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Ramkumar Vs. The State Represented By

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Court : Chennai

Decided On : Feb-05-2015

Judge : K.Ravichandra Baabu

Appellant : Ramkumar

Respondent : The State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

05. 02.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal (MD)No.322 of 2007 Ramkumar ... Appellant/ Accused Vs. The State represented by The Inspector of Police, Thandigudi Police Station, Dindigul. (Cr.No.127 of 2005) ... Respondent/ Complainant Prayer : Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment passed in S.C.No.88 of 2006 dated 21.04.2007, by the Principal Sessions Judge, Dindigul. !For Appellant : Mr.A.P.Muthupandian ^For Respondent : Mrs.S.Prabha, Government Advocate (Crl.Side) :

JUDGMENT

The sole accused in S.C.No.88 of 2006, stood charged and tried for the commission of the offences under Section 302 and 323 I.P.C. The Court of the Principal Sessions Judge, Dindigul, vide judgment dated 21.04.2007, has convicted the appellant/accused under Section 304-II I.P.C and sentenced him to

undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- with default sentence of rigorous imprisonment for three months and for the commission of the offence under Section 323 I.P.C., sentence him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- with default sentence of simple imprisonment for three months. The trial Court further directed that the sentences of imprisonment shall run concurrently and also ordered set off under Section 428 Cr.P.C. The appellant/accused, aggrieved by the conviction and sentence passed in the impugned judgment in S.C.No.88 of 2006 by the trial Court, has filed this Criminal Appeal.

2. The facts narrated in brief and necessary for the disposal of this Criminal Appeal, are as follows:

2. 1. The appellant/accused is the son-in-law of P.W.1 and the deceased, namely, Jaisankar. P.W.1 is the wife of the deceased Jaisankar and out of wedlock with the deceased Jaisankar, she begotten two female and three male children. The eldest daughter of P.W.1 developed love affair with the appellant/accused, namely, Ramkumar and married him. 2.2. The appellant/accused went to Chennai and therefore, the daughter of P.W.1 was in her parental home. The husband of P.W.1, namely, the deceased Jaisankar was employed as Supervisor in the M.G.R. Town Group Houses scheme. The residence of P.W.1 as well as the appellant/accused are lying opposite to each other. The daughter of P.W.1, namely, Pandiselvi - wife of the appellant/accused was also working as a labourer in the construction of the above said group houses. 2.3. About four or five months prior to June 2005, the appellant/accused returned from Chennai and started demanding the wages paid to his wife and had altercation with the husband of P.W.1. The husband of P.W.1 also made a promise that as and when the Contractor gives the money, it will be given to him. The daughter of P.W.1 was not reported for job since her husband returned from Chennai. 2.4. On 23.06.2005, the husband of P.W.1, P.W.1, the son of P.W.1 - P.W.2, P.W.5, P.W.4, P.W.6 and others, were proceeding to the work site and at about 12.30 p.m., the husband of P.W.1 and P.W.2 went to their house to get some reapers for the purpose of scaffold and at that juncture, the appellant/accused had a wordy altercation and abused the husband of P.W.1 by using filthy language and it was castigated by the deceased. Subsequently, there

