

Mayan Vs. State Represented by the

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Court : Chennai

Decided On : Jun-24-2013

Judge : S.Rajeswaran

Appellant : Mayan

Respondent : State Represented by the

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

24. 06/2013 CORAM THE HONOURABLE MR.JUSTICE S.RAJESWARAN AND THE HONOURABLE MR.JUSTICE T.MATHIVANAN Criminal Appeal(MD) No.96 of 2013 Mayan ... Appellant Vs State represented by the The Inspector of Police, D2, Sellur Police Station, Madurai. (In Crime No.1454 of 2009) ... Respondent Prayer Appeal is filed under Section 374 of the Code of Criminal Procedure, against the Judgment dated 11.10.2011 and made in S.C.No.220 of 2010, on the file of the learned Additional District and Sessions Judge (Fast Track Court No.II), Madurai. !For Appellant ... Mr.P.Kumarasamy ^For Respondent ... Mr.K.S.Duraipandian Addl. Public Prosecutor :

JUDGMENT

(Judgment of the Court was made by T.MATHIVANAN, J.) This memorandum of criminal appeal is directed against the Judgment dated 11.10.2011 and made in the Sessions Case in S.C.No.220 of 2010, on the file of the learned Additional

District and Sessions Judge (Fast Track Court No.II), Madurai finding the appellant/accused guilty under Sections 341 and 302 I.P.C., convicting him thereunder and sentencing to suffer one month of Rigorous Imprisonment for the offence under Section 341 I.P.C. and to suffer imprisonment of life and also to pay a fine of Rs.2,000/- in default to suffer rigorous imprisonment for a further period of six months under Section 302 I.P.C.

2. Brief Summary:

2. 1. That on 11.07.2009, at about 9.30 p.m. opposite to Thathaneri Burial Ground, when the deceased Peer Mohammed and his brother-in-law Mohammed Kasim P.W.1 were proceeding in a bicycle, the appellant/accused had voluntarily waylaid and hit himself against their bicycle. When questioned his authority of doing so, the appellant/accused had stabbed the deceased Peer Mohammed with knife on the lower part of left side neck and thereby caused his death. 2.2. That on 09.10.2009, P.W.12, the Inspector of Police attached to Sellur Police Station had laid a final report against the appellant/accused, before the learned Judicial Magistrate No.II, Madurai, alleging that he had committed the offences punishable under Sections 341, 302 and 506(ii) I.P.C. 2.3. After taking cognizance of the offences and furnishing the copies of the final report to the appellant/accused as required under Section 207 Cr.P.C. and after completion of the preliminary enquiry, the learned Judicial Magistrate No.II, Madurai had committed the case to the Court of Sessions as envisaged under Section 209(a) Cr.P.C. for trial according to law. The learned Principal Sessions Judge, Madurai had in turn made over the case to the learned Additional Sessions Judge (Fast Track Court No.II), Madurai for disposal. 2.4. After the appearance of the appellant/accused and on hearing the learned counsel appearing for the appellant/accused and the learned Public Prosecutor appearing for the State, the learned Additional Sessions Judge had framed the following charges as against the appellant/accused: (i) Charge No.1 : Under Section 341 I.P.C. (ii) Charge No.2 : Under Section 302 I.P.C. (iii) Charge No.3 : Under Section 506(ii)I.P.C. 2.5. When the ingredients of the charges were explained and questioned, the appellant/accused had pleaded innocent and claimed to be tried and therefore, he was put on trial. 2.6. In order to substantiate it's case, the prosecuting agency has examined as nearly as 12

witnesses and during the course of their examination Exs.P1 to P9 and material objects in M.Os.1 to 8 were marked.

