

Munusamy Vs. State

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Court : Chennai

Decided On : Mar-05-1996

Reported in : 1996CriLJ3161

Judge : Rengasamy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304, 323 and 324

Appeal No. : Criminal Appeal No. 424 of 1988 (Against order of Sessions Judge, Court of Session North Arcot Divis

Appellant : Munusamy

Respondent : State

Advocate for Def. : R. Reghupathy, Addl. Public Prosecutor

Advocate for Pet/Ap. : D. Krishnan, Adv.

Judgement :

1. This appellant stands convicted for the offence under Section 304 Part II Indian Penal Code by the learned Additional Sessions Judge, South Arcot District at Vellore to undergo rigorous imprisonment for five years.

2. The facts of the case in brief are as follows :

The deceased was the wife of the appellant/accused.

The appellant is working as a mason. The deceased had a suspicion that the appellant was having illicit intimacy with some other women. Therefore, there were frequent quarrels between them. PW-2 who is the step mother of the appellant is residing two houses away from the house of the appellant in Poondi Colony. PW-1 is the son-in-law of the appellant having married his daughter Laxmi. He is also living in Poondi Colony. On 25-3-1988, the appellant returned home by about 8.30-9.00 p.m. after finishing his day's work. The deceased quarrelled with the appellant on suspicion that he had visited his concubine. In the quarrel between them, the appellant hit his wife on her head with the wall levelling reaper of the mason (Vernacular matter omitted) The deceased fell down and got fainted. PWs 1 and 2 were watching this event. The appellant, after the incident, left the house. As there was no one to look after the deceased. PW-2, the step-mother of the appellant, requested PW-3 and others to bring the deceased to her house, so that she could attend on her. PW-3 and his wife carried the deceased to the house of PW-2 where a paste was applied on her head to reduce the pain. On 26-3-1988, the condition of the deceased became worse and she could not even take liquid food. Soon she died. On the request of PW-2, the body of the deceased was taken to the house of the appellant. Thereafter, PW-1 informed about the incident to PW-6 the Village Administrative Officer, who prepared the report Ex. P. 1 and took it to Kondungalur Police Station. PW-8, the Sub-Inspector of Police, attached to the Kilkondugalur Police Station, received the complaint Ex. P. 1 from PW-6 and registered the same in Crime No. 26 of 1988 of his police Station under section 302 Indian Penal Code and prepared the First Information Report Ex. P. 7, which was forwarded to the Court and his superior Officers. PW-9, the Inspector of Police. Vandavasi, receiving the First Information Report, came to the house of the appellant on the same day at 7.00 p.m. and took up the investigation. He prepared a rough sketch Ex. P. 6 for the scene of occurrence and arranged to take photos through PW-7. M.Os. 12 to 14 are the photo prints and M.Os. 9 to 11 are the negatives. PW-9 conducted the inquest in the presence of the Panchayatars and prepared the inquest report Ex. P. 9. The body was sent to Vandavasi Government Hospital through the constable PW-5. PW-4, the Medical Officer attached to the Government Hospital at Vandavasi, after receiving the requisition Ex. P. 2 from PW-9 conducted the post-mortem at 10.00 a.m. on 27-3-1988. He

