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Court : Chennai

Decided On : Nov-09-1992

Reported in : 1994CriLJ1272

Judge : Janarthanam and;Thangamani, JJ.

Appeal No. : Criminal Appeal No. 365 of 1986

Appellant : Gomu

Respondent : State

Advocate for Def. : S. Shanmughavelayuthan, Addl. Public Prosecutor

Advocate for Pet/Ap. : M. Ravindran, Adv.

Judgement :

Thangamani, J.

1. The appeal against he conviction and sentence of imprisonment for life under S. 302, I.P.C. passed by the learned Sessions Judge, Tirunelveli in S.C. No. 49 of 1985 on his file.

2. The case of the prosecution is that on 7-8-1984 at about 9 a.m. in front of the shop of P.W. 2 Gomathi Devar in Veerasigamani village the appellant Gomu caused the death of the Ganesan by stabbing him with a knife.

3. The prosecution examined 14 witnesses filed 18 Exhibits and Marked 9 Material Objects. Of the witness examined P.W. 1 Murugaiya and P.W. 3 Kailsamoopanar turned hostile. The evidence disclosed those facts :- Deceased Ganesan is the maternal uncle of the appellant Gomu. They are residents of Veerasingamani village. P.W. 7 Avudaiammal is the wife of deceased Ganesan. Her mother in law wanted to gift away their house to her daughter who is the mother of the appellant Gomu. Ganesan was demanding his mother to give one third share to him in this house. On account of this Gomu used to quarrel frequently with Ganesan. Two days prior to the occurrence Gomu and their parents objected to Ganesan and P.W. 7 Avudaiammal living near the house of Ganesan's mother.

4. On 7-8-1984 at about 9 a.m. Ganesan took coffee in the tea shop of P.W. 2 Gomathi Devan near Veerasigamani Bus Stand came out and stood there. At the time the appellant - Gomu, came there and saying that Ganesan was always causing hindrance to his family and he could be done away with stabbed on the stomach of Ganesan with a knife and ran towards east. Ganesan fell down. P.W. 1 Murugaiya who was coming to the Bus Stand saw blood oozing from the wound of Genesan. He immediately took his towel and placed the same on the wound and prevented blood coming out. P.W. 4 Murugesan was driving his taxi along that way. P.W. 2 Gomathi Devar and others sent Ganesan and P.W. 1 Murugaiya in that car. On reaching the Police Station P.W. 9 Grade I constable came to the car and recorded Ex. P. 1 complaint given by Ganesan. He also obtained L.T.I. of Ganesan in that complaint. Ganesan also produced M.O. 1 blood stained towel. Ganesan was in a position to talk well at that time. P.W. 9 Grade I Constable registered a case in his Station Crime No. 66 of 1984 under S. 307, I.P.C. He prepared Ex. P. 11 F.I.R. and sent the records to the Judicial Second Class Magistrate Court and the concerned authorities. P.W. 13 constable was was entrusted with Exs. P. 1 and P. 11 at 10.15 a.m. handed over the same to Judicial Second Class Magistrate at 5.50 p.m. on that day. Then P.W. 9 Grade I Constable sent Ganesan to Government Hospital Sankaran Koil with Ex. P. 2 requisition through P.W. 12 constable.

5. At 10.50 a.m. P.W. 5 Doctor examined Ganesan at Government Hospital Sankaran-Koil and found that he was dead. So he sent Ex. P. 3 death intimation to

Police. On receipt of the same P.W. 10 Head Constable altered the crime to one under S. 302, I.P.C. and prepared Ex. P. 12 express F.I.R. He sent Ex. P. 12 to Judicial Second Class Magistrate Court. On receipt of the message P.W. 14 Inspector took up investigation of the case. He proceeded to Veerasigamani village visited the scene place and at 11.45 a.m. prepared Ex. P. 6 observation mahazar and Ex. P. 18 rough sketch. He recovered M.O. 2 blood stained earth from the scene place under Ex. P. 7 mahazar. P.W. 8 Thalaiyari who was present then attested Ex. P. 6 and Ex. P. 7 mahazars. P.W. 10 constable came to the scene place and handed over Ex. P. 12 express report to P.W. 14 Inspector. There upon the Inspector went to Government Hospital Sankaran Koil from 1.30 p.m. to 4.00 p.m., he held inquest over the dead body of Ganesan. Ex. P. 8 is the inquest report. At the time of inquest he examined P.Ws. 1, 2 and 7. Then he handed over the dead body to P.W. 12 constable with Ex. P. 4 requisition for post-mortem. On the same day Inspector Examined P.Ws. 3, 4, 5, 6, 8, 9 and 12.

