

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1990 OF 2012

SADAYAPPAN @ GANESAN

...APPELLANT

VERSUS

STATE, REPRESENTED BY
INSPECTOR OF POLICE

...RESPONDENT

J U D G M E N T

N.V. RAMANA, J.

1. This appeal is directed against the Judgment dated 13th December, 2011 passed by the High Court of Judicature at Madras in Criminal Appeal No. 346 of 2011 whereby the Division Bench of the High Court dismissed the appeal preferred by the appellant herein and upheld his conviction and sentence passed by the Trial Court for the offence punishable under Section 302 read with Section 34, IPC.

2. Prosecution case in brief is that Selvam @ Thangaraj (deceased), Karuppusamy (A1) and Sadayappan @ Ganesan (A2/appellant herein) were neighbouring

agricultural land owners in the village of Kandavayal who used to go together for hunting of rabbits in the nearby forest area. Around 15 years prior to the incident, the deceased Thangaraj had negotiated to buy some agricultural land from A1 and paid him Rs. 30,000/- towards the sale value and took possession of the said land. However, despite repeated requests, A1 had never come forward for registering the sale deed in favour of the deceased. Owing to this, A1 and the deceased developed animosity towards each other. A2—appellant herein is the adjacent landowner who always supported A1 in avoiding registration of the sale deed. Despite animosity against the deceased, A1 and A2 kept on going to the forest for hunting along with him. On May 27, 2008 at about 11 p.m., both A1 and A2 went to the house of deceased and insisted that he accompany them to the fields/forest. Eventually, the deceased went with them hesitatingly. When the deceased did not return home till 4 am in the morning, his wife—Rajammal (PW1) sent one Palanisamy (PW2—brother of the deceased) and Govindarajan (PW3—nephew of the deceased) to search for her husband. PWs

2 and 3, while searching for the deceased, found his dead body near the fields with bleeding injuries. They immediately rushed to PW1 and informed her of the same.

3. On a complaint given by PW1, the Sub-Inspector of Police (PW14) at Sirumugai Police Station registered the crime under Section 302, IPC and Section 25 (1B)(a) of the Indian Arms Act against the accused. The Assistant Commissioner of Police (PW15—Pandian) took up the investigation and after completing the formalities of holding inquest and preparing inquest report (Ext. P21), sent the body of the deceased for post-mortem. On August 29, 2008 the accused appeared before the Village Administrative Officer (VAO) and confessed to committing the crime. When the VAO produced the accused with their confessional statements, the I.O. arrested them and at their instance recovered material objects including Single Barrel Muzzle Loading Gun (MO1), torch light with battery, blood stained and normal soil, torn clothes, lungi, towel etc. and sent them for chemical analysis. Subsequently, the learned Judicial Magistrate committed

the case to the Principal District and Sessions Judge, Coimbatore who framed charges against the accused-appellant under Section 302 read with Section 34, IPC.

The appellant denied the charges and claimed to be tried.

4. After an elaborate trial, the Trial Judge opined that the circumstantial evidence correlates with the accused and clearly proves that owing to prior enmity, A1 and A2, in furtherance of their common intention, committed the murder of the deceased with a gun shot from the unauthorized gun owned by accused-appellant. The Trial Court thereby found both the accused guilty and accordingly convicted the appellant herein under Section 302 read with Section 34, IPC and sentenced him to life imprisonment and also to pay a fine of Rs. 10,000 *vide* order dated 18.05.2011. Both the accused preferred an appeal before the High Court which was dismissed *vide* order dated December 13, 2011. Aggrieved thereby, both the accused preferred separate appeals before this Court. It is pertinent to state that the appeal of the A1 stood abated owing to his death during its pendency. Thus, we are now concerned only with the appeal preferred by A2.

5. Learned counsel appearing on behalf of the appellant contended that the courts below have incorrectly relied on the testimonies of interested witnesses who are relatives of the deceased. He submitted that the chain of circumstances connecting the appellant to the crime is incomplete. He further submitted that the courts below erred in holding that the appellant had motive to commit the alleged crime and shared a common intention with A1, inasmuch as the land dispute between A1 and the victim had already been settled amicably in the panchayat. He argued that A1, A2 and the victim were on friendly terms thereafter which is reinforced from the fact that they used to go to the forest for hunting together.

6. Learned counsel appearing for the State, however, supported the judgment of the High Court and submitted that there was no occasion for this Court to interfere with it.

7. We have heard the learned counsels for the parties and meticulously perused the material on record.

8. Admittedly, the deceased, A1 and A2 (appellant herein) were neighbouring agricultural landowners and

used to go for hunting together. Further, there is no denial of the fact that around 15 years prior to the date of incident, the deceased and A1 had entered into a deal through which land was sold to the deceased, but the same was never registered. Additionally, record shows that A2—the appellant herein, whose land was adjacent to that of A1, always supported A1 in the matter of delaying the registration of land in favour of the deceased. This is the factual matrix of enmity between the accused and the deceased which serves as motive for the offence. Despite this, the deceased kept on going to the forest for hunting with the accused persons. These facts are abundantly clear from the testimonies of PWs 1, 2, 3, 4 and 6.

