
(2003) 02 MAD CK 0133

In the Madras High Court

Case No : Criminal Appeal No. 848 of 1999

Ashok, Nagaraj and Duriodanan @ Devibalan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 32

Penal Code, 1860 (IPC) — Section 114, 147, 148, 302, 307

Citation : (2003) 02 MAD CK 0133

Hon'ble Judges : M. Karpagavinayagam, J;A.K. Rajan, J

Bench : Division Bench

Advocate : A. Natarajan, for the Appellant; V. Arul, G.A., for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Ashok, A.1 was convicted u/s 324 I.P.C. and sentenced to undergo two years rigorous imprisonment, A.2 Nagaraj was convicted u/s 302 and 324 I.P.C. and sentenced to undergo life imprisonment and two years rigorous imprisonment and to pay a fine of Rs. 2,000/- and A.3 Duriodanan alias Devibalan was convicted u/s 302 read with 114 I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs. 2,000/- and the sentences were to run concurrently. Challenging the said conviction and sentence, the appeal has been filed by A.1 to A.3.

2. The case of the prosecution in brief as follows:

(a) P.W.1 Karthik alias Karthikeyan belongs to D.M.K. party. The accused A.1 to A.6 belong to M.D.M.K. party. P.W.1 is working as a mason. On 15.5.1996 at about 9.30 p.m., P.W.1 after finishing his mason work, was coming back to his house. On the way, he found that the D.M.K. flagpole was removed by someone. Accusing the same, P.W.1 was murmuring to himself. At that time, all the accused, A.1 to A.6 came there, thinking that P.W.1 was saying something against them. When P.W.1 was questioned about this, a wordy quarrel ensued

between them.

(b) On hearing the noise, the brother of P.W.1, the deceased Arunagiri and another brother Kalvinathan, P.W.2, Pushpa, wife of the deceased, P.W.5 and others came to the scene. At that time, A.1 Ashok took a knife which was concealed in his pocket and stabbed on the neck of P.W.1. Similarly, A.2 also took out a knife from his pocket and gave a cut on the right eye brow of P.W.2. Arunagiri, the deceased intervened and tried to prevent the attack. A.4, A.5 and A.6 began to assault the deceased. Therefore, the deceased ran towards Pattikaran Street. In the meantime, A.3 brought an eversilver bowl containing spirit and poured on the body of the deceased. A.2 Nagaraj lighted the match stick and threw it on the deceased and set fire. The deceased caught fire. The witnesses, P.Ws.1, 2, 3, 4 and 5 and others jointly put out the fire. All the accused ran away from the scene.

(c) Then P.W.2, elder brother of the deceased took the deceased Arunagiri and P.W.1, the injured from the village Kolathur to the hospital at Villupuram. P.W.16 admitted P.W.1 in the hospital at about 10.30 p.m. on 15.5.1996 and issued Accident Register, Ex.P.18. The deceased was admitted at about 11.00 p.m. and Ex.P.19 is the Accident Register issued to him. Since the condition of the deceased was so serious, the deceased was referred to JIPMER Hospital at Pondicherry. In the meantime, P.W.16 sent intimation to the police station. P.W.18, Sub-Inspector of Police, Villupuram reached the hospital at 1.30 p.m. on 16.5.1996 and recorded a statement from P.W.1.

(d) Ex.P.1 is the complaint. P.W.18 registered the crime under Sections 147, 148, 341, 323, 324 and 307 I.P.C. Ex.P.21 is the First Information Report. On 16.5.1996 at 2.00 a.m. P.W.15 Doctor attached to JIPMER Hospital admitted the deceased Arunagiri in the hospital and gave treatment. He also gave intimation, Ex.P.15 to the local police station. His Medical Report is Ex.P.16.

(e) On receipt of the message, P.W.19, the Inspector of Police took up investigation at about 3.30 a.m. He got the copy of F.I.R. on the morning of next day, on 16.5.1996. P.W.19, Inspector of Police along with P.W.18, Sub-Inspector of Police came to the scene of occurrence. He prepared Observation Mahazar, Ex.P.2 and Rough Sketch, Ex.P.22. Thereafter, P.W.19 went to JIPMER Hospital and examined the witnesses and recorded the statement of the victim Arunagiri and P.W.1.

(f) On 18.5.1996, P.W.19, Investigating Officer handed over the investigation to P.W.20, another Inspector of Police. On the same day at about 8.40 p.m., the victim Arunagiri died at JIPMER Hospital. He sent Death Intimation, Ex.P.3 to the police station. Ex.P.17 is the death intimation.

(g) On receipt of the death intimation on 19.5.1996, P.W.20, Inspector of Police altered the case into Section 302 I.P.C. and sent Express Report, Ex.P.23. Thereupon, he came to the JIPMER Hospital and conducted inquest on the body of the deceased Arunagiri; the Inquest Report is Ex.P.24. He examined the

witnesses and sent the body for post-mortem.