3. The gravamen of the prosecution case is this:

3. 1. The deceased Peer Mohammed is none other than the elder sister's husband of P.W.1 Mohammed Kasim. P.W.1 is residing at Aruldasspuram and was working in an Eversilver workshop at Anuppanadi. That on 11.07.2009 at 9.00 p.m. he came to Goripalayam for the purpose of going to Anuppanadi. When he was waiting for the bus, the deceased Peer Mohammed came there in his cycle. On seeing him, both were returning to home. The deceased Peer Mohammed was riding his cycle. P.W.1 was sitting on the pillion. When they were proceeding opposite to Thathaneri burial ground, after passing the railway gate, the appellant/accused had voluntarily waylaid them and hit himself against the deceased's cycle. When the deceased had questioned his authority of waylaiding, the appellant/accused had replied as ".mg;goj;jhd; nog;Bgd;". While saying so, he had taken out a knife from his back and stabbed on his (deceased) chest below his neck. After receiving the stab injury, Peer Mohammed had slided down. 3.2. Thereafter, P.W.1 had taken the deceased in an ambulance. But in the hospital he was declared dead. In this connection P.W.1 had lodged a complaint (Ex.P.1) before P.W.8, the Sub-Inspector of Police, attached to Sellur Police Station at 11.45 p.m. Based on his complaint, P.W.8 had registered a case in Crime No.1454 of 2009 under Section 302 I.P.C. The Printed First Information Report was marked as Ex.P.7. Thereafter, he had sent the complaint Ex.P.1 and the First Information Report Ex.P7 to the learned Judicial Magistrate No.II, Madurai and the copies of the same were also sent to the police higher officials, including P.W.11. 3.3. Subsequently, P.W.11, Inspector of Police, Sellur Police Station, after receiving the copy of the First Information Report, had taken up the case for investigation. At about 00.45 a.m. on 12.07.2009, he had been to the place of occurrence and inspected the place of occurrence in the presence of P.W.5 Nagarajan and one Murugan and prepared an Observation Mahazar Ex.P.8 in respect of the place of occurrence. He had also collected some blood stained earth and some un-blood stained earth in the presence of above said witnesses under the cover of a Seizure Mahazar Ex.P.3. At about 7.45 a.m. P.W.11 had been to Rajaji

Government Hospital, Madurai and conducted an inquest on the dead body of Peer Mohammed, which was kept in the mortuary, in the presence of panchayathars. At about 9.45 a.m., he had completed the inquest and prepared an inquest report under Ex.P9. 3.4. Then P.W.11 had sent the dead body for conducting postmortem examination through P.W.10 Head Constable attached to Sellur Police Station along with a requisition. On receipt of the requisition, P.W.7 Dr.Selvaraj, who was functioning as the Assistant Professor in the Department of Forensic Science at Madurai Medical College had started conducting of postmortem examination on the dead body of Peer Mohammed at 10.30 a.m., on 12.07.2009. Whileso, he had found the following antemortem injuries on the dead body: ".1. An oblique stab injury 3 x 1 cm x muscle deep noted on the outer aspect of lower part of left side of neck, 2 cms above the inner end of left clavicle bone. On dissection, the wound is directed downwards & inwards piercing the underlying muscles, carotid sheath, carotid vessels and nerves through & through and ends as a point in the underlying muscle. Note: The margins of the injury are regular with one end pointed and other end curved. Other findings: Peritoneal cavity - empty : Pleural cavities empty; Pericardium - contains 15 ml of straw colour fluid; Heart - both chambers empty; Coronaries - patent; Lungs - cut section pale; Larynz & trachea - normal; Hyoid bone - intact; Stomach - contains 400 gms of partially digested food particles, nil specific smell, mucosa pale; Liver, spleen & kidneys - cut section pale; Small intestine - contains 20 ml of bile stained fluid, nil specific smell, mucosa pale; Bladder - empty; Brain - surface vessels pale, cut section pale.". After the completion the postmortem examination, P.W.7 had opined that ".the deceased would appear to have died of shock & haemorrhage due to stab injury to the neck, 12 to 16 hours prior to autopsy".. To that effect, he had issued a postmortem certificate under Ex.P.6. 3.5. P.W.11, the investigating officer had examined the witnesses and recorded their respective statements. Then at about 2.00 p.m. on 12.07.2009, he had arrested the appellant/accused near the Corporation Lavatory, which is located on the northern side of Madurai K.V.Main Road in the presence of P.W.6, Village Administrative Officer and his Menial one Paramasivam. 3.6. On interrogation, the appellant/accused had voluntarily given a confessional statement, which was reduced into writing by P.W.11 in the presence of the above said witnesses and based on his disclosure

