

Muniappan Vs. State

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Court : Chennai

Decided On : Jul-13-1993

Reported in : 1994CriLJ1309

Judge : K.M. Natarajan, J.

Appeal No. : C.A. 479 of 1986

Appellant : Muniappan

Respondent : State

Advocate for Def. : Thiru Govindarajan, Govt. Adv.

Advocate for Pet/Ap. : M/s. G. Krishnan,;G. Ravindran and;K. Srinivasan, Advs.

Judgement :

1. This appeal is directed by the 1st accused his conviction and sentence awarded to him by the learned Sessions Judge, Dharmapuri Division at Krishnagiri under S. 304, Part II, IPC and 324, IPC and sentenced to undergo R.I. for 5 years and 1 year respectively and both the sentences were ordered to run concurrently.

2. The appellant who is A. 1 was tried along with 3 others for the offences under sections 147, 148, 302 read with 149 and 324 and 323, IPC on the allegation that the appellant along with two others and the juvenile accused Nagarajan and Annamalai were members of an unlawful assembly and in prosecution of the

common object of causing hurt to deceased Perami alias Chinna Pillai and her son Dhanapal A. 1 armed with a deadly weapon crowbar, beat the deceased Perami alias Chinna Pillai on her head and as a result of the same she died later and in the course of the same transaction A1 also beat P.W. 1 with a crowbar on his head and he sustained simple injury. A2 and A3 caused simple hurt to witness Dhanapal P.W. 1 by fisting with hands. In support of the above charges, the prosecution examined P.Ws. 1 to 14 and filed Ex. P. 1 to P. 24 and marked Mos. 1 to 11.

3. The case of the prosecution as disclosed from the oral and documentary evidence, which are necessary for the disposal of this appeal can be stated as follows :-

P.W. 1 and the accused are residents of Kondrampatti. The deceased is the mother of P.W. 1 A. 2 is the maternal uncle of P.W. 1, A. 3, is the wife of A. 2. A. 1, Juvenile Annamalai and Nagarajan are the sons of A2. A2 got two wives and out of them first wife died. P.W. 2 is the son of A. 2 through his first wife. A. 3 is the second wife of A. 2 P.W. 2 got divided and they were living separately. P.Ws. 3 and 4 are residents of the same village. About 7 years prior to the occurrence, A. 2 demanded money from the deceased, who was sister of A. 2, for purchasing a land. She was not having money at that time and hence she gave jewel weighing about 10 sovereigns as demanded by A. 2. When she asked for A. 2 to return the said jewel but A. 2 did not return the same in spite of many demands. About 10 days prior to the occurrence, there was a panchayat through Oor Gounder Duraiswamy A. 2 promised to return the jewels by 1-1-1984 in the said panchayat.

4. On 1-1-1984 the deceased and her son P.W. 1 were returning from their field, after attending field work at about 6-30 p.m. to the village. While they were coming through the house of the accused, all the accused were in front of the house of A. 2. At that time, the deceased demanded A2 to return the jewels to her A. 2. retorted by saying that she was asking for the jewels which was given once upon a time and he refused to return the jewels. Immediately she retorted by saying as to whether she was born to a widow (whore). On being provoked A. 1 took up a crowbar. On seeing it P.W. 1 and the deceased ran towards the house of P.W. 2.

At that time the juvenile accused obstructed and waylaid them. At that time A1 beat the deceased on her head with MO 1. P.W. 1 and the deceased raised an alarm and on hearing the noise, P.W. 2 and P.W. 5 came there. When P.W. 1 bent down and attempted to lift his mother. A. 1 beat him on the head and on the left shoulder twice with same MO 1. The juvenile accused Nagarajan beat the deceased with MO 2 on the back once. A2 and A3 and juvenile accused Annamalai fisted P.W. 1 on the back and others parts. P.W. 1 got angry since he and his mother were beaten. He picked up the cart peg in front of the house of P.W. 2 and beat A1 and the juvenile accused Nagarajan indiscriminately. On seeing the same P.W. 3 and P.W. 4 came and separated them. The accused ran away from the scene of occurrence, with their weapons. Perami was taken in a cart to Erumathur and from there she was taken to Dharmapuri Government Hospital in a bus. P.W. 12 Dr. Kumudha examined Perami at 8-50 p.m. for the injuries said to have been caused at about 6-30 p.m. by 5 known persons with crowbar and she found the following injury :

