

Suresh Kumar Vs. The State Rep. By

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Court : Chennai

Decided On : Aug-31-2015

Judge : S.Nagamuthu

Appellant : Suresh Kumar

Respondent : The State Rep. By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 31.08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU and THE HONOURABLE MR.JUSTICE V.S.RAVI CrI.A(MD)No.383 of 2010 Suresh Kumar .Appellant/ FiRs.Accused versus The State rep.

by The Inspector of Police, Arumuganeri Police Station, Tuticorin District.

(Crime No.70 of 2009).Respondent/ Complainant PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction passed by the learned Additional Sessions Judge, Fast Track Court No.I, Tuticorin, in S.C.No.243 of 2009, dated 21.09.2010.

!For Appellant : Mr.M.Ajmal Khan Senior Counsel for Mr.A.Velan for M/s.Ajmal Associates.

^For Respondent : Mr.A.Ramar, Addl.

Public Prosecutor.

:

JUDGMENT

(Judgment of the Court was made by S.NAGAMUTHU, J.The appellant is the fiRs.accused in S.C.No.243 of 2009, on the file of the learned Additional Sessions Judge, Fast Track Court No.I, Tuticorin.

One Mr.Ganesh was the second accused.

The fiRs.accused stood charged for the offence under Section 302 I.P.C.and the second accused stood charged for the offence under Section 201 read with 302 I.P.C.By Judgment, dated 21.09.2010, the Trial Court acquitted the second accused, but convicted the fiRs.accused alone under Section 302 I.P.C.and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one year.

Challenging the said conviction and sentence, the appellant is before this Court, with this Criminal Appeal.

2.The case of the prosecution, in brief, is as follows: One Mrs.Shanthi (P.W.9) is the sister's daughter of the deceased.

P.W.10 is the elder brother of the fiRs.accused.

P.W.9 and P.W.10 got married at Maruthamalai in Coimbatore District.

But, the said marriage was not with the consent of the family members of the fiRs.accused.

Therefore, the fiRs.accused had grudges against the family of the deceased.

This is stated to be the motive for the occurrence.

3.On 01.03.2009, it is stated that P.W.1, P.W.2 and few others along with the deceased were standing just in front of the house of P.W.1 at the Second Street, Lakshmipuram.

The deceased in this case was one Mr.Chernapandi.

When they were chatting with each other, the deceased wanted to go to the Third Street at Lakshmipuram to the house of his mother.

When he moved few steps away from the said place, the fiRs.accused suddenly emerged there with an aruval.

Then, he cut the deceased repeatedly with aruval.

The deceased fell down in a pool of flood and died on the spot.

The occurrence was witnessed by P.W.1 to P.W.7.

4.P.W.1 immediately went to the Police Station.

P.W.15, the then Sub Inspector of Police, Arumuganeri Police Station received the complaint of P.W.1 at 05.15 p.m.on 01.03.2009 and registered a case in Crime No.70 of 2009 under Section 302 I.P.C.Ex.P.1 is the complaint and Ex.P.10 is the FiRs.Information Report.

Then, he forwarded both the documents through P.W.13, a Constable attached to the Police Station, to the house of the learned Judicial Magistrate.

The same was received by the learned Magistrate at 01.50 a.m.on 02.03.2009.

P.W.15, then handed over the Case Diary to the Inspector of Police for investigation.

5.P.W.17, the then Inspector of Police, took up the case for investigation on the same day.

At the place of occurrence, he prepared an Observation Mahazer and a Rough Sketc.showing the place of occurrence.

Then, he recovered blood stained earth and sample earth from the place of occurrence.

He conducted inquest on the body of the deceased and then forwarded the body for postmortem.

6.P.W.16, Dr.Pabanasakumar, conducted autopsy on the body of the deceased on 02.03.2009 at 11.00 a.m.He found a single cut injury on the body of the deceased as detailed below: ?An incised wound is present over nape of neck with the size of 20x10x6 cm.

