
(2009) 07 MAD CK 0384
In the Madras High Court
Case No : C.A. No. 765 of 2008

Chinna Kalappan

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 24-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304, 34, 342

Citation : (2009) 07 MAD CK 0384

Hon'ble Judges : M. Chockalingam, J;C.S. Karnan, J

Bench : Division Bench

Advocate : M.G. Sankaran and S. Shantha Kumari, for the Appellant; N.R. Elango, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—Challenge is made to a judgment of the Additional Sessions Division, Fast Track Court, Dharmapuri, made in S.C. No. 150 of 2007 whereby the appellant/A-1 along with A-2 stood charged, tried, and found guilty as follows:

ACCUSED CHARGES FINDING PUNISHMENT A-2 342 IPC -- A-1 342 r/w 34 IPC
Guilty 1 year RI A-1 302 IPC Guilty Life imprisonment A-2 302 r/w 109 IPC --

Pending trial, A-2 died, and hence charges against him stood abated.

2.Short facts necessary for the disposal of this appeal can be stated as follows:

(a) P.W.1 is the cousin brother of the deceased Kumar. On 21.8.2005 at about 6.00 P.M., P.W.1 was just crossing the shop of one Vijai. At that time, he found A-1 and the deceased quarreling with each other, and A-1 was demanding money which he gave to the deceased as a loan. At that time, A-2 was also present. P.W.1 and also Vijai pacified them. At about 8.30 P.M., when P.W.1 was proceeding along with a torch light to take a basket as per the direction of his master, he heard the sound near the cattle shed of one Muniappan. Then he went

nearby and heard the words "You did not pay back the money for the past two months despite so many demands. Then you should be finished off". So saying A-1 attacked the deceased with a billhook on the neck which crime was facilitated by A-2. This was witnessed by P.Ws. 1 and 2. When there was a distressing cry, both the accused fled away from the place of occurrence. Then P.W.1 proceeded to the respondent police station where P.W.11 was the Sub Inspector of Police. P.W.1 gave a report, Ex. P1, on 21.8.2005 at about 11.00 P.M., on the strength of which a case came to be registered in Crime No. 371/2005 under Sections 342 and 302 of IPC. The printed FIR, Ex. P14, was despatched to the Court along with Ex. P1, the report.

(b) P.W.12, the Inspector of Police of that Circle, on receipt of the copy of the FIR, took up investigation, proceeded to the spot, made an inspection and prepared an observation mahazar, Ex. P2, and also a rough sketch, Ex. P15. He conducted inquest on the dead body in the presence of witnesses and panchayatdars and prepared an inquest report, Ex. P16. He examined the witnesses and recorded their statements. The dead body was sent to the Government Hospital along with a requisition for the purpose of postmortem.

(c) P.W.8, the Assistant Surgeon, attached to the Government Hospital, Palacode, on receipt of the requisition, conducted autopsy on the dead body of Kumar and has issued a postmortem certificate, Ex. P8, with her opinion that the deceased would appear to have died 18 to 24 hours prior to autopsy, and death was due to shock and haemorrhage due to head injury and fracture to skull bones.

(d) Pending investigation, on 23.8.2005, A-1 and A-2 were arrested. A-1 came forward to give a confessional statement, which was recorded. The admissible part is Ex. P4, pursuant to which he produced M.O.1, billhook, which was recovered under Ex. P5, the mahazar. A-2 gave a confessional statement, which was also recorded. Both were sent for judicial remand. All the material objects recovered from the place of occurrence and from the dead body and M.O.1 were subjected to chemical analysis by the Forensic Sciences Department on a requisition made by the Investigator through the concerned Court. After analysis, Ex. P11, the serologist's report, and Ex. P12, the chemical analyst's report, were received. 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 marched 12 witnesses and also relied on 16 exhibits and 10 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 and took the view that the prosecution has proved the case beyond reasonable doubt in respect of A-1 and hence found him guilty and awarded punishment referred to above, which is the subject matter of challenge before this Court. Pending trial, A-2 died, and hence charges against him stood abated.

4. Advancing arguments on behalf of the appellant, the learned Counsel Mr. M.G. Sankaran would submit that in the instant case, the prosecution rested its case on the evidence of P.Ws. 1 and 2; that P.W.2 has turned hostile, and thus P.W.1 was the only witness; that his evidence remained uncorroborated; that according to the prosecution, the occurrence has taken place at 8.30 P.M.; that he was actually a chance witness; that according to him, he took the torch light and proceeded near the place of occurrence, and it was utter darkness; that under the circumstances, he could not have seen the occurrence at all; that apart from that, P.W.1's evidence was self contradictory, and it was not consistent with the prosecution case; and that the medical opinion canvassed through P.W.8 the Doctor, and the contents in the postmortem certificate did not support the ocular testimony. Added further the learned Counsel that the alleged confession and recovery of M.O.1, billhook, are all nothing but a cooked up affair, and thus the prosecution has miserably failed to prove its case.

