

Karuppiah and Another Vs. the State

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Court : Chennai

Decided On : Jan-24-1996

Reported in : 1996CriLJ3776

Judge : N. Arumugham, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304, 323, 324 and 326;
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Criminal Appeal No. 38 of 1988

Appellant : Karuppiah and Another

Respondent : The State

Advocate for Def. : Venkatesan, Adv. (Accused) and ;A.N. Rajan, Govt. Advocate

Advocate for Pet/Ap. : Ms. N.S. Nappinai, Adv.

Judgement :

1. Both the accused being the husband and wife have filed this appeal, challenging the judgment and findings of the learned Additional Sessions Judge of Ramanathapuram at Madurai in S.C.109 of 1987 dated 14-12-1987, wherein the first accused was found guilty for the offences under Ss. 304(II) and 323, Indian Penal Code, convicted and sentenced to rigorous imprisonment for seven years under S. 304(II), I.P.C. and to pay a fine of Rs. 100/- in default to suffer rigorous

imprisonment for one month under S.323, I.P.C. and the second accused was found guilty for the offence under S. 323, Indian Penal Code, convicted and sentenced to pay a fine of Rs. 100/- in default to suffer rigorous imprisonment for one month under S. 323, I.P.C., for want of its correctness, propriety and legality.

2. Both the appellants herein who are the husband and wife along with PWs 1 to 4 are the residents of Kamuthi village, in the same locality. PW 1 is the father-in-law of the deceased lady by name Muthumari who is the wife of PW 2 by name Ganapathy, son of PW 1. PW 3 by name Meenal is the wife of another son of PW 1, PW 4 by name Ambigapathy is the divorced wife of the first accused. It was the case of the prosecution that PW 4 was given in marriage to the first accused, but due to misunderstanding erupted among themselves, she was divorced as per the custom of their community, which was followed by her marriage with one Subramaniam. The first accused Karuppiyah is none other than the sister's son of PW 1. It was also claimed by the prosecution that the second accused Muthulakshmi, though she was married to the first accused, does not belong to the same sect of Devar community to which the other accused and the prosecution witnesses belong to. It appears that the second accused had borrowed a sum of Rs. 100/- as hand loan from the deceased Muthumari, wife of PW 2 and daughter-in-law of PW 1, prior to the occurrence. It was also stated that PW 4 Ambigapathy was suspicious of the conduct of her husband Subramaniam, as if he was having secret intimacy with the second accused Muthulakshmi. For the said reasoning, PW 4 showed much interest in collecting the money from the second accused, due to her sister-in-law. Thus, PW 4 was aiding the deceased Muthumari to get back her money from the second accused, but, however, the second accused was evading. It was claimed that there existed misunderstanding among themselves indirectly.

3. In this backdrop, at about 9.00 p.m. on 4-2-1986, while PWs 1 to 4 were all sitting in the front veranda of the house of PW 2 and engaged in their usual conversation, the second accused came there, from north towards sought with M.O. 1 fire-wood in her hand. On seeing her, Muthumari, the deceased demanded money due to her. The second accused replied that she would return the money at her own convenience and as such she could not compel her to make the

repayment. PW 1 immediately intervened and was said to have told the second accused that she should repay the amount due to his daughter-in-law and evading the same was not proper. This has resulted in a wordy quarrel. At that time, the first accused Karuppiah came from the house which was situate nearby and picked up a stone near the house of PW 1 and hit PW 1 on his head. The second accused beat PW 1 with the stick on his right shoulder. On seeing PW 1 being assaulted by the accused 1 and 2, his daughter-in-law viz., the deceased Muthumari intervened and wanted to separate the accused and PW 1. The first accused picked up a fire-wood which was lying in front of the house of PW 1 and gave a forcible hit on the head of Muthumari and she fell down with bleeding injury on her head. PW 2 who was taking food in his house came out and saw the occurrence, PW 3 was also an eye-witness. PW 4, another resident of the locality came on hearing the wordy quarrel and saw the whole occurrence. Muthumari due to bleeding injury upon her head, fell down and became unconscious. She was unable to talk. A cycle rickshaw was then brought up from the bus-stand situated nearby and both the deceased and PW 1 were taken to Kamuthi Police Station.

