
(2009) 04 MAD CK 0140
In the Madras High Court
Case No : Criminal Appaeal. No. 935 of 2007

Kuppan

APPELLANT

Vs

State by The Inspector of Police

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 300, 302, 304, 506

Citation : (2009) 04 MAD CK 0140

Hon'ble Judges : Raja Elango, J;R. Banumathi, J

Bench : Division Bench

Advocate : S. Panneerselvam, for the Appellant; P. Kumaresan, Addl.P.P., for the Respondent

Judgement

Raja Elango, J.—This appeal arises out of the judgment made in S.C. No. 113 of 2006 by the District & Sessions Judge, Thiruvannamalai

convicting the appellant/ accused for an offence u/s 302 IPC., and sentencing him to undergo life imprisonment and also to pay a fine of Rs.

10,000/-, in default, to undergo rigorous imprisonment for two years.

2. Brief facts of the prosecution case are as follows:

(i) On 03.10.2002 at about 10.00 p.m., when the deceased Poongavanam was sitting out side of his house at Eachur and shouted that a false

complaint has been lodged against him; that on hearing the same the accused who rushed to the deceased armed with a stick started assaulting the

deceased believing that the deceased refers to him alone, on his chest and stomach. As a result of which the deceased fell down and thereafter, the

accused sat on the body of the deceased and started assaulting the deceased with a stone on his chest, stomach and on both legs repeatedly; that

on seeing the same, witness Maheswari intervened in order to pacify the situation, but the accused not only pushed her aside, but also the other

witnesses who came in rescue of the deceased; he threatened the witnesses with dire consequences and criminally intimidated them by showing the

stone. The deceased has been rushed to the Government Hospital at Vandhavasi then transferred to the Government Hospital, Chengalpattu. On

04.10.2003 and on 05.10.2007 at about 09.30 a.m, he died of injuries that have been caused by the accused.

(ii) P.W.1 set the law in motion. On the basis of complaint lodged by P.W.1 case was registered in Cr. No. 806/2002 u/s 302 I.P.C.

(iii) P.W.12 Inspector of Police had taken up investigation, he inspected scene of occurrence and prepared Ex.A6 Observation Mahazar and

Ex.P12 Rough Sketch. In the Government Hospital, Chengalpattu inquest was held on the body of the deceased Poongavanam and Ex.P13 is the

inquest report. On requisition from investigating officer P.W.9 Dr. Parasakthi had conducted autopsy on the body of deceased and noted

depressed comminuted injuries in the head and stomach. P.W.9 opined that death was due to chest and stomach injury and issued Ex.P10 Post

mortem certificate.

(iv) On 07.10.2002 at about 3.00 P.M., the accused was arrested by P.W.12- Investigating Officer. Confession statement of accused led to

recovery of M.O.1 stick and M.O.2 stone under Ex.P4 Seizure Mahazar. P.W.12 Investigating officer examined the witnesses and recorded their

statements. P.W.13- successor Inspector of Police examined the Doctor who conducted the autopsy and recorded his statement and on

completion of investigation final report was filed against the accused on 04.03.2006 for the offence u/s 302, 304 and 506(II) I.P.C.

3. To substantiate charges against the accused, in the trial Court, the prosecution examined P.Ws.1 to 13, Exs.P.1 to P.13 and M.Os.1 to 3 were marked.

4. When the accused was questioned u/s 313 Cr.P.C., in respect of the incriminating materials appearing against him, he denied the same as false

and pleaded not guilty. Upon analysis of evidence, the trial Judge convicted the appellant/accused for the offence u/s 302 I.P.C. and sentenced him

to undergo life imprisonment and imposed fine.

5. The learned Counsel appearing for the appellant/accused submitted that the learned Sessions Judge erred in believing the evidence of PWs.2,3

and 7 and their presence in the place of occurrence is highly doubtful and further they are related to the deceased. The learned Counsel for the

appellant/accused further contended that there is an inordinate delay in lodging the complaint, i.e., the occurrence on 03.10.2002, where as the

complaint was lodged on 05.10.2002, the complaint was also received by the Magistrate on 08.10.2002. The learned Counsel for the

appellant/accused further contended that there are lot of improvements and discrepancies in the evidence adduced by the above said witnesses.