was a wordy altercation and on hearing the same, P.W.1 rushed to the place and questioned her son-in-law/appellant/accused as to why he is abusing her husband by using filthy words. Immediately, the appellant/accused took a stick (M.O.1) lying nearby and attacked her and consequently, P.W.1 sustained injury on her left ear and on seeing it, the husband of P.W.1/deceased had a fight and the brother-in-law of P.W.1, namely, Murugesan pacified them. However, the appellant/accused not heeding to his words, uttered the words that 'not only took the money, but also attempted to beat him' and went inside his house and took the aruval (M.O.2) and started chasing the husband of P.W.1. The husband of P.W.1 fearing for his life, started running and the appellant/accused chased him and made an attempt to cut him with aruval and it fell on the right side buttock of the husband of P.W.1. 2.5. P.W.1 as well as the brother-in-law of P.W.1, namely, Murugesan, asked him not to do so and the husband of P.W.1 unable to bear the pain, started raising alarm and both of them prevented further attack. The appellant/accused ran away from the scene of occurrence and P.W.1 brought a lorry and took him to Thandigudi and on medical advice, he was taken to the Government Hospital, Batlagundu and was examined by the Casualty Medical Officer, who declared him as dead. 2.6. P.W.1 took treatment and her statement was recorded by P.W.12, marked as Ex.P.1 and thereafter, he came back to Thandigudi Police Station and registered a case in Cr.No.127 of 2005 against the appellant/accused for the commission of the offences under Sections 323 and 302 I.P.C. The printed F.I.R was marked as Ex.P.11. 2.7. P.W.12 took up the investigation and despatched the original of Ex.P.1 and F.I.R to the jurisdictional Judicial Magistrate and the copies to his superior officers. On the same day, i.e. on 23.06.2005, at about 06.30 p.m., in the presence of P.W.7 and another witness, he prepared Ex.P.12 - Observation Mahazar and Ex.P.13 - Rough Sketch. At about 07.30 p.m., on the same day, P.W.12 recovered M.O.1 - stick, M.O.7 - blood stained earth, M.O.8 - sample earth, under a cover of mahazar, marked as Ex.P.14 and it was attested by P.W.7 and another witness. 2.8. On 24.06.2005, at about 07.00 a.m., P.W.12 reached the Government Hospital, Batlagundu and in the presence of the Panchayatdars, conducted the inquest on the body of the deceased and the inquest report was marked as Ex.P.15. After completion of inquest, P.W.12 through P.W.11, sent the body of the deceased for post-mortem. P.W.10 - Doctor, on receipt of the body,

commenced the post-mortem at about 01.10 p.m., on 24.06.2005 and noted the following features: ?.The body was first seen by the undersigned at 1.10 P.M. 24.6.05. Its condition then was Rigormortis present in all 4 limbs. Post mortem commenced at 1.10 P.M. on 24.6.05. Appearances found at the post-mortem of the body of a male moderatlty nourished symetrical. Black hair, Tongue inside the mouth eye partially opened. Abdoment distended. INJURIES:

1. Cut injury 8x3x12 cm over the right gluted region bone deep injury the underlying muscles and blood vessels. 2) Abrasion 1x2x+ cm over the right forearm. Hyoidbone: Intact. Heart:

250. gram Chambers empty. Lung: left 300 right 350 pale. Stomach contain 100 gram of partially digested food particles. Liver :

1500. gram pale. Kidney each 150 gram pale. Head : No fracture brain. No bleeding Membrance intact. Postmortem concluded at 02.10 P.M. The deceased died due to shock and haemorrhage due to injuries sustained 20 to 24 hrs prior to autopsy.?. (extracted as such) 2.9. After conclusion of the post-mortem, P.W.10 ?. Doctor, issued Ex.P.10 ?. Post-mortem Certificate, opining that the deceased died due to shock and haemorrhage due to injuries sustained 20 to 24 hours prior to autopsy. 2.10. P.W.12 examined P.W.1, P.W.4, P.W.5, P.W.6 and two other witnesses and recorded their statements under Section 161(3) Cr.P.C and at about 10.15 a.m., on the same day, recovered M.O.9 ?. saree worn by P.W.1 and despatched the same under Form 95, marked as Ex.P.16 to the jurisdictional Judicial Magistrate and also seized the trip sheet from one Murugan (not examined), marked as Ex.P.17. 2.11. P.W.12 also seized the copy of the Accident Register and the death intimation. At about 09.00 p.m., on that day, under Form 95, P.W.12 seized M.Os.3 to 6, clothe worn by the deceased. On 25.06.2005, on receipt of the information about the whereabouts of the appellant/accused, P.W.12 effected the arrest of the appellant/accused near Pattalangadu diversion and he voluntarily came forward to give a confession statement and it was recorded in the presence of P.W.8 ?. Village Administrative Officer, Thandigudi and the admissible portion of the confession was marked as Ex.P.18 and seized M.O.2 ?. aruval under a cover of mahazar, marked as Ex.P.19. Thereafter, P.W.12 recorded the

