13 miles away from the Police Station. On reaching the village, PW-14 conducted the inquest and recorded the statement of PWs.1 and 2 and some others. He seized some blood stained articles, sent some of them to the Chemical Examiner and arranged for the bodies of the deceased to be sent for post mortem. PW-5, the doctor who conducted the post mortem examination found 3 injuries on the body of D-1 out of which injury No.3 had almost severed the neck of the deceased and was hanging by the front skin of the neck. He found another cut injury on the left hand of the deceased. On the body of D-2 the doctor found a cut injury on the nape of the neck extending till below the jaw bone up to the place called angle. The said injury had cut the head which was hanging from the jaw-bone and the skin on that part. The doctor opined that the death was caused due to shock and bleeding caused by the said injuries on the bodies of the deceased. In the examination in chief the doctor had opined that the death of the deceased might have been caused within a period of 16-24 hours before the post mortem. The post

mortem report of the doctor was marked as Ex. P-4. It is also stated by the prosecution that on 17.12.1990 the appellant went to the village Mettukkadai and met the VAO of that village by name Chinnasamy at about 8 a.m. and told him that he had committed the murder of the deceased persons at their village and since he apprehended that if he went to the Police by himself, he would be tortured. He requested PW-12 to take him to the Police Station and hand him over. According to this witness he made a lengthy statement which was taken down by him in writing and he had obtained the signature of the accused on the same. This extra-judicial confession was marked as Ex. P-14, subject to objection. During the course of investigation it is alleged that on a statement made by the appellant MO-1 the sickle was recovered along with certain blood stained clothes of the appellant. Mr. N. Natarajan, learned senior counsel for the appellant, contended that the entire prosecution case is totally unbelievable. He pointed out that the investigation conducted by PW-14 does not inspire any confidence whatsoever and there is very serious doubt as to the time and place of the occurrence of the incident as also to the presence of the eye- witnesses. He pointed out from the evidence of PW-16, IO, that when he got to read the complaint of PW-1 he was not sure of the facts narrated in the said complaint. Therefore, even though the name of the accused was mentioned in the complaint, he had decided to investigate to ascertain the real culprit by inquiring with the eye witnesses himself which according to the learned counsel, this itself shows even PW-16 was doubtful about Ex.P.1. He also contended that from the evidence of the doctor in the cross-examination, it is clear that the death in question had occurred about 39 hours before the post mortem which would take the time of death sometime in the evening/night of 15.12.1990 which if it is correct would entirely demolish the prosecution case. He also submitted that non- examination of the independent witnesses as also other eye- witnesses who were the members of the family of the deceased, creates considerable doubt on the prosecution case. He pointed out that PW-1 was not residing with D-1 and was staying independently with his family about one and a half kilometers away from the house of D-1 therefore his presence at the time of the incident is also doubtful. From the contents of Ex. P-1 the complaint and the evidence of PW-1 as well as the alleged extra judicial confession made as per Ex. P-14, he pointed out great similarity in them as to the motive, nature of attack etc. which also throws considerable doubt on the prosecution case. He also pointed out the discrepancy between the oral evidence of the two eye witnesses and the medical evidence. From this he concluded that the prosecution case cannot be accepted and the courts below have very lightly brushed aside the various discrepancies, omissions and glaring infirmities while coming to the conclusion that the appellant was guilty of the offence. Mr. T.L.V. Iyer, learned senior counsel appearing for the State, countered the argument of the learned counsel for the appellant by stating that the discrepancies and omissions pointed out by the learned counsel are of not such gravity that it would vitiate the prosecution case. He contended that the courts below have correctly assessed the prosecution case and eschewed such evidence as was not reliable and have relied upon only plausible evidence and there being a finding of 2 courts concurrently, this is not a case in which the court should interfere on re-appreciation of the evidence.

