

**Ramesh Vs. State Through**

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**Court :** Chennai

**Decided On :** Nov-19-2014

**Judge :** A.Selvam

**Appellant :** Ramesh

**Respondent :** State Through

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 19.11.2014 CORAM THE HONOURABLE MR.JUSTICE A.SELVAM and THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL(MD)No.514 of 2008 Ramesh .Appellant/ Sole Accused versus State through The Inspector of Police, Pudhukkottai Town Police Station, Pudhukkottai.

(Crime No.15 of 2008).Respondent/ Complainant Criminal appeal is filed under Section 374 of the Code of Criminal Procedure, 1973, against the Judgment dated 25.09.2008 passed in Sessions Case No.88 of 2008 by the Additional District and Sessions Court (Fast Track Court).Pudhukkottai.

!For Appellant : Mr.P.Ganapathi Subramanian (Legal Aid Counsel) ^For Respondent : Mr.T.Mohan, Addl.

Public Prosecutor.

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## JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.The convictions and sentences imposed in Sessions Case No.88 of 2008 by the Additional District and Sessions Court (Fast Track Court).Pudukkottai are being challenged in the present Criminal Appeal.

2.The schema of the case of the prosecution is that the defacto complainant by name Senthilkumar has served in a liquor shop which situates near Palaniyappa Lodge, Santhanathapuram Fourth Street, Pudukkottai.

The deceased Palanisamy is the owner of the same.

On 17.01.2008 at about 11.45 p.m.the accused Ramesh has come to the said liquor shop after closing the same and demanded liquor and due to that a strife has happened and in order to murder the deceased the accused has attacked on his person and thereby caused fatal injuries and initially the then injured (deceased) has been taken to Government Hospital, Pudukkottai and subsequently referred to K.M.C.Hospital, Tiruchirappalli, where he passed away on 23.01.2008.

During the couRs.of occurrence, the accused has also caused injuries to the de facto complainant.

Further the accused has also threatened P.W.2, Ravi by way of saying that he would kill him.

After occurrence the de facto complainant has given a complaint viz., Ex.P.1 and the same has been registered by the Sub Inspector of Police, Pudukkottai Town Police Station in Crime No.15 of 2008.

3.On receipt of Ex.P.1, P.W.23, Inspector of Police, Pudukkottai Town Police Station has taken up investigation and examined all the connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and P.W.20, Renukadevi, attached to K.M.C.Hospital, Tiruchirappalli has conducted autopsy and found the following external and internal injuries: ?1.A vertical

sutured wound, 34 c.m.in length, on the front of midline of abdomen, starting from the xiphisternam, 6 c.m.above the pubic symphysis.

On removal of the sutures, the edges are regular, 4 c.m.breadth and cavity deep.

Peritoneal cavity contains fluid blood ?.

Surgical treatment.

2.A transversely sutured wound, 24 c.m.in length, on the front of left side of the chest, side aspect of the chest, back of left side of the chest.

On removal of the sutures, edges are regular, 3 c.m.breadth and cavity deep ?.

Surgical treatment.

3.Sutured wounds:- On the back of left shoulder, 3 c.m.in length; left buttock, 3 c.m.in length; back of right index and right middle finger 1 c.m.in length each; front of lower part of right side of the abdomen 4 c.m.in length, on removal of the sutures, edges are irregular, 1 c.m.breadth and muscle deep.

4.An inter costal drainage wound, on the 5th left inter costal space, in the mid axillary line ?.

surgical treatment.

5.Drainage wound, on the left flank of abdomen ?.

Surgical treatment.

6.Dark brown colour abrasions, of varying dimensions, on the left side of the face, back of left side of the neck, top of left shoulder, centre of back of the chest and back of left forearm.

7.Diaphragmatic tear, on the left dome with surrounding area bruising ?.

Dark red.

8.Sutured wound, on the lower lobe of left lung present.

Left lung collapsed.

c/s pale.

9.Gel foam present.

An incised wound, 2 c.m.x 0.5 c.m.x 0.5 c.m., on the visceral surface of left lobe of liver.

10.Two oblique, sutured wounds, on the lesser curvature of the stomach.

11.Bruising of Omentum and mesentery ?.

Dark red?.The Postmortem Report has been marked as Ex.P.18.

After completing investigation, P.W.23, has laid a final report on the file of the Judicial Magistrate's Court, Pudukkottai and the same has been taken on file in P.R.C.No.3 of 2008.

4.The Judicial Magistrate, Pudukkottai after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Pudukkottai Division and taken on file in Sessions Case No.88 of 2008.

