

Pechimuthu Vs. State Represented by

Pechimuthu Vs. State Represented by

SooperKanoon Citation : sooperkanoon.com/1170193

Court : Chennai

Decided On : Oct-17-2014

Judge : A.Selvam

Appellant : Pechimuthu

Respondent : State Represented by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 17.10.2014 CORAM THE HONOURABLE MR.JUSTICE A.SELVAM and THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL(MD)No.217 of 2014 Pechimuthu .Appellant/ Accused versus State represented by The Inspector of Police, Thanjavur East Police Station, Thanjavur District.

(Crime No.530 of 2012).Respondent/Complainant Criminal appeal is filed under Section 374 of the Code of Criminal Procedure, 1973, against the Judgment dated 04.07.2013 passed in Sessions Case No.54 of 2013 by the Principal Sessions Court, Thanjavur.

!For Appellant : Mr.R.Venkatesan ^For Respondent : Mr.C.Ramesh, Addl.

Public Prosecutor.

:

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.Challenge in this Criminal Appeal is to the conviction and sentence dated 04.07.2013 passed in Sessions Case No.54 of 2013 by the Principal District and Sessions Court, Thanjavur.

2.The conspectus of the case of the prosecution is that the accused viz., Pechimuthu is the husband of the deceased Kalaiselvi.

The de facto complainant by name Premkumar is their son.

Since the accused has spent a life of spendthrift, a frequent tussle has occurred in between him and deceased.

On 21.10.2012, the deceased has questioned the conduct of the accused and having infuriated at her conduct, at about 09.45 a.m., in front of the house of one Karikalan, the accused has indiscriminately attacked on the person of the deceased by using a bill-hook and thereby caused injuries and after occurrence, the then injured (deceased) has been taken to Government Medical College Hospital, Thanjavur and subsequently the de facto complainant has given a written complaint and the same has been registered in Crime No.530 of 2012, Thanjavur East Police Station and the same has been marked as Ex.P.1.

After admission, it is found that the said Kalaiselvi has passed away and subsequently P.W.17 has conducted necessary inquest.

After completing the same, autopsy has been conducted by one doctor by name Rajakumar and Post Mortem Report has been marked as Ex.P.19.

The Investigating Officer after completing the investigation, has laid a final report on the file of the Judicial Magistrate's Court No.I, Thanjavur and the same has been taken on file in P.R.C.No.1 of 2013.

3.The Judicial Magistrate No.I, Thanjavur after considering the fact that the offence alleged to have been committed by the accused is triable only by a Sessions court, has committed the case to the Court of Sessions and taken on file in Sessions Case No.54 of 2013.

4.The trial Court after hearing both sides and upon perusing the relevant records has framed a charge under Section 302 of the Indian Penal Code against the accused and the same has been read over and explained to him.

The accused has denied the charge and claimed to be tried.

5.On the side of the prosecution, P.W.s.1 to 17 have been examined and Exs.P.1 to P.22 and M.Os.1 to 10 have been marked.

6.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 let in on the side of the accused.

7.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 to him to undergo imprisonment for life and also imposed a fine of Rs.10,000/- 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.

8.The consistent case of the prosecution is that the accused is the husband of the deceased Kalaiselvi and both of them have been blessed with the de facto complainant by name Premkumar.

Since the accused has led a wayward life, the same has been questioned by the deceased and on 21.10.2012, the deceased has questioned the incorrigible attitude of the accused and having infuriated at her conduct, at about 09.45 a.m.in front of the house of Karikalan (P.W.7).the accused has indiscriminately attacked on the person of the deceased by using a bill-hook and thereby caused fatal injuries and due to that she has passed away.

9.On the side of the prosecution, the author of Ex.P.1 has been examined as P.W.1.

The other eye-witnesses namely Rajasekar, Periyandaver and Karikalan have been examined as P.Ws.2,3 and 7.

10.The trial Court after considering the evidence given by P.Ws.1 to 3 and 7 and other connected documents coupled with medical evidence has found the accused guilty under Section 302 of the Indian Penal Code and imposed a sentence as pointed out earlier.