found a swelling on the backside of the head and another swelling on the backside of the neck. The internal examination of the head revealed the presence of haematoma back and beneath the skull, a fracture over the upper part right occipital bone 5 cm length and presence of haematoma beneath and back of the neck region. The doctor was of the opinion that the deceased would appear to have died due to the cerebral haemorrhage 30 to 36 hours prior to the autopsy. Ex. P. 3 is the post-mortem Certificate. After the Post-mortem, PW-5 recovered the sarees, thali Kayiru, nose screw, jacket, skirt, ring etc., M.Os. 2 to 8 respectively from the body of the deceased for handing over the same to the Inspector of Police and handed over the body to the relatives of the deceased. The Inspector of Police, PW-9 arrested the accused/appellant opposite to the bus stop in Veliyambakkam in the presence of PW-6 and another. On examination, the appellant gave a confession statement, the admissible portion of which is Ex. P. 5. He took the police party and others to a place in front of the house of one Sait from where he took out M.O. 1 a wall levelling reaper which was seized by the Inspector of Police under Ex. P. 6 mahazar in the presence of the witnesses. The Inspector of Police, after completing the investigation, filed the charge-sheet against the appellant for the offence under section 302 Indian Penal Code. After the examination of the witnesses, the accused was questioned as to the incriminating circumstances found against him in the evidence of the witnesses. The appellant denied his complicity crime and he said that on the date of the occurrence, he returned home by 8.00 p.m. but his wife did not cook anything for him and his children to eat, that when he questioned her, there was quarrel and she abused him with filthy words that one Selvam scolded her for such behaviour, but his wife scolded Selvam also, that when Selvam gave a push by placing his hands on her head, his wife fell on the stone of the pial backwards, that he, PW-3 Selvam, and others carried her to the house of PW-2 as they wanted to find out in the electric light whether there was any injury on her head, but there was no external injury, that before she could be taken to the hospital, she died, that he, Selvam, the Village menial Sekar. Thalayari Mani and PW-1 went to the Police Station to inform about her death but he was detained in the police station itself and the case was foisted against him. No witness was examined on his side. The learned Additional Sessions Judge acquitted the accused/appellant for the Offence under

section 302 Indian Penal Code but has chosen to convict him under section 304 Part II Indian Penal Code in the manner stated above.

3. The learned counsel appearing for the appellant Mr. Krishnan contended that even according to the prosecution case, the appellant gave only one blow with the mason's wall levelling reaper, which is not a dangerous weapon, that the medical evidence shows that the injury caused by the appellant was only injury No. 2, which was in the backside of the neck and which was not fatal, but the fatal injury namely the fracture of the occipital bone to 5 cm. length has not been explained by the prosecution and therefore, the Lower Court has not properly considered the evidence before convicting the accused. I also perused the records and I find that there is an ambiguity as to the nature of injury caused by the appellant. The doctor PW-4 has found only two swellings on the body of the deceased one on the backside of the head and the other on the backside of the neck. The internal examination revealed that the swelling on the backside of the neck had caused only haematoma and it was only a simple injury whereas the injury No. 1, which was the swelling on the backside of the head, leading to the fracture of the occipital bone to 5 cm. length, had caused the cerebral haemorrhage leading to the death of the injured. Even though there were two injuries, as mentioned above, both the eye-witnesses PWs 1 and 2 have spoken only one hit by the appellant with his wall levelling reaper. The prosecution has elicited through PW-4, the doctor, as to the manner in which these two injuries could have been caused on the deceased. PW-4 has given opinion that the injury No. 2 namely the swelling on the backside of the neck, could have been caused by a hit with M.O. 1 reaper and the first injury namely the swelling in the occipital region could have been caused by a hit against the wall. Therefore, from the medical evidence, it is brought out that injury No. 2, which was simple in nature, alone was caused by the appellant and he was not responsible for the injury No. 1, which was fatal. Among the two eye-witnesses, none of them had said that the deceased was dashed against on the wall or the appellant had hit her head against the wall, PW-2 alone has stated that the appellant, holding the deceased by her turf and resting her head on the wall, beat her on the backside of the head with the levelling reaper.

4. Mr. R. Reghupathy, learned Additional Public Prosecutor, contended that as there is no evidence against the appellant that he had hit the head of the deceased against the wall, the only probability for injury No. 2 must have been due to a fall on the ground because both the ocular witnesses have stated that the deceased fell down when she was hit by the levelling reaper. This explanation is also probable. If this explanation is accepted, the fatal injury namely injury No. 1, which is a fracture in the occipital region, could not have been due to the direct attack on the deceased by the appellant but only a consequential injury, when she fell down on the ground. So, it has to be concluded that the appellant had hit his wife on her neck causing only a simple injury.

