

Joseph Raj @ Joseph Vs. State Rep. by The

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SooperKanoon Citation : sooperkanoon.com/65697

Court : Chennai

Decided On : Aug-28-2015

Judge : S.Nagamuthu

Appellant : Joseph Raj @ Joseph

Respondent : State Rep. by The

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

28. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU and THE HONOURABLE MR. JUSTICE V.S.RAVI CrI.A(MD)No.187 of 2009 Joseph Raj @ Joseph .. Appellant / Accused Vs. State rep. by the Inspector of Police, Thuckalay Police Station, Kanyakumari District. (Crime No.514 of 2005) .. Respondent/ Complainant PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence, dated 18.06.2009, made in S.C.No.26 of 2006, by the learned Sessions Judge, Kanyakumari Division at Nagercoil. For appellant : Mr.V.Kathirvelu, Senior Counsel for Mr.M.R.Sreenivasan For respondent : Mr.A.Ramar, Additional Public Prosecutor :

JUDGMENT

(Judgment of the Court was made by S.NAGAMUTHU, J.) The appellant is the sole accused in S.C.No.26 of 2006 on the file of the learned Sessions Judge, Kanyakumari Division at Nagercoil. He stood charged for the offences under

Sections 364, 342 and 302 IPC. By judgment dated 18.06.2009, the trial Court acquitted the accused from the charge under Section 364 IPC, but convicted him under Sections 302 and 342 IPC. The trial Court sentenced the appellant to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one year for the offence under Section 302 IPC and to undergo rigorous imprisonment for one year for the offence under Section 342 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 Mr.Rajkumar. Some time before the occurrence, the deceased had gone abroad and returned only 15 days before the date of occurrence. On 25.05.2005, the marriage of PW6 - Mr.Sasikumar was to be celebrated in his house. For the purpose of cutting vegetables to prepare food for the guests, the deceased, the accused, PW1, PW2 and few others were engaged. Accordingly, at 11.00 a.m., PWs.1 to 3 and the deceased were in the house of PW6. When the work was going on, the accused asked the deceased as to whether he had brought anything from the foreign country for him to present. The deceased answered in the negative. This resulted in a petti quarrel between them and after the work was over, the deceased and the accused told others that they were going to the house of the accused for lunch, as in his house fish had been cooked. So saying, the deceased and the accused went together towards the house of the accused. (b) It is the further case of the prosecution that the accused had taken the deceased by deceiving him only for the purpose of killing him at his house and accordingly, the accused detained the deceased at his house. By about 2.00 p.m, it is alleged that PWs.1 & 2 went in search of the deceased to the house of the accused. At that time, they heard the hue and cry of the deceased from inside the house. Therefore, PW2 went near the window. PW1 went to the main entrance of the house. Through the window, it is alleged that PW2 saw the accused stabbing the deceased twice with a knife. Then, the accused ran away from the house. (c) PWs.1 & 2, immediately, took the deceased in a car to the Government Hospital, Thackalay. The doctor, who was on duty, after examining him, declared him dead. Thereafter, it is stated that PW1 dictated a complaint and the same was reduced in writing by PW2. Then, PWs.1 and 2 went to Thuckalay Police Station at 4.00 p.m. PW1 presented the said complaint under Ex.P1 to

PW10 ? the then Sub Inspector of Police. PW10 registered a case on the said complaint in Crime No.514 of 2005 under Sections 342 and 302 IPC. Ex.P8 is the FIR. Then, he forwarded Ex.P1 and P8 to the Court and handed over the case diary to the Inspector of Police for investigation. (d) PW11 ? the Inspector of Police took up the case for investigation. He proceeded to the place of occurrence at 05.00 p.m., prepared an observation mahazar in the presence of PW5 and another witness. He also prepared a rough sketch showing the place of occurrence. He recovered bloodstained earth and sample earth from the place of occurrence under a mahazar. Then, he conducted inquest on the body of the deceased between 7.00 p.m. to 10.00 p.m. During inquest, he examined PWs.1 to 3 and few more witnesses. Then, he prepared inquest report (Ex.P10) and forwarded the body for postmortem. (d) PW7 - Dr.John Britto conducted autopsy on the body of the deceased on 26.05.2005 at 11.00 a.m. He found the following injuries: ?External Injuries :

1. Stab wound measuring 2 cm x 1 cm on the left side of the chest, situate 8 cm from the middle of the collar bone 14 cm from the middle of the sternum. 2)Stab wound measuring 1 cm x 1 cm situated on the right side of the chest 4 cm from the collar bone and 10 cm from the middle of the sternum 2 cm deep. Internal injuries :

