

Chandrabose Vs. The State Rep. by The

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Court : Chennai

Decided On : Jul-29-2015

Judge : S.Nagamuthu

Appellant : Chandrabose

Respondent : The State Rep. by The

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

29. 07.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
Crl.A(MD)No.498 of 2004 Chandrabose .. Appellant/Accused Vs. The State rep.
by the Inspector of Police, Manur Police Station. (Crime No.39 of 2001) ..
Respondent/Complainant PRAYER Criminal Appeal filed under Section 374 of
Cr.P.C. against the conviction and sentence, dated 17.03.2003, made in
S.C.No.463 of 2001, by the learned Principal Sessions Judge, Tirunelveli. For
appellant : Mr.V.Kathirvelu, Senior Counsel for Mr.K.Prabhu For respondent :
Mr.C.Mayilvahana Rajendran, Additional Public Prosecutor :

JUDGMENT

The appellant is the sole accused in S.C.No.463 of 2001 on the file of the learned
Principal Sessions Judge, Tirunelveli. He stood charged for the offences under
Sections 341, 302, 324 and 506(ii) IPC. By judgment dated 17.03.2003, the trial
Court convicted him under Sections 304(ii), 324 and 506(ii) IPC and sentenced

him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for one year for the offence under Section 304(ii) IPC; to undergo rigorous imprisonment for one year for the offence under Section 324 IPC; and to undergo rigorous imprisonment for one year for the offence under Section 506(ii) IPC. All the sentences were ordered to run concurrently. Challenging the said conviction and sentence, the appellant is before this Court with this appeal. 2.The case of the prosecution in brief is as follows; (a) The deceased in this case was one Mr.Mariya Johnson. On 08.04.2001 at about 3.00 p.m. the accused and Mr.Mariya Johnson and few others were playing cricket in the village. At that time, there were wordy quarrel between the two teams. Consequently, the game was dropped. The quarrel between the accused and the deceased was pacified by the people there. Thereafter, on the same day, at 8.15 p.m., the deceased, along with PWs.1 & 2, was standing in front of the building of Ramaiyanpatti Nadar Sangam, near the tea shop of one Krishnan and they were talking to each other. At that time, the accused came there, armed with a knife. On seeing the accused, the deceased attempted to escape from the place of occurrence. But, the accused chased him and gave a single blow with the knife on the left side of his stomach. PW2 - Mr.Paul Prince attempted to rescue the deceased. When he intervened, the accused attacked him with the knife on his head and caused a simple hurt. PW1 is the brother of the deceased, when he attempted to go to the help of the deceased, the accused brandished the knife and criminally intimidated him. Thereafter, the accused fled away from the scene of occurrence. (b) The deceased was immediately taken to Tirunelveli Medical College Hospital by PW1. PW10 - Dr.Soundara Rajan examined the deceased at 8.40 p.m. on 08.04.2001. He was told by the deceased that he was attacked by a known person with a knife on his stomach. At that time, the deceased was conscious. PW10 noticed a stab injury on the left side of the stomach measuring 5 x 3 cm. The intestine was found protruding through the said injury. He was admitted as inpatient. Ex.P2 is the wound certificate. Then, he intimated the same to the Police. Along with the deceased, PW2 appeared in the hospital for treatment. At 9.15 p.m., PW10 examined him and found a lacerated injury measuring 1 cm x + cm on the left parietal region of the head. He was also admitted as inpatient. Ex.P4 is the Accident Register for PW2. According to PW10,

