

(2009) 10 MAD CK 0273

In the Madras High Court

Case No : Criminal Appeal No. 734 of 2008

Govindaraj, Krishnamurthy and Selvaraj

APPELLANT

Vs

State by the Inspector of Police

RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 294, 302, 323, 324, 34

Citation : (2009) 10 MAD CK 0273

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

Bench : Division Bench

Advocate : S. Ashok Kumar, SC for S. Palanivelayutham, for A1 and A2 and K. Gandhikumar, for A3, for the Appellant; Babu Muthu Meeran, Assistant Public Prosecutor, for the Respondent

Judgement

M. Chockalingam, J.—Challenge is made to the Judgment of the learned Sessions Judge, Cuddalore Division, Cuddalore District made in SC. No. 101/2007 dated 21.08.2008 whereby the accused/A1 to A3 stood charged, tried and found guilty for the offence u/s 324, 302 r/w 34, 294[b] IPC and on trial, they were found guilty of the charges and were awarded with punishments as follows:

Accused

Conviction

Sentence awarded

A1

Under Section 294[b], 324 and 302 read with 34 IPC

1]sentenced to undergo life imprisonment and to pay a fine of Rs. 10,000/- and in default to undergo one year simple imprisonment for the offence u/s 302 read with 34 IPC.

2]sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs. 2,000/- and in default to undergo one year simple imprisonment for the offence u/s 324 IPC.

3]sentenced to pay a fine of Rs. 500/- and in default to undergo one month simple imprisonment for the offence u/s 294[b]

A2

Under Section 302 IPC

Sentenced to undergo life imprisonment and to pay a fine of Rs. 10,000/- and in default to undergo one year simple imprisonment for the offence u/s 302 IPC.

A3

Under Section 302 read with 34 IPC

Sentenced to undergo life imprisonment and to pay a fine of Rs. 10,000/- and in default to undergo one year simple imprisonment for the offence u/s 302 IPC.

The trial Judge ordered the sentence to run concurrently in respect of the first accused.

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

[a] P.W.1 is the resident of Elavathadi village and he is the son of the deceased Swamidurai; P.W.2 is the wife and P.W.3 is the daughter and P.W.4 is the son of the maternal uncle of P.W.1. The family members of the deceased were in search of a missing goat on the evening hours on 13.03.2006 and they found a goat lying dead near the house of A1. But, they ascertained that the goat did not belong to them. When they were about to return home, A1 was under the impression that they entertained suspicion over him and hence, he picked up a wordy altercation with P.W.1 and attacked him with iron pipe and also bite him on his left cheek. P.W.1 along with P.W.5 and one Babu, went to Senthnanadu for taking treatment. Since, the doctor was not available, he stayed with Babu in a tea stall at Senthnanadu at about 2.00 a.m. on 14.03.2006.

[b] When the deceased was sleeping along with his wife [P.W.2] and his daughter [P.W.3] in his house, all the accused standing in front of the house of the deceased, shouted in filthy language against P.W.2. The deceased came out of the house and tried to pacify them to go away. Immediately, A2 assaulted him on his head with wooden log and pushed the deceased down. A1 attacked the deceased with iron rod on the chest while A3 attacked him with the wooden log on the chest. The accused also threatened P.W.2 and other family members also. P.Ws.5 and 6 who are the residents of the same village, viz., Elavathadi, and who were returning from Senthnanadu also witnessed the occurrence. When P.W.1 returned home at about 6.00 a.m. in the morning on 14.03.2006, P.W.2 informed about the incident and P.Ws.1,2 along with P.W.4 engaged a taxi, took the deceased for treatment to the Government Hospital, Panruti and on the way,

