

(2009) 12 MAD CK 0138

Madras High Court

Case No: Criminal Appeal No. 661 of 2009

Mohhamed Ali Jhinna @ Jhinna

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision: Dec. 14, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302, 304(I), 307

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

Bench: Division Bench

Advocate: B. Rajamani, for the Appellant; Babu Muthu Meeran, Addl. P.P., for the Respondent

Final Decision: Dismissed

Judgement

M. Chockalingam, J.

Challenge is made to the judgment of the Additional District and Sessions Division, Fast Track Court No. 1, Chengleput, made in S.C. No. 231 of 2008 whereby the sole accused stood charged, tried and found guilty of murder and awarded life imprisonment along with fine of Rs. 1,000/- in default to undergo one month rigorous imprisonment.

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

(a) P.W.1 was working as a Manager in Tirupur Cotton Terminus Cloth shop . P.Ws. 2 and 4 were the salesmen and P.W.4 was a customer of the said shop. The accused and the deceased were working as the salesmen of the said shop during the relevant time. The accused used to steal clothes from the shop during night hours and sell them in the open market and it was noticed by the deceased. On 1.2.2008, during night hours, when the accused was stealing the clothes, the same was noticed by the deceased and the deceased questioned the accused. At that time, there was a quarrel between them. The next day morning, that was on 2.2.2008 at

about 8.30 a.m., when P.Ws. 1 and 4 were actually sitting in the cash counter, the accused and the deceased quarrelled with each other. The deceased told the accused that he would reveal the theft made by the accused to the Manager. At that time, the accused took a knife, M.O.1 and stabbed the deceased on the neck and on different parts of the body. The same was witnessed by P.Ws.1 and 4. When question, the accused threatened them with the knife and ran away from the place of occurrence.

(b) P.W.1 and others took the severely injured deceased to the doctor. P.W. 10, doctor attached to the Tambaram Government Hospital admitted him and gave treatment. The wound certificate in that regard was marked as Ex. P9. Then, he was taken to the Chennai Government Hospital where he was declared dead by the doctor. In the meanwhile, P.W. 9 Sub Inspector of Police, who was on duty, received the complaint, Ex. P1 from the deceased and on the strength of which, a case came to be registered u/s 307 IPC in Crime No. 68 of 2008. The F.I.R., Ex. P8 was despatched to Court.

(c) P.W. 11, Inspector of Police took up investigation. He went to the spot, made an inspection and prepared the observation mahazar Ex. P2 and drew a rough sketch Ex.P. 10 He also recovered the material objects from the place of occurrence. He got information from the Government Hospital that the deceased died. Hence, the case which was originally registered u/s 307 IPC was altered to Section 302 IPC and the amended F.I.R., Ex.P. 11 was sent to Court. He conducted inquest on the dead body of the deceased in the mortuary and prepared the inquest report, Ex.P. 12 in the presence of witnesses and panchayatdars. Thereafter, the dead body was subjected to post mortem.

(d) P.W. 8, doctor attached to the Madras Medical College Hospital, on the requisition made by the Investigation Officer, conducted autopsy on the dead body of the deceased Syed Ibrahim and issued Ex. P6, post mortem certificate wherein he has opined that the deceased would appear to have died of shock and haemorrhage due to stab injury on the neck.

(e) Pending investigation, the accused was arrested. He came forward to give confessional statement which was recorded in the presence of witnesses. The admissible part of the same was marked as Ex. P4. Pursuant to which, he produced M.O. 1, knife which was recovered under a mahazar. Thereafter, the accused was sent to judicial remand. All the material objects recovered from the place of occurrence and the knife, weapon of crime recovered from the accused pursuant to the confessional statement given by him were sent for chemical analysis by the Forensic Science Department and Ex.P. 15, biology report was received and produced before the Court. On completion of 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, the prosecution examined 12 witnesses and relied on 15 exhibits and 3 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 evidence of prosecution witnesses and he denied them as false. No defence witness was examined. The trial Court heard the arguments advanced on either side and took the view that the prosecution has proved the case beyond reasonable doubt and found the accused guilty as per the charge 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, in the instant case P.Ws. 1 to 4 were examined as eye witnesses. Though, P.W. 1 is the Manager, P.Ws. 2 and 4 were the salesmen and P.W. 3 was the customer, their evidence would clearly indicate that there are lot of discrepancies on material particulars. The witnesses had admitted that there was quarrel between the accused and the deceased for more than 10 minutes. If the accused/appellant and the deceased were salesmen in that shop, at the relevant time, P.W. 1 who was the Manager should have intervened and pacified the situation, but not done so. When the occurrence had taken place, there were number of persons available in the shop. Therefore, the accused could have been caught by some one else but not so. A perusal of the post mortem certificate would reveal that there was injury on the neck and it had actually pierced into the wind pipe. If to be so, the deceased could have not spoken at all, but the prosecution has come with the story that the deceased was taken to the Police Station immediately, and the deceased gave a complaint and on the basis of which a case came to be registered are highly unbelievable. So far as the injury found in the post mortem certificate was not accounted by the so called eye witnesses, the recovery and the alleged confessional statement, pursuant to which M.O. 1 knife were all cooked up in order to strength the prosecution case. The prosecution has miserably failed to prove its case beyond reasonable doubt, but the trial Court has taken an erroneous view and convicted the accused.

