

1.Sakthivel Vs. State Rep. By

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Court : Chennai

Decided On : Jan-09-2015

Judge : A.Selvam

Appellant : 1.Sakthivel

Respondent : State Rep. By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 09.01.2015 CORAM THE HONOURABLE MR.JUSTICE A.SELVAM and THE HONOURABLE MR.JUSTICE T.MATHIVANAN CRIMINAL APPEAL(MD)No.282 of 2014 and MISCELLANEOUS PETITION(MD)No.1 of 2014 1.Sakthivel 2.Sivakumar .Appellants/ Accused 1 & 2 versus State rep.

by The Inspector of Police, Ganesh Nagar Police Station, Pudukkottai, Pudukkottai District.

(Crime No.399 of 2013).Respondent/ Complainant Criminal appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973, against the Judgment dated 20.08.2014 passed in Sessions Case No.134 of 2013 by the District and Sessions Judge, Mahila Court, Pudukkottai.

!For Appellants : Mr.R.P.Ramachanthiran ^For Respondent : Mr.C.Ramesh, Addl.

Public Prosecutor.

:

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.This Criminal Appeal has been directed against the convictions and sentences passed in Sessions Case No.134 of 2013 by the Mahila Court, Pudukkottai.

2.The schema of the case of the prosecution is that the de facto complainant by name Chandrika and accused are residing in Vamban Colony, Pudukkottai.

The second accused is the son of fiRs.accused.

Prior to three months from the date of occurrence, a tussle has arisen in between the accused and one Yoganathan.

At that time, the son of de facto complainant by name Shanmugabharathi has attacked the second accused, which culminated loding of a police complaint and due to that an animosity has been in existence between the families of the de facto complainant and accused.

Under the said circumstances both the accused have conspired together to murder the husband as well as son of the de facto complainant.

In pursuance of their conspiracy, on 26.09.2013 at about 10.00 a.m., the accused 1 and 2 have come to the house of the de facto complainant and openly declared that they would murder both the husband as well as son of the de facto complainant and on 29.09.2013 at about 08.00 p.m., while the de facto complainant and her husband by name Samy Ayya watching Television, both the accused have trespassed into the house of the de facto complainant and attacked on the head of the said Samy Ayya by using cutgels and during the couRs.of occurrence, the fiRs.accused has also attacked the de facto complainant and immediately after occurrence, the husband of the de facto complainant (injured) has been admitted in Government Hospital, Pudukkottai where he passed away.

The de facto complainant has given a statement to the Sub Inspector of Police (P.W.14) and the same has been registered in Crime No.399 of 2013.

The statement alleged to have been given by the de facto complainant has been marked as Ex.P.1.

3.On receipt of Ex.P.1, the Investigating Officer viz., P.W.15 has taken up investigation, examined connected witnesses, made arrangements for conducting necropsy and P.W.11, Dr.Palanisamy has conducted autopsy and he found the following external and internal injuries on the body of the deceased: ?
External Examination: 1.Rigor Mortis present all four limb.

2.Swelling of scalp left side 15 x 15 c.m.Internal Examination: 1.Blood clot present peritoneal cavity.

2.Blood clot present in Pleural cavity.

3.Fracture of left 3rd to 6th rib.

4.Heart empty.

5.Lungs appears black color.

6.Intestine, bladder empty.

7.Liver, Kidney, spleen pale.

8.Fracture of skull bone (Parietal, Temporal bone).9.Blood clot present within the left side brain matter?.The Postmortem Report has been marked as Ex.P.8.

After completing investigation P.W.15, Investigating Officer 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.24 of 2013.

4.The Judicial Magistrate, Pudukkottai after perusing the relevant records has come to a conclusion 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 and taken on file in Sessions Case No.134 of 2013 and subsequently transferred to the trial Court.

5.The trial Court after hearing both sides and upon perusing the available materials on record has framed fiRs.charge under Section 120-B of the Indian Penal Code, second charge under Section 506(ii) of the Indian Penal Code, third charge under Section 449 of the Indian Penal Code, fourth charge under Section 302 of the Indian Penal Code against both the accused and fifth charge under Section 323 of the Indian Penal Code against the fiRs.accused and the same have been read over and explained to them.

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

6.On the side of the prosecution, P.Ws.1 to 15 have been examined and Exs.P.1 to P.15 and M.Os.1 to 3 have been marked.

7.When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their 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 both the oral and documentary evidence, has found the fiRs.accused guilty under Sections 120-B, 506(ii).449, 302 and 323 of the Indian Penal Code and sentenced him as detailed in the following table and ordered sentences to run concurrently: Conviction Sentence 120-B I.P.C.To undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo one year rigorous imprisonment.

506(ii) I.P.C.To undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo three months rigorous imprisonment.