P.W.1 got down at the respondent police to give a complaint. P.W.12, the Sub-Inspector of Police of the respondent police who was on duty at the relevant point of time, received the complaint of P.W.1 under Ex.P.1 and on strength of which, registered a case in Cr. No. 37/2006 for the offences u/s 294, 323, 324 and 506[ii] IPC. Ex.P.11 is the Express FIR and the same was despatched to the court. Meanwhile, P.W.2 and others reached the hospital at about 11.00 a.m. and P.W.10, the doctor attached to the Government Hospital, Panruti, who was on duty at that relevant point of time, recorded the condition of the deceased in the Accident Register marked as Ex.P.9. and advised P.W.2 to take the deceased for further treatment to the District Headquarters Hospital, Cuddalore. When, the deceased was brought to the District Headquarters Hospital, Cuddalore, despite treatment, the deceased died at about 4.15 p.m. P.W.1 who came to the Government Hospital, Panruti, on coming to know that the deceased was taken to District Headquarters Hospital, Cuddalore, came over there and came to know about the death of his father, the deceased.

[c] P.W.12, took up further investigation, went to the scene of occurrence, prepared Observation Mahazar-Ex.P.2 and a rough sketch-Ex.P.12 in the presence of witnesses; examined the witnesses and recorded their statements. On receipt of the intimation that the deceased died, he altered the case to one u/s 302 IPC and the altered FIR under Ex.P.13 was also despatched to the court and also handed over a copy of the altered FIR to Dinakaran, the then Inspector of Police.

[d] The Inspector of Police, in continuation of his investigation, held inquest on the dead body of the deceased in the Headquarters Hospital, Cuddalore, between 8.00 a.m. and 11.00 am in the presence of the witnesses and panchayatdars and prepared Ex.P.14, the Inquest Report. He also sent the dead body for postmortem along with a requisition.

[e] P.W.11, the doctor attached to the District Headquarters Hospital, Cuddalore, received a requisition from the Inspector of Police and conducted autopsy on the dead body of the deceased. P.W.11 also issued Ex.P.8, the Post Mortem Certificate wherein he has opined that the deceased would appear to have died out of shock and haemorrhage due to head injury on the left subdural haematoma and left intra cerebral hemorrhage .

[f] In continuance of the investigation, on 17.03.2006 at about 10.00 a.m. the Inspector of Police arrested the accused 1 to 3 in the presence of witnesses and A1 voluntarily came forward to give a confessional statement, the admissible part of which is marked as Ex.P.15 pursuant to which M.Os.1 to 3 were recovered in the presence of witnesses under the cover of Mahazar, Ex.P.16. All the material objects recovered from the place of occurrence, from the dead body and the material objects recovered pursuant to the confessional statement of A1, were all subjected to chemical analysis pursuant to requisition.

[g] On completion of investigation and filing of the final report, the case was

committed to sessions; necessary charges were framed and in order to substantiate the charges, the prosecution examined 12 witnesses [P.Ws.1 to 12], marked 18 exhibits [Exs.P.1 to 18] and produced 3 material objects [M.Os.1 to 3].

3. When the accused were questioned u/s 313 Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution against them, they denied them as false and on the side of the accused no defence witnesses were examined and no documents were marked. Hearing the arguments advanced on either side and also considering the materials available, the trial court took a view that the prosecution has proved its case beyond reasonable doubt and thus, rendered the judgment of conviction and sentence as stated supra. As against the said conviction and sentence, the accused, A1 to A3 have preferred the above appeal.

4. Advancing the arguments on behalf of the appellants/A1 to A3, the learned senior counsel for the appellants would submit that in the instant case, the prosecution has miserably failed to prove its case beyond reasonable doubt. The prosecution examined P.Ws.2,3,5 and 6 as eyewitnesses. Information was given to the police by P.W.1 who was not a eyewitness to the occurrence and hence, the entire narration of the incident spoken to by him cannot but be only a hearsay. P.W.2, is the wife of the deceased and P.W.3 is the daughter of the deceased and their narration about the incident as found in Ex.P.1-complaint and their evidence before the court is a discrepant one and P.Ws.5 and 6 are the chance witnesses as their presence at the place of occurrence in those odd hours at about 2.00 a.m. is highly impossible as mentioned by them.