4. PW 11 Sub-Inspector of Police, Kamuthi recorded a statement narrated by PW 1 at about 9.45 p.m. on 4-2-1986, and read over to PW 1. After admitting it to be correct, PW 1 affixed his left thumb impression on Ex. P-1. Then, PW 11 registered the same in his police station crime No. 18 of 1986 for the offences under Ss. 324 and 326, Indian Penal Code and sent both the injured to the Government Hospital, Kamuthi for treatment.

5. PW 5 is the Civil Assistant Surgeon attached to the Government Dispensary at Kamuthi. At about 10.30 p.m. on 4-2-1986 PW 5 examined PW 1 who came there with police memo and found upon him the following injuries :-

(i) A small contusion on the right side of the temporal region.

(ii) A linear contusion about 4' length on the right shoulder.

PW 5 was of the opinion that the injuries found on PW 1 are simple in nature and the injury No. 1 could have been caused due to hit with a stone and injury No. 2 could have been caused by a beating with a stick like M.O. 1, Ex. P-2 is the would

certificate issued by PW 5.

6. PW 6 is the Civil Assistant Surgeon attached to Mudukulathur Government Hospital. It was claimed as there was no specialist available in the hospital, for treating the patient with head injuries, the deceased was referred to the Government Head Quarters Hospital, Ramanathapuram. However, PW 6 was, for some reason, treated as hostile. PW 7 is the Civil Assistant Surgeon attached to the Government Head Quarters Hospital at Ramanathapuram who claims that at about 2.10 a.m. on 5-2-1996, he examined one Muthumari sent by the police for a report as to certain injuries said to have been caused on the previous night at about 8.00 p.m. due to assault with a stick by a known person. During the course of his examination, PW 7 found the following injuries :-

- (i) A lacerated injury 1' X 1/2' over the right temporal region.
- (ii) Irregular lacerated contusion 6' X 4' over the right fronto temporal region.
- (iii) Contusion 1' X 3/4' over the right side back of the chest.

According to him, the patient Muthumari was admitted in the hospital and treated for the injuries, but however, she died at about 4.30 a.m. in the hospital on 5-2-1986. Ex.P-4 is the death intimation sent by PW 7 to Ramanathapuram police. This witness is of the opinion that the injuries found upon the person of Muthumari could have been caused by beating with a stick like M.O. 2. The copy of the accident register noted by him is marked as Ex.P-3.

7. PW 8 is the Woman Medical Officer attached to the Government Head Quarters Hospital, Ramanathapuram. She conducted post-mortem examination over the dead body of Muthumari at about 3.00 p.m. on 5-2-1986, on receipt of the requisition Ex.P-5 given by the police. During the autopsy, she found the following injuries :-

- (i) Irregular lacerated injury over the right temporal region 1' X 1/2' surrounding oedema present.
- (ii) Contusion over the right fronto-temporal region 6' X 4'.

(iii) Contusion 1' X 1/4' over the back of the right side of the chest.

On dissection, it was found that clotted blood was present in the fronto-temporal region, black in colour and clotted blood was present over the right temporal muscle. Fracture of right temporal bone extending to the right side of the frontal bone upto the rear orbital margin 1' above the margin upto the middle of the orbital margin was identified. On opening the skull, PW 8 found extra-dural and sub-dural haematoma present on the right side. She also found blood clots in the middle cranial fossa. She found fracture of petrous portion of the right temporal bone. The other parts of the brain were found congested. The stomach contained food particles about 100 ml. PW 8 doctor was of the opinion that the deceased would have died due to head injuries, due to shock and haemorrhage. Ex.P-6 is the post-mortem examination certificate given by her. PW 8 was also of the opinion that the injuries 1 and 2 noted above, could have been caused by a single blow with a stick like M.O. 2 and the third injury is possible due to fall on rough surface. She also claimed that it was also possible for the deceased to be in a position to talk one or two hours after the receipt of the injuries.

