

In Re: Arumugham

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SooperKanoon Citation : sooperkanoon.com/774608

Court : Chennai

Decided On : Jan-31-1989

Reported in : 1990CriLJ1430

Judge : David Annoussamy and ;Janarthanam, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173 and 313; Indian Panel Code, 1860 - Sections 300 and 302

Appeal No. : Criminal Appeal No. 520 of 1984

Appellant : In Re: Arumugham

Advocate for Pet/Ap. : T.G. Jeyakumar, Adv.;N. Dinakar, Addl. Public Prosecutor

Judgement :

Janarthanam, J.

1. The accused aggrieved by the conviction and sentence has come forward with this appeal.

2. The brief facts are :-

(i) The accused is a resident of Amarapoondi Melakottai village which is 12 k.m. away from Chatrapatti Police Station, Marikannan (since deceased) was also a resident of the same village. He was a tender child of seven years old. His father

P.W. 1 is a gold smith. There is a soda factory in the village owned by P.W. 2. His father is P.W. 4. The soda factory is situated in the North-South Street P.Ws. 2 and 4 reside in a house situated on the west of the Street. The soda factory is also accommodated in some portion of the house. Opposite to the soda factory, there is the house of one Thirumalai Chettiar. There is a street lamp post situated 20 feet south of the house of P.W. 2. The deceased used to go and play with the children of P.W. 2.

(ii) On the day of occurrence, namely, 2-4-1983, the deceased had been to the house of P.W. 2 as usual and took his food there at 7 p.m. and returned home. While he was making a march towards north, the accused who was coming in the opposite direction caught hold of the legs of the deceased and thrashed him on the floor thrice in quick succession before any one could prevent such a dastardly occurrence. At that time, P.Ws. 2 and 3, the owner and worker of the soda factory respectively, were standing in front of the house of P.W. 2 conversing with each other. P.W. 4 was inside the house. Immediately after thrashing the deceased on the floor, the accused ran away from there. Attracted by the hues and cries, P.W. 4 also came out of the house and saw the deceased lying on the ground dead. He instructed his son P.W. 2 to inform the same to P.W. 1, the father of the deceased.

(iii) P.W. 1 came to the scene and saw his son lying dead in front of the house of Thirumalai Chettiar. He then went to Chatrapatti Police Station and gave Ex. P. 1 complaint to P.W. 8, the Sub-Inspector of Police at 9 p.m., who in turn registered the same in Crime No. 52 of 1983 under Section 302 I.P.C. Ex. P. 7 is the printed F.I.R. sent to Court. He prepared express report and sent the same to the concerned officials.

(iv) P.W. 9, the Inspector of Police, on receipt of the express F.I.R. at 10.40 p.m. took up further investigation in the case. He immediately reached the scene at 11.50 p.m. After inspecting the same, he prepared Ex. P. 2, observation mahazar, attested by P.W. 5. He drew a rough sketch of the scene Ex. P. 8. Between 1.15 and 3.30 a.m. on 3-4-1983 he held inquest over the body of the deceased. He examined during inquest P.Ws. 1 to 3 and others Ex. P. 9 is the inquest report. After the inquest, he sent the body of the deceased through the constable P.W. 6

with the requisition to the Government Hospital, Palani, for the purpose of autopsy. He searched for the accused and he was absconding.

(v) P.W. 10, the Doctor attached to the Government Hospital, Palani, conducted the autopsy over the body of the deceased at 12.30 p.m. on 3-4-1983. Ex. P. 10 is the post-mortem certificate. He would opine that all the injuries are possible due to forcible hit on a rough surface. He would further opine that external injury No. 3 corresponding to internal injury Nos. 1 and 2 is necessarily fatal. After autopsy, P.W. 6 seized from the body M.O. 1 shirt and M.O. 2 trouser and handed them at the police station.

(vi) On 4-4-1983, P.W. 9 arrested the accused at 11.30 a.m. near the bus stand at Amarapoondi. He then sent him to court for remand. On 6-4-1983 he sent Ex. P. 3 requisition to the Judicial Second Class Magistrate, Palani for dispatching the incriminating articles to the Chemical Examiner for the purpose of analysis.

(vii) P.W. 7, the Headclerk attached to the Judicial Second Class Magistrate, Palani sent the incriminating articles to the Chemical Examiner as per the directions of the Magistrate under the original of Ex. P. 4 Exs. P. 5 and P. 6 are the reports of Chemical Examiner and Serologist respectively.

(viii) After completing the formalities of investigation, P.W. 9 laid a report before the Judicial Second Class Magistrate, Palani on 21-5-1983 under Section 173 Cr.P.C. for the offence under Section 302 I.P.C. appeared to have been committed by the accused.

3. Upon committal, the learned Sessions Judge at Madurai North at Dindigul, framed a charge under Section 302 I.P.C. against the accused.

4. The accused when questioned as respects the charge framed against him denied the same, and claimed to be tried.

5. The prosecution in proof of the charge against the accused examined P.Ws. 1 to 10, marked Exs. P. 1 to P. 10 and produced M.Os. 1 and 2.

6. The accused when questioned under Section 313 Cr.P.C. with respect to the incriminating circumstances appearing in evidence against him denied his complicity in the crime. He did not choose to examine any witness on his side.