1. Fracture 5th rib (left) at the (N.C.) 2)Pericordial cavity filled with about 1 litre of blood. Heart ?. 150 gm ?. pale ?. 1 cm x 1 cm stab wound in the anterior wall entering into the cordial chamber. Lungs ?. Right 500 gm, Left 400 gm ?. congested. Hyoid bone intact. Abdomen ?. No blood in the peritoneal cavity. Stomach ?. Pale contain banana and food materials. Liver ?. 1500 gm pale. Spleen ?. 100 gm pale. Kidney - Right 100 gm, Left 100 gm pale.?. Ex.P7 is the postmortem certificate. He opined that the deceased would appear to have died of shock and haemorrhage due to cardiac injury 20 to 24 hours before the postmortem. (e) During the course of investigation, on 26.05.2005 at 02.30 p.m., near Palliyadi Railway Station, PW11 arrested the accused in the presence of PW4 and another witness. On such arrest, he gave a voluntary confession, in which he disclosed the place where he had hidden the knife. In pursuance of the same, he took PW11 and PW4 to the south bank of Aalkatti Kulam and produced the knife (MO.1). 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. Then, he made a request to the learned Magistrate to forward the material objects for chemical examination. The report of the chemical analysis revealed that there was human blood on all material objects, including the knife. PW11 collected the medical records, examined the doctors and finally, on completing the investigation, laid charge sheet against the accused. (f) Based on the above materials, the trial Court framed the charges, as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the charges, on the side of the prosecution, as many as 11 witnesses were examined, and 15 documents and 9 material objects were marked. (g) Out of the said witnesses, PW1, who was examined as an eyewitness, turned hostile and he has not supported the case of the prosecution in any manner. He has only spoken about the quarrel between the accused and the deceased at the house of PW6. PW2 is the sole eyewitness, who has stated that after the quarrel, at the house of PW6, the accused and the deceased had gone together to the house of the accused for having lunch. He has further stated that by about 2.00 p.m., he, along with PW1, went in search of the deceased at the house of the accused and at that time, through window, he saw the accused stabbing the deceased. He has further stated that he, along with PW1, took the deceased to the hospital. He has also stated that he drafted the complaint, as per the dictation made by PW1. PW3 is not an eyewitness to the occurrence. He has stated that on 25.05.2005 at about 02.30 p.m. on hearing the hue and cry at the house of the accused, when he went to the house of the accused, he found the deceased was inside the house with injury. (h) PW4 has spoken about the arrest of the accused, the confession given by him and the consequential recovery of MO.1 aruval. PW5 has spoken about the preparation of the observation mahazar and the rough sketch by PW11. PW6 has spoken about the incident, which took place five hours prior to the occurrence, in which there was a quarrel between the accused and the deceased. PW7 has spoken about the postmortem conducted and his final report regarding the cause of death. PW8 is a constable, who carried the FIR to the Court. He has also spoken about handing over of the body to the hospital for postmortem. PW9 has spoken about the fact that he carried the body to the hospital for postmortem. PW10 has spoken about the registration of the case and PW11 has spoken about the investigation done. (i)

When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. On his side, his sister and mother were examined as DWs.1 & 2 respectively. DW1 has stated that she was hardly aged 25 years at the time of occurrence. On the date of the occurrence, the accused and the deceased came together to their house. After some time, according to her, the deceased sent the accused for purchasing liquor. Accordingly, the accused left the house. Her mother viz., DW2 went out for washing the clothes. Thus, in the house, the deceased and DW1 alone were there. She has further stated that after some time, utilising the loneliness of DW1, the deceased closed the door and attempted to misbehave with her so as to exploit her sexually. She resisted the same, which resulted in a scuffle between the two. In the scuffle, it is stated that she pushed him and he fell down in the construction materials and sustained injury. DW2 ? the mother of the accused has also stated the same. (j) Having considered all the above, the trial Court has convicted the accused under Sections 342 and 302 IPC and accordingly, punished him. That is how, the appellant is before this Court with this appeal.

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

4. The learned senior counsel appearing for the appellant would submit that PW2, who is stated to be the solitary eyewitness, would not have been present at the time of occurrence and he would not have seen the occurrence at all. He took us through the evidence of PW2 to point out certain facts spoken to by him which would improbabilise his very presence at the time of the alleged occurrence. He would next submit that the accident register, wherein entry has been made about the fact that the deceased was brought dead to the hospital, has been suppressed by the prosecution. He would further submit that there is no reason to disbelieve the evidence of DWs.1 & 2. He would also submit that when the deceased and the accused had gone to the house of the accused in a friendly manner, there would have been no reason for the accused to commit murder of the deceased. Thus, according to the learned senior counsel, there are lot of doubts in the case of the prosecution and therefore, the accused is entitled for acquittal.

