

(2009) 11 MAD CK 0186

Madras High Court

Case No: Criminal Appeal No. 415 of 2009

Pandi Thevar @
Pandian @
Marudapandian

APPELLANT

Vs

State by Inspector of
Police

RESPONDENT

Date of Decision: Nov. 9, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 304

Hon'ble Judges: V. Periya Karuppiah, J; M. Chockalingam, J

Bench: Division Bench

Advocate: E.J. Ayyappan, for the Appellant; Babu Muthu Meeran, APP, for the Respondent

Final Decision: Dismissed

Judgement

M. Chockalingam, J.

Challenge is made to the judgment of the Principal Sessions Division, Erode made in S.C. No. 56 of 2007 whereby the sole accused stood charged, tried and found guilty as per the charge of murder and awarded life imprisonment along with fine and default sentence.

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

(a) P.W.1 is the resident of Pollachi Main Road, Ponnapuram. On 23.1.2007 at 8.00 p.m., the deceased Arumugham was quarrelling with his mother, at that time, the accused questioned him, "Are you a man, quarrelling with your mother?". There was wordy alternation between the accused and the deceased. Thereafter, the accused left the place and after 15 minutes he came back again. The deceased warned him that it was his family affair and that he should not interfere. Again, there was wordy altercation between the accused and the deceased. The accused took a knife and

attacked the deceased on the chest and on different parts of the body. P.W.1 raised distress cry. The accused ran away from the place of occurrence. Immediately, the other witnesses gathered there. P.Ws.2, 3, 4, 5 & 7 were all occurrence witnesses.

(b) On 23.1.2007 at about 10.40 hours, when P.W.14 Sub Inspector of Police was on duty, P.W.1 appeared before him and gave Ex.P1 report. On the strength of which, a case came to be registered in Crime No. 64/2007 u/s 302 I.P.C. The express F.I.R. Ex.P15 was dispatched to Court.

(c) P.W.16 Inspector of Police of that circle took up investigation. He proceeded to the spot, made an inspection and prepared the Observation Mahazar Ex.P.2 and drew a rough sketch Ex.P.18 in the presence of witnesses. He conducted inquest on the dead body of the deceased and prepared the Inquest report, Ex.P.19. Thereafter, the dead body was sent for post mortem.

(d) P.W.15, doctor attached to the Government Hospital, Dharapuram, conducted autopsy on the dead body of the deceased and issued post mortem certificate, Ex.P17 wherein he has opined that the deceased would have died of injury to the vital organ causing shock and haemorrhage between 12 to 24 hours prior to autopsy.

(e) Pending investigation, the accused was arrested. He came forward to give confessional statement on 25.1.2007. The same was recorded and the admissible part of the same was marked as Ex.P4. Following the confessional statement, the accused produced M.Os.1, 5 and 6 which were recovered under a cover of mahazar. The accused had also sustained injuries. Thus, he was taken to the Hospital. P.W.11, doctor medically examined him and gave treatment. Thereafter, the accused was sent for judicial remand. All the material objects recovered from the place of occurrence, from the dead body of the deceased and recovered from the accused, pursuant to the confessional statement, were all subjected to chemical analysis which resulted in Ex.P.11 chemical report and Exs.P.12 and 13 serologist report. On completion of the investigation, the investigating officer filed a final report.

(f) The case was committed to the Court of Sessions. Necessary charges were framed. In order to substantiate the charges levelled against the accused, the prosecution examined 16 witnesses and relied on 19 exhibits and 13 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned u/s 313 Cr.P.C. as to the incriminating circumstances found in the prosecution witnesses and he denied them as false. No defence witnesses were examined. On hearing the arguments advanced on either side, the trial Court found the accused guilty of murder and awarded life imprisonment along with fine and default sentence. Hence, this appeal at the instance of the appellant.