4. We have heard learned counsel and carefully looked into the material on record. From the evidence of PW-5, the doctor, we find that there is a possibility that the incident in question might have occurred about 39 hours prior to the post mortem. Though in the examination in

chief, PW-5 has stated that the time between the death and post mortem could be 16 to 24 hours which fits in with the prosecution case, in the cross examination he has very clearly stated that in this case death would have been caused about 39 hours before the post mortem which would be sometime after 5.30 p.m. on 15.12.1990. This the doctor has stated by taking into consideration the time and month of the incident as also the time required for the setting of rigor mortis and passing off of the same. According to the doctor, in the month of December in a place like Erode the rigor mortis may set in after about 2 to 3 hours after the death. He has stated that for the rigor mortis to reach from the leg to head, it would take 12 hours and the same would remain in existence for about another 12 hours. Thereafter, it would gradually diminish in the reverse direction i.e. from head to leg taking about another 12 hours and on this basis when he examined the body of the deceased, he found the rigor mortis had reversed almost to the end of the legs. By this process he came to the conclusion that the death in question must have occurred about 39 hours before post mortem. Though the prosecution has re- examined this witness on other points, not a single question is put to this witness in regard to this part of his evidence. Since there is no cross examination on this point and there being no other material to hold that the evidence of the doctor is either not scientific or contrary to known medical information, we have to conclude that there is a strong possibility that the death of D-1 and D-2 could have occurred much prior to 1.30 p.m. on 16.12.1990. If this doubt of ours is reasonable then the prosecution case should fall to the ground straightaway. But in view of the fact that the two courts below have thought it fit to rely on the evidence of eye witnesses and other circumstantial evidence, and the doctor's evidence is only a probability, we will consider other materials independently of the evidence of the doctor. It is an admitted fact that PW-1 stays a few kilometers away from the village where D-1 was residing. D-2 was D-1's brother and was residing in a different house opposite to that of D-1 along with PW-2, his wife and elder son Rengasamy. On the date of the incident it is stated that PW-1 came to the house of his father D-1 and having found the house locked he went to the house of D-2 where he found PW-2, his wife and the other son Rengasamy sitting. On being enquired about D-1, he was told by these 3 persons that both his father and their father had gone near the cattle-shed, therefore, even though he had no specific work as such with his father instead of spending time with PW-2 and others, he went to meet his father near the cattle-shed. According to this witness, when he went near the place of the incident, he saw the accused first cut his father's head at the back of his neck forcibly with a sickle. Though he shouted at the appellant not to cut, the appellant proceeded to inflict 2 cuts on D-2 on the back side of his neck. At the same time he threatened this witness not to go near him or else he would cut him also. Thereafter it is stated by this witness that he again cut his father D-1 in the neck. He stated that he, his cousin Palanisamy, PW-2 and non-examined witness Rengasamy then chased the appellant but he fled from the scene. Thereafter when he came back to the spot of the incident, he found both his father and uncle dead. If we examine this evidence of PW-1 along with the evidence of PW- 5, the doctor, we find from the first blow of the sickle by the appellant the head of D-1 had almost totally severed and the same was hanging by the skin of the neck on the front side. The doctor has graphically explained this injury which shows that immediately after suffering the injury, D-1 must have died. But the evidence of PW-1 is that after he dealt the first blow to D-1 on his neck, he dealt 2 other blows also to D-2 severing his head almost from the body and then again he assaulted D-1 on the neck. If PW-1's evidence is compared with the

