

Elumalai .Vs. State.

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Court : Chennai

Decided On : Aug-31-2010

Judge : M.Chockalingam; M.Sathyanarayanan, Jj.

Acts : Code of Criminal Procedure (CrPC) (CRPC) - Section 374(2)

Appeal No. : CRL.A.No.305 of 2010 and M.P.No.1 of 2010

Appellant : Elumalai .

Respondent : State.

Advocate for Def. : Mr.V.Balasubramanian, Adv.

Advocate for Pet/Ap. : Mr.R.Vijayaraghaven, Adv.

Judgement :

1. Challenge is made to a judgment of the Additional Sessions Division, Fast Track Court No.V, Chennai, made in S.C.No.12 of 2010 whereby the sole accused/appellant stood charged under Sections 302, 324 and 506(ii) of IPC, tried and found guilty under Sections 302 and 324 of IPC and awarded life imprisonment along with a fine of Rs.5000/- and default sentence under Sec.302 IPC and two years Rigorous Imprisonment along with a fine of Rs.1000/- and default sentence under Sec.324 IPC, and he was acquitted of the third charge under Sec.506(ii) IPC.

2.Short facts necessary for the disposal of this appeal can be stated as follows:

(a) P.W.1 is the son of the deceased Ramanathan @ Mohammed. P.W.2 is the wife and P.W.3 is the daughter-in-law of the deceased. The deceased along with his family members P.Ws.1 to 3, was residing at No.51, Jyothi Ammal Nagar 3rd Street, Saidapet. The accused is the brother of P.W.2. At about 4.30 P.M. on 30.8.2009, there was a wordy altercation between P.W.2 and the accused in respect of a money transaction. While the same was going on, the deceased intervened, and at that time, aggrieved over the same, the accused attacked him with a knife, M.O.1., on the stomach. On seeing this, P.W.1 intervened. Then he also attacked P.W.1 on his left hand, left rib and also right eyebrow. Immediately when P.W.1 raised the distressing cry, the accused fled away from the place of occurrence. (b) P.Ws.4 and 5 who were residing in the other house, were informed, and they rushed to the spot. Immediately they took P.W.1 and the severely injured Ramanathan, P.W.1's father, to the Government General Hospital where P.W.7 was the Doctor on duty. He admitted both of them and gave initial treatment. Ex.P4 is the accident register copy for P.W.1, while Ex.P5 is the accident register copy for the deceased. Thereafter, immediately, an intimation was given to the respondent police station. P.W.10, the Inspector of Police of the Circle, proceeded to the Government General Hospital and recorded the statement of P.W.1 which is marked as Ex.P1, on the strength of which he registered a case in Crime No.458/2009 under Sections 324, 341, 307 and 506(ii) IPC. The printed FIR, Ex.P10, was despatched to the Court. (c) P.W.10 took up investigation, proceeded to the spot, made an inspection and prepared an observation mahazar, Ex.P11, and also a rough sketch, Ex.P12. He recovered the material objects from the place of occurrence. (d) Further treatment was given to P.W.1 and the deceased by P.W.8, the Doctor. The wound certificate in respect of P.W.1 was marked as Ex.P6. Despite the treatment given, the deceased died on 16.9.2009. Then the case originally registered under Sec.307 IPC, was altered to Sec.302 of IPC. The altered FIR, Ex.P14, was despatched to the Court. Then the Investigator conducted inquest on the dead body of the deceased in the presence of witnesses and panchayatdars and prepared an inquest report, Ex.P15. A requisition was given to the hospital authorities for the purpose of postmortem. (e) On receipt of the said requisition, P.W.9, the Tutor in Forensic Medicine, Madras Medical College, has conducted autopsy on the dead body of Ramanathan @

Mohammed and has issued a postmortem certificate, Ex.P9, with his opinion that the deceased would appear to have died of effects of stab injury to abdomen. (f) Pending the charge sheet to be laid, the accused was absconding. Then the final report was filed under Sections 324, 341, 302 and 506(2) of IPC.

3.The case was committed to Court of Session, and necessary charges were framed. In order to substantiate the charges, the prosecution examined 10 witnesses and also relied on 16 exhibits and 1 material object. On completion of the evidence on the side of the prosecution, the accused was questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses which he flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced on either side, and took the view that the prosecution has brought home the guilt of the accused in respect of the charges 1 and 2 and awarded the punishment as referred to above. Hence this appeal at the instance of the appellant. However the trial Court has recorded an order of acquittal in respect of the third charge.

4.Advancing the arguments on behalf of the appellant, the learned Counsel would submit that in the instant case, the prosecution relied on the evidence of P.Ws.1 to 3 as eyewitnesses; that they are the son, wife and daughter of the deceased respectively, and hence they were all interested witnesses; that under the circumstances, if the careful scrutiny test is applied, their evidence should have been rejected by the trial Judge in view of the discrepancy in their evidence, and also their evidence is self inconsistent.

5.Added further the learned Counsel that P.W.1 was examined as an injured witness; that he could not have accounted for the injuries sustained by him; that the accident register copy and the wound certificate, Exs.P4 and P6 respectively, in respect of P.W.1, did not in any way corroborate the ocular testimony projected through P.W.1; and that from the evidence of P.W.1, it would be quite evident that the other witnesses could not have seen the occurrence at all. Added further the learned Counsel that the weapon of crime has not been recovered, and hence the prosecution has miserably failed to prove its case.

