

Sadasivan @ Mookandi Vs. State Through

Sadasivan @ Mookandi Vs. State Through

SooperKanoon Citation : sooperkanoon.com/49736

Court : Chennai

Decided On : Mar-17-2015

Judge : M.Sathyannarayanan

Appellant : Sadasivan @ Mookandi

Respondent : State Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

17. 03.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN CrI.A.(MD)NO.408 of 2007 Sadasivan @ Mookandi S/o.Perumal Nadar Residing at 46/76 North Street, Ranimaharajapuram Tuticorin District. .. Appellant Vs. State through the Inspector of Police Tiruchendur Police Station, Tuticorin District. .. Respondent Prayer: Criminal Revision Petition filed under Section 374 Cr.P.C., against the judgment dated 09.02.2005 made in S.C.No.284 of 2005 on the file of the Additional District and Sessions Judge, Fast Track Court, No.2, Tuticorin. !For Petitioner :: Mr.S.Ramasamy ^For Respondent :: Mrs.S.Prabha Government Advocate (Crl. side) :

JUDGMENT

The sole accused, in S.C.No.284 of 2005 on the file of Additional District and Sessions Court cum Fast Track Court, No.2, Tuticorin stood charged and tried for the commission of offence under Section 302 IPC. The trial Court vide impugned

judgment dated 09.02.2005 has convicted him and found the appellant/accused not guilty under Section 302 IPC and however, convicted him under Section 304(1) IPC and imposed a sentence of eight years of Rigorous Imprisonment. The trial Court has also ordered set off under Section 428 Cr.P.C. and aggrieved by the conviction and sentence recorded by the trial Court, the present appeal is filed.

2. The facts leading to the filing of this appeal, narrated in brief, are as follows: The deceased, namely, Vijayalakshmi was the wife of the appellant/accused and marriage between him and Vijayalakshmi was solemnized about 16 years prior to 2005 and out of wedlock, a girl and a boy were born and they were aged about 12 years and 8 years respectively during the year 2005. 2.1. The appellant/accused has developed suspicion with regard to the character of his wife, namely, Vijayalakshmi and in this regard, there used to be altercations and Vijayalakshmi had left for her parental home on very many occasions. The relatives of Vijayalakshmi has also sought the help of P.W.5 Jeyaraj to mediate the dispute. 2.2. Similarly, there was altercations between the appellant/accused and his wife just prior to 22.11.2005 and it was amicably resolved and Vijayalakshmi was taken to her matrimonial home and left there and to find out whether everything was right, on 22.11.2005, P.W.1, the junior father of Vijayalakshmi along with his wife Annapackiam and mother of Vijayalakshmi ?. P.W.2 and elder brother's son of P.W.1 namely Kumaravel went to Rani Magarajapuram, wherein the appellant/accused and his wife were living and all of them took lunch in the house. After some time, they heard the wordy altercation between the appellant/accused and his wife Vijayalakshmi and immediately all of them went inside the house of the appellant/accused and they found that the appellant/accused kicked his wife and she has fallen down and by pressing her face, the appellant/accused took a spade and hit on the right rear side of her head with wooden portion and on seeing that all of them raised alarm. The appellant/accused threw the weapon and fled away from the scene of occurrence. P.W.1 went near Vijayalakshmi and found that she is dead. P.W.1 went to Tiruchendur Police Station and on the way, he found P.W.4 Maharajan and he took him to the police station and lodged a complaint under Ex.P1 to P.W.14. 2.3. P.W.14 - the Sub Inspector of Police on receipt of Ex.P1 complaint registered an FIR in Crime No.926 of 2005 under Section 302 IPC. The printed FIR was marked as Ex.P17. P.W.14 on receipt of the FIR has

forwarded the original of Ex.P1 and Ex.P.17 to the jurisdictional Magistrate Court and also informed his higher officials. 2.4. P.W.15 was the station house officer of Tiruchendur Police Station and he received a copy of the FIR at about 3.45 p.m. on 22.11.2005 and reached the scene of crime at about 4.00 p.m. and between 4.00 and 4.30 p.m., he prepared observation mahazar and sketch marked as Ex.P2 and Ex.P18 respectively in the presence of witnesses. P.W.15 also collected bloodstained earth and sample earth as well as bloodstained pillow and mat (M.Os.2 to 5) in the presence of witnesses, namely, Somasundarapandian and Ashokan under the cover of mahazar Ex.P3. Thereafter P.W.15 made a requisition to the jurisdictional Magistrate for conducting the postmortem on the body of the deceased and after obtaining permission, deputed Head Constable 784 along with body of the deceased to the Government Hospital, Tiruchendur for conducting the postmortem. 2.5. P.W.11 was the Assistant Surgeon attached to Government Hospital at Tiruchendur and on receipt of the body of the deceased, namely, Vijayalakshmi commenced postmortem at about 11.30 a.m. on 23.11.2005 and noted the following features: ? .Injuries:

1. A laceration 6 cm x 1 cm x bone depth over Rt. Side of top of the head. Skull: Fracture of the Rt. Temporal bone and Occipital bone Head: Extravasation of blood beneath in the Rt. Temporal region and occipital region.?. P.W.11 after completing the postmortem opined that ?.the deceased would appear to have died of hemorrhage and shock due to injury to brain at about 18 to 24 hours prior to autopsy?.. Postmortem report was marked as Ex.P12. 2.6. P.W.15 came to know that the accused was brought to police station by the Village Administrative Officer, namely, P.W.9 along with his Assistant and therefore, came back to the police station at about 20.30 hours and seized cloth owned by the appellant/accused under Form 95, which were marked as M.Os.10 and 11. The appellant/accused voluntarily came forward to give a confession statement and based on the admissible portion of the confession statement, marked as Ex.P6, M.O.1 was recovered from the scene of crime under a cover of mahazar Ex.P7. P.W.15 recorded the statements of P.W.9 and P.W.11, who conducted autopsy and other witnesses and also examined the chemical analyst and recorded the statements and also sent the appellant/accused for judicial custody. 2.7. P.W.15, after completing the investigation, has obtained opinion of the Public Prosecutor

and filed the charge sheet on 25.11.2005 on the file of the Court of Judicial Magistrate, Tiruchendur, charging the appellant/accused for the commission of offences under Section 302 IPC.

3. The Court of Judicial Magistrate, Tiruchendur, on receipt of the charge sheet in P.R.C.No.40 of 2005, has furnished copies of documents under Section 207 of Cr.P.C. to the appellant/accused and having found the case is exclusively tried by the Sessions Court, committed the case to the Principal Sessions Court, which in turn, made over the case to the Fast Track Court No.II, Tuticorin.

4. The trial Court, on appearance of the accused, has framed the charge under Section 302 IPC and questioned the appellant/accused and he pleaded not guilty to the charges framed against him.

5. The prosecution in order to sustain their case, has examined P.Ws.1 to 15, marked Exs.P1 to P19 and also marked M.Os.1 to 11. The appellant/accused was questioned under Section 313(1)(b) of Cr.P.C. with regard to the incriminating circumstances made out against him in the evidence rendered by the prosecution and he denied it as false. On behalf of the appellant/accused, no oral and documentary evidence was let in and no exhibits were marked.

6. The trial Court, on consideration of oral and documentary evidence and other materials, found him guilty for the commission of offence under Section 304(I) IPC and imposed the sentence of imprisonment as stated above and hence this appeal.

7. The learned counsel for the appellant made the following submissions: (i) As per Ex.P18 rough sketch, the eye witnesses were sitting on the pial of Durairaj Nadar's house, which is shown as Sl.No.8 and from that place, they could not hear the conversation or wordy altercation between the appellant/accused and the deceased Vijayalakshmi and hence, it would not have been possible for them to go to the house of the appellant/accused and seen the occurrence. (ii) The eye witnesses are closely related to the deceased and since they are the interested witnesses, their testimonies cannot be believed unless their testimonies are corroborated by materials particulars. (iii) The recovery of M.O.1 is also doubtful

for the reason that even according to the eye witnesses, the appellant/accused left the weapon in the scene of crime and fled away and according to the admissible portion of the confession marked as Ex.P6, P.W.15 came back to the scene of occurrence at about 20.30 hours and recovered the said weapon under the cover of mahazar Ex.P7 and it is purely unbelievable. (iv) Alternatively it is contended by the learned counsel for the appellant that the conviction recorded by the trial Court under Section 304(I) IPC also requires modification for the reason that admittedly, the appellant/accused has used the wooden portion of the spade and attacked on the rear side of the head of his wife, which resulted in her instantaneous death and even as per the version of the eye witnesses, there was a wordy altercation just prior to the commission of offence and the said aspect has not been properly considered by the trial Court, while recording the conviction under Section 304(I) IPC.