7. The learned Sessions Judge on perusal of the evidence placed before him and after hearing the arguments of the learned counsel for the accused and the learned Public Prosecutor, found the accused guilty under Section 302 I.P.C., convicted him thereunder and sentenced him to imprisonment for life, giving rise to this appeal.

8. The point that arises for consideration is as to whether the prosecution has brought home the guilt of the accused beyond any shadow of doubt.

9. The simple occurrence of the deceased, a child of seven years old, being done to death by the accused by catching hold of his legs and dashing him against the ground three times in quick succession is spoken to by the ocular witnesses P.Ws. 2 and 3. They would depose that about 7 p.m. the deceased after taking food went to his house by walking along the street towards north. At that time, they were standing in front of the house of P.W. 2 conversing with each other. The accused who came in the opposite direction, suddenly caught hold of the legs of the deceased and thrashed him on the floor thrice. Their evidence would further reveal that before they attempted to prevent the deceased being done to death by the accused, the act of dashing on the floor had been performed in the quickest fashion possible by the accused, who ran away thereafter from there. P.Ws. 2 and 3 are independent witnesses, not having any sort of animosity or ill-will towards the accused. It is also not shown that they are having any sort of interestedness in the cause and welfare of the deceased. As such, they could not have implicated the accused in the heinous crime, leaving the real assailant, but for the incident having happened in the manner deposed to by them. Of course a suggestion has been thrown to these witnesses that the accused at that time was unsound in mind in the sense of himself not knowing the consequences of his action. The suggestion had been categorically denied by them P.W. 1 would further state that the accused was leading a normal married life, leave alone the suggestion which had been denied. The other materials on record also point out that the accused

was a sound man at the time of occurrence knowing the consequences of what he was doing. The moment he thrashed the deceased on the floor, he ran away from the scene fearing his apprehension by P.Ws. 2 and 3 there. If the accused was really of unsound in mind, he could not have run away from the scene immediately after the performance of the feat of thrashing the deceased on the floor. This points out that he was quite conscious of his action and the perilous consequences he had to face at the hands of the persons present there at the scene, namely P.Ws. 2 and 3. This apart, the accused had also given sensible and rational answers to the questions put during the course of his Section 313 Cr.P.C. statement. From this we are able to gather that the accused was not only sound at the time when the occurrence had happened, but it was also proved that he continued to be a sound man. As such, the suggestion put by the defence merits little substance.

10. The occurrence happened at about 7.15 p.m. It is possible to raise an argument that the occurrence having happened during night hours, it could not have been possible for P.Ws. 2 and 3 to have witnessed the occurrence, unless there is some sort of visible factor in the scene. The evidence of P.Ws. 2 and 3 clearly brings out that there was an electric lamp post situate 20 feet south of the house of P.W. 2 very close to the place where the occurrence had happened. As such, there could not be any unsurmountable obstacle for the ocular witnesses P.Ws. 2 and 3 not having the facility of visible factor to have the glimpse of the occurrence at the time when the accused caught hold of the legs of the deceased and dashed him against the floor. This apart, the accused is a person known very well to P.Ws. 2 and 3. Even at the pitch of darkness there could not have been any difficulty for P.Ws. 2 and 3 for correctly identifying the assailant as the accused.

11. The occurrence having happened at 7.15 p.m. had been reported without the least possible delay before P.W. 8 i.e., within one hour and forty five minutes from the time of occurrence. Ex. P. 1 also contains all relevant details as spoken to by P.Ws. 2 and 3. There was no time left for painting an embellished or coloured version in the earliest information Ex. P. 1. As such, Ex. P. 1 also lends assurance to the testimony of P.Ws. 2 and 3.

12. Top of all, the medical evidence available on record in the shape of the testimony of P.W. 10 coupled with post-mortem certificate Ex. P 10 corroborates in ample measure the testimony of P.Ws. 2 and 3. The doctor would state that all the injuries he found on the person of the deceased could have been caused in the manner spoken to by the ocular witnesses, thereby lending credibility and face-lift to the version projected in court. Thus, it is crystal clear that it was the hand of the accused that was responsible for causing the death of the deceased on the fateful day in question.

13. The next question that crops up for consideration is as to what is the offence that has been committed by the accused.

14. From the act of the accused in catching hold of the legs of the deceased and dashing him against the ground thrice as adverted to earlier, we can very well infer that though he might not be having the requisite intention of causing the death of the deceased, yet it cannot be stated that his act was not one, not done without any knowledge of the consequences of his actions in the sense of himself having the knowledge of doing away with the deceased. The act of the accused in such circumstances was imminently dangerous and the act had been performed by the accused with full knowledge of the consequences of his action without any excuse for the same. The evidence of the doctor P.W. 10 also points out that external injury No. 3 corresponding to internal injury Nos. 1 and 2 is necessarily fatal. In such circumstances, we are of the view that the act of the accused will squarely fall within clause (iv) of Section 300 I.P.C.

15. Therefore, the conviction and sentence of the accused by the court below are sustainable in law.

16. In the result, the appeal fails and the same is dismissed. The conviction and sentence are confirmed.

17. Appeal dismissed.