It is spindle shaped and the edges of wound are clean-cut, well defined.

The underlying muscles, vessels and nerves are cut transversely with clots and blood staining of underlying tissues and bones.

The cervical vertebra spins are exposed with no evidence of fracture.

Vertebral arteriers are cut.

No other injuries are made out?.Ex.P.12 is the Postmortem Certificate.

According to him, the injury found on the deceased could have been caused by a weapon, like M.O.1, Kozhival Aruval.

Then, P.W.17, handed over the investigation to P.W.18, his successor.

7.P.W.18 took up the case for investigation on 02.03.2009.

On 03.03.2009, during the couRs.of investigation, he arrested the fiRs.accused in the presence of P.W.12 and another witness, at Kayalpattinam Bus Stand.

On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden the kozhival aruval.

In pursuance of the same, he took P.W.18 and P.W.12 to the said place and produced M.O.1, Kozhival Aruval.

P.W.18 recovered the same under a mahazer.

On being identified by the fiRs.accused, P.W.18 arrested the second accused at 08.30 a.m.at Thaikapuram, Kayalpattinam, in front of the house of the second accused.

On such arrest, he gave a voluntary confession, in which, he disclosed that the place where he had hidden a shirt and a pant.

In pursuance of the same, he took P.W.18 and P.W.12 to the said place and produced the said material objects.

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 Court to forward the material objects for chemical examination.

Ex.P.18 is the Report received from the Forensic Expert.

According to him, human blood was found on all the material objects including the aruval.

But, the blood grouping and the blood found on the aruval was inconclusive.

On completing the investigation, P.W.18 laid charge sheet against the accused.

8.Based on the above materials, the Trial Court framed charges against both the accused.

The accused denied the same.

In order to prove the case, on the side of the prosecution, as many as, 18 witnesses were examined and 19 documents were exhibited, besides 9 Material Objects.

9.Out of the said witnesses, P.W.1 and P.W.2 are the eye-witnesses to the occurrence, who have spoken about the same.

P.W.3 to P.W.6, though examined as eye witnesses, have turned hostile as they have not supported the case of the prosecution in any manner.

P.W.7 has also been examined as eye witness and he has also stated that he witnessed the accused cutting the deceased with a ruval.

P.W.8 is the witness for the recovery of material objects from the place of occurrence and for the preparation of the Observation Mahazer.

He has spoken about the same.

P.W.9, P.W.10 and P.W.11 have spoken about the marriage between P.W.9 and P.W.10 and the consequential enmity between the two families.

P.W.10, Village Administrative Officer, has spoken about the arrest of the accused 1 and 2, the disclosure statements made by them and the consequential recovery of material objects.

P.W.13, the Head Constable, has spoken about the fact that he handed over the original FiRs.Information Report to the learned Judicial Magistrate at 01.50 a.m.on 02.03.2009.

P.W.14 has spoken about the fact that he handed over the dead body to the doctor for postmortem.

P.W.15 has spoken about the registration of the case.

P.W.16, the Doctor, has spoken about the autopsy conducted and his final opinion.

P.W.17 and P.W.18 have spoken about the investigation done and the laying of charge sheet.

10.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false.

However, they did not choose to examine any witness on their side nor to mark any document.

11. Having considered all the above materials, the Trial Court acquitted the second accused and convicted the first accused, as detailed in the first paragraph of this Judgment, and sentenced him accordingly.

That is how, the appellant is before this Court, with this Criminal Appeal.

12. We have heard the learned senior counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

13. The learned senior counsel appearing for the appellant would submit that the evidences of P.W.1, P.W.2 and P.W.7 cannot be believed, because, during the cross-examination they have given a complete go-by to what they have stated in the chief-examination.

The learned senior counsel would further submit that so far as P.W.7 is concerned, he was examined by P.W.18 only after 03.03.2009, whereas the alleged occurrence was on 01.03.2009.

