

**1.P.Baskarran Vs. The State, Rep By**

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**Court :** Chennai

**Decided On :** Aug-10-2015

**Judge :** S.Nagamuthu

**Appellant :** 1.P.Baskarran

**Respondent :** The State, Rep By

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

10. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRL.A(MD).No.158 of 2010 1.P.Baskarran 2.P.Prabhu Alias Prabhakaran : Appellants Vs. The State, rep by the Inspector of Police, Sellur Police Station, Madurai, Crime No.1656 of 2008. : Respondents PRAYER Appeal is filed under Section 374 of the Code of Criminal Procedure to allow the Criminal Appeal and consequently set aside the order of conviction and sentence imposed on the appellants by the Hon'ble Principal Sessions Judge, Madurai, by his Judgment dated 26.04.2010 made in S.C.No.309 of 2009 on his file. !For Appellants : Mr.S.Palanivelayutham ^For Respondent : Mr.A.Ramesh Additional Public Prosecutor :

JUDGMENT

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JUDGMENT

of the Court was delivered by S.NAGAMUTHU, J]. In this Criminal Appeal, there are two appellants, who are the accused Nos.1 and 2 in S.C.No.309 of 2009, on the file of the learned Principal Sessions Judge, Madurai. The third accused is one Mr.Pandi. The accused Nos.1 and 2 are the sons of the third accused. The accused Nos.1 and 2 stood charged for the offences punishable under Sections 341 and 302 r/w 34 of the Indian Penal Code. The third accused stood charged for the offence punishable under Section 302 r/w 114 of the Indian Penal Code. By Judgment dated 26.04.2010, the Trial Court acquitted the third accused of the charge framed against him, but convicted the accused Nos.1 and 2 under Section 302 r/w 34 of the Indian Penal Code and sentenced them to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for three months. As against the said conviction and sentence, the appellants have come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:- The deceased, in this case, was one Mr.Gunasekaran. He was a resident of Sengol Nagar Third Cross Street, opposite to the Fathima College in Madurai. The accused Nos.1 to 3 were all his neighbours. On 21.10.2006, the first accused had parked his Motorcycle in front of the house of the deceased. The deceased questioned the same. In response to the same, it is alleged that the first accused abused him in filthy language. In respect of the same, the deceased made a complaint to the Sub-Inspector of Police, Sellur Police Station, on 21.10.2006, under EX-P15. In the Police Station, on 03.11.2006, both the parties appeared and they assured that they would not indulge in any such quarrel in future. Therefore, the said complaint was closed under EX-P16, by PW-11. From then onwards, there was no cordial relationship between the parties. 2.2. While so, on 08.10.2008, PW-2, the wife of the deceased was at her home with her children. PW-1 is the father-in-law of the deceased. He had also come to the house of the deceased. The deceased had gone out for his job. PW-1 and PW-2 were waiting for the arrival of the deceased. By around 11.00 PM, the first accused came in a Motorcycle and parked the same just in front of the house of the deceased. Shortly, thereafter, the deceased had also come. On noticing the Motorcycle being parked in front of the house of his house, the deceased shouted at the first accused. The first accused retaliated and scolded him in filthy language. Then, he called the accused Nos.2 and 3, who were in the

