
(2007) 03 MAD CK 0184

Madras High Court (Madurai Bench)

Case No: Criminal Appeal (MD) No. 367 of 2005

Kasi

APPELLANT

Vs

State

RESPONDENT

Date of Decision: March 15, 2007

Acts Referred:

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

Citation: (2007) 03 MAD CK 0184

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

Bench: Division Bench

Advocate: B. Chandra Mohan, for the Appellant; N. Senthurpandian, Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

M. Chockalingam, J.

Challenging the judgment of the Principal Sessions Court, Ramanathapuram District, made in S.C. No. 86 of 2004, convicting him u/s 302 IPC and sentencing to undergo life imprisonment and also to pay a fine amount of Rs. 5,000/-, in default to undergo six months rigorous imprisonment, the sole accused in the said case has brought-forth this appeal.

2. The brief facts necessary, sans unnecessary facts, for the disposal of the appeal can be stated thus:

(a) P.W.1 Murugesan is a resident of V.V.R. Nagar, Sayalkudi. The deceased Muniasamy is his junior paternal uncle. P.W.9 is the wife of the deceased. The accused is the brother-in-law of the deceased. They all belong to the same place. On 15.08.2002 at about 7.00 p.m., there was an incident in which the deceased slapped the accused on his cheek. P.W.15 also witnessed the said incident. In a short while, at about 7.30 p.m.,

P.W.1 and the deceased went over to the palmyra grove of one Sakthivel for attending calls of nature and at that time, the accused, who came over there with a wooden log (M.O.1) attacked the deceased on his head and immediately left the place of occurrence. P.W.1 with the help of P.Ws.4 and 5, took the deceased home and they took it ordinarily. However, on the next day, the deceased was taken to a private hospital in Sayalgudi run by P.W.11 and on examination, P.W.11 directed them to take the deceased to Ramanathapuram Government Hospital and Ex.P-8 is the report given by him. Thereafter, the deceased was taken to a hospital at Virudhunagar run by P.W.3, the doctor and on his advice C.T.Scan was taken. P.W.2 is the doctor who took the C.T. Scan and Ex.P-2 is the report given him. On examination of C.T. Scan and report, P.W.3 issued Ex.P-3 report advising them to take the deceased to Madurai. Then P.W.1 and others brought the deceased to their home and on 18.08.2002, at about 1.30 p.m., the deceased died. Thereafter, P.W.1 went to the respondent police station and reported the matter to P.W.16, the Inspector of Police, who reduced the statement of P.W.1 into writing and obtained his signature after read it over to him. The report given by P.W.1 is marked as Ex.P-1.

(b) Based on Ex.P-1 complaint, P.W.16, the Inspector of Police, registered a case in Crime No. 208/2002 under Sections 302 IPC and prepared Ex.P-10, the First Information Report and despatched the same to the Court through P.W.13, the constable. Thereafter, he took up the investigation, proceeded to the place where the dead body was kept, made an observation in the presence of witnesses and prepared Ex.P-11, the observation mahazar and Ex.P-12, the rough sketch. He conducted inquest on the dead body in the presence of witnesses and panchayatdars and prepared Ex.P-13, the inquest report. Following the inquest, he sent the body for postmortem through P.W.14, the constable, with a requisition. Thereafter, he proceeded to the place of occurrence, made an observation in the presence of witnesses and prepared Ex.P-4, the observation mahazar, attested by P.W.6 and also Ex.P-14, the rough sketch.

(c) P.W.12, the doctor attached to Mudukulathur Government Hospital, on receipt of a requisition from the investigator, conducted postmortem on the dead body of Muniasamy at 10.30 a.m. on 19.08.2002 and after postmortem he issued Ex.P-9, the postmortem certificate, wherein he has opined that the deceased would have died of shock and haemorrhage due to head injury, 6 to 18 hours prior to autopsy. After postmortem, P.W.14, the constable, collected the lungi worn by the deceased, which is marked as M.O.2.

(d) Pending investigation, P.W.16, the investigator, arrested the accused on 19.08.2002, at about 9.00 a.m., in the presence of P.W.10 and another and when enquired, the accused volunteered to give a confessional statement, admissible portion of it is marked as Ex.P-15, pursuant to which the accused produced M.O.1, the weapon of crime and the same was recovered under Ex.P-7 mahazar attested by P.W.10 and another. Thereafter, P.W.16, subjected the accused to judicial custody. On completion of the investigation, P.W.16, the investigator, filed the final report before the Judicial Magistrate Court

concerned.

3. The case was committed to the Court of Session and necessary charge was framed. To substantiate the charge levelled against the accused, the prosecution marched 16 witnesses as P.Ws.1 to 16 and relied on 16 documents, marked as Exs.P-1 to P-16 as well as two material objects, marked as M.Os.1 and 2. On completion of the evidence on the side of the prosecution, the accused was questioned u/s 313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses. The accused denied them flatly as false. No defence witness was examined. The trial court heard the arguments advanced on either side, scrutinised the materials available and took the view that the prosecution has proved the case beyond reasonable doubt and found the accused guilty as per the charge framed, convicted him thereunder and imposed punishment as referred to earlier. Hence this appeal.

