

Dharmalingam Vs. State, rep. by the Inspector of Police, Dharmapuri.

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Court : Chennai

Decided On : Apr-04-2016

Judge : M. Jaichandren & S. Nagamuthu

Appeal No. : Criminal Appeal No. 665 of 2012

Appellant : Dharmalingam

Respondent : State, rep. by the Inspector of Police, Dharmapuri.

Judgement :

(Prayer: This Criminal Appeal has been preferred under Section 374(2) of Code of Criminal Procedure, challenging the conviction and sentence imposed by the learned Principal Sessions Judge, Dharmapuri by judgment made in S.C.No.6 of 2011 on 8.8.2012.)

S. Nagamuthu, J.

1. The Appellant is the sole accused in S.C.No.6 of 2011 on the file of the Principal Sessions Judge, Dharmapuri. He was charged for the offence under Section 302 IPC. By Judgment dated 8.8.2012, the trial Court convicted the accused under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs. 1,000/-, in default to undergo three months simple imprisonment. Challenging the said conviction and sentence, the accused is before this Court by filing this appeal.

2. The case of the prosecution in brief is as follows:

(a) The appellant/accused and PW-4 Mahalingam are brothers. PW-2 Chennammal is their mother. The wife of the accused is one Kanaka. PW-3 Master Singaravelu is the son of PW-4 Mahalingam and deceased Parameswari.

(b) The deceased Parameswari was residing with her husband PW-4 Mahalingam and son PW-3 Master Singaravelu at Sundarampalli village.

(c) Some time before the occurrence, the deceased Parameswari had informed her husband PW-4 Mahalingam that the wife of the accused Kanaka had developed illicit intimacy with one Settu of Mookanurpatti village. PW-4, being the brother of the accused Dharmalingam, called Kanaka and reprimanded her. Kanaka, in turn, informed the same to her husband. The accused Dharmalingam got enraged over the act of PW-4 and the deceased Parameswari. This is stated to be the motive.

(d) On 30.3.2008 the accused had gone to PW-2 and wanted her to transfer the land allotted to her in the family partition. PW-2 told the accused that the matter could be sorted out after the arrival of PW-4, who had gone for work. Not satisfied with that, the accused attacked PW-2 on her shoulder. Thereafter, he took the bicycle and proceeded towards the house of the deceased, shouting that he would attack the person concerned, meaning thereby the deceased Parameswari. PW-2, fearing for some untoward incident, followed the accused.

(e) On reaching the house of the deceased, the accused found the deceased standing outside her house. Her son PW-3 was inside the house. Parking the bicycle, the accused rushed towards the deceased and started attacking her with MO-1 aruval. The deceased raised alarm. PW-3 came out of the house and witnessed the incident. By that time PW-2 reached the place of occurrence and she also witnessed the occurrence. The accused ran away from the place of occurrence.

(f) PW-3 immediately contacted PW-1, his uncle, over phone and informed him about the occurrence. PW-1 rushed to the place of occurrence. Parameswari was

fighting for life with injuries. PW-1 immediately took her to the Government Hospital at Dharmapuri.

(g) PW-8 Dr.Satheeshkumar examined the deceased at 8.05 p.m. on 30.3.2008 at the Government Hospital, Dharmapuri. The deceased was then unconscious. One Madhu, who accompanied the injured Parameswari told PW-8 that the deceased was attacked in her house by an unknown person at 6.00 p.m. with an iron pipe. PW-8 admitted Parameswari as an inpatient and noticed the following injuries on the body of the deceased:

(1) A cut injury measuring 5x1x1 cm on the right parietal region of the head,

(2) There was bleeding through right ear, and

(3) A cut injury on the left upper arm measuring 1x1 cm.

Ex.P-6 is the accident register recorded by PW-8. On 31.3.2008 at 1.15 p.m., against medical opinion, the injured Parameswari was taken to Mohan Kumaramangalam Government Hospital, Salem.