statement under Ex.P.4, P.W.11 had recovered the knife M.O.1 at the instance of the appellant/accused in the presence of the above witnesses under the cover of a Seizure Mahazar Ex.P.5. 3.7. Thereafter, P.W.11 came down to the Police Station along with the appellant/accused and material objects and subsequently he had sent the appellant/accused to the learned Judicial Magistrate No.II, Madurai for being remanded to judicial custody. 3.8. Thereafter, the case records were entrusted with P.W.12, the Inspector of Police for further investigation. After the completion of his investigation, he had laid a final report against the appellant/accused under Sections 341, 302 and 506(ii) I.P.C. on 09.10.2009, before the learned Judicial Magistrate No.II, Madurai. 3.9. When the incriminating circumstances, arising out of the testimonies of the prosecution witnesses, were put to the appellant/accused during the course of proceedings under Section 313(i)(b) Cr.P.C. so as to enable him to explain, he had replied that this case was foisted against him. He had also replied that he was arrested and detained in the police station and subsequently, this case was foisted against him. Neither any oral nor any documentary evidence was adduced on his behalf.

4. On evaluating the evidences both oral and documentary, the learned Additional Sessions Judge (Fast Track Court No.II), Madurai had found the appellant/accused guilty under Sections 341 and 302 I.P.C., convicted him thereunder and sentenced as aforestated. He was not found guilty under Section 506(ii) I.P.C., and therefore he was acquitted of the charge under Section 506(ii) I.P.C. The sentences were directed to run concurrently and the period already undergone by the appellant/accused during the trial was also directed to be given set off under Section 428 of Cr.P.C.

5. Having been aggrieved by the impugned Judgment of conviction and sentence dated 11.10.2011, as afore stated the appellant/accused now stands before this Court with this appeal.

6. We have heard Mr.P.Kumarasamy, learned counsel appearing for the appellant/accused and Mr.K.S.Duraipandian, learned Additional Public Prosecutor appearing for the respondent Police and carefully perused the testimonies of the prosecution witnesses and other documentary evidences.

7. Mr.P.Kumarasamy, learned counsel appearing for the appellant/accused while advancing his arguments has raised a suspicion with regard to the presence of P.W.1 at the time and place of occurrence. He has argued that P.W.1 would not have present in the place of occurrence when the alleged occurrence was committed for the simple reason that he himself had contradicted the averments of his complaint under Ex.P1.

8. During the course of his argument, he has also drawn our attention to the averments of his complaint, which has been marked as Ex.P.1 as well as to his examination in chief with regard to the crime weapon.

9. In this connection, Mr.P.Kumarasamy, learned counsel has maintained that in Ex.P1 it was stated as if the appellant/accused had taken out the knife, which was hidden in his hip, whereas in his evidence in chief, he had stated as if he had taken out the knife from his back. He has also adverted to that since the place, where the crime weapon was said to have been hidden, was differently spoken to by P.W.1, his presence at the time of occurrence was highly suspected.

10. Secondly, he has adverted to that, as it was revealed from the testimonies of other witnesses, since there was a wine shop near the place of occurrence, somebody could have stabbed the deceased under the influence of alcohol and since P.W.1 happened to be the brother-in-law of the deceased might have been prepared by the prosecuting agency to lodge the complaint as against the appellant/accused as he was arrested and kept in the police station in connection with some other case. He has also alleged that Ex.P.1 complaint could have been fabricated by the prosecuting agency after confabulation, for which P.W.1 might have been used as an instrument.

11. On the other hand Mr.K.S.Duraipandian, learned Additional Public Prosecutor has argued that the evidence of P.W.1 was natural and that P.W.1 had without any ambivalent narrated the incident which appears to be cogent and convincing and that there could not be any suspicion over the evidence given by P.W.1. He has also added that after hearing the hue and cry of P.W.1, P.W.2 Gopal, who was taking tea in the nearby tea shop, had rushed to the place of occurrence and seen the deceased Peer Mohammed lying in the pool of blood.

12. The learned Additional Public Prosecutor has also added that P.W.2 had categorically deposed that P.W.1 had taken the deceased Peer Mohammed to the hospital in the Ambulance and on the next day, he had been to the hospital and seen the dead body of Peer Mohammed. He has also argued that since P.W.2 had corroborated and supported the evidence of P.W.1 with the aid of the testimonies of other witnesses, it could not be heard to say that the prosecution had not brought home the guilt of the appellant/accused beyond all reasonable doubts.

