

Rajendran Vs. the State

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Court : Chennai

Decided On : Mar-18-1996

Reported in : 1997CriLJ171

Judge : M. Karpagavinayagam, J.

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

Appeal No. : CrI. A. No. 933 of 1989

Appellant : Rajendran

Respondent : The State

Advocate for Def. : S. Manimaran, Govt. Adv.

Advocate for Pet/Ap. : Miss Rajeswari, Adv. for ;R. Balasubramanian

Judgement :

1. This appeal is directed against the judgment dated 4-11-1989 in S.C. No. 25 of 1988 on the file of Additional Sessions Judge, South Arcot District at Cuddalore, convicting the appellant under Section 326, I.P.C. and sentencing him to undergo RI for three years and to pay a fine of Rs. 300/- in default to undergo R.I. for three months, also convicting him under S. 324, I.P.C., and sentencing to R.I. for six months. The substantive sentences were directed to run concurrently.

2. Originally, the appellant was tried for the offences under Sections 302 and 324, I.P.C., on the allegation that on 1-8-1987 at about 11.00 p.m. he gave a fatal blow with an iron rod on the head of the deceased vijayarani, a one year old baby, and also caused simple injury with the same iron rod on the left chest of one Vijaya (P.W. 1) the mother of the child Vijayarani. On behalf of the prosecution 9 witnesses were examined, 10 exhibits were filed and M.O. 1, the iron rod was marked.

3. The facts leading to the conviction need narration :-

P.W. 1 Vijaya is the wife of P.W. 2 Kolanji. The deceased Vijayarani the one year baby was the daughter of P.Ws. 1 and 2. The appellant Rajendran is the younger brother of P.W. 2 Kolanji. Both the brother, the appellant and P.W. 2 were residing in adjacent houses in the same street. On 1-8-1987 at about 8.00 p.m., there was a quarrel one Jagathambal and one Vijayakumarti, the mother and wife of the appellant, as it was alleged that the said Jagathambal took away the sugarcane crops belonging to the wife of the appellant without her knowledge. P.W. 2 Kolanji, his father Amirthalingam and two others came there, pacified and separated them.

4. At about 10.45 p.m. on the same day, the appellant Rajendran, who had been outside came back home. He was informed by his wife Vijayakumari stating that in the quarrel. She was assaulted by the parents of the parents of the appellant and P.W. 2 Kolanji. Having got enraged on hearing this the appellant took out an iron rod (M.O. 1) the length being 1 1/2 feet, and rushed towards the house of his mother, in order to beat her. On the way P.W. 2 Kolanji, his brother stopped him asked (Vernacular matter omitted). Then the appellant attempted to beat P.W. 2, his brother with M.O. 1 iron rod. Sensing danger, P.W. 2 ran immediately from the place. All the neighbours who gathered there caught hold of the appellant and prevented him from proceeding further. In the mean time, P.W. 2 Kolanji concealed himself by entering into his house. At that time P.W. 1 Vijaya the wife of P.W. 2, was standing at the entrance of the house with her one year old baby Vijayarani in her arm. When the appellant came running towards the house of P.W. 2, P.W. 1 Vijaya asked (Vernacular matter omitted). The appellant said, (Vernacular matter omitted) and so saying, he with M.O. 1 iron rod gave a blow on

the head of P.W. 1. At that time, P.W. 1 Vijaya ducked by turning her head one side and unfortunately, the hit aimed at P.W. 1, fell on the head of the child the tip of the iron rod (M.O. 1) also hit the left chest of P.W. 1 Vijaya. The Child Vijayarani died at the spot itself. Then the appellant with M.O. 1 iron rod, after threatening the witnesses ran away from the scene of occurrence. At that time the electric bulbs in the house of P.W. 2 Kolanji and in the neighbouring houses were burning.