first floor of the house. The accused Nos.2 and 3 rushed to the place of occurrence and joined hands with the accused No.1. For some more time, the quarrel went on. While so, the second accused ran to his house, brought two knives in his hands, handed over one knife to the first accused and kept one knife with him. On seeing the same, the deceased attempted to enter into his house. At that time, the first accused stabbed the deceased from behind repeatedly. The second accused stabbed him at the abdomen and chest repeatedly. The deceased fell down. On seeing the said occurrence, PW-1 and PW-2 shouted and rushed to the rescue of the deceased. All the three accused ran away from the scene of occurrence. The deceased died instantaneously. 2.3. Thereafter, PW-1, the father-in-law of the deceased, went to the Police Station and presented a written complaint, under EX-P1. PW-7, the then Sub-Inspector of Police, attached to the Sellur Police Station, registered a case in Crime No.2656 of 2008, under Sections 341, 302 r/w 109 of the Indian Penal Code against all the three accused, at 11.45 PM, on 08.10.2008. EX-P10 is the First Information Report. Then, he forwarded both the documents to the Court and handed over case diary to the Inspector of Police for investigation. 2.4. PW-10, the then Inspector of Police, took up the case for investigation, at 12.30 AM, on 09.10.2008. He proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch in the presence of PW-4 and another witness. Then, he recovered the bloodstained earth and sample earth from the place of occurrence for the purpose of investigation under a mahazer in the presence of the same witnesses. Between 02.00 PM and 03.00 PM, he conducted inquest on the body of the deceased, during which he examined PW-1 and PW-2 and few more witnesses. EX-P14 is the inquest report. Then, he forwarded the dead body for postmortem through PW-6. 2.5. PW-8, Dr.G.Natarajan, conducted autopsy on the body of the deceased, on 09.10.2008, at 10.15 AM. He found the following injuries:- "1. An oblique stab injury measuring 4.5 X10 CM X pleural cavity deep noted on the left side of the chest 10 cms below the nipple. On dissection, the wound passes oblique downwards and backwards piercing the underlying muscles, vessels nerves in the 6th intercostals space, piercing the underlying pleura and lower lobe of left lung measuring 3 X1X10 Cms and ends as a point. Lungs cut section pale. Left Pleural cavity contains 200 ml of fluid blood with clots. Right pleural cavity empty.

2. An oblique stab injury measuring 5 X3CM peritoneal cavity deep noted on the front of left side of abdomen, 4.0 CM below the costal margin, through which loops of intestines is protruding out.
3. An oblique stab injury measuring 4.0 X2CM Peritoneal cavity deep noted on the front of lower abdomen just below the umbilicus. Peritoneal cavity contains 200 ml of fluid blood with clots.
4. An oblique stab injury measuring 4 X2CM X Pleural cavity deep noted on the back of left side of chest, 5 CM below the angle of scapula.
5. On dissection, the wound passes obliquely downwards and forward piercing the underlying muscles, vessels, nerves in the 6th intercostals space pierces the underlying pleura and lower lobe of left lung measuring 3 X1X1CM and ends as a point.
5. An oblique stab injury 3 X1X Pleural Cavity deep noted 1.0 CM below the wound No.4. On dissection, the wound passes obliquely downwards and forwards piercing the underlying muscles, vessels, nerves in the 7th intercostals, piercing the underlying pleura and lower lobe of left measuring 2 X1X1CM and ends as a point.
6. An oblique stab injury 4 X1X3CM along with the muscle plane and noted on the back of right lower chest.
7. An oblique cut injury 5 X05 CM X bone deep noted on the right parieto occipital region.
8. An oblique cut injury 4 X05 X bone deep noted on the left parieto occipital region.
9. Abrasions noted on the following areas:- Two abrasions each measuring 3 X2CM one below another noted on right side of back of chest; 2 X1CM on the back of right of side of shoulder; 3 X1CM on the outer aspect of right side of the chest". He opined that the death of the deceased was due to the shock and hemorrhage due to the cumulative effect of all the injuries. 2.6. Continuing the

investigation, PW-10 examined the doctor and collected the postmortem certificate. Since he was then transferred, he handed over the case diary to his successor, namely, PW-12. 2.7. On 18.10.2008, PW-12 took up the case for investigation. He came to know that all the three accused surrendered before the learned Judicial Magistrate at Vadipatti. He made a request to the Court and took custody of all the three accused, on 22.10.2008, at 05.00 PM. At the Police Station, in the presence of PW-3 and another witness, the first accused gave a voluntary confession, in which he stated that he had hidden the Motorcycle in a bush near Thathaneri Kanmoi. The second accused also gave a confession, in which he disclosed that he would produce the knife. The first accused also gave a confession, in which he disclosed the place where he had hidden yet another knife. In pursuance of the same, the first accused produced MO-3, the Motorcycle and MO-1, the knife. In pursuance of the disclosure statement, the second accused produced MO-2, the knife. All these materials were seized by PW-12, under separate mahazars. Then, he forwarded all the Material Objects for chemical examination. EX-P20 is the Serological Report. According to the said report, there was human blood on the knives. On completing the investigation, he laid charge sheet against the accused. 2.8. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, the prosecution examined as many as 12 witnesses and 20 documents were exhibited, besides six Material Objects. Of the said 12 witnesses, PW-1 and PW-2 are the eye-witnesses to the occurrence, who have vividly spoken about the entire occurrence. PW-3 has spoken about the confession made by the accused Nos.1 and 2 and the consequential recoveries of the Material Objects. PW-4 has spoken about the preparation of the Observation Mahazar by PW-10 and the recovery of the bloodstained earth from the place of occurrence. PW-5 is the Head Constable, who has stated that he carried the First Information Report to the Court of Judicial Magistrate and handed over the same. PW-6 is the Constable, who handed the dead body to the doctor for postmortem. PW-7 has spoken about the investigation of the case in Crime No.2656 of 2006, on the complaint of PW-1. PW-8 is the doctor, who has spoken about the autopsy conducted by him and his final opinion.

