

V.Aruldoss Vs. State

V.Aruldoss Vs. State

SooperKanoon Citation : sooperkanoon.com/1167863

Court : Chennai

Decided On : Jun-18-2014

Judge : The Honourable Mrs. Justice Aruna Jagadeesan

Appellant : V.Aruldoss

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

18. 06.2014 CORAM THE HONOURABLE MRS. JUSTICE ARUNA JAGADEESAN CRL.A.No.838 of 2011 V.Aruldoss ..Appellant Vs State represented by Inspector of Police Nallanpillai Petral Police Station Villupuram District. (Crime No.13/2010) ..Respondent Appeal filed under Section 374 Cr.P.C. against the judgment of the learned Additional District and Sessions Judge, Fast Track Court No.II, Tindivanam dated 11.01.2011 in S.C.NoI.260 of 2010. For Appellant : Mr.D.Selvaraju for Mrs.V.Alamelu For Respondent : Mr.V.MR.Rajendran, Additional Public Prosecutor.

JUDGMENT

This appeal arising out of the judgment dated 11.01.2011 passed by the learned Additional District and Sessions Judge, Fast Track Court-II, Tindivanam, in S.C.No.260 of 2010, has been preferred by the sole appellant who after having

been convicted for the offence under section 304(2) IPC was directed to suffer rigorous imprisonment for 10 years. 2. The facts disclosed from the prosecution case are as follows i) On 24.01.2010 at about 9.00 p.m., when the wife of the appellant was found talking to a beggar aged about 60 years, the appellant scolded his wife as to why she was talking to him and attributed illicit relationship with him. He tried to assault his wife but she escaped from his clutches. However, he turned towards the beggar and attacked him with wooden log after chasing him to a distance, as a result of which, the deceased sustained injuries on his head and met with instantaneous death. ii) It appears from the evidence that on gathering information from the neighbours, more particularly, P.W.2 Rathinam, P.W.3, Gurumurthy @ Thirumurthy and P.W.12 Ramesh, P.W.4 Village menial informed the Village Administrative Officer P.W.1, who in turn came to the spot and saw the dead body of the deceased. After enquiring the neighbours, P.W.1 went to Nallanpillaipetran Police Station and lodged Ex.P1 report on the basis of which P.W.11, Sub Inspector of Police, registered a case in Crime No.13 of 2010 for the offence under section 302 IPC and prepared Ex.P13 printed FIR. He gave the F.I.R. to P.W.13 Inspector of Police who proceeded to the place of occurrence and recovered blood stained earth and sample earth. He also prepared the observation mahazar and drew a rough plan. He recovered some coins, gunny bags, polythene paper roll, water bottles viz., M.Os 2 to 9 from the place of occurrence in the presence of witnesses. He conducted inquest on the dead body of the deceased and examined the witnesses and recorded their statements. On information, he arrested the accused at Semmedu bus stop and on his confession, he recovered the Thadi M.O.1 from the house of the accused. He sent the material objects to the Forensic Laboratory by giving a requisition through the Judicial Magistrate, Ginjee. After complying with the formalities, he completed the investigation and laid the charge sheet against the accused for the offence under section 302 IPC. iii) During the course of trial, 13 witnesses were examined on the side of the prosecution. The prosecution also marked 17 exhibits and marked 9 material objects. No witness was examined on the side of the defence and no exhibits and material objects were marked. Thereafter the accused was questioned under section 313 Cr.P.C. as to the incriminating circumstances found in the prosecution case. He denied his complicity in the crime. The trial Court after

hearing the arguments of both sides and on perusal of the entire materials placed on record, found the accused guilty of offence under section 304 (II) IPC and passed the judgment of conviction and sentence as stated above. Hence, this appeal at the instance of the appellant.

3. The defence of the appellant was two fold. Firstly, he had not committed the offence as complained of rather the deceased sustained injuries in the road accident. The other suggestion of the accused was that P.W.12 Ramesh could not have witnessed the occurrence as his house is far away from the place of occurrence.

4. Mr.D.Selvaraju, learned counsel appearing for the appellant submitted that even according to the prosecution, the occurrence took place in front of one Puniyakodi's lathe shop but the said witness has not been examined before Court though his statement was recorded by the Investigating Officer during investigation. The learned counsel would submit that an adverse inference should be drawn against the prosecution. He would submit that the non-examination of the material witness Puniyakotti would only show that the incident has occurred not as projected by the prosecution that is why the prosecution has withheld the material evidence. Learned counsel would further submit that P.W.12 who has been examined before Court at the fag end of the trial could not have witnessed the occurrence as even according to him, he had come out only on hearing the sound. Learned counsel also pointed out that his house is not shown in the rough plan. He would further submit that if P.W.2 Ramesh is residing in the close vicinity of the place of occurrence then the Investigating Officer would not have omitted to note down the location of his house in the rough plan.

5. Learned counsel strenuously contended that there is no genuineness even with regard to the FIR lodged in this case. There is considerable doubt in the registration of the FIR which goes to the root of the matter. Learned counsel further contended that the genuineness of the FIR cannot be accepted for the reason that the only witness who speaks about the occurrence namely P.W.12 had stated that the Village Administrative Officer enquired him at the scene of occurrence at 10.00 a.m. On 25.1.2010 and only thereafter, P.W.1 went to the

police station and lodged the complaint. Therefore, he would submit that the FIR could not have been registered at 6.30 a.m as projected by the prosecution. Learned counsel would further submit that the accused was falsely implicated in this case and the conviction based on the unreliable evidence cannot be sustained.

