
Ganesan Vs The State of Tamilnadu

Criminal Appeal No. 356 of 2006

Court: Madras High Court

Date of Decision: Jan. 23, 2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 164, 313#Penal Code, 1860 (IPC) " Section 302, 304, 324, 34, 341

Hon'ble Judges: M. Venugopal, J; M. Chockalingam, J

Bench: Division Bench

Advocate: M. Devaraj, for the Appellant; P. Kumaresan, Additional Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

M. Chockalingam, J.

Challenge is made to a judgment of the Principal Sessions Division, Salem, made in S.C. No. 305 of 2005 whereby

the appellant/A-1 stood charged along with A-2 under Sections 341 and 302 read with 34 of IPC, and on trial, A-1 was found guilty under

Sections 302 and 341 of IPC and awarded life imprisonment along with a fine of Rs. 1000/- and default sentence and six months Simple

Imprisonment respectively, while the learned trial Judge recorded an order of acquittal of A-2.

2. The short facts necessary for the disposal of this appeal can be stated thus:

(a) P.W.5 is a resident of Thippampatty, and he was doing coolie work. The deceased Karadi @ Chinnasamy was known to him. One year prior

to the date of occurrence, A-2 the wife of A-1, was found missing. It came to the knowledge of A-1 and P.W.5 that she was living with the

deceased at Periyagoundapuram. Then they went over to that place and brought her back just 15 days prior to the occurrence, and thereafter, A-

2 was living with her husband A-1 during the relevant time.

(b) On the date of occurrence namely 4.4.2005, at about 10.30 A.M., P.W.5 heard the noise near the house of A-1. Immediately he went over

there. A-1 told that some one was lying there with injuries. The very day, P.W.2, the brother's wife of P.W.1, on seeing the deceased with severe

injuries, informed P.W.1, and P.W.1 in turn rushed to the place. He found the deceased with bleeding injuries and P.Ws.1 and 2 asked him at

about 12.00 P.M., how he happened to sustain injuries. He narrated that he had illicit intimacy with A-2, and he came that day to take her, and at

that time, he was tied by A-1 and A-2, and both of them attacked him with a wooden log and an iron pipe, and thus he sustained injuries.

Immediately, P.Ws.1 and 2 took him to the Government Mohan Kumaramangalam Medical College Hospital, Salem, at 2.45 P.M. P.W.12, the

Doctor, who was on duty, admitted him and gave treatment. The accident register copy is marked as Ex.P16. The further treatment was given by

P.W.11, the Doctor. Despite the same, he died at the Hospital. Immediately, P.W.1 proceeded to the respondent police station and gave a

complaint under Ex.P1. P.W.15, the Sub Inspector of Police, who was on duty, on the strength of Ex.P1, the report, registered a case in Crime

No. 15 of 2005 under Sections 341, 324 and 302 of IPC. The printed FIR, Ex.P22, was despatched to the Court.

(c) P.W.16, the Inspector of Police, who was in charge of Mallur Police Station, on receipt of the copy of the FIR took up investigation,

proceeded to the spot, made an inspection and prepared an observation mahazar, Ex.P5, and also a rough sketch, Ex.P23. He conducted inquest

on the dead body in the presence of witnesses and panchayatdars and prepared, Ex.P24, the inquest report. Then, a requisition, Ex.P17, was

given to the hospital authorities for the purpose of postmortem.

(d) P.W.13, the Professor of Forensic Medicine, Government Mohan Kumaramangalam Medical College Hospital, on receipt of the said

requisition, conducted autopsy on the dead body of Karadi @ Chinnasamy and has given his opinion in Ex.P18, the postmortem certificate, that

the deceased would appear to have died of shock and haemorrhage due to multiple injuries.

(e) On 7.4.2005, at about 6.30 A.M., when P.W.6, the Chairman of Vikram Memorial Matriculation School, Mallur, was in his house, the

accused appeared before him and gave a confessional statement, and the same was recorded by him in his letter pad, and it is marked as Ex.P4.

Thereafter, he produced both the accused before the respondent police. Both were enquired by the Investigator. A-1 gave a confessional

statement. The admissible part is marked as Ex.P7. Pursuant to the same, M.O.3, wooden log, M.O.4, rope, and M.O.5, iron pipe, produced by

him were recovered under a cover of mahazar. They were sent for judicial remand.

(f) The witnesses were produced before the Judicial Magistrate No. II, Salem, who is examined as P.W.10, before whom they gave statements

which were recorded u/s 164 of Cr.P.C. They were all produced before the Court. The material objects recovered from the place of occurrence

and from the dead body and M.Os.3 to 5 were subjected to chemical analysis which has brought forth Ex.P20, the chemical analyst's report, and

Ex.P21, the Serologist's report. On completion of investigation, the Investigating Officer filed the final report.

