

Chinnathambi Vs. State Rep.by

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Court : Chennai

Decided On : Mar-20-2014

Judge : The Honourable Mr. Justice a.Selvam

Appellant : Chinnathambi

Respondent : State Rep.by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

20. 03.2014 CORAM THE HONOURABLE MR. JUSTICE A.SELVAM and THE HONOURABLE MR. JUSTICE V.S.RAVI CrI.A.(MD)No.87 of 2013 and MP(MD)No.2 of 2013 Chinnathambi .. Appellant/Single Accused vs State rep.by The Inspector of Police, Thirupanandhal Police Station Kumbakonam, Thanjavur District Crime No.77 of 2009. .. Respondent/Complainant Criminal appeal filed under Section 374 of Cr.P.C. against the conviction and sentence dated 24.08.2010 passed in Sessions Case No.47 of 2010 by the Additional District and Sessions Court - cum - Fast Track Court, Thanjavur. !For Appellant ... Mr.G.Thalaimutharasu ^For Respondent ... Mr.C.Ramesh Addl.Public Prosecutor :

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J.) This Criminal Appeal has been directed against the conviction and sentence dated 24.08.2010 passed in Sessions Case No.47 of 2010 by the Additional District and Sessions Court (Fast

Track Court), Thanjavur.

2. The epitome of the case of the prosecution is that the deceased Valli is the wife of the deceased and both of them have got married in the year 1997 and blessed with two children. The accused has had suspicion over the conduct of the deceased. On 18.03.2009 during evening hours, since the deceased has not cooked rice, a tussle has arisen between the accused and deceased. On 19.03.2009 at about 05.30 am, both the accused and deceased have gone to a field in which they are having leasehold rights for the purpose of irrigating the same. On the way to their field, in eucalyptus grove of one Ramakrishnan, the accused has attacked the deceased indiscriminately and thereby caused fatal injuries and due to overtacts alleged to have been committed by the accused, the deceased has passed away.

3. After receipt of information, PW1, Kaliyamoorthy, Village Administrative Officer has given Ex.P1, complaint and the same has been registered in Crime No.73 of 2009 by the Sub Inspector of Police, who has been examined as PW19.

4. On the basis of Ex.P1, the Investigating Officer, PW20 has taken up investigation and examined connected witnesses, collected material objects and after completing investigation, laid a final report on the file of the Judicial Magistrate Court No.II, Kumbakonam and the same has been taken on file in PRC No.15 of 2009.

5. The case has been committed to the Court of Sessions and taken on file in Sessions Case No.47 of 2010.

6. The trial court after considering the available materials on record has framed a charge against the accused under Section 302 of the Indian Penal Code and the same has been read over and explained to the accused. The accused has denied the charge and claimed to be tried.

7. On the side of the prosecution, PWs.1 to 20 have been examined and Exs.P1 to P14 and M.Os.1 to 14 have been marked.

8. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

9. The trial Court after considering the available evidence on record has found the accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. Against the conviction and sentence passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

10. The consistent case put forth on the side of the prosecution is that the accused is the husband of the deceased by name Valli and both of them have got married in the year 1997 and blessed with two children. The accused has had suspicion over the conduct of the deceased. On 18.03.2009 during evening hours, the deceased has failed to cook rice and due to that a miff has arisen in between them. On 19.03.2009 at about 05.30 am, the accused and deceased have proceeded to their land, in which they are having leasehold right under the guise of irrigating the same and on their way, in the midst of eucalyptus grove of one Ramakrishnan the accused has attacked the deceased indiscriminately by using an aruval and thereby caused fatal injuries and due to overtacts alleged to have been committed by the accused, the deceased has passed away.

11. In the instant case, even though as many as 20 witnesses have been examined on the side of the prosecution, nobody speaks about the occurrence. The trial Court has invited conviction and sentence only on the basis the evidence given by one Sathya (PW2) who is none other than the daughter of the deceased and accused. The other witnesses namely PWs.3 to 7 who have been examined for the purpose of proving the relationship between the accused and deceased and also for the purpose of proving that on 19.03.2009 both the accused and deceased have proceeded towards their land, have become hostile witnesses. Under the said circumstances, the trial Court has invited conviction and sentence only on the basis of testimonies given by PW2.

12. Before contemplating the rival submissions made on either side, the Court has to look into as to whether the evidence given by PW2 can be relied upon for the purpose of inviting conviction and sentence against the accused.

13. It is an admitted fact that PW2 is the daughter of both the accused and deceased. At the time of occurrence, PW2 is aged about 10. The trial Court before examining her has posed certain questions and PW2 has given befitting answers and by ascertaining conduct of PW2, the trial Court has given certificate to the effect that PW2 is a competent witness to depose evidence before Court.

14. The specific evidence given by PW2 is that very often her father/accused has had suspicion over the conduct of her mother/deceased. Further the accused would say very often that the deceased would try to kill him by administering poison. Even on 18.03.2009, during night hours, the accused has refused to take food. But she and her younger brother have taken the same. The accused has directed her to go and purchase barotta and accordingly she has done it. The accused has eaten the same. During early morning the accused has woken her up and asked her to see time. After some time, at 04.55 am, the accused and deceased have proceeded towards the land for the purpose of irrigating the same and subsequently she has gone to school, where she has informed about the factum of death of her mother.