PW-9 is the Head Clerk of the Court, who has stated that he forwarded the Material Objects for chemical examination, on the orders of the learned Judicial Magistrate, as requested by the Inspector of Police. PW-10 and PW-12 have spoken about the investigation done by them. PW-11 has spoken about the earlier complaint made by the deceased and the compromise reached between the accused and the deceased. 2.9. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Having considered all the above materials, the Trial Court acquitted the third accused of all the charges, but convicted the accused Nos.1 and 2, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the appellants/accused Nos.1 and 2 are now before this Court with this Criminal Appeal.

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

4. The learned counsel appearing for the appellants would submit that the presence of PW-1 at the time of occurrence is doubtful. According to him, PW-1 was residing elsewhere and therefore, it would not have been true that he was present at the place of occurrence. He would further submit that so far as the evidences of PW-1 and PW-2 are concerned, there are material contradictions. According to him, PW-1 has stated that all the injuries on the backside of the deceased were caused by the first accused and the injuries on the chest and abdomen were caused by the accused No.2, whereas PW-2 has stated vice versa. This contradiction, according to the learned counsel, would go to the very root of the case of the prosecution. The learned counsel would further submit that the medical evidence does not corroborate the eye-witnesses account. He would further submit that so far as the confession of the accused and the consequential recoveries are concerned, there is no truth in the same. There are contradictions in that respect also. The learned counsel would further submit that there was delay in preferring the complaint and forwarding the First Information Report to the Court, which also creates doubt in the case of the prosecution. Thus, according to

the learned counsel, the entire case of the prosecution is liable to be rejected.

5. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, the presence of PW-1, at the time of occurrence cannot be doubted, as his presence has been duly explained away by PW-1 and there is no reason to reject the same. PW-1 and PW-2 have vividly spoken about the entire occurrence. So far as the injuries caused by the accused Nos.1 and 2 are concerned, PW-1 and PW-2 have spoken about the same in a vivid fashion. He would further submit that though there are certain contradictions, they are immaterial. He would also submit that there was no delay in preferring the First Information Report and forwarding the same to the Court. The Trial Court has considered the entire case of the prosecution and has come to the right conclusion that these two accused had caused the death of the deceased, the learned Additional Public Prosecutor contended. Thus, there are no reasons to interfere with the conviction and sentence imposed by the Trial Court on the accused Nos.1 and 2.

6. We have considered the above submissions.

7. So far as the presence of PW-1 is concerned, we do not find any reason to doubt his presence. Admittedly, PW-1 is not residing elsewhere in a different village. He has stated that he had come to meet his son-in-law in connection with a private matter. He was all along with PW-2 at the house of the deceased. Thus, the presence of PW-1 has been duly explained away and his presence cannot be doubted at all. Similarly, the presence of PW-2 also cannot be doubted, as she is the wife of the deceased and the occurrence had taken place just in front of the house of the deceased. Thus, PW-1 and PW-2 are the natural witnesses. They have spoken about not only the entire occurrence, but also the overt acts. Though the learned counsel for the appellants would submit that there are material contradictions in respect of the injuries caused by the accused on the deceased, in our considered view, they are immaterial. PW-1 has stated that all the injuries found on the backside of the deceased were caused by the first accused and the injuries on the chest and abdomen were caused by the accused No.2, whereas PW-2 has stated vice versa. In our considered view, these are immaterial. One

cannot expect PW-1 and PW-2 to have meticulously noticed the every injury being caused in a particular place. Therefore, we do not find any reason to reject the evidences of PW-1 and PW-2.

