

Manokaran Vs. State

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Court : Chennai

Decided On : Mar-21-2013

Judge : T. Sudanthiram

Appellant : Manokaran

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :21.03.2013
CORAM THE HONOURABLE MR.JUSTICE T. SUDANTHIRAM CrI.A.No.267 o

1. Manokaran 2. Damodaran .. Appellants/Accused 1 and 2 Versus State
Represented by, The Inspector of Police, C-2, Elephant Gate Police Station,
Chennai. .. Respondent/Complainant Prayer:- Criminal Appeal filed under Section
374 (2) of Cr.P.C., against the judgment dated 28.02.2005 passed by the learned
Additional District and Sessions Judge, Fast Track Court not II, Chennai, in
S.C.No.706 of 2004. For Appellants : Mr.M.Kabilan For Respondent :
Mr.P.Govindarajan, Additional Public Prosecutor. - - - - - JUDGMENT The
appellants herein are the accused 1 and 2 in S.C.No.706 of 2004 on the file of the
learned Additional Sessions Judge, Fast Track Court not II, Chennai. The first
accused was convicted for an offence under Section 304 Part II r/w. 34 I.P.C. and
sentenced to undergo five years rigorous imprisonment and to pay a fine of
Rs.1,000/-, in default, to undergo three months simple imprisonment and the
second accused was convicted for an offence under Section 341 I.P.C. and
sentenced to undergo one month simple imprisonment and he was also convicted

for an offence under Section 304 Part II r/w. 34 I.P.C. and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment and the sentences of imprisonment imposed on the second accused were ordered to run concurrently. Challenging the said conviction and sentence, the accused 1 and 2/appellants herein have preferred this criminal appeal.

2. The case of the prosecution, in brief, is as follows:- The first accused is son of the second accused and the deceased is younger brother of the second accused and they belonged to the Village called Ulagapuram, Tindivanam Taluk and they were staying in Chennai and they were all working as Loadman. The accused, deceased and P.Ws.1 to 3, who were all working as Loadman, were staying on the platform behind Ekambareswarar Koil. There was a dispute among the deceased and the accused regarding a property in their Village. On 20.11.2003 at about 10.30 p.m., after their work, they were all sitting on the platform near Indian Bank at Agragaram and they were chatting. The accused 1 and 2 questioned the deceased that he had built a house in the plot belonging to them and he did not give any money for that. The accused 1 and 2 insisted for money from the deceased or for return of the plot. The deceased told them that he had already paid a sum of Rs.15,000/- and he was not in a position to pay any further amount. At that time, there was a quarrel among them and while quarreling, the first accused took a casuarina stick from a bullock cart and the second accused caught hold of the deceased. The first accused had attacked the deceased on his head and caused bleeding injuries. Thereafter, the deceased was taken to the hospital by the first accused and P.W.2. P.W.10, Medical Officer in the Government General Hospital, examined the deceased and declared that the deceased was brought dead and he prepared the Accident Register-Ex.P.15. P.W.1 gave a complaint-Ex.P.1 to the police. (ii) P.W.12, the Inspector of Police, Elephant Gate police station, received the complaint from P.W.1 and registered a case in Crime No.450 of 2003 for the offences under Sections 341 and 302 I.P.C. and prepared the First Information Report-Ex.P.11. Then, he went to the scene of occurrence and prepared an Observation Mahazar-Ex.P.12 and Rough Sketch-Ex.P.13 and also collected the bloodstained earth. He went to the hospital and held inquest on the body of the deceased and prepared Inquest Report-Ex.P.16. He has also

enquired the witnesses and recorded their statements. On 21.11.2003, at about 11.00 a.m., he arrested the accused and recorded their confession statements in the presence of P.W.4 and another and in pursuance of the confession given by the accused, he recovered the cloths of the first accused and also recovered M.O.1-Casuarina Stick. (iii) P.W.13, Inspector of Police took up the further investigation in this case and after completing the investigation, he laid the final report against the accused 1 and 2. (iv) In order to prove the case, the prosecution examined P.Ws.1 to 13, marked Exs.P.1 to P.23 and produced M.Os.1 to 11. The accused were questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances and they denied their complicity. The first accused had stated that he did not attack the deceased, but the deceased, who was in a drunken mood, fell down and sustained injuries and he took the deceased to the hospital. The second accused also had stated that the deceased was in a drunken mood and fell down and sustained head injury. The accused did not choose to examine any defence witness and mark any defence document. (v) The Trial Court, after analyzing the oral and documentary evidence, convicted and sentenced the accused 1 and 2 as already stated above.

3. Mr.Kabilan, learned counsel appearing for the appellants/accused 1 and 2 submitted that the occurrence did not take place in the manner as alleged by the prosecution and it was only the first accused, who took his paternal uncle, the deceased, to the hospital and the deceased sustained injuries due to fall and the Accident Register-Ex.P.15 also reveals the said fact. The Post-mortem Doctor-P.W.11 also admitted that the deceased had sustained injuries due to fall from a high level place and M.O.1-Casuarina Stick could not have been used by the accused. The recovery in respect of M.O.1 is false. Though the Inspector of Police says that M.O.1 was recovered from the place of occurrence in pursuant to the confession given by the accused, according to P.W.1, M.O.1 was available in the scene of occurrence and it was recovered by the police. The learned counsel for the appellants further pointed out that P.W.1 had not stated in his evidence that the second accused caught hold of the deceased.

