

Muthupandi Vs. State Rep. By

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Court : Chennai

Decided On : Aug-06-2015

Judge : S.Nagamuthu

Appellant : Muthupandi

Respondent : State Rep. By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

06. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL (MD).No.354 of 2010 Muthupandi : Appellant Vs. State rep. By the Inspector of Police Kayathar Police Station, Crime No.342/2008 Tuticorin District : Respondent PRAYER Appeal is filed under Section 378 of the Code of Criminal Procedure against the judgment passed in S.C.No.108 of 2009 dated 02.08.2010 by the learned Additional Sessions Judge (Fast Track Court No.II) Tuticorin Division, Tuticorin. !For Appellant : Mr.S.Durairaj ^For Respondent : Mr.A.Ramar Additional Public Prosecutor :

JUDGMENT

(Judgment of the Court was delivered by S.NAGAMUTHU, J.) The appellant is the sole accused in S.C.No.108 of 2009 on the file of the Additional District and Sessions Judge, Fast Track Court, No.II, Thoothukudi District. He stood charged

for offences under Sections 302 IPC and 307 IPC (2 counts). By judgment dated 22.07.2010, the trial Court convicted him under all the three charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one year for the offence under Section 302 IPC and to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/- for each count, in default to undergo rigorous imprisonment for one year for the offences under Section 307 IPC (2 counts). Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution is as follows: The accused is a resident of Periyasampuram Village. The deceased in this case was one Mr.Samiyapandian. P.Ws.1 to 3 and the deceased belong to Suriyaminukkan Village in Tuticorin District. Nine months prior to the occurrence, the wires and other electrical materials were found stolen away in the motor pump sets of one Shanmugayya Thevar, who is the grand father of P.W.1. When it was enquired later, the family members of Shanmugaiya Thevar came to know that the said properties were stolen away by the accused. Similarly, two months prior to the occurrence, the saplings kept in the farm of P.W.1's grandfather Murugan were all stolen away. The prosecution party suspected that the accused had committed theft of these properties. 2.1. On 03.11.2008, at about 10.00 p.m., P.W.1, the deceased, P.W.2 and four persons including the deceased had gone in a van to the village of the accused. They stopped the van somewhere near the house of the accused. All of them went to his house. It was 11.00 p.m. At that time, the house of the accused was found bolted from inside. P.W.1 knocked at the door. On hearing the noise, the accused opened the door and came out. It is the further case of the prosecution that thereafter all of them wanted the accused to come to their village to participate in a panchayat in respect of the above incident of theft. The accused refused to come with them. Therefore, they all dragged him physically to the van and attempted to push him into the van. However, the accused managed to get relieved from their clutches and ran into his house. Then, he took out an aruval from inside the house and came out. Even thereafter, the prosecution party did not stop. The deceased again insisted the accused to come and get into the van. He was repeatedly refusing. This resulted in a small scuffle, in which, it is alleged that the accused cut the deceased on his head, left cheek and other parts of the body.

P.Ws.1 and 2 tried to rescue him. The accused cut them with aruval. He cut P.W.1 on his left hand and P.W.2 on his right palm. Then, the accused disappeared in the darkness. The deceased died instantaneously due to the injuries. On hearing the alarm raised, the villagers gathered. P.W.2 went to the hospital for treatment. P.W.1 and others rushed to the police station and P.W.1 made a complaint. 2.2. P.W.16 was the then Sub Inspector of Police attached to Kayathar Police Station. P.W.1 made an oral complaint, which was reduced to writing by P.W.6. Ex.P1 is the complaint. P.W.16 registered a case in Crime No.342 of 2008 under Sections 302 and 307 IPC. Ex.P12 is the FIR. He forwarded both the documents to the Court and handed over the case diary to the Inspector of Police for investigation. 2.3. Taking up the case for investigation, P.W.18, the then Inspector of police proceeded to the place of occurrence, prepared an observation mahazar in the presence of P.W.5 and another witness and also a rough sketch. Then, he held inquest on the body of the deceased in the presence of Panchayatdars, during which, he examined P.Ws.1 to 4, who are all eye witnesses, of whom, P.Ws.1 and 2 are the injured witnesses. Then, he took photograph of the dead body through P.W.13. Then, he forwarded the body for postmortem. 2.4. P.W.9 ? Dr.Rajendra Prasad conducted autopsy on the body of the deceased on 04.11.2008 at 9.45 p.m. He noticed the following injuries on the body of the deceased: (1)A linear cut injury above the right ear (2)A cut injury on the occipital region of the head (3)A cut injury on the left side of the head involving left ear. (4)There were two more injuries overlapping on the same. (5)A cut injury on the right wrist (6)There was another overlapping cut injury on the same. He gave final opinion that the death was due to shock and hemorrhage due to the cumulative effect of all the injuries. Ex.P16 is the postmortem certificate. 2.5. Continuing the investigation, P.W.18 arrested the accused in the presence of P.W.10 on 05.11.2008 at 10.30 p.m. at Thirumangalakurichi bus stop. On such arrest, he made a voluntary confession, in which, he disclosed the place, where he had hidden the aruval and the bloodstained cloth. In pursuance of the same, he proceeded to the said place and produced the aruval and a green colour bloodstained shirt. P.W.18 recovered the same under Ex.P9 mahazar. Then, he returned to the police station to forward the accused for remand through Court. The above material objects were sent for chemical examination. P.W.16 conducted chemical analysis on the same, found

