

P.Chockalingam Vs. The State Rep By

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Court : Chennai

Decided On : Aug-13-2015

Judge : M.M.Sundresh

Appellant : P.Chockalingam

Respondent : The State Rep By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

13. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRL.A(MD).No.312 of 2008 P.Chockalingam : Appellant Vs. The State rep by Inspector of Police, Devipattinam Station, Ramanathapuram District, Crime No.239 of 2003. : Respondent PRAYER Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 18.10.2004 made in S.C.No.48 of 2004, on the file of the Principal District and Sessions Judge, Ramanathapuram District. !For Appellant : Mr.R.Murugappan ^For Respondent : Mr.A.Ramar Additional Public Prosecutor :

JUDGMENT

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JUDGMENT

of the Court was delivered by S.NAGAMUTHU, J. The appellant is the sole accused in in S.C.No.48 of 2004, on the file of the Principal District and Sessions Judge, Ramanathapuram District. He stood charged for the offence punishable under Section 302 of the Indian Penal Code. By Judgment dated 18.10.2004, the Trial Court has convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:- The deceased, in this case, was one Ramalakshmi. The deceased and the accused were all residing at Thattan Thoppu village. They have five children. Their eldest daughter, by name, Arputhavalli, was given in marriage to one Mr.Senthilkumar of Thattan Thoppu village. After the said marriage, there were frequent quarrels between the accused and the deceased. PW-1 - Ramar is the brother of the deceased. PW-1 was already married. In order to celebrate Deepavali, in the month of October 2003, PW-1 and the deceased had gone to Thattan Thoppu village to invite her daughter and son-in-law to come to her house. PW-1 and the deceased returned to their village at 07.30 PM. PW-1 had gone to his house. When the deceased returned to her house, the accused was present. On seeing the deceased, the accused questioned her as to where she had gone. The deceased told that she had gone to Thattan Thoppu village to invite her daughter and son-in-law for deepavali. The accused became angry over the same and he quarreled with her during which he used all kinds of filthy languages. The deceased also retaliated. Then, she started weeping and the deceased went behind the house. At that time, the accused followed her and questioned her as to how she could go to Thattan Thoppu village to invite her daughter, without his consent. This developed into a quarrel, in which it is stated that the accused cut the deceased on the left side of her neck, chest, both shoulders and on the hip. In the very same occurrence, PW-2, yet another daughter of the deceased, by name, Mrs.Velammal, was cut by the accused in which she sustained injury on her rightre palm. The deceased fell down and breathed her last. PW-1 raised alarm, which attracted the neighbours. 2.1. PW-1 proceeded to the Police Station and made a complaint., PW-15, the then Inspector of Police, attached to the Thattan Thoppu Police Station, received the complaint from PW-1 under EX-P1 and registered a case in Crime No.239 of 2003 under

Section 302 of the Indian Penal Code. Then, he forwarded the complaint and the First Information Report, EX-P11 to the Court. Taking up the case for investigation, PW-15 proceeded to the place of occurrence, at 09.30 PM prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of the witnesses. He found PW-2 with injuries. He sent her to hospital for treatment. He recovered bloodstained earth and sample earth from the place of occurrence. He conducted inquest on the body of the deceased. Then, he forwarded the dead body for postmortem. 2.2. PW-8 Dr.S.Sathik Ali, conducted autopsy on the body of the deceased and found the following injuries:- "1. Cut injury in the neck, involving skin, subcutaneous tissue muscle plan, saphanous vein, common carotid artery, paravertebral muscle incised wound is more than 8 X2CM.

2. 1 X1CM incised like wound on the face, left side.

3. 3 X2CM cut injury incised like wound on the neck, involving skin and muscle plan.

4. 3 X2CM incised wound on the chest in the sternal region.

5. 2 X2CM incised like wound in the left shoulder joint.

6. 3 X2CM incised like wound on the back not extending to the plural cavity.

7. 1 X1CM cut injury in the thumb, left side". He gave final opinion that the death was due to shock and hemorrhage due to the above injuries. 2.3. Thereafter, PW-15 forwarded the material objects for chemical examination through Court. The report revealed that there was human blood on the aruval. But, the grouping result was inconclusive. On completing the investigation, PW-15 laid charge sheet against the accused. 2.4. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, the prosecution examined as many as 15 witnesses and 13 documents were exhibited, besides six Material Objects. Out of the said 15 witnesses, PW-1, the brother of the deceased, has stated that after he returned

from Thattan Thoppu village, he went to his house and the deceased gone to her house. After sometime, on hearing the alarm raised at 08.00 PM, he rushed to the house of the deceased, where he witnessed the occurrence. He has further stated that PW-2, the daughter of the deceased was also cut. He has further stated about the making of the complaint. 2.5. PW-2, the daughter of PW-1, is an eye-witness to the occurrence. He has spoken about the occurrence in a vivid manner. PW-3 is a neighbour of the deceased, who has also spoken about the entire occurrence. PW-4 is yet another neighbour, who has stated that on hearing the alarm raised, when he rushed to the house of the deceased, he found PW-2 with injuries and the deceased lying dead with injuries. PW-5 is the daughter of the deceased. She has stated about her marriage with Mr.Senthilkumar at Thattan Thoppu village and she has further stated that on the day of occurrence, lastly, her mother came to her house and returned in the evening. PW-6 has spoken about the Observation Mahazer and the recoveries made, including the aruval. PW-7 has spoken about the treatment given to PW-1. PW-8 has spoken about the postmortem conducted by him and his final opinion. PW-9 and PW-10 are the Scientific Assistants, who have spoken about the scientific analysis conducted, more particularly, the fact that there was human blood found on the aruval. PW-11 is the Head Clerk of the Court, who has spoken about the forwarding of the material objects for chemical examination. PW-12 is the Village Administrative Officer, who has spoken about the arrest of the accused, on 26.10.2003. The others are the official witnesses. PW-15 has spoken about the investigation done by him. 2.6. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he did not choose to examine any witness nor to exhibit any document. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned counsel for the appellant, the learned Additional Public Prosecutor for the respondent and also perused the records carefully.