5. At about 7.00 a.m., on the next day i.e. on 2-8-1987 P.W. 1 Vijaya and others came to Sethiyathope Police Station, P.W. 8 Sivagurunathan, Sub-Inspector of Police, who was then in charge of the Police Station, recorded the statement (Ex. P. 1) given by P.W. 1 and obtained her signature thereon. He registered the case in Cr. No. 177 of 1987 under Sections 302 and 324, I.P.C. Ex. P. 8 is the printed F.I.R. He sent Ex. P. 1 statement and Ex. P. 8 F.I.R., to the concerned Magistrate and the copies to higher officials. He sent P.W. 1 Vijaya along with Memo to the Hospital for treatment.

6. P.W. 7 Doctor Rajeswari, examined P.W. 1 Vijaya at 8.00 a.m. and found a contusion of 1' in length x 1/2' in breadth on her left chest upper part, which according to P.W. 7 was a simple injury. She issued Ex. 7 accident Register. On receipt of copy of F.I.R. at 9.00 a.m. P.W. 9 Kandasany, Inspector of Police went to the spot at 9.30 a.m., and prepared Ex. P. 2 observation Mahazar and Ex. P. 9 rough sketch in the presence of P.W. 4 Kulasekaran, and another. Between 10.00 a.m. and 12.00 Noon, he conducted inquest over the dead body of the child Vijayarani. Ex. P. 10 is the inquest report. He examined P.W. 1 Vijaya P.W. 2 Kolanji, P.W. 3 Ramakrishnan and others. Thereafter he sent the dead body of the child along with Ex. P. 5 requisition through P.W. 6 Md. Jinna, Police Constable for post-mortem.

7. P.W. 6 Doctor Sundaravadanam, at 3.15 p.m. conducted post-mortem on the body of the deceased Vijayarani and found the following injuries :-

'(1) AM Diffuse swelling the right lateral aspect of head extending to the fore-head, vertex of scalp up to occipital region. On dissection the right parietal temporal bones were fractured into six pieces. There was ecchymosis in the scalp. There was extra dural clot 200ml. Dura intact. Brain covered with blood. Brain 30 gms.

Heart Chambers-empty pale, liver-pale 350 gms. Bladder empty. Hyoid bone intact. Eyes closed. Tongue inside mouth. Lungsboth lungs pale, stomach contained partially digested rice and curd like milk. Intestine distended with gas.' He issued Ex. P. 6 post-mortem certificate and opined that the child died of shock and haemorrhage due to the head injury.

8. On 13-8-1987 at 3.00 p.m. the appellant Rajendran was arrested by P.W. 9 Inspector of Police, in the presence of P.W. 4 Kulasekaran, village Administrative Officer and on the confession of the appellant, the admissible portion of which is Ex. P. 3, M.O. 1 iron rod was recovered by P.W. 9 Inspector in the presence of witnesses under Ex. P. 4 mahazar. After the completion of investigation P.W. 9 Inspector of Police filed the charge sheet in Court on 8-10-1987 against the appellant.

9. After the examination of witnesses, the appellant was questioned under Section 313 Cr.P.C. to explain the incriminating circumstances found against him in evidence brought on record, he denied his complicity in the crime.

10. On termination of trial, learned Additional Sessions Judge, found him guilty under Section 326, I.P.C. dealt with the appellant as referred earlier. Aggrieved over the same, the present appeal has been preferred by the appellant.

11. Miss Rajeswari, learned Counsel representing Mr. R. Balasubramanian, learned Counsel for the appellant took me through the entire evidence and judgment of the trial Court and contended that there are various contradictions in the evidence adduced by the prosecution witnesses and so it cannot be contended that the prosecution has proved its case beyond reasonable doubt and as such the benefit of doubt accrued out of these vital contradictions must be given to the appellant and in that situation, the appellant is entitled for acquittal. I have heard, learned Government Advocate, who countered the submissions made by learned counsel for the appellant.