5. The learned Additional Public Prosecutor would, however, oppose this appeal. He would submit that though PW1, who was examined as an eyewitness, has turned hostile. He has supported the case of the prosecution to some extent. In other words, he has spoken about the quarrel between the accused and the deceased, at the house of PW6 and the fact that they left together to the house of the accused. The learned Additional Public Prosecutor would further submit that PW2 has vividly spoken about the entire occurrence and there is no reason to reject his evidence. He would further submit that the medical evidence also duly corroborates the eyewitness account. In respect of the non production of the accident register, the learned Additional Public Prosecutor would submit that since the deceased was already brought dead to the hospital, the non production of the accident register is immaterial. He would further submit that the discovery of MO.- 1 ? knife, on the disclosure statement made by the accused, is yet another evidence in favour of the prosecution and the same further strengthened the case of the prosecution. Thus, according to the learned Additional Public Prosecutor, the prosecution has proved the case beyond reasonable doubts.

6. We have considered the above submissions. Admittedly, the prosecution relies only on the solitary eyewitness account of PW2 alone. The question is whether PW2 would have been present at the time of occurrence and whether he has spoken the truth. Now, the narration of the events goes like this. The accused and the deceased were not in inimical terms and in a friendly manner, when they were cutting vegetables at the house of PW6, the accused had asked the deceased as to whether he had brought anything from the foreign country to present to him. The deceased answered in the negative. This only resulted in a petty quarrel. Had the accused been inimical towards the deceased, he would not have asked for any presentation in a friendly manner from the deceased. This would go to show that they were not in inimical terms. The petty quarrel also would not have been the cause for any enmity between them, because, after the petty quarrel, they continued the work viz., vegetable cutting, along with others. At the end, when all of them were to leave, the accused and the deceased told together that they were going to the house of the accused for lunch. The deceased told that since there was fish cooked at the house of the accused, he was going there with the accused. This would go to show that they had gone to the house of the accused

only in a friendly manner.

7. PW2 has admitted during cross examination that the accused and the deceased had left the house of PW6 between 10 to 10.30 a.m. But, PW2 has further stated that by about 2.00 p.m, he, along PW1, went to the house of the accused in search of the deceased. What happened between 10.30 a.m. to 2.00 p.m. has not been investigated into by the Police and the same remains to be a mystery. However, this time gap duly explained away by DWs.1 & 2. At 2.30 p.m., it is alleged that when PWs.1 and 2 had gone near the house, the deceased cried. This, in our considered view, is highly unbelievable. PW2 further says that suddenly when he went near the window, through which he saw the accused stabbing the deceased. This is also highly unbelievable for the simple reason had it been the intention of the accused to kill the deceased, there would have been no need for him to wait till 2.30 p.m. from 10.30 a.m. for PWs.1 & 2 to come there to witness the occurrence, that too at his house. The narration of events in this fashion by PW2 is highly doubtful. 8. Then, it is stated that after the occurrence, PWs.1 and 2 took the deceased to the hospital, but, the accident register has been suppressed. To satisfy our judicial conscience, we went through the Case Diary. It contains the accident register, which shows that it is only PW1, who brought the deceased to the hospital and not PW2. This document would clearly go to show that PW2 would not have been present at the time of occurrence. Between 10.30 a.m. to 2.30 p.m. what had happened has been explained away by DWs.1 & 2. Though these two witnesses have been cross examined at length, nothing has been brought on record to make their evidences totally unbelievable. Though their evidences cannot be believed in full, the statement made by them to the extent that the accused was not at the time of occurrence, may be accepted. At any rate, the evidences of DWs.1 and 2 would at last probabalise the defence taken by the accused. It is settled law that the accused need not prove his defence with the same vigour with which the prosecution is expected to prove the case beyond reasonable doubts. It is enough for the accused to probabalise his defence.

9. On an over all analysis of the entire evidence of the prosecution as well as the accused in this case, we are of the view that the defence theory has been probabalised and the case of the prosecution has been improbabilised and there

are lot of doubts in the case of the prosecution. Thus, we hold that the prosecution has failed to prove the case against the accused beyond reasonable doubts. Therefore, we are inclined to acquit the accused.

10. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the trial Court in S.C.No.26 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 the him. To 1.The Sessions Judge, Kanyakumari Division at Nagercoil. 2.The Inspector of Police, Thuckalay Police Station, Kanyakumari District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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