

Muthuraj Vs. State Rep. by

Muthuraj Vs. State Rep. by

SooperKanoon Citation : sooperkanoon.com/965634

Court : Chennai

Decided On : Jan-30-2013

Judge : M.Jaichandren

Appellant : Muthuraj

Respondent : State Rep. by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

30. 01/2013 CORAM THE HONOURABLE MR.JUSTICE M.JAICHANDREN and THE HONOURABLE MR.JUSTICE S.NAGAMUTHU Criminal Appeal (MD) No.233 of 2012 Muthuraj .. Appellant vs. State rep. by the Inspector of Police, Eral Police Station, Turicorin District. .. Respondent (Crime No.17 of 2010) Criminal Appeal filed under Section 374 of the Cr.P.C. praying to set aside the Judgment dated 29.09.2010 made in S.C.No.96 of 2010 on the file of the Additional Sessions Judge, Fast Track Court No.1, Thoothukudi. !For appellant ... Mr.S.Durai Raj ^For respondent... Mr.K.S.Duraipandian Addl.Public Prosecutor :JUDGMENT (Judgment of the Court was delivered by S.NAGAMUTHU, J) The appellant is the sole accused in S.C.No.96 of 2010 on the file of the learned Additional Sessions Judge, Fast Track Court not I, Tuticorin. He stood charged for the offences under Sections 294(b), 302, 324 and 506 (ii) IPC. By judgment dated 29.9.2010, the Trial Court convicted him under Sections 302 and 324 IPC but acquitted him from the charges under Sections 294(b) and 506(ii)IPC. For the offence under Section 302 IPC, the Trial Court has sentenced him to undergo imprisonment for life (no fine

was imposed) and for the offence under Section 324 IPC, the Trial Court has sentenced him to undergo rigorous imprisonment for two years. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Esakkiammal. PW.1 is her grand daughter. The accused is the husband of PW.1. Both the accused and PW.1 are labourers. On account of her work, PW.1 used to speak to her employer and others over cell phone. This raised a suspicion in the mind of the accused about the fidelity of PW.1. Some time before the occurrence, PW.1 spoke to some one over cell phone. This was noticed by the accused. Enraged over the same, he slapped PW.1 on her cheek. Therefore, PW.1 took her children and went to the house of the deceased on 15.2.2010. On the same day, at about 2.00 p.m., PW.1, PW.3 and the deceased were at the house of the deceased. At that time, the accused came to the house of the deceased. The deceased questioned him as to why he attacked PW.1. This resulted in a quarrel. In the course of quarrel, the accused suddenly attacked the deceased with a hammer on her head, left eye brow and left wrist. The deceased fell down. PW.1 attempted to rescue the deceased. The accused attacked her also with the hammer on her head and forehead. Then the accused ran away from the scene of occurrence. PW.3 took the deceased and PW.1 to Eral Government Hospital in an auto. The husband of the deceased joined them on their way. PW.1 and the deceased were given first aid treatment at Eral Government Hospital from where they were referred to the Government Medical College at Tuticorin. (ii) PW.17 was the Assistant Surgeon, attached to Tuticorin Government Hospital. He examined the deceased at 4.20 p.m., on 15.1.2010. At that time, she was unconscious. But, PW.1 informed that the deceased had been attacked by a known person with a hammer. He noticed the following injuries:-

(1) A laceration 8 x 2 x 2 cm present left side of scalp

(2) Bleeding from left ear oral cavity present

(3) Swelling in right forearm Ex.P12 is the Accident Register. (iii) On the same day, at 4.30 p.m, on 15.10.2010, PW.17 examined PW.1. She also told the Doctor that she was attacked by a known person with a hammer on 15.1.2010 at about 2.00

p.m.,. He noticed the following injuries:- (a) Sutured wound present in left side of forehead (b) Sutured wound present in left side of scalp. Ex.P13 is the wound certificate. Both PW.1 and the deceased were admitted in the hospital for treatment. (iv) On receiving intimation from the hospital, PW.12 went to the Government Hospital at Tuticorin on 15.1.2010 at 6.00 p.m.,. He found the deceased in unconscious state. Therefore, he obtained a statement from PW.1 under Ex.P1. Based on the said statement/complaint, PW.12 registered the case in Crime No.17 of 2010 under Sections 294 (b), 307, 324 and 506(ii) IPC. Ex.P5 is the FIR. He sent Exs.P1 and P5 to Court and handed over the case diary to the Inspector of Police for investigation. (v) PW.18 was the then Inspector of Police, attached to Eral Police Station. He took up the case for investigation. On 15.1.2010 at 10.30 p.m., on reaching the place of occurrence, he prepared an Observation Mahazar and a Rough Sketch in the presence of PWs.8 and