statements of P.W.8 and another witness and at about 10.00 a.m., came back to the Police Station and sent the appellant/accused for judicial custody and also examined P.W.11 and other witnesses and recorded their statements. 2.12. On 27.06.2005, P.W.12 recorded the statement of P.W.9 and seized the Accident Register pertaining to P.W.1, marked as Ex.P.8. P.W.12, after obtaining permission, sent the material objects for chemical analysis and on receipt of the reports, those documents were marked as Exs.P.23 and P.24 respectively. On 30.06.2005, P.W.12 recorded the statement of one Dr.Subramanian and further recorded the statements of P.W.4 and other witnesses and also seized an Account Book pertaining to the construction of the Group Houses and it was marked as Ex.P.22, subject to objections. 2.13. P.W.12, after completion of the investigation, filed the final report on 23.08.2005, charging the appellant/accused for the commission of the offences under Sections 323 and 302 I.P.C. 2.14. The Court of Judicial Magistrate, Kodaikanal, on filing of the final report, took it on file in P.R.C.No.9 of 2005 and on appearance of the appellant/accused, furnished the documents under Section 207 Cr.P.C. The said Court having found that the case is exclusively triable by the Sessions Court, committed the same to the Court of Principal Sessions Judge, Dindigul. 2.15. The said Court, on appearance of the appellant/accused, framed the charges under Sections 323 and 302 I.P.C. and questioned him and he pleaded not guilty to the charges framed against him and prayed for trial of the case. 2.16. The prosecution in order to sustain their case, examined P.W.1 to P.W.12 and marked Exs.P.1 to P.24 and also marked M.O.1 to M.O.9. 2.17. The appellant/accused was questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against him in the evidence tendered by the prosecution and he denied it as false. 2.18. On behalf of the accused, neither oral nor documentary evidence was let in. 2.19. The trial Court on consideration of the oral and documentary evidence, found the appellant/accused guilty and convicted him and imposed the sentences as stated above and challenging the vires of the same, the appellant/accused has filed the present Criminal Appeal.

3. Mr.A.P.Muthupandian, learned Counsel for the appellant/ accused, made the following submissions:

3. 1. The presence of P.W.1 and P.W.2, near the scene of occurrence was very much doubtful as their testimonies would disclose that they would not have present at all when the alleged offences were committed. 3.2. The alleged arrest, confession and recovery, have also not been proved by the prosecution, as P.W.8 - Village Administrative Officer, in whose presence the above said things were done, had turned hostile. 3.3. The testimony of P.W.10 - Doctor, who conducted the autopsy, would also disclose that the injury was on a non-vital part and if proper treatment was given on time, the husband of P.W.1/deceased would have been saved and no explanation has been offered by the prosecution as to why there was a delay in giving him treatment. Even in Ex.P.1, P.W.1 did not state anything about the presence of P.W.2 at the time of the alleged commission of the offences.

4. The learned Counsel for the appellant has invited the attention of this Court to the testimonies of witnesses and exhibits marked on the side of the prosecution and would submit that in the light of the said infirmities, the trial Court ought to have awarded the benefit of doubt and acquitted the appellant/accused.

5. It is also pointed out by the learned Counsel for the appellant/accused that at the time of the alleged commission of the offences, the wife of the appellant/accused, was pregnant and now, the appellant/accused has joined with the company of his wife and leading a happy married life and begotten two children and further that his mother-in- law/P.W.1 is also residing with him and the said fact may also kindly be considered.

6. Per contra, Mrs.S.Prabha, learned Government Advocate (Criminal Side) for the respondent would contend that the testimony of the injured witness, namely, P.W.1 would also carry a great weight and her testimony is in consonance with her complaint under Ex.P.1 and the discrepancies pointed out are only trivial in nature.

