

Ponnuswamy Vs. State

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Court : Chennai

Decided On : Dec-04-1991

Reported in : 1992CriLJ3100

Judge : Padmini Jesuddurai, J.

Appeal No. : Criminal Appeal No. 780 of 1987

Appellant : Ponnuswamy

Respondent : State

Advocate for Def. : P. Govindarajan, Government Adv. (Criminal side) for Public Prosecutor

Advocate for Pet/Ap. : K.V. Sridharan, Adv.

Judgement :

1. This appeal has been filed by the accused in S.C. 99/87 on the file of the II Additional Session Judge, Salem, challenging his conviction for an offence under S. 304, IPC and the sentence of imprisonment for a period of 3 years. The appellant was tried by the court for an offence under S. 302, IPC, in that on 24-1-1987 at about 3-30 p.m. he beat the deceased Chandran with his hands, fisted him and then beat him with the stick M.O. 1 as a result of which Chandran died on the night between 25-1-87 and 26-1-87.

2. The facts are briefly as follows :- The deceased is the younger brother of P.W. 6. P.W. 1 is the wife of Thangasamy, the elder brother of the deceased. All of them were residing in the village Olakkadu within the limits of Yercaud Police Station. The deceased a bachelor aged about 22 at the time of his death, was leading a wayward life involving in crimes. He had no house of his own. On 24-1-87 at about 7 a.m. the deceased came to the house of his brother Thangasamy. Thangasamy's wife P.W. 1 was in the house. P.W. 1 questioned the deceased as to where he had gone and the deceased replied that he had gone for a court hearing in the case. The deceased took lunch and went in to the front of the house of P.W. 1 and was lying down there. P.W. 1 was gathering coffee seeds nearby. At about 3 p.m. the appellant came there and seeing the deceased lying down, he fisted the deceased on the neck, forcibly, saying that for 4 adjournments the deceased had not attended court and was lying down here and who would spend for all the adjournments and that he would put an end to all this. He then caught hold of the shirt of the deceased and fisted the deceased on the chest. He asked the deceased to get up. He then dragged the deceased to a place under a tree and picking out M.O. 1 which was nearby, beat the deceased on the left flank, right flank, right temporal region and back. He then dragged the deceased to his house stabbing the deceased all along with M.O. 1. The occurrence was witnessed by P.Ws. 1 and 3 and part of the occurrence by P.W. 4. At about 6-30 p.m., P.W. 10 the mother of the appellant came to the P.W. 1 and told her that the appellant had beaten the deceased and that the deceased was having pain all over the body and could be given fomentation with hot water. The deceased also came there and complained of suffocation. He demanded water and when given was able to drink only one mouthful and after that saying that he was not able to drink any more water, lay down in front of the house of P.W. 1. The next day that is on 25-1-87 at 6 p.m. the deceased left P.W. 1's house saying that he was going to his sister's house to get some money from her to go to the hospital for treatment. P.W. 7 is the daughter of P.W. 6. The deceased went to the house of P.W. 6 P.W. 6 and her husband were away and P.W. 7 was alone in the house. The deceased told P.W. 7 that the appellant had beaten him and he was having a suffocating felling. He then took bed in the house of P.W. 6 and P.W. 7 covered him with a blanket. The next morning at 4 a.m. P.W. 6 and her husband returned home and was informed

by P.W. 7 about the presence and condition of the deceased. P.W. 6 tried to wake up the deceased but found that the deceased was dead. She then went to Olakkadu and informed the husband of P.W. 1 and other relatives. They came and saw the deceased. They went to Semmanatham to inform the Village Administrative Officer and not finding him there, gave information to Thalayari Gnanamuthu, who in turn sent information to P.W. 5 the Village Administrative Officer. P.W. 5 came to the house of P.W. 6 at 6-30 p.m. and recorded Ex. P.1 from P.W. 1 and sent it the next day through his subordinates to the police as well as to the court. Ex. P.1 was received at the police station at Yercaud on 27-1-87 by P.W. 15 the Sub-Inspector of Police who registered it as crime No. 5/87 for an offence under S. 302, IPC. P.W. 16 the Inspector of Police took up investigation. He examined witnesses, held inquest, visited the scene and sent the body for postmortem.