the injuries found on the deceased and PW2 would have been caused by a knife. Despite treatment, the deceased succumbed to the injuries at 3.45 a.m. on 09.04.2001. (c) On intimation from the hospital authority, PW16 - the Special Sub Inspector of Police, attached to Manoor Police Station, went to the hospital and recorded the statement from PW1, since the deceased was not in a position to speak. On returning to the Police Station, he registered a case in Crime No.39 of 2001 under Sections 341, 307, 324 and 506(ii) IPC. After the demise of the deceased on account of the injury, the FIR was altered into one under Section 302 IPC. Ex.P18 is the alteration report. (d) The case was taken up for investigation by the Inspector of Police (PW19). PW19 proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch showing the place of occurrence. Then, he conducted inquest on the body of the deceased and examined PWs.1 to 7. On completing inquest, he sent the body for postmortem. PW11 ?. Dr.Selvaraj conducted autopsy on the body of the deceased on 09.04.2001 at 12.30 p.m. During the postmortem, he found an external injury on the left side of the stomach measuring 3 x 2 cm depth into intestine. 15 cms of intestine was found protruding through the said injury. On opening the abdomen, he found that there were injuries to the vital blood vessels in the abdomen. He found blood clots about two liters of blood in the abdominal cavity. There were no other external injuries. He gave opinion that the death was due to shock and haemorrhage due to the said injury. (e) Continuing the investigation, PW19 examined the Doctors, collected the medical records pertaining to PW2 and the deceased. On 17.04.2001, he arrested the accused in the presence of witnesses and on such arrest, he made a voluntary confession. In the said confession, he disclosed the place where he had hidden the knife. In pursuance of the same, he took the Police and the witnesses to the said place and took out MO.3 ?. knife. PW19 recovered the same under Ex.P16 -Mahazar. Then, he forwarded the accused to the Court for judicial remand and through Court he forwarded the knife for chemical examination. In the knife, according to the expert, human blood was found, but the grouping test was inconclusive. In the bloodstained earth recovered from the place of occurrence and in the lungis and shirt worn by the accused, human blood was detected. The blood noticed was that of blood group of the deceased. On completing the investigation, he laid a final report against the

accused. (f) Based on the above materials, the trial Court framed the charges against the accused, as stated in the first paragraph of this judgment. The accused denied the same. In order to prove the charges, the prosecution examined as many as 19 witnesses and marked 23 documents, besides 6 material objects. Out of the said witnesses, PW2 is the injured eyewitness. PW1 is the brother of the deceased, who claims to have been present at the scene of occurrence, during which it is alleged that the accused criminally intimidated him by brandishing knife. PWs.3 to 7, according to the prosecution, were eyewitnesses to the occurrence. But, PWs.3 & 5 have turned hostile and they have not supported the case of the prosecution in any manner. PWs.1, 2, 4, 6 & 7 have vividly spoken about the occurrence. PWs.8 & 9 have stated that they witnessed the quarrel between the deceased and the accused, at 3.00 p.m. during their cricket play. PW10 - Dr.Soundara Rajan has spoken about the examination of the deceased and PW2, and the treatment given to them. PW11 - Dr.Selvaraj has spoken about the examination conducted by him and his opinion regarding the cause of death. PW12 is the Head Clerk of the Magistrate Court, who forwarded the material objects for chemical examination, on the orders of the Magistrate. PW13 is the driver of the auto in whose auto the deceased was taken to the hospital. He has vividly spoken about the same. PW14 has spoken about the observation mahazar prepared and the recovery of the bloodstained earth from the scene of occurrence. PW15 has spoken about the confession made by the accused and the consequential recovery of the knife at his instance. PW16 has spoken about the registration of the case. PWs.17 & 18 are the Head Constables, who have spoken about the requisition letter sent to the Doctor for postmortem. PW19 has spoken about the investigation done. (g) When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness nor mark any document on his side. Having considered all the above, the trial Court convicted him as detailed above in the first paragraph of the judgment. That is how he is before this Court with this appeal.

3. I have heard the learned senior counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent. I have also perused the records carefully.

4. The learned senior counsel appearing for the appellant would submit that the prosecution has failed to prove the case beyond reasonable doubts. According to him, the earliest doubt is in respect of the FIR in the case. According to him, PW13 - the auto driver, in whose auto the deceased was taken to the hospital, has stated during the cross examination that on their way to the hospital, the auto was stopped at the Police Station and the information was passed on to the Police. This being the earliest information, according to the learned senior counsel, has been suppressed. This creates enormous doubts in the case of the prosecution, the learned senior counsel submitted. The learned senior counsel would next submit that PWs.1, 2, 4, 6 & 7 are the interested witnesses in the case of the prosecution and therefore, their evidences should be rejected. So far as the recovery of the knife is concerned, the learned senior counsel would submit that there is no truth in the same and the evidence of PW15 cannot be believed as he is also an interested witness. At any rate, according to the learned senior counsel, the offence said to have been committed by the appellant would not attract Section 304(ii) IPC, as, according to the learned senior counsel, it would attract only an offence under Section 324 IPC for want of medical evidence. The learned senior counsel would further submit that the sentences imposed on the appellant is highly disproportionate to the gravity of the offences. At any rate, according to the learned senior counsel, the appellant is entitled for acquittal.

