

Mariappan and Another Vs. State

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Court : Chennai

Decided On : Nov-10-1992

Reported in : 1994CriLJ749

Judge : Janarthanam and;Thangamani, JJ.

Appeal No. : Criminal Appeal Nos. 884 of 1985 and 493 of 1986

Appellant : Mariappan and Another

Respondent : State

Advocate for Def. : A.N. Rajan, Govt. Adv.

Advocate for Pet/Ap. : Calvin Jacob, Adv.

Judgement :

Thangamani, J.

1. The appellants are accused Nos. 1 and 2 in SC No. 87 of 1985 on the file of the learned Sessions Judge, Coimbatore.

2. They were charged under section 302 read with Section 34 I.P.C. on the allegation that on 21-2-1985 at about 2.00 p.m. near Pannaikinar Harijan Colony in furtherance of their common intention to cause the death of one Nachimuthu Gounder they beat him with hands, pushed him down and trampled on his chest

and as a result of the injuries sustained, in the assault, the said Nachimuthu Gounder died at 2.40 p.m. on 23-2-1985 in Coimbatore Medical College Hospital, Coimbatore.

3. The prosecution examined 10 witnesses filed 15 Exhibits and marked 4 Material Objects. On the side of the appellants 3 Exhibits were marked. These facts emerge from the evidence on record :- Deceased Nachimuthu Gounder was residing with his wife P.W. 1 Thirumathal in a garden shed in the village Kozhikuttai. There was a complaint of theft against him in Gudimangalam Police Station Crime No. 78 of 1984 for stealing coconuts, Ex. D-2 is the copy of the charge sheet in C.C. No. 14 of 1985 on the file of the Judicial Second Class Magistrate Udumalpet laid on that complaint. On 21-9-1984 A-1 Mariappan gave another complaint in Komangalam Police Station alleging that deceased Nachimuthu Gounder and three others scolded him. Thereupon, Nachimuthu Gounder was charged under section 290 I.P.C. in S.T.R. Nos. 63 to 66 of 1984.

4. The said Nachimuthu Gounder used to frequent the toddy shop in Pannaikinar. The appellants and Nachimuthu Gounder were in the habit of drinking toddy in that shop. P.W. 2 Ramasamy Gounder is an employee in that toddy shop. He knew that there was litigation pending between deceased Nachimuthu Gounder and A-1 Mariappan.

5. On 21-2-1985 at about 1.00 p.m. deceased Nachimuthu Gounder left his house saying that he would purchase a match box. At about 1.30 p.m. he came to the tea shop of P.W. 3 Arokiasamy and demanded an omelet. Appellants also came there at that time. Since the deceased used to quarrel often with the appellants. P.W. 3 Arokiasamy said that no omelet was available in his tea shop. Yet all the three continued to sit in the tea shop and they left the tea shop only at the request of P.W. 3 Arokiasamy.

6. A little later deceased Nachimuthu Gounder and A-1 Mariappan were found taking in the toddy shop fully drunk. P.W. 2 Ramasamy Gounder sent them away fearing that they would fight with each other. One hour later, both A-1 and Nachimuthu Gounder beat each other and rolled down in front of the toddy shop on the Kozhikuttai road, P.W. 1 Thirumathal who came in search of her husband

saw both the appellants fisting her husband indiscriminately on his flank and A-2 Panchalingam pushing down her husband and both trampling on his chest, P.W. 2 Ramasamy Gounder and P.W. 3 Arokiasamy also came running there and shouted not to beat him. Thereupon the appellants went away. P.W. 1 Thirumathal sent for one Rajendran. At about 2.00 p.m. Rajendran brought a taxi and P.W. 1 took her husband to Government Hospital, Udumalpet. P.W. 4 Doctor Prakasam admitted Nachimuthu Gounder in the hospital at 7.00 p.m. Ex. D-3 is the case sheet relating to him. Ex. P-3 is the Accident Intimation sent by the Doctor to the Police. Later on the patient was referred to Coimbatore Medical College Hospital, Coimbatore for further treatment. But he died there at 2-45 p.m. on 23-2-1985. P.W. doctor Krishnamurthy had treated him till then. Ex. P-4 is the Death Intimation sent to the police from Coimbatore Medical College Hospital, Coimbatore.