449 I.P.C.To undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo one year rigorous imprisonment.

302 I.P.C.To undergo imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo one year rigorous imprisonment.

323 I.P.C.To undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- in default to undergo four weeks rigorous imprisonment.

The trial Court has also found the second accused guilty under Sections 120- B, 506(ii).449 and 302 of the Indian Penal Code and sentenced him as detailed in the following table and ordered sentences to run concurrently: Conviction Sentence 120-B I.P.C.To undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo one year rigorous imprisonment.

506(ii) I.P.C.To undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo three months rigorous imprisonment.

449 I.P.C.To undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo one year rigorous imprisonment.

302 I.P.C.To undergo imprisonment for life and to pay a fine of Rs.2,000/- in default 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 appellants.

9.The consistent case putforth on the side of the prosecution is that the de facto complainant and the accused are residing in Vamban Colony, Pudukkottai and prior to three months from the date of occurrence, a miff has arisen in between the accused and one Yoganathan and at that time, the son of the de facto complainant by name Shanmugabharathi has attacked the second accused and due to that a police complaint has been given and subsequently the said Shanmugabarathi has been arrested and remanded to custody and thereafter a permanent animosity has been in existence in between the families of the de facto complainant and accused and both the accused have conspired together so as to murder the husband as well as son of the de facto complainant and in pursuance of their conspiracy on 26.09.2013 at about 10.00 a.m., both the accused have come to the house of the de facto complainant and openly declared that they would kill the husband and son of the de facto complainant and on 29.09.2013, at about 08.00 p.m., both of them have trespassed into the house of the de facto complainant and attacked her

husband by using cudgels and during the course of occurrence the FIRs accused has also attacked her and immediately after occurrence she then injured (deceased) has been admitted in Government Hospital, Pudukkottai, where she passed away.

10. The learned counsel appearing for the appellants/accused has asserted the following points so as to topsy-turvy the convictions and sentences passed by the trial Court against the appellants/accused: (a) Even though the prosecution has put forth a motive for occurrence, the same has not been established by way of filing relevant documents.

(b) On the side of the prosecution, the son of the de facto complainant by name Shanmugabharathi and his cousin by name Manikandan have been examined as P.Ws. 2 and 3 and both of them are not at all eye witnesses and if really they are present in the place of occurrence, definitely they would have deterred the accused.

(c) No independent witnesses have been examined on the side of the prosecution.

(d) The doctor who initially admitted the deceased, has been examined as P.W. 7 and he found contusion on the head of the deceased and if really both the accused have repeatedly attacked on the head of the deceased, definitely he would have sustained some other injuries and therefore the entire case of the prosecution is nothing, but false.

(e) It is seen from the records that P.W. 8, Dr. Ramalingam has examined the de facto complainant at 11.00 p.m. and therefore the de facto complainant is not at all an eye witness.

(f) In the instant case, on the side of the prosecution M.Os. 1 and 2 have been marked by way of saying that the same have been used at the time of occurrence by both the accused and if really M.Os. 1 and 2 have been utilized at the time of occurrence for attacking the deceased, he would have sustained some other injuries and therefore the entire case of the prosecution is liable to be thrown out.

11. In order to resile the contentions put forth on the side of the appellants/accused, the learned Additional Public Prosecutor has sparingly contended that in the instant case motive for occurrence has been clearly established and further P.W.1 is an injured witness and her evidence cannot be belittled on the basis of flimsy infirmities and the trial Court after considering the evidence given by P.W.1 coupled with the evidence given by P.Ws.2 and 3 and other connected documents has rightly invited convictions and sentences against the appellants/accused and therefore the convictions and sentences passed against the appellants/accused by the trial Court are not liable to be set aside.

12. The FIRs and foremost point urged on the side of the appellants/accused is that in the instant case motive has not been established on the side of the prosecution.

13. The specific case of the prosecution is that three months prior to occurrence a tussle has arisen in between the accused and one Yoganathan and during the course of occurrence, the son of the de facto complainant by name Shanmugabharathi has attacked the second accused and due to that a police complaint has been given and consequently the said Shanmugabharathi has been arrested and remanded to custody and since then a permanent animosity has been in existence in between the families of the accused and de facto complainant.

14. As rightly pointed out on the side of the appellants/accused, with regard to lodging of complaint by the second accused against the said Shanmugabharathi and subsequent arrest and remand, no document has been marked.

Even though no such document has been marked on the side of the prosecution, P.W.1 has given picturesque evidence with regard to previous occurrence.

Further the said Shanmugabharathi has been examined as P.W.2.

He has also clearly stated in his evidence that he has been arrested and remanded to custody in connection with the police complaint given by the second accused.

Therefore, it is quite clear that the prosecution has clearly established motive for occurrence.

15.The second contention putforth on the side of the appellants/accused is that P.Ws.2 and 3 are not at all eye witnesses and if really they are present at the time of occurrence, definitely they would have deterred both the accused from entering into the house of the de facto complainant.

