

Mariappan Vs. 1.State Rep. by The

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Court : Chennai

Decided On : Aug-12-2015

Judge : S.Nagamuthu

Appellant : Mariappan

Respondent : 1.State Rep. by The

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

12. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU and THE HONOURABLE MR. JUSTICE V.S.RAVI CrI.A(MD)No.376 of 2010 Mariappan .. Appellant/Sole accused Vs. 1.State rep. by the Deputy Superintendent of Police, Thalaiyuthu, Tirunelveli District. 2.State rep. by the Inspector of Police, Manoor Police Station, Tirunelveli District. (Crime No.17 of 2006) .. Respondents/Complainants PRAYER Criminal Appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence, dated 15.09.2010, made in S.C.No.72 of 2006, by the II-Additional Sessions Judge, Tirunelveli. For appellant : Mr.S.R.A.Ramachandran For respondents : Mr.C.Mayilvahana Rajendran Additional Public Prosecutor :

JUDGMENT

(Judgment of the Court was made by S.NAGAMUTHU, J.) The appellant is the sole accused in S.C.No.72 of 2006 on the file of the II Additional Sessions Judge,

Tirunelveli. He stood charged for the offences under Sections 341, 302, 307 IPC and also under Sections 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (2 counts). By judgment dated 15.09.2010, the trial Court convicted the accused under Sections 341, 307 and 302 IPC alone and acquitted him from the charge under Sections 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (2 counts). The trial Court has sentenced the accused to pay a fine of Rs.250/- in default to undergo simple imprisonment for one week for the offence under Section 341 IPC; to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for three months for the offence under Section 307 IPC; and to undergo imprisonment for life and to pay a fine of Rs.1,500/-, in default to undergo rigorous imprisonment for six months for the offence under Section 302 IPC. 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 Essakkimuthu. PW1 is her husband. One year prior to the occurrence, it is alleged that PW1 had borrowed a sum of Rs.50,000/- from the accused. Since the same was not repaid on time, there developed ill-feeling between the two. Two months prior to the occurrence, PW1 repaid only a sum of Rs.10,000/- to the accused. At that time, the accused threatened him that unless he paid Rs.50,000/- within one week, he would kill him. This is stated to be the motive for the accused. (b) On 20.01.2006 at about 1.00 p.m. PW1 had gone to a nearby town for purchasing groceries for his house. After purchasing the same, he returned by a bus to his village. The bus reached the bus stop in the village between 8.00 to 8.30 p.m. The deceased was waiting at the bus stop for him. On getting down from the bus, PW1 gave some of the luggages to his wife and carried the rest. Both of them were proceeding towards their house. When they were nearing the vacant site on the south of the street, suddenly the accused came to that place. On reaching PW1, the accused started mounting attack on him with aruval. The deceased intervened to rescue PW1. The accused attacked her also with aruval indiscriminately. PW1 raised alarm. On hearing the alarm, PW1's son Muthuselvakumar and one Arockiyasamy rushed to the place of occurrence. By the time, the deceased breathed her last. (c) Then, Muthuselvakumar and Arockiyasamy took PW1 to Tirunelveli Medical College Hospital. PW7 ?. Dr.Senthil

Sivakumar examined PW1 on 20.01.2006 at 10.40 p.m. He noticed the following injuries; ?.(a) A lacerated injury measuring 6 x 1 x 1 cm on the lower jaw. (b) A cut injury measuring 15 x 1 x 1 cm on the right parietal region of the head. (c) A cut injury measuring 10 x 1 x 1 cm over his left parietal region of the head; (d) A lacerated injury measuring 10 x 1 x 1 cm on the right shoulder.?. At that time, according to PW7, PW1 was fully conscious and he told him that he was attacked by an unknown person at about 8.00 p.m. on the same day with aruval. That statement was duly recorded in the accident register. (d) On receiving intimation from the hospital authority, PW11, the then Sub Inspector of Police, attached to Maanoor Police Station went to Tirunelveli Medical College Hospital and recorded the statement of PW1. Ex.P1 is the said statement. On returning to the Police Station, at 2.30 a.m. on 21.01.2006, he registered a case in Crime No.17 of 2006 under Sections 341, 307, and 302 IPC and under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Ex.P10 is the FIR. Then, he forwarded these two documents to the Court and handed over the case diary to the Deputy Superintendent of Police for investigation. (e) PW13 - the then Deputy Superintendent of Police, Tirunelveli Rural Circle took up the case for investigation. On 21.01.2006 at 3.15 p.m. on reaching the place of occurrence, he prepared an observation mahazar and a rough sketch showing the place of occurrence. Then, he recovered bloodstained earth and sample earth at the place of occurrence. He conducted inquest on the body of the deceased in the presence of Panchayators and prepared Ex.P-22 - the inquest report. Then, he forwarded the body for post- mortem. PW6 conducted autopsy on the body of the deceased on 21.01.2006 at 12.40 p.m. He noticed the following injuries; ?.

