

1.Duraipandi Vs. State Rep. By

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Court : Chennai

Decided On : Feb-05-2015

Judge : A.Selvam

Appellant : 1.Duraipandi

Respondent : State Rep. By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 05.02.2015 CORAM THE HONOURABLE MR.JUSTICE A.SELVAM and THE HONOURABLE MR.JUSTICE T.MATHIVANAN CRIMINAL APPEAL(MD)No.171 of 2009 1.Duraipandi 2.Ramakkaran 3.Veerannasamy .Appellants/ Accused 1 to 3 versus State rep.

by The Inspector of Police, Melur Police Station, Madurai District.

(Crime No.455 of 2007).Respondent/ Complainant Criminal appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973, against the Judgment dated 12.06.2009 passed in Sessions Case No.24 of 2008 by the Sessions Judge/ Mahalir Neethimandram, Madurai.

!For Appellants : Mr.R.Paul Sukumar ^For Respondent : Mr.C.Mayilvahana Rajendran, Additional Public Prosecutor.

:

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.This Criminal Appeal has been directed against the conviction and sentence dated 12.06.2009 passed in Sessions Case No.24 of 2008 by the District and Sessions Court/Mahalir Neethimandram, Madurai.

2.The case of the prosecution is that the fiRs.accused is the husband of the deceased Pandiammal.

The second accused is the father of fiRs.accused and third accused is the younger brother of fiRs.accused.

On 07.07.2007 at about 06.00 p.m., the deceased Pandiammal has questioned the fiRs.accused with regard to taking of liquor by him and due to that with intention to murder her, all the three accused have attacked her by using deadly weapons and subsequently she has been taken to Thiruppuvanam Hospital and thereafter referred to Government Hospital, Melur and thereafter she has been referred to Government Rajaji Hospital, Madurai and after lapse of 1+ months, she passed away.

On 08.07.2007, one Vetrilaipandi (P.W.1).father of the deceased has given a complint to P.W.13, viz., Pandi and the same has been registered in Crime No.455 of 2007 under Sections 341, 323 and 506(ii) of the Indian Penal Code.

The complaint given by P.W.1 has been marked as Ex.P.1.

3.On receipt of Ex.P.1, the Investigating Officer viz., P.W.17 has taken up investigation, examined some connected witnesses and made alteration in Section of law and after the demise of the deceased, P.W.17 has altered Section as 302 of the Indian Penal Code alongwith other Sections and made arrangements to conduct autopsy on the body of the deceased.

The Doctor by name Natarajan (P.W.11) has conducted autopsy and he found the following injuries: ?

- 1.Healed abrasion 3 x 2 cms noted on the right eyebrow.

- 2.Healed abrasion 3 x 2 cms noted on right cheek.

3.Healed abrasion 3 x 3 cms noted on the back of right shoulder.

4.Healed abrasion 3 x 3 cms noted on right forearm.

5.Healed abrasion 6 x 3 cms noted on the front of right side of abdomen.

6.Bedsore 10 x 8 cms noted on the sacral region.

On dissection of scalp, skull & dura: Dark colour contusion scalp 5 x 3 cms on the right parietal and 4 x 3 cms on the mid frontal region.

Diffused subdural haemorrhage and subarachnoid haemorrhage noted over both cerebral hemispheres.

Cerebrospinal fluid increased and blood stained?.The Postmortem Report has been marked as Ex.P.6.

After completing investigation, P.W.17 has laid a final report on the file of the Judicial Magistrate's Court, Melur and the same has been taken on file in P.R.C.No.50 of 2007.

4.The Judicial Magistrate, Melur after considering the fact that the offences alleged to have been committed by all the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Madurai Division and taken on file in Sessions Case No.24 of 2008 and subsequently made over to the trial Court.

5.The trial Court after hearing both sides and upon perusing the relevant records has framed a charge against all the accused under Sections 302 read with 34 of the Indian Penal Code and the same has been read over and explained to them.

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

6.On the side of the prosecution, P.Ws.1 to 17 have been examined and Exs.P.1 to P.15 and M.O.1 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.

8.On the side of the accused, Ex.D.1 has been filed and no oral evidence has been tendered on their side.

9.The trial Court, after upstaring the evidence available on record, has found all the accused guilty under Sections 302 read with 34 of the Indian Penal Code and sentenced them to undergo imprisonment for life and also imposed a fine of Rs.10,000/- upon each of them with usual default clause.

Against the conviction and sentence passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellants.

10.The sum and substance of the case of the prosecution is that the fiRs.accused by name Duraipandi is the husband of deceased Pandiammal.

The second accused is his father and third accused is the younger brother of fiRs.accused.