8. PW 11, the Sub-Inspector of Police, Kamuthi claimed that after registering the case above referred to, on the strength of Ex.P-1, the statement given by PW 1, proceeded to the scene of occurrence which was situate in the north-south Muniarsamy Koil Street at Kamuthi and inspected the scene of crime at about 10.15 p.m. Ex.P-13 is the observation mahagar and Ex.P-14 is the rough sketch relating to the topography of the scene of crime, prepared by him, in the presence of witness. He claims that he also noticed the existence of an electric tube light post which was burning south of scene and at the junction of Aruppukotta-Kamuthi Road and Muniarsamy Koil Street. On receipt of death intimation through V.H.F., on 5-2-1986 at about 8.00 a.m., PW 11 altered the first information report into the offence under S. 302, Indian Penal Code and sent Ex.P-8 memo as well as Ex.P-7, the first information report to the Judicial Second Class Magistrate at Mudukulathur, along with Ex.P-1 statement. He also sent message to PW 12, the Inspector of Police, Kamuthi with regard to the occurrence.

9. PW 12, the then Inspector of Police, Kamuthi, on receipt of the message at about 8.10 a.m., on 5-2-1986 about the present case, proceeded to the Government Head Quarters Hospital, Ramanathapuram and conducted inquest over the dead body of the deceased Muthumari between 11.30 a.m. and 2.30 p.m. by examining PWs 1 to 3 and others. Ex.P-15 is the inquest report prepared by PW 12. Thereafter, he despatched the dead body through a constable attached to him to the hospital with a request to conduct autopsy. After the autopsy was over, PW 9 took charge of the dead body and handed over the same to the relations as per the directions of PW 12.

10. The Head Clerk attached to the Judicial Second Class Magistrate's Court, Mudukulathur was examined as PW 10. He speaks about the receipt of Ex.P-7 the printed first information report at about 12.00 noon on 5-2-1986 with Ex.P-1 and Ex.P-8 express memo, initiated by the learned Magistrate. On the basis of the requisition given by the Inspector of Police, PW 12, Ex.P-9, case properties were duly packed and sent to the Chemical Examiner with the original covering letter sent by the Magistrate. Accordingly, M.Os.1 to 5 were sent to the Regional Forensic Science Laboratory for chemical examination. PW 10 received a report of chemical examiner, Ex.P-11 which contends that blood was found on M.Os.3 to 5. Ex.P-12 is the Serologist's report received by PW 10, which discloses blood stains found on M.Os.3 to 5 are human blood.

11. On 6-2-1986 at 12.00 noon, PW 12 Inspector of Police arrested the second accused at Aranmanai Medu in Kamuthi and recorded her voluntary confession, given by her, the admissible portion of which is marked as Ex.P-16. As per the same, it is seen that the second accused has told that she would produce M.O. 1. Accordingly, the second accused took the investigating officer and his party to a nearby bush situated on Southern tank bund of Chetty Urani and produced M.O. 1 Karuvel stick which was seized by PW 12 under the cover of Ex.P-17 mahazar, attested by the witnesses. At about 2.00 p.m. on the same day, the first accused was arrested by PW 12, and the first accused gave a voluntary confession, the admissible portion of which is marked as Ex.P-18 and in pursuance thereof M.O. 2 was produced and seized under the cover of mahazar Ex.P-19, attested by the witnesses. After examining all the witnesses, PW 12 completed the investigation

and laid the final report against both the accused for the offences above referred to, in the Court of law.

12. When the accused were questioned under S. 313 of the Code of Criminal Procedure, with regard to the incriminating piece of evidence appeared against them, both the accused denied their complicity and they did not examine any witness or mark any document on their side.