5. The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, PW2 is an injured witness and there are no reasons to reject his evidence. Similarly, PW1's presence also cannot be doubted for any reason. Apart from these two witnesses, PWs.4, 6 & 7, who are independent witnesses, have also spoken about the occurrence in a detailed manner. This is a case of single stab with a knife. The evidences of these witnesses are duly corroborated by the evidences of PWs.10 & 11. The learned Additional Public Prosecutor would submit that from these evidences, the prosecution has clearly proved that the accused had caused the death of the deceased. The learned Additional Public prosecutor would further submit that though it is stated by PW13 that on their way to the hospital, the vehicle was stopped and the information was passed to the Police, that cannot be a ground to reject the entire case of the prosecution. He would further submit that the offence committed by the petitioner would clearly fall

under Section 304(ii) IPC and the sentences imposed on him does not deserve to be interfered with. Thus, according to him, the appeal deserves to be dismissed.

6. I have considered the above submissions.

7. Of-course it is true that PW1 is an interested witness and he is the brother of the deceased. On that score, the evidence of PW1 cannot be simply rejected. His evidence requires only close scrutiny. A close reading of the evidence of PW1 would go to show that there is no reason to reject his evidence, as his evidence is very cogent and convincing. Apart from that, from the evidence of PW1, it is crystal clear that it was he who took the deceased and PW2 to the hospital. This would also go to establish the case that he was present at the time of occurrence. PW2 is an eyewitness to the occurrence and he is an injured. PW10 had noticed an injury on his head and he has opined that the said injury would have been caused by a knife. Thus, the evidence of PW2 is duly corroborated by the evidence of PW10, who treated the deceased and PW2, at the earliest point of time, in the hospital. The other witnesses viz., PWs.4, 6 & 7 have claimed that they were near the place of occurrence i.e., near the tea shop. The same cannot be doubted at all. A close scrutiny of the entire records would go to show that nothing has been brought on record to disbelieve their evidences. Thus, I hold that the evidences of PWs.1, 2, 4, 6 & 7 are very cogent and their evidences are duly corroborated by the evidences of PW10 and PW11.

8. So far as the argument of the learned senior counsel for the appellant assailing the FIR is concerned, I do not find any force. Of- course, it is true that PW13 has stated that on their way to the hospital, the auto was stopped for a moment and somebody went into the Police station and then returned. From this, the learned senior counsel would try to make out a case that there would have been an information to the Police which is earliest in point of time and the same has been suppressed. I do not doubt the evidence of PW13, in this regard. It may be true that the vehicle would have been stopped and some information would have been passed. Going by the fact that the deceased was in a serious condition and his intestine was already protruded out through the injury, the endeavor of everyone, including the Police Officer, would be to save the deceased. Therefore, the Police

would have advised him to rush to the hospital for treatment. Thereafter, the Police have gone to the hospital, where the Special Sub Inspector of Police found that the deceased was unconscious. The FIR reached at the hands of the learned Magistrate at 01.30 p.m. on 09.04.2011, which is evidenced from the endorsement made by the learned Magistrate. Therefore, the foremost ground raised by the learned senior counsel that the original complaint has been suppressed in this case, deserves to be rejected.

9. The learned senior counsel would next submit that the medical evidence does not corroborate the eyewitness account. I do not find any force at all in this argument. PWs.10 & 11 have categorically stated that there was a stab injury on the left side of stomach through which intestine was found protruding. PW11 has given clear opinion that the death was due to shock and haemorrhage due to the said injury. Thus, the medical evidence also duly corroborates the eyewitnesses account. From these evidences, it is clear that due to the injury caused by the accused on the stomach of the deceased, the death occurred.

10. But, now the learned senior counsel would submit that there is no evidence in respect of the nature of the injury so as to bring it within the ambit of Section 299 IPC. In other words, according to him, PW11 has not opined as to whether the said injury found on the deceased was likely to cause death or sufficient to cause death in the ordinary course of nature. In my considered opinion, even in the absence of any such positive opinion by the Doctor, the Court can certainly come to the safe conclusion that the injury was likely to cause death. It is common knowledge that any injury caused on the vital part viz., on the stomach, causing rupture of the blood vessels, would result in death. The Doctor had noticed huge amount of blood clots in the abdominal cavity which were due to rupture of the vital blood vessels in the stomach. In my considered view, this injury would be sufficient in the ordinary course of nature to cause death and thus, the act of the accused would fall under the third limb of Section 300 IPC. Since, the trial Court has convicted him under Section 304(ii) IPC, and since there is no appeal against the same by the State, I cannot convert this conviction into one under Section 302 IPC. But, one thing is sure, that is, at-least one can safely conclude that this injury was likely to cause death. This does not require any opinion at all from the Doctor.

