

Kumar and Others Vs. State by: The Inspector of Police, Salem District

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Court : Chennai

Decided On : Aug-23-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : Criminal Appeal No. 238 of 2016

Appellant : Kumar and Others

Respondent : State by: The Inspector of Police, Salem District

Judgement :

(Prayer: Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code against the judgement of the learned III Additional Sessions Judge, Salem, in S.C.No.179 of 2015, dated 10.03.2016.)

S. Nagamuthu, J.

1. The appellants are the accused 1 to 4 in S.C.No.179 of 2015 on the file of the III Additional District and Sessions Judge, Salem. The trial court framed as many as three charges against the accused. The first charge was against the accused 1 to 4 under Section 341 IPC. The second charge was under Section 302 IPC against the first accused and under Section 302 IPC read with 34 IPC against accused 2 to 4 and the third charge was under Section 506 (ii) IPC against the accused 1 to 4.

2. By judgment, dated 10.03.2016, the trial court convicted them under all the charges and sentenced them as detailed below:-

Accused	Section of law	Sentence
A-1 to A-4	341 IPC.,	Each of the accused to undergo Simple Imprisonment for one month.
A-1	U/s 302 IPC.,	To undergo Imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for six months.
A-2 to A-4	U/s 302 r/w 34 IPC.,	Each of the accused to undergo Imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months.
A-1 to A-4	506 (ii) IPC.,	Each of the accused to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one month.

3. The trial Court has ordered the sentences to run concurrently. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

4. The case of the prosecution, in brief, is as follows:-

The deceased in this case was one Mr.Thambusamy. The fourth accused, Mrs.Chinthamani, is the first wife of the deceased. P.W.1, Chinnaponnu, is the second wife of the deceased. The third accused, Mrs.Mallika is the daughter of the deceased. The second accused is the husband of the third accused and the first accused is the child of accused 2 and 3. They were all residing at Gengavalli Circle, Pachamalai Taluk, in Salem District. The deceased was living separately with his second wife, namely, P.W.1. Thirty years prior to the occurrence, the deceased had sold two acres of his land to one Sengoda Gounder. However, the deceased was cultivating the said lands, as a tenant. Five years prior to the occurrence, the tenancy was transferred in favour of the second accused. Thus, the second accused was cultivating the said lands for about five years. The tenancy period had come to an end. Thereafter, Mr.Sengoda Gounder, the landlord, had given the lands to the deceased again, on tenancy. Thus, the deceased was cultivating the said lands for about three months. All the four accused were enraged over the same. Thus, there was enmity between these four accused against the deceased. This is stated to be the motive for the occurrence.

5. It is alleged that, on 08.10.2014, around 05.00 pm, the deceased was returning to his house, taking the goats from his field. P.W.1 was standing by the side of the house of one Chelladurai. One Mr.Kasirajan, P.W.2, was also standing there, talking to P.W.1. When the deceased was nearing them (taking the goats), all these four accused rushed to the said place of occurrence. They surrounded the deceased. They shouted at the deceased, as to how dare he was to cultivate the lands, which were all-along under the cultivation of the second accused.

6. It is further alleged that the second accused, induced the first accused to cut the deceased. The first accused cut the deceased with Aruval (bill hook). This was witnessed by P.Ws.1 and 2. Having sustained number of injuries on his body, the deceased succumbed to the injuries instantaneously. All the four accused fled away from the scene of occurrence. P.W.1, immediately went to Thammampatti Police Station and made a complaint on 08.10.2014 at 10.00 pm. Ex.P-1 is the complaint and Ex.P-8 is the First Information Report. P.W.6, the then Head

Constable, registered the said case in Crime No.354 of 2014 under Sections 341, 342 and 302 IPC, against all the four accused. P.W.9 took up the case for investigation. He proceeded to the place of occurrence at 12.00 mid-night (intervening between 08.10.2014 and 09.10.2014) and prepared an observation mahazar and a rough sketch, in the presence of P.W.3 and other witnesses. He recovered the blood stained earth and sample earth from the place of occurrence. He conducted inquest on the body of the deceased between 12.30 am and 03.30 am, on 09.10.2014, and forwarded the body for post-mortem. P.W.8, Dr.Kirubashankar, conducted autopsy on the body of the deceased on 09.10.2014 at 11.45 am. He found the following injuries:-

External Injuries:

A chop wound extending from left shoulder to entire neck (extending to opposite side).

