

A.Kumaran Vs. State Rep.By

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SooperKanoon Citation : sooperkanoon.com/48589

Court : Chennai

Decided On : Feb-20-2015

Judge : The Honourable Mr. Justice a.Selvam

Appellant : A.Kumaran

Respondent : State Rep.By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

20. 02.2015 CORAM THE HONOURABLE MR. JUSTICE A.SELVAM and THE HONOURABLE MR. JUSTICE T.MATHIVANAN CrI.A.(MD)No.354 of 2007 A.Kumaran .. Appellant/Single Accused Vs. State rep.by The Inspector of Police, Melur, Crime No.1390 of 2005, Madurai District. .. Respondent/Complainant Criminal appeal filed under Section 374 of Cr.P.C. against the conviction and sentence dated 05.09.2006 passed in Sessions Case No.109 of 2006 by the Principal District and Sessions Court, Madurai. For Appellant : Mr.A.K.Azhagarsamy Legal Aid Counsel For Respondent : Mr.K.S.Duraipandian Addl.Public Prosecutor :

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM, J.) This Criminal Appeal has been directed against the convictions and sentences dated 05.09.2006 passed in Sessions Case No.109 of 2006 by the Principal District and Sessions Court,

Madurai.

2. The crux of the case of the prosecution is that the defacto complainant by name Jeyalakshmi is the wife of the deceased and she has been running a small hotel and she known the accused. Prior to seven months, wife of brother of the accused by name Dhanalakshmi has used to come to hotel of the defacto complainant and two days prior to Deepawali, the said Dhanalakshmi has eloped with the accused and with regard to such elopement, prior to 4 or 5 days from the date of occurrence, the accused has enquired the deceased about the said Dhanalakshmi. The said Dhanalakshmi after coming to village has committed suicide. On the date of occurrence, the accused has come to hotel of the defacto complainant and stated that only due to disrespect caused by the deceased to the said Dhanalakshmi she committed suicide and at about 12.00 noon, the accused has poured heated milk on the person of the deceased and with an intention to murder him, he attacked on his chest by using a knife and due to his overtacts, the deceased has sustained injury. After occurrence, he has been taken to Government hospital, Melur, where it is informed that the deceased has passed away and subsequently the defacto complainant has given the complaint, Ex.P1 and the same has been registered by the Sub Inspector of Police (PW13) in Crime No.1390 of 2004 under Section 302 of the Indian Penal Code.

3. On receipt of Ex.P1, the Inspector of Police, PW16 has taken up investigation and examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased. The doctor by name Venkatachalam (PW15) has conducted autopsy and found the following external and internal injuries: Ante-mortem injuries: External Injury: (i)A scaled injury left shoulder and back 20 x 20 cm. (ii)An incised wound 6 cm below right nipple 2 x 2 cm penetrating in nature. On dissection subcutaneous haemorrhage present (blood clots seen) with extended through & intercostal space. On opening of thorax, right lobe of liver was found to be lacerated over blood clots seen over peritoneal cavity and right pleural cavity about 1000 ml of blood clots seen. Hyoid intact. Left and right lungs pale. Cut section pale. No injury. Abdomen : stomach pale. C/s.Pale. Contains partially digested food matter. Intestine filled with gases. Spleen kidneys pale. C/s.Pale. No injury. Bladder empty.

4. The postmortem certificate has been marked as Ex.P8. After completing investigation, the Investigating Officer has laid a final report on the file of the Judicial Magistrate Court, Melur and the same has been taken on file in PRC No.61 of 2005.

5. The Judicial Magistrate, Melur has furnished copies of all documents to the accused under Section 207 of the Code of Criminal Procedure, 1973 and after coming to a conclusion to the effect 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, Madurai Division and the same has been taken on file in Sessions Case No.109 of 2006.

6. The trial court after considering the available materials on record has framed first charge under Section 449 and second charge under Section 302 of the Indian Penal Code against the accused and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

7. On the side of the prosecution, PWs.1 to 16 have been examined and Exs.P1 to P14 and M.Os.1 to 8 have been marked.

8. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

9. The trial Court after analysing both the oral and documentary evidence has found the accused guilty under Section 449 of the Indian Penal Code and sentenced him to under go five years rigorous imprisonment and also imposed a fine of Rs.500/- with usual default clause and he has also been found guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. Further it is directed that all sentences imposed against the accused shall run concurrently. Against the convictions and sentences passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

10. Before analysing the rival submissions made on either side the Court has to look into as to whether the prosecution has established the guilt of the accused punishable under Sections 449 and 302 of the Indian Penal Code.