11.The learned counsel appearing for the appellant/accused has raised the following points so as to supplant the conviction and sentence passed by the trial Court: (a)It is stated on the side of the prosecution that both P.Ws.1 and 2 have taken the deceased to Government Medical College Hospital, Thanjavur and the deceased has been admitted in hospital by P.W.15 and issued Ex.P.18, Accident Register, wherein it is stated that P.W.2, Rajsekar has reported him that the then injured (deceased) has been attacked by some unknown persons and no explanation has been given on the side of the prosecution and therefore the conviction and sentence passed by the trial Court against the appellant/accused are liable to be interfered with.

(b)One of the eye witnesses by name Karikalan has been examined as P.W.7 and during the couRs.of cross-examination his specific evidence is that ten minutes after occurrence has takenplace, both P.Ws.1 and 2 have come to the place of occurrence and therefore they cannot be stated as eye- witnesses.

(c) Bloodstained clothes of P.Ws.1 and 2 have not been recovered by the Investigating Officer.

(d)Blood group has not been identified.

12.In order to sustain the conviction and sentence passed by the trial Court, the learned Additional Public Prosecutor has contended that in the instant case, Ex.P.1, the complaint has been given by the son of both the deceased and accused, wherein it has been explicitly stated to the effect that in the place of occurrence, the accused has indiscriminately attacked the deceased by using a bill-hook and in support of the averments made in Ex.P.1, the author of the same

has been examined as P.W.1 and the other eye-witnesses namely Rajasekar, Periyandaver and Karikalan have been examined as P.Ws.2,3 and 7 and all of them have consistently and cogently stated to the effect that in the place of occurrence, the accused has attacked the deceased by using a bill-hook and the testimonies given by P.Ws.1,2,3 and 7 have been clearly corroborated by the medical evidence and the trial Court after considering the available evidence on record has rightly found the accused guilty under Section 302 of the Indian Penal Code and therefore the conviction and sentence passed by the trial Court against the accused are not liable to be interfered with.

13.As pointed out earlier, the prosecution has set the law in motion only on the basis of Ex.P.1, the complaint, alleged to have been given by P.W.1 on the date of occurrence at about 01.00 p.m.and the FiRs.Information Report has reached the Court at 02.30 p.m.on the same day.

14.Before contemplating the contentions putforth on the side of the appellant/accused, the Court has to analyze as to whether the prosecution has established the guilt of the accused punishable under Section 302 of the Indian Penal Code even without a speck of doubt?.

15.The author of Ex.P.1 by name Premkumar, has been examined as P.W.1.

The other eye-witnesses namely Rajasekar, Periyandaver and Karikalan have been examined as P.Ws.2,3 and 7 and all of them have consistently stated in their evidence that in the place of occurrence the accused has indiscriminately attacked the deceased by using a bill-hook and thereby caused fatal injuries.

16.It is seen from the records that after occurrence P.W.2 has admitted the deceased in Government Medical College Hospital, Thanjavur and P.W.15 has issued Ex.P.18, Accident Register and subsequently one doctor by name Rajakumar has conducted autopsy on the body of the deceased and issued Ex.P.19, Post Mortem Report.

Since in Ex.P.1, it has been clearly stated that in the place of occurrence the appellant/accused has attacked the deceased and since Ex.P.1 has been given by

the son of both the accused and deceased, the evidence given by him (P.W.1) cannot be discarded.

Apart from the evidence given by P.W.1, cousin brother of P.W.1 by name Rajasekar has been examined as P.W.2 and brother of the accused by name Periyandaver has been examined as P.W.3.

Both of them have cogently deposed to the effect that in the place of occurrence, the accused has attacked the deceased by using a bill-hook.

17. Even for the sake of argument, though P.Ws.1 to 3 are interrelated to each other and their testimonies cannot be believed in, the prosecution has chosen to examine an independent witness by name Karikalan.

18. The specific case put forth on the side of the prosecution is that the entire occurrence has taken place in front of the house of the said Karikalan and his specific evidence in chief examination is that in the place of occurrence, the accused has indiscriminately attacked the deceased by using a bill-hook and thereby caused fatal injuries.

The evidence given by P.W.7 itself would be sufficient for coming to a conclusion that the prosecution has clearly established the guilt of the accused punishable under Section 302 of the Indian Penal Code.

19. The FIRs and foremost contention put forth on the side of the appellant/accused is that in Ex.P.18, Accident Register and in the evidence given by P.W.15, it has been clearly stated that P.W.2 (Rajasekar) has brought the deceased to hospital and reported that she has been attacked by some unknown persons and therefore both P.Ws.1 and 2 are not at all eye-witnesses.

