

1.Marimuthu Vs. State Rep. by The

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Court : Chennai

Decided On : Aug-26-2015

Judge : S.Nagamuthu

Appellant : 1.Marimuthu

Respondent : State Rep. by The

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

26. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU and THE HONOURABLE MR. JUSTICE V.S.RAVI CrI.A(MD)No.78 of 2013 1.Marimuthu 2.Mahalingam .. Appellants/ Accused Nos.1 & 2 Vs. State rep. by the the Inspector of Police, SIPCOT Police Station, Sivagangai District. (Crime No.170/2000) .. Respondent/ Complainant PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence, dated 31.10.2012, made in S.C.No.36 of 2002, by the learned Sessions Judge, Sivagangai. For appellants : Mr.S.Duraisamy For respondent : Mr.C.Ramesh, Additional Public Prosecutor :

JUDGMENT

(Judgment of the Court was made by S.NAGAMUTHU, J.) The appellants are the accused 1 & 2 in S.C.No.36 of 2002 on the file of the learned Sessions Judge, Sivagangai. The first accused stood charged for the offences under Sections 449

and 302 IPC and the second accused stood charged for the offences under Sections 449, 342, 426 and 302 r/w 34 IPC. By judgment dated 26.12.2002, the trial Court acquitted both the accused. Challenging the same, the father of the deceased viz., PW4 in this case filed a revision before this Court in Crl.R.C.No.356 of 2003. By order dated 08.09.2004, a learned single Judge of this Court set aside the judgment of acquittal recorded by the trial Court and remanded the case to the trial Court for fresh disposal in accordance with law. While remanding the matter, this Court gave liberty both to the petitioner as well as to the accused to let in additional evidence, if any or to recall any witness, if need be for the purpose of further examination. Neither the prosecution nor the accused let in any further evidence or did they recall any witness for further examination. Having considered the very same materials available on record, the learned Sessions Judge, Sivagangai, by judgment dated 31.10.2012, convicted and sentenced the accused as follows; Accused Convictions U/s. Sentences A1 & A2 U/s.449 IPC Rigorous Imprisonment for 10 years and to pay a fine of Rs.1000/- each, in default to undergo simple imprisonment for six months. A1 U/s.302 IPC Imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one year A2 U/s.342 IPC Rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for three months. A2 U/s.426 IPC Rigorous imprisonment for three months and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for three months. A2 U/s.304 r/w 34 IPC Imprisonment for life and to pay a fine of Rs.5000/-, in default to undergo the simple imprisonment for one year. Challenging the said conviction and sentence, the appellants/accused are 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.Palanivel. PW4 - Mr.Subbiah is the father of the deceased. There was a long standing civil dispute in respect of a landed property between PW4 - Mr.Subbiah and the accused. The accused are brothers. It is also on record that there was a civil suit pending between the parties. In the above said disputed property, there were three tamarind trees. PW4 claimed that the said tamarind trees belonged to him. The accused quarrelled with him claiming that the trees belonged to them. There was a panchayat in respect of the same in the village. But, the matter could not be settled. Therefore, PW4 gave a complaint to the Police, on an earlier

occasion, against the accused. Even there also, the matter could not be settled, though an enquiry was held between the parties at the Police Station. While so, in the month of October 2000, the accused had cleaned the said disputed property. On 13.10.2000, PW4 had sowed maize on the same. This was not to the liking of the accused. This is stated to be the motive for the alleged occurrence. (b) On the next day, i.e., on 14.10.2000, between 2.00 to 2.30 p.m. the deceased was sitting on the pial of the house of PW1. PW1, who is the paternal uncle of the deceased, enquired him as to why he was sitting on the pial?.. The deceased told him that since his house had been locked by his mother and she had gone out, he was sitting on the pial. After enquiring the deceased, when PW1 was moving towards his house, which was by the side of the house of the deceased, suddenly, these two accused emerged at the place of occurrence, each armed with one aruval and the first accused shouted at the deceased as to how they could sow maze on the disputed property, when the accused were not available in the village and that he would not allow the deceased to live. So saying, the first accused cut the deceased indiscriminately. The second accused did not cause any injury on the deceased. But, he was holding aruval in his hands. The deceased fell down in a pool of blood and succumbed to the injuries. Both the accused fled away from the scene of occurrence. The occurrence was witnessed by PW2 and PW3. They noticed the deceased dead. (c) Thereafter, PW3 went to the house of PW5, the Village Panchayat President seeking help. But, unfortunately, PW5 was not at home. PW3 was informed that PW5 had gone to Sivgangai, which is at a distance of 7 k.m. from the place of occurrence. PW3, therefore, rushed to Sivagangai, informed PW5 about the incident and returned to the place of occurrence. PW5 reached the place of occurrence at 3.30 p.m. He enquired PW1 about the occurrence and as narrated by PW1, he drafted a complaint under Ex.P1. Then, PWs.1 & 3 proceeded to the SIPCOT Police Station at 4.30 p.m. and PW1 presented Ex.P1 complaint. (d) PW11, the then Sub Inspector of Police attached to Manamadurai SIPCOT Police Station registered a case in Crime No.170 of 2000 under Sections 341, 302 and 427 IPC on the basis of Ex.P1. Ex.P17 is the FIR. Then, he forwarded Ex.P1 and P17 to the Court through a constable. The FIR had reached the hands of the learned Judicial Magistrate at 6.00 p.m. (e) PW12 took up the case for investigation on 14.10.2000 at 6.30 p.m., proceeded to the