11. The prosecution has set the law in motion only on the basis of Ex.P1, complaint, wherein it has been clearly stated about the motive for occurrence and details of overtacts committed by the accused on the person of the deceased.

12. The author of Ex.P1, wife of the deceased by name Jeyalakshmi has been examined as PW1 and her specific evidence is that she has been running a small hotel in Navinipatti and the wife of brother of the accused by name Dhanalakshmi has used to come there and prior to Deepawali, she eloped with the accused and subsequently returned home and committed suicide. Prior to occurrence, the accused has made tussle with the deceased by way of saying that the accused has caused impudicity to the deceased Dhanalakshmi and on the date of occurrence, the accused has repeated the same and poured heated milk on the person of the deceased and with an intention to murder him, stabbed him by using a knife and thereby caused fatal injuries and subsequently the deceased has passed away.

13. The mother of the deceased by name Sivapackiam and her husband by name Malaiyarasan have been examined as PWs.2 and 3 and in fact, they reiterated the evidence given by PW1.

14. The independent witnesses namely Abdul Muthalif and Sakkarai Mohammed have been examined as PWs.4 and 6. The specific evidence given by PW4 is that in the place of occurrence, the accused has poured heated milk on the person of the deceased and subsequently stabbed the deceased by using a knife. The specific evidence given by PW6 is that he has seen the accused with knife after the occurrence.

15. The evidence given by PWw.1 to 4 has been clearly corroborated by medical evidence by way of examining PW15, Dr.Venkatachalam and his specific evidence is that the injuries sustained by the deceased would be possible if he has been attacked by a person by using MO1, knife.

16. Even assuming without conceding that PWs.1 to 3 and deceased are inter-related to each other, the prosecution has chosen to examine PWs.4 and 6 as independent witnesses and no motive has been suggested against them and therefore, their evidence cannot be rejected. It has already been pointed out that PWs.1 to 4 and 6 have given clear evidence with regard to motive and also details of overtacts alleged to have been committed by the accused on the person of the deceased. Since their evidence has been clearly corroborated by medical evidence, the Court can very well come to a conclusion that the prosecution has established guilt of the accused punishable under Sections 449 and 302 of the Indian Penal Code.

17. The learned counsel appearing for the appellant/accused has assorted the following points so as to set aside the convictions and sentences passed against the appellant/accused. (i) The person who has given intimation to police station as well as the constable, who submitted Ex.P1 in Court have not been examined. (ii)The bloodstained clothes of PW1 and deceased have not been recovered. (iii)With regard to recovery of MO1, satisfactory evidence is not available. (iv)Taxi driver has not been examined. (v)At the time of framing charge, no counsel has represented the accused and therefore, the entire charges framed against him are illegal. (vi)Questions under Section 313 of the Code of Criminal Procedure, 1973 have not been properly asked to the accused. (vii)The accused without intention to murder the deceased has come to the place of occurrence and due to sudden provocation has taken MO1, knife from the hotel of PW1 and subsequently attacked the deceased. Under the said circumstances, the accused cannot be mulcted with liability under Section 302 of the Indian Penal Code.

18. The learned Additional Public Prosecutor has contended with great vehemence that in the instant case, replete evidence has been adduced with regard to motive and occurrence by way of examining PWs.1 to 4 and 6 and their evidence have been clearly corroborated by medical evidence. Under the said circumstances, the trial Court has rightly invited convictions and sentences under Sections 449 and 302 of the Indian Penal Code and the same are not liable to be interfered with.

19. The first and foremost contention put forth on the side of the appellant/accused is that the person who has given intimation to the police from hospital as well as the constable who submitted Ex.P1 in Court have not been examined.

20. It is seen from the records that after admitting the deceased in hospital proper intimation has been given to the police. But the person who is connected with such information has not been examined. Likewise, the constable who submitted Ex.P1, complaint in Judicial Magistrate Court has also not been examined. Merely on the basis of their non examination, the Court cannot come to a conclusion that the case of the prosecution is false. Therefore, the first contention put forth on the side of the appellant/accused is of no use.

21. The second contention put forth on the side of the appellant/accused is that bloodstained clothes of defacto complainant and deceased have not been seized.