In fact, this Court has perused the entire evidence given by P.Ws.2 and 3 and their specific evidence is that after hearing queer noise from the house of P.W.2, they have come to the front yard of the same and found that both the accused have run from the place of occurrence with cudgels.

Under the said circumstances, the Court cannot come to a conclusion that P.Ws.2 and 3 would not have seen the accused after occurrence.

Further both of them have not spoken about the overtacts alleged to have been committed by both the accused on the person of the deceased.

Under the said circumstances the second contention putforth on the side of the appellants/accused is of no use.

16.The third contention putforth on the side of the appellants/accused is that no independent witnesses have been examined on the side of the prosecution.

17.It is seen from the evidence given by P.W.1 that the entire occurrence has takenplace inside her house and the same has been corroborated by way of marking Ex.P.11, Rough Sketch.

Since the entire occurrence has takenplace inside the house of the de facto complainant (P.W.1).no possibility on the part of outsiders to witness the same.

Therefore the third contention putforth on the side of the appellants/accused is sans merit.

18.The fourth contention putforth on the side of the appellants/accused is that P.W.7 Dr.Subbu Sivakumar has found a contusion on the head of the deceased

and if really both the accused have repeatedly attacked by using cudgels on the head of the deceased, definitely he would have sustained some other injuries.

19.It is an admitted fact that after occurrence, the then injured (deceased) has been taken to Government Hospital, Pudukkottai and he has been admitted by P.W.7, Dr.Subbu Sivakumar and his evidence is that he found a contusion on the head of the deceased.

Simply because P.W.7 has adduced such kind of evidence, the Court cannot eschew the evidence given by the eye witness (de facto complainant).20.The fifth contention putforth on the side of the appellants/accused is that the de facto complainant (P.W.1) is not at all an eye witness.

21.The specific evidence given by the de facto complainant (P.W.1) is that at the time of occurrence, she tried her level best to deter both the accused from attacking her husband and the fiRs.accused has attacked her and she sustained injuries.

22.It is seen from the records that P.W.8, Dr.Ramalingam has examined her on the date of occurrence at about 11.30 p.m.Simply because P.W.8 has examined the de facto complainant (P.W.1) at 11.00 p.m., her testimonies cannot be belittled.

Under the said circumstance the fifth contention putforth on the side of the appellants/ accused also goes out without merit.

23.The last contention putforth on the side of the appellants/accused is that if really both the accused have attacked on the head of the deceased by using M.Os.1 and 2, definitely he would have sustained some more injuries and therefore M.Os.1 and 2 are purposely introduced in the present case.

24.At this juncture, it would be condign to refer the opinion given by the Postmortem Doctor (P.W.11) and his specific opinion is that if M.Os.1 and 2 have been used at the time of occurrence, the injuries sustained by the deceased would be possible.

Therefore the last contention put forth on the side of the appellants/accused also goes out without merit.

25.As pointed out earlier, 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.

In fact P.W.1 has given clinching evidence with regard to motive for occurrence and the occurrence which has taken place on 26.09.2013 and also the occurrence which has taken place on 29.09.2013.

To put it in short, P.W.1 has given a clearcut evidence with regard to overtacts alleged to have been made by both the accused on the person of the deceased.

Further the evidence given by P.W.1 has been clearly corroborated by medical evidence by way of examining P.Ws.7,8 and 11.

Therefore, it is quite clear that the prosecution has clearly established the guilt of both the accused as mentioned in the charges.

26.The trial Court after evaluating the available evidence on record has rightly found the fiRs.accused guilty under Sections 120-B, 506(ii).449, 302 and 323 of the Indian Penal Code and also rightly found the second accused guilty under Sections 120-B, 506(ii).449 and 302 of the Indian Penal Code and imposed sentences as mentioned supra.

In view of the foregoing narration of factual aspects, this Court has not found any acceptable force in the contentions put forth on the side of the appellants/accused and therefore the present Criminal Appeal deserves to be dismissed.

27.In fine, this Criminal Appeal deserves dismissal and accordingly is dismissed and the convictions and sentences passed in Sessions Case No.134 of 2013 by the Mahila Court, Pudukkottai are confirmed.

Consequently, connected Miscellaneous Petition is dismissed.

[A.S.,J.][T.M.,J.].09.01.2015 Index:Yes/No Internet:Yes/No.smn To 1.The District and Sessions Judge, Mahila Court, Pudukkottai.

2.The Inspector of Police, Ganesh Nagar Police Station, Pudukkottai, Pudukkottai District.

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

A.SELVAM, J.

and T.MATHIVANAN, J.

Judgment made in Crl.A(MD)No.282 of 2014 and M.P(MD)No.1 of 2014
09.01.2015

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