
Chelladurai Vs The State

Criminal Appeal (MD) No. 244 of 2009

Court: Madras High Court (Madurai Bench)

Date of Decision: July 6, 2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) "Section 313#Explosive Substances Act, 1908 "Section 3, 5#Penal Code, 1860 (IPC) "Section 302, 449

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

Bench: Division Bench

Advocate: C. Mayil Vahana Rajendran, for the Appellant; N. Senthur Pandian, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

M. Chockalingam, J.

Challenging the judgment of the Additional Sessions Judge cum Fast Track Court No. 1, Tuticorin passed in S.C.

No. 152 of 2008 on 29.01.2009, whereby the appellant/accused stood charged, tried, found guilty and awarded punishment as under, the present

Criminal Appeal has been filed.

Charges under Finding Punishment

Section

449 IPC Found The accused was sentenced to

guilty undergo life imprisonment and

to pay a fine of Rs. 1000/- in

default, to undergo 6 months R.I.

302 IPC (2 counts) Found The accused was sentenced to

guilty undergo life imprisonment for

each count and to pay a fine of

Rs. 1000/- towards each count

in default, to undergo 6

months R.I. for each count.

3(a) of the Explosive Found The accused was sentenced to

Substances Act, 1908 guilty undergo 10 years R.I. and to

pay a fine of Rs. 1000/- in

default, to undergo 6 months

R.I.

5(a) of the Explosive Found The accused was sentenced to

Substances Act, 1908 guilty undergo 5 years R.I. and to

pay a fine of Rs. 1000/- in

default, to undergo 6 months

R.I.

2. The short facts that are necessary for the disposal of this appeal can be stated as follows:

a) P.W.6-Panneerselvam is the resident of Podappanaickenpatti. He owned 5 acres of land, out of which, 2 l acres were sold to one Valayapathi.

The said land was in possession and cultivation of the accused/appellant. The brother of P.W.6 by name Thadiveeraswamy @ Chellaiah and his

another brother P.W.2-Ponraj raised objections as to the cultivation of the said land by the accused-Chelladurai, and on that score, P.W.2

attacked him with a stick and the deceased-Thadiveeraswamy @ Chellaiah attacked him with aruval. Pursuant to the said occurrence, the matter

was referred to the Police and a case was actually registered and in that case, P.W.2 was sentenced by the Criminal Court. The judgment in that

earlier case was marked as Ex.P26.

b) On 19.08.2007, at about 1.00 a.m., the first deceased-Chellaiah was lying in a mat in his house. P.W.1-Ayyathurai's house is situate at the

northern side of the house of the first deceased. P.W.2's house is also situate near the first deceased's house. P.Ws.1 and 2, on hearing a

distressing cry, woke up and witnessed the occurrence. The appellant/accused attacked the first deceased-Chellaiah with M.O.1-Aruval on all

parts of the body indiscriminately, as a result of which, he died on the spot. On seeing this, the mother of the first deceased by name, Kalamadathi

@ Chittu raised a distressing cry. Immediately, the accused/appellant pulled her tuft and attacked her with aruval due to which, she also died on

the spot. The accused/appellant, when he was about to leave the place, hurled country bombs which also exploded and caused damages to the

properties. P.W.1, after witnessing the occurrence, proceeded to the respondent-Police Station, where P.W.21-Sub-Inspector of Police was on

duty, to whom he gave Ex.P1-Complaint. On the strength of Ex.P1, a case came to be registered in Crime No. 94 of 2007 u/s 302 IPC and under

Sections 3(a) and 5(a) of the Explosive Substances Act, 1908. Ex.P27-Express F.I.R. was prepared and despatched to the Court.

c) Investigation was taken up by P.W.22-Circle Inspector of Police. On receipt of the copy of F.I.R., he proceeded to the place of occurrence

and prepared Ex.P3-Observation Mahazar and Ex.P28-Rough Sketch. Then, he conducted inquest over the bodies of both the deceased in the

presence of witnesses and panchayatars and prepared Inquest Reports marked as Exs.P29 and 30. Then, the Investigator sent requisitions to

P.W.15-Doctor to conduct autopsy over the bodies of the deceased under Exs.P12 and P14. Thereafter, the Investigator recovered the blood-

stained earth, sample earth and portions of mats, from the place of occurrence under M.Os.2 to 12. He also recovered some portion of the

remnants of the bomb from the place of occurrence.

d) P.W.15-Doctor conducted autopsy over the bodies of the deceased and issued Post Mortem Certificates, marked as Exs.P11 and P13

respectively, wherein the Doctor opined that the deceased would appear to have died due to shock and haemorrhage due to the injuries sustained.

After completion of the post mortem, the material objects were recovered from the bodies of the deceased.

e) Pending the investigation, the Investigator arrested the accused on 20.08.2007 at 6.15 a.m. He came forward to give a confessional statement

voluntarily and the same was recorded in the presence of witnesses. The admissible portion of the confessional statement of the accused is marked

as Ex.P5. On the basis of the confessional statement given by the accused, aruval and unused bombs were recovered. Then, he sent the accused

for judicial remand.

f) All the material objects recovered were sent to the Forensic Lab for conducting chemical examination. A requisition to carry out chemical

examination on the explosive materials contained in the bombs was also sent. Four reports were received. They are Ex.P17-Chemical Analyst"s

Report, Ex.P18-Serologist"s Report, Ex.P21-Chemical Analyst"s Report pertaining to the examination of the explosives contained in the bomb

and Ex.P23-Certificate relating to diffusing of the bombs.

g) P.W.23-Inspector of Police took up the case for further investigation. After completing the investigation, he filed final report on 29.02.2008

against the accused/appellant before the concerned court, which in turn committed the case to the Court of sessions and necessary charges were

framed.

h) In order to substantiate the charges, at the time of trial, the prosecution examined 24 witnesses and relied on 30 exhibits and 42 M.Os. On

completion of the evidence adduced on the side of the prosecution, the accused/appellant was questioned u/s 313 of Cr.P.C. as to the

incriminating circumstances found in the evidence of prosecution witnesses. He denied them as false. No defence witness was examined.