On 07.07.2007, at about 06.00 p.m., the deceased has questioned the fiRs.accused with regard to taking of liquor by him and having enraged at the conduct of the deceased, all the accused with intention to murder her, have attacked on her person indiscriminately by using deadly weapons and after occurrence, she has been taken to Thiruppuvanam Hospital and subsequently referred to Government Hospital, Melur and thereafter she has been referred to Government Rajaji Hospital, Madurai, where she succumbed to injuries after lapse of 1+ months.

11.The prosecution has chosen to examine the daughter of both the deceased and fiRs.accused by name Petchi as P.W.2.

The trial Court after considering the veracity of the testimonies given by P.W.2 coupled with other evidence has invited conviction and sentence against all the accused under Sections 302 read with 34 of the Indian Penal Code.

12.The learned counsel appearing for the appellants/accused has raised the following points so as to set aside the conviction and sentence passed by the trial Court: (i)In Ex.P.1, complaint the name of P.W.2 is not found place.

(ii) In Ex.P.7, it has been clearly stated that the deceased has fallen down on a pipeline and sustained injuries and to that effect P.W.12 has given evidence.

(iii) In the mahazer as well as sketch, place of occurrence has not been stated.

(iv) The FiRs. Information Report has been marked as Ex.P.10 and the same has been sent to Court on 10.07.2007 and no acceptable explanation has been given on the side of the prosecution.

(v) The specific evidence given by P.W.15 is that somebody has written the body of Ex.P.1.

(vi) No document has been filed with regard to alteration of the complaint under Section 302 of the Indian Penal Code.

(vii) After admission in Government Rajaji Hospital, Madurai, no document has been filed as to what kind of treatment has been given to the deceased.

13. In order to dispel the contentions put forth on the side of the appellants/accused, the learned Additional Public Prosecutor has contended that P.W.2 is the daughter of both the fiRs. accused and deceased and even though her name has not been mentioned in Ex.P.1, complaint, her evidence cannot be eschewed and further P.W.5, Doctor who attached to Government Hospital, Melur has given clear evidence to the effect that it is reported to her that the then injured has been attacked by three known persons and simply because on the basis of Ex.P.7 coupled with the evidence of P.W.12, the Court cannot come to a conclusion that the accused have had no connection whatsoever with the crime and further the entire occurrence has taken place while the deceased sitting on a cavie and further simply because a mere delay has occurred in sending Ex.P.1 to the Court and simply because altered FiRs. Information Report under Section 302 of the Indian Penal Code has not been produced, the Court cannot eschew the entire evidence given by P.W.2 and the trial Court after considering the relationship between the accused and P.W.2 has rightly invited conviction and sentence against the accused and therefore the conviction and sentence passed by the trial Court do not warrant interference.

14. On the basis of divergent submissions, the Court has to meticulously analyse the evidence given by P.W.2.

It is an admitted fact that P.W.2 is the daughter of the fiRs. accused and deceased and throughout her evidence she has clinchingly stated to the effect that in the place of occurrence all the accused have attacked on the person of the deceased.

Even during the couRs. of cross-examination, she has encrusted the evidence given by her in chief examination and no acceptable materials are available in the evidence of P.W.2 to the effect that she has been tutored so as to adduce evidence against the accused.

Since P.W.2 is the daughter of both the fiRs. accused and deceased and since her evidence has completely inspired the confidence of Court, it is needless to say that only on the basis of her evidence, the Court can very well come to a conclusion that the entire occurrence has taken place as put forth on the side of the prosecution and in the place of occurrence all the accused have attacked the deceased by using deadly weapons.

15. The consistent case put forth on the side of the prosecution is that in the place of occurrence all the accused have attacked the deceased by using deadly weapons and thereby caused fatal injuries on the head of the deceased.

16. It is an admitted fact that P.W.11, Dr. Natarajan has conducted autopsy on the body of the deceased and filed Ex.P.6, Postmortem Certificate, wherein it has been clearly stated that the deceased would have died due to head injuries.

Therefore it is quite clear that the evidence given by P.W.2 is in consonance with the medical evidence given by P.W.11 coupled with Ex.P.6.

17. The fiRs. and foremost attack made on the side of the appellants/accused is that name of P.W.2 is not found place in Ex.P.1, complaint.

18. It is true that in Ex.P.1, the name of P.W.2 is not found place.

Simply because name of P.W.2 is not found place in Ex.P.1, the Court cannot automatically come to a conclusion that P.W.2 is not at all an eye witness.

Further mere omission to mention names of witnesses in the FiRs. Information Report is not at all fatal to the case of the prosecution.

Therefore the fiRs. and foremost contention urged on the side of the appellants/accused is sans merit.

19. The second contention put forth on the side of the appellants/accused is that in Ex.P.7, letter given by P.W.12, it is mentioned to the effect that the deceased has fallen down on a pipeline and thereby sustained injuries.

20. It is seen from the records that after occurrence initially the then injured has been seen by P.W.12 and subsequently she has been referred to Government Hospital, Melur, where P.W.5 has seen her.