5. The next question to be considered is what is the effect of the consequential injury namely the fatal injury caused to the deceased due to the fall on the ground. The learned counsel appearing for the appellant has cited a decision of the Apex Court in *Jani Gulab Shaikh v. State of Maharashtra*, 1969 UJ (SC) 598, wherein the deceased, who abused the accused in that case, was pushed down and the deceased, who fell on the ground, sustained a fatal injury, leading to his death. Though the appellant was convicted under section 304 Part II Indian Penal Code, the Apex Court observed that the accused must not be posted with the knowledge that the death was likely to result in the circumstances under which the injuries were caused to the deceased and it is very rarely that if a man was pushed and he fell on the road, The occipital bone would get fractured and at any rate, it would be difficult to impute knowledge to the accused that the death was likely to result by the push that he was alleged to have given. Therefore, in that case, the appellant was found guilty only for the Offence under section 323 Indian Penal Code. Following this decision, this Court also in Criminal Appeal No. 759 of 1983 dated 20-3-1987, has convicted a person, who pulled down the deceased by his leg while he was standing on a pandal and sustained fatal injury by falling on a sharp projection. In that case, the deceased and some others were erecting pandal, which was objected to by the appellant and his brother, that while the deceased and others were carrying on the work of erecting the pandal, the appellant pulled down the deceased by his leg when he was standing at some height and the deceased, who fell down, developed a fracture in the head leading to his death. In that case also this Court has found that the accused would not have anticipated

the fatal head injury and therefore, though the trial Court convicted the appellant under section 304 Part II Indian Penal Code, this Court convicted him only for the Offence under section 323 Indian Penal Code.

6. In view of these decisions, I also feel that the appellant in this case cannot be convicted for the Offence under section 304 Part II Indian Penal Code because he gave only a blow on the neck of the deceased with the levelling reaper without knowing that she would fall down and develop a fracture in the occipital bone. As he had knowledge that his wife, the deceased, would develop such a fatal injury, the appellant cannot be punished under Section 302 Part II Indian Penal Code and this is conceded by the Additional Public Prosecutor also.

7. Even though the learned counsel for the appellant would argue that the appellant was having only a reaper used for levelling during the brick work and therefore, the appellant can be punished only under Section 323 Indian Penal Code as the weapon used is not a dangerous Weapon for causing the injury on the deceased the learned Additional Public Prosecutor would contend that the weapon of Offence cannot be said to be an ordinary stick because M.O. 1 the wall levelling reaper, measures more than 3 and it has sufficient weight to be used as a levelling reaper and therefore, the Offence would fall under Section 324 Indian Penal Code. As M.O. 1 is as a weapon of more than 3 length, and it is a hard wooden reaper with smooth surface. Therefore, certainly, this reaper can be used even as a club or lathi to attack a person. Therefore, I agree with the learned Additional Public Prosecutor to treat M.O. 1 as a dangerous weapon and by the user of this weapon, the appellant has committed the Offence under section 324 Indian Penal Code, for which, I am inclined to impose a punishment of two years rigorous imprisonment.

8. In view of the reasoning given above, the findings of the trial Court convicting the appellant under section 304 Part II Indian Penal Code is set aside but, he is found guilty under section 324 Indian Penal Code, for which, he is convicted and sentenced to undergo rigorous imprisonment for two years.

9. In the result, subject to the modification in the nature of the Offence and the consequential punishment as mentioned above, the appeal stands otherwise

dismissed. Even though the appellant is convicted, in view of the G.O. Ms. Nos. 180, dated 28-1-1989, 781, dated 11-4-1990, 279 dated 23-2-1992 and 296 dated 20-2-1993, he shall not be arrested or detained.

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