

Subbiah Vs. State

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Court : Chennai

Decided On : Apr-07-2006

Reported in : 2006CriLJ3501

Judge : P.D. Dinakaran and ;M.E.N. Patrudu, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304

Appeal No. : Cri. Appeal (MD) No. 815 of 1997

Appellant : Subbiah

Respondent : State

Advocate for Def. : K. Chellapandian, Addl. P.P.

Advocate for Pet/Ap. : B. Pugalenghi, Adv.

Judgement :

M.E.N. Patrudu, J.

1. The appeal arises from the judgment rendered by the Principal Sessions Judge, Tuticorin dated 29-7-1997 in S. C. No. 110 of 1993.

1.1 The learned Sessions Judge convicted the appellant for an offence under Section 302 IPC and sentenced him to undergo imprisonment for life.

2. The grievance of the appellant is that there is no legal evidence to convict the appellant for any offence and he is entitled to acquittal.

3. For the purpose of understanding, it would be sufficient to refer to the facts narrated here under:

FACTS

3.1 A petty sudden quarrel led to a grave offence of murder.

3.2 On 8-6-1991 at about 16.30 hours, the appellant stabbed the deceased on the left side of his chest resulting instantaneous death of the deceased.

3.3 The reasons for the incident are quite simple. The appellant sold his bicycle to PW.3 for Rs. 100/- Thereafter, PW.3 enquired from the deceased whether the price of the bicycle is reasonable. The deceased expressed his view that the price is on higher side. This opinion of the deceased provoked the accused to commit the offence. Some time later, the appellant took out his knife and stabbed the deceased for quoting low price. This was witnessed by PW. 1, the father of the deceased and another by name Ranalinga Athikari. He was not examined as witness. It is the case of the prosecution that soon after inflicting the injury, PW.1 beat the appellant on his head with stick and he ran away. Since the deceased met with instantaneous death, PW. 1 along with the said Athikari went to Vilathikulam Police Station, gave a report. It is Ex. P1. The said Athikari also signed the report as a witness to the incident. PW. 2 is also referred as eye-witness to the incident in Ex. P. 1. PW.2 is an Independent person.

3.4 The police took up investigation and attended to all the requirements of procedural law mentioned under Chapter 12 of the Code of Criminal Procedure.

3.5 The accused pleaded not guilty for the charge. He was defended by an advocate at the trial.

3.6 During trial 9 witnesses were examined for prosecution, so also 14 documents and 9 MOs were marked.

3.7 During the course of arguments, our attention has been drawn by Thiru. Pugalendhi, learned Counsel appearing for the appellant to the factual aspects of the Incident and Thiru. Pugalendhi wanted to Impress us by highlighting that the entire Incident appears to have happened in sudden quarrel, due to sudden fight and it is by grave and sudden provocation by losing self-control by the appellant and it is not an intentional act.

3.8 In all fairness, the learned Counsel stated that the offence alleged against the appellant is not attracting the Ingredients of murder but the Court can consider conviction under Section 304 Part II of the IPC and award a reasonable sentence, in case if we do not consider for clean chit in favour of appellant.

3.9 Learned Additional Public Prosecutor resisted the argument.

4. The sole point for our determination is:

Whether the appellant caused murder with intention and knowledge?

5. Point:

5.1 The death of the deceased is not in dispute. PW. 8 Dr. Balusamy, Civil Asst. Surgeon, Govt. Hospital, Vilathikulam conducted the post mortem and Issued Autopsy Certificate Ex. P. 12. The evidence of PW. 8 and the contents of Ex. P. 12 clearly establish that the death of the deceased is homicidal.

5.2 As can be seen from the facts of the case, this is a case of sudden quarrel and sudden fight. No doubt, the reasons in detail have been recorded by the learned Sessions Judge while convicting the appellant.

5.3 From para 8 onwards, the learned Sessions Judge discussed the factual matrix of the case. The admitted facts need not be reproduced and some of the undisputed aspects which are noted in the Trial Court Judgment need no reiteration.

5.4 Motive:

The evidence on record is not establishing the fact of purchase of bicycle by PW. 3 and his enquires from the deceased about the value of the bicycle and the reply of the deceased, The simple reason is PW3 did not support the case of the prosecution. He is a total hostile witness. Thus, the forceful contention of the learned Counsel for the appellant that the motive for the offence is not established and therefore, the appellant is entitled to acquittal is pleasing but not acceptable as the Apex Court held more than thousand times that in a case of murder, motive is Immaterial when there are direct witnesses to the incident.

5.5 In Rajendra Kumar v. State of Punjab : 1966 CriLJ960

It is clearly held that 'the motive behind a crime is relevant fact on which evidence can be given. The absence of a motive is also a circumstance, which is relevant for assessing the evidence. The circumstances which have been mentioned as proving the guilt of the accused, much, however, not weakened at all by this fact that the motive has not been established. It often happens that only to corroborate himself for what made him take a certain course of action when the case appears to be one like that, Court need not search for motive'. In the above case, death sentence was maintained.

5.6 Thus, the Court need not consider the question of motive when the Court is satisfied that the accused is the assailant.

5.7 Proof of motive satisfies the judicial mind about the likelihood of the authorship but its absence only demands deeper forensic search and cannot undo the fact, and evidence otherwise sufficient.

5.8 Motives of men are often subjective, submerged and unamenable to easy proof so that Courts have to go without clear evidence thereon if other clinching evidence exists.

5.9 Datar Singh v. State of Punjab : 1974 CriLJ908

It is held as follows:

If the eye-witnesses are relied upon, the mere absence of motive for committing murder or the mode of his commission is of no assistance to the accused.' In the above case, the eye-witnesses are disbelieved and hence the accused was acquitted.