6. On the same day at 4.30 p.m. P.W. 6 Doctor commenced the post-mortem in Government Hospital, Sankarankoil. Rigor Mortis was present in all the four limbs. The doctor found a stab incised injury of 1-1/2' x 1' x depth up to abdominal cavity present 1/2' to the left of umblicus. The injury is obliquely present from outwards to in wards. One foot of small intenstine came out through the injury. The intestine is pinkish in colour. The muscles and peritoneum under the injury are pierced. Mesentry of the small instestine is pierced correspondingly. The superior mesentric artery is divided at its centre, 1-1/2 litres of blood present in the abdominal cavity. Heart chambers empty. Stomach is 8 1/2 ozs. and 1-1/2 ozs. of coffee coloured fluid present. Rectum and urinary, bladder are empty. Other organs are pale. Post-mortem concluded at 5.35 p.m. on 7-8-1984. Cause of death; is shock and haemorrhage due to injury sustained on the abdomen. Ex. P. 5 is the post-mortem certificate issued by the Doctor. In his opinion death would have occurred 3 to 12 hours prior to the post-mortem. He further states that he had wrongly written in Ex. P. 5 post-mortem certificate that death would have occurred 12 to 24 hours prior to post-mortem. The external injury and the corresponding internal injury are necessarily fatal. After the post-mortem P.W. 12 constable removed M.O. 5 blood stained Saram, M.O. 6 blood stained Underwear, M.O. 7 blood stained towel, M.O. 8 Banian and M.O. 9 Waist cord from the dead

body and handed over the same in the Police Station.

7. On 18-8-1984 at 10.45 a.m. P.W. 14 Inspector arrested the appellant near Kalladi Anmen Temple. He gave a confession statement the admissible portion of it is Ex. P. 9. Pursuant to the same he took him and P.W. 9 Thalaiyari to the dilapidated well in the village produced M.O. 3 knife with M.O. 4 cover. The Inspector seized the same under Ex. P. 10 mahazar. P.W. 8 Thalaiyari attested this mahazar as well as Ex. P. 9.

8. On 19-8-1984 P.W. 14 Inspector sent Ex. P. 13 requisition to Judicial Second Class Magistrate Court to send the blood stained article for chemical examination P.W. 11 Head Clerk of the Judicial Second Class Magistrate Court arranged to send them for chemical examination under the original of Ex. P. 14 covering letter. Exs. P. 15 and P. 16 of the reports of the chemical Examiner and Serologist. On completion of investigation P.W. 14 Inspector laid charge-sheet against the appellant under S. 302, I.P.C. on 29-9-1984.

8A. When the appellant was examined under S. 313, Criminal Procedure Code he denied the allegations against him. After the trial the learned Sessions Judge found the appellant guilty convicted and sentenced him as indicated earlier.

9. Thiru M. Ravindran and learned counsel for the appellant submitted that the deceased Ganesan, was not in a position to give such a lengthy statement as that in Ex. P. 1 and in view of the medical evidence it is highly doubtful whether the deceased is the author of this complaint. This complaint is purported to have been given at 9.30 a.m. on 7-8-1984 by Ganesan in the Police Station. This constitutes a dying declaration also. P.W. 1 Murugaiya an attestor to this complainant has turned hostile. On a careful scrutiny of this complaint we are unable to accept the claim of the learned Defence counsel that the origin of Ex. P. 1 is doubtful. No doubt, in this complaint Ganesh narrates that his sister Madathi who is the mother of the appellant was giving him trouble and insisting that he should not reside in the house of his parents. He then states in this complaint that on 7-8-1984 at 9 a.m. while he was standing in front of the tea shop of P.W. 2 Gomathi Devar the appellant Gomu came there with a knife and stabbed in his stomach saying that Ganesan was always causing trouble to his family. This narration is not as lengthy

as the learned counsel for the defence alleges. It is natural and convincing.

10. The learned counsel for the appellant next argued that there has been undue delay in this complaint reaching the Court and hence it should not be given any weight. This has been recorded at 9.30 a.m. by P.W. 9 Grade I Constable. Ex. P. 11 the printed F.I.R. and this complaint were entrusted with P.W. 13 constable at 10.15 a.m. The Police Station in Senthamaram is 3 Kms. away from the bus stand of Veerasingamani which is the place of occurrence. And it is the evidence of P.W. 13 constable that he handed over the copy of F.I.R. to the Inspector. The Inspector directed him to deliver the same to the Deputy Superintendent of Police. So he went to Ambasamuthiram and furnished the copy of Ex. P. 11 to Deputy Superintendent of Police at 2 p.m. He boarded the bus at 2.30 at Ambasamuthiram and and reached Sankaran Koil. Since Judicial Second Class Magistrate was not available in the Court he went to his house and handed over the complaint at 5.50 p.m. No doubt in Ex. P. 7 pass port of the constable there is no endorsement that the copies of the F.I.R. issued to the Inspector of Alankulam and Deputy Superintendent of Police Ambasamuthiram were handed over to him and on the reverse of Ex. P. 11 there is correction in the time of handing over of the copy of Ex. P. 11 to Deputy Superintendent of Police. However, considering the facts that the complaint of Ex. P. 1 was originally registered only under S. 307, I.P.C. and that Sankaran Koil is at a distance of 1.15 hours bus journey from Senthamaram Police Station, we do not think that there has been any undue delay in the complaint reaching the Court.