After hearing the arguments of the counsel and looking into the available materials, the Trial Court, took the view that the prosecution has proved

the case beyond reasonable doubt and found the accused guilty and awarded the punishments as referred to above. Under these circumstances,

this criminal appeal has arisen at the instance of the accused/appellant.

3. Advancing arguments on behalf of the accused/appellant, the learned Counsel would submit that the entire case of the prosecution rests on the

the direct evidence of P.Ws.1 and 2. He further submitted that P.Ws.1 and 2 are admittedly close relatives of both the deceased and they were

not the residents of the area where they stayed. The occurrence took place inside the house of both the deceased at 1.00 a.m. on 19.08.2007.

Pointing to the time factor and the place of occurrence, the learned Counsel would urge that such occurrence could not have been seen by the

witnesses P.Ws.1 and 2 as there are certain discrepancies in their evidence, and apart from that, in the instant case, the Observation Mahazar and

other reports relied on by the prosecution would indicate that P.Ws.1 and 2 could not have witnessed the occurrence. Pointing to the Post Mortem

Certificates, the learned Counsel would submit that P.Ws.1 and 2 did not account for the injuries sustained by the deceased.

4. Added further the learned Counsel for the accused/appellant that, in the instant case, Sections 3(a) and 5(a) of the Explosive Substances Act,

should not have been invoked as there was no evidence available for the prosecution to show that the accused had hurled the bombs. He further

submitted that the prosecution was unable to show any motive for the accused/appellant for committing such a heinous crime.

5. Learned Counsel for the accused/appellant further added that in order to invoke Sections 3(a) and 5(a) of the Explosive Substances Act, the

factual matrix was not put forth or proved by the prosecution and in such circumstance, the prosecution has miserably failed to bring home the guilt

of the accused. Therefore, the accused is entitled for acquittal in the hands of this Court and accordingly, the judgment of the Trial Court has got to

be set aside.

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

and also scrutinised the materials available.

7. It is not in controversy that the incident took place at 1.00 a.m. on 19.08.2007 in which one Thadiveeraswamy @ Chellaiah and his mother

Kalamadathi @ Chittu were killed indiscriminately and following this, the accused hurled country bombs. Following the inquest made by P.W.22-

Investigating Officer, the dead bodies were subjected to post mortem by P.W.15-Doctor, who had issued Ex.P11 and Ex.P13-Post Mortem

Certificates, and gave an opinion that both of them died due to shock and haemorrhage due to the injuries sustained by them. These facts were

never disputed by the appellant before the Trial Court and hence the Trial Court had no legal impediment in recording so.

8. In order to substantiate the occurrence, the prosecution examined two witnesses, P.Ws.1 and 2. True it is, that both P.Ws.1 and 2 were close

relatives to both the deceased, but it would not be a reason to discard or doubt the testimony of the witnesses. On applying the test of careful

scrutiny, the Court is satisfied that the evidence of these witnesses inspires the confidence of the Court and the prosecution is able to show that

originally P.W.2 and the first deceased attacked the accused on an earlier occasion and a case has also been registered in which P.W.2 was also

sentenced. Thus, sufficient motive is available for the accused/appellant to commit the offence. On the date of occurrence, he entered into the

house of the deceased and while the first deceased was lying on his mat, the accused attacked him indiscriminately with an aruval and caused his

death instantaneously. On hearing the distressing cry, when the first deceased's mother, who had nothing to do with the earlier incident, came for

rescue, and she was also attacked by the accused/appellant, causing her death instantaneously. Thus, the act of the accused at that juncture was

gruesome. Further, not satisfied with the said act, when he was about to leave from the place, he hurled country bombs and the remnants of the

bombs were also collected and sent for analysis and they were found to contain residues of explosion. P.Ws.1 and 2 spoke about the incident in

one voice. Their evidence are found to be unshaken. Evidence of P.Ws.1 and 2, coupled with the circumstances adduced on the side of the

prosecution corroborates with the medical opinion canvassed, and all these would go to show that the prosecution has proved the case without any

reasonable doubt and it can be very well stated that the prosecution had sufficient evidence to bring home the guilt of the accused/appellant, on

both the charges of murder and the charges levelled against him under the Explosive Substances Act.

9. The contention of the learned Counsel for the accused/appellant that there are discrepancies in the evidence of P.Ws.1 and 2, cannot be

countenanced as they are minor-most and they would not shake the veracity of the evidence adduced on the side of the prosecution.

10. With regard to the offence under Sections 3(a) and 5(a) of the Explosive Substances Act, sufficient materials have been placed by the

prosecution and the Trial Court has given a correct finding by convicting the accused/appellant under Sections 449 and 302 IPC and also under

Sections 3(a) and 5(a) of the Explosive Substances Act and awarding the punishments, as referred to above.

11. In view of the reasons stated supra, this Court is unable to find any reason either factually or legally to interfere with the findings of the Trial

Court. Therefore, the conviction and sentences imposed by the Trial Court on the accused/appellant are liable to be confirmed and accordingly

confirmed and the Criminal Appeal is dismissed.