7. It is further submission of the learned Government Advocate (Criminal Side) for the respondent that most of the witnesses are hailing from a remote places and rustic and they were examined after two years from the date of commission of the offence and on account of the time gap, there are bound to be some discrepancies and embellishments and the same would not mitigate the merits of the case

projected by the prosecution.

8. It is further contended by the learned Government Advocate (Criminal Side) for the respondent that though P.W.8 turned hostile, the material objects were subjected to chemical analysis and were tainted with the human blood and medical evidence had also established the fact that the husband of P.W.1 died on account of homicidal violence and the trial Court, taking into consideration the fact that the offences are committed during the heat of passion and the seat of injury was on non-vital part, has rightly convicted the appellant/accused under Sections 304-II and 323 I.P.C., for having caused the injury on P.W.1 and imposed the adequate sentences and the family circumstances, now, projected cannot be taken note of and hence, prayed for the dismissal of this Criminal Appeal.

9. This Court paid it's best attention to the rival submissions and also perused the oral and documentary evidence and the original records.

10. P.W.1 - wife of the deceased, is the defacto complainant and according to her, on 23.06.2005, there was an altercation and initially, the appellant/accused near the house of P.W.1, attacked P.W.1 with a stick (M.O.1) and consequently, she sustained a simply injury on the left ear and subsequently, there was a wordy altercation between him and the husband of P.W.1 and went inside the house and took M.O.2 - aruval and chased him and made an attempt to cut him and it fell on the right buttock of the husband of P.W.1 and consequently, the husband of P.W.1, namely, the deceased Jaisankar, had fallen down and started bleeding profusely and was taken to Thandigudi and thereafter, on medical evidence, was taken to Government Hospital, Kodaikanal, wherein he was pronounced dead on arrival.

11. A perusal of Ex.P.1, which came into existence at the earliest point of time, has not disclosed the fact that P.W.2 - minor son of P.W.1 was present near the scene of occurrence, when his father was inflicted with injury by the appellant/accused.

12. P.W.1, in the course of his cross-examination, has deposed that only after infliction of the injury, she saw her husband and she was in the spot wherein she

was attacked by the appellant/accused and since she became drowsy, she did not follow her husband. It was further deposed by P.W.1 that on the same day of occurrence, i.e. on 23.06.2005, the appellant/accused was taken to the Police Station. It was further deposed that she was an illiterate and while affixing her left thumb impression, she did not know the contents and was also not aware as to who has written the contents of Ex.P.1.

13. P.W.2 - minor son of P.W.1, in the cross-examination, would depose that his mother - P.W.1 after sustaining the injury, became unconscious and he administered water and cleaned the wound.

14. In Ex.P.13 - Rough Sketch, Serial No.11 is the house of P.W.1 and the deceased and Serial No.7 is the house of the appellant/accused and both are lying opposite to each other. Serial No.21 is the space in which the appellant/accused attacked P.W.1 with M.O.1 - stick. Serial No.8 is the scene of occurrence wherein the appellant/accused has attacked the husband of P.W.1 and inflicted the injury on the right buttock. The distance between Serial No.21 and Serial No.8 is quite a long distance and near the house of one Rajarathinam, marked as Serial No.6, there was a right bend or curve.

15. A perusal of the testimonies of P.W.1 and P.W.2 coupled with Ex.P.1 would disclose the unclenching fact that at the time of attack made by the appellant/accused on P.W.1, P.W.2 was present and she became unconscious and P.W.2 was attending to her and the husband of P.W.1 - father of P.W.2 was chased by the appellant/accused armed with M.O.2 - aruval and about 40 feet from the place in which P.W.1 was attacked, the murder was committed. The answers elicited in the cross-examination of P.W.1 and P.W.2, as stated above, coupled with the Rough Sketch, marked as Ex.P.13, would lead to the only inference that P.W.1 and P.W.2 would not have seen the attack on the part of the appellant/accused on the husband of P.W.1. Therefore, they cannot be termed as eyewitnesses.