place of occurrence and prepared an observation mahazar and a rough sketch in the presence of PW5 and another witness. He recovered bloodstained earth and sample earth and the broken tiles from the place of occurrence under Ex.P6 mahazar in the presence of the same witnesses. Then, he conducted inquest on the body of the deceased at 7.30 p.m. Ex.P19 is the inquest report. During inquest, he enquired PWs.1 to 5 and recorded their statements. Then, he forwarded the body to the Government Hospital for postmortem. PW8 - Dr.Geetha conducted autopsy on the body of the deceased on 15.10.2000 at 9.00 a.m. She found the following injuries: 1.A cut injury of size 10 cm x 3 cm x 3 cm over the middle of the left ear. Extending from the left TM joint medially and laterally upto the middle of the left occipital region of the scalp. Left ear lobule is torn off in the middle by 3 cm x 2 cm. 2.A cut injury 15 cm x 3 cm x 5 cm just (torn) injury No.1 wound extending from the (Nc) line of the temporal region along the occipital region extends upto the nuchal line laterally. 3.A cut injury of size 8 x 6 cm over the right elbow joint, extending from the jaw upto the lateral aspect of right forearm middle. The forearm bones exposed. 4.A cut injury of size 8 cm x 3 cm x 3 cm over the posterior aspect of the right forearm. 5.A cut injury over the middle of the right palm. 4 fingers amputated of MLP joint. Thumb present. Amputated fingers with the palm lie by the side of the body. 6.A cut injury 6 cm x 3 cm x 2 cm over the left wrist joint. 7.A cut injury 8 cm x 4 cm x 2 cm over the centre of the left palm extending from the bone of the left little finger upto the base of left index finger bone and tendons exposed. 8.A cut injury measuring 15 cm x 6 cm x 4 cm over the tip of the left shoulder joint extending medially upto the left clavicle middle and laterally upto the tip of the left shoulder joint. Left shoulder joint exposed. Ex.P12 is the postmortem certificate. He gave opinion that the deceased would appear to have died of shock and haemorrhage due to the multiple injuries. (f) Continuing the investigation, PW12 collected the dress materials found on the dead body under a mahazar. During the course of investigation, PW12 came to know that both the accused had surrendered before a Court in connection with this case. On a petition made by him, the learned Judicial Magistrate handed over the custody of both the accused to him on 19.10.2000 at 12.45 p.m. While they were in the Police Station, the first accused gave a voluntary confession in the presence of PW6 and another witness. In the said confession, he disclosed the place where

he had hidden the aruval. At 1.30 p.m. the second accused gave a voluntary confession in the presence of the same witnesses, in which he disclosed the place where he had hidden yet another aruval. In pursuance of the same, the first accused produced MO.4 - aruval from the hide out in the presence of PW6 and another witness. PW12 recovered the same under Ex.P8 - mahazar. Then, at 3.30 p.m, the second accused produced MO.5 aruval from his house. PW12 recovered the same in the presence of PW6 and another witness under mahazar ?. Ex.P10.