- 1.Gaping heavy cut injury 11 x 6 cm seen from the centre of the neck on the right side extending upto the shoulder. The soft tissues, nerves, blood vessels, muscles, tendons, cervical vertebrae C6 and C7 along with spinal cord found cut along with upper part of oesophagus and trachea. The head hands with a flap of skin on the back.
- 2.Cut injury 5 x 4 cm below the chin cutting the soft tissues and muscles.
- 3.Cut injury 8 x 3 cm x bone deep centre of scalp, cutting the skull bone at site.
- 4.Defense cut injury 11 x 4 cm lateral border of right forearm cutting the lower part of right radius bone, small bones of right wrist joint, base of the thumb and right index finger.
- 5.Defense cut injury 6 x 1 cm x muscle deep seen along the right

wrist. 6.Linear abrasion 10 x 1 cm right shoulder. 7.Abrasion 4 x 1 cm left shoulder. Peritoneal and pleural cavities: Empty. Heart : Normal. Coronaries : Patent. Lungs : Pale. Hyoid Bone : Intact. Stomach : Contains 200 gms of partly digested cooked rice food particles with nil specific smell. Mucosa : Pale. Liver, spleen and kidneys : Pale. Small intestine : contains 20 ml of bile stained fluid with nil specific smell. Mucosa : Pale. Bladder : Empty. Uterus : Normal. C/s.Empty. Brain : Pale.?. Ex.P5 is the postmortem certificate. He gave his final opinion that the deceased would appear to have died of cut injuries in the region of neck. (f) Continuing the investigation, PW13 arrested the accused on 21.01.2006 at 9.00 p.m. at Gangaikondan Bus stop in the presence of witnesses. On such arrest, he gave a voluntary confession in which he disclosed that he would identify the place where he had hidden the aruval and in pursuance of the said disclosure statement, he took the Police and other witnesses to a pump-set room, belonged to one Arunachalam, at Tiruvalluvar Nagar and from the said place, he produced M.O.1 aruval. PW13 recovered the same under mahazar. He recovered a half burnt shirt and a towel at that place in the presence of the witnesses under mahazar. On returning to the Police Station, he forwarded the accused to the Court for judicial remand and handed over the material objects to the Court. He obtained community certificate of both the accused and the PW1, showing that the deceased belong to the scheduled caste, whereas the accused belongs to a non scheduled caste community. He examined the doctor and collected the medical records. Finally, he laid charge sheet against the accused. (g) Based on the above materials, the trial Court framed charges. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 25 documents were exhibited and 13 material objects were marked. (h) Out of the said witnesses, PW1 is the sole eyewitness examined by the prosecution. He has vividly spoken about the injury caused by the accused on the deceased as well as on him. PW2 is the sister of the deceased, who has spoken only about the motive. PWs.3 & 4, who are Thasildars, have spoken about the community certificate issued to PW1 and the accused. PW5 has spoken to the fact that at the time of occurrence, there was no electricity power failure at the place of occurrence. PW6 Dr.Paramasivan has spoken about the post-mortem conducted on the body of the deceased and his final opinion. PW7 & PW8 are the

Doctors, who have spoken about the treatment given to PW1 and the opinion given regarding the nature of the injury sustained by him. PW9 is the Head constable, who carried the FIR from the Police Station to the Court. PW10 has spoken about the fact that he carried the dead body from the place of occurrence to the hospital for postmortem. PW11 - the then Sub Inspector of Police has spoken about the complaint given by PW1 and the registration of the case by him. PW12 is the Head Constable, who forwarded the material objects for chemical examination. According to his report, there was human blood found in the billhook, but the blood group was inconclusive. PW13 was spoken about the investigation done. (i) When the above material evidences were put to the accused under Section 313 of the Code of Criminal Procedure, he denied the same as false. However, he did not choose to examine any witness nor mark any document, on his side. (j) Having considered all the above materials, the trial Court convicted the accused under Sections 341, 307 and 302 IPC, but acquitted him from the charge under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (2 counts) and accordingly punished him. That is how the appellant is before this Court with this appeal.