5. Added further the learned Counsel in the second line of argument that in the instant case, even as per P.W.1's evidence, there was a quarrel, and A-1 has lent money to the deceased a few months before, and he was giving false promise often that he would borrow money and pay it back; that even at the time of occurrence, A-1 was demanding money; but, the same answer was given by him; that in that quarrel, uttering the words he has cut him with the billhook and caused injuries; that even assuming that the factual position that it was A-1 who actually cut the deceased and caused his death, the act of A-1 would not attract the penal provisions of murder, but it was only due to the quarrel followed by the provocation on account of the non-payment of the money which the deceased owed to A-1 and false promise for a few months; that under the circumstances, it would fall within one of the exceptions to definition of murder and this legal aspect has got to be considered by this Court.

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

7. It is not in controversy that one Kumar, the cousin brother of P.W.1, was done to death following an incident that had taken place at 8.30 P.M. on 21.8.2005. Following the inquest made by P.W.12, the Investigator, the dead body was subjected to postmortem by P.W.8, the Doctor, who has given his opinion as a witness before the trial Court and also through postmortem certificate, Ex. P8, that he died out of shock and haemorrhage due to the head injury sustained by him. This fact was never disputed by the appellant before the trial Court. Hence no impediment was felt by the trial Court in recording so and rightly too.

8. In order to establish the charges levelled against the appellant, the prosecution marched before the trial Court two witnesses as eyewitnesses; but, P.W.2 has turned hostile. P.W.1 has given a categorical evidence. It is true that P.W.1 is the cousin brother of the deceased. But from the narration of the incident what he has spoken to, it would be quite clear that he has spoken the truth, and it inspires the confidence of the Court. According to P.W.1, the

deceased actually borrowed money a few months before; but, he did not pay it back, and on the date of occurrence, A-1 was demanding money, and there was evasive answer, and in that quarrel, he being provoked by the non-payment, attacked him with the billhook. This ocular testimony projected through P.W.1 stood fully corroborated by the medical evidence. According to P.W.1, there was one cut made by A-1 with the billhook on the neck of the deceased. His evidence is consistent with the medical opinion canvassed through P.W.8.

9. Apart from the above, in the case on hand, on arrest on 23.8.2005, A-1 has given a confessional statement in the presence of witnesses, and M.O. 1, weapon of crime, has been recovered from him. Thus the recovery of M.O. 1 from A-1 pursuant to the confessional statement would be pointing to the nexus of the crime with the accused. Under the circumstances, the prosecution has brought home the guilt of A-1 as one expected in law. The contention put forth by the learned Counsel for the appellant that it was darkness, and therefore, he could not have seen the occurrence at all cannot be accepted in view of the evidence of P.W.1 that he took a torch light, went near the place of occurrence and heard the noise, and at that time, the occurrence has taken place. At this juncture, it is pertinent to point out that it was P.W.1 who actually took him to the hospital, went to the respondent police station and then gave the complaint with a narration of the entire incident. Under the circumstances, the trial Court was perfectly correct in coming to the conclusion that it was A-1 who has actually cut the deceased on his neck and caused instantaneous death. Thus the contentions put forth by the appellant's Counsel do not carry merit as to the factual position, and they are liable to be rejected, and accordingly rejected.

10. As far as the second line of argument is concerned, this Court is able to see force in the contention put forth. Even as per the prosecution case, the deceased borrowed money from A-1, a few months before; but he did not pay it back and was giving false promise. Even on the date of occurrence, he was giving evasive reply, and being irritated and provoked by the answers given, A-1 has acted so. That apart, it was also pursuant to a quarrel and provocation, A-1 has acted so. It remains to be stated that he had intention to cause such bodily injury as is likely to cause death. Under the circumstances, the act of A-1 would attract the penal provision of Section 304 (Part I) of IPC and awarding punishment of seven years Rigorous Imprisonment would meet the ends of justice.

11. Accordingly, the conviction and sentence imposed on A-1 by the trial Court u/s 302 IPC are set aside, and instead, he is convicted u/s 304 (Part I) of IPC and directed to undergo seven years Rigorous Imprisonment. The sentence already undergone by him shall be given set off. The conviction and sentence imposed by the trial Court on A-1 u/s 342 read with 34 IPC are confirmed.

12. In the result, with the above modification in conviction and sentence, this criminal appeal is dismissed.