4. Per contra, the learned Additional Public Prosecutor submitted that P.Ws.1 to 3 are the eye-witnesses to the occurrence and they were all co-workers along with

the accused and the deceased, and they had no personal animosity to depose falsely against the accused. The ocular evidence of P.Ws.1 to 3 prevail over the medical evidence. The medical opinion is also not contra to the ocular evidence. The Post-mortem Doctor had not stated in his evidence that the injuries on the deceased were possible by attack with wooden log and this opinion of the Doctor corroborates the evidence of eye-witnesses to the occurrence. The learned Additional Public Prosecutor further submitted that of course, the first accused, having attacked the deceased had taken the deceased to the hospital and in order to escape from his liability, he had given a false information to the Doctor that the deceased fell down from a height. But, this version of the accused is falsified by the evidence of P.Ws.1 to 3, who are uninterested independent witnesses to the occurrence.

5. This Court has considered the submissions made by the learned counsel on either side and perused the records.

6. According to the prosecution case, the deceased and the accused being closely related and there being a property dispute, on the date of occurrence, after quarrel, the first accused had attacked the deceased with wooden log. According to the prosecution, the second accused caught hold of the deceased. While giving evidence, P.W.1 had not stated that the second accused caught hold of the deceased. Even P.W.2 had stated that while quarreling, the first accused had suddenly took up a wooden log and attacked the deceased and at that time, the second accused caught hold of the deceased. Though P.W.2 had stated that at that time, the second accused caught hold of the deceased, it cannot be said that the second accused, in order to facilitate the first accused to attack the deceased, he caught hold of the deceased. P.W.3 also, in the cross examination, had stated that the first accused had attacked the deceased with wooden log at an unexpected point of time. Therefore, it is to be held that the second accused is not responsible for the occurrence of first accused attacking the deceased. It is to be seen that whether the case of the prosecution regarding the attack on the deceased by the first accused with wooden log to be accepted. P.Ws.1 to 3, who are the co-workers along with the accused and the deceased and who are the independent witnesses, have categorically deposed that there was a quarrel

among the accused and the deceased and at that time, the first accused suddenly took up the wooden log and attacked the deceased. The evidence of P.Ws.1 to 3 had not been shattered in the cross examination by the defence regarding the attack on the deceased by the first accused. The evidence of P.Ws.1 to 3 is corroborated by the medical evidence. Though the Post-mortem Doctor-P.W.11 had admitted in the cross examination that the injury on the head of the deceased was possible due to fall, it is his evidence that the injury on the head of the deceased was possible by wooden log. When no doubt arises on the ocular evidence, the medical opinion in support of the ocular evidence should be taken into account. In Ex.P.15-Accident Register, the Doctor, while mentioning about the history of the occurrence, described that there was a fall from height about 10 feet. The said statement was given to the Doctor only by the first accused, who had taken the deceased to the hospital. Of course, the first accused, who attacked the deceased being nephew of the deceased had taken him to the hospital in order to save him. At the same time, the first accused in order to escape from the liability, he had given a false statement to the Doctor. The version of the accused cannot be accepted in view of the evidence available from the direct eye-witnesses to the occurrence. The prosecution had proved its case that the deceased was attacked by the first accused with wooden log in a spur of the moment during quarrel.

7. For the above said reasons, the conviction and sentence imposed by the trial Court on the second accused/second appellant herein are set aside and he is acquitted of the charges. The bail bond executed by the second appellant/second accused shall stand cancelled forthwith and the fine amount paid, if any, shall be refunded to him.

8. In so far as the first accused is concerned, the conviction imposed on him for the offence under Section 304 Part II r/w. 34 I.P.C. is altered to Section 304 Part II I.P.C. Considering the fact that it is not a premeditated occurrence and the occurrence had taken place in a spur of the moment after quarrel, the first accused though he had attacked the deceased he himself had taken the deceased to the hospital and now more than nine years had elapsed from the date of occurrence, the first accused is sentenced to undergo three years rigorous imprisonment and he is also sentenced to pay a fine of Rs.1,000/-, in default, to undergo three

months rigorous imprisonment. The fine amount of Rs.1,000/- already paid by first appellant/first accused before the trial Court for the offence under Section 304 Part II r/w. 34 I.P.C. shall be adjusted towards the fine amount now imposed by this Court for the offence under Section 304 Part II I.P.C. T. SUDANTHIRAM, J.

jrl 9. In the result, the criminal appeal is partly allowed.

10. The learned trial Judge is directed to take steps to secure the first accused and send him to prison to undergo the remaining period of sentence. 21.03.2013 Index : Yes Internet : Yes jrl To 1. The Additional District and Sessions Judge, Fast Track Court not II, Chennai.

2. The Inspector of Police, C-2, Elephant Gate Police Station, Chennai.

3. The Public Prosecutor, High Court, Madras. CrI.A.No.267 of 2005

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