

A

KITTUSAMY
v.
STATE OF TAMIL NADU

AUGUST 13, 2007

B

[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

C

Penal Code, 1860—Sections 302 read with s. 34—Conviction under, based on testimony of witnesses—Upheld by High Court—Justification of—Held: Evidence of prosecution witnesses cogent and credible—Thus, no infirmity to warrant interference—Conviction by courts below justified—Evidence.

D

According to the prosecution case, A was married to Y, A1's daughter. The parties had strained relations. A2 and A3 are sons of A1. On the fateful day, around 6.00 AM, A1 to A3, armed with weapons came to the house of A. A1 to A3 attacked A and inflicted 17 injuries on his body. Cousin brother of A and A's parents witnessed the incident. FIR was lodged. Investigation was carried out. Accused were arrested and recoveries were made. Trial court relying on the evidence of PW-1, 2 and 3 convicted the accused for the offence under section 302 read with section 34 IPC and passed sentence of imprisonment for life. High Court upheld the same. Hence the appeal.

E

Appellant contended that the evidence was not credible and cogent; and that the evidence of PWs 1, 2 and 3 was contrary to medical evidence of record.

F

Dismissing the appeal, the Court

HELD: 1.1. The High Court rightly observed that there is a ring of truth in the evidence of prosecution witnesses. The appellant could not point out any infirmity, which would warrant interference with the impugned judgment of the High Court. [Para 9] [1003-G]

G

1.2. PWs. 1 to 3 gave the elaborate details of the weapons held by the accused and the manner of assault by them. PW 6-doctor noted that there were 17 injuries found on the body of the deceased which could be caused by the weapons held by A1 to A3. With regard to doctor's evidence about the approximate time of death, he had nowhere stated that death took place around

H

mid night. The recovery of the weapons of assault was also established.

[Para 7] [1003-D, E, F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1061 of 2007.

From the Judgment and Order dated 25.11.2002 of the High Court of Judicature at Madras in Criminal Appeal No. 744 of 1998.

Vidya Dhar Gaur for the Appellant.

V. Kanakaraj, V.G. Pragasam, S. Joseph Aristotle and S. Prabu Ramasubramanian for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of the Division Bench of the Madras High Court dismissing the appeal filed by the appellant. The said appeal was filed by the appellant and two others. The accused-appellants are Kittusamy, Channappan, and Palanisamy (for the sake of convenience the accused persons are described as "A1, A2 and A3"). Each of them was convicted for offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (in short the 'IPC').

3. The prosecution version in a nutshell is as follows:

Deceased Ayyasamy is the son-in-law of Kittusamy (A1). Chinnappan (A2) and Palanisamy (A3) are the sons of A1.

Deceased Ayyasamy married Valliammal, daughter of A1, about 15 years back. From the wedlock, two children were born. After sometime, Chinnakutty, second daughter of A1 was kept as concubine by the deceased. After four months, she left the house of the deceased and eloped with somebody else. Four years prior to the date of occurrence, Valliammal, daughter of A1, unable to bear the torture at the hands of the deceased, left the house of the deceased and joined her parents with her children.

On 3.11.1996 at about 10.00 P.M., the deceased Ayyasamy came to the house of the accused, where the wife of the deceased along with her children were residing, and asked his wife to come with him to lead the matrimonial

A life. She refused to accompany him. The accused also told the deceased that they would not allow Valliammal to join him anymore. Then, the deceased abused the accused in filthy language and went back to his house.

B On 4.11.1996 at about 6.00 A.M., A1 to A3 came to the house of the deceased, where he was residing alone, with weapons. A1, A2 and A3 were armed with stick, iron rod and aruval respectively. Noticing all the accused coming with the weapons, the deceased got afraid and began to run from his house towards Northern side. But all the accused chased him to a considerable distance and ultimately, surrounded and attacked the deceased with the weapons causing 17 injuries. Three persons (PWs 1, 2 and 3) witnessed the incident.

C Then, P.W.1 went to Avanashipalayam police station and gave Ex.P1 complaint to Sub Inspector of Police (PW-10). A case under Section 302 read with Section 34 IPC was registered against the accused.

D Inspector of Police (PW-11), on receipt of the information, visited the scene of occurrence at about 11.30 A.M. He prepared Observation Mahazar and rough sketch. He also conducted inquest and examined the witnesses. He recovered blood stained earth, sample earth and other things from the scene of occurrence. He sent Ex.P-9 requisition to the Doctor, Palladam Government Hospital to conduct autopsy.

E Doctor (PW-6) conducted postmortem and issued Postmortem Certificate (Ex.P-10) giving details of the injuries found all over the body. He was of the opinion that the deceased would appear to have died of contusion of brain matter and shock and haemorrhage due to injury to lungs.

F On 5-11-1996, at about 1.00 PM, Inspector of Police (PW-11) arrested A1 to A-3 and obtained their confession statements and in pursuance of the same, he recovered weapons M.O.1 (stick), M.O.2 (iron rod) and M.O.3 (aruval).

G Inspector of Police (P.W.12), who was the successor to P.W.11, finished the investigation and filed charge-sheet against all the accused under Section 302 read with Section 34 IPC.

H 4. On completion of investigation, charge sheet was filed. As the accused persons pleaded innocence, they were put on trial. In order to further its version, prosecution examined 12 witnesses. It was noted by the trial court that PWs 1, 2 and 3 were eye-witnesses and their version was sufficient to

hold the accused persons guilty. In appeal, the conviction and sentence of imprisonment for life and fine awarded were confirmed. Before the High Court, the primary stand of the appellant was that the evidence is not credible and cogent; the evidence of PWs. 1, 2 and 3 is contrary to the medical evidence on record. The Doctor stated that the occurrence could have taken place around 4 a.m., whereas the prosecution stated that the occurrence took place around 6 a.m. The High Court did not accept the stand as noted above and confirmed the conviction and sentence.

5. In support of the appeal learned counsel for the appellant reiterated the stand taken before the High Court.

6. Learned counsel for the State on the other hand supported the judgment.

7. It is to be noted that PW 1 was the cousin brother of the deceased while PWs. 2 and 3 were his parents. Though efforts was made to show that PWs 2 and 3 stay at a different place, as rightly observed by the trial court and the High Court that really is not relevant and that PWs. 2 and 3 stated as to why and how they were at the place of occurrence. PWs. 1 to 3 have given the elaborate details of the weapons held by the accused and the manner of assault by them. PW 6 the doctor noted that there were 17 injuries found on the body of the deceased which could be caused by the weapons held by A1 to A3. So far as the doctor's evidence about the approximate time of the death is concerned, it is to be noted that the doctor had nowhere stated that death took place around mid night. On the contrary he stated as follows:

“As I opined that the deceased could die from 12 to 16 hours, I am saying here that the deceased could die from 12 to 16 hours. Depend upon the trigger mart on body, I had mentioned the time of death. I stated that there was digested liquid in his stomach.”

8. The recovery of the weapons of assault has also been established.

9. The High Court has rightly observed that there is a ring of truth in the evidence of PWs. The appellant could not point out any infirmity, which would warrant interference with the impugned judgment of the High Court. In view of the above, the appeal is without merit and is dismissed.

N.J.

Appeal dismissed.