5. Learned Senior counsel contended that the prosecution has come forward with a story that A1 to A3 shared the common intention and no materials were placed before the trial court to substantiate the same. According to the prosecution witnesses, it was A1 armed with iron pipe and A2 and A3 armed with wooden logs and all the eyewitnesses have categorically stated that it was A2 who has attacked the deceased with wooden log on the head; but no corresponding external or internal injury is found by P.W.11-the doctor who conducted autopsy on the dead body of the deceased. At the earliest the deceased was examined by P.W.10-the doctor attached to Government Hospital, Panruti and the Accident Register-Ex.P.9 does not indicate any external injury on the skull or any part of the body and thus, the evidence of the eyewitnesses that A2 attacked the deceased with wooden log cannot but be false. It is also contended by the learned senior counsel that the medical opinion canvassed by the prosecution did not support the ocular testimony. P.W.11, the doctor, has given his opinion that the death was due to shock and haemorrhage on account of head injury; but no injury was actually found and had the death of the deceased been due to subdural haematoma and left intra cerebral haemorrhage, corresponding injury should have been found. But, no corresponding injury was noticed by P.W.11 and this opinion is also given after a period of nearly two months and hence, no

evidentiary value could be attached to the opinion of P.W.11 who conducted the postmortem.

6. Learned Senior counsel would further add that as far as A1 attacking the deceased with iron pipe is concerned, though certain injuries were found on the ribs, that was not shown as the cause for the death of the deceased and insofar as A3 attacking the deceased is concerned, the eyewitnesses have categorically deposed that he attacked him with wooden log. But, on trial, it was found that A3 was actually fisted the accused with hands and thus, the evidence of the eyewitnesses in respect of the overt act attributed to A3, found to be inconsistent with Ex.P.1 and hence, it casts a doubt on their evidence. The prosecution was also unable to show that the accused have come with a common intention to share with and thus, the ocular testimonies of the eyewitnesses are with discrepancies and the medical evidence did not corroborate with the ocular testimony. It is further added that insofar as the alleged arrest and recovery pursuant to the confession statement is concerned, the same is doubtful and it could not be believed since the evidence adduced by the prosecution is shaky in that regard. Under such circumstances, it is contended by the learned senior counsel that the trial court has taken an erroneous view that the prosecution has proved its case beyond reasonable doubt and thus, the accused/appellants are entitled to for acquittal at the hands of this Court.

7. Heard the learned Additional Public Prosecutor on the above contentions and the court paid its anxious consideration on the submissions made on either side.

8. It is not in controversy that one Swmaidurai, the husband of P.W.2, following an incident that took place at about 2.00 a.m. on 14.03.2006, was taken to the Government Hospital, Panruti where he was treated by P.W.10-doctor and thereafter, he was taken to the District Headquarters Hospital, Cuddalore where, despite treatment, the deceased died at about 4.15 p.m. on the same day. Originally, the case was registered by P.W.12 as evidenced through Ex.P.11 and on the death of the deceased, the case was altered to one u/s 302 IPC and the investigation was taken up by the Inspector of Police of that circle, by name Dinakaran and after conducting the inquest, the dead body was sent for postmortem. P.W.11-the doctor attached to the District Headquarters Hospital, Cuddalore, has given his opinion that the deceased would appear to have died of shock and haemorrhage on account of head injury and due to sub-dural hematoma and left intra cervical haemorrhage. The doctor has given his opinion as a witness before the court and also through Ex.P.8-the Post Mortem Certificate. What was all contended before the trial court and equally here also, was that the deceased has sustained head injury by falling down on a rough surface. The doctor has given his opinion after a period of two months therefrom. This contention of the learned senior counsel for the appellants has to be rejected for two reasons. Firstly, merely because there was no external injury noticed by P.W.10-doctor and also in the Accident Register-Ex.P.9, it cannot be stated that the death was not due to homicidal violence and secondly, the

postmortem was conducted immediately after the inquest was over and even the doctor who conducted the postmortem also has pointed out that there was sub dural hematoma and left intra cervical haemorrhage and the same could not have been caused by falling on a rough surface.