7. In the meanwhile, on 22-2-1985 at 8.15 a.m. P.W. 8 Head Constable came to Government Hospital, Udumalpet and recorded Ex. P-1 complaint from P.W. 1 Thirumathal. Since the place of occurrence is located within the jurisdiction of Komangalam Police Station, P.W. 8 Head Constable sent Exs. P-1 and P-3 there.

8. At 10.00 a.m. on 22-2-1985 P.W. 9 Sub-Inspector received Exs. P-1 and P-3 and registered Ex. P-1 as his Station Crime No. 34/85 under Section 325 I.P.C. He prepared Ex. P-9 printed F.I.R. and sent both the documents to Judicial Second Class Magistrate Court, Udumalpet. He took up investigation and visited the scene place at 11.00 a.m. and prepared Ex. P-10 observation mahazar and Ex. P-11 rough sketch. He also examined P.W. 2 Ramasamy Gounder and P.W. 3 Arokiasamy. At 4.00 p.m. he had been to Coimbatore Medical College Hospital, Coimbatore and examined P.W. 1 Thirumathal. He recovered M.Os. 1 to 3 - shirt, dhoti and underwear of the deceased produced by P.W. 1 under Ex. P-12 mahazar.

9. On 23-2-1985 P.W. 9 Sub-Inspector received Ex. P-4 Death Intimation and altered the crime to one under section 302 I.P.C., prepared Ex. P-13 Express F.I.R and sent the same to the concerned authorities. P.W. 10 Inspector took up investigation and held inquest over the dead body of Nachimuthu Gounder

between 6.30 a.m. and 9.45 a.m. on 24-2-1985. Ex. P-15 is the Inquest Report. P.Ws. 1 to 3 were examined at the time of inquest. Then he sent the dead body for post-mortem through P.W. 7 Constable with Ex. P-7 Requisition.

10. On 24-2-1985 at 10.40 a.m. P.W. 6 Doctor Vadively commenced the post-mortem in Coimbatore Medical College Hospital, Coimbatore. He found these external injuries :-

1. An abrasion 6 cm x 2 cm seen on the left side of forehead.
2. An abrasion 2 cm x 1 cm seen on the back of right elbow.
3. An abrasion 6 cm x 2 cm seen over the front of chest just below both collar bones.
4. A contusion 10 cm x 8 cm seen over the outer aspect of middle left side chest.
5. An incised wound 1 cm x 1 cm entered into the abdomen cavity over the left side chest with drainage tube in situ (Surgical).
6. A tracheotomy wound seen over the front of neck (Surgical).

Internal injuries :-

- (a) On opening the chest, multiple fracture of all the ribs on both sides with extensive contusion all over the chest.
- (b) On opening the scalp, a contusion 5 cm x 4 cm noticed on the left side frontal region.
- (c) Brain : A contusion 5 cm x cm seen over the left side frontal lobe of the brain with petechial haemorrhage noticed all over the white matter of the brain.

Stomach contained 250 grams of partially digested food particles. No smell. Mucosa normal. Heart : all chambers empty. Lungs :- Both lungs found collapsed. Both pleural cavity contained 500 ml. of fluid blood. Liver, Spleen and Kidneys :- Pale. Visceras were preserved to rule out alcohol.

In the opinion of the Doctor the deceased would appear to have died of shock and haemorrhage due to multiple injuries sustained by him. Abrasion can be caused by falling on rough surface. Contusion on the chest be caused by stamping with legs. The fracture of ribs could be caused by stamping with legs. Both lungs collapsed because of the breakage of ribs. The breakage of ribs and collapse of lungs are sufficient to cause death in the ordinary course of nature.

11. On 28-2-1985 at about 6.00 a.m. P.W. 10 Inspector arrested A-1 Mariappan in Vallakuntapuram road. A-2 Panchalingam surrendered in Judicial Second Class Magistrate Court, Udumalpet. The Inspector completed the investigation and laid charge sheet on 18-3-1985.

12. When examined under section 313 Cr.P.C., the appellants denied the allegations against them.

13. After trial, the learned Sessions Judge found both the accused guilty, convicted and sentenced them as indicated earlier.