4. In his sincere attempt in assailing the conviction and sentence imposed on the appellant/accused by the trial court, Mr. Chandra Mohan, learned Counsel for the appellant, made the following submissions.

(a) In the instant case, the prosecution had only one witness as eye-witness, who is P.W.1 and he could not have seen the occurrence at all. First of all, P.W.1 is a close relative of the deceased. According to the prosecution, the occurrence has taken place in front of the house of one Sargunam but, P.W.1 has clearly spoken to the fact that there is no house of Sargunam in the place where the deceased was assaulted and it is a strong fact which would indicate that P.W.1 could not have present witnessed the occurrence.

(b) According to P.W.1, the accused attacked the deceased twice on his head and on the left cheek and there was no bleeding injuries; whereas, three external injuries were found on the body of the deceased according to the postmortem doctor P.W.12 and thus P.W.1 was not able to account for the injuries found on the deceased and also the nature of injuries and this would indicate that he was not an eye-witness to the occurrence.

(c) In the instant case, had it been true that P.W.1 has witnessed the occurrence, immediately after the occurrence he would have given a complaint either to the respondent police or to the village administrative officer or to the president of the village, but he has not done so. Further, according to P.W.1, the deceased was taken to a private hospital at Sayalkudi on the next day of occurrence i.e. on 16.08.2002 and thereafter, on the advice of P.W.11, the doctor, he was taken to the hospital run by P.W.3 and on his advice a C.T.Scan was taken and on seeing the scan and report, P.W.3 advised them to take the deceased to Madurai but, however, the deceased died on 18.08.2002 and thereafter he gave a complaint and, thus, though there were three intervening days, the complaint was given only on 18.08.2002, after a period of three days from the date of occurrence and that would cast a strong doubt in the prosecution case.

(d) Apart from the evidence of P.W.1, as an eye-witness to the occurrence, the learned Counsel would further add that in the instant case the prosecution relied on and the lower court too accepted was the alleged arrest, recording of the confessional statement of the accused and recovery of M.O.1, the wooden log, pursuant to the said confessional statement. According to the prosecution, the accused was arrested at 9.00 a.m. on 19.08.2002 in the presence of P.W.10. According to P.W.10, P.W.16, the Inspector of Police, came to his office at about 7.30 or 8.00 a.m. on 19.08.2002 and took him by saying that an accused was to be arrested and therefore he accompanied him in search of the accused and on their way, they found the accused and arrested him and on his confessional statement M.O.1, wooden log, was recovered. But, contrarily, P.w.16, the Inspector of Police, would depose that when he was making arrest of the accused, P.W.10, the Village Administrative Officer and his assistant were coming on that way and they were stopped and asked to be witnesses to the arrest and recovery and, therefore, it would be clear from the evidence of P.W. 10 and P.W.16 that the arrest of the accused and the alleged confessional statement given by him and the consequential recovery of M.O.1 are nothing but an introduction to shape the prosecution case, since the evidence in respect of arrest and recovery of M.O.1 talk of falsehood and therefore the same has got to be brushed aside and thus, the prosecution has not proved its case beyond reasonable doubt.

(e) Advancing his further arguments, learned Counsel for the appellant would submit that even assuming that the prosecution has proved the fact that it was the accused who attacked the deceased and caused his death, the act of the accused would not attract the penal provision of murder. According to the learned Counsel, even as per the prosecution, in the incident that took place at about 7.00 p.m. on 15.08.2002, the deceased slapped on the cheek of the accused and provoked by the said incident, at about 7.30 p.m. the accused attacked the deceased and thus it would be clear that in a short while from the earlier occurrence, due to the provocation caused by the deceased in a quarrel that took place at 7.00 p.m., the accused has acted without any intention or pre-meditation and thus the act of the accused would not attract the penal provision of murder and this has got to be considered by this Court.

5. The Court heard the learned Additional Public Prosecutor appearing for the State on the above contentions.

6. The Court paid its anxious consideration to the submissions made on either side and also made a thorough and careful scrutiny of the available materials.

7. In the instant case, it is not the fact in controversy that one Muniasamy, husband of P.W.9, died out of homicidal violence. Following the incident that took place at 7.30 p.m. on 15.08.2002, Muniasamy was taken to P.W.11, the doctor, on the next day and on his advise he was taken to the hospital run by P.W.3 at Virudhunagar and thereafter he was advised to be taken to Madurai Hospital but he died on 18.08.2002 due to the direct consequence of the homicidal attack made on him. This fact is further proved through the

medical evidence by examining P.W.12, the postmortem Doctor and Ex.P-9, the postmortem certificate issued, by him. Apart from this, this fact was never questioned by the accused at any stage of the proceedings. Hence, without any impediment, it could be recorded so.