that there was human blood on the above material objects. But the result of grouping was inconclusive. The bill hook also found human blood. On completing the investigation, he laid the charge sheet against the accused. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of the judgment. The accused denied the same. 2.6. In order to prove the case, on the side of the prosecution, as many as 18 witnesses were examined, 17 documents were exhibited, besides 13 material objects were marked. Out of the said witnesses, P.Ws.1 and 2 are the eye witnesses. They have vividly spoken about the motive between the prosecution party and the accused and the injuries sustained by them. P.W.1 has spoken about the complaint given by him. P.Ws.3 and 4 are the eye witnesses to the occurrence. P.W.3 accompanied P.Ws.1 and 2 along with the deceased to the place of occurrence. P.W.4 has spoken about the observation mahazar. P.W.9 is the Doctor, who conducted postmortem, has spoken about the cause of death of the deceased. P.W.13 is the Photographer, who took photograph of the dead body. P.W.14, who is the Head Constable, has spoken about the registration of the case. P.W.15 is the one who handed over the dead body for postmortem. P.W.16 has spoken about the FIR. P.W.17 is the Chemical analyst. P.W.18 has spoken about the investigation. 2.7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he examined three witnesses on his side. D.W.1 has not spoken anything about the occurrence. He has spoken about the motive between the accused and the witnesses. D.W.2 has also spoken about the same. D.W.3 has spoken about some documents executed to again prove the motive. Having considered all the above materials, the trial Court convicted the accused and that is how, he is before this Court with this appeal.

3. We have heard the learned counsel for the appellant and the learned Additional Public prosecutor and we have also perused the materials carefully.

4. The learned counsel for the appellant would submit that though P.Ws.1 and 2 are injured witnesses, since they are highly motivated, they cannot be believed. He would further submit that P.W.2 is closely related to the deceased and therefore, his evidence also cannot be believed. He would further submit that there was a delay in preferring the complaint and forwarding the FIR to the Court, which

creates doubt in the case of the prosecution. He would submit that there was no light at the place of occurrence and therefore, the assailants would not have been noticed by the eye witnesses. The learned counsel would further submit that assuming that the occurrence was true, even then, the act of the accused would fall within the ambit of right of private defence or within the first exception to Section 300 IPC. Thus, according to the learned counsel, the accused is entitled for acquittal or atleast he is entitled for conviction only under Section 304 IPC.

5. The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, though P.Ws.1 to 4 are related to the deceased, on that score, their evidences cannot be rejected. He would further submit that P.Ws.1 and 2 are the injured eye witnesses, whose presence cannot be disputed at all. P.Ws.3 and 4 had gone along with P.Ws.1 and 2 in the van to the house of the accused and therefore, their presence cannot be disbelieved. The learned Additional Public Prosecutor would, however, submit that the evidences of P.Ws.1 to 4 are duly corroborated by the medical evidence. The learned counsel would further submit that the recovery of the aruval and the disclosure statement made by the accused would also further strengthen the case of the prosecution. He would submit that absolutely there is no delay in the FIR, as it is projected by the learned counsel for the appellant so as to create any doubt in the case of the prosecution. The learned Additional Public Prosecutor would submit that the act of the accused would not fall under any one of the exceptions to Section 300 IPC and therefore, he is liable for punishment only under Section 302 IPC and also under Section 307 (2 counts) IPC.

6. We have considered the above submissions.

7. It is true that P.Ws.1 to 4 are closely related and all the four had gone along with the deceased to the house of the accused. On that score their evidences cannot be rejected. At the most, this Court is required only to closely scrutinise their evidences. P.Ws.1 and 2 have admittedly sustained injuries only at the place of occurrence in the same occurrence and therefore, their presence cannot be doubted at all. Except the accused, there was no body else in the house. According to the case of the prosecution, the evidences of P.Ws.1 to 4 are cogent