A lacerated wound 8 cm x 3 cm x 1 cm over parieto frontal area right side about 6 cm above the ear. Depressed fracture of skull present. Patient is conscious and talking. Paralysis so left upper limb present. X-ray of the skull showed stellate fracture right frontal bone. According to her, the said injury is fatal and she issued Ex. P. 15 the wound certificate. At about 9-20 p.m. she examined P.W. 1 for the injuries sustained by him at about 6-30 p.m. by 5 known persons with crow bar and she found the following injuries :-

- 1) A lacerated wound over right parietal area near midline 2 cm x 1/4 cm x 1/2 cm with bleeding.
- 2) A reddish contusion over left shoulder blade 8 cm x 4 cm.

According to her, the injuries are simple in nature and she issued Ex. P. 14 wound certificate. At about 9-40 p.m. she examined juvenile accused Nagarajan for the injuries said to have been caused by 3 known persons with Crowbar and she found the following injuries on the juvenile accused Nagarajan.

- 1) A lacerated wound over left side near midline of fore-head 2 cm x 1/2 cm x 1/2 cm with bleeding depressed fracture of frontal bone present;
- 2) A reddish contusion over right shoulder blade 4 cm x 4 cm;
- 3) A reddish contusion over left shoulder blade 4 cm x 2 cm;
- 4) X-ray was taken and it showed depressed fracture frontal region.

According to her, Injury No. 1 is grievous in nature and the other injuries are simple. She issued Ex. P. 17 wound certificate.

5. P.W. 12 examined A. 1 at about 10-00 p.m. for the injuries said to have been caused by 3 known persons and she found the following injuries on A. 1.

- 1) A lacerated wound over right side of occipital area 1 cm x 1/4 cm x 1/4 cm;
- 2) A reddish contusion over left fronto temporal area 4 cm x 3 cm about 5 cm above the ear;
- 3) A reddish contusion over left arm 4 cm x 3 cm near shoulder joint;
- 4) A reddish contusion over right arm in mid portion 4 cm x 3 cm;
- 5) A reddish contusion 6 cm x 3 cm over left buttocks near great trancharlar;
- (6) Anabrasion with bleeding below left knee 3 cm x 1/2 cm

X-ray was taken. Since on 3-1-1984 at about 7-30 p.m. A. 1 ran away from the hospital and hence no final opinion was given. Ex. P. 18 is the accident register extract.

6. P.W. 8 the First Grade Constable on Dharmapuri Police Station on receipt of the information Ex. P. 6 and Ex. P.7 from the Dharmapuri Headquarters Government hospital, went there since the deceased Peramiammal was unconscious he recorded the statement Ex. P. 1 from P.W. 1. A. 1. was also admitted in the same hospital along with the juvenile accused Nagarajan. He also examined A1 and recovered his statement. Thereupon returned to the police station and made

