

G. VIVEKANANDAN

v.

SRIRAMULU & ORS.

Criminal Appeal No. 300 of 2003

FEBRUARY 12, 2009

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Penal Code, 1860 :

s. 302/34 – Conviction by trial court – Acquittal by High Court – Held: The acquittal order, since was passed without analysis of evidence and without indicating basis for differing with conviction order, matter remitted to High Court for disposal afresh.

Appellant accused was convicted u/s. 302/34 IPC. The conviction order was reversed by High Court. Hence the present appeal.

Disposing of the appeal, the Court

HELD: High Court has practically disposed of the criminal appeal without analyzing the evidence and without indicating any basis as to why the view expressed by the trial court cannot be maintained. High Court has not discussed the evidence. No reason has been indicated as to why the detailed analysis done by the trial court deserved to be upset. The conclusions are factually incorrect. So far as the date on which the special report reached the Magistrate is concerned, the Judicial Magistrate has put his signature to have received the document at about 7.45 a.m. on 25.5.1997. But in the seal of the court, the date is differently shown. Nevertheless date is recorded by the Magistrate to be 25.5.1997. The High Court also doubted the lodging of the FIR at the time of the claim. [Paras 8 and 6] [358-C; 357-E, F, G, H]

A CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 300 of 2003

 From the final Judgement and Order dated 8.2.2002 of
B the High Court of Judicature at Madras in Criminal Appeal No.
273 of 1999.

 V. Krishnamurthy and R. Shunmugasundram, Siddhartha
 Dave, Vijay Thakur, Senthil Jagadeesan, V. Ramasubramanian
 and P.N. Ramalingam, P.R. Kovilan Poongkuntran, R.V.
C Kameshwaran, V. Vasudevan, Prashnath P., T. Harish Kumar,
R. Nedumaran, S. Thanajayan and K.V. Bharathi Upadhyaya,
with them for the appearing parties.

 The Judgement of the Court was delivered by

D **DR. ARIJIT PASAYAT, J.**

 1. Challenge in this appeal is to the judgment of a Division
 bench of the Madras High Court directing acquittal of the
 accused persons who faced trial for alleged commission of
 offences punishable under Section 302 read with Section 34
E of the Indian Penal Code, 1860 (in short the 'IPC'). Learned
Additional Sessions Judge, Virudhunagar had held the
 respondent accused persons guilty for causing the death of one
 Gurusamy Naicker (hereinafter referred to as the 'deceased')
 on 25.5.1997 while he was sleeping in front of a shop.

F 2. Prosecution version as unfolded during trial is as follows:

 Subburaj (PW1), Vivekanandan (PW2) are brothers and
 sons of the deceased. Gopalakrishnasamy (PW5) is the brother
 of the deceased. Rajavelusamy (A3) and Vasudevan (A4) are
G brothers. There is a Hindu Primary School in S. Thiruvenga-
katapuram which belonged to the Kammavar community.
 Venkatasamy (PW-7) has been the administrator of the school
 for the past twenty years, as the President of the school by name
 Rangasamy has not been there in the village for several years.
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Apart from the President and Administrator, the Committee consisted of seven members. One of the members by name Thiruppathi passed away. Without the knowledge of the people of that village, the accused group showing the 4th accused as President, 2nd accused as Administrator and seven persons including first accused as members registered as the members of the Association Committee in the office of the District Registrar, Virudhunagar. Jayaveeran (PW15) the District Registrar received the memorandum and bye-laws in this regard and effected registration on 06.05.1997. Coming to know about this, a meeting in the village was convened including P.Ws.7 and 8. The meeting was held on 15.05.1997 and about 200 persons participated in that meeting. It was resolved in that meeting to elect an able administrator and in that meeting the deceased Gurusamy was selected as the Administrator. In fact in the meeting, apart from P.Ws. 3 and 5, the accused also participated. In the said meeting, the accused raised an objection. But however, the same was overruled and it was resolved to register on 27.05.1997 the name of the deceased Gurusamy Naicker as Administrator and this provoked the accused.

On 28.03.1997 at about 11.00 p.m., 1st and 3rd accused and 7 others attacked PW.13 in the hotel belonging to the deceased. The deceased and one Veerasamy pacified the accused and others. PW 13 lodged a complaint before the Police in that regard. After investigation, Police filed charge sheet against A1 and others, in which the deceased Guruswamy Naicker was cited as a witness. Thus, the accused had a grievance against the deceased.