13. After recording the oral evidence of 12 witnesses viz., PWs 1 to 12 and marking of 19 documents along with 5 material objects made available on the side of prosecution, with no evidence on document on behalf of the accused, after having considered elaborately and discussed every aspect, learned trial Judge found both the accused guilty, i.e., the first accused for the offences under Ss. 304(II) and 323, Indian Penal Code and the second accused for the offence under S. 323, Indian Penal Code, by rejecting the prosecution case for the offence under S. 302 Indian Penal Code and accordingly, convicted and sentenced them as aforementioned.

14. Aggrieved at this, both the accused have come forward with the present appeal, challenging the correctness and legality of the various findings given by the learned trial Judge.

15. I have heard the Bar for and against the impugned judgment involved in this appeal. It was the very effort made by Ms. Nappinai, learned counsel for the appellants to say that the learned trial Judge has not appreciated the oral claim of PWs 1 to 4 in its proper perspective legally warranted with the result, the conviction based upon the unbelievable testimony to ocular witnesses has become unjustifiable. Learned counsel took me to the entire adduced evidence whereupon persuaded me to disbelieve the evidence of PWs 1 to 4 for the very reasoning of personal motive and basing reliance upon them, learned counsel contended that it is not safe to render conviction on the accused for flimsy reasoning. That apart, absence of the light element during the time of the occurrence was also brought to my notice which throws considerable doubt about the claim of the ocular witnesses. This above aspect has been substantiated by the fact that the rough sketch Ex.P-14 and the observation mahazar Ex.P-13 prepared by PW 12 Were

sent to the Court almost a year later that would go to show that the claim of PWs 1 and 2 about the burning of the light during the occurrence is an after thought. Investigation in this regard, according to the learned counsel, seems to be not proper but, however, surmounted with every grave suspicion. Lastly, the learned counsel would contend that even if the prosecution case is accepted, the sentence awarded for the offence under S. 304(II), Indian Penal Code is too excessive and that therefore, she emphasises the above points in favour of the appellants.

16. It was the very endeavour of Mr. A. N. Rajan, learned Government Advocate who controverted each and every one of the said averments of the appellants by contending that the testimony of ocular witnesses PWs 1 to 4 has necessarily to be believed and accepted for the reason of its naturalness, convincing and acceptability and above, all, their accounting cannot be suspected and that therefore, learned trial Judge was perfectly alright and correct in believing them. With regard to the light element, learned Government Advocate contended that apart from Exs.P-13 and P-14, the evidence of PW 12 on the one hand and the evidence of PWs 1 and 3 on the other hand are very much available and they are overwhelming. Taking as granted the above said aspect, it is noticed that PWs 1 to 4 are none other than the nearest relations of the deceased and the accused and all are the neighbours and residents of the same locality. It is, therefore, under the said circumstances, the absence of the light element cannot be taken as the prosecution case has been undermined. The corroboration in other respects, that no delay in setting the law in motion and the subsequent investigation of this case was fully established, was found perfectly alright and therefore, according to learned Government Advocate, the impugned judgment rendered by learned trial Judge must be allowed to remain intact.

17. In the context of the above rival position, I have carefully gone into the impugned judgment rendered by the trial Court. The fact that the occurrence had taken place at about 9.00 p.m. on 4-2-1986 in front of the house of the deceased wherein both the deceased Muthumari and P.W. 1 Gurusamy sustained injuries by the violence perpetrated against them and consequently, they have lodged a complaint, Ex.P-I with no delay to the police situate at about a furlong distance and set the law in motion and they have sent to the hospital for treatment and the