9. Then, on going over to the hospital, he examined PW.1. The deceased was still unconscious. Therefore, PW.18 could not examine her. Then, he examined a few witnesses. On 17.1.2010, he arrested the accused beneath Eral Serman Kovil river bridge in the presence of PW.7 and another witness. On such arrest, he gave a voluntary confession in which he disclosed the place where he had hidden the hammer. In pursuance of the same, the accused took the police and witnesses to the said place and produced the hammer. PW.18 recovered the same. (vi) While so, the deceased died in the hospital. On 21.01.2010, PW.18 received the intimation regarding the same at 11.25 a.m., and therefore, he altered the case into one under Sections 294, 302, 324 and 506 (ii) IPC. Ex.P15 is the alteration report. Then, he conducted inquest on the body of the deceased at 1.30 p.m., on the same day and prepared Ex.P16 Inquest Report. During the inquest, he examined PWs.1 to 3 and a few more witnesses and then, handed over the case diary to his successor. (vii) PW.19 the succeeding Inspector of Police took up the case for investigation and on completing the same, he filed charge sheet against the accused under Sections 294(b), 302, 324 and 506(ii) IPC.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of this judgment. The appellant pleaded innocence and therefore, he was put on trial. In order to prove the charges, on the side of the prosecution as

many as 19 witnesses were examined, 16 documents were exhibited and 3 Material Objects were marked.

4. Out of the said witnesses, PWs.1 to 3 are the eye-witnesses to the occurrence. PW.6 is the husband of the deceased who has spoken to the fact that he joined PW.1 and PW.2 when they were proceeding to the hospital. PW.7 has spoken about the arrest of the accused and consequential recovery of the hammer from his possession. The others are official witnesses.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he has neither chosen to examine any witness nor to mark any document on his side. Having considered the above materials, the Trial Court found the accused guilty under Sections 302 and 324 IPC and accordingly, punished him. That is how the accused is before this Court with this appeal.

6. We have heard the learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor appearing for the State and we have perused the records carefully.

7. The learned counsel for the appellant would submit that, in this case, Ex.P1 FIR is a doubtful document and therefore, the entire case of the prosecution should be rejected. In order to substantiate the said contention, the learned counsel would submit that though it is alleged that the FIR was registered on 15.1.2010 at 9.30 p.m., the same had reached the learned Judicial Magistrate on 18.1.2010. Thus, according to him, there is enormous delay of about 3 days. He would further submit that in the mean while on 17.1.2010 itself, the accused was arrested. Thus, after the arrest of the accused, FIR had been brought into existence. Therefore, according to the learned counsel, the entire prosecution case should be suspected and eventually rejected.

8. He would further submit that though it is the positive case of the prosecution that the deceased and PW.1 were initially taken to Eral Government Hospital, neither the Doctor who treated them has been examined nor Accident Register Copies have been proved in evidence. From this, the learned counsel would

submit that the earliest information passed on by PW.1 to the Doctor has been suppressed. He would further submit that PW.17, the Doctor who treated the deceased at Government Hospital, Tuticorin had noticed 3 external injuries whereas according to the Doctor who conducted post-mortem, there were 7 external injuries. According to the learned counsel, this is a major contradiction and this has not been resolved at all.

9. The learned counsel would further submit that the deceased was in the hospital for 6 days and thus, the cause of the death cannot be directly attributed to the injury sustained by the deceased. He would further submit that assuming that the occurrence was true, even then, the act of the accused would be punishable under Section 326 IPC.,.

10. But, the learned Additional Public Prosecutor appearing for the State would vehemently oppose the said contention. According to him, PWs.1 to 3 who are the eye-witnesses have vividly spoken to about the entire occurrence. He would further submit that the presence of PW.3 at the place of occurrence cannot be doubted at all. Though there is some delay in forwarding the FIR, according to the learned Additional Public Prosecutor, on that score, the entire case of the prosecution cannot be doubted. He would further submit that the contradiction between the evidences of PW.17 and PW.18 cannot be considered to be a major contradiction so as to go to the very root of the case of the prosecution. From the medical evidence, according to him, it is crystal clear that the death was directly due to the injury caused by the accused. Thus, according to the learned Additional Public Prosecutor, the prosecution has proved its case beyond reasonable doubts and the offence committed by the accused would fall under Section 302 IPC.

11. We have considered the above submissions.

12. Admittedly, PW.1 is the wife and PW.3 is the son of the accused. The deceased was none else than the grand mother of PW.1. In pursuance of the quarrel, PW.1 and PW.3 had gone to the house of the deceased. At the time of occurrence, PW.1 and PW.3 were at the house of the deceased. In our considered opinion, there is no reason to reject this portion of evidence of PWs.1 and 3. PW.2 is the neighbour of the deceased. She had also witnessed the occurrence. She

has also very vividly spoken to about the occurrence. Her presence at the time of occurrence cannot be doubted, because her house is very closely situated to the house of the deceased. Thus, PWs.1 to 3 have spoken to about the occurrence in a very convincing manner and their evidence also duly corroborated with the medical evidence. Thus, we do not find any reason to reject the evidences of PWs.1 to 3.