12. P.W. 1 Vijaya and P.W. 2 Kolanji are the eye-witnesses in this case. P.W. 1 Vijaya is in fact injured eye-witness. Immediately after the occurrence, the first information report has been given by P.W. 1 to the police station, which has

reached the concerned Judicial Magistrate without any delay. The evidence adduced by P.Ws. 1 and 2 is cogent and convincing and nothing has been elicited from their cross-examination to discredit their testimony. It is relevant to point out that the appellant happened to be the brother of P.W. 2 Kolanji. There is no necessity for P.Ws. 1 and 2 to speak falsehood against the appellant.

13. It is a very unfortunate case, in which one year old baby, for no fault of her, has been subjected to death, because of the blind anger, that the appellant had against his mother, who alleged to have assaulted his wife. The evidence of ocular witnesses has been affirmed by the medical evidence, as spoken to by P.W. 6 Doctor Sundaravadanam, who conducted post-mortem over the body of one year old baby Vijayarani and by P.W. 7 Doctor Rajeswari, who gave treatment to P.W. 1 Vijaya, which proves the prosecution case to the hilt. It is also brought on record, that at the time of occurrence, the electric lights in the house of P.W. 2 Kolanji and in the neighbouring houses were burning, which fact has been mentioned in Ex. P. 2, observation mahazar and in Ex. P. 1, statement given by P.W. 1 to the police, which is the earlier document. In the above circumstances, there is no difficulty in coming to the conclusion that the appellant and the appellant alone has perpetrated this inhuman crime.

14. The learned Additional Sessions Judge, Cuddalore, has elaborately discussed about the nature of the offence by referring various decisions of this Court, and come to the conclusion that the offence would only fall under Section 326, I.P.C. and not under Section 302, I.P.C. Though, I am not in agreement with the reasonings given by the trial Court, for convicting the appellant for the offence under Section 326, I.P.C., instead 302, I.P.C., I am confined in this appeal with the question, whether there are materials available on record to prove at least for the offence under Section 326, I.P.C. as there is no appeal from the State in respect of acquittal of the charge u/S. 302, I.P.C. In the light of the ample material available in this case, I have no hesitation to conclude that the case has been proved by the prosecution beyond reasonable doubt. In so far as the offence under Section 323, I.P.C. is concerned, the evidence of P.W. 1 Vijaya, the injured is clear enough to hold against the appellant. The ocular version of P.W. 1 and P.W. 2 coupled with the evidence of P.W. 7 Doctor would clinchingly prove the attack of the appellant

on P.W. 1 Vijaya with M.O. 1 iron rod. Therefore, the trial Judge is correct in holding the appellant guilty under Section 323, I.P.C. also.

15. At this stage, learned Counsel for the appellant requested this Court to consider on the question of sentence. She also referred to the decision of the Calcutta High Court in the case of the Empress v. Sahae Rae ILR (1878) Cal 623, in which on the similar facts, the sentence of the accused was reduced to two years. The same has not been seriously objected to by Government Advocate also. Considering the facts and special circumstances of the case, I feel that ends of justice would be met by reducing the sentence of three years R.I. for the offence under S. 326, I.P.C. into R.I. for two years, while confirming the conviction under Sections 326 and 324, I.P.C.

16. In fine, the conviction of the appellant under Sections 326 and 324 and sentence under S. 324, I.P.C. are confirmed. Subject to the modification of sentence of R.I. for three years into R.I. for two years under Section 326, I.P.C., the appeal is dismissed. Learned counsel for the appellant submits that the appellant is entitled to the benefit of remission for a period of two years as per G.O.Ms. Nos. 781, dated 11-4-1990, 279 dated 23-2-1992, 296 dated 20-2-1993 and 205 dated 23-2-1994. Learned Government Advocate does not dispute the appellant's entitlement of remission. As the period of sentence viz., R.I. for two years is wiped out under the above said four G.Os. the appellant need not surrender before the prison authorities.

17. Order accordingly.