necessary entries in the general diary and since the place of occurrence lies within the jurisdiction of Kambainallur Police limits, he sent both the statements through Grade I constable No. 862 to Kambainallur police station P.W. 11 Sub-Inspector of Police, Kambainallur P.S. on receipt of the report Ex.P.1. at about 11-45 a.m. registered a case in Crime No. 1/84 under S. 148, 149, 341, 324, 326 read with 34, IPC prepared First Information Report Ex. P. 10 and sent them to the Court and copy of the same to the higher officials. He also registered a case on the basis of the report given by A. 1 in Crime No. 2/84 under S. 323 and 324 read with 34, IPC. Ex. P. 11 is the First Information Report and sent the same also to the Judicial Second Class Magistrate, Arur. He took up both the cases for investigation reached the place of occurrence at 1-00 p.m. and inspected the same, prepared the observation mahazar Ex. P. 2 in the presence of P.W. 6 another and do the rough sketch Ex. P. 12. He seized the bloodstained earth M.O. 3 under mahazar Ex. P. 3. Thereupon he came to the Dharmapuri Headquarters Government Hospital and examined P.W. 1 and A. 1 and also the juvenile accused Nagarajan. He could not examine the deceased since Peramiammal was in unconscious stage. He also seized the bloodstained saree M.O. 9 of the deceased on being produced by her son P.W. 1, M.O. 10 jacket, M.O. 11 banian under mahazar Ex. P. 11. He arrested A2 and A. 3 and also the juvenile accused Annamalai on 3-1-1984 at the entrance of the bus-stand.

7. P.W. 10 the civil Assistant Surgeon attached to Government Hospital sent the death intimation Ex. P. 9 to the effect that Peramiammal died at 3-30 p.m. on 5-1-1984 and on receipt of the same P.W. 11 altered the section into one under S. 302, IPC, and prepared the express Ex. P. 13 and sent the same to the Court and also the copy to the higher officials. P.W. 14 the Inspector, Harur on receipt of the information regarding the registration of case through VHF, went to the Kambainallur P.S. got the case records in both the cases and took up investigation and reached the place of occurrence at 9-00 a.m. Thereupon he went to the Government Hospital since it was late, he stayed there and held the inquest over the dead body of Peramiammal on the next day morning between 6-00 and 8-00 a.m. i.e. on 6-1-1984. Ex. P. 23 is the inquest report prepared by P.W. 14. At that time he examined P.Ws. 1 to 5. After completing inquest he handed over the deadbody to P.W. 9 constable along with requisition Ex. P. 8 to the Medical Officer

to conduct the autopsy over the deadbody. P.W. 12 the civil Assistant Surgeon attached to Government Headquarters Hospital conducted the autopsy on the dead body of Peramiammal on 6-1-1984 at about 11-45 p.m. and she found the following external injuries :

'A linear sutured wound over tight fronto parieto temporal area 8 cm in length anterior end about 4 cm and posterior end about 7 cm from mid line.

Internal Examination :

On opening of suture of wound and on extension of it blood clot present over temporal area at joint portion of parietal and frontal area of head. Blood clot present over temporal muscle. Muscle inflamed. Depressed fracture of temporal and adjoining part of frontal and parietal bone, Temporal bone fracture extended upto to the ear 7 cm. x 9 cm. Fracture line is extended along the fronto parietal suture to left fronto parieto suture to left fronto parieto temporal suture joint. Blood clots present in extra-dural space corresponding to the fracture Duro and arachnoid are intact. Injury over temporal lobe 5 cm x 5 cm x 3 cm blood clots over cortex of parietal and frontal lobes of brain present Brain tissue inflamed.'

She was of the opinion that the deceased would appear to have died of shock and brain damages due to head injury about 12 to 18 hours prior to the autopsy. Ex. P. 16 is the post mortem certificate issued by P.W. 12. She was also of the opinion that the injury found on the head as well as the internal is sufficient to cause death in the ordinary course of nature.

8. P.W. 14 arrested the juvenile accused Nagarajan on 7-1-1984 at 5-00 p.m. and he gave confession statement in the presence of P.W. 7 and another. Ex. P. 4 is the admissible portion of the confession statement of juvenile accused Nagarajan and he took P.W. 14 and his party to the chilly garden and from there he produced M.O. 1 crowbar and M.O. 2 and he seized the same under mahazar Ex. P. 5. A. 1 surrendered before the Judicial Magistrate, Harur. He gave Ex. P. 19 requisition for sending the blood stained articles for Chemical Analysis through the Court. P.W. 13 the Head clerk deposed about sending the articles for chemical analysis as per the orders of the Judicial Magistrate and about the receipt of Ex. P. 21 and

P. 22 Chemical Analyst report and serologist report respectively. After completing the investigation P.W. 14 referred the case in Crime No. 2/84 as mistake of fact and sent final report to that effect, and he filed charge sheet in Crime No. 1/84 against all the accused and the juvenile.