3. The case was committed to Court of Session, and necessary charges were framed. In order to establish the charges, the prosecution examined

16 witnesses and also relied on 23 exhibits and 7 material objects. On completion of the evidence on the side of the prosecution, the accused were

questioned u/s 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses which they flatly denied as

false. No defence witness was examined. The trial Court heard the arguments advanced, scrutinised the materials available and took the view that

the prosecution has proved the case beyond reasonable doubt and hence entered a judgment of conviction of A-1 and awarded the punishment

referred to above. Hence this appeal at the instance of the appellant/A-1.

4. Advancing arguments on behalf of the appellant, the learned Counsel Mr. Devaraj would submit that according to the prosecution, the

occurrence has taken place on 4.4.2005 at 10.30 A.M.; that A-1 was the husband of A-2, and A-2 was kept by the deceased for a period of one

year or two prior to the occurrence as per the prosecution case; that the prosecution has miserably failed to prove its case; that P.W.5 was shown

as a person who actually met the deceased at the place of occurrence immediately after the occurrence; that P.W.5 has not spoken about any

utterance made by the deceased or as to the incident at all; that under the circumstances, it would be quite clear that the deceased could not have

spoken anything to anybody, and hence the entire evidence of P.Ws.1 and 2 as if the deceased made an oral dying declaration to them could not

but be false; that according to P.W.1, the complaint was written by him and was taken to the police station; but, at the time of evidence, he would

state that it was written by the Sub Inspector of Police, and it was also at about 7.00 P.M.; that according to the Sub Inspector of Police, it was

recorded at 4.30 P.M.; and that it is highly doubtful whether Ex.P1 could have come into existence as put forth by the prosecution.

5. Added further the learned Counsel that in the instant case, first he was taken to Government Mohan Kumaramangalam Medical College

Hospital, and P.W.12 was the Doctor who admitted him, and he was found to be conscious; but, the name of the person who admitted him and

also the name of the injured all remained unknown; and that if to be so, the evidence of P.Ws.1 and 2 as if he gave a dying declaration should have

been rejected. The learned Counsel would further add that in the instant case, except this the prosecution had no evidence to offer, and even all the

material objects as if they were recovered from A-1 pursuant to the confessional statement were all cooked up records.

6. Added further the learned Counsel that in the case on hand, even assuming the factual position put forth by the prosecution is to be taken as

proved, the act of the accused would not attract the penal provision of murder; that admittedly, A-2 was the wife of A-1; that A-2 was actually

taken away and kept by the deceased for a period of more than one year; that just 15 days prior to the occurrence, it was P.W.5 who intervened

and got her back, and thus, A-1 and A-2 were living for 15 days peacefully in their place; that at that time, it was the deceased who came there to

take her again, and it is quite natural for a husband to become provoked; that under the circumstances, he attacked him; that at that time he was

not armed with any deadly weapon, but only a stick and iron pipe which was used in the kitchen; that it is further to be pointed out that the injuries

as found in the postmortem certificates were external, and they were simple; that the appellant had no intention to cause the death or premeditation

with which he has acted; that it cannot be termed as murder, and this has got to be considered by the Court.

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 severely injured namely Karadi @ Chinnasamy was taken from the place of occurrence to the Government

Mohan Kumaramangalam Medical College Hospital, and it was P.W.12, the Doctor, who gave treatment to him, and the accident register copy is

marked as Ex.P16. Within a short span of half an hour at about 3.20 P.M. on the date of occurrence namely 4.4.2005, he died. Following the

inquest made by the Investigating Officer, the dead body was subjected to autopsy by P.W.13, the Doctor, who gave his categorical opinion that

he died out of shock and haemorrhage due to multiple injuries sustained by him. The cause of death put forth by the prosecution was never

disputed by the appellant before the trial Court, and hence without any impediment the factual position that he died out of homicidal violence has

got to be recorded so.

9. In order to establish the charges levelled against the appellant, the prosecution before the trial Court had no direct evidence to offer, but it relied

upon the circumstantial evidence. The circumstances noticed by the trial Court and also by this Court on perusal and scrutiny of the materials could

be stated as follows. First of all, immediately after the occurrence, it was P.W.2 who on seeing the severely injured Karadi @ Chinnasamy gave

message to P.W.1, her brother's husband, who rushed to the spot. Both P.Ws.1 and 2 enquired him, and at that time, the deceased told both of

them that he was beaten by the accused with wooden stick and also with iron pipe, as a result of which injuries were sustained.