9. In the instant case, in order to substantiate that the head injury was sustained by the deceased while he was attacked by A2 with wooden log, the prosecution has examined P.Ws.2,3,5 and 6 who have all spoken in one voice and the evidence of those eyewitnesses coupled with the evidence of the doctor along with the Post Mortem Certificate-Ex.P.8, would clearly indicate that the fatal injury was caused by A2 when he attacked the deceased with wooden log. It is true that P.W.1 was not an eyewitness to the occurrence, but from the evidence of P.W.1, it would be quite clear that on the previous day to the occurrence, a goat belonging to the family of P.W.1 was missing and that they made a search and found a goat lying dead near the house of A1 and when they went there, they ascertained that the dead goat did not belong to them and when they were about to return, A1 picked up a quarrel since, he entertained a suspicion that P.Ws.1 to 3 suspected him of having stolen the goat. In that incident, he attacked P.W.1 with iron pipe apart from biting him. P.W.1 went to Senthnanadu for getting treatment and could not come back that night since the doctor was not available. Thus, when he came on the next day morning, i.e., 14.03.2006, he was informed by P.W.2, his mother about the incident and thereafter, P.Ws.1,2 and others took the deceased in a taxi to the Government Hospital, Panruti and on their way, P.W.1 got down near the respondent police station to lodge a complaint under Ex.P.1. Though P.W.1 was not an eyewitness to the occurrence, he has narrated the incident as he heard the same from P.W.2 and hence, the evidence of P.W.1 could serve the purpose of setting the crime in motion.

10. Insofar as the incident is concerned, the eyewitnesses marched, viz., P.Ws.2,3,5 and 6 have deposed about the same and from their evidence, it would be quite clear that it was A2 who attacked the deceased with wooden log on the head of the deceased while A1 attacked him with iron pipe and A3 fisted the deceased on the chest. The fatal injury as could be seen from the medical opinion, was caused only by A2. There is nothing to indicate that all the accused, viz., A1 to A3 shared the common intention of causing the death of Swamidurai or only A1 and A3 shared the common intention. Under such circumstances, they have got to be dealt with individually. A2 has attacked the deceased with wooden log and has caused the head injury. Though external injury could not be noticed, it was the doctor's, viz., P.W.11's opinion that the deceased would appear to have died of shock and haemorrhage due to the head injury-sub dural hematoma and left intra cervical haemorrhage. Thus, the act of A2 is not done intentionally to cause the death of the deceased but he should have done with the intention of causing the said injury on the head and the same was sufficient in the ordinary course of nature to cause the death and hence, the act of A2 has got to be termed as murder and he is liable to be punished u/s 302 IPC and got to be awarded the sentence of life imprisonment. Insofar as A1 is concerned, he has

attacked the deceased with iron pipe on the chest and hence, he has got to be found guilty u/s 324 ad 294[b] IPC and a punishment of two years rigorous imprisonment for the offence u/s 324 IPC and to pay a fine of Rs. 500/-in default to undergo one month simple imprisonment for the offence u/s 294[b] IPC. As far as A3 is concerned, he fisted the deceased on the chest with his hands and hence, he is found guilty u/s 323 IPC and awarded the sentence of one year simple imprisonment for the said offence.

11. Accordingly, the appeal is dismissed in respect of the SECOND APPELLANT/ ACCUSED No. 2 and the judgment of conviction and sentence against A2 passed by the learned Sessions Judge, Cuddalore, Cuddalore District, in SC. No. 101/2007 dated 21.08.2008 is confirmed and the judgment of conviction and sentence in respect of A1 and A3 are modified as follows:

Rank

Modification of conviction

Sentence awarded

Accused No. 1

Under Section 324 and 294[b] IPC

1]to undergo two years rigorous imprisonment for the offence u/s 324 IPC

2]to pay a fine of Rs. 500/- and in default to undergo one month simple imprisonment for the offence u/s 294[b] IPC

Accused No. 3

Under Section 323 IPC

To undergo one year simple imprisonment for the offence u/s 323 IPC.

The period of sentence already undergone by A1 and A3 shall be given set off.