In Ex.P.7, it is stated that the deceased has fallen down on a pipeline and sustained injuries and author of Ex.P.7 has been examined as P.W.12 and he has given evidence in accordance with Ex.P.7.

At this juncture, it would be condign to look into the evidence given by P.W.5 and Ex.P.2.

The specific evidence given by P.W.5 is that the then injured has been brought to Government Hospital, Melur and reported that she has been attacked by known persons and to that effect she has given Ex.P.2.

Since P.W.5 has given clear evidence to that effect and since the person who has given such kind of information to P.W.12, viz., Thotichi is not at all an eye witness, merely on the basis of materials found in Ex.P.7, the Court cannot come to a conclusion that the deceased has fallen down on a pipeline and thereby sustained injuries and therefore the second contention put forth on the side of the appellants/accused is not having merit.

21. The third contention put forth on the side of the appellants/accused is that in mahazer as well as sketch, the place of occurrence is not found place.

22. The specific case put forth on the side of the prosecution is that all the accused have attacked the deceased while she sitting on a cavie.

Simply because both in mahazer as well as in sketch, certain omission has taken place with regard to the said cave, the Court cannot eschew the plenitude of evidence adduced by P.W.2 with regard to occurrence.

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

23.The fourth contention put forth on the side of the appellants/accused is that Ex.P.10, FiRs.Information Report has reached the Court on 10.07.2007, even though Ex.P.1 has been registered on 08.07.2007.

24.It is seen from the records that Ex.P.1 has been registered on 08.07.2007.

But Ex.P.10 has reached the Court on 10.07.2007.

Further the occurrence has taken place on 07.07.2007 and Ex.P.1 has come into existence on 08.07.2007.

25.It is an archaic principle of law that mere delay in lodging FiRs.Information Report and also sending the same to Court would not militate the case of the prosecution, provided the prosecution has adduced trustworthy evidence so as to connect the accused with the crime.

Therefore the fourth contention put forth on the side of the appellants/accused cannot be accepted.

26.The fifth contention put forth on the side of the appellants/accused is that the specific evidence given by P.W.15 is that body of Ex.P.1 has been written by somebody else and therefore Ex.P.1 is nothing, but a concocted document.

Further in the FiRs.Information Report, some material alterations are found place in the place of crime number and date.

27.As stated in many places, the entire occurrence has taken place on 07.07.2007 whereas Ex.P.1 has become emerged on 08.07.2007.

The actual crime number is 455 of 2007.

As rightly pointed out on the side of the appellants/accused, some fliMs.alterations are found place in Ex.P.10 with regard to crime number as well as date.

On the basis of the said alterations, the Court cannot come to a conclusion that the entire case of the prosecution is false.

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

28.The sixth contention putforth on the side of the appellants/accused is that after the demise of the deceased, Section of law has been altered into Section 302 of the Indian Penal Code and no alteration report is avialable.

29.In fact with regard to that aspect the Investigating Officer viz., P.W.17 has given evidence and his specific evidence is that Alteration Report has been submitted to Court.

But the same is not available.

Since the same is not available, the Court cannot come to a conclusion that the entire case of the prosecution is nothing, but false.

30.The last contention putforth on the side of the appellants/accused is that even though the deceased has been admitted in Government Rajaji Hospital, Madurai, the prosecution has not chosen to mark any document with regard to treatment given to her.

31.As rightly pointed out on the side of the appellants/accused, the prosecution has not chosen to mark treatment particulars and that itself would not affect the case of the prosecution.

32.Even at the risk of jarring repetition, the Court would like to point out that the evidence given by P.W.2, daughter of the fiRs.accused and deceased remains unimpugnable.

Since her evidence is unshattered and also uncontroverted, only on the basis of her evidence, the Court can very well invite conviction and sentence against all the

accused.

33.The trial Court after considering sole testimony of P.W.2 coupled with her relationship with fiRs.accused and deceased has rightly invited conviction and sentence against all the accused.

In view of the discussion made earlier, this Court has not found any acceptable force in the contentions putforth on the side of the appellants/accused and therefore the present Criminal Appeal deserves to be dismissed.

34.In fine, this Criminal Appeal deserves dismissal and accordingly is dismissed and the conviction and sentence passed in Sessions Case No.24 of 2008 by the District and Sessions Court/ Mahalir Neethimandram, Madurai are confirmed.

The trial Court is directed to take appropriate steps so as to incarcerate all the appellants/accused in prison.

[A.S.,J.].[T.M.,J.].05.02.2015 Index:Yes/No Internet:Yes/No.smn To 1.The Sessions Judge, Mahalir Neethimandram, Madurai.

2.The Inspector of Police, Melur Police Station, Madurai District.

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

A.SELVAM, J.

and T.MATHIVANAN, J.

smn Judgment made in CrI.A(MD)No.171 of 2009 05.02.2015

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