(g) On returning to the Police Station, PW12 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 Judicial Magistrate to forward the material objects for chemical examination. The chemical analysis report reveals that there was human blood on the dress materials of the deceased, but there was no human blood found on both the aruvals (MOs.4 & 5). PW12 collected the medical records, examined the doctor and many other witnesses and finally, laid charge sheet against the accused. (h) Based on the above materials, the trial Court framed charges against the accused. The accused denied the same. In order to prove the charges, on the side of the prosecution, as many as 12 witnesses were examined and 19 documents and 10 material objects were marked. (i) Out of the said witnesses, PWs.1 to 3 have been examined as eyewitness to the occurrence. But, PW2 has turned hostile and he has not supported the case of the prosecution in any manner. PWs.1 & 3 have vividly spoken about the entire occurrence. PW4 is the father of the deceased. He has spoken about the motive and the other facts. PW5 is the local Panchayat Board President. He has stated that while he was in Sivagangai, PW3 gave an information to him that the deceased had been done to death by these accused and immediately, he rushed to the place of occurrence and drafted a complaint, as spoken to by PW1 and thereafter, PWs.1 & 3 took the same to the Police Station. PW6 - the then Village Administrative Officer has spoken about the confession given by the accused 1 & 2 at the Police Station, disclosure statement made by them and the consequential recoveries of MOs.4 & 5 - aruvals. PW7 is the photographer, who took photograph of the deceased at the place of occurrence. PW8 ?. Dr.Geetha has spoken about the postmortem conducted and her final opinion regarding the cause of the death of the deceased. PW9 is a Police Constable, who has spoken about the fact that he carried the

dead body from the place of occurrence to the hospital for postmortem. PW10 is the Head Clerk of the Judicial Magistrate Court, who forwarded the material objects for chemical examination on the orders of the learned Magistrate. PW11 - the Sub Inspector of Police has spoken about the registration of the case. PW12 has spoken about the investigation done. (j) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. On their side, they did not choose to examine any witness, but they marked two documents viz., Exs.D1 and D2. Ex.D1 is the FIR in Crime No.132 of 1997 on the file of the SIPCOT Police Station, Manamadurai. Ex.D2 is the General Diary for the period from 01.10.2000 to 04.12.2000 of the SIPCOT Police Station, Manamadurai. The defence of the accused was a total denial. (k) Having considered all the above materials, the trial Court, originally, by judgment dated 26.02.2002 acquitted both the accused. As we have already pointed out, PW4 - the father of the deceased filed a revision in Criminal Revision Case No.356 of 2003 before this Court, challenging the said judgment. By order dated 08.09.2004, a learned Single Judge of this Court set aside the judgment of the trial Court and remanded the case back to the trial Court. Now, on appreciating the entire evidence, the trial Court has convicted and sentenced the accused, as detailed in the first paragraph of this judgement. It needs to be noted that no further evidence whatsoever was let in by either side. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

3. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully. 4. The learned counsel appearing for the appellants would submit that PW1 & PW3 are closely related to the deceased and also highly inimical towards the accused and therefore, their evidences should be rejected. He would further submit that PWs.1 & 2 would not have been present at the time of occurrence. This fact is established, according to the learned counsel, by a number of contradictions between the evidences of PWs.1 & 3. He would further submit that the conduct of PWs.1 & 3 also would go to show that they would not have been present at the time of occurrence. He would point out that though PWs.1 & 3 are closely related to the deceased, they did not make any attempt to go to the rescue of the deceased. In this regard, the learned counsel would rely on

