(2007) 03 MAD CK 0044

Madras High Court (Madurai Bench)

Case No: Criminal A. (MD) No. 78 of 2004

Mariappan and Krishnammal		APPELLANT
	Vs	
State		RESPONDENT

Date of Decision: March 23, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 307, 324, 326, 34

Citation: (2007) 03 MAD CK 0044

Hon'ble Judges: P.R. Shivakumar, J; M. Chockalingam, J

Bench: Division Bench

Advocate: N. Anantha Padmanabhan, for the Appellant; A. Balaguru, Additional Public Prosecutor, for the Respondent

Judgement

M. Chockalingam, J.
The appellants two in number, have challenged the judgment of the Additional Sessions Division, Fast Track Court No. I, Tirunelveli, in S.C. No. 316/2002 whereby A-1 stood charged u/s 307 of I.P.C. (2 counts) and A-1 and A-2 stood charged u/s 302 read with 34 of I.P.C., and on trial, both were found guilty as per the charges, and A-1 was awarded 7 years Rigorous Imprisonment for each count u/s 307 of I.P.C. (2 counts), and A-1 and A-2 were awarded life imprisonment along with a fine of Rs. 2,500/- and default sentence u/s 302 read with 34 of I.P.C.

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

(a) P.W.1 is the wife of the deceased Velusamy. P.Ws.3 and 4 are the children of P.W.1 and the deceased. P.W.2 is the elder brother''s wife of P.W.1. Both the accused are husband and wife respectively. P.Ws.1 to 4 and the accused all belonged to the place called Ramalingapuram. They had lands adjacent to each other. On the day of

occurrence namely 31.12.2001, at about 7.30 A.M., A-1 took his tractor through the field of P.W.1 twice, and P.W.1 and others shouted at the same. On the very same day at about 7.00 or 7.30 P.M., P.Ws.1, 3 and 4 and the deceased were inside the house, and they heard the distressing cry of P.W.1. All of them went out. At that time, A-1 was cutting P.W.2. When the deceased intervened, A-2 held him, and A-1 gave the cuts indiscriminately. When P.W.1 also intervened, she was also cut by A-1. Immediately after the occurrence was over, both the accused fled away from the place of occurrence. P.W.1 gave a complaint, Ex.P1, on the very day at about 8.30 P.M., before the respondent police. P.W.18, who was the Sub Inspector of Police at that time, registered a case in Crime No. 170/2001 under Sections 342, 324, 326 and 302 of I.P.C. The First Information Report, Ex.P16, was despatched to the Court immediately through P.W.19, the Police Constable.

(b) On receipt of the copy of the F.I.R., P.W.23, the Inspector of Police, attached to the said Circle, took up investigation, proceeded to the spot, made an inspection in the presence of witnesses and prepared Ex.P2, the observation mahazar, and Ex.P21, the rough sketch. He also conducted inquest on the dead body of Velusamy in the presence of witnesses and panchayatdars and prepared an inquest report, Ex.P22. Then, the dead body was sent to the Government Hospital along with a requisition, Ex.P10, for the purpose of autopsy.

(c) P.W.16, the Assistant Surgeon, attached to the Government Hospital, Sankarankovil, on receipt of the said requisition, conducted autopsy on the dead body of Velusamy and found 8 injuries. The Doctor has given a postmortem certificate, Ex.P11, with his opinion that the deceased would appear to have died of neurogenic shock and hypovolunic shock due to multiple injuries.

(d) P.Ws.1 and 2 both were sent for medical treatment along with medical memos. P.W.22, the Doctor, medically examined P.W.1 at 9.30 P.M. and gave treatment. The copy of the accident register is marked as Ex.P19. The same Doctor gave treatment to P.W.2 at about 9.45 P.M., and the copy of the accident register is marked as Ex.P20.

(e) Pending the investigation, A-2 was arrested on 1.1.2002 at 3.00 P.M. She came forward to give a confessional statement, which was recorded. The admissible part of the said confession is Ex.P5, following which she produced bloodstained saree and also a blouse. They were all recovered under a cover of mahazar. She was sent for judicial remand. Pending the further investigation, the Investigator came to know that A-1 surrendered before the Judicial Magistrate No. I, Sattur. The Investigator filed a memo for getting police custody. The same was ordered, and A-1 was interrogated. Then, he came forward to give a confessional statement voluntarily, which was recorded. The admissible part of the said confession is marked as Ex.P8, following which he produced M.O.3, aruval, which was recovered under a cover of mahazar. He was again sent for judicial remand. All the material objects recovered from the place of occurrence and from the dead body, and also the material objects recovered from A-1 and A-2 pursuant to their

confessional statements, were subjected to chemical analysis by the Forensic Sciences Department, which resulted in two reports namely Ex.P14, the Chemical Analyst''s report, and Ex.P15, the Serologist''s report.