13. P.W.6 Ganesan, Madurai South Taluk, Madurai North Village Administrative Officer had deposed about the arrest of the appellant/accused near the Corporation Lavatory, situated at the Northern side of Madurai K.V. Main Road and he has also spoken to about the recovery of the crime weapon M.O.1 by P.W.11, which was produced by the appellant/accused from the place lying proximity to the burial ground and apart from this evidence and the evidence of P.W.7 Dr.Selvaraj, who had conducted postmortem examination on the dead body of deceased Peer Mohammed appears to be cogent and convincing.

14. The injury specified in Ex.P.6 Postmortem Certificate appears to be consistent with the testimony of P.W.1 and therefore, we find that though P.W.1 is a solitary eye-witness, his evidence is sufficient to inspire confidence and to prove the guilt of the appellant/accused. It is a trite law that the conviction can very well be maintained on the basis of solitary eye witness.

15. In this connection, we would like to place reliance on the following decisions: i. Josephy v. State of Kerala, reported in 2003 SCC (Cri) 356; ii. Kartick v. State, reported in (1996) 1 SCC614:

1996. SCC (Cri) 188 :

1996. Cr LJ889 and iii. Namdeo v. State of Maharashtra, reported in 2007 Cri.L.J.

1819 16. In Josephy's case (cited supra), the Apex Court has observed that: ".Section 134 provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a Court to record and sustain a conviction on the evidence of a solitary eye-witness. But, at

the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspired implicit confidence."

17. On coming to the instant case on hand, on deep delve of the evidence of P.W.3, we are of considered opinion that the evidence given by P.W.3 is cogent, convincing reliable and also in tune with probabilities and inspired implicit confidence.

18. In Kartick's case (cited supra), the Apex Court has held that: ".The Court can convict the accused persons on the basis of solitary witness provided his credibility is not shaken by any adverse circumstance and the Court, at the same time, is convinced that he is a truthful witness."

19. In Namdeo's case (cited supra), the Apex Court has also held that: ".Neither the Legislature nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent Court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of solitary eye-witness, therefore, has no force and must be negated."

20. It is manifested from the prosecution case that P.W.1 is the brother-in-law of the deceased Peer Mohammed. Since he happens to be the brother-in-law of the deceased Peer Mohammed, his evidence cannot be doubted and discarded based on his relationship with the deceased. There is no hard and fast rule to discard the evidence of a related witness. It is a settled proposition of law that the testimony of related witness shall have to be decided with the test store of thorough scrutiny. In this connection, we would like to place reliance on the following decisions: i. Angoo v. State of U.P., reported in (1970) 3 SCC208: AIR 1972 SC296 and ii. Vishvas Aba Kurawe vs. State of Maharashtra, reported in AIR 1978 SC414 21. In Angoo's case (cited supra), the Honourable Apex Court has held that the evidence

given by the father of deceased cannot be rejected only because of he being his father, instead he could give exact picture of the case as he had seen the offence being committed.

22. In Vishvas Aba Kurawe's case (cited supra), it has been held by the Apex Court that when medical evidence corroborates the evidence given by a relative witness, there is no reason to disbelieve such an evidence.

23. On coming to the instant case on hand, as discussed herein before, P.W.1 Mohammed Kasim happens to be the brother-in-law of the deceased Peer Mohammed and he is also the sole eye witness to the occurrence. Therefore, it may be relevant to note here that his evidence has been corroborated with the evidence given by P.W.7 Dr.Selvaraj, who had conducted the postmortem examination on the dead body of the deceased.

24. On a harmonious reading of the testimonies of P.W.1 and P.W.7 with the aid of Ex.P6 Postmortem certificate, we are of the firm opinion that their evidences have inspired confidence and therefore we find that no reason is made out to disbelieve or discard the evidence of P.W.1.