deceased Muthumari succumbed to the injuries - balance of its fatality and P.W. 1 sustained simple injuries, has been clearly established by the evidence of P.Ws. 1 to 4 and doctors P.Ws. 6 to 8 along with wound certificates and post-mortem examination certificate Exs. P2, P-3 and P-6 and the said fact was not in controversy among the parties herein nor disputed. The evidence of P.W. 8 and the post-mortem examination certificate would clearly demonstrate the fact that the deceased Muthumari wife of P.W. 2 died due to homicidal violence perpetrated upon her at about 9.00 p.m. on 4-2-1986. Regarding the place of occurrence, it was the claim of P.Ws. 1 to 4 and the investigating Officer with Ex.P-I that it happened in front of the house of the deceased. The question that remains to be seen is who is responsible for the violence perpetrated on the date and time of the occurrence. It was the definite finding of the learned trial Judge that the accused 1 and 2 are responsible and their complicity in perpetrating the said violence has been fully brought out. This was, perhaps, in the basis of the evidence of P.Ws. 1 to 4. Learned trial Judge after having elaborately discussed the claim of every witnesses and the suggestions made on behalf of the accused, arrived at the above conclusion. Though much was stated about the character and conduct of P.Ws. 1 to 4, it is highly difficult for me to countenance the attack perpetrated upon the version on behalf of the accused for the very reasoning that the accused 1 and 2 are not total strangers for P.Ws. 1 to 4 and the deceased. It is found that they are closely inter-related and residing in the same locality. It is, in this background, if the impugned judgment with all of its observations, is looked into, in the wake of the claim made by P.Ws. 1 to 4, I feel with all sincerity that the decision and conclusion arrived at by the learned trial Judge is more appropriate and justifiable. Simply for the reason that P.Ws. 1 to 4 happened to be close relations of the deceased, their evidence with regard to the occurrence cannot be rejected unless and until a serious doubt is created in their claim or accounting of the occurrence. Their version has to be believed in toto. Learned trial Judge has devoted much of his time in probing the testimonies inch by inch and finally believed their version. On my part also, after having considered the whole aspects of the testimony given by ocular witnesses P.Ws. 1 to 4, I have to subscribe my view in favour of the conclusion arrived at by the learned trial Judge. In short to say, I believe the version of P.Ws. 1 to 4 in stating that following the wordy quarrel between the

deceased and the second accused, P.W. 1 was attacked by the first accused and on intervention by the deceased, the first accused subscribed a blow upon the deceased and the second accused also attacked P.W. 1. The claim of P.W. 1 on this aspect has been substantiated and corroborated by P.Ws. 2 to 4. It was true that the learned counsel for the appellant would contend that there was vengeance on the part of P.W. 4 to speak against the first accused as her marital relationship has already been severed legally. But, it does not mean that show would come forward always to speak against the first accused for the very reasoning of the first accused married the second accused a lady belongs to her sub-caste and she herself got married one Subramanian who is supposed to have developed illegal intimacy with the second accused. It is the settled judicial principal that Courts of law shall not be carried away with mere sentimentalities conjectures and surmises, but, however, bound by the legal evidence alone. There is no iota of evidence made available in this case to suspect the evidence of P.Ws. 1 to 4 except the suggestion made by the accused to the extent referred to above. It is enough for me, at this stage, to say that the suggestion or the defence theory projected in this case is not in a position to shatter the consistent version of P.Ws. 1 to 4 nor to suspect them to any extent possible.

18. Three doctors were examined in this case. Though the deceased was first taken to Government dispensary at Kamuthi, since there was no expert available there, she was referred to the Government Hospital at Ramanathapuram to have proper treatment, where after treatment, she succumbed to injuries. The Post-mortem examination certificate would clearly indicate the force of the blow dealt with upon the deceased which was proved to be fatal, resulting in her death. In this angle, if the matter is viewed based on the accounting of the eye-witnesses P.Ws. 1 to 4 I am fully constrained to hold that the prosecution case was fully corroborated by the medical evidence.