8. The motive for the occurrence has also been spoken to clearly by PW- 11. According to her evidence, in respect of the alleged occurrence, on 21.10.2006, a complaint was made by the deceased against the first accused. According to her, the matter was settled amicably between them and therefore, the same was closed. This is stated to be the motive. Regarding this fact, there is no much of controversy before this Court. Of course motive is a doubled edged weapon. In this case, it is because of this motive, according to the case of the prosecution, the occurrence had taken place. We do not find any reason to reject the same.

9. The next contention of the learned counsel for the appellant is that there was delay in preferring the First Information Report. The alleged occurrence, in this case, was at 11.00 PM. According to PW-7, the complaint was received at 11.45 PM. Thus, hardly within 45 minutes, the case was registered on the complaint of PW-1 and the First Information Report was received by the learned Judicial Magistrate concerned at 01.30 AM, on 09.10.2008. Thus, absolutely, there is no delay in preferring the First Information Report and forwarding the same to the Court so as to doubt the genuineness of the case of the prosecution.

10. Next comes the medical evidence. PW-8, Dr.G.Natarajan, has stated that he found as many as nine external injuries. According to him, all these injuries would have been caused by the knife. Though PW-8 has been subjected to lengthy cross-examination, nothing has been brought on record so as to disbelieve his evidence. In our considered view, the medical evidence also duly corroborates the eye-witness account of PW-1 and PW-2. Considering all the evidences available on record, we hold that the death of the deceased was caused only by these two accused.

11. Now, the next immediate question, which arises for consideration, is by the said act, what is the offence, that these two accused committed. From the evidence, it is crystal clear that the alleged occurrence was in the year 2006. For about two years, there was no recurrence. Therefore, it cannot be stated that

actuated by the said motive, the accused would have committed the crime. The first accused had come by around 11.00 PM to his house. He had parked the Motorcycle in front of the house of the deceased, which is the adjacent house. It is in evidence of PW-1 and PW-2 that on returning home, the deceased questioned the same, which resulted in wordy quarrel between the parties. It is also in evidence that the quarrel went on for some more time. It was only thereafter, the occurrence had taken place.

12. From these circumstances, it is inferable that the accused have committed the crime actuated by grave and sudden provocation. Thus, the act of the accused falls under First Exception to Section 300 of the Indian Penal Code. But, at the same time, going by the number of injuries found on the deceased and the medical opinion, we hold that these injuries would be sufficient to cause the death of the deceased. The injuries were not unintentional. Thus, the act of the accused squarely falls within the ambit of second limb of Section 299 of the Indian Penal Code. Therefore, the accused are liable for punishment under Section 304(i) of the Indian Penal Code.

13. The learned counsel for the appellants would submit that these accused are aged 28 and 30 years respectively. They are married and they have got children also. They hail from a middle class family. According to the learned counsel, if both the accused are imprisoned at this stage, it would ruin the entire family, as there is no other person available to take care of the family. Considering these mitigating circumstances, the learned counsel would submit that leniency may be shown in the matter of sentence.

14. Having regard to the aggravating circumstances that the occurrence was out of the sudden quarrel and the action of the accused was not premeditated one and having regard to the mitigating circumstances, as stated above, we are of the considered view that imposing sentence of rigorous imprisonment for five years and to direct the accused Nos.1 and 2 to pay a sum of Rs.1,50,000/- each as fine would meet the ends of justice. In respect of the fine amount, the learned counsel for the appellants would submit that the appellants are capable of paying the said fine amount.

15. In the result, the Criminal Appeal is partly allowed in the following terms:- The conviction and sentence imposed by the Trial Court under Section 302 r/w Section 34 of the Indian Penal Code is set aside and instead, the accused Nos.1 and 2 are convicted under Section 304(i) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,50,000/- each in default to undergo rigorous imprisonment for three months. The said fine amount of Rs.3,00,000/- shall be paid to the legal heirs of the deceased as compensation. On recovering the said fine amount from the accused Nos.1 and 2, the Trial Court shall ascertain as to who are all the legal heirs of the deceased and pay the same, without reference to this Court. The Trial Court shall take steps to secure the accused Nos.1 and 2/appellants to commit them in prison to serve out the remaining period of sentence. The period of sentence already undergone by the appellants shall be set off under Section 428 of the Code of Criminal Procedure. To 1.The Inspector of Police, Sellur Police Station, Madurai. 2.The Principal Sessions Judge, Madurai. 2.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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