22. It is seen from the evidence given by PW1 that after occurrence, the then injured has been taken to Government hospital, Melur and thereby her clothes have sustained bloodstain. But unfortunately the Investigating Agency has not recovered bloodstained clothes of PW1 and deceased and that itself would not pave the way for coming to a conclusion that the accused has falsely been roped in in the present case.

23. The third contention put forth on the side of the appellant/accused is that with regard to recovery of MO1, PW10 has given evidence, wherein some discrepancies are found place.

24. Of course it is true that with regard to recovery of MO1, some flimsy contractions are found place in the evidence of PW10 and that itself cannot be a basis for rejecting the testimonies of eye witnesses namely PWs.1 to 4 and 6.

25. The fourth contention put forth on the side of the appellant/accused is that after occurrence, the then injured has been taken to Government hospital, Melur by way of taxi and the taxi driver has not been examined.

26. It is true that the said taxi driver has not been examined on the side of the prosecution and his non examination would not cause fatal to the case of the

prosecution.

27. The fifth contention put forth on the side of the appellant/accused is that while framing charges against him, counsel has not been represented on his side.

28. It is seen from the records that at the time of framing charges, accused has not been represented by any counsel.

29. At this juncture, the Court has to look into Sections 227 and 228 of the Code of Criminal Procedure, 1973. Section 227 deals with 'discharge' and Section 228 deals with 'framing of charge' and both sections must be read together.

30. In Section 227 it has been clearly mentioned that the Court has to hear submissions of accused and prosecution and if the Court finds that no sufficient materials are available to proceed against the accused, he shall be discharged. In Section 228, it is mentioned that if after such consideration and hearing as aforesaid, Judge is of the opinion that there is a ground for presuming that the accused has committed an offence.

31. From cumulative reading of the said sections, it is made clear that before framing charge as mentioned in section 227, both sides must be heard. But in the instant case, at the time of framing charge, the accused has not been represented by any counsel. Even though he has not been represented by any counsel at the time of framing charge, the same would not prejudice him. If really he is having any grudge or prejudice, definitely the same would have been agitated before the trial Court. Under the said circumstances, at the time of hearing appeal, the said contention cannot be urged.

32. The sixth contention put forth on the side of the appellant/accused is that the evidence given by PWs.1 to 3 have been clubbed together and a consolidated question has been put to the accused under Section 313 of the Code of Criminal Procedure, 1973 and the same is improper.

33. In fact, this Court has compared the evidence given by PWs.1 to 3 and all of them have consistently and uniformly stated about the motive and occurrence. Under the said circumstances, in one question it has been stated to the effect that

PWs.2 and 3 have adduced evidence as adduced by PW1. Therefore, there is no mistake on the part of the Court in posing question to the accused under Section 313 of the Code of Criminal Procedure, 1973.

34. The last contention put forth on the side of the appellant/accused is that the specific evidence given by the Investigating Officer is that only after taking MO1 from the hotels of the deceased, the accused has attacked him without intention to murder him and therefore, he cannot be mulcted with liability under Section 302 of the Indian Penal Code.

35. For analysing the said contention, the Court has to look into the evidence given by PWs.1 and 2. Both of them have clearly stated in their evidence that the accused himself has brought MO1, knife and attacked the deceased. Further in their evidence it has been clearly stated that only with an intention to murder the deceased the accused has attacked him. Simply because the Investigating Officer has given such kind of evidence, the Court cannot eschew the evidence given by PWs.1 and 2 with regard to MO1. Therefore, the last contention put forth on the side of the appellant/accused is sans merit.

36. The trial Court after considering the available evidence on record has rightly found the accused guilty under Sections 449 and 302 of the Indian Penal Code. In view of the discussions made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/accused and therefore, the present Criminal Appeal deserves to be dismissed.

37. In fine, this Criminal Appeal is dismissed. The convictions and sentences passed in Sessions Case No.109 of 2006 by the Principal District and Sessions Court, Madurai are confirmed. (A.S., J) (T.M., J) 20.02.2014 Index :Yes/No Internet:Yes/No mj To 1.The Principal District and Sessions Court, Madurai 2.The Inspector of Police, Melur, Madurai District. 3.The Addl. Public Prosecutor, Madurai Bench of Madras High Court, Madurai. A.SELVAM, J.

and T.MATHIVANAN, J.

mj Pre delivery Judgment in Crl.A.(MD)No.354 of 2007 20.02.2015