(h) PW-9 Dr.V.Saravanan examined the injured Parameswari and admitted her as an inpatient and informed the Police. The condition of the injured Parameswari was critical at that time.

(i) When the deceased was in the Government Hospital, Dharmapuri, on getting information from the Hospital, PW-14 a Head Constable attached to Morappur Police Station rushed to the hospital and recorded the statement (Ex.P-1) of PW-1 and on returning to the Police Station, he registered a case in Cr.No.140 of 2008 under Section 307 IPC (vide Ex.P-14). He forwarded both Ex.P-1 and Ex.P-14 to the jurisdictional Magistrate at 7.00 a.m. on 31.3.2008.

(j) PW-15 Ganesan, the Inspector of Police took up the investigation of the case. He proceeded to the place of occurrence at 7.00 a.m. on 31.3.2008 and prepared the observation mahazar (Ex.P-2) and rough sketch (Ex.P-15) and examined the witnesses, present there. He also recovered blood stained earth (MO-2) and

ordinary earth (MO-3) under the cover of mahazar Ex.P-3 in the presence of PW-6 Sigamani and one Vijayakumar (not examined).

(k) On 1.4.2008, PW-15 received information that the deceased succumbed to injuries at Mohan Kumaramangalam Government Hospital, Salem. Pursuant to that he altered the case into one under Section 302 IPC and sent the alteration report to the Court. Thereafter PW-15 proceeded to the Mohan Kumaramangalam Government Hospital, Salem and in the presence of Panchayatdars, conducted inquest and prepared Inquest Report (Ex.P-16).

(l) At request, PW-10 Dr.Kesavalingam conducted autopsy over the body of the deceased Parameswari on 1.4.2008 at 12.20 p.m. and he found the following injuries:

"INJURIES:

(1) Abrasion over right shoulder 5x2 cms;

(2) Sutured wound over left parietal region of scalp measuring 5 cms long sutures intact. On removal the edges clean cut with underlying skin is contused.

(3) Sutured wound over right side parietal region of scalp measuring 4 cms long sutures intact on removal edges clean cut with underlying skin is contused;

(4) Sutured wound over right side posterior parietal region of scalp 3.5 cms long. On removal of sutures edges clean cut with underlying skin is contused.

(5) Sutured wound over right side occipital region of scalp 2 cms long. On removal of sutures edges clean cut with underlying skin is contused.

(6) Sutured wound over right side occipital region of scalp 5 cms long. On removal edges clean cut with underlying skin is contused.

(7) Sutured wound over dorsum of right hand. On removal edges irregular.

(8) Contusion over right side posterior parietal region of scalp 4 x 3 cms.

O/D of head, contusion over left fronto parieto temporal region of scalp 18x8x0.5 cms dark red and contusion over right side fronto parieto temporal region of scalp 12x5x0.5 cms dark red.

Cranial vault transverse cut fracture over mid parietal 8 cms long and cut fracture of right side temporo occipital bone 10 cms long and cut fractured over right side occipital bone 6 cms long. Dura membrane intact. Brain: Sub dural and sub arachnoid haemorrhage over both cerebral hemispheres of brain (antemortem).

O/D of neck: Neck structure normal. Hyoid Bone: Intact. O/D of Thorax: No ribs fracture. Heart: Normal in size chambers contained fluid. Blood coronary vessels patent great vessels normal lungs c/s congested. O/D abdomen Stomach: 100 ml of brown coloured fluid. No specific smell. Mucosa congested. Liver, Spleen, Kidneys c/s congested. Bladder-empty. Uterus normal in size cavity empty. Pelvis and spinal column: intact."

Ex.P-8 is the Post mortem certificate. PW-10 Dr.Kesavalingham opined that the deceased would appear to have died of the effects of head injuries, and that, the death could have occurred 36 to 38 hours prior to autopsy.