3. Advancing the arguments on behalf of the appellant, the learned Counsel would submit that in the instant, the prosecution, though examined 7 witnesses as eye witnesses, only P.Ws 1 to 3 have spoken in favour of the prosecution. P.W.1 is the

wife of the deceased and she is an interested witness. When the evidence of P.Ws. 2 and 3 is scrutinised it would show that there are lot of discrepancies on the material particulars. Hence, their evidence is inconsistent. Therefore, the trial Court should have rejected their evidence. Insofar as the ocular testimony of these witnesses is concerned, it did not corroborate with the medical evidence canvassed. Further, in the instant case, the accused has sustained injuries and the injuries were actually found and spoken by a doctor. P.W.11, doctor have noted the injuries on the head of the accused and those injuries could not have been caused without a weapon . The injuries sustained by the accused was not explained. Hence, the prosecution has miserably failed to prove the genesis of the occurrence and the non-explanation of the injuries on the accused would suffice to reject the prosecution case. For that proposition the learned Counsel relied on the decision of the Apex Court reported in [Lakshmi Singh and Others Vs. State of Bihar,](#) . The learned Counsel would add that the trial Court has taken an erroneous view and found the accused guilty. Hence, the accused has got to be acquitted in the hands of this Court.

4. The learned Counsel for the appellant, as the second line of argument would submit that even as per the eye witnesses, it was the deceased who quarrelled with his mother and on seeing the same the accused came there to advised him and in that process, there was wordy altercation between the accused and the deceased. Apart from that, the accused sustained injuries. All would go to show that the deceased was the aggressor who first attacked the accused on his head with a weapon and thereafter, the accused has attacked the deceased. Therefore, the act of the accused would not attract the penal provision of murder and this factual position has to be considered by this Court.

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

6. It is not in controversy that one Arumugam husband of P.W.1 died on the spot in an incident that had taken place on 23.1.2007 at 8.00 p.m. Following the inquest made, the investigating officer sent the dead body for post mortem. P.W.1 who is the wife of the deceased has categorically deposed that it was the accused who had attacked the deceased and the doctor who conducted post mortem has given opinion that the deceased died out of shock and haemorrhage due to the injuries sustained by him. The time, cause and place of death as putforth by the prosecution was never disputed by the appellant before the trial and before this Court. Hence, it could be recorded so.

7. In order to substantiate that it was the accused who stabbed the deceased, the prosecution though examined P.Ws. 1 to 6, the fact was clearly spoken to by P.Ws. 1 to 3. P.W.1 is the wife of the deceased and her evidence corroborates with the evidence of P.Ws. 2 and 3. At the time of occurrence, there was wordy altercation between the deceased and his mother. At that time, the accused intervened and there was wordy altercation between the accused and the deceased and thereafter,

the accused left the place. Again, after 15 minutes, the accused came back and again there was wordy alternation between the accused and the deceased. At that time, it was the accused who took a knife from his waist and stabbed the deceased on different parts of the body and caused his death. The ocular testimony projected through P.Ws. 1, 2 and 3 truthfully corroborates with the medial evidence canvassed through the post mortem certificate, Ex.P17. Added circumstances is the recovery of the weapon of crime from the accused pursuant to the confessional statement recorded from him in the presence of witnesses. All would go to show that the prosecution has clearly proved that it was the accused who stabbed the deceased and caused his death instantaneously. Hence, the contention putforth by the learned Counsel for the appellant and recorded above do not merit acceptance whatsoever. Hence, it is liable to be rejected, accordingly rejected.

8. Insofar as the second line of argument is concerned, the Court is able to see force in the contention of the learned Counsel for the appellant. The case of the prosecution is that at 8.00 p.m. on 23.1.2007, the deceased was quarrelling with his mother, at that time, the accused intervened and there was wordy altercation between the accused and the deceased. The accused left the place but the quarrel between the deceased and his mother continued and again, the accused intervened to advise the deceased, at that time there was wordy altercation between the accused and the deceased and the accused took a knife and stabbed him on different parts of the body of the deceased. Thus, it is quite clear that there was quarrel between the accused and the deceased and hence, the accused had acted so. Hence, the act of the accused was neither intentional nor premeditated, but due to sudden provocation, he has acted so. In that process the accused also sustained injury. Therefore, the act of the accused would be one culpable homicide not amounting to murder. Hence, the Court is of the considered opinion that the act of the accused would attract the penal provision of Section 304(ii) IPC and awarding punishment of 5 years rigorous imprisonment would meet the ends of justice.

9. Hence, the judgment of conviction and sentence imposed by the lower court on the appellant u/s 302 IPC is modified and instead, the appellant is found guilty u/s 304(ii) IPC and sentenced to undergo 5 years rigorous imprisonment. The period of sentence already undergone by the appellant is ordered to be given set off. The fine amount imposed u/s 302 IPC shall be treated as the fine amount imposed u/s 304(ii) IPC.

10. With the above modification in conviction and sentence, the criminal appeal is dismissed.