6.The learned Counsel in the second line of argument would submit that even as per the prosecution case, there was a wordy altercation between P.W.2, the wife of the deceased, and also the appellant who is her brother, in respect of the money transaction; that at that time, the deceased intervened which was not warranted, and thus in view of the same, he got provoked, and thus he has stabbed him which was neither intentional nor premeditated; that even the injury that was caused to P.W.1, was very simple; that it is also pertinent to point out that he has actually stabbed him only once in the stomach; that in the postmortem certificate, two injuries are noted; that the second injury was due to the operation conducted at the time when he was admitted in the hospital; that though the occurrence has taken place on 30.8.2009, the deceased who was in the hospital under treatment, died only on 16.9.2009, and it was also due to the complications; and that it would clearly indicate that the act of the accused cannot be termed as murder, but it is only a culpable homicide not amounting to murder if the Court takes the view that the factual matrix as put forth by the prosecution has got to be accepted.

7.The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

8.It is not in controversy that the husband of P.W.2, following an incident that took place in the evening hours of 30.8.2009, was taken to the hospital and originally treated by P.W.7 and thereafter by P.W.8, the Medical Person, and despite treatment, he died on 16.9.2009. The case originally registered under Sec.307 of IPC inter alia, was subsequently altered to Sec.302 of IPC on his death. Following the inquest made by the Investigator, the dead body was subjected to postmortem by P.W.9, the Doctor, who has given a categorical opinion as a witness before the Court and also through the contents of the postmortem certificate, Ex.P9, that the deceased would appear to have died of effects of stab injury to abdomen and direct consequences of the same. The cause of death as put forth by the prosecution was never disputed by the appellant before the trial Court or before this Court. Under the circumstances, no impediment is felt by the Court to record that Ramanathan died out of homicidal violence.

9. In order to substantiate the charges levelled against the appellant that he caused the death of Ramanathan and also caused simple injury to P.W.1, the prosecution has marshalled three witnesses as eyewitnesses namely P.Ws.1 to 3. It is true that P.Ws.1 to 3 are close relatives of the deceased. Merely because of the relationship, their evidence cannot be rejected, but before acceptance, the Court must apply the test of careful scrutiny. Even after the application of the test, this Court is satisfied that their evidence has inspired the confidence of the Court. Apart from that, it remains to be stated that P.W.1 was an injured witness. It is well settled principle of law that in a given case like this, when an eyewitness happened to be an injured witness, the Court should not discard the testimony of such witness, unless and until a strong circumstance is noticed, or reason is brought about casting doubt on that evidence. In the case on hand, P.W.1 has given a clear narrative of the incident that when the wordy altercation between P.W.2 and also the accused in respect of the money transaction was going on, his father intervened, and at that time, the accused stabbed him, and when he went to the rescue of his father, he was also stabbed by him on different parts of the body. The evidence of P.W.1 stood fully corroborated by P.W.2. P.W.3's evidence also stood fully corroborated by the evidence of P.W.1. Apart from the above, the evidence adduced through P.Ws.7 and 8 and the wound certificate and the accident register copies marked through them, apart from the postmortem certificate in respect of the deceased, would be a corroborative piece of evidence to the ocular testimony. Thus the contentions put forth by the learned Counsel for the appellant in this regard cannot be accepted in view of the above evidence. Thus the prosecution by suffice evidence has brought home the guilt of the accused that it was he who stabbed the deceased and also P.W.1 at the time of occurrence. Thus it leaves no doubt, much less reasonable doubt in the mind of the Court.

10. As far as the second line of argument put forth by the learned Counsel for the appellant is concerned, this Court is able to see force in that contention. Admittedly, the wordy altercation was going on between P.W.2, the wife of the deceased, and also the accused and that too in respect of money transaction. When the altercation was going on between the brother and sister, the husband of P.W.2 the deceased, intervened, and it was also a money transaction. At the time

when he intervened, it actually caused sudden provocation to the appellant/accused, and then he stabbed him on the stomach. The circumstance apart from the provocation which led the accused to act so, is that he stabbed him only once, and the deceased was also taken to the hospital the very day. He was under treatment from 30.8.2009 till 16.9.2009. All these circumstances have got to be taken into consideration by the Court. Therefore, the act of the accused cannot be taken as one premeditated or intentional, and it would not attract the penal provision of murder. He has got to be found guilty under Sec.304 (Part I) of IPC, and awarding a punishment of seven years Rigorous Imprisonment would meet the ends of justice.

11.As far as the attack on P.W.1 is concerned, simply injury was sustained by him which is also spoken to by him. The medical opinion was also canvassed through P.W.7, the Medical Person, apart from the documentary evidence in that regard. Hence the trial Judge was perfectly correct in finding him guilty under Sec.324 of IPC and awarding the punishment of 2 years Rigorous Imprisonment.

12.Accordingly, the conviction and sentence imposed by the trial Court on the appellant under Sec.302 IPC are set aside, and instead, he is convicted under Sec.304 (Part I) of IPC and is directed to suffer seven years Rigorous Imprisonment. The sentence already undergone by him, shall be given set off. The fine amount imposed by the trial Court, will hold good.

13.As regards the conviction and sentence imposed by the trial Court on the appellant under Sec.324 of IPC, they are confirmed. Both the sentences are ordered to run concurrently.

14.In the result this criminal appeal is, accordingly, disposed of. Consequently, connected MP is closed.

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