19. In so far as the investigation is concerced, there cannot be any laches on their part, except the one that in preparing the observation mahazar and rough sketch, a doubt is culminated. This has, perhaps, become possible for the reason that the rough sketch and the observation mahazar Exs. P-13 and 14 seem to have been sent to the Court only in the next year. If other documents viz., inquest report, first

information report and other things had been sent to the Court immediately after the occurrence within a week, then, there is no reason to see for the delayed despatch of these two documents alone, after one year. This would show some serious doubt upon the alleged claim of the investigating Officer that on the very same date of the occurrence itself, Exs.P-13 and 14 have been prepared. A casual perusal of Exs. P-13 and 14 would reveal that they do not contain the signature of the judicial Officer at any place, but contained the seal of the Court after a long lapse of time. This position would possibly establish the fact that these two documents had been despatched subsequently and that was the reason why they had been received by the Court long after the occurrence. Of course, these two documents contained the existence of the light point. The evidence of P.Ws. 1 to 2 is that an electric light was burning nearby the scene of occurrence. If the above aspect as respects the, delay in sending Exs. P-13 and 14 is accepted, then, I have to necessarily say that the testimony of ocular witnesses has to be rejected. But, the real position is converse. The prosecution witnesses, P.Ws. 1 to 4 and the accused and also the deceased are not strangers. But, they are close relatives, living in the same village and in the same locality. If that being so, as the violence had taken place at about 9.00 p.m. on the date of occurrence, in front of the house of the deceased, in sequence to the wordy quarrel between the deceased and the second accused, when the first accused came to the scene and beat P.W. 1, then, I find no reason to reject the testimony of P.Ws. 1 to 4 in accounting the overt acts attributed against the accused. This would mean in all that the parties were fully conscious of the identity of the persons who were all there. The delayed despatch of Exs. P-13 and 14 is an error or mistake committed by the investigating agency. Having considered the contentions made by the learned Government Advocate in this regard, I have to accept the findings and the conclusion of the learned trial Judge in this case, and for the said reason, I feel that there is every force and substance in the arguments advanced by the learned Government Advocate. The delayed despatch P.Ws. 13 and 14 to the Court may not tilt the proof offered by the prosecution to the realm of any doubt, and for the said reason, the testimony of ocular witnesses P.Ws. 1 to 4 can be accepted.

20. Learned trial Judge, in his elaborate and lengthy judgment has not left a single point to be taken in this appeal, but considered every length and breadth of the

case with all its probabilities and improbabilities and finally arrived at his conclusion that the prosecution has established the complicity of both the accused beyond all reasonable doubt, in perpetrating the violence against the deceased and P.W. 1.

21. Coming to the question of conviction and sentence, after having gone through the impugned judgment, I am constrained to agree fully with the learned trial judge in mulcting the criminal liability on both the accused for the offences under Sections 304(II) and 323, I.P.C. against the second accused. It is stated that the violence in this case had occurred in view of the wordy quarrel preceded immediately which was the direct result of a petty quarrel in connection with the return of a hand-loan of Rs. 100/- Considering the prosecution claim that a wordy quarrel happened just prior to the occurrence in connection with the demand of the payment of the hand loan, the intervention of the first accused in giving blows to P.W. 1 and also to the deceased when she tried to intervene is manifestly without any premeditation or preplan, but however done at the spur of the moment due to sudden fashion. Therefore, learned trial Judge was perfectly correct in finding them guilty for the offences referred to above. Regarding the sentence awarded, I feel that the quantum of sentence awarded to the first accused viz., 7 years rigorous imprisonment for the offence under Section 304(II) Indian Penal Code is too severe and excessive. Taking into consideration the fact that the entire occurrence had happened unexpectedly and all of a sudden without any premeditation, I feel that the ends of justice would be met if I reduce the sentence from seven years to a period of three (3) years, that would justify the criminal activity committed by the first accused. Since the accused were fined only for the offence under Section 323, Indian penal Code, I do not want to interfere with the same. The fine imposed was only Rs. 100 each which in my opinion is rather adequate. Learned trial Judge has elaborately discussed each and every one of the aspect of the case, rendered legal evidence and other attendant circumstance and arrived at correct conclusion and the impugned judgment rendered by him is totally on par with the law and therefore, it has to be accepted. Except the modification of the sentence above referred to, I do not find any merit in this appeal and as such, it is liable to be dismissed.

22. In the result, for all the reasonings, the appeal is dismissed with the modification in the sentence awarded against the first accused, from seven years to a period of three years.

23. Appeal dismissed.

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