Absolutely, there is no explanation for the non-disclosure of the facts by P.W.7 for two days.

He would next contend that it is the positive case of the prosecution that the deceased was cut by the accused indiscriminately with a ruval.

But, according to P.W.16, the Doctor, who conducted autopsy, there was only one injury found on the deceased.

Thus, according to him, the medical evidence, does not corroborate the eye witness account.

He would further submit that according to P.W.1 and the other so-called eye witnesses, the weapon used, allegedly, by the accused, was an aruval, whereas what is projected as M.O.1 is a Kozhival Aruval.

He would further state that the witnesses have tacitly admitted that Kozhival Aruval and aruval are different, in that perception.

He would further submit that P.W.12 has admitted that what is recovered from the fiRs. accused is only an aruval and not kozhival aruval.

The learned senior counsel would point out that in the mahazer as well as in Form 95, there is an overwriting made as though what was recovered was kozhival aruval.

P.W.12 has disowned the said correction.

Thus, according to the learned senior counsel, the prosecution has not come forward with clean hands.

The learned senior counsel would next contend that Ex.P.1 would not have been made as it is projected by the prosecution, because, according to P.W.1, within half-an-hour, on receiving phone message, the police came to the spot.

Thus, for all these reasons, according to the learned senior counsel, the case of the prosecution should be rejected and the appellant should be acquitted.

14. But, the learned Additional Public Prosecutor would oppose this appeal.

According to him, though there are here and there small contradictions, since they are not material contradictions between the evidences of P.W.1, P.W.2 and P.W.7, they cannot form the basis for acquittal of the accused.

So far as the contradiction between the medical evidence and the eye witness account is concerned, the learned Additional Public Prosecutor would submit that P.W.1 has categorically stated that one single cut was made by the accused.

In respect of M.O.1, the learned Additional Public Prosecutor would submit that of-couRs. there is contradiction in respect of the same and the so-called contradiction pointed out by the learned senior counsel is immaterial.

Thus, according to him, the prosecution has proved the case against the appellant, beyond reasonable doubts and therefore the conviction and sentence imposed on him is liable to be confirmed.

15. We have considered the above submissions.

16. As we have already pointed out, P.W.3 to P.W.6 have turned hostile, though examined as eye witnesses and they have not stated anything in favour of the prosecution.

The prosecution is only left with P.W.1, P.W.2 and P.W.7.

So far as, P.W.7 is concerned, this witness was examined by P.W.18 only on 10.03.2009, whereas the occurrence was on 01.03.2009.

Thus, this witness did not disclose anything about the occurrence for nine days to anybody, including the police.

Absolutely, there is no explanation as to why this witness did not disclose the occurrence to anybody else.

In the absence of such explanation, we find it difficult to believe her very presence.

Therefore, the evidence of P.W.7 is only liable to be rejected as we have got every reason to believe that P.W.7 has been planted as witness only to strengthen the case of the prosecution as P.W.7 is a close relative to the deceased.

17. Now, turning to the evidences of P.W.1 and P.W.2, we find that there are lot of contradictions.

P.W.1 during chief examination has stated that she along with the deceased and other witnesses, were standing just in front of her house.

The deceased after telling P.W.1 that he was going to his mother's house at Street No.3, he moved away to a short distance.

It is, at that time, according to her, the accused emerged and cut him.

But, the evidence of P.W.2 is quite contrary.

According to her, the deceased did not move and he was all along only with P.W.1 and P.W.2 speaking to them.

It was only at that time, the accused came and attacked.

But, during cross- examination, this witness has stated that she did not witness the fight between the accused and the deceased.

She has further stated that on hearing the alarm raised only, she along with P.W.1 rushed to the place of occurrence.

He has further admitted that at that time, when they reached the place of occurrence, P.W.1 and P.W.2 found the deceased lying with an injury.

This part of the evidence would clearly go to show that neither P.W.1 nor P.W.2 would have seen the occurrence.