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

4. The learned counsel for the appellant would submit that at the earliest point of time, when PW1 was taken to the Hospital, PW1, who is the sole eyewitness to the occurrence had stated that he was attacked by an unknown person. Though PW1 was duly contradicted for the above said statement during cross examination, PW1 has not given any explanation. The learned counsel would submit that since the occurrence was during night hours and since there was no light, the assailant/accused would not have been visible for PW1. That is the reason why, according to him, PW1 had told him before the Doctor that he was assaulted by an unknown person. The learned counsel would further point out that even in the rough sketch, there is no indication that there was light at the place of occurrence. He would further point out that there is no evidence that there was moon light also. 5. The learned counsel for the appellant would next submit that

though there are other houses situated near the place of occurrence, no independent witness was examined. He would further point out that even the son of PW1 and one Arockiyasamy, who, according to the prosecution, were present at the time of occurrence, have not been examined. Thus, according to the learned counsel, the appellant has been falsely implicated and the prosecution has failed to prove the charges against him.

6. The learned Additional Public Prosecutor would, however, oppose this appeal. According to him, PW1 is the injured eyewitness and therefore, his evidence deserves acceptance. He would further submit that it is true that to the Doctor, PW1 had told him that he was attacked by an unknown person, but that is immaterial, if the evidence of PW1 is fully analysed. The learned Additional Public Prosecutor would further point out that the non examination of independent witnesses would not affect the case of the prosecution in any manner. He would further submit that the medical evidence also duly corroborates the eyewitness account of PW2. For these reasons, according to the learned Additional Public Prosecutor, the conviction and sentence imposed on the appellant does not deserve any interference at the hands of this Court.

7. The prosecution, admittedly, relies only on the evidence of PW1, who is an injured eyewitness. The fact that he sustained injury in the very same occurrence would go to vouch for his presence at the time of occurrence. Therefore, there can be no doubt that he witnessed the occurrence. But, the question is whether he would have been able to see the assailant. There is no evidence that there was light at the place of occurrence. Immediately, after the occurrence, he was taken to the hospital by his son and one Arokiyasamy, and at the earliest point of time, he told the Doctor that he was attacked with aruval by an unknown person. Had it been true that he was able to see the assailant of the accused and had it been true that there was enough light to see the assailant, by all probabilities, PW1 would have told the Doctor that he was attacked only by a known person. It is not as though the accused is an unknown person. Though PW1's attention was drawn by contradicting him for the above statement as required under Section 145 of the Indian Evidence Act, PW1 has not at all given any explanation for the above statement. It was only thereafter on intimation from the hospital authority, the

Police came to the hospital and obtained the statement from PW1. By the time, many people would have been visited and hence, the chance for tutoring cannot be ruled out. In our considered view, the earliest statement made in this case by PW1 carries weightage, in which he has stated that he was attacked by an unknown person. Thus, the same, in our considered view, destroys the entire case of the prosecution.

8. Apart from that, absolutely, there is no explanation as to why PW1's son and one Arokiyasamy, who rushed him from the place of occurrence, immediately, after the occurrence, have not been examined. It is not as though they did not witness the occurrence. They would have at least seen a part of the occurrence, because these two people only had taken PW1 to the hospital. Had they seen the occurrence, they would have at least corrected PW1, when he told the Doctor that he was attacked by an unknown person. Absolutely, there is no explanation coming forward from the prosecution as to why these two witnesses were not examined. Above all, it is not as though there were no houses in the place of occurrence. There were number of houses situated near the place of occurrence, which is evident from the records. But, no independent witness was examined.

9. In this background viz., no independent witness was examined; the son of PW1 and Arociyasamy, who witnessed a part of the occurrence, were not examined; and in the light of the fact that PW1, at the earliest point of time, had told the Doctor that he was attacked by an unknown person, we find it difficult to sustain the conviction of the appellant/accused. By all probabilities, due to the non-availability of light, PW1 would not have been in a position to notice the accused. In other words, the features of the assailant would not have been visible due to darkness, that is the reason why PW1, at the earliest point of time, uninfluenced by anybody, had told the Doctor that he was attacked by an unknown person. In view of the above, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal.

10. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused in S.C.No.72 of 2006 is set aside and he is acquitted. The bail bond, if any, executed by him shall stand terminated. The fine

amount, if any, paid shall be refunded to him. To 1.The II-Additional Sessions Judge, Tirunelveli. 2.The Deputy Superintendent of Police, Tirunelveli Rural, Thalaisyuthu, Tirunelveli District. 3.The Inspector of Police, Manoor Police Station, Tirunelveli District. 4.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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