Entire head chopped off from whole body with skin of right side neck (only) attached.

Another chop wound over the occipital area of size 10x3x5 cm including left ear.

Bones of left clavicle, right shoulder and viscera inside neck, namely, the larynx, oesophagus, (cut portions of above viscera, vessels and vertebral column noted).

A chop wound over right arm present 5x2x2 cm.

Another chop wound at right shoulder 4x2x2 cm.

Blood stains both nostrils.

A laceration over chin 2x1x0.5 cm.

Left second rib present. Sternum intact. Lungs right side congested. Left side pale. Heart filled with clotted blood. Stomach filled with partially digested food 500 ml. Intestine filled with gas. Liver intact. Both kidneys intact. Skull base fracture present extending to left temporal bone. Membrane intact forebrain. Left side haemorrhage right side and hind brain intact. Spleen congested. Bladder empty.

Hyoid bone intact. Pelvis and spinal intact.

7. Ex.P-12 is the post-mortem certificate. He gave opinion that the death of the deceased was due to shock and haemorrhage caused on account of the injuries found on the body of the deceased. He further opined that the said injuries would have been caused by a weapon like M.O.1. He came to know that the accused 1 to 3 had surrendered before the Magistrate's Court. He took the police custody of the accused, on 14.10.2014, on the orders of the learned Magistrate. While in custody, the second accused gave a voluntary confession in the presence of P.W.3 and another witness. On 15.10.2014, he arrested the first accused. On such arrest, he also gave a voluntary confession, in which, he had disclosed the place where he had hidden the Aruval. In pursuance of the same, he took the police and the witnesses to the place of occurrence and produced the Aruval. He recovered the same under a mahazar. Then, he forwarded all the accused to the Court for judicial remand and handed over the material objects also to the Court. At his request, the material objects were sent for chemical examination, which revealed that there were human blood stains on all the material objects, including the Aruval. On completing the investigation, he laid the charge sheet against all the four accused.

8. Based on the above materials, the trial court framed charges against the accused, as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 9 witnesses were examined and 19 documents were exhibited, besides marking 3 Material Objects.

9. Out of the said witnesses, P.Ws.1 and 2 are the eye-witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.1 has spoken about the complaint made by her to the Police. P.W.3 has spoken about the preparation of Observation Mahazar, the rough sketch and also the recovery of material objects from the place of occurrence and he has also spoken about the arrest of the first accused and the consequential recoveries of the knife and the blood stained cloth from the possession of the first accused. P.W.4, the Head Constable, has stated that he took the dead body of the deceased from the place

of occurrence and handed over the same to the Doctor for conducting post-mortem, as directed by P.W.9. He has further stated that he recovered blood stained cloths from the body of the deceased and handed over the same to the Investigating Officer. P.W.5 has stated that the First Information Report and the complaint were handed over to him by the Sub-Inspector of Police at 02.00 am, on 09.10.2014, and he handed over the same to the learned Magistrate at 10.30 am on the same day. P.W.6 has spoken about the registration of the case on the complaint made by P.W.1. P.W.7 has spoken about the chemical analysis conducted on the material objects. P.W.8 has spoken about the post-mortem conducted and the final opinion regarding the cause of death. P.W.9 has spoken about the investigation done and the final report filed.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor marked any document, on their side. Their defence was total denial. Having considered all the above, the trial Court convicted and sentenced the accused, as stated in the first paragraph of this judgment. Challenging the same, the appellants are before this Court with this Criminal Appeal.

11. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. According to the positive case of the prosecution, the alleged occurrence happened at 05.00 pm on 08.10.2014, whereas the First Information Report was registered at 10.00 pm on 08.10.2014. The distance between the place of occurrence and the police station is around 60 Kms. Therefore, it cannot be stated that there was an inordinate delay in making the complaint to the Police. But, the fact remains that the First Information Report was received by the learned Magistrate only at 10.30 am on 09.10.2014. Thus, there is an enormous delay in the First Information Report reaching the hands of the learned Magistrate. From out of this, the learned counsel appearing for the appellants would submit that the First Information Report would not have come into being at 10.00 pm on

08.10.2014 as it is projected by the prosecution. We find some force in the said argument. This creates an initial doubt, in the case of the prosecution, in our mind.