20. It is true that in Ex.P.18 and in the evidence of P.W.15, it is stated to the effect that P.W.2 has admitted the deceased in the hospital and at the time of admission, he stated that she has been attacked by some unknown persons.

It is seen from the records that the occurrence has taken place on 21.10.2012 at about 09.45 a.m. and after occurrence the deceased has been taken to

Government Medical College Hospital, Thanjavur and after some time P.Ws.1 and 2 have gone to concerned Police Station and P.W.1 has given Ex.P.1, complaint at about 01.00 p.m. and the FiRs. Information Report has reached the Court on the same day at about 02.30 p.m. Considering the aforesaid factual circumstances, the Court cannot come to a conclusion that Ex.P.1 is a doubtful document.

21. In Ex.P.1, it has been clearly stated that in the place of occurrence, the accused has attacked the deceased by using a bill-hook.

In fact this Court has perused the entire evidence given by P.W.1 and no motive has been suggested to him.

If really such occurrence has not taken place as put forth on the side of the prosecution, definitely P.W.1 being the son of both the accused and deceased, would not have stated in Ex.P.1 to the effect that his father (accused) has attacked his mother indiscriminately by using a bill-hook.

As pointed out earlier, apart from the evidence given by P.W.1, the brother of the accused by name Periyandaver has been examined as P.W.3 and his specific evidence is that in the place of occurrence the accused has attacked the deceased.

Likewise, P.W.2, Rajasekar, brother's son of the accused has also given similar evidence.

Even eschewing the evidence given by P.Ws.1 to 3, as pointed out earlier, P.W.7, independent witness has given concrete evidence to the effect that in the place of occurrence the accused has attacked the deceased by using a bill-hook.

Therefore simply because in Ex.P.18 and in the evidence given by P.W.15, it is stated to the effect that P.W.2 has reported to P.W.15 that the deceased has been attacked by some unknown persons, it is not at all sufficient to disbelieve the evidence given by P.Ws.1 to 3 and P.W.7.

Under the said circumstances, the fiRs. contention put forth on the side of the appellant/accused is sans merit.

22.The second contention putforth on the side of the appellant/accused is that during the couRs.of cross-examination, P.W.7 has admitted to the effect that after ten minutes from the time of occurrence both P.Ws.1 and 2 have come to the place of occurrence and therefore both P.Ws.1 and 2 are not at all eye-witnesses.

In fact this Court has scrutinized the entire evidence given by P.W.7 and in the chief examination it has been clearly stated about the presence of P.Ws.1 and 2.

But during the couRs.of cross-examination, P.W.7 has given a different version with regard to presence of P.Ws.1 and 2.

It is nothing, but a fliMs.contradiction and the same would not militate the case of the prosecution.

Even assuming that P.Ws.1 and 2 are not present in the place of occurrence as pointed out in many places, the prosecution has examined P.W.7 and his specific evidence is that in the place of occurrence the accused has attacked the deceased.

Therefore the second contention putforth on the side of the appellant/accused is of no use.

23.The third and fourth contentions putforth on the side of the appellant/accused are that the bloodstained clothes of P.Ws.1 and 2 have not been recovered and blood group has not been identified.

This is nothing, but a lapse on the part of the Investigating Officer.

Simply because there is a flaw in the investigation, the same would not pave the way for disbelieving the entire case of the prosecution, provided sufficient evidence is available so as to point out the guilt of the accused.

In the instant case as stated in many places, the prosecution has adduced enormous evidence for the purpose of coming to a conclusion that the appellant/accused has attacked the deceased in the place of occurrence.

Considering the aforesaid factual aspects, the third and fourth contentions putforth on the side of the appellant/accused cannot be accepted.

24.It has already been pointed out that the prosecution has adduced plenitude of evidence with regard to culpability of the accused and the trial Court after considering the overwhelming evidence available on record has rightly 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.10,000/- with usual default clause.

In view of the foregoing elucidation of factual aspects, this Court has not found any force in the contentions putforth on the side of the appellant/accused and altogether the present Criminal Appeal deserves to be dismissed.

25.In fine, this Criminal Appeal deserves dismissal and accordingly is dismissed and the conviction and sentence passed in Sessions Case No.54 of 2013 by the Principal District and Sessions Court, Thanjavur are confirmed.

To 1.The Principal Sessions Court, Thanjavur.

2.The Inspector of Police, Thanjavur East Police Station, Thanjavur District.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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