

Kumar Vs. State represented by The Inspector of Police

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Court : Chennai Madurai

Decided On : Feb-22-2016

Judge : A.Selvam & G. Chockalingam

Appeal No. : Criminal Appeal (Md) No. 326 Of 2013

Appellant : Kumar

Respondent : State represented by The Inspector of Police

Judgement :

(Prayer: Criminal appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973, against the Judgment dated 07.10.2013 passed in Sessions Case No.91 of 2009 by the Principal District and Sessions Court, Pudukkottai.)

A.Selvam, J.

1. Challenge in this Criminal Appeal is to the convictions and sentences dated 07.10.2013 passed in Sessions Case No.91 of 2009 by the Principal District and Sessions Court, Pudukkottai.

2. The case of the prosecution is that prior to occurrence a tussle has arisen between the accused and deceased at the time of seeing a drama in the village. Under the said circumstances, with intention to murder the deceased, on 20.08.2009, at about 06.00 a.m., the accused has tried to attack the de facto

complainant by name Rajendran in the place of occurrence with the intention to bring the deceased to the place of occurrence and during the course of occurrence the accused has attacked one Arumugham @ Ayyar and also during the course of occurrence the accused has attacked the deceased by using a deadly weapon and due to his overtacts, the deceased has passed away. After occurrence, the de facto complainant viz., Rajendran has given a complaint and the same has been registered in Crime No.47 of 2009.

3. On receipt of complaint, the Investigating Officer viz., P.W.24 has taken up investigation, examined connected witness and also made arrangements for conducting postmortem on the body of the deceased and accordingly Dr.Ilayaraja, viz., P.W.18 has conducted autopsy on the body of the deceased and he found the following external and internal injuries:

Symmetrically, moderately and black coloured body lies on back. Rigor Mortis present. No external wound. No scalp injuries : Right eyelid swelling. Nasal bleeding present. Mouth and lips closed. Tongue inside the mouth. No ears discharge.

Internal Examinations:

Peritoneal cavity	No free fluid. No ribs fracture.
Heart	Normal
Lungs	Congested
Hyoid bone	Intact

Stomach	Undigested food particles.
Liver	Normal,
Spleen	Congested
Kidney	Normal
Intestines	Intestines :
	filled with gas
Bladder	Empty
Skull	Fracture right fronto parietal region 5 x 3 cm
Membrane	Intact
Brain	Bleeds present

The Postmortem Certificate has been marked as Ex.P.5. The Investigating Officer has continued investigation, examined some more witnesses and after completing investigation, has laid a final report on the file of the District Munsif cum Judicial Magistrate's Court, Keeranur and taken on file in P.R.C.No.15 of 2009.

4. The District Munsif cum Judicial Magistrate, Keeranur 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.91 of 2009.

5. The Trial Court after hearing arguments of both sides and upon perusing the relevant records has framed a first charge against the accused under Section 323 of the Indian Penal Code and second charge against him under Section 302 of the Indian Penal Code 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.1 to P.W.24 have been examined and Ex.P.1 to P.9 and M.O.1 to M.O.6 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. No oral and documentary evidence have been let in on the side of the accused.

8. The Trial Court, after hearing arguments of both sides and upon perusing 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 slapped a fine of Rs.5,000/- with usual default clause. The Trial Court has also found him guilty under Section 324 of the Indian Penal Code and sentenced him to undergo one year rigorous imprisonment. 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 sum and substance of the case of the prosecution is that prior to occurrence, a miff has arisen between the accused and deceased at the time of seeing drama in the village and due to that the deceased has attacked the accused and with intention to murder the accused on 20.08.2009, at about 06.00 a.m., the accused has tried to attack the de facto complainant, who is none other than the brother-in law of the deceased and during the course of occurrence the witness by name Arumugham @ Ayyar has sustained injury and since during the course of occurrence the deceased has come to the place of occurrence and also questioned the attitude of the accused, he attacked on his person by using a

deadly weapon and thereby caused fatal injuries and due to overtacts of the accused the deceased has passed away.

10. The prosecution has set the law in motion only on the basis of Ex.P.1, the complaint. The author of Ex.P.1 has been examined as P.W.1. The injured eye witness by name Arumugham @ Ayyar has been examined as P.W.2. The other independent eye witnesses namely Subramani and Rasu have been examined as P.W.3 and P.W.5. For the purpose of proving the motive that existed between the accused and deceased, the wife of the deceased has been examined as P.W.6, the brother of the deceased has been examined P.W.7, the doctor who conducted autopsy has been examined as P.W.18 and Postmortem Certificate has been marked as Ex.P.5. The Trial Court after considering the evidence adduced by the witnesses mentioned supra, has found the accused guilty under Sections 302 and 324 of the Indian Penal Code.

11. The learned counsel appearing for the appellant/accused has advanced his argument by way of raising the following points:

(i) Even as per the evidence of P.W.1 as well as other witnesses, in the instant case, the initial complaints given to the police have been purposely suppressed and therefore the entire case of the prosecution is false.

(ii) The specific evidence given by P.W.2, injured witness is that only due to attack made by the deceased, he sustained injuries and the Trial Court has failed to look into the same.

(iii) Even on the basis of evidence given by some of the prosecution witnesses, the accused has sustained injuries and both the accused and deceased have taken from the place of occurrence to hospital by using 108 Ambulance Service, but the prosecution has not explained the injury sustained by the accused.

(iv) Even though a specific charge has been framed against the accused under Section 323 of the Indian Penal Code, the Trial Court has erroneously found him guilty under Section 324 of the Indian Penal Code and therefore the conviction and sentence passed under the said Section by the Trial Court are liable to be set

aside.

12. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, an injured eye witness has been examined as P.W.2 and other eye witnesses have been examined as P.W.1, P.W.3, P.W.5 and P.W.19 and all of them have consistently stated about the factum of occurrence and also details of attack made by the accused on the person of P.W.2 and deceased. Since on the side of the prosecution, enormous evidence are available for the purpose of proving the occurrence as well as details of attack made by the accused on the person of P.W.2 and deceased, the Trial Court has rightly found him guilty under Sections 302 and 324 of the Indian Penal Code and therefore the convictions and sentences passed by the Trial Court do not require any interference.

13. As stated earlier, the entire case of the prosecution is based upon Ex.P.1, complaint. In Ex.P.1, it has been vividly stated to the effect that prior to occurrence, a tussle has arisen between the accused and deceased at the time of seeing drama in the village and during that occurrence, the deceased has attacked the accused and due to that on 20.08.2009 at about 06.00 a.m. in the place of occurrence the accused has tried to attack the de facto complainant and unfortunately P.W.2 viz., Arumugham @ Ayyar has sustained injury and at that time the deceased has come to the place of occurrence and accused has attacked him by using a deadly weapon.

14. The author of Ex.P.1 has been examined as P.W.1. The injured eye witness has been examined as P.W.2. The other eye witnesses have been examined as P.W.3, P.W.5 and P.W.19 and all of them have clearly stated in their evidence that the occurrence has taken place as pleaded on the side of the prosecution and during the course of occurrence, the accused has attacked both P.W.2 and deceased. The doctor, who examined P.W.2, has been examined as P.W.17 and issued Ex.P.4. From the conjoint reading of the evidence given by the witnesses mentioned supra, the Court can very well come to a conclusion that the occurrence has taken place as put forth on the side of the prosecution and in the place of occurrence the accused has attacked both P.W.2 and deceased. The doctor who conducted autopsy has been examined as P.W.18 and his specific

opinion is that the death would have occurred only due to injuries sustained by the deceased.

15. The first and foremost contention put forth on the side of the appellant/accused is that P.W.1 and other prosecution witnesses have stated that immediately after occurrence the police have come to the place of occurrence and they made arrangements for sending both P.W.2 and accused to hospital through 108 Ambulance Service and even in the place of occurrence P.W.1 and other eye witnesses have given complaints. The specific evidence given by P.W.1 is that in the place of occurrence the police have simply enquired him, but he has not put any signature therein and his specific evidence is that he has given Ex.P.1, complaint to the concerned police. Likewise, P.W.

15, Village Menial has also given evidence to the effect that P.W.1 has given a complaint in the place of occurrence. Since the witnesses mentioned supra have given clear evidence to the effect that in the place of occurrence, the accused has attacked both P.W.2 and the deceased, a flimsy contradiction available on the side of the prosecution with regard to giving of complaint, cannot be a basis to reject the case of the prosecution. Under the said circumstances, the first and foremost contention putforth on the side of the appellant/accused cannot be accepted.

16. The second contention put forth on the side of the appellant/accused is that the specific evidence given by P.W.2, injured eye witness during the course of cross-examination is that in the place of occurrence he has been attacked by the deceased and therefore the case of the prosecution is false.

17. At this juncture, the Court has to look into his entire evidence and he has been examined on 20.09.2010. On that day, he has also been cross examined to certain extent and after lapse of some months, he has been purposely recalled and cross examined, wherein he stated to the effect that in the place of occurrence he has been attacked by the deceased. Considering the aforesaid factual circumstances and also considering the purpose for which he has been recalled and cross-examined after lapse of several months, the evidence given by him in cross-examination cannot be accepted and therefore the second contention urged on the side of the appellant/accused is sans merit.

18. The third contention put forth on the side of the appellant/accused is that during the course of occurrence, the accused has also sustained injuries and P.W.17 has also given evidence to that effect, but the prosecution has purposely suppressed the said fact and on that score also the entire case of the prosecution is liable to be thrown out.

19. It is seen from the evidence of P.W.17 that the accused has sustained a lacerated injury on his head. Simply because the same has not been explained on the side of the prosecution, since in the instant case replete evidence is available for the purpose of proving the motive as well as occurrence and also details of attack made by the accused, failure to give explanation about the injuries sustained by the accused would not affect the case of the prosecution and therefore the third contention put forth on the side of the appellant/ accused also goes out without merit.

20. The last contention put forth on the side of the appellant/accused is that even though a specific charge has been framed under Section 323 of the Indian Penal Code, the Trial Court has found the accused guilty under Section 324 of the Indian Penal Code with regard to injury sustained by P.W.2.

21. It is true that against the accused along with Section 302 of the Indian Penal Code, a separate charge has also been framed under Section 323 of the Indian Penal Code. The Trial Court after considering the nature of weapon alleged to have been used by the accused in the place of occurrence has rightly found that he has committed an offence punishable under Section 324 of the Indian Penal Code and therefore the last contention put forth on the side of the appellant/accused cannot be accepted.

22. Even at the risk of repetition, the Court would like to point out that in the instant case motive for occurrence has been clearly established on the side of the prosecution. Apart from the motive, P.W.1, P.W.2 and P.W.3, P.W.5 and P.W.19 have clearly given evidence to the effect that in the place of occurrence the accused has attacked both P.W.2 and deceased. Therefore viewing from any angle, the convictions and sentences passed by the Trial Court are not liable to be interfered with and altogether the present Criminal Appeal deserves to be

dismissed.

23. In fine, this Criminal Appeal is dismissed and the convictions and sentences passed in Sessions Case No.91 of 2009 by the Principal District and Sessions Court, Pudukkottai are confirmed. The trial Court is directed to take appropriate steps so as to imprison the appellant/accused to serve out the remaining period of sentence.

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