4. On the second lie of argument, the learned Counsel for the appellant would submit that all the eye witnesses have categorically stated that there was a quarrel between the accused and the deceased at the time of occurrence. The previous day also there was a quarrel as found in Ex. P1 report. Even on the morning hours, when the business was about to commence, it was the deceased who told the accused that he would bring to the notice of the Manager as to the theft committed by the accused/appellant. Annoyed by the same and due to sudden provocation and heat of passion, the accused has acted so. Therefore, the act of the accused would not attract the penal provision of murder, but it would be one culpable homicide not amounting to murder which has got 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 pursuant to the incident that had taken place on 2.2.2008 at about 8.30 a.m. inside the shop the severely injured deceased was taken to the Police Station and on his statement, a case came to be registered u/s 307 I.P.C. He was taken to the Government Hospital at Tambaram and thereafter to the Government Medical College Hospital, Chennai. Despite treatment, he succumbed to injuries. Originally, a case, which came to be registered u/s 307 IPC was subsequently, altered to Section 302 IPC. Following the inquest made by the investigating officer, the dead body was subjected to post mortem P.W. 8 doctor conducted autopsy and issued post mortem certificate, Ex.P. 6 wherein he has opined that the deceased died out of shock and haemorrhage due to the injury sustained on the neck. The time and cause of death as put forth by the prosecution was never disputed by the appellant before the trial Court or before this Court. Under such circumstances, the trial Court was perfectly correct in recording that the deceased died out of homicidal violence.

7. In order to substantiate that it was the accused who stabbed the deceased to death, the prosecution to its advantage had four eye witnesses viz., P.W. 1-Manager of the Shop was sitting in the cash counter during the relevant time. P.Ws. 2 and 4, the salesmen were standing nearby the place of occurrence and P.W.3, a customer who came to the shop also witnessed the occurrence. Despite cross examination in full, they all have spoken in one voice that at the time of occurrence, there was a quarrel between the accused and the deceased and the accused took a knife and attacked on the neck of the deceased and caused fatal injury.

8. It is true, the learned Counsel brought to the notice of the Court, certain discrepancies available in their evidence but these discrepancies are minor most in character, which in the considered opinion of the Court will not tilt the truth or rigour of the prosecution case. In so far as the ocular testimony projected through P.Ws. 1 to 4 are concerned, their evidence corroborates with the medical evidence canvassed. The evidence of P.W. 10 who examined the deceased and P.W. 8, the doctor who conducted post mortem on the deceased corroborate with the evidence of P.Ws. 1 to 4.

9. Yet another circumstance is the recovery of knife, weapon of crime pursuant on the confessional statement made by the accused. The witness to that effect was also examined and there is nothing to doubt about the same. The recovery of weapon of crime, M.O. 1 knife from the accused on his confessional statement points to the nexus between the crime and the accused. All would go that show that the prosecution has abundant witnesses to indicate the culpability of the accused that he who attacked the deceased with knife and caused his death. In the event of such evidence, the contention put forth by the learned Counsel for the appellant do not merit acceptance and hence, it has got to be rejected, accordingly rejected. Thus,

the prosecution is successful enough in proving the factual position that it was the accused who attacked the deceased with knife on the neck and caused his death.

10. On the second line of argument, the Court is able to see force in the contention put forth by the learned Counsel for the appellant. It is admitted by the prosecution that on 1.2.2008, during night hours, there was a quarrel between the accused and the deceased. The deceased told the accused that he would reveal the activities of theft of clothes from the shop by the accused to the Manager of the shop. The next day morning, when the business was about to commence, there was a quarrel between the accused and the deceased. It was the deceased who again informed the accused that he will inform the Manager of the shop as the activities of the accused. The accused was annoyed by the same and due of sudden provocation, he has taken a knife and attacked the deceased and caused his death. Under these circumstances, it would be quite clear that the act of the accused was neither intentional nor premeditated nor planned, but it was done due to sudden quarrel, which arose between the deceased and the accused. Hence, the act of the accused would not attract the penal provision of murder, but it would be one culpable homicide not amounting to murder and therefore, the act of the accused would attract the penal provision of Section 304(I) IPC and awarding punishment of 7 years R.I. would meet the ends of justice.

11. Accordingly, the conviction and sentence imposed on the appellant u/s 302 IPC are modified and instead the appellant is convicted u/s 304(I) IPC and sentenced to undergo 7 years R.I. The period of sentence already undergone by the appellant is ordered to be given set off. The fine amount and default sentence imposed by the trial court will hold good.

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