5.The trial Court after hearing both sides and upon perusing the relevant records has framed fiRs.charge under Section 302 of the Indian Penal Code, second charge under Section 324 of the Indian Penal Code and third charge under Section 506(ii) of the Indian Penal Code against the accused and the same have been read over and explained to him.

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

6.On the side of the prosecution, P.W.s.1 to 23 have been examined and Exs.P.1 to P.24 and M.Os.1 to 4 have been marked.

7.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.

However no oral and documentary evidence have been let in on the side of the accused.

8.The trial Court after contemplating the evidence available 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.5,000/- with usual default clause.

He has also been found guilty under Sections 324 and 506(ii) of the Indian Penal Code and imposed rigorous imprisonment of one year respectively under the said Sections.

Against the convictions and sentences passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

9.The consistent case putforth on the side of the prosecution is that the deceased Palanisamy is the owner of the liquor shop which situates near Palaniappa Lodge, Santhanathapuram Fourth Street, Pudukkottai.

The de facto complainant by name Senthilkumar has served therein.

On 17.01.2008, after closure of the said shop, the accused has demanded them to give liquor.

Since they refused, on the same day at about 11.45 p.m.with intention to murder the said Palanisamy, the accused has repeatedly attacked the deceased by using a knife.

On the same day, the accused has also attacked the de facto complainant and threatened P.W.2, Ravi by way of saying that he would kill him.

10.The learned counsel appearing for the appellant/accused has made a fatuous exercise by way of assorting the following points so as to topsy-turvy the convictions and sentences imposed by the trial Court against the appellant/accused: (i)The case of the prosecution is that after occurrence the then injured (deceased) has been brought to Government Hospital, Pudukkottai both by P.Ws.1 and 2.

But in Ex.P.7, Accident Register, the name of P.W.1 does not find place and therefore P.Ws.1 and 2 are not at all eye-witnesses.

(ii)P.W.3 has spoken to the effect that the accused has come to the place of occurrence by using an auto, whereas P.Ws.1 and 2 have not spoken about the same.

(iii)The de facto complainant (P.W.1) has been admitted in K.M.C.Hospital, Tiruchirappalli on 18.01.2008 and Ex.P.1 has been registered on the same day at about 07.30 a.m.and therefore Ex.P.1 cannot be considered as a genuine document.

(iv)The prosecution has examined one Selvam as one of the eye-witnesses and he has not spoken about the injuries sustained by P.W.1.

(v)The prosecution has not established recovery of M.Os.1 and 4.

(vi)There is an unexplained delay with regard to sending of FiRs.Information Report to the Court.

11.In order to sustain the convictions and sentences passed by the trial Court, the learned Additional Public Prosecutor has contended that in the instant case, the de facto complainant is an injured witness and much weight should be given to his evidence and other witnesses Ravi, Arumugam and Selvam have been examined as P.Ws.2,3 and 9 and in fact the prosecution has given proper explanation with regard to delay in registering Ex.P.1 and also sending the FiRs.Information Report to the concerned Court and the trial Court after considering the testimonies of P.W.1 coupled with the evidence of P.Ws.2,3 and 9 has clearly come to the conclusion that the charges framed against the accused are proved and rightly invited convictions and sentences against him and therefore the convictions and sentences imposed by the trial Court against the accused are not liable to be interfered with.

12.As stated earlier, the specific case putforth on the side of the prosecution is that the deceased is the owner of the liquor shop, which situates near Palaniyappa Lodge, Santhanathapuram Fourth Street, Pudukkottai.

The de facto complainant viz., P.W.1 has served therein.

The specific contention put forth on the side of the prosecution is that after closure of the said shop, the accused has approached them and demanded liquor.

Since his request has been turned down, with intention to murder the deceased, the accused has attacked on the person of the deceased repeatedly by using a knife and thereby caused fatal injuries and immediately after occurrence, the then injured (deceased) has been referred to Government Hospital, Pudukkottai and thereafter he has been referred to K.M.C.Hospital, Tiruchirappalli, where he succumbed to injuries on 23.01.2008.

The further case of the prosecution is that during the course of occurrence the accused has also attacked the de facto complainant viz., P.W.1 and also threatened P.W.2 by way of saying that he would kill him.

13.The prosecution has set the law in motion only on the basis of Ex.P.1, the complaint, wherein it has been explicitly stated about the demand of liquor, refusal, attacks made by the accused and also threatening made to P.W.2.