6. Mr.V.MR.Rajendran, learned Additional Public Prosecutor appearing for the State countering the arguments submitted that P.W.12 is the eye witness and his evidence cannot be brushed aside as his evidence disclosed that he was residing near the place of occurrence. Learned Additional Public Prosecutor further submitted that P.W.1 and P.W.4 have categorically stated that they have enquired P.W.12 Ramesh also before lodging the FIR and therefore the presence of P.W.12 at the time of occurrence cannot be doubted. He further submitted that the report was promptly lodged and the oral testimony is supported by medical evidence.

7. I have heard the learned counsel for the appellant and the learned Additional Public Prosecution appearing for the State.

8. The prosecution has examined three eye witnesses namely, P.W.2 and P.W.3 and P.W.12. However, both P.W.2 and P.W.3 did not support the prosecution case. The only eye witness who has seen the occurrence is P.W.12 and his evidence clearly indicated that on hearing the sound at 9.00 p.m. on the date of occurrence i.e., on 24.1.2010, he came out of his house and saw the accused who was quarreling with his wife for talking to a beggar. His evidence further indicated that in a spur of a moment, the accused took a wooden log and tried to attack his wife but as she ran away, he turned towards the beggar who started running away from the place and was chased and attacked by the accused in front of Punniyakoti lathe shop. His evidence does not suffer from any serious infirmity. Though the house of P.W.12 is not shown in the rough plan, there is no suggestion made to the said witness that he is not residing within the vicinity of the place of occurrence. In fact the accused has chased the deceased and only then, gave the fatal blow with the wooden log . No motive is attributed to the said witness. P.W.12 is the natural and independent witness and he has no reason to falsely implicate the accused and that he had no motive or animus to depose

against the accused. Therefore, I find no reason to reject the evidence of P.W.12 from the purview of consideration.

9. It is no doubt true that there is some contradiction with regard to the time in lodging the FIR but that does not in any way affect the case of the prosecution. P.W.1 who is the Village Administrative Officer, after gathering information had gone to the Police Station along with his menial, P.W.4 and gave the report. Therefore, the discrepancies in the evidence of P.Ws. 1 and 4 in respect of lodging the FIR is not so material to disbelieve the prosecution case. Merely suggesting the delay in despatching the report may not be sufficient in itself to discard the FIR in the absence of any ulterior motive for giving such a report by P.W.1 Village Administrative Officer. During the cross examination of P.W.13, investigating officer there is no suggestion put to him by the accused that he fabricated the FIR. It is true that the defence has suggested that the injuries sustained by the deceased is likely to have sustained in an accident, however, there is no material available on record even to suggest that there was an accident at the time of occurrence. The deceased has sustained injuries on his vital part i.e., head and it is unlikely that the deceased would have sustained those injuries in the accident. The trial Judge, after analysing the evidence in a proper and perspective manner has rightly convicted the accused for the offence under section 304(II) IPC instead of the offence under section 302 IPC.

10. Now the matter to be considered is as to what sentence should be imposed upon the appellant. The incident had occurred in 2010 and the accused was aged about 62 years at that time. It is argued on behalf of the appellant that the act of the appellant may at best constitute the offence under section 326 IPC. I failed to see how this can be so. The deceased was 65 years old and when the appellant gave a blow with M.O.1 wooden log on a vital part suspecting fidelity of his wife on merely seeing them talking to each other, the appellant might have presumed to have had the knowledge that the blow to be given with the wooden log on that part of the body is likely to cause death. Although he might not have any intention to cause his death or to cause any injury which is likely to cause his death but he had knowledge that it is likely to cause death. In such circumstances, I am of the considered view that the appellant has been rightly convicted under Part II of

Section 304 IPC. However considering the circumstances of the case, I feel that the sentence of rigorous imprisonment of 10 years imposed on the appellant by the learned trial Judge is rather severe and that the ends of justice would be sufficiently met if it is reduced to 4 = years. Therefore, while maintaining the conviction under section 304(ii) IPC as recorded by the Court below, I reduce the sentence from the period 10 years rigorous imprisonment to that of 4 1/2 years rigorous imprisonment.

11. In the result, i) The criminal appeal is partly allowed. ii) The conviction imposed by the learned Additional District and Sessions Judge, Fast Track Court-II, Tindivanam on the Appellant/Accused viz., V.Aruldoss for the offence 304(ii) IPC is confirmed, however, the sentence of imprisonment is modified from 10 years rigorous imprisonment to that of 4 = years rigorous imprisonment. It is brought to the notice of this Court that the accused is in custody from the date of his arrest i.e., 25.1.2010 till date and he is in prison for 4 = years. The accused shall be set at liberty, if he had completed 4 = years of rigorous imprisonment. 18.06.2014
Index:Yes/No Internet:Yes/No vsi To 1. The Additional District and Sessions Judge, Fast Track Court No.II, Tindivanam.

2. The Inspector of Police, Nallanpillai Petral Police Station Villupuram District.,
3.The Public Prosecutor, High Court, Chennai. ARUNA JAGADEESAN,J vsi
Criminal Appeal No.838 of 2011 18.06.2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com