The Doctor's opinion only falls under Section 45 of the Indian Evidence Act and it is for the Court to duly adjudicate upon the nature of the injury, based on the opinion of the Doctor and other circumstances.

11. In this case, in my considered view, the injury found on the deceased is at least in the nature of an injury, which is likely to cause death, falling within the second limb of Section 299 IPC. The trial Court had not convicted him under Section 304(i) IPC. In my view, since the act of the accused would squarely fall under the second limb of Section 299 IPC as the accused had caused the injury which was at least likely to cause the death with sufficient intention, he should have been at least convicted under Section 304 (i) IPC. But, the State has not filed any appeal against the same. The trial Court has not given any reason as to why the Court has held that the act of the accused would amount to an offence under Section 304(ii) IPC. Probably, the trial Court was under the impression that for want of medical evidence, it could be concluded that the accused would have had knowledge that his act would likely to result in death. Thus, the act of the accused would at any lowest estimation fall under third limb of Section 299 IPC. Therefore, the conviction of the accused under Section 304(ii) IPC does not deserve any inference. So far as the injury on PW2 is concerned, there is enough oral eyewitness account for the same which is corroborated by the medical evidence. Therefore, the conviction of the accused under Section 324 IPC is also liable to be confirmed. Similarly, in respect of the offence under Section 506(ii) IPC, there is enough evidence through eyewitnesses and therefore, the conviction under this penal provision is also liable to be confirmed.

12. Now, turning to the quantum of sentence, the learned senior counsel would submit that the appellant, at the time of occurrence, was hardly 21 years old and he hails from a poor family and subsequent to the occurrence, he married and he got two children also. His father and mother are very old people, who are taken care of only by the accused. He has also undergone the sentence about three years and two months. Having regard to these mitigating circumstances, the learned senior counsel would submit that the substantive sentence may be reduced. He would further submit that the appellant is prepared to pay Rs.25,000/- as compensation to the family of the deceased. But, the learned Additional Public

Prosecutor would oppose this plea. According to him, an young boy at the age of 17 years was killed in a brutal manner. Therefore, no leniency could be shown in the matter of sentence, he submitted.

13. I have considered the above submissions. While deciding quantum of punishment, it is for this Court to strike a balance between the aggravating circumstances and mitigating circumstances. At the time of occurrence, the deceased was 17 years old and the accused was 21 years old. The occurrence did not arise out of any strong motive, as it was out of a wordy quarrel, when they were playing cricket. Having regard to these aggravating circumstances and all the mitigating circumstances mentioned hereinabove, I am of the view that reducing the sentence to rigorous imprisonment for five years with fine of Rs.25,000/- for the offence under Section 304 (ii) IPC will meet the ends of justice. The conviction and sentence imposed for the offences under Sections 324 and 506(ii) IPC are liable to be confirmed.

14. In the result, this Criminal Appeal is partly allowed in the following terms; (a) The conviction of the appellant under Section 304(ii) IPC is confirmed. However, the substantive sentence of imprisonment imposed by the trial Court is modified and he is directed to undergo rigorous imprisonment for five years and to pay a fine of Rs.25,000/-, in default to undergo rigorous imprisonment for three months. (b) The conviction and sentence imposed for the offences under Sections 324 IPC and 506 (ii) IPC are confirmed. (c) All these sentences shall run concurrently. The sentence already undergone by the appellant shall be set off under Section 428 Cr.P.C. (d) It is reported that the appellant/accused has already paid Rs.1,000/- as fine. Therefore, it would be enough for him to pay Rs.24,000/- before the trial Court. The said amount of Rs.25,000/- shall be paid to the legal heirs of the deceased in this case by the trial Court as compensation. To 1.The Principal Sessions Judge, Tirunelveli. 2.The Inspector of Police, Manur Police Station, Tirunelveli District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..