15. From the evidence adduced by PW2, the Court can easily deduce the conduct of the accused, occurrence happened during previous night and also the fact that both the accused and deceased have gone to field for the purpose of irrigating their land.

16. The specific case put forth on the side of the prosecution is that the accused has murdered the deceased by way of attacking her indiscriminately by using an aruval (M.O.4).

17. At this juncture, the Court has to look into Section 106 of the Indian Evidence Act 1872 and the same reads as follows: Burden of proving fact especially within knowledge.-When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

18. In the instant case, the Court is having acceptable/trustworthy evidence with regard to the fact that on the fateful day, both the accused and deceased have proceeded together to their field under the guise of irrigating the same. It is an admitted fact that the body of the deceased has been found in the midst of eucalyptus grove of one Ramakrishnan. Since both the accused and deceased have proceeded together from their house to their field under the guise of irrigating the same, the entire burden lies upon the accused to prove as to what happened to the deceased. But the accused has not discharged his burden. Since the accused has not discharged his burden, since PW2 daughter of both the accused and deceased has given cogent/trustworthy evidence with regard to conduct of the accused and also with regard to the fact that both of them have proceeded towards their field, for the purpose of irrigating the same, it is needless to say that the accused has attacked the deceased by using M.O.4 indiscriminately and thereby caused her death and consequently he has committed an offence punishable under Section 302 of the Indian Penal Code.

19. The learned counsel appearing for the appellant/accused has tried to attack the conviction and sentence passed by the trial Court by way of raising the following points: (a) The father as well as brother of the deceased have been examined as PWs.10 and 11 and both of them have not stated about the conduct of the accused as well as deceased prior to occurrence and therefore, their evidence is of no use and the same cannot be relied upon. (b) The trial Court has invited conviction and sentence only on the basis of the testimonies of PW2 who is none other than minor daughter of both the accused and deceased. On the date of occurrence she has attained only 10 years of age. After occurrence she has been under the care and custody of PWs.10 and 11 and only due to their tutoring she has given such kind of evidence and therefore, her evidence cannot be believed in.

20. In support of the second contention raised on the side of the appellant/accused, the following decisions are relied upon (a) In 1995 Supreme Court Cases (Cri) 182 (Chhagan Dame Vs. State of Gujarat), the Hon'ble Apex Court has held that ".Court must carefully consider whether child witness was under influence of any tutoring.". (b) In 2011 (3) CTC308(State of M.P. Vs.

Ramesh & Another), the Hon'ble Apex Court has held that ".if evidence of child inspires confidence of Court it can be relied. Such evidence must be evaluated more carefully and with greater circumspection. Even if such witness is found to have been tutored, Court can sift through evidence and reject tutored portion and accept rest. Evidence of child witness must reveal that witness was able to discern between right and wrong.". (c) In 2014 STPL (web) 120 SC (Radhey Shyam v. State of Rajasthan), the Hon'ble Apex Court has observed as follows: ".evidence of a child witness must be subjected to close scrutiny to rule out the possibility of tutoring. It can be relied upon if the court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. As a matter of caution, the court must find adequate corroboration to the child witness's evidence. If found, reliable and truthful and corroborated by other evidence on record, it can be accepted without hesitation.

21. From conjoint reading of the decisions referred to supra, it is made clear that the testimonies of a child witness must be analysed very carefully and atmost circumspection. Even if a child witness is tutored, the tutored portion can be rejected and rest of the evidence can be relied upon.

22. In the instant case, as pointed out earlier, PW2 has given evidence only with regard to conduct of her father/accused and also with regard to the fact that prior to occurrence, both the accused and deceased have left house and proceeded towards land under the guise of irrigating the same. Since PW2 has adduced evidence to that part alone, the Court can easily come to a conclusion that the evidence given by PW2 can be relied upon and further, as per Section 106 of the Indian Evidence Act, 1872, the entire burden lies upon the accused and he has not discharged the same. Therefore, the argument advanced by the learned counsel appearing for the appellant/accused is sans merit.

23. The learned Additional Public Prosecutor has contended that in the instant case, PW2 has given clear evidence with regard to conduct of the accused and also with regard to the fact that prior to occurrence, both the accused and deceased have proceeded towards the land under the guise of irrigating the same and the trial Court after evaluating the evidence given by PW2 has rightly invited

conviction and sentence against the accused and therefore, the conviction and sentence passed by the trial Court against the accused do not warrant interference.

24. It has already been discussed in detail that the evidence of PW2 can easily be relied upon with regard to the aspect mentioned supra. Further as per Section 106 of the Indian Evidence Act, 1872 the accused has not discharged his burden. Therefore, viewing from any angle, the conviction and sentence passed by the trial Court do not suffer from any infirmity nor illegality and the same are not liable to be interfered with and altogether, the present Criminal Appeal deserves to be dismissed.

25. In fine, this Criminal Appeal deserves dismissal and accordingly is dismissed. The conviction and sentence passed in Sessions Case No.47 of 2010 by the Additional District and Sessions Court (Fast Track Court), Thanjavur are confirmed. Connected Miscellaneous Petition is also dismissed. To 1.The Additional District and Sessions - cum - Fast Track Court, Thanjavur 2.The Inspector of Police, Thirupanandhal Police Station Kumbakonam, Thanjavur District 3.The Addl. Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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