(f) P.W.24, the Inspector of Police, took up further investigation. On completion of investigation, the Investigator filed the final report.

3. The case was committed to Court of Session, and necessary charges were framed. In order to substantiate the charges, the prosecution examined 24 witnesses and also relied on 24 exhibits and 16 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 on either side. After doing so, the Court below was of the opinion that the prosecution has proved the case beyond reasonable doubt and found both the appellants guilty as per the charges and awarded the punishment as referred to above. Hence, this appeal at the instance of both the accused.

4. Advancing his arguments on behalf of the appellants, the learned Counsel would submit that in the instant case, the prosecution has not proved its case beyond reasonable doubt; that the prosecution marched four witnesses, out of whom two were children of tender age, and hence, their evidence does not stand the scrutiny of law; that so far as P.Ws.1 and 2 are concerned, they were injured witnesses; that they were not only inter se related, but also closely related to the deceased; that P.W.1 is the wife, and P.W.2 is the elder brother''s wife of P.W.1, and under such circumstances, their evidence, if careful scrutiny test is applied, should not have been accepted by the trial Court; that apart from that, the ocular testimony projected through these witnesses, did not get support from the medical opinion; that the incident in which, according to the prosecution, both these P.Ws.1 and 2 who have spoken about the manner of injury caused to them and also to the deceased, have sustained injuries, could not have happened, since it is found to be discrepant and it would not only vary, but also be inconsistent to the medical evidence through the postmortem Doctor and also P.W.22, the Doctor, who medically examined and gave treatment to P.Ws.1 and 2; that in the instant case, the alleged confessional statement from A-1, after he was taken from the judicial custody, was nothing but an introduction to strengthen the prosecution case; that if that part of the evidence is carefully scrutinized, it would clearly indicate that it was only a subsequent introduction and an afterthought in order to give weight to the prosecution case, and hence, that part of the evidence was not available, and A-1 has got to be acquitted.

5. Added further the learned Counsel that in the instant case, as far as A-2 was concerned, she has been roped in in the case; that even as per the prosecution case, an incident has taken place at about 7.30 A.M. on 31.12.2001, when A-1 had taken a tractor through the land of P.W.1 twice; that when the FIR was read out, no mention of the presence of A-2 is available, and thus, A-2 had no role to play in the earliest occurrence

that took place in the morning; that according to the prosecution, the occurrence has taken place in the night hours at about 7.00 or 7.30 P.M., and P.Ws.1, 3 and 4 and the deceased were inside the house, and after hearing the distressing cry of P.W.2, all the three witnesses and the deceased went outside to see P.W.2 being attacked by A-1, and when the deceased intervened at that time, it was A-2 who immediately caught hold of him and facilitated the crime, and A-1 attacked him indiscriminately; that from the narration of the prosecution case, the role of A-2 was exactly catching hold of the deceased in order to facilitate the attack given by A-1 at that time; but, the scrutiny of the evidence of P.Ws.1 and 2 would clearly indicate that A-2 could not have been present at the place of occurrence at all; that the postmortem certificate would clearly reveal that the seat of injuries were on the occipital region, the shoulder and also the back side, and the head was even hanging mostly; that if to be so, all the injuries should have been inflicted from backside; that even according to P.W.1, A-2 was actually catching hold of the shirt collar of the deceased; but, contrarily, P.W.2 has deposed that A-2 was embracing the deceased from the backside so that the deceased could not wriggle out, and thus, she facilitated the crime for making the attack by A-1; that if the evidence of P.Ws.1 and 2, who are eyewitnesses, are taken into consideration, it would be quite clear that the deceased was actually being held by A-2 by catching the shirt collar or by embracing; that if all these injuries are found on the dead body only on the backside and if these facts are cumulatively put together and had these facts been true, as deposed by P.Ws.1 and 2, at least an abrasion or scratch should have been caused on A-2; but, A-2 was not found with any injury at all; that the postmortem certificate and the evidence of P.Ws.1 and 2 which were relied on by the prosecution and accepted by the lower Court, would clearly indicate that A-2 could not have been present at the place of occurrence at all; that since she happened to be the wife of A-1, she has been roped in for the reasons best known to the prosecution, that this part of the evidence would clearly indicate that A-2 was not at all present; that all doubts are attendant; that in such circumstances, benefit of doubt should be given to her, and she must be acquitted of the charge levelled against her.

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

7. In the instant case, the fact that one Velusamy, the husband of P.W.1 and the father of P.Ws.3 and 4, was done to death in an incident that took place at about 7.00 or 7.30 P.M. on 31.12.2001 just before the house of the deceased. The dead body was subjected to postmortem, and the Doctor who conducted the same, has opined that Velusamy died out of neurogenic shock and hypovolunic shock due to multiple injuries. That apart, the fact that he died out of homicidal violence was never questioned by the appellants/accused at any stage of the proceedings. All would clearly indicate that Velusamy died out of homicidal violence, and hence, it has got to be factually recorded so.