On 23.05.1997 at about 10.00 p.m., all the four accused went to the hotel of the deceased Guruswamy Naicker. But the deceased was not there. The accused then told PW 1 and PW2 who were present in the shop to tell the deceased not to take charge in the School administration, and that if he does so, he will not be allowed to live. When the deceased Guruswamy Naicker returned, both P.Ws.1 and 2 informed him about the threat by the accused. The deceased replied to PWs.1 and 2

A by saying that when something good is done to village, there is bound to be some opposition and one should not mind this and pacified his sons viz. PWs.1 and 2.

B On 24.05,1997 at about 11 p.m. P Ws.3 and 4 were talking to the deceased about School administration and thereafter the deceased went to sleep near the well situated South-West of the hotel. Along with the deceased, PWs 3 and 4 also left. As it was late by then, PWs.3 and 4 decided to stay there itself. The deceased then went and slept in front of the Shop known as Surya Saloon and Nandini Tailors, belonging to his brother PW5,
C PWs. 3 and 4 went to the terrace of the Surya Saloon and slept there.

D At about 3.45 a.m. on 25.05.1997 PWs.1and 2 for the purpose of opening the hotel, were making preparations by cleaning the hotel. At that time, all the four accused came there and questioned them about the whereabouts of the deceased. A1 was having MO-1 Aruval with him while A-2 was having MO 2. Seeing this, PWs.1 and 2 got scared and told the accused that the deceased was out of station. Then third accused saying that the deceased should be there only and that his story can be
E finished proceeded towards west and marched ahead to the place towards south to reach the place where the deceased was sleeping. PWs.1 and 2 fearing that the accused would finish off the deceased, followed the accused by shouting. When the accused reached the deceased, A-3 caught hold of the legs of
F the deceased and A-4 uttered the words, "cut and kill him", whereupon A-1 with MO I aruval in his hands cut on the left side of the neck of the deceased. Thereafter, A 2 with MO-2 aruval also cut on the left side of the neck of the deceased. PWs.3 and 4 who were sleeping on the terrace of the Surya
G Saloon, hearing the noise made by P.Ws. 1 and 2 got up and also witnessed the attack on the deceased. P.Ws. 3 and 4 on seeing the attack on the deceased, shouted, "why are you cutting and killing him". The accused then threatened PWs. 3 and 4 not to come near and in view of that PWs 3 and 4 did not proceed
H further. Thereafter accused left with weapons. At the time of

occurrence, electric mercury lights were burning both on the west and south of the Alagarraja Textile Mill. There was also a light burning in the pial where the deceased was sleeping.

After the accused left, PWs. 1 to 4 went near the deceased and they saw the deceased had no life, Thereafter, PW1 went to the village and informed him that PW 5 and both of them went back to the scene of occurrence. PWs.1 and 5 saw the deceased lying dead with injuries on his beck. Thereafter, PWs. 1 and 5 proceeded in a two wheeler to Keelarajakulareman Police Station and reached there at 4.45 pm and gave complaint to Sub Inspector of Police (P.W16). The complaint was reduced to writing by the Head Constable and the same was read over to PW1 and after ascertaining the correctness, his signature was obtained. In the said complaint Ex.P-1, PW5 also signed. Sub Inspector of Police (PW 16), on the basis of the said complaint registered a case in Crime No.169 of 1997 and prepared printed F.I.R. Ex.P19. PW.16 thereafter telephonically informed the Inspector of Police P.W.17 about the incident. The printed FIR along with the complaint was sent to the Court of Judicial Magistrate and copies thereof were sent to his superiors.

Inspector of Police (PW 17) proceeded to the scene of occurrence and reached there at 6.00 a.m in the morning. Copy of the FIR, was received by him at the scene of occurrence, Ex.P.6 is the observation mahazar prepared by him and the same was attested by Village Administrative Officer (PW6) and Thalayari Guncisekaran. A sketch Ex.P.20 was also prepared by the Inspector of Police. Inquest over the body of the deceased was held between 6.00 a.m. and 10.00 a.m. And Ex.P-21 is the inquest report. During inquest, Inspector of Police examined PWs. 1 to 3 and Rajammal and others. After inquest, MOs. 3, 4, 8, 9, 10 and 11 were seized under mahazar Ex. P7. The body of the deceased was then sent to the Government Hospital with a requisition to conduct post mortem.