a judgment of the Hon'ble Supreme Court in Abdul Razak and others Vs. State of Karnataka, reported in (2015) 3 MLJ (Cri.) 32 (SC). Referring to the said judgment, the learned counsel would submit that the very conduct of PWs.1 and 3, who have stated that they did not go to the rescue of the deceased, would go to show that they would not have been present, as the said conduct is highly unnatural. The learned counsel would further submit that neither PW1 nor PW3 did choose to go to the Police Station, immediately, after the occurrence. Instead, according to the positive case of the prosecution, PW3 had gone to the house of the President of the village (PW5) and then, they went to Sivagangai, from where PW5 was brought and thereafter, the complaint was drafted. This would go to show, according to the learned counsel, that the complaint was drafted out of deliberation. 5. The learned counsel for the appellants would next submit that PW4 has stated that he went to the Police Station at 7.00 p.m., whereas, according to Ex.D2, the Inspector of Police had left the Police Station at 5.30 p.m. itself to reach the place of occurrence. Therefore, the evidence of PW3 that he had gone to the Police Station at 3.45 p.m. cannot be true. Similarly, PW1, during cross examination, stated that he remained in the Police Station at 7.00 p.m. and the body was brought to the Police Station at 9.00 p.m. This would also go to falsify the case of the prosecution, the learned counsel submitted. He would further submit that the investigating officer was available at the place of occurrence at 6.00 p.m. itself. Therefore, it is quite possible that Ex.P1 would have come into being after due deliberation. He would next contend that PW1 has stated that as soon as the first blow was caused on the deceased, he fell down, whereas, according to PW3, the deceased was standing all through the attack and at last, only he fell down. This, according to the learned counsel, was a serious contradiction which would go to falsify the evidence of PWs.1 & 3. He would next submit that there was no independent witness examined at all, though the occurrence had taken place in the street, where there are number of houses. For these reasons, according to the learned counsel, the case of the prosecution should be rejected and the accused should be acquitted. 6. The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, there is no delay in the FIR. The FIR had reached the hands of the learned Magistrate at 6.00 p.m. Therefore, according to him, the post-conduct of the witnesses after 6.00

p.m. would not be material. He would further submit that so far as the presence of PWs.1 and 3 are concerned, it is quite natural, because the occurrence had taken place just in front of their houses. He would further submit that since PWs.1 & 3 were related to the deceased, on that score, their evidences cannot be outright rejected. The other contradictions pointed out by the learned counsel for the appellants, according to the learned Additional Public Prosecutor, are immaterial as they are only minor contradictions, which would not cause any dent in the case of the prosecution. The learned Additional Public Prosecutor would further submit that the medical evidence duly corroborates the eyewitness account. Thus, according to learned Additional Public Prosecutor, the prosecution has proved the case beyond reasonable doubts and therefore, the conviction and sentence imposed by the trial Court is liable to be confirmed.

7. We have considered the above submissions. Admittedly, PW1 is the paternal uncle of the deceased. The deceased was hardly 17 years old. There is a civil dispute pending between the parties in respect of a landed property. The prosecution has clearly established the motive between PW4 ? the father of the deceased and the accused. There is no denial of the said fact. Thus, the prosecution has clearly established the motive between the accused and the family of the deceased.

8. Now, turning to the occurrence, it happened at 2.30 p.m. It is true that PW1 is the paternal uncle of the deceased. PW3 appears to be a distant relative of the deceased. But, on that score, their evidences cannot be rejected. The prudence requires that their evidences require only close scrutiny. In other words, if the evidences of these witnesses passed in the test of close scrutiny, then, there is no impediment for this Court to act upon the evidences of PWs.1 & 3.

9. Now, turning to the FIR, according to PWs.1 and 3, after the occurrence, PW3 had gone to the house of PW5, who was the President of the local panchayat board. Admittedly, PWs.1 and 3 are illiterates. Therefore, quite naturally, they would have gone to the house of the President of the village seeking some help. Unfortunately, PW5 was not at home. PW5 was at Sivagangai. PW3 went to Sivagangai and told PW5 about the incident. PW5, immediately, rushed to the

place of occurrence. The information passed on to PW5 by PW3 was that the deceased was cut by the accused. PW5, on arriving at the place of occurrence, enquired the same from PW1 and as narrated by PW1, he drafted a complaint and handed over the same to PWs.1 and 3. From these evidences, we find only the natural conduct of PWs.1 and 3. We do not find anything unnatural as it is argued by the learned counsel for the appellants. As we have already pointed out, since PWs.1 and 3 are illiterates, they would have waited for the arrival of the village head and then, they would have got the complaint drafted with his assistance. This is cannot be stated to be a deliberation. Therefore, we hold that the FIR in this case is a true document.