(m) The accused surrendered before the learned Judicial Magistrate at Bhavani. On the orders of the jurisdictional Magistrate, PW-15 took the accused into Police custody for two days on 22.4.2008 and 23.4.2008. While in police custody, accused made a voluntary confession statement in the presence of PW-7 and another witness. In the confession statement the accused disclosed the place where he had hidden the aruval. Pursuant to the same, he took the Police party to the place of hide out and took out and produced MO-1 Aruval and the same was recovered under a mahazar (Ex.P-5). On returning to the Police Station, PW-15 sent the accused back to judicial custody.

(n) Ex.P-12 Chemical analysis report reveals detection of human blood in the material objects. PW-16 Inspector of Police continued further investigation and after completion of the investigation, he laid charge sheet against the accused under Section 302 IPC.

3. Based on the above materials, the trial Court framed the charge against the accused under section 302 IPC. The accused denied the charge. In order to prove the charge, prosecution examined 16 witnesses, marked 19 exhibits, and produced 6 material objects.

4. Out of the 16 witnesses, PW-2 and PW-3 are said to be the eye witnesses to the occurrence. PW-1, on hearing about the occurrence, rushed to the place of occurrence and took the injured Parameswari to the Government Hospital, Dharmapuri. PW-4, the husband of the deceased, has spoken about the motive. PW-5 has turned hostile and has not supported the prosecution case. PW-6 is a mahazar witness, who has spoken about the preparation of observation mahazar and rough sketch. PW-7 has spoken about the voluntary confession allegedly made by the accused on 28.3.2008 and consequential recovery of MO-1 aruval. PW-8 has spoken about the initial treatment given by him to the injured Parameswari at the Government Hospital, Dharmapuri on 30.3.2008. PW-9 has spoken about the admission of injured Parameswari in the Mohan Kumaramangalam Government Hospital, Salem on 31.3.2008. PW-10 has spoken about the autopsy and his final opinion regarding the cause of death. PW-11 has spoken that he handed over the body of the deceased for postmortem and carried the internal organs, for examination, to the Forensic Science Laboratory, Vellore. PW-12 the Head Constable has spoken about the registration of the case on the complaint of PW-1. PW-13, the Head Clerk of the Court has stated that he sent the material objects to the Forensic Science Laboratory, Vellore, for chemical analysis and received the reports. PW-14 is the Investigating Officer and he has spoken about the conduct of investigation of the case. PW-15 continued and concluded the investigation and laid the charge sheet before the jurisdictional Court.

5. When the above incriminating circumstances against the accused were put to the accused under section 313 Cr.P.C., he denied the same. Further, he did not choose to examine any witness on his side.

6. After considering all the materials and hearing both sides, the trial Court convicted the accused under Section 302 IPC and that is how he has come up with this appeal.

7. Heard Mr.D.Veerasekaran, learned counsel appearing for the appellant/accused as well as Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State.

8. The learned Counsel appearing for the appellant/accused would submit that the evidence of PWs.2 and 3 cannot be believed at all as they could not have witnessed the occurrence, since the occurrence had taken place outside the house. He has further submitted that at the earliest point of time it was informed to the Doctor (PW-8) that the deceased was attacked with an iron pipe, whereas MO-1 aruval was recovered by the Police, stating to be the weapon used by the accused. This contradiction, according to the learned counsel is vital, which will destroy the case of the prosecution. Learned Counsel also submitted that the motive as mentioned in the charge has not been proved by the prosecution.

9. On the other hand, the learned Additional Public Prosecutor submitted that since the occurrence had taken place in front of the house of the deceased, presence of PWs.2 and 3 cannot be disbelieved. He further submitted that from their evidence, the prosecution has proved the case against the accused beyond reasonable doubts. The medical evidence also corroborate their evidence and prosecution case.