25. On careful perusal of the evidence given by P.W.1, we find that the appellant/accused was not having any mens rea or premeditation to commit the crime of murder. It is also evident from the testimony of P.W.1 that at about 09.30 p.m., when he was proceeding along with his brother-in-law Peer Mohammed as a pillion rider, opposite to Thathanery burial ground, the appellant/accused had voluntarily hit himself against the cycle. When his conduct was questioned by the deceased, he had replied as ".mg;goj;jhd; nog;Bgd;". by saying so he had immediately taken out a knife from his back and stabbed on the lower part of left side neck of the deceased.

26. From his evidence, we infer that no motive was attributed to his conduct. The stab wound given by the appellant/accused on the left side of neck, according to postmortem certificate is 2 cms above the inner end of left clavicle bone. On dissection, the wound is directed downwards & inwards piercing the underlying muscles, carotid sheath, carotid vessels and nerves through and through and ends

as a point in the underlying muscle.

27. It may be more relevant to note here that P.W.7 Dr.Selvaraj has opined that deceased appeared to have died due to shock and haemorrhage due to stab injury to the neck 12 to 16 hours prior to autopsy. However, P.W.7 did not say that the said single wound was sufficient, in the ordinary course of nature, to cause death. Instead, he has stated that the deceased appeared to have died due to shock and haemorrhage due to stab injury.

28. Keeping view of the above fact, we find that the act of the appellant/accused may be taken out from the ambit of Section 302 I.P.C., instead it can be brought under the amplitude of Section 304(ii) I.P.C.

29. The appellant/accused had no intention to cause death of the deceased. He had inflicted only one injury. As stated herein before, P.W.7 has also not stated that the above said injury would be sufficient in the ordinary course of nature to cause death and therefore we find that the act of the accused at best may constitute an offence under Section 299 I.P.C., which envisages that: ".299.Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

30. As we have stated above, from the medical evidence we find that this is a case of single injury caused by a knife M.O.1. No doubt, the offence of culpable homicide supposes an intention, or knowledge of likelihood of causing death. In the absence of such intention or knowledge, the offence committed may be grievous hurt or simple hurt.

31. Often it is contended that as the accused had administered a single blow to the victim or gave merely a lathi blow to him, he probably did not have the requisite intent or knowledge of causing death and as such his act may not amount to culpable homicide amounting to murder. Indeed, there is no rule of thumb like this; in all depends on the facts and circumstances of each case.

32. In *Tholan vs. State of Tamil Nadu*, reported in (1984) 2 SCC133: AIR 1984 SC759 the Honourable Supreme Court had convicted the accused under Section 304 Part II I.P.C., as he had dealt with a single knife blow on the chest, which was found to be sufficient to cause death.

33. Intent and knowledge as the ingredients of Section 299 I.P.C., postulate the existence of a positive mental attitude and this mental condition is the special mens rea necessary for the offence. Culpable homicide is of two kinds: i. Culpable homicide amounting to murder, and ii. Culpable homicide not amounting to murder. In the scheme of the Penal Code, culpable homicide is genus and murder is species. All murder is culpable homicide, but not vice versa. Generally speaking, culpable homicide sans the special characteristics of murder is culpable homicide not amounting to murder. This dictum is envisaged in *Jabamalai Royappn, In re*, 1981 LW (Cr) 136.

34. Considering the relevant aspects of the case of the prosecution, we are of the view that the act of the accused constitute an offence of culpable homicide not amounting to murder. Accordingly, while we maintain the conviction and sentence imposed on the appellant/accused under Section 341 I.P.C., by the learned Trial Judge, we modify the conviction and sentence imposed on the appellant/accused under Section 302 I.P.C., to one under Section 304 Part II I.P.C., 35. In the result, the criminal appeal is partly allowed and the appellant/accused is convicted under Section 304 Part II I.P.C., and sentenced to suffer five years of rigorous imprisonment and to pay a fine of Rs.2,000/-. In default of payment of fine, the appellant/accused shall undergo rigorous imprisonment for a further period of six months. The substantive portion of sentences are directed to run concurrently. The period sofar undergone shall be given set-off against the sentence of imprisonment under Section 428 Cr.P.C., Consequently, connected miscellaneous petitions are closed. sj/krk To 1.Additional District and Sessions Judge, Fast Track Court No.II, Madurai 2.The Inspector of Police, D2, Sellur Police Station, Madurai. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.