9. When questioned about the incriminating circumstances in the evidence against the accused under section 313, Cr.P.C. they totally denied the prosecution evidence. However, A.1 would submit that statement was recorded when he was in the hospital. He denied the fact that he was absconded from the hospital on 3-1-1984 at about 7-30 p.m. No witness was examined on the side of the accused. The learned trial Judge after taking into consideration of the oral and documentary evidence, came to the conclusion that the prosecution has proved the guilt of A.1 viz., the appellant herein and consequently convicted him under S. 304, Part II and 324, IPC and sentenced him as stated above while acquitting the accused 2 and 3 and the Juvenile were tried separately and they were also acquitted. The convicted accused A.1 alone has preferred this appeal.

10. The learned counsel for the appellant after taking this court to the evidence as well as the judgment of the trial Court submitted that the witnesses in this case P.W. 1, P.W. 2 and P.W. 5 are all interested and the trial Court ought to have rejected their evidence. He would submit that in this case the accused also sustained injuries and the Accused No. 1 is entitled to the benefit of self-defence. In any event the injury on the accused/appellant has not been properly explained by the prosecution and there is no acceptable evidence regarding the origin of the occurrence. Further the trial Court having acquitted the other accused, ought to have acquitted this accused also. Per contra, the learned Government Advocate vehemently argued that the trial Court has rightly considered the evidence on record and its consideration is proper and legal and came to the right conclusion so far as this appellant is concerned and hence no interference is called for.

11. The point for consideration in this appeal is whether conviction of the appellant is sustainable and any interference is called for

12. The case of the prosecution is that on 11-11-1984 at about 6.30 p.m. while the deceased along with his son P.W. 1. returning from their field, they noticed that

these accused were in front of the house of A. 1. and when the deceased demanded A. 1 to return her jewels which were taken by A2, who is none other than the brother, for the purpose of purchasing a house and he had not returned as promised and in a panchayat held about a week before wherein he agreed to return the jewel, A2 retorted by saying that he has not returned the jewels and thereupon the deceased abused him by saying as to whether he was born through a widow (immoral women) and that provoked the accused and it is stated that A1 took crowbar and beat her on the head while the juvenile accused waylaid and prevented them P.W. 1 and the deceased who were running apprehend danger to their lives and this was witnessed by P.W. 2 and P.W. 5, who came there on hearing the noise. When P.W. 1 tried to lift her mother A. 1 beat him on the head and left shoulder with No. 1 and it was only at that time A2 and A.3 along with the juvenile fisted P.W. 1 on back and as this enraged P.W. 1 he took up a cart-peck and beat A. 1 and the juvenile indiscriminately and caused injuries to them. This has been clearly spoken to by the injured witness P.W. 1 and his evidence has been corroborated by the evidence of P.Ws. 2 and P.W. 5. Nothing has been elicited in their cross-examination to discredit their testimony. The mere fact that they are related, when there is nothing elicited to discredit their testimony is not a ground to discredit their testimony. The relationship in this case does not assume importance as the witnesses are related to both the accused and the deceased. The report Ex. P. 1 is amply corroborated by their testimony. Further their evidence is fully corroborated by medical evidence adduced through the evidence of P.W. 12 who examined them viz. P.W. 1 the injured as well as the accused and the evidence of the Doctor viz., P.W. 12 who conducted the autopsy and who issued Ex. P. 16 post mortem certificate. The learned trial Judge has given cogent and convincing reasons for acquitting the other accused as they did not attack the deceased. What all stated is that A2 and A3 and the juvenile accused fisted P.W. 1 with hands and there is no corresponding injuries to the overtact attributed to them and so, the learned trial Judge has rightly acquitted the other accused and the juvenile accused. The injuries on the accused also have been properly explained in this case. The learned counsel for the appellant is not able to make out any case for self-defence. As regards the origin of occurrence, we have got acceptive evidence and it cannot be said that the prosecution has failed to prove