3. P.W. 12 the Medical Officer attached to the Government Hospital, Yercaud conducted postmortem on the dead body of the deceased and found on the deadbody, the following injuries and symptoms described by him in Ex. P.11 the postmortem certificate.

'External appearance : Discharge of frothy blood from the nostrills and discharge of fluid blood from the mouth. Dried blood stain over the middle of the chest.

External Injuries : 1. Contusion over the right side temporal region blue in colour size 5 cm x 4 cm.

2. Contusion over the right side axillary region which is blue in colour size 8 cm x 4 cm.

3. Contusion over the left side chest which is blue in colour size 6 cm x 4 cm.

4. Contusion over the right side back below the right scapula bluish black in colour size 9 cm. x 4 cm.

5. Contusion over the left side back 5 cm below the left scapula bluish black in colour size 7 cm x 4 cm. Internal Examination : Opening of the thorax, fracture of right side 5th rib at mid axillary line. Effusion of fluid blood quantity 250 ml.

Heart : Weight 300 grams cut section normal.

Lungs : Right weight 550 grams. Tear in the right lung upper border of the lower lobe in the mid axillary line corresponding to the fracture of the 5th rib size 3 cm x 1/2 cm depth. Directed antero lateral aspect. Left lung : weight 500 grams contusion over the lower lobe in the mid axillary line. 4 cm x 3 cm in size which is blue in colour. Cut section : Right lung pale left lung congested and exude a fine frothy fluid blood.

Stomach : Shrunken contains thick Mucoidal fluid inner suspicious pale. Liver : weight 1.500 Kgs. Soft swollen dark brown in colour cut section congested.

Spleen : weight 150 grams cut section congested.

Small Intestine : Distended with fluid and gas inner surface pale. Large Intestine : Distended with fluid and gas. Kidneys : Right weight 150 grams. Left 150 grams. Cut section pale. Bladder : Empty. Head : Bones no injury to the line. Brain weight 250 grams. cut section normal.'

According to P.W. 12 death was due to haemorrhage haemo thorax and respiratory embarrassment due to injury to the vital organ lungs. The injuries could have been caused in the manner and time alleged. P.W. 16 continued investigation, arrested the appellant on 29-1-87 and on his information recovered M.O. 1. The blood-stained articles were sent for chemical analysis and after completing investigation, charge-sheet was laid.

4. During trial on behalf of the prosecution, P.Ws. 1 to 16 were examined. Exts. P.1 to P.41 were marked, and M.Os. 1 to 6 were produced. The appellant when questioned, denied having committed any crime and had no evidence to offer. The learned Sessions Judge accepted the prosecution case but held that the appellant had no intention to cause the death of the deceased and accordingly convicted the appellant and sentenced him as stated above, against which the present appeal has been filed.

5. Thiru K. V. Sridharan, learned counsel for the appellant went through the entire oral and documentary evidence and contended that the prosecution case cannot

be accepted in view of the inordinate delay in giving a complaint about the occurrence, delay in Ex. P.1 and other records reaching court and in view of the further fact that P.W. 1 was an interested witness and the names of P.Ws. 3 and 4 were not mentioned in Ex. P.1, that the statements recorded from P.Ws. 3 and 4 under S. 161, Cr.P.C. had reached court only on 30-1-87, that the conduct of P.W. 1 in not taking the deceased to the hospital was unnatural and would suggest that the occurrence had not taken place at the time and manner alleged, that the police had not investigated into the motive part of the crime to find out whether any case was pending against the appellant and the deceased in which the deceased had failed to attend court, that the Medical Officer P.W. 12 had stated that death could also have been instantaneous and the presence of digested liquid in the stomach of the deceased would suggest that the deceased had consumed some food which had not been spoken to by the prosecution witnesses and that therefore, it was unlikely that the occurrence could have taken place in the manner spoken to by P.Ws. 1, 3 and 4. The learned counsel also contended that even if the prosecution case was accepted, the offence committed by the appellant would not be one under S. 304, IPC but would reduce to S. 325, IPC. Reliance was placed upon a decision of the Madhya Pradesh High Court in *Mansharam v. State of Madhya Pradesh* 1990 CrL LJ NOC 35 and a decision of this Court in *Marana Goundan v. Emperor*, 1941 Madras Weekly Notes 16.