14. Both the appellants had filed C.A. Nos. 884 of 1985 and 493 of 1986. The counsel on record in the later appeal did not turn up. The later appeal got merged in the earlier appeal and Mr. Calvin Jacob, learned counsel for the appellants advanced arguments. The grounds of appeal mentioned in the later appeal were also considered in arriving at the conclusion.

15. There is no dispute that there were criminal cases between the first appellant Mariappan and deceased Nachimuthu Gounder. According to P.W. 2 Ramasamy Gounder and P.W. 3 Arokiasamy, there used to be frequent quarrels between the two. However, enmity is a double edged weapon. When prosecution relies on this enmity as a motive for the alleged assault of the deceased, it is the argument of learned counsel for the appellants that they have been falsely implicated on account of this outstanding grievances.

16. Of the three eye-witnesses examined by the prosecution P.W. 2 Ramasamy Gounder is an employee in the toddy shop and P.W. 3 Arokiasamy is the owner of a nearby tea shop. Both of them are stated to be independent witnesses. But P.W.

3 Arokiasamy admits in cross-examination that when he went there Nachimuthu Gounder was lying on the ground. Both of them state that they saw P.W. 1 Thirumathal on the scene place. According to P.W. 1 Thirumathal, her husband left the house at 1.00 p.m. on 21-2-1985 and as he did not turn up for half an hour, she came in search of him. At that time she saw the appellants assaulting her husband. But she concedes in cross-examination that neither P.W. 2 Ramasamy Gounder nor P.W. 3 Arokiasamy or herself tried to prevent the assault. Admittedly she had not sent word to her son on seeing her husband sustaining injuries. Till P.W. 8 Head Constable came to the hospital on the next day morning neither her relations nor her son made their appearance in the hospital. That P.W. 2 Ramasamy Gounder and P.W. 3 Arokiasamy left the scene place without rendering any assistance also appears unnatural.

17. Ex. P-1 is the complaint given by P.W. 1 Thirumathal at 8.15 a.m. on 22-2-1985. Though the occurrence is stated to have taken place on 21-2-1985 at 2.00 p.m., there is no satisfactory explanation for the inordinate delay in lodging the F.I.R. This Ex. P-1 complaint is conspicuously silent about the presence of the alleged eye-witnesses P.Ws. 2 and 3 at the time of assault. P.W. 1 Thirumathal only states that she brought water from the tea shop of P.W. 3 Arokiasamy and gave it to her husband. Though P.W. 1 states in the witness box that one Vellal and Subbal were present at the time of occurrence, they had not been examined.

18. Further the evidence of P.W. 4 Doctor discloses that Nachimuthu Gounder was brought to Government Hospital, Udumalpet at 7.00 p.m. on 21-2-1985. He was unconscious at that time. Rajendran did not inform him that Nachimuthu Gounder was assaulted by two persons. Instead, Rajendran represented that Nachimuthu Gounder was found lying unconscious at Kozhikuttai road. When Nachimuthu Gounder was brought to the hospital, his wife was not present. He saw his wife only at mid-night on that day. On the next day at 7.00 a.m. she told him that her husband was assaulted by two persons D.W. 2 the Chief Medical Officer of the Government Hospital, Udumalpet also admits that Nachimuthu Gounder was brought unconscious to the hospital at 7.00 p.m. on 21-2-1985. The entry in Ex. D-3 case sheet reads that Nachimuthu Gounder was found unconscious in front of a toddy shop and he was chronic alcoholic. As it has been

rightly pointed out by the learned counsel for the appellants the abovesaid material completely belies the versions of P.W. 1 Thirmathal and the other two eye-witnesses.

19. In the circumstances, it is seen that till 7.00 a.m. on 22-2-1985 nobody knew who was the assailant. Evidently the prosecution has not come forward with the true version of the incident. And the learned Sessions Judge has erred in relying on the evidence of P.Ws. 1 and 3 and finding the appellants guilty.

20. In the result, both the appeals are allowed and the conviction and sentence passed by the trial Court are set aside and the appellants are acquitted of the charges. Their bail bonds shall stand cancelled.

21. Appeal allowed.

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