(h) P.W.17 Doctor commenced the post-mortem on 19.5.1996 at about 3.30 p.m. and issued the Post-mortem Certificate, Ex.P.20. The opinion given by the Doctor is that death was due to the shock as a result of burns. On 13.6.1996, A.1, A.3, A.4, A.5 were arrested. On the confession of A.1, M.O.1 was recovered and on the confession of A.3, M.O.3, eversilver bowl was recovered.

(i) In the meantime, another Inspector of Police, P.W.21 investigated the case on 20.6.1996 and he came to know that A.2 surrendered before the Judicial Magistrate. He filed an affidavit on 28.6.1996 to get the police custody of A.2 to A.6. He obtained the police custody of A.2 and A.6 and recorded their confession and in pursuance of the same, M.O.2 knife was recovered from A.3. After finishing investigation, P.W.21 filed charge-sheet against all the accused for the offences under Sections 147, 148, 341, 323, 324 and 307 I.P.C.

3. During the course of trial, P.Ws.1 to 22 were examined. Exs.A.1 to A.25 and M.Os.1 to 3 were marked.

4. When the accused were questioned u/s 313 Cr.P.C., they denied their complicity in the crime and they further stated that the prosecution party came and set fire to the houses and foisted a false case against them.

5. The trial Court while appreciating the materials available on record, acquitted A.4, A.5 and A.6 and convicted A.1 for the offence u/s 324 I.P.C.; A.2 for the offences under Sections 324 and 302 I.P.C. and A.3 for the offences under Sections 302 read with 114 I.P.C. and sentenced them thereunder. Challenging the same, this appeal has been filed.

6. Mr. A. Natarajan, learned counsel for the appellants would strenuously make the following contention.

" The prosecution has failed in their duty to establish the guilt of the accused by producing acceptable evidence. The fact that the statement obtained from the deceased at Villupuram hospital and at Pondicherry hospital, has not been placed before the Court for proper appraisal of the same, in the light of the other evidence available on record, would clearly indicate that the prosecution has not come with clean hands. There is no reason given by the prosecution as to why the Investigating Officer did not take steps to record the dying declaration of the deceased, even though he was conscious throughout till his death for three days. The evidence of the eye witnesses with reference to the place of occurrence, is not in consonance with the Observation Mahazar, Ex.P.2 and Rough Sketch Ex.P.22 and also the inquest report, Ex.P.24. Therefore, the appellants are liable to be acquitted."

7. Alternatively, it is submitted by learned counsel for the appellants that even if the entire case of the prosecution is true, the accused cannot be convicted u/s 302 I.P.C., in view of the fact that P.W.15, the Doctor who attended on the deceased and P.W.17, the Doctor who conducted post-mortem, had stated that

death was "due to infection" and as such, the accused, at the most, could be convicted only for the lesser offence and not u/s 302 I.P.C.

8. We have heard Mr. V.Arul in respect of the above aspects.

9. We have given our thoughtful consideration to the rival contentions urged by either side and have also meticulously gone through the records.

10. There are five eye-witnesses. Out of these five witnesses, P.W.4 turned hostile. P.W.1 is the younger brother of the deceased. P.W.2 is the elder brother of the deceased. P.W.5 is the wife of the deceased. P.W.3 is an independent witness. According to them, when P.W.1 was coming back home, the accused came there and picked up a quarrel with him; A.1 and A.2 attacked P.W.1 with Koduval; when the deceased intervened, he was also attacked by A.4 to A.6; when the deceased was running away from the scene of occurrence, A.3 came with eversilver bowl containing spirit and poured the same on the body of the deceased; A.2 lighted the match stick and threw it on the body of the deceased resulting in the death of the deceased catching fire.

11. Both the victims, the deceased and P.W.1 were immediately taken to Villupuram hospital where treatment was given to P.W.1. As the condition of the deceased was so serious, he was sent to JIPMER hospital, Pondicherry. P.W.16 Doctor gave Accident Registers, Exs.P.18 and P.19 in respect of both the victims and in the said documents, there is a reference about the attack and pouring of the spirit on the body of the victim. P.W.15 admitted the deceased on 16.5.1996 at about 2.00 a.m. and gave treatment. On receipt of information from P.W.16 Doctor, P.W.18, Sub-Inspector of Police went to Villupuram hospital and obtained the complaint from P.W.1. Despite the treatment given to the deceased at JIPMER hospital, the deceased died on the 18.5.1996 at about 8.30 p.m. Thereafter, the case was altered into Section 302 I.P.C. The evidence of P.Ws.1, 2, 3 and 5 coupled with medical evidence, would indicate that both the victims sustained injuries on 15.5.1996 at about 9.30 p.m. near Pillaiyar Koil Street.

12. It is true the trial Court acquitted A.4, A.5 and A.6. The ground on which they were acquitted by the trial Court is that there is variation with reference to the weapon used by them for assaulting the deceased. Merely, because, some of the accused had been acquitted on a particular ground, it cannot be contended that the same would apply to other accused also. In respect of the accused-1 to 3, there is a clear version from the eye-witnesses, P.Ws.1, 3 and 5 that A.1 and A.2 attacked P.W.1 with Koduvals, M.Os.1 and 3 and after A.3 poured spirit on the body of the deceased, A.2, set fire on the deceased. Both the doctors P.Ws.15 and 16 would state that death was due to burn injuries and their complications.