13. Now, coming to the delay aspect, the alleged occurrence was on 15.1.2010 at 2.00 p.m., whereas the case was registered at 9.30 p.m., on 15.1.2010. Thus, it cannot be stated that there was any delay in preferring the complaint. Since the deceased was in a serious condition and since PW.1 was undergoing treatment in the hospital as inpatient, there would not have been occasion for PW.1 to go to the Police Station and prefer a complaint forthwith. Thus, in our considered view, there is no delay at all in preferring the complaint.

14. Nextly, the learned counsel for the appellant would submit that had it been true that the FIR was registered at 9.30 p.m, on 15.1.2010 the same would have reached the Court on the same night or at least, in the morning on 16.1.2010 but instead it had reached the Court only on 18.1.2010. Thus, admittedly, there is enormous delay in forwarding the FIR and the complaint to the Court.

15. But, now the question is as to whether the entire case of the prosecution should be discarded on this score? Our answer to this question is emphatically "No". Simply, because there was some flaw committed by the police, on that score, we cannot belittle the evidences of PWs.1 to 3 and reject them. As we have already pointed out, the evidences of PWs.1 to 3 are highly convincing thereby inspiring the confidence of this Court. Therefore, the argument based on the delay aspect is rejected.

16. Nextly, the learned counsel would submit that the Doctor who treated the deceased as well as PW.1 at Eral Hospital had not been examined. It is of course, again a flaw in the case of the prosecution. But, on this score also, we cannot discard or reject the evidences of PWs.1 to 3 of whom, PW.1 is the injured eye-witness.

17. The next contention of the learned counsel for the appellant is that PW.17, the Doctor, who treated the deceased at Government Hospital, Tuticorin, noticed 3 injuries whereas according to Post-Mortem Certificate, there are 7 injuries. This aberration is sought to be shown as a major contradiction. In our considered opinion, there is no contradiction at all on this aspect. As we have noticed, at the time, when the deceased was brought to the hospital, her condition was so critical and she was unconscious. Therefore, the Doctor would have been left with a little time to notice the injuries. He would not have had occasion to notice the minor injuries such as abrasions found on the deceased. Thus, he had mentioned only major injuries, namely, 3 injuries. But, subsequently, during post-mortem, the Doctor had occasion to examine the injuries minutely on the bare body of the deceased. Therefore, he would have had occasion to notice all the minor injuries found. That is the reason why he has mentioned about 7 injuries including abrasions. Thus, in our considered opinion, there is no contradiction in this aspect.

18. Now, coming to the cause of death, PW.16 has given opinion that the death was due to head injury. The post-mortem certificate and the evidence of PW.16 would go to reveal that there was skull fracture and injury to brain. This injury is fatal. Thus, the death in this case was caused only by the act of the accused.

19. Now, turning to the point as to what is the provision under which the appellant is liable to be convicted, in our considered opinion, the act of the accused is punishable only under Section 304 (I) IPC. Here, the injury caused on the deceased was sufficient to cause the death in the ordinary course of nature and the said injury was intended injury. Therefore, the act of the accused would squarely fall within the third limb of Section 300 IPC. But, it is the contention of the learned counsel for the appellant that the act of the accused would fall within the first exception to Section 300 IPC.

20. A perusal of the evidences of PWs.1 to 3 would go to show that absolutely, there was no premeditation on the part of the accused. He had just returned from his work spot with the hammer in hand. It was only the deceased who provoked him by questioning his authority to beat PW.1, on the same day, some time before. This ensued in a quarrel. It was in this quarrel, provoked by the words of the

deceased, the accused had attacked her with the hammer, which was already in his hands. From this evidence, we find no difficulty to hold that the deceased had acted out of grave and sudden provocation, which falls within the first exception to Section 300 IPC.,. Thus, the accused has committed culpable homicide not amounting to murder punishable under Section 304 (I) IPC.

21. Insofar as the conviction under Section 324 is concerned, the evidences of PWs.1 to 3, more particularly, the evidence of PW.1 proves the same. The medical evidence also corroborates. Therefore, the conviction of the appellant under Section 324 also deserves to be confirmed.

22. Now, turning to the quantum of punishment, the appellant is an old man. He had no previous motive or premeditation. The weapon was also not brought for the purpose of attack. Having regard to these facts and circumstances, in our considered opinion, imposing sentence of rigorous imprisonment for 7 years with a fine of Rs.1,000/- for the offence under Section 304 (I) IPC would meet the ends of justice. Insofar as the quantum of punishment for the offence under Section 324 is concerned, we confirm the sentence imposed by the Trial Court.

23. In the result, the Criminal Appeal is allowed in the following terms:- (i) The conviction and sentence imposed on the appellant for the offence under Section 302 IPC is set aside, instead he is convicted under Section 304 (I) IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for two weeks. (ii) The conviction and the sentence imposed for the offence under Section 324 IPC is hereby confirmed. (iii) The sentences are directed to run concurrently and the period of sentence already undergone by the accused/appellant shall be given set off. asvm To 1.The Additional Sessions Judge, Fast Track Court No.1, Thoothukudi. 2.The Inspector of Police, Eral Police Station, Turicorin District. (Crime No.17 of 2010) 3.The Additional Public Prosecutor, Madurai Bench of Madras High court, Madurai.