medical evidence then we notice that this witness does not speak about the injury to the hand. He also says that after the chase of the appellant he came back and saw the dead body of D-1 and notice the injury on his hand and chest but nowhere in his evidence he has stated that he had seen this part of the attack on his father. Thus, as contended by the learned counsel for the appellant we do see this discrepancy in the evidence of PW-1 (which cannot be lightly brushed aside as contended by the learned counsel for the State). If we now examine the evidence of PW-2 in this regard we notice that after PW-1 came to the house and enquired about the whereabouts of his father and when they told him that he was near the cattle-shed, PW-2 says that he, his wife and his brother followed PW-1 to the place where their respective fathers were. They have not given any reason whatsoever why they chose to go to the said place while all along they were sitting in their house. Then PW-2 says that he saw the appellant assault D-1 with a sickle on the neck. He of course corroborates the evidence of PW-1 by saying that after the first attack on D-1, the appellant attacked D-2 twice on his neck and his father D-2 fell down on the spot. He also says that the appellant thereafter dealt the second blow on the neck. While like PW-1 he also does not speak about the attack on the chest and hand of D-1, therefore, his evidence also suffers from the same lacuna as that of PW-1. The rest of the evidence of PW-2 is almost in verbatim the same as that of PW-1. If we examine the evidence of these two witnesses in the background of the fact that there is some doubt as to the time of death of D- 1 and D-2 as spoken to by the doctor, PW-5 coupled with the fact that the incident in question had occurred on a mid-day at a place where there were nearly 50 houses and none of those persons are supposed to have seen the incident, creates doubt in our minds as to the prosecution case. Here we may notice that any independent eye-witness cited by the prosecution PW-6 has not supported the prosecution case. This witness being the sister of the VAO, PW-11, who had written Ex. P-1 cannot be presumed in any manner, as having been won over by the accused nor is there any suggestion to that effect. It is also to be noted at this stage that for reasons not explained, the prosecution has failed to examine the other two eye-witnesses viz., Rengasamy s/o D-2 and Thulasi Ammal, wife of PW-2. The defence has pointedly suggested that these witnesses have not been examined because of property dispute in the family which is suggested as one of the possibilities for the murders of D-1 and D-2. There is also material on record to show that the land in which the deceased were digging was not their land and the interference by the deceased with the possession of the land was not liked by others who had an interest in the land. If that be so, there were others who also entertained animosity with the deceased apart from the appellant. In these circumstances, we find it difficult to rely on the testimony of these two interested eye witnesses. In our opinion there is sufficient justification for the learned counsel for the appellant to contend that the prosecution having failed to examine all the eye witnesses in these facts and circumstances of the case, reliance can hardly be placed on the evidence of PWs.1 and 2 to convict the appellant.

5. In this context it may be necessary to note another fact from the evidence of PW-5 which reads thus : "From the nature of the injuries caused to Nachimutthu alias Rice man and Nachimutthu alias Beediman, we can say that more than one person more than one-weapon could have been used." This evidence of the doctor which again is not challenged coupled with the possibility of the incident having taken place as suggested by the doctor and the

discrepancies in the evidence of PWs.1 and 2 make us hesitant to rely on the prosecution case.

6. At this juncture we may take note of the prosecution case that the appellant had made an extra-judicial confession to PW- 12, another VAO on the day following the incident. Though the courts below have not placed any reliance on this confession, we take note of this document for the purpose of appreciating the genuineness of prosecution case. A perusal of this confession Ex. P-14 gives us an indication of the attempt of the prosecution to build a case against this appellant. This extra judicial confession is so full of facts starting from about 25 years prior to the date of the incident and graphically details what happened over these years to his sister and his family which actually is the motive suggested by the prosecution for the crime. Ex. P-14 is recorded in nearly 4 full pages, it not only speaks of his motive to kill D-1 and D-2 but also gives graphic details of the nature of the attack on the deceased and also mentions in detail the persons whom he saw during and after the incident. In a manner of speaking, if this confession is true the appellant had the foresight to guess as to who the prosecution witnesses are going to be and gives an impression, therefore, he was seeking to corroborate their future evidence. In our opinion, this would hardly be the natural conduct of an accused if he was voluntarily making a confession. We further notice the unimaginable similarity in Ex. P-14 and P-1 as also in the evidence of PW-1 which supports the theory of the defence that there was an attempt by the prosecution to create evidence in this case.

7. We also notice the fact that the motive suggested by the prosecution for this dastardly attack is supposed to have taken place first 15 years before the date of the incident It is the prosecution case that so far as Sarasu who is the cause behind the entire issue, she had been sent away for the last time from the village 2 years prior to the incident, there was no fresh incident thereafter. Of course the prosecution has tried to fill in this hiatus by making PW-1 state that the appellant every now and then complained about injustice done to his family and threatened to take revenge. That apart, there is nothing to show that the appellant had tried to do anything untoward towards those deceased persons during those two years or for that matter even before that. Therefore in our opinion it is difficult to accept that this appellant who was 29 years old at the time of the incident and was gainfully employed, would take recourse to such a crime which would put his entire career and future in jeopardy. That apart it has come in evidence that the appellant was engaged to be married within a few days after the incident and all arrangements for the marriage had been made. In such a situation we find it extremely difficult to believe that the appellant would have committed this dastardly crime to settle a score which was no more in existence with D-1 and D-2, in the manner stated by the prosecution.

8. For the reasons stated above, we allow this appeal, set aside the judgments under appeal as also the conviction and sentence imposed on the appellant and direct his release forthwith, if not required in any other case. The appeal is accordingly allowed.