13. It is contended that there is variation in respect of the place of occurrence. The learned counsel for the appellant laid stress, much on the Observation Mahazar, Ex.P.2 and Rough Sketch, Ex.P.22 wherein the place of occurrence was mentioned as Pillaiyar Koil Street, whereas the eye witnesses would state the

main incident, wherein the deceased sustained injuries took place at Pattikaran street. This , in our view, is not a variation at all, since the Pillaiyar Koil Street is situate only 25 feet away from Pattikaran passage; it is a only a junction which connects the main road of Pillaiyar Koil Street with Pattikaran street.

14. According to the prosecution, on hearing the noise due to the quarrel at Pillaiyar Koil Street, the deceased came running from Pattikaran street and after a wordy quarrel, A.4, A.5 and A.6 beat the deceased with sticks and unable to bear the beatings, the deceased ran through the Pattikaran street and at that time, the accused No. 3 poured spirit on the body of the deceased and the accused No. 2 lighted the match stick and threw on the deceased. So, under these circumstances, we are unable to accept the contentions of the learned counsel for the appellant with reference to this aspect.

15. It is further contended that the statement obtained from the deceased is not marked. As seen from the evidence of P.W.2 and P.W.3, statements were obtained from the deceased at Villupuram hospital by the police. But, they themselves admitted that no signature was obtained from the deceased. It is true that P.W.5, the wife of the deceased would state that Gorimedu Police obtained statement from the deceased and got his signature. We do not give any importance to this statement, because P.W.1 who is the injured eye-witness for both the occurrences, had given a complaint and P.W.18, Sub-Inspector of Police on 16.5.1996 at 1.30 a.m. recorded the same. When once the complaint has been received by P.W.18 at 1.30 p.m., even assuming that some other statement was obtained from the deceased, there is no material to show that, as the said statement contained some other version. It is also admitted by P.W.5 that a statement was also obtained by Gorimedu police. But it is not the case of the prosecution that any statement was obtained by the police at Pondicherry. Further, there is no question put to P.W.19, the Investigation Officer. P.W.19 himself would admit that he went to JIPMER hospital and obtained statement from the deceased. If it is so, the said statement, after the death of the deceased, would become admissible u/s 32 of the Indian Evidence Act. Unfortunately, the prosecution has failed to mark such a document, which is an important piece of evidence to corroborate the other evidence available. But, mere failure to mark the document, in our opinion, would not be a ground to reject the ocular evidence tendered by P.Ws.1 to 3 and 5.

16. A perusal of the evidence of P.Ws.1 to 3 and 5 would clearly indicate that these witnesses are trustworthy and reliable. Admittedly, P.W.3 is an independent witness, who is a resident of the same village. When this ocular testimony is corroborated by the medical testimony tendered by P.Ws.15 and 17, there is no difficulty in holding that the prosecution case has been established beyond reasonable doubt.

17. Lastly, a faint attempt has been made by the counsel for the appellant that since P.W.15, Doctor has given opinion that the deceased died of "Septicimia with 45% burns", the offence would not come u/s 302 I.P.C. This contention also, in

our view, is not tenable. It is the evidence of P.W.15 that proper treatment has been given to the deceased from the date he was admitted in the hospital. Ex.P.17 is only a Death Report. But Ex.P.20 is the Post-mortem Report given by P.W.17 Doctor, wherein the Doctor has given a clear opinion that the death was due to "shock as a result of burns" and furthermore, it is noticed from Ex.P.20 that the following injuries were found on the vital parts of the body of the deceased:

" I. Superficial to deep burns are seen present over the following parts of the body:

- a) face including front and back of the neck.
- b) front and back of the chest wall.
- c) front of the upper half of the abdominal wall.
- d) entire right upper limb excluding the hand.
- e) front of the left arm.

Thin layer of pus is seen present over the burnt areas. "

Therefore, we are unable to accept the contentions of the counsel for the appellant with reference to the nature of the offence.

18. In view of the discussion made above, we are of the opinion that there are materials which are formidable to show that A.1 to A.3 caused cut injuries and burn injuries. Consequently, the conviction imposed upon the appellants -1 to 3 is confirmed.

19. As far as A.1 is concerned, it is seen that two years rigorous imprisonment has been imposed u/s 324 I.P.C. It is also noticed that P.W.1 was hospitalized for three days and the injuries were simple. Therefore, it would be appropriate to modify the sentence of two years to one year rigorous imprisonment and accordingly, the same is modified.

20. The trial Court is directed to secure the presence of the appellant/A.1 to undergo the unexpired portion of the sentence. The sentence imposed on the other accused shall stand confirmed.

21. With the above modification, the appeal is dismissed.