Dr. Bharathilakslmi (P.W.11) at Government Hospital, Rajapalayam, on receipt of requisition Ex.P-13 commenced

A autopsy on the body of the deceased at about 3.00 PM in the afternoon. Ex.P-14 is the post mortem certificate issued by the Doctor. In the said certificate, the Doctor had noted the following:

B “Injuries : 1. Cut injury of about 9 cms extend from 2 cm away from the angle of the mouth (left) to 3 cm below the ear lobule (left) horizontally placed, depth 1 cm margins regular and tapering with fracture of the angle of the mandible.

C 2. Cut injury of about 20 cms extend from middle of the neck back side (left) to the middle of the chin and first injury merging with this wound margin regular and tapering depth upto vertebral bone, wound horizontally placed – skin, muscles and vessels hence all are cut with fracture of the C.2 vertebrae body. No blood clots seen. There was no fracture in skull. There was no injury in the Brain and its colour was pale.

D There was fracture of C-2 Vertebrae in Spinal Column.

Hyoid :

Intact. Lung : PaLE NO RIB FRACTURE, Heard:

E Pale, Chambers empty, Liver, Spleen: Pale.

Stomach: Pales Bladder: 100 ml. of urine”.

F The Doctor had opined that the deceased would appear to have died of shock and haemorrhage and death would have occurred 10 to 18 hours prior to post mortem.

G On information, the Inspector of Police arrested all the four accused on 26.05.1997 at about 2.00 p.m., at the place called Sevelmedu Otrangadu in the presence of PW9 and PW 12. On arrest, accused 1 and 2 independently gave confessional statements. Ex.P22 is the admissible portion of the confession statement given by A1 while Ex.P.23 is the admissible portion of the confession statement given by A2 Pursuant to the confession statement, A2 took the police party and the witnesses and produced MO 2 aruval from a thorny bush at a place called

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Otrangadu and the same was recovered under mahazar Ex.P 24. On the same day, at about 6.15 p.m., A-1 produced MO-1 aruval and the same was recovered. Both the mahazars were attested by Village Administrative Officer (PW 9) and Thalayari. The Inspector of Police proceeded with the investigation and examined the witnesses on various dates. The statements of PWs. 1 to 4 were recorded by P.W.10 Judicial Magistrate, Srivivilliputhur and the same are marked as Exs to P2 to P5. The material objects were then sent for chemical analysis. Exs.P.28 and P29 are the chemical analyst's report while Ex.P 30 is the Serologist's report. The Inspector of Police after completing investigation, filed his report on 7.7.1997 under Section 302 read with Section 34 and 109 IPC.

As the accused persons pleaded innocence, trial was held, where the accused persons were held guilty. Questioning the conviction an appeal was filed by the respondents which as noted above directed acquittal.

4. In support of the appeal, learned counsel for the appellant-informant submitted that the High Court was not justified in directing acquittal. The evidence of PWs.1 & 2 has been discarded without indicating any reason. It was also pointed out that there is no delay in dispatching to Magistrate (Ex.19).

5. Learned counsel for the respondent on the other hand supported the judgment.

6. It is seen that the High Court has not discussed the evidence. No reason has been indicated as to why the detailed analysis done by the Trial Court deserved to be up set. The conclusions are factually incorrect. So far as the date on which the special report reached the Magistrate is concerned it is to be noted that the Judicial Magistrate has put his signature to have received the document at about 7.45 a.m. on 25.5.1997. But in the seal of the Court the date is differently shown. Nevertheless date is recorded by the Magistrate to be 25.5.1997. The High Court also doubted the lodging of the FIR at the time of the claim.

A 7. Opposing the appeal, learned counsel for the accused submitted that since there was unexplained factor of delay, the High Court was justified in directing acquittal. It is stated that the evidence of PWs. 1 & 2 do not inspire confidence and, therefore, the High Court has rightly discarded the evidence brought on record.

B 8. We do not think it is necessary to analyse the various aspects involved in detail. It is seen that the High Court has practically disposed of the criminal appeal without analyzing the evidence and without indicating any basis as to why the view expressed by the trial court cannot be maintained. In the aforesaid circumstances we remit the matter to the High Court for fresh disposal in accordance with law. We request the High Court to dispose of the appeal as early as practicable.

C 9. The appeal is disposed of accordingly.

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I-K.K.T.

Appeal disposed of.