

Pitchai Vs. State

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Court : Chennai

Decided On : Feb-23-1999

Reported in : 1999CriLJ3940

Judge : T. Jayarama Chouta and ;A. Ramamurthi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 109, 302, 304, 307, 313, 324 and 341

Appeal No. : Crl. Appeal No. 650 of 1989

Appellant : Pitchai

Respondent : State

Advocate for Def. : S. Anbalgan, Addl. Public Prosecutor

Advocate for Pet/Ap. : A.A. Selvam, Adv.

Judgement :

T. Jayarama Chouta, J.

1. The appellant-Pitchai was accused No. 1 in Sessions Case No. 69 of 1989 on the file of Principal Sessions Judge, Madurai. He was tried along with two others for an offence of murder of one Dhevaraj and also for causing injuries with dangerous weapon to W 1. The accused 2 and 3 were acquitted whereas the

present appellant was convicted under Section 302 of Indian Penal Code and sentenced to undergo Life Imprisonment. However, he was acquitted of the charge punishable under Section 324, I.P.C. The said conviction and sentence have been challenged in this criminal appeal.

2. The prosecution's case in brief is as follows-

P.W. 1 Neelavathi is the wife of Dhevaraj, the deceased. They lived in Dower Camp. A1 is the son of A2 and A3. A3 being the wife of A2, they were also residents of that area. Deceased-Dhevaraj was working as Security Guard in Electricity Board. He was also a Panchayat President. The house of one Mayandi P.W. 5 is situated north of the accused.

3. One month prior to the death of Dhevaraj, at about 12.00 midnight, P.W. 5 came out of the house. At that time, he saw one Karnan, son of A2 and A3 committing unnatural offence on the buffalo belonging to him. He questioned Karnan and Karnan told that he would not commit such offence and rushed away from that place. On the next day, Panchayat was convened in which Dhevaraj presided and imposed a fine of Rs. 200/- on Karnan. Since Karnan did not pay such an amount, the amount was demanded by Dhevaraj from A2.

4. On 7-10-1988, at about 4.00 p.m., PW 6 Palaniammal and her daughter were going to grocery shop to purchase rice. Dhevaraj-deceased and his wife P.W. 1 were coming behind them. A2 and A3 were standing in front of house of dhoby Rengan. Dhevaraj asked A2 to give the fine amount of Rs. 200/-. A2 retorted stating that he would not give that amount and he can do whatever he wants. There was a scuffle between the deceased and A2. Accused 2 and 3 pushed Dhevaraj to the ground and A1 stabbed Dhevraj with knife on the right side of his head and right flank. P.W. 1 shouted and A1 stabbed P.W. 1 on her head and ran away towards south. Dhevaraj got up, walked some distance and fell down near the coffee shop of one Singarammal. P.W. 1 and her brother P.W. 2 who also happened to be there, took Dhevaraj in a bus to the police station. The attack on the deceased-Dhevaraj was witnessed by P.W. 2, P.W. 3 and P.W. 4.

5. The Sub-Inspector of Police, Cudalur recorded the statement of P.W. 1 on 7-10-1988 at about 4.30p.m., since injured Dhevaraj was not in a position to make any statement. P.W. 12 recorded the statement, obtained her thumb impression and obtained the attestation from P.W. 2. On the basis of the said statement, he registered the case in Crime No. 306/88 under Sections 341,324 and 307,I.P.C. and prepared express reports as per Ex. P14 and forwarded the same to the jurisdictional magistrate as well as to his superiors.

6. Dhevaraj was shifted to the Government Hospital, Cumbam by P.W. 10. P.W. 8 Doctor examined him and pronounced him as dead and gave death intimation Ex. P6. Doctor P.W. 8 noticed the following injuries :-

1. An incised wound 6 cm. x 2.5 cm. x 2 cm. on his right side of chest wall over the 7 to 9th ribs.

2. An incised wound 9x2x1 cms. on his right parietal region on the scalp.

He also examined P.W. 1 at 5.10 p.m. and noticed an incised wound of 4 x 1 x 1 cm. in the left parietal region of the scalp. According to the doctor, the injury was simple in nature and issued the wound certificate Ex. P7.