9. Further, PW1 – wife of the deceased (complainant), who is the witness to the last seen, supported the prosecution version and deposed that two days prior to the incident she had pressed A1 to register the land, but he kept quiet and went away. She further stated that owing to this pre-existing enmity, the accused persons were motivated to eliminate her husband. Thus, on the

fateful night, the accused had come, armed, to take the deceased along with them to the forest, a request which was acceded to by the deceased hesitatingly.

10. With respect to the deposition of PWs 1, 2, 3, 4 and 6 which firmly establish the prosecution version, the learned counsel for the appellant contended that they are inter-related and interested witnesses, thus, making their evidence unreliable.

11. Criminal law jurisprudence makes a clear distinction between a *related* and *interested* witness. A witness cannot be said to be an “*interested*” witness merely by virtue of being a relative of the victim. The witness may be called “*interested*” only when he or she derives some benefit from the result of a litigation in the decree in a civil case, or in seeing an accused person punished. [See: ***Sudhakar v. State, (2018) 5 SCC 435***].

12. In the case at hand, witnesses maybe related but they cannot be labelled as interested witnesses. A scrutiny of their testimonies which has stood the rigour of cross-examination corroborates the prosecution story.

13. PW2—brother of the deceased and PW3—nephew of

the deceased, clearly deposed that when they came to know from PW1 that the deceased did not turn up after leaving home at 11 pm on the previous night, they went in search of him and found his dead body in '*Vaalaithope*'. Similarly, PW4 – another nephew of the deceased has also deposed that upon coming to know from his brother—PW3 about the death of his uncle, he along with his mother went to '*Vaalaithope*' where they found the dead body of the deceased. PW6—another nephew of the deceased also deposed in his statement that when he went to Sirumugai Police Station he saw the accused persons there and witnessed their confessional statements recorded by the police. He also stated that he accompanied the police with the accused to the place of occurrence where normal and blood stained mud was collected, and that he signed the observation Mahazar (Ex.P7).

14. Going by the corroborative statements of these witnesses, it is discernible that though they are related to each other and to the deceased as well, their evidence cannot be discarded by simply labelling them as

“interested” witnesses. After thoroughly scrutinizing their evidence, we do not find any direct or indirect interest of these witnesses to get the accused punished by falsely implicating him so as to meet out any vested interest. We are, therefore, of the considered view that the evidences of PWs 1, 2, 3, 4 and 6 are quite reliable and we see no reason to disbelieve them.

15. With respect to forensic evidence, Dr. T. Jeya Singh (PW12), who conducted post mortem on the body of the deceased, found prominent injuries on the body of the deceased and opined that the deceased died due to shock and haemorrhage from multiple injuries (perforating and penetrating) which were possible due to piercing of pellets. The post mortem report and chemical analysis report confirms the gun shot and proves that the gun powder discovered on the body and clothes of the deceased was the residue of the gun (MO1). The ownership of this gun (MO1), which was discovered on the basis of his extra-judicial confession, has not been disputed by the appellant in his Section 313 Cr.P.C. statement.

16. The counsel appearing on behalf of the appellant agitated the genuineness and admissibility of the extra-judicial confession of the accused on the basis of which recovery of gun (MO1) was made. He questioned the same on the basis of absence of the examination of the VAO who allegedly recorded the same. It is to be noted that the record indicates that the VAO could not be examined due to his death before the commencement of the trial. However, it is clear that the said confessional statement, was sent by the VAO to the Inspector of Police along with a covering letter (Ext. P14). Moreover, the Village Assistant—PW11, even though turned hostile, had specifically deposed that the said extra judicial confession was recorded by the VAO.

17. Though the prosecution case is premised on circumstantial evidence in the absence of any eye-witness, the depositions of prosecution witnesses which have stood the rigour of cross-examination clearly support the prosecution version and establishes enmity between the accused and the deceased. This fact supported by PW1's last seen evidence, her prompt

complaint to the police and the forensic evidence which correlates the recovered weapon to the physical injuries on the body of the deceased proves the prosecution case beyond any reasonable doubt independent of the extra-judicial confession.

18. Thus, the High Court was justified in upholding the conviction of the appellant and did not commit any illegality in passing the impugned judgment which merits interference. Therefore, the appeal being devoid of merit stands dismissed.

.....J.
(**N. V. RAMANA**)

.....J.
(**MOHAN M. SHANTANAGOUDAR**)

NEW DELHI;
APRIL 26, 2019.