14.In order to prove the case of the prosecution, the de facto complainant has been examined as P.W.1 and his specific evidence is that after closure of liquor shop, the accused has approached and demanded liquor and since his request has been turned down, with intention to murder the deceased he attacked on the person of the deceased repeatedly and he also attacked him and further he has threatened Ravi (P.W.2).The said eye-witnesses Ravi, Arumugam and Selvam have been examined as P.Ws.2,3 and 9 and all of them have consistently/cogently deposed to the effect that in the place of occurrence the accused has attacked the deceased and also the de facto complainant viz., P.W.1.

15.The main defence put forth on the side of the appellant/accused is that P.Ws.1,2,3 and 9 and also deceased are relatives of P.W.6 and only under his instigation the accused has been falsely roped in in the present case and therefore the evidence given by them cannot be accepted.

16. In the instant case as pointed out earlier P.W.1, de facto complainant is an injured witness.

Since P.W.1 is an injured witness, much weight can be given to his testimonies.

Further the occurrence has taken place on 17.01.2008 at about 11.45 p.m. and immediately after occurrence both deceased as well as accused have been seen by P.W.12, Dr. Ahmed Marshook attached to Government Hospital, Pudukkottai.

Considering the time of occurrence and also admission of accused and deceased in Government Hospital, Pudukkottai, the Court can very well believe the evidence given by P.Ws.1,2,3 and 9.

17. It is an admitted fact that in Ex.P.7, Accident Register, no mention has been made with regard to de facto complainant viz., P.W.1 and that itself would not be a basis for coming to a conclusion that P.W.1 is not an eye-witness.

18. It is seen from the evidence given by P.W.3 to the effect that the accused has come to the place of occurrence by using an auto.

But P.Ws.1 and 2 have not spoken about the same.

Since P.Ws.1 and 2 have not spoken about the auto, that itself would not militate the case of the prosecution.

19. It is seen from the records that the de facto complainant has been admitted in K.M.C. Hospital, Tiruchirappalli on 18.01.2008 and Ex.P.1 has been registered on the same day at 07.30 a.m. Since the de facto complainant has been admitted in K.M.C. Hospital, Tiruchirappalli on 18.01.2008, Ex.P.1 has been registered on the same day at about 07.30 a.m. and that itself cannot be a basis for disbelieving the version of the prosecution.

20. It is also seen from the records that P.W.9 has not spoken about the injury sustained by P.W.1.

Since P.W.9 has not spoken about the injury sustained by P.W.1, the Court cannot eschew the entire evidence given by P.W.1, injured witness.

21.The Investigating Officer has seized M.Os.1 and 4 with the assistance of Village Administrative officer and his menial.

Since the Investigating Officer has seized the said material objects in the presence of Village Administrative officer and his menial, recovery made by the Investigating Officer cannot be considered as false.

22.It has already been pointed out that Ex.P.1 has been registered on 18.01.2008 at about 07.30 a.m.by the Sub Inspector of Police, who has been examined as P.W.15 at K.M.C.Hospital, Tiruchirappalli and the FiRs.Information Report has reached the Court on the same day at about 03.15 p.m.With regard to such delay, P.W.17, Head Constable, has given proper explanation.

Since with regard to delay, P.W.17 has given proper explanation delay in sending FiRs.Information Report to Court would not be a cause for disbelieving the entire case of the prosecution.

It may be true that the injured eye-witness and other eye-witnesses are related to P.W.6.

Simply because they are interrelated to each other, the Court cannot eschew the evidence given by them.

23.In the instant case, the evidence given by P.W.1 and other witnesses are clearly corroborated by the Doctor (P.W.20).who conducted autopsy on the body of the deceased and the Doctor (P.W.12).who has fiRs.seen the deceased and accused and the Doctor (P.W.13).who admitted the de facto complainant in K.M.C.Hospital, Tiruchirappalli.

24.It is not an adulation to say that in the instant case, the prosecution has adduced plenitude of evidence so as to prove the charges framed against the accused.

In view of the foregoing enunciation of factual aspects, this Court has not found any force in the contention putforth on the side of the appellant/accused.

25.The trial Court after considering the entire evidence adduced on the side of the prosecution has rightly found the accused guilty under Sections 302, 324 and 506(ii) of the Indian Penal Code and therefore convictions and sentences passed by the trial Court do not require any interference.

26.In fine, this Criminal Appeal deserves dismissal and accordingly is dismissed and the convictions and sentences passed in Sessions Case No.88 of 2008 by the Additional District and Sessions Court (Fast Track Court).Pudukkottai are confirmed.

To 1.The Additional District and Sessions Court (Fast Track Court).Pudukkottai.

2.The Inspector of Police, Pudhukkottai Town Police Station, Pudhukkottai.

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

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