7. P.W. 12 after receiving the death intimation at 6.00 p.m., altered the case as one under Section 302, I.P.C. and prepared the express alteration. reports and forwarded the same to the concerned Authorities. P.W. 13 the Inspector of Police, Cumbum after receiving the death intimation, went to the Police Station and took up the case for investigation. He went to the place of occurrence at 7 p.m. on 7-10-1988 and prepared the observation mahazar as per Ex. P2 and rough sketch Ex. P16 in the presence of P.W. 7 and on the same day, at about 10 p.m., he arrested AI near a quarry in the presence of P.W. 7 and recorded his voluntary statement as per Ex. P4 and seized knife MO. 2 under Mahazar Ex. P3 and also seized M.O. 3 shirt and M.O. 4 Kaili under a cover of attakshi Ex. P3. On 8-10-1988, P.W. 13 conducted inquest over the dead body of Dhevaraj from 6.30 a.m. to 9 a.m. and prepared inquest report as per Ex. P17. Then, he sent the body for post-mortem examination through P.W. 10 with a requisition.

8. P.W. 9 Dr. Johnson who is the Assistant Surgeon, Government Hospital Cumbum, on 8-10-1988 at 11.00 a.m. conducted the post-mortem examination and noticed the following injuries.-

1. 7 cm. x 1/2 cm. x 1/2 cm. incised, curved injuries 3 cm. above the right ear in the skull. On further dissection, showed no evidence of fracture of skull bone. No subdural or extradural haemorrhage in the brain.

2. A cut injury 6 cm. x 2 cm. in size about 12 cm. below the right axilla, covering 7th, 8th and 9th right intercostal space. Further dissection showed no fracture of ribs. The injury has extended and pierced the right lobe of the liver, about 5 cm. in length on the upper surface of the liver. This injury extended up to the lower surface of the liver with 3 cm. in length over the lower surface of the right lobe of the liver.

3. Small abrasion seen over right back, hip over the right gluteal area and over both knees, both elbows and both wrists.

He was of the opinion that the deceased would have appeared to be died of haemorrhage and shock due to damage to liver and death would have occurred 12 to 24 hours prior to autopsy. He issued post-mortem certificate Ex. P9. A2 and A3 were arrested on 5-11-1988 at Kumuli by P.W. 13. After receiving the reports of the Chemical Examiner and Serologist as per Exs. P12 and P. 13 and after completing the investigation, chargesheet was filed by P.W. 13 on 6-12-1988.

9. On committal, the Sessions Judge, Madurai Division, Madurai framed charge under Sections 302 and 324, I.P.C. against A1 and under Section 302 read with 109, I.P.C. against A2 and A3 and accused pleaded not guilty. On behalf of prosecution, PWs. 1 to 13 were examined and Ex. P1 to P17 were marked and M.Os. 1 to 9 were produced before Court. No witnesses and no documents were produced on behalf of accused, they pleaded not guilty. The Sessions Judge, after completion of trial and after examination of accused under Section 313, I.P.C. by putting all the incriminating circumstances which were against them, convicted the appellant under Section 302, I.P.C. and sentenced him to undergo Life Imprisonment. He acquitted A2 and A3 since they were found not guilty under

Section 302 r/w. 109, I.P.C. and acquitted the appellant of the charge framed under Section 324, I.P.C.

10. Heard the learned advocate for the appellant and Additional Public Prosecutor on behalf of respondent-State. They took us through the material evidence and the relevant documents in the case. The learned advocate, Mr. A. A. Selvam appearing on behalf of the appellant submitted that Sessions Judge was not justified in convicting the appellant for an offence punishable under Section 302, I.P.C. placing reliance on PWs. 2,4 and 6. According to him, the Sessions Judge ought to have rejected the evidence of these witnesses especially when P.W. 1 did not support the prosecution's case. The alternate argument was even the entire evidence was believed, the offence committed by the appellant will not come under Section 302, I.P.C. in view of the fact, admittedly, there was a scuffle between the appellant and deceased and during that scuffle the injuries might have been caused after receiving the said injuries, deceased had walked to the police station and was alive after some time and the death has taken place only after he left the Police Station to go to the hospital. His submission was that if immediate medical aid would have been given to the deceased, there would have been possibility of his survival.