8. In order to substantiate the fact that it was A-2 who held the deceased, and A-1 attacked him, and they caused his instantaneous death, and apart from that, A-1 attacked P.Ws.1 and 2, four witnesses have been marched as eyewitnesses, out of whom as

rightly pointed out by the learned Counsel for the appellant, two are children. Merely because they happened to be the children of tender age, their evidence need not be rejected. The lower Court has marshaled the evidence proper and accepted the same. So far as the evidence of P.Ws.1 and 2 are concerned, they were injured witnesses. It is settled proposition of law that in a case where a witness happens to be not only an eyewitness, but also injured, the evidence of the injured witness should not be discarded, unless and until there is a strong circumstance noticed or reason is brought forth. In the instant case, P.Ws.1 and 2 have narrated the occurrence, and they also sustained injuries. They went to the Doctor with medical memos, and they have been medically examined and treated, and accident register copies have also been produced. Both the witnesses have spoken about the occurrence, in which A-1 cut both P.Ws.1 and 2 and also the deceased indiscriminately. Thus, the evidence of P.Ws.1 and 2 stood fully corroborated to each other inter se and also stood corroborated to the medical evidence. All would go to show that the prosecution has proved the case in that regard.

9. Yet another circumstance in favour of the prosecution is the recovery of M.O.3, weapon of crime, from A-1, when he was taken to police custody. The confession and recovery of weapon of crime have been spoken to by a witness, and his evidence despite the cross-examination in full, remained unshaken. Thus, the prosecution has proved the act of A-1 in attacking the deceased indiscriminately, causing instantaneous death and also attempting at the life of P.Ws.1 and 2. So far as the contentions put forth by the learned Counsel for the appellants as narrated above, are concerned, in the face of the overwhelming evidence against A-1, this Court is unable to appreciate or accept those contentions. Hence, they are stated for the purpose of rejection.

10. As far as A-2 is concerned, this Court is able to see sufficient force in the contention put forth by the learned Counsel for the appellants. In the instant case, according to the prosecution, A-2 facilitated the crime by catching hold of the deceased at the time of occurrence, at which A-1 cut him indiscriminately with the aruval. When the postmortem certificate is noticed, all the injuries which were fatal, were found to be on the backside i.e., on the occipital region and also on the shoulder. Thus, it would be quite clear that the injuries should have been inflicted by A-1 on the deceased from backside. Now, the evidence of P.Ws.1 and 2 in this regard have got to be considered carefully. According to P.W.1, A-2 was actually catching the shirt collar of the deceased, and the attack was made by A-1. Contrarily, P.W.2 would say that A-2 actually embraced the deceased, and thus, he could not wriggle out, and thereafter, the attacks were made by A-1. Thus, the evidence of P.Ws.1 and 2 in regard to the act of A-2 is inconsistent. It would also cast a doubt whether P.Ws.1 and 2 could have been in the place of occurrence at all. If A-2 in such a situation, facilitated the crime by catching hold of the deceased and the attacks were made by A-1 indiscriminately, and the seat of the injuries was on the backside as noticed, then one would naturally expect at least some abrasion or scratches on the body of A-2. But, A-2 was not found to be with any injury whatsoever. This would clearly indicate that the evidence of P.Ws.1 and 2 that A-2 either caught hold of or embraced the

deceased cannot be accepted.

11. Now, the contention put forth by the learned Counsel for the appellants when viewed from the evidence available, it would go to show that the role of A-2 is not to be found so. There is nothing to indicate that A-2 shared the common intention of A-1 in committing the crime. Hence, this Court is of the considered opinion that A-2 is entitled for acquittal in the hands of this Court. Accordingly, the judgment of conviction and sentence passed by the lower Court as regards A-2, is set aside, and A-2 is acquitted of the charge levelled against her. The bail bond if any executed by her, shall stand terminated. The fine amount if any paid by A-2, will be refunded to her.

12. In view of the reasons stated above, the conviction of A-1 u/s 307 of I.P.C. (2 counts) and the consequent sentence imposed on him by the trial Court, are confirmed. As regards the conviction and sentence imposed by the trial Court on A-1 u/s 302 read with 34 of I.P.C., this Court is of the view that A-1 has got to be convicted u/s 302 of I.P.C. Accordingly, A-1 is convicted u/s 302 of I.P.C., and the life sentence along with fine and default sentence imposed by the trial Court, is confirmed. The sentences are to run concurrently.

13. In the result, this criminal appeal is partly allowed.