8. Per contra, Mrs.S.Prabha, learned Government Advocate (Crl. Side), would vehemently contend that though it is projected on behalf of the appellant/accused that he was a rustic person, hailing from a village, knowing pretty well that use of wooden portion of the spade on the vital part would cause death, has inflicted a severe blow on the rear part of the head, which resulted in immediate death of his wife and the trial Court has also shown lenience by convicting him under Section 304(I) IPC instead under Section 302 IPC.

9. The learned Government Advocate (Crl. Side), on the merits of the case, would contend that the testimonies of eye witnesses corroborated with each other and on material particulars, the scientific evidence in the form of Ex.P10 the chemical analysis report, Ex.P11 serology report and Ex.P13 postmortem report coupled with the evidence of P.W.11 would disclose that the wife of the appellant/accused died on account of homicidal violence and the trial Court on a proper consideration of oral and documentary evidence has rightly recorded conviction under Section 304(I) IPC and imposed adequate sentence and prays for dismissal of this appeal.

10. The learned counsel for the appellant in response to the submission made by the learned Government Advocate (Crl. Side) would contend that both children are under the care and custody of the appellant/accused and the son of the

appellant/accused is having mental illness and the daughter is studying in Engineering Course and in the event of his incarceration, their education is bound to suffer and the said fact may also be taken into consideration, while modifying the sentence of imprisonment.

11. This Court paid its anxious consideration and best attention to the learned counsel for the appellant, learned Government Advocate (Crl. Side) and also perused oral and documentary evidences and the original records.

12. P.W.1 is the junior father of the deceased Vijayalakshmi and he has spoken about the motive on the part of the appellant/accused and it is his testimony that the appellant/accused has suspected the fidelity of his wife as she is used to converse with his neighbour, namely Lakshmanan and in this regard there used to be altercations between them and the deceased Vijayalakshmi also used to come to the parental home and just prior to the commission of offences, she was taken back to the matrimonial home and to see as to whether she was living happily, P.W.1 along with his wife, his brother's son went to the house of the appellant/accused and P.W.1 after having lunch in his brother-in-law's house along with other eye witnesses, were sitting on the pial of Durairaj Nadar and on hearing a wordy altercation, all of them rushed inside the house of the accused and they found the appellant/accused has kicked his wife and she has fallen down and he pressed her neck and took the wooden spade found on the spot and attacked on the rear side of her head, which resulted in her instantaneous death.

13. The motive aspect has also spoken by the mother of the deceased, who has been examined as P.W.2, P.W.3, who knows both the accused and the deceased and P.W.6, the minor daughter of the appellant and the deceased. Even for the sake of argument that the prosecution has failed to prove the motive on the part of the appellant/accused, the case of the prosecution built up on ocular testimony of the eye witnesses and therefore, the motive failed insignificance. P.W.2 is the mother of the deceased and she has corroborated the testimony of P.W.1 with material particulars both with regard to materials and overt act on the part of the appellant/accused and so also P.W.3.

14. P.W.1 immediately after the occurrence, without any loss of time has gone to the Tiruchendur police station and lodged a complaint under Ex.P1 signed by P.W.4 as a witness and P.W.14 on receipt of Ex.P1 has registered a case against the appellant/accused for the commission of offence under Section 302 IPC and the original of Ex.P1 as well as Ex.P17 FIR has reached the jurisdictional Magistrate without any loss of time.

15. The scientific evidence in the form of Exs.P10, P11 and P.13 coupled with the testimony of P.W.11 would disclose the fact that Vijayalakshmi died on account of infliction of the wound on her vital part, namely, right rear side head by use of the wooden portion of the spade (M.O.1).

16. It is the submission of the learned counsel for the appellant that since all the eye witnesses were sitting on the pial of Durairaj Nadar, which was shown as Serial No.8, would not have been possible for them to hear the alarm and went to the house of the appellant/accused and seen the occurrence. However, this Court is of the view that the said submission lacks merit for the reason that the eye witnesses were sitting on the pial of tiled house of Durairaj Nadar, which is shown as Serial No.11 and the entrance of tiled house of Durairaj is facing the entrance of Serial No.7, in which the crime has been committed and hence, it would be possible for the eye witnesses to hear the wordy altercation and consequently they would have witnessed the occurrence. Though eye witnesses were exhaustively cross examined on behalf of the appellant/accused, nothing useful was elicited in favour of the appellant/accused.

17. Insofar as the recovery of weapon is concerned, the prosecution relied upon the extra judicial confession given by the appellant/accused to P.W.9.