11. The recital in Ex. P. 1 is to the effect that the deceased was brought to the Police Station in a car. This version gets support from the evidence of P.W. 4 Taxi Driver who speaks about his taking the injured to the Police Station and from there to the Police Station and there to the Hospital. He is an independent witness and nothing has been elicited in the cross-examination to improbablise his version. The mere fact that his trip sheet has not been produced does not by itself make his evidence unreliable. Further, P.W. 9 Grade I Constable also mentions in his evidence about bringing the deceased in the car to the Police Station. This also corroborates the narration in Ex. P. 1 complaint.

12. P.W. 2 Gomathi Devar is stated to be an eye-witness to the occurrence. Though he swears in his Chief Examination that at 9.00 a.m. on 7-8-84 while deceased was standing in front of his tea shop Ganesan came there and stabbed on his stomach, in his cross-examination he admits that as he was inside the tea shop and looking after his business he did not witness the occurrence directly. So the evidence of this witness is of not much help to the prosecution. However, it is helpful to the limited extent of holding that the deceased was sent in a car to hospital from the place in front of his tea shop.

13. Though the entire prosecution version is based on Ex. P. 1 dying declaration, we find corroboration of the centents of the same from the evidence of P.W. 4 Taxi Driver as well as medical evidence. P.W. 6 Doctor has found a stab incised injury in the abdomen cavity. He is of opinion that the deceased would have been in a position to talk well at least for one hour after his sustaining the injury. He admits in cross-examination that there was a possibility of the injured becoming unconscious on account of loss of one-third of the blood. But he does not completely rule out the deceased remaining conscious for some time after the occurrence. Further as per the evidence of P.W. 14 Inspector and P.W. 8 Thalaiyari, pursuant to the confession statement the appellant had produced M.O. 3 knife. The admissible portion of the confession statement Ex. P. 9 reads that if he is taken he would show the place and produce the knife. And Ex. P. 16 serologist report reveals that M.O. 3 knife, M.O. 1 shirt. M.O. 5 Lungi and M.O. 7 Towel contained the same AB Group of human blood. So we have no hesitation in agreeing with the learned Sessions Judge that the appellant had inflicted the injury found on the deceased.

14. The trial Court has taken the view that the offence committed by the appellant is punishable under S. 30, I.P.C. But it is seen that though the deceased was standing unarmed in front of the tea shop of P.W. 2 Gomathi devar the appellant had inflicted only one injury on the stomach. He had not chosen to assault on any vital part of the body. There is nothing in evidence to indicate that anybody prevented him from inflicting more than one injury. However he took to his heels immediately after giving a solitary blow. Though Ex. P. 1 recites that the appellant dealt the blow saying (vernacular omitted) the background of the case does not

indicate that the appellant had any idea to do away with his maternal uncle. Had his intention been to cause the death of Ganesan he could have inflicted more than one injury on any vital part of the body. Considering the fact that the appellant was aged only about 19 years at the time of occurrence, it is likely he had taken recourse to this action to exhibit his anger over the stand of his maternal uncle in the property dispute. Though P.W. 6 doctor says that the injury is necessarily fatal, Ex. P. 7 post-mortem certificate reveals that the incised injury is of 1' depth and death was due to the cutting of superior messentric artery at its centre. Evidently the appellant could not have known that a stab on the stomach would result in the cutting of this artery. In this background we are inclined to hold that the appellant had dealt the solitary blow only with the knowledge that the act is unlikely to cause death in which case the offence is one of culpable homicide not amounting to murder under S. 299, I.P.C.

15. In the result, the appeal is allowed in part and the conviction and sentence under S. 302, I.P.C. are set aside. Instead the appellant is found guilty and convicted under S. 304, Part II, I.P.C. We are informed that on the whole he had spent 4 years and 3 months in the prison. Since we are of the view that this period would meet the ends of justice, we sentence him to the period already undergone. His bail bound shall stand cancelled.

16. Appeal allowed.

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