5.10 The Apex Court in large number of cases, held that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic and some times the motive is clear and can be proved and some times, however, the motive is shrouded in mystery and it is very difficult to locate the same. When the Court is able to place implicit reliance on the evidence of the eye-witnesses, the question whether there is any motive or not becomes Irrelevant.

5.11 In the instant case, the investigation agency has collected the evidence on motive. But the person who was examined to prove motive decided to travel along with the appellant, hence the prosecution was not able to establish the motive. But it should not be a ground for total acquittal.

5.12 A close reading of the evidences, both oral and documentary clearly establish the incident on 8-6-1991 at 4.30 P. M. PWs. 1 and 2 are direct witnesses. Both of them have supported the case of prosecution. Their evidence is consistent. The occurrence as spoken to by PWs. 1 and 2 is without any contradiction. The minor discrepancies attempted to be focussed through magnifying glass are to be discarded. The Trial Court had exercised its judicial mind and discussed evidence in detail.

5.13 The contention that the evidence of PW. 1 is to be rejected because he is the father of the deceased and is an interested witness, is without any merit.

5.14 Interested Witness:

(a) Time and again, the Apex Court is observing that the evidence of interested witness need not be discarded in its totality but only the Court is expected to search for some corroboration through the Independent source.

(b) It is not the law of the land that the evidence of interested witness is not entitled to any weight. Their evidence has got to be scrutinised with care. Therefore, the evidence of PW. 1 will have to be considered with great caution and when there is material corroboration found in the Other evidence adduced by the prosecution through the testimony of PW. 2, it is unfair to discard the evidence of PW. 1.

(c) Interest of justice is the requirement of law and not the rejection of the interested evidence.

(d) In the recent decision of the Supreme Court,

Ashok Kumar Pandey v. State of Delhi : 2002 CriLJ1844

It is clearly held that the evidence of PW, 2 who is the father of the deceased cannot be branded as a partisan or interested witness when his evidence is found to be credible and further his evidence is corroborated by other witnesses.

(e) Therefore, we are not able to agree with the contention of the appellant that the evidence of PW. 1 has no value. PW. 1 has narrated how the Incident occurred and PW 2 has fully corroborated the same.

5.15 Non-examination of material witness:

(i) The other contention that non-examination of Ramalinga Athikari and some other witnesses is fatal to the prosecution, is also without substance.

In Munshi Prasad v. State of Bihar : 2001 CriLJ4708

It is held that it is the quality of the evidence and not quantity, which is required.

(ii) The crux of the issue being has the prosecution been able to bring home the guilt with the evidence available on record if the evidence on record is otherwise satisfactory in nature and can be ascribed to be trustworthy, an increase in the number of witnesses cannot be termed to be a requirement for the case.

(iii) When overwhelming evidence through the testimony of PWs. 1 and 2 is available, examination of Ramalinga Athikari or any other witness would only be a

repetition or duplication of the evidence already adduced. Hence, non-examination of such witness is immaterial.

(iv) The Courts on facts normally ask itself, whether in the facts and circumstances is it necessary to examine such other witnesses and if so whether such witnesses are available to be examined and if they are available, whether they are being withheld intentionally from the record and the Court on facts if comes to a positive conclusion that the material witness who should have been examined is withheld and the evidence of other direct witnesses are of no credence, then only the question of drawing adverse inference may arise,

5.16 in this case, the Trial Court, scrutinised the worthy evidence of PWs. 1 and 2 adduced before it and arrived to the right conclusion. Hence, we do not find any merit in the argument.

5.17 For the foregoing reasons, we hold that the prosecution is able to establish the occurrence and how it happened and therefore, the appellant is liable for conviction.

5.18 The next core question is whether the act of the appellant attracts an offence Under Section 302 IPC or 304 IPC.

(i) To attract the ingredients of Section 302 IPC, the case facts must establish all the four essential requirements as mentioned in Section 300 IPC and also not falling in any of the exceptions. We consider it unnecessary to produce Section 300 IPC as it will add few more pages.

(ii) In the light of the record and submissions made before us and after careful scrutiny and exhaustive reference to the evidence on record, we hold that this case is attracting exception (1) to Section 300 IPC.

The said exception alone is noted.

Section 300 IPC, Exception (1) IPC

Exception 1- When culpable homicide is not murder -

Culpable homicide is not murder if the offender, whilst deprived of the power of self control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to three provisions.

Explanation - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

In the instant case, according to the prosecution the incident occurred as the deceased expressed his opinion about the accused's bicycle and undoubtedly, the said expression of the deceased provoked the appellant and thereby he was deprived of the power of self-control and caused the injury. In this case, this provocation is not sought by the appellant or he has not voluntarily provoked. It is a sudden provocation since the appellant sold his bicycle at a rate may be on higher side and the deceased might have expressed an honest opinion but that is the reason for the grave and sudden provocation.

5.19 Thus, taking every fact and circumstances into consideration, we are of the opinion that Exception (1) to Section 300 IPC is squarely attracting the incident and the conviction of the appellant is to be altered into one under Section 304 Part I of the IPC as in our considered opinion, the appellant by inflicting the stab injury on the chest with a knife had requisite intention and knowledge that such injury would cause death. Therefore, this is a case falling under Section 304 Part (I) of the IPC and not under Part (II) as urged by the learned Counsel for the appellant.

5.20 In the result, the appeal is partly allowed. The conviction and sentence imposed by the appellant under Section 302 IPC are set aside. Instead, he is convicted under Section 304(i) IPC and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs. 1,000/- and compensation of Rs. 9,000/-, which would be paid within a period of 8 weeks from the date of receipt of copy of this order, failing which, he shall undergo one year rigorous imprisonment as default sentence and the sentence already undergone is set off.