18. It is the submission of the learned counsel for the appellant that P.W.15 immediately after receipt of the copy of the FIR has reached the scene of crime at 20.30 hours and if he made a proper inspection, he would have found the weapon lying on the kitchen. But curiously only after giving the extra judicial confession and based upon the admissible portion of the confession given by the appellant/accused, he once again went to the scene of crime and recovered the weapon, which is wholly unbelievable.

19. As already pointed out, the chemical analysis report Ex.P10, Ex.P11 serology report would disclose the fact that blood found on M.O.1 as well as other material objects were human blood 'B' Group and the testimony of P.W.11 would also disclose the fact that the injury on the vital part would have been caused by use of the wooden portion of M.O.1 spade. Therefore, this Court is of the view that the prosecution has proved its case beyond any pale of doubt.

20. Now, coming to the prayer made by the learned counsel for the appellant that the conviction recorded by the trial Court for the commission of offences under Section 304(I) IPC and imposition of eight years of Rigorous Imprisonment for the commission of the said offence, this Court is of the view that the conviction and sentence requires modification.

21. Even according to the prosecution, just prior to the commission of the offence, there was a wordy altercation between the appellant/accused and the deceased and all along the appellant/accused suspecting the fidelity of his wife, namely, Vijayalakshmi (since deceased) and on that date, the wordy altercation on account of the very same reason and on the spur of moment, the appellant/accused took the spade, which was lying on the spot and inflicted the injury on the vital part by using the wooden portion.

22. In the considered opinion of the Court, with regard to the overt act on the part of the appellant/accused, Section 304(II) IPC is attracted for the reason that he had no intention to cause such bodily injury as is likely to cause death, but he had the knowledge that injury shall likely to cause the death and admittedly he did not use the front portion of the spade but used only the wooden handle to inflict the blow on the vital part.

23. In 2003 (1) LW (Crl) 282 [Ekambaram vs. The State rep. by Inspector of Police, Thirumanur Police Station, Trichy District]., the facts of the case would disclose that there was a sudden quarrel between the husband/accused and the deceased/wife and the appellant/accused took a pen knife and stabbed his wife on the right side of the neck and right side of the upper abdomen and caused instantaneous death of the deceased. The trial Court has recorded conviction under Section 304(II) IPC and imposed a sentence of five years and this Court has

modified the sentence to one of 3+ years rigorous imprisonment.

24. In 1997 SCC (Cri) 726:1997 Cri LJ831[MAVILA THAMBAN NAMBIAR V. STATE OF KERALA]., the Hon'ble Supreme Court of India held that when the accused/appellant gave one blow with a pair of scissors on the chest of the deceased, the intention to cause death cannot be imputed to him but it would be reasonable to infer that he had knowledge that any injury on the vital part of the body of the deceased would cause death and therefore, convicted him under Section 304(II) IPC.

25. In the light of the reasons assigned above, this Court is of the view that the conviction recorded by the trial Court under Section 304(I) IPC has to be modified to one under Section 304(II) IPC and sentence of imprisonment for eight years awarded by the trial Court for the commission of the said offence is to be modified into one of three years, considering the fact that both the children are under the care and custody of the appellant and his daughter, who was examined as P.W.6, is also studying in Engineering Course and she is to be married after completing her education.

26. In the result, the Criminal Appeal is partly allowed and the conviction of the appellant/accused under Section 304(I) IPC is modified to one under Section 304(II) IPC and the sentence of rigorous imprisonment of eight years awarded by the trial Court is modified to three years rigorous imprisonment and the period of incarceration already undergone by the appellant/accused during the course of investigation and trial, is ordered to be set off under Section 428 Cr.P.C.

27. Since the appellant was apprehended and produced by the Station House Officer of Tiruchendur Police Station, Tiruchendur on 16.03.2015 in pursuant to the non bailable warrant issued by this Court on 23.12.2014 and that he has also appeared before this Court today, the Station House Officer of Tiruchendur police Station is directed to take necessary steps to send the appellant/accused to judicial custody to undergo the remaining part of the sentence of imprisonment, as modified by this Court in this judgment. 17.03.2015 Index :Yes/No Internet:Yes RR To 1.The Additional District and Sessions Judge, Fast Track Court, No.2, Tuticorin. 2.The Inspector of Police Tiruchendur Police Station, Tuticorin District.

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

RR CrI.A.(MD)NO.408 of 2007 17.03.2015

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com