6. Per contra, the learned Public Prosecutor by referring to the salient features of the prosecution case sought to sustain the conviction.

7. The question that arises for determination is whether the conviction of the appellant could be legally sustained.

8. The motive for the occurrence is said to be the grievance of the appellant over the deceased not attending court adjournments on 4 occasions in a case where both of them were co-accused. Though this is not spoken to as such by any of the witnesses, we have the evidence of P.W. 1 that when she asked the deceased as to where he was coming from, the deceased had referred to attending court. It is also the evidence of P.Ws. 1 and 3 that when the appellant assaulted the deceased, he was finding fault with the deceased for absenting himself from

attending court and thereby compelling the appellant to spend money unnecessarily attending court. It is true, that further details about the cases pending against the appellant and the deceased are not available. However, it is the case of the appellant himself that the deceased was concerned in several cases, particularly cases of theft. The cross-examination of P.W. 1 would show this, when P.W. 1 had been asked during the cross-examination as to whether there was a case of theft in an estate by throwing chilly powder and whether the deceased was an accused in that case. P.W. 1 has admitted that the deceased was an accused in that case and that case was still pending and there were 4 accused and after the deceased had been taken out on bail in that case, the deceased had been roaming about in Olakkadu for some time along with his associates in crime Mathaiyan and Kuppusamy. When further cross-examined, P.W. 1 has admitted that during season time, the deceased used to commit theft of plantains, jack fruits and seasons vegetables. She has also admitted in the cross-examination that on such occasions the appellant and the deceased used to commit theft together. All these details have been elucidated during the cross-examination and suggestions put to P.W. 1 on this aspect have been admitted by her. It is therefore clear that the appellant and the deceased have been together leading a life of crime and the conduct of the appellant on the day of the occurrence gets proved.

9. Regarding the actual occurrence, it is spoken to by P.Ws. 1, 3 and 4. Another witness P.W. 2 had turned hostile. P.Ws. 1 and 3 had seen the earlier part of the occurrence right from the beginning while P.W. 4 is a witness only to the later part of the occurrence. On the evidence of these witnesses, the learned counsel for the appellant would contend that P.W. 1 is an interested witness. No doubt it could be so, but in view of the fact that the occurrence itself had taken place in front of the house of P.W. 1. P.W. 1 would be the most natural witness. The occurrence has taken place in a hill area, wherein the houses are few and far between. While so, one cannot expect a number of witnesses, even though the occurrence is a daylight one. Another criticism on the evidence of these witnesses is that, even though the occurrence had taken place on 24-1-87 at 3-30 p.m., neither P.W. 1 nor any of the other witnesses had given any complaint about it to any of the authorities. The law had not been set in motion. No doubt, this is so. The first

complaint is made only on the 3rd day, that is after the death of the deceased. The whole of 25-1-87 the deceased had been lying down for sometime in the house of P.W. 1 and thereafter in the house P.W. 6. The delay on the part of P.W. 1 or her husband Thangasamy to give any report to the police could be traced to two reasons, the first being that though the deceased was bleeding from the nose, there were no external visible injuries as such caused by any sharp cutting weapon. The appellant had forcibly fisted the deceased and the postmortem certificate would show that most of the injuries are internal injuries. It is obvious, therefore, that no one had taken the matter very seriously and would never have anticipated fatal results to follow. The other reasons is that, it was after all a quarrel between two associates in crime. As stated earlier, P.W. 1 has frankly admitted that the deceased was always engaged in property offences with his associates, one of them being the appellant himself. Even when P.W. 1 questioned the appellant when the latter was beating the deceased, the appellant had replied that there would be several matters between them both on which scores had to be settled and it was not P.W. 1 to bother herself about them. The deceased himself had no fixed place of residence, was leading a life of his own and under nobody's control. All these factors would have contributed to the relatives of the deceased not to take the matter seriously so as to report about it to the authorities. The delay, therefore, is quite acceptable in the facts and circumstances of the case.