4. The learned counsel for the appellant would submit that PW-1, during cross-examination has stated that he did not see the occurrence in full and thus, he is not an eye-witness to the occurrence. He would further submit that the evidence of PW-2 cannot be believed, as PW-2 is a child witness. A child, who is prone to tutoring, should not be believed in the absence of any corroboration. He would further submit that the evidence of PW-3 also cannot be believed, because her presence is doubtful at the time of occurrence. He would further submit that except the evidence of PW-1 to PW-3, there is no other evidence to prove the occurrence. Thus, according to the learned counsel, these three witnesses are not reliable. He would further submit that even assuming that these three witnesses are reliable, from their evidences, it could be culled out that the offence committed by the appellant would not fall under Section 302 of the Indian Penal Code.

5. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, PW-1 to PW-3 are the eye-witnesses to the occurrence, more particularly, PW-2 is an injured eye-witness and there is no reason to reject her evidence. He would further submit that the medical evidence duly corroborates the eye-witness account. Thus, according to the learned Additional Public Prosecutor, the act of the accused would squarely fall within the ambit of Section 302 of the Indian Penal Code.

6. We have considered the above submissions.

7. PW-2 is the daughter of the deceased. Her presence, at the time of occurrence, cannot be doubted. Further, she also sustained injury in the very same occurrence. Simply because PW-2 happens to be the child witness, her evidence cannot be rejected at all, as absolutely, there is no material to show that PW-2 has been tutored. PW-2 has elaborately stated about the entire occurrence. Thus, we do not find any reason to reject the evidence of PW-2. On hearing the alarm raised by PW-2, PW-1 and PW-3 rushed to the place of occurrence and they found PW-2 with injuries. They also found the deceased lying dead. PW-1 has stated that he witnessed the occurrence. But, during cross-examination, he has stated that he did not see the occurrence in full. Assuming that PW-1 did not see the occurrence in full, his evidence goes to corroborate the evidence of PW-2. The evidence of

PW-3 is also quite natural, as she is the neighbour. She was attracted towards the place of occurrence on hearing the alarm raised by PW-2. He has also vividly spoken about the fact that when he reached the house of the deceased, he found PW-2 with injuries. PW-7, Dr.A.Raghuman, has spoken about the injuries found on PW-2. Thus, from the evidence of PW-1 to PW-3, it has been clearly established that the accused caused injuries on the deceased as well as on PW-2. From the medical evidence of PW-8, it is clearly established that the death was due to the cumulative effect of all the injuries. Thus, the prosecution has proved the case beyond any doubts that the accused caused the death of the deceased and caused injuries on PW-2.

8. Now, the immediate next question, which arises for consideration, is by the said act, what is the offence, that the accused committed. PW-1 and PW-2 have categorically stated that the accused was not happy with the deceased in going to Thattan Thoppu village to invite PW-5 and her husband for Deepavali. It is in the evidence of these witnesses that the accused questioned the deceased about her going to Thattan Thoppu village. This resulted in a quarrel. The deceased started weeping. The quarrel still went on. The deceased went to the backyard of the house. The accused followed the deceased. There also the quarrel continued. It was only in the said quarrel, the accused took out an aruval and caused the injuries on the deceased.

9. Thus, from the evidences available on record, it is inferable that in the said quarrel, the accused was provoked by the deceased and out of the said grave and sudden provocation, in our considered view, the deceased had caused the death of the deceased. Thus, the act of the accused would fall within the ambit of First Exception to Section 300 of the Indian Penal Code. Thus, the offence committed by the accused in causing the death of the deceased is punishable under Section 304(i) of the Indian Penal Code. So far as the injury caused on PW-1 is concerned, he is liable for punishment under Section 324 of the Indian Penal Code. But, unfortunately, there was no charge framed by the Trial Court for the offence under Section 324 of the Indian Penal Code and consequently, there was no punishment imposed for the injury caused on PW-1 and therefore, the question of convicting the accused under Section 324 of the Indian Penal Code does not

arise.

10. Now, turning to the quantum of punishment, the appellant is an aged person. The occurrence itself was not out of any motive, but out of sudden quarrel. The appellant had no bad antecedents. He has got a big family to be taken care of. Having regard to all the above aggravating circumstances as well as the mitigating circumstances, we are of the considered view that sentencing the appellant to undergo rigorous imprisonment for seven years with fine of Rs.1,000/- would meet the ends of justice.

11. In the result, this Criminal Appeal is partly allowed in the following terms:- The conviction and sentence imposed by the Trial Court on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304(i) of the Indian Penal Code and sentenced 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. It is stated that the accused/appellant is on bail. The bond executed by him and the sureties shall stand cancelled. The Trial Court shall take steps to secure the accused/appellant to commit him in prison to serve out the remaining period of sentence. The period of sentence already undergone by the appellant shall be set off under Section 428 of the Code of Criminal Procedure. To 1.The Inspector of Police, Devipattinam Station, Ramanathapuram District. 2.The Principal District and Sessions Judge, Ramanathapuram District. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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