Now, P.W.2 has further stated that at that time, she found the accused moving away from the place of occurrence.

This is only an improvement, as according to her original version, she witnessed the entire occurrence.

Similarly, P.W.1, during cross-examination, has stated that she rushed to the place of occurrence only on hearing the alarm raised by the deceased.

She has also stated that when she reached the place of occurrence, she found the deceased lying with an injury.

She has further stated that at that time, she found the accused at a distance of 30 feet, running away from the place of occurrence.

Thus, during cross- examination, P.W.1 has also given a go-by to her chief-examination.

Thus, during cross-examination, P.W.1 and P.W.2 have categorically admitted that when they went to the place of occurrence, they found only the deceased lying on the ground.

Thus, it is crystal clear that P.W.1 and P.W.2 would not have seen the occurrence at all.

The fact that the accused had fled away from the scene of occurrence, as spoken to by P.W.1 and P.W.2 cannot be given any weightage at all, because, it is only an improvement made by them.

18.Next comes, the medical evidence.

According to the charge framed, in this case, it is as though, the deceased was cut repeatedly by the appellant.

But, the Doctor has stated that there was only one injury on the dead body.

This contradiction has not been explained away by the prosecution.

The Doctor has further stated that the said single injury would not have been caused, when the deceased was standing.

He has further stated that this injury would have been caused on the deceased, while he was lying.

This evidence of the Doctor has also not been explained away by the prosecution.

Above all, the weapon allegedly used by the appellant is doubtful.

P.W.1 during cross-examination has stated that there is a vast difference between vettaruval and a kozhival aruval.

She has stated that the deceased was cut only with a vettaruval and not with kozhival aruval.

P.W.12, Village Administrative Officer, has stated that what was recovered at the instance of the fiRs.accused was only a vettaruval and not kozhival aruval.

But, M.O.1 is a kozhival aruval.

It is not known as to whether the vettaruval, which was recovered at the instance of the fiRs.accused, is in the shape of kozhival aruval.

In the mahazer and in Form 95, there are corrections made by P.W.18.

Originally, it was written as aruval.

Now, it has been written as kozhival aruval.

P.W.12, Village Administrative Officer, has stated that what was recovered at the instance of the fiRs.accused was only an aruval and what was mentioned in the mahazer was only an aruval and not kozhival aruval.

He has stated that this correction in the mahazer was not made in his presence.

This also creates a doubt in the case of the prosecution.

19.Next comes the FiRs.Information Report.

According to the senior counsel, the FiRs.Information Report is doubtful.

P.W.1 has admitted during cross-examination that within half-an-hour after the occurrence, on receiving phone information, the Police arrived at the spot and the body was immediately removed.

She has further stated that until the police arrived, she was present only at the place of occurrence.

If that be so, the case of the prosecution that P.W.1 went to the Police Station and made a complaint to P.W.15 cannot be true.

There must have been some other information to P.W.15 and on that basis, the police would have arrived at the spot within half-an- hour after the occurrence and that information has been suppressed.

Thus, the FiRs.Information Report is a doubtful document in the case.

20.As we have already pointed out, there are lot of inconsistencies, improbabilities in the evidence let in by the prosecution and consequently there are lot of doubts in the case of the prosecution.

The said doubts have not been clarified by the prosecution.

Therefore, we are bound to give the benefit of these doubts to the appellant and thus the appellant is entitled for acquittal.

21.In the result, the Criminal Appeal is allowed; the conviction and sentence imposed on the appellant by the learned Additional Sessions Judge, Fast Track Court No.I, Tuticorin, made in S.C.No.243 of 2009, dated 21.09.2010 is set aside and the appellant/fiRs.accused is acquitted.

The fine amount, if any, paid by him, shall be refunded to him.

To 1.The Additional Sessions Judge, Fast Track Court No.I, Tuticorin.

2.The Inspector of Police, Arumuganeri Police Station, Tuticorin District.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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