11. We heard the learned Additional Public Prosecutor on these points. He tried to support the judgment of conviction and sentence passed by the Sessions Judge. He pointed out that even though P.W. 1 who was the eye witness of the incident, did not support the prosecution's case, the other eye witnesses PWs. 2, 4 and 6 have clearly mentioned that it was the appellant who caused injuries on the person of deceased. However, he has fairly submitted that witnesses have admitted that there was a scuffle between the appellant and deceased and during that scuffle, injuries might have been caused by appellant to the deceased. He has also pointed out from the evidence of P.W. 6 that injured was alive for some time and he walked some distance and the death had taken place only after he had been shifted from Police Station. The fact that the deceased met with homicidal death is proved from the evidence of PW 9 Doctor. In the postmortem certificate Ex. P 9, Doctor has stated that the deceased has died due to shock and haemorrhage and death would have taken place 12 to 24 hours prior to autopsy.

12. The prosecution has examined PWs. 1, 2 and 4 to be the eye-witnesses to the incident. PW. 1 who was present with her husband-deceased and who lodged complaint, however, did not support the prosecution's case and hence she has been treated as hostile. P.W. 2 is the brother of P.W. 1 and he has deposed that after going to the forest, he had come to see his sister at lower camp. In front of the dhoby's house, accused 2 and 3 were scuffling with Dhevaraj. A2 and A3 pushed Dhevaraj to the ground. A1 stabbed Dhevaraj with knife on the right side of his head. When he went near the accused, he ran away. He and PW. 1 took the injured to the Police Station. Injured walked certain distance and he was with bleeding injuries. P.W. 1 gave a statement before Sub-Inspector of Police as per Ex. P1 and P.W. 2 attested the said statement. In the cross-examination, he has admitted that the scuffle was going on between appellant and deceased for five minutes. He came to know that the dispute was regarding the payment of Rs. 200/-. Except stating that his family is in Gudaloor which is five miles from lower camp, no suggestion was put to the witness to show that he was not present at the time of the incident. His presence is strengthened by the fact that he accompanied the deceased with P.W. 1 and he attested Ex. P1 in the Police Station.

13. P.W. 2 is the eye-witness for the incident. P.W. 4 has also stated that while she was sitting in her house, she saw P.W. 1 and the deceased in front of dhoby Rengan's house. When Dhevaraj asked A2 for payment of money, there was scuffle between them and at that time A1 stabbed Dhevaraj with 'suri knife' on the right side of his head and P.W. 1 and he ran away from there. She has admitted in the cross-examination that she asked P.W. 1 why they were fighting and she replied that they were fighting for Rs. 200/-. She also further stated that the first scuffle was by P.W. 1 and her husband with A2 and A3 and A1 came later.

14. P.W. 6 is another eye-witness for the incident. She has also stated that there was a fight between them and A1 stabbed Dhevaraj with knife on the right side of the head and right flank. In the cross-examination, she has stated that the persons who were present at the time of the incident have not rendered any support nor given any first aid to him. The version of this witness could not be disputed. Hence, the Sessions Judge believed the version given by this witness and convicted the appellant. We also place reliance on their evidence.

15. The alternative argument of the learned advocate for the appellant that in view of the fact that there was a scuffle between the accused and deceased and in that scuffle, injuries would have been caused by A1 on the person of deceased and hence the act committed by the appellant will not amount to a murder, has got some force. In view of the material collected at the time of the trial. and in view of the evidences of the above mentioned witnesses that there was scuffle and the injured had walked some distance and there was no immediate medical aid, we are of the opinion that the Sessions Judge was not justified in convicting the accused for an offence punishable under Section 302,I.P.C.

16. P.W. 13 the Investigating Officer in the cross-examination had admitted that in the observation Mahazar Ex. P2 the marks of the scuffle between the accused and the complainant have been noted and those marks were there when he saw the scene of occurrence and if that be so, there was a scuffle between them and during that scuffle, the injuries could have been caused to the deceased and the deceased survived for sometime, without any medical aid.

17. Under those circumstances, we are of the opinion that the act committed by the appellant will be an offence punishable under Section 304. I.P.C. Accordingly, we partly allow the Criminal Appeal and set aside the conviction and sentence of the appellant under Section 302, I.P.C. Instead, we convict the appellant under Section 304(I), I.P.C. and sentence him to undergo Rigorous Imprisonment for seven years. If the appellant is on bail, he has to surrender before the Court below and undergo the remaining period of imprisonment. Consequently, Criminal M.P. Nos. 945/90 and 1180/91 are dismissed.