and convincing. The medical evidence also duly corroborates the eye witnesses account. Thus, in our considered opinion, there are no reasons to reject the evidences of P.Ws.1 to 4, more particularly, the eye witness account of the injured witnesses, namely, P.Ws.1 and 2. From these evidences, it is crystal clear that the death of the deceased was caused only by this accused. Though it is submitted by the learned counsel for the appellant that there is delay in FIR, which according to the learned counsel creates doubt, absolutely, we do not find any such delay. The alleged occurrence was at 11.00 p.m., whereas the complaint was lodged at 2.00 a.m. and FIR reached the hands of the Magistrate at 9.40 a.m. The delay has been duly explained by P.W.14 ? Head Constable, who handed over the FIR to the learned Magistrate. Thus, we do not find any merit at all in the argument that the case of the prosecution is doubtful because of the above said delay. The delay is not enormous and the said meagre delay has been duly explained away. The learned counsel would submit that the motive has not been clearly established, it is true. P.Ws.1 to 4 have stated they along with the deceased had gone to the house of the accused to take him as they had suspicion that he had committed theft. Thus, there was no previous motive. The learned counsel would submit that there was no light at the place of occurrence. In our considered view, this argument also deserves to be rejected, because P.Ws.1 and 2 and the deceased and the accused standing in a close range. It is not as though the accused is not a known person to the witnesses. Therefore, even in the absence of the light, assuming that the same is true, the assailant would have been clearly noticed by the eye witnesses, more particularly, the injured eye witnesses.

8. Lastly, the learned counsel submitted that the act of the accused would fall under Exception (2) to Section 300 IPC. But, we are not persuaded by the said argument. Right of private defence will extend to an accused to justify his act of attacking the other so long as the apprehension of any threat to his life is in progress. But, in this case, it is true that as per the version projected in the FIR, which has been duly elicited during the evidence of P.W.1, the prosecution party had gone to a different village, i.e. to the village of the accused, dragged him from his house, when he was sleeping so as to take him for panchayat. When he was about to be pushed into the van, he escaped from their clutches. In order to safeguard his interest, he went into his house and took out an aruval. Even then

they were insisting him to come with them. It was only thereafter the accused cut the deceased and when, P.Ws.1 and 2 intervened and the cut fell on them also. This happened when there was no threat to his life and apprehension of abduction. Thus, there is no apprehension to his life or limb, which would justify his action in cutting the deceased.

9. But at the same time, we are persuaded by the argument of the learned counsel that the act of the accused would fall within the first exception to Section 300 IPC, which speaks of the act done by the accused out of grave and sudden provocation. Here, in this case, as we have already narrated, the accused took out the aruval from his house, only to safeguard his interest. The prosecution party did not stop with that. They insisted him to come. Admittedly there was a quarrel. Thus, he would have been provoked by the act of the deceased and the others. Such provocation need not be always only by words. A person can be provoked either by act or by words or by gestures. Having a cumulative analysis of the entire occurrence, we are able to visualize that the accused would have been provoked by the deceased and his companions and such provocation, in our considered view, was grave enough, which would have made him to lose his mental balance. It was, in that situation, which was so sudden, the accused had acted and caused injuries on the deceased, which resulted in his death. Thus, in our considered view, the act of the accused would fall within the first exception to Section 300 IPC. As the act of the accused would fall only within second limb of Section 299 IPC, he is liable to be punished under Section 304(i) IPC.

10. Turning to the attack made on P.Ws.1 and 2, as rightly pointed by the learned counsel, there was no motive for the accused to cut them at all. When they intervened, the blows fell on them also. Therefore, it cannot be said that the accused had any intention or knowledge as required under Section 299 IPC to cause the death of P.Ws.1 and 2. The act of the accused would fall only under Section 324 IPC, so far as the cut made on P.Ws.1 and 2 are concerned. Thus, the appellant is liable to be convicted under Section 324 IPC (2 counts).

11. Now, turning to the quantum of punishment to be imposed, it is an important task of this Court. This Court is required to strike a balance between the

aggravating circumstances and mitigating circumstances, while deciding about the quantum of punishment. In this case, there was no motive. He was provoked as he was branded as a thief. He was provoked also by the attempt to drag him to the van so as to take him to a different village. It was only thereafter he cut the deceased as well as P.Ws.1 and 2. This is regarding the gravity of the offence. Now, turning to the mitigating circumstances, the accused is a poor man. He has got a big family to take care of. He is not a thief by profession. There is no proof that he has ever committed any theft. Having regard to all these mitigating and aggravating circumstances, we hold that for the offence under Section 304(i) IPC, he is liable for punishment to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one month and for the offence under Section 324 IPC, for each count, he is liable to be sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- for each count, in default, to undergo rigorous imprisonment for one month.

12. In the result, the appeal is partly allowed in the following terms: (1) The conviction of the appellant/accused under Section 302 IPC and 307 IPC (2 counts) are set aside and instead, he is convicted under Section 304(i) IPC and 324 IPC (2 counts) ; (2) For the offence under Section 304(i) IPC, he is sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- (Rupees one thousand only), in default, to undergo rigorous imprisonment for one month; for the offence under Section 324 IPC (2 counts), the appellant is sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- (Rupees one thousand only) for each count, in default, to undergo rigorous imprisonment for one month; (3) The sentences are to run concurrently; (4) The trial Court shall take steps to secure the accused to commit him in prison to serve out the remaining period of sentence and the period of sentence already undergone by the accused/appellant is ordered to be set off under Section 428 Cr.P.C. To 1.Additional Sessions Judge (Fast Track Court No.II) Tuticorin Division, Tuticorin. 2.The Inspector of Police Kayathar Police Station, Tuticorin District 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..