13. It is the case of the prosecution that the occurrence was witnessed by P.Ws.1 and 2. According to them, all the four accused came out from the house of one Mr.Duraisamy. They surrounded the deceased. The accused 2 to 4 held the deceased and the first accused cut him indiscriminately. Thus, these two witnesses have spoken about the presence and active participation of all the four accused. The learned counsel for the appellants would submit that the evidences of these witnesses cannot be believed, because they are interested witnesses.

14. In our considered view, simply because, they are interested witnesses, their evidence cannot be out-right rejected. Their evidences only require close scrutiny. If we closely scrutinize their evidences, in the light of the medical evidence, it is crystal clear that there is some falsehood in their evidence. Though the presence of P.Ws.1 and 2 cannot be disbelieved, they cannot be fully believed. Had it been true that the deceased was held by the accused 2 to 4, certainly, all the injuries found on the body of the deceased could not have been caused by the first accused. The first injury was on the neck. According to the Doctor, the head was almost severed, only the skin was connecting the severed head and the trunk. Therefore, in our considered view, to cause such an injury, enormous amount of force should have been used. If really the accused 2 to 4 were holding the deceased, in our considered view, this injury could not have been caused at all, with so much of force. Similarly, the other injuries found on the body of the deceased also could not have been caused, when the deceased was allegedly held by the accused 2 to 4. Thus, in our considered view, the presence and participation of the accused 2 to 4 in the occurrence is highly doubtful. By utilising the delay in registering the case, in our considered view, an attempt has been made by the prosecution to rope in the entire family members of the accused. Therefore, we are not prepared to believe the evidences of P.Ws.1 and 2, as against the accused 2 to 4.

15. The learned counsel for the appellants would submit that once it is found that P.Ws.1 and 2 are not fully believable, then their evidences should be rejected in

toto, thereby, giving the benefit of doubt to the first accused also. This argument does not persuade us at all. The principle falsus in Uno falsus in omnibus has not been recognised by the Indian Courts. In the Indian Scenario, if the Court is able to separate the grain from the chaff, there can be no impediment for the Court to act upon the grain. In this case, from out of the evidences of P.Ws.1 and 2, we are able to separate the grain easily and to hold that, it was only the first accused, who caused the death of the deceased.

16. The learned counsel for the appellants would further submit that, assuming that it was the first accused, who caused the death of the deceased, his act would amount to offence punishable only under Section 304 IPC. But we find it otherwise. Going by the nature of the weapon used, the nature of the injuries inflicted, more particularly, the fact that the head was severed, the motive, the enmity and all other attendant circumstances, we find that the occurrence was a premeditated one. So far as the first accused is concerned, he had come to the place of occurrence with a dangerous weapon only with an intention of causing the death of the deceased. Thus, having considered the totality of the circumstances, we are of the view that the act of the first accused would squarely fall within the first limb of Section 300 IPC and the same would not fall under any of the exceptions to Section 300 IPC. Therefore, he is liable to be punished for the offence under Section 302 IPC. For having restrained the deceased wrongfully, the first accused is liable to be punished for the offence under Section 341 IPC.

17. So far as the charge under Section 506 (ii) IPC against the first accused is concerned, there is no evidence against him and therefore, he is entitled for acquittal, from this charge.

18. Turning to the quantum of punishment, for the offence under Sections 341 and 302 IPC is concerned, the trial court has imposed a reasonable punishment, which does not require any interference by this Court.

19. In the result, this Criminal Appeal is partly-allowed, on the following terms:

(i) The conviction and sentence imposed by the learned III Additional Sessions Judge, Salem, in S.C.No.179 of 2015, dated 10.03.2016, against the accused 2 to

4 are hereby set-aside. These appellants (2 to 4) / accused 2 to 4 are acquitted of all the charges levelled against them and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount, if any, paid by these appellants (A-2 to A-4), shall be refunded to them. Bail bonds, if any, shall stand discharged.

(ii) The conviction and sentence imposed on the first appellant / first accused, for the offence under Section 506 (ii) IPC alone is set-aside and he is acquitted from the said charge.

(iii) The conviction and sentence imposed on the first appellant / first accused for the offence under Section 302 and 341 IPC are hereby confirmed.

(iv) It is directed that the period of sentence already undergone by the first appellant shall be given set off, as required under Section 428 Cr.P.C.,

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