10. Further, the FIR in this case was registered at 4.30 p.m. and the same reached the hands of the learned Magistrate at 6.00 p.m. itself. Therefore, absolutely, there is no delay in the FIR. The other contradictions, which the learned counsel pointed out that the dead body was brought to the Police Station and that PW4 was in the Police Station at 7.00 p.m., relate to the post-conduct of the witnesses, that too after 06.00 p.m. When at 6.00 p.m. itself the FIR had reached the hands of the learned Magistrate, whatever be the contradictions about the conduct of the prosecution witnesses after 6.00 p.m., they are all immaterial. Therefore, we are not prepared to give any weightage for these contradictions pointed out by the learned counsel. More particularly, the learned counsel would submit that PW1 told that after receiving the first blow, the deceased fell down, whereas, according to PW3, the deceased received all the blows and at- last only, he fell down. In our considered view, it is only a minor contradiction. At the spur of a moment, when one person was being attacked, one cannot expect the witnesses to closely watch as to what are all the attacks made and then, narrate the same meticulously with all minor details. If they have, meticulously, spoken about the every overtacts and every happenings, that would appear to be too artificial. In our considered view, the evidences of PWs.1 and 3 are quite natural and believable. The medical evidence also duly corroborates the eyewitnesses account. It is true that no independent witness has been examined on the side of the prosecution. In our considered view, though independent witness has not been examined, that has not caused any dent in the case of the prosecution. We are of the view that when the evidences of PWs.1 and 3 are cogent and convincing as against A1, we need

not look for any corroboration from any independent source to corroborate their evidences. As we have already pointed out, the medical evidences also duly corroborate the eyewitness account of PWs.1 and 3. 11. So far as the judgment in Abdul Razak case, referred to above, relied on by the learned counsel for the appellants is concerned, the same is factually distinguishable. In that case, the close relative, who claimed to have been present at the place of occurrence, did not go to take the injured to the hospital and instead, the injured was lying at the place of occurrence for about four hours without any reason. It was, under those circumstances, the Hon'ble Supreme Court has held that the conduct of the said witness, who claimed to be the eyewitness, cannot be believed. In the instant case, PWs.1 & 3 have categorically stated that the deceased died instantaneously and therefore, there was no occasion, thereafter, to rescue the deceased. When the first accused was attacking the deceased, in a merciless manner, with formidable weapon, PWs.1 & 3 claimed that they did not make any attempt to go near and to rescue the deceased. But, the conduct of PWs.1 & 3 in not going to the rescue of the deceased, at the time when the deceased was attacked, would not go to, in any manner, suggest, even remotely, that they would not have been present at the place of occurrence. 12. Now, turning to the individual overtacts of the accused, it was only the first accused, who caused all the injuries on the deceased and he died. According to PWs.1 and 3, the second accused did not cause any injury at all on the deceased. He was only standing at the place of occurrence, though he was having an aruval in his hands. This part of the evidence of PWs.1 and 3 about the participation of the second accused is doubtful. In our considered view, when the motive is common, if really, these two accused had gone there with an aim of killing the deceased, quite naturally, the second accused would have also caused some injuries on the deceased. The evidence of Pws.1 & 3 that the second accused had not caused any injury on the deceased and he was standing aloof, though he was having an aruval in his hands, would go to show that he did not participate in the occurrence. To that extent, we disbelieve the evidences of PWs.1 and 3. The motive is very strong and therefore, it appears that they have falsely roped in the second accused also in the case. Therefore, giving the benefit of doubt, we are inclined to acquit the second accused. 13. So far as the first accused is concerned, we have already pointed out,

the weapon used, the number of injuries caused and the situs of the injuries would all go to show that the first accused had intended to cause the death of the deceased and accordingly, he caused the death of the deceased. Thus, his act would squarely fall within the first limb of Section 300 IPC and his act does not fall under any one of the exceptions to Section 300 IPC. Therefore, he is liable to be punished under Section 302 IPC.

14. Now, turning to the quantum of punishment for the first accused, the trial Court has imposed only the minimum punishment and the same does not require any interference at the hands of this Court.

15. In the result, this Criminal Appeal is partly allowed in the following terms; (a) The conviction and sentence imposed on the first appellant/A1 by the learned Sessions Judge, Sivagangai, in S.C.No.36/2002 is confirmed. (b) The conviction and sentence imposed on the second appellant/A2 by the learned Sessions Judge, Sivagangai in S.C.No.36/2002, is set aside and the second appellant/A2 is acquitted. Fine amount, if any, paid shall be refunded to the second appellant/A2. It is reported that the second appellant/A2 is in prison. Therefore, he is directed to be released forthwith, unless his detention is required in connection with any other case. To 1. The Sessions Judge, Sivagangai. 2. The Inspector of Police, SIPCOT Police Station, Sivagangai District. 3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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