the origin of occurrence. As regards motive, the prosecution has got satisfactory evidence and on account of the refusal of the jewels given by the deceased to A2 and A2 who has agreed to return the same in the panchayat held a week prior to the occurrence and that is responsible for the occurrence on that day, in which the deceased and P.W. 1 attacked. The injuries on the accused also have been clearly explained. On a careful consideration of the entire evidence on record, this Court is of the firm view that the prosecution has satisfactorily established the charge as against the appellant/A1 for the offence under S. 304, Part II and 324, IPC beyond reasonable clause and the appellant is not able to make out any case for interference with the findings rendered by trial Court. On the other hand, the learned trial Judge has given proper and acceptable reason for convicting the appellant/A1 and as such, the conviction of the appellant/A1 is confirmed.

13. The learned counsel for the appellant vehemently argued that the parties are closely related viz., the deceased is none other than the sister of A.2 and A.1 is none other than the son of A.2 and A.1 also sustained injuries on the head and X-ray was also taken but no opinion was given as to whether they are grievous in nature. Further the deceased died 4 days later in the hospital and the occurrence took place in the year 1984 viz., about 9 years ago, and the appellant is a young man and he has already undergone imprisonment for nearly 3 months and as such, at this stage, if he is sent back to jail, he will be put to more hardship and further he is also entitled to the remission of two years imprisonment pursuant to the Government Orders. The learned Government Advocate leaves the sentence to the discretion of this Court. Further the learned counsel for the appellant also drew the attention of this Court to the decision reported in : 1992 CriLJ523 Chandalal v. State of Rajasthan wherein it has been held as follows (at page 524; of Cri LJ.) :-

'We have heard learned counsel for parties at length. But we agree with the learned counsel for appellant that in the facts and circumstances of the case, the High Court should have attached greater weight to appreciation of evidence by the trial Judge. The finding of the trial Judge that there was no evidence of inflicting any injury after the deceased had fallen down was not set aside by the High Court. The death of the deceased was caused due to head injury. Even one of the

accused had head injury. The learned counsel urged that in these circumstances the accused could utmost have been convicted under S. 304-II of IPC. The incident is of 1972. The appellant had been acquitted by the trial judge in October, 1972. The High Court allowed the appeal and convicted the appellant in January, 1980. The appellant was admitted in this Court on April 8, 1980 and appellants were granted bail. In these circumstances, we modify the order of the High Court and convict the appellants under S. 304-II read with S. 34, IPC and sentence them to the period already undergone. The appellants are further directed to pay a fine of Rs. 3000/- each. The amount shall be deposited within six months. In case of default the appellants shall serve out the entire period of sentence imposed by the High Court. On deposit of fine, the bail bonds shall stand discharged.'

Having regard to the facts and circumstances of the case, and the submissions made by the learned counsel for the appellant, and the ratio laid down in the above said decision, this Court feels, that the ends of justice would be met by sentencing the appellant to the period already undergone and in addition, to pay a fine of Rs. 5000/- under S. 304, Part II, IPC in default to undergo R.I. for 3 years and Rs. 500/- under S. 324, IPC in default to undergo R.I. for 6 months. Out of the fine amount collected, Rs. 5000/- will be paid to the heirs of the deceased Peramiammal towards compensation. Time for payment of fine of Rs. 550/- is 6 weeks from the date of the receipt of the records by the Court below. On deposit of the fine amount the bail bond shall stand discharged. With the above said modification, this Criminal Appeal is dismissed.

14. Appeal dismissed.