16. According to P.W.1, the appellant/accused was taken to the Police Station on 23.06.2005. However, according to P.W.12 - Investigating Officer, the appellant/accused was arrested on 25.06.2005 and in the presence of P.W.8 -

Village Administrative Officer, who turned hostile, he voluntarily came forward to give a confession statement and as per the admissible portion of the confession statement marked as Ex.P.18, M.O.2 - aruval was recovered under a cover of mahazar, marked as Ex.P.19.

17. P.W.8 turned hostile and consequently, the arrest, the alleged confession and recovery in pursuance of the admissible portion of the confession statement, have not been proved or substantiated by the prosecution and the alleged arrest of the appellant/accused on 25.06.2005, itself was doubtful for the reason that according to P.W.1, his mother-in- law, the appellant/accused was taken to the Police Station even on 23.06.2005, i.e. on the same day of the commission of the offence.

18. Certain contradictions were also elicited in the oral testimonies of P.W.1 and P.W.2 and P.W.12 - Investigating Officer was also questioned wherein he would depose that P.W.1, in the course of the investigation, did not speak about the arming of M.O.2 - aruval by the appellant/accused and also did not state that she was weeping near the body of her husband. The improvement made by P.W.1 in the course of her oral testimony, also strengthens the point urged by the learned Counsel for the appellant that P.W.1 would not have been present at the time of attack inflicted by the appellant/accused on her husband.

19. P.W.10 - Doctor, who conducted the autopsy, in the cross- examination would depose that the injury was not on the vital part and not capable of causing immediate death and if treatment was given on time, haemorrhage would have been stopped and the injured (since deceased) would have survived.

20. Therefore, except the testimonies of the alleged eyewitnesses, namely, P.W.1 and P.W.2, the prosecution did not produce any other evidence to support their case that it was the appellant/accused who made a fatal attack on the husband of P.W.1.

21. As regards the injury inflicted on P.W.1, it was admittedly a simple injury and the testimony of P.W.1 is in consonance with her complaint, marked as Ex.P.1 and it was also corroborated by her minor son, namely, P.W.2.

22. In the light of the infirmities pointed out above, this Court is of the view that the case built by the prosecution with regard to the commission of the offence of murder on the part of the appellant/accused, based on the testimonies of P.W.1 and P.W.2, became very weak and there was no corroboration on material particulars with regard to the overt act on the part of the appellant/accused through the testimonies of other witnesses, who are merely hear-say evidence.

23. In the considered opinion of this Court, the prosecution has failed to prove it's case beyond any reasonable doubt. However, the prosecution has proved the commission of the offence under Section 323 I.P.C. on the part of the appellant/accused.

24. In the result, this Criminal Appeal is partly allowed and the conviction recorded under Section 304-II I.P.C. and the sentence of imprisonment and fine, imposed on the appellant/accused by the Court of Principal Sessions Judge, Dindigul, in S.C.No.88 of 2006, vide judgment dated 21.04.2007, are set aside and the appellant/accused is acquitted of the conviction under Section 304-II I.P.C. However, the conviction of the appellant/accused under Section 323 I.P.C. is maintained and taking into consideration the above facts and circumstances of the case, this Court is of the view that the fine of Rs.1,000/- (Rupees One Thousand only) with default sentence of three months rigorous imprisonment, would meet the ends of justice and the award of sentence of imprisonment for one year rigorous imprisonment is liable to be set aside and accordingly, set aside. The bail bonds executed by the appellant shall stand terminated. The fine amount of Rs.5,000/- (Rupees Five Thousand only) if any, paid by the appellant, for the conviction recorded under Section 304-II I.P.C. is ordered to be refunded to him. Index :Yes/No 05.02.2015 Internet :Yes/No rsb To 1.The Inspector of Police, Thandigudi Police Station, Dindigul. 2.The Court of Principal Sessions Judge, Dindigul. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN,J.

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