10. Second circumstance was that immediately P.W.1 took him to the Government Mohan Kumaramangalam Medical College Hospital where he

was given treatment; but, within a short span of time, he died. At this juncture, it is pertinent to point out that P.Ws.1 and 2 are admittedly

strangers. Why they should come before a Court of law to give such evidence as if an oral dying declaration was given by him to them, no reason

was brought forth by the appellant or noticed by the Court. Hence the oral dying declaration has got to be accepted for the circumstance that they

have sent the injured to the Hospital immediately after the occurrence, and he has narrated the incident. He has also further spoken to the fact that

he took A-1 and was keeping her for sometime, and on that day, he came there to take her back and at that time, the occurrence has taken place.

Further P.W.1 immediately went to the police station and has given Ex.P1, the report, wherein he has completely narrated the entire episode.

Under the circumstances, the said dying declaration, in the considered opinion of the Court, could be acted upon since the evidence of P.Ws.1 and

2 inspired the confidence of the Court.

11. The third circumstance noticed by the Court is the extra-judicial confession given by the accused to P.W.6. P.W.6 was the Chairman of

Vikram Memorial Matriculation School, Mallur. According to him, when he was in his residence, the accused appeared before him and narrated

that they have beaten the deceased with wooden log and iron pipe and caused severe injuries, and thereafter, both of them were produced along

with his report in the letter paid marked as Ex.P4.

12. Fourth circumstance was that pursuant to the arrest, A-1 has given a confessional statement, pursuant to which M.Os.3 to 5 were all

recovered. They were all subjected to chemical analysis, and further, they were all found to have contained human blood. At this juncture, it is

pertinent to point out that out of these three material objects, M.O.3 was the wooden log, and M.O.5 was the iron pipe with which the appellant

attacked him and caused injuries, and thus, the recovery of these material objects pursuant to the confessional statement given by A-1 would be

pointing to the guilt of A-1.

13. Now the contention put forth by the learned Counsel for the appellant is that it is highly doubtful whether Ex.P1, the report, has come into

existence. It is true that there is discrepancy as to the time and place and by whom it was written. But, in the considered opinion of the Court,

Ex.P1 was only to the extent of setting the criminal law in motion because P.W.1 was not an eyewitness. Hence the attempt made by the

appellant's side to attack the case of the prosecution ended in vain.

14. The learned Counsel would further add that when the deceased was taken to the Government Hospital at 2.40 P.M. he was found to be

conscious; but, nothing has been recorded by the Doctor in Ex.P16, the accident register copy. It is to be pointed out that within a short span of

30 minutes, when he was taken to the casualty ward, he actually died, and thus, he could not have been in a position to speak. Therefore, nothing

has been recorded. When there is sufficient evidence by way of circumstances which are narrated above, this contention put forth by the learned

Counsel for the appellant does not carry merit whatsoever, and the same is to be rejected and accordingly, rejected. Thus the prosecution by these

evidence as narrated above, has brought home the guilt of A-1 that it was he who attacked the deceased with the wooden log and iron pipe, and

as a direct consequence, death has ensued.

15. 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 sufficient force.

Admittedly, A-2 is the wife of A-1. They were living together peacefully. It was the deceased who intervened in their marital life and took A-2

from A-1 and he was living with her nearly for one year. P.W.5 intervened, and she was brought back, and for a period of 15 days prior to the

occurrence, A-1 and A-2 were living peacefully. At this juncture, the deceased again came to the place of A-1 and made an attempt to take her

on the morning hours of the occurrence, and naturally any husband would become provoked. Due to that provocation, A-1 has attacked him. It is

further to be pointed out that at the time of the occurrence, he has used only a stick and also an iron pipe which is being used in the kitchen. and

thus, it cannot be stated that he used any deadly weapon. Further, all the injuries noticed in the postmortem certificate are simple in nature, and

they have brought forth the death. Under the circumstances, this Court is unable to notice that A-1 had got any intention or any premeditation to

cause the death. It was the deceased who kept A-2, the wife of A-1, for sometime, and even after she was brought home and living with A-1,

again he came over there and attempted to take her. Naturally due to the provocation, A-1 has acted so. Under the circumstances, this Court is of

the considered opinion that it cannot be termed as murder, but culpable homicide not amounting to murder, and it would attract the penal

provisions of Section 304 (Part I) of IPC, and awarding seven years Rigorous Imprisonment would meet the ends of justice.

16. Accordingly, the conviction and sentence imposed by the trial Court on A-1 u/s 302 of IPC are set aside, and instead, he is convicted u/s 304

(Part I) of IPC and directed to undergo seven years Rigorous Imprisonment. The sentence already undergone by him, shall be given set off. The

fine imposed by the trial Court will hold good. The conviction and sentence imposed by the trial Court on A-1 u/s 341 of IPC are confirmed.

17. With the above modification in conviction and sentence, this criminal appeal is dismissed. It is reported that the appellant is on bail. Hence the

Sessions Judge shall take steps to commit him to prison to undergo the remaining period of sentence.