10. It was then commented that Ex. P-1 and other records of investigation had reached Court late. This is so. However, the scene of occurrence is Olakkadu which is about 12 K.M. from the police station at Yercaud. Yercaud itself is a hill station and Olakkadu is much interior. The occurrence had taken place in the month of January, which is the coldest part of the year for that area. While so, there is bound to be delay in taking these records to Court at Salem which is in the plains. In these circumstances, the delay in the documents reaching Court, particularly in a case of a single accused, would not assume much significance. It was then stated that the stomach contents of the deceased showed thick mucoidal fluid and this would suggest that the deceased must have taken some food after the assault and there being no evidence to that effect, would indicate that the occurrence could not have taken place at the time alleged by the prosecution. It is

the evidence of P.W. 1 that on the day of the occurrence, the deceased took his lunch and then was lying opposite to the house. The occurrence took place at that time. Thereafter in the evening, when P.W. 10 the mother of the appellant had brought the deceased, the deceased had wanted some water and could not take more than one mouthful. There is no evidence that the deceased took any food while he was in the house of P.W. 1. The deceased leaves the house of P.W. 1 at 6 p.m. on 25-1-87. That evening he goes to the house of P.W. 6 and it is the evidence of P.W. 7 that she just gave some water. As to whether the deceased had taken any food on his way to the house of P.W. 6, there is no evidence. The presence of the fluid in the stomach does not suggest food or digested particles of any solid. The viscera of the internal organs of the deceased as is seen from Ex. P-13 the Chemical Examiner's report, shows that ethyl alcohol was present in the intestine, liver and kidney of the deceased. It is the uniform evidence that the deceased could not take any food. There is no undigested or partly digested food in the stomach. There is, therefore, nothing to suggest that the prosecution evidence is false. P.W. 12 has stated that the deceased could have survived till his death that night, though it was also possible that he could have died instantaneously.

11. The learned counsel also pointed out that there is discrepancy between Ex. P-1 and the evidence of P.W. 1 as to the place from where M.O. 1 was taken. These are minor discrepancies which would not affect the main narrative of the occurrence. There was no reason as to why P.Ws. 1, 3 and 4 should falsely implicate the appellant. The simple way in which the occurrence has been narrated indicates that it should be true. Nothing has been elicited in the cross-examination to discredit these witnesses. I therefore, accept the evidence of P.Ws. 1, 3 and 4 and hold that the occurrence had taken place in the manner spoken to by them.

12. It was then urged that the offence made out could only be one under Section 325, I.P.C. A look at Ex. P-11 the post-mortem certificate would show that the oral evidence of P.Ws. 1, 3 and 4 stand corroborated by external and internal injuries found on the deceased. There had been persistent fisting on the deceased, forcibly ragging the deceased by pulling him, beating him with M.O. 1 and pushing

him with M.O. 1 as he was taken to the house of the appellant. All these overt acts have caused the injuries spoken to by P.W. 12. The internal injuries include the fracture of the 5th rib on the right side, fracture of the 6th rib and injury to the lower lobe of the lung. The attack had been persistent and forcible. It was long drawn. Merely because, no weapon other than a stick had been used, it would not follow, that the offence made out cannot be under section 304 either part I or part II, I.P.C. I therefore, agree with the learned Sessions Judge in holding that the appellant had knowledge that by repeatedly and forcibly fisting the deceased on vital parts and beating him persistently also on vital parts. He had knowledge that by his act he would cause the death of the deceased. The appellant has been rightly convicted for the offence under Section 304, I.P.C. The sentence is very lenient. I therefore, ought not to interfere with it.

13. In the result, the conviction of the appellant for the offence under section 304, I.P.C. and the sentence of imprisonment for a period of 3 years are confirmed. This appeal is dismissed.

14. Appeal dismissed.