8. In order to prove the charge against the accused, the prosecution had only one witness i.e. P.W.1. It is true that he is a close relative of the deceased and since the testimony of this sole witness remained uncorroborated, the Court is mindful of the caution made by the rule of law that such evidence of related and interested witnesses has to be subjected to careful scrutiny. According to P.W.1, he has narrated the entire incident and he has also spoken about the fact that in the earlier incident the deceased slapped the accused and following which the present incident has taken place. According to P.W.1, the accused came over to the place of occurrence with an wooden log when he and the deceased were proceeding to attend calls of nature and attacked the deceased twice on his skull. At this juncture, the contention put-forth by the learned Counsel for the appellant that P.W.1 could not have seen the occurrence requires consideration. The submission of the learned Counsel for the appellant that P.W.1 has deposed that the house of Sargunam was not situate near the place of occurrence cannot be a point for consideration for the simple reason, according to P.W.1 from the very beginning, the occurrence has taken place in Sakthivel's palmyrah grove. Further the accused has not denied Ex.P-14, the rough sketch and Ex.P-4, the observation mahazar, prepared by the investigator after seeing the occurrence place wherein it has been shown that the occurrence has taken place in front of the house of Sargunam. Further, it is seen that Sargunam's house is situated within Sakthivel's Palmyrah Grove. All put together would go to show that the evidence of P.W.1 is consistent with the prosecution case.

9. Coming to the next contention that when at the time of postmortem P.W.12, the postmortem doctor, has found three external injuries as found mentioned in Ex.P-9, the postmortem certificate, P.W.1 has not stated any such injury, it is pertinent to point out that even at the time of inspecting the occurrence place, the investigator has not recovered any bloodstained earth, since it was not available because no external injuries were noticed. Further, a perusal of Ex.P-9 would indicate that the injuries found were only contusions and abrasion and no lacerated or incised wound.

10. The other contention that there was a long, huge and unexplained delay in giving Ex.P-1 complaint and also in coming into existence of Ex.P-10, the first information report is concerned, the same cannot be countenanced in the present facts of the case. It was an incident that took place at about 7.30 p.m. on 15.08.2002 in which the accused attacked the deceased with an wooden log on his head but all, including P.W.1 and the deceased, took it as a simple matter and they did not go to the hospital on that day. Even then, on the next day, P.W.1 took the deceased to a private hospital at Sayalgudi, where they were advised to take the deceased to Ramanathapuram but, however, they took the deceased to Virudhunagar and there, after taking a C.T.Scan, they were advised to take the deceased to Madurai but, in the meantime, the deceased died on 18.08.2002 and

only then there arose the necessity for giving a complaint. Thus, initially they took the matter simply and only after the death necessity arose for P.W.1 to give a complaint as found in Ex.P-1, where a whole narration from the incident that took place at 7.00 p.m. in which the accused was slapped by the deceased till the death of the deceased has been thoroughly made and thus though there is a delay, the delay has occurred in the natural course of events and since they did not want to take the matter to the police station because the accused and the deceased are brothers-in-law to each other and, therefore, the delay cannot be a reason to reject the prosecution case.

11. Insofar as the other contention as to the recovery of M.O.1 wooden log is concerned, the Court is able to see discrepancies in the evidence of P.W.10 and P.W.16 and, therefore, in the opinion of the court, that part of the prosecution case is liable to be rejected. Even after rejection of that evidence, the Court is able to see that the evidence of P.W.1 is inspiring the confidence of the Court coupled with the medical evidence to sustain the conviction and the prosecution has proved that it was the accused who attacked the deceased on his head and he died as a direct consequence of the injuries sustained.

13. Now coming to the question of nature of the act of the accused, the Court is able to see sufficient force in the contention put-forth by the learned Counsel for the appellant. Even as per the prosecution, at 7.00 p.m. there was an incident in which the deceased slapped the accused on his cheek and got provoked by this, at about 7.30 p.m., the accused attacked the deceased with an wooden log and the deceased died after three days. Thus, it would be clear that pursuant to the quarrel in which he was slapped by the deceased, the accused got provoked and upon such provocation he has acted not due to pre-meditation or intention to cause death of the deceased and thus the act of the accused would attract only the penal provision of Section 304(ii) IPC and not Section 302 IPC and the Court feels that ends of justice would be met by imposing five years rigorous imprisonment instead of life sentence imposed u/s 302 IPC.

14. Accordingly, the conviction of the accused/appellant u/s 302 IPC is modified into one u/s 304(ii) IPC and he is sentenced to undergo rigorous imprisonment for five years instead of life imprisonment u/s 302 IPC. The sentence already undergone by the appellant/accused shall be given set off.

15. With the above modification in the conviction and sentence, the appeal stands dismissed.