10. We have considered the rival submissions. As rightly pointed out by the learned Additional Public Prosecutor, there is no dispute that the occurrence had taken place in front of the house of the deceased. The recovery of blood stained earth and sample earth fixes the place of occurrence. According to PW-3, who is son of the deceased Parameswari, when he was watching Television inside the house, he heard the alarm raised by his mother and immediately rushed out of the house and found the accused attacking the deceased. PW-2, the mother of the accused, has stated that initially the accused came to her and demanded transfer of property in his name and not satisfied with her answer, the accused attacked on her shoulder and then proceeded to the house of the deceased. Fearing untoward incident, she also followed the accused. Thus she was present at the place of occurrence, and she had seen the accused at the place of occurrence with weapon. There is no reason to disbelieve these evidences of PWs.2 and 3. They

had no axe to grind against the accused. Though these witnesses are interested in the deceased, they are equally interested in accused also. From these evidences, the prosecution has established that the accused had caused injuries on the deceased with MO-1 aruval on 30.3.2008.

11. The contention of the learned counsel for the appellant/accused that at the earliest point of time PW-8 was told that the deceased was attacked with an iron pipe, deserves to be rejected, for, it is only a former statement of one Madhu. The said Madhu has not been examined as a witness in this case. It is only for him to explain about the above statement made to the Doctor. Only when examined, the former statement made by a person could be used to contradict him under section 145 or to corroborate his evidence under section 157 of the Indian Evidence Act, 1872. In this case, since Madhu has not been examined, his statement made to the Doctor that the deceased was attacked by an unknown person with iron pipe, cannot be considered as evidence at all. Therefore, this contention is rejected.

12. When the deceased was in the Government Hospital, Dharmapuri, PW-14 went there and recorded the statement (Ex.P-1) of PW-1, and registered the case in Cr.No.140 of 2008. The FIR reached the Court at 7.00 p.m. on 31.3.2008, the next day. There is no delay in sending the FIR to the Court.

13. The medical evidence also fully corroborates the eye witness account. Similarly, the recovery of MO-1 aruval on the disclosure statement of the accused strengthens the prosecution case further. Thus, in our considered view, the prosecution has proved beyond doubt that it was this accused, who had caused the death of the deceased.

14. Now comes the question as to what was the offence committed by the accused in this case. As pointed out by the learned Counsel for the appellant/accused, the motive has not been proved. Absolutely there is no evidence to prove the motive. Further, it is the evidence of PW-2 that the accused demanded transfer of property allotted to her towards maintenance, in his favour. This resulted in a quarrel between PW-2 and the accused. The said quarrel continued for some time. Thereafter, the accused had gone to the house of the deceased. From the evidence of PW-2, certainly it is inferable that there would

have been some quarrel between the accused and the deceased. Only in the said quarrel accused had taken out the aruval and caused injuries on the head of the deceased. Though the act of the accused squarely falls within the third part of Section 300 IPC, we find sufficient evidence on record to bring the act of the accused within the ambit of the first exception to Section 300 IPC. The death was also not instantaneous. Having regard to all the above, we hold that the accused is punishable under Section 304(I) IPC.

15. Coming to the quantum of sentence, the accused is having a big family to take care of and he is a poor coolie. He has no bad antecedents. After this occurrence, he had not committed any crime. Having regard to all these mitigating and aggravating circumstances, we are of the view that the appellant/accused deserves to be sentenced to undergo rigorous imprisonment for five years, and to pay a fine of Rs. 1,000/- in default, to undergo further period of four weeks rigorous imprisonment.

16. In the result, the criminal appeal is partly allowed, the conviction and the sentence imposed on the accused under Section 302 IPC, by the trial Court in S.C.No.6 of 2011 by judgment dated 8.8.2012 are set aside; instead, the appellant/accused is convicted under Section 304(I) IPC and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 1,000/-, in default to undergo rigorous imprisonment for a further period of four weeks. The period of sentence already undergone, if any, is directed to be set off under section 428 Cr.P.C.

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