6. We carefully examined the evidence adduced by the prosecution, the wife of the accused(P.W.1) even though she turned hostile, she supported

the case of the prosecution to some extent. By perusal of Ex.P2 marked through P.W.4 would indicate that P.W.1 Maheswari who admit the

deceased in the hospital, where she stated that one known person assaulted her husband(since deceased).

7. As far as the evidence of P.W.2,3 and 7 are concerned, careful perusal of the evidence would indicate that they have deposed in the Court in

one voice regarding the presence of the accused. The Possession of weapon and the manner of attack and the time of occurrence cogently. Some

discrepancies mentioned by the learned Counsel for the appellant are negated in the course of cross examination and the witnesses reiterated

their stand regarding (i) The motive for the occurrence (ii) Presence of the accused (iii) Place of occurrence (iv) Manner of attack.

8. P.W.2 while in his cross examination stated that "" nghyp!hh; cz;ikiaj;jhd; brhy;yr; brhd;dhh;fs;@/ P.W.3 in her answer to the Court question

@ehd; rk;gtj;ij nehpy; ghh;j;njd;@ and P.W.7 brother in law of the deceased answer is also categorically implicate the accused with the crime

committed.

9. The learned Counsel appearing for the appellant/accused further contended that there is a delay in lodging the complaint, the delay in lodging the

complaint is not always fatal to the prosecution. (i) The delay should be examined on the basis of the facts and circumstance of each and every

case. (ii) Whether it caused any prejudice to the accused. (iii) Is there any possibility of improvement by way of lodging the complaint belatedly.

10. In the present case, the complaint was lodged after two days, due to the fact that the injured succumbed to death in the hospital on

05.10.2002. The injuries sustained by the deceased were simple in nature and there is no grievous external injuries in the sudden quarrel. The

complainant would not have felt it is necessary to lodge a complaint for a trivial occurrence. But on the demise of her husband she rightly lodged a complaint on 05.10.2002.

11. Ex.P2 (Accident Register) which clearly contains the manner of attack and the weapon used involvement of one known person who caused

the injury, the complaint also disclose the same. We do not any improvement or false implication. The delay in lodging the complaint has been

satisfactorily explained by the prosecution. In view of the above, we are of the view that the delay is not fatal to the prosecution .

12. The prosecution examined P.W.10, the Magistrate received the complaint and wherein she has signed and put the date as 08.10.2002. She

categorically deposed in the Court that she inadvertently put the date as 08.10.2002. But the perusal of the evidence shows that the other

documents received along with the complaint contains the signature and date of the Magistrate as 05.10.2003, which clearly shows that the

complaint was immediately sent to the Court.

13. The other contention raised by the learned Counsel appearing for the appellant/accused was that the recovery of material objects are highly

doubtful which cannot be believed. When the oral- evidence adduced by the prosecution clinchingly connects the accused with the crime and the

quality of the evidence given by the witnesses are sufficient to arrive at a conclusion that the accused is the person who committed the murder

recovery of material objects is not of much significance. Further in this case, the alleged weapons are small stick and stones. Even if it is recovered

that can also be questioned since because those material objects are available in plenty in a place like the place of occurrence. In view of the above

the arguments advanced assailing the recovery of weapons is of no avail.

14. Hence, we are of the opinion that the conclusion of the trial Judge, regarding the commission of crime by the accused cannot be interfered with.

Now the question before us whether the evidence adduced by the prosecution would attract an offence u/s 302 I.P.C. or it would fall under

Exception to Section 300 IPC.

15. The accused was in the habit of using the land belonging to the deceased Poongavanam as a cattle shed and also for the purpose of disposal of cow dung and garbages, which was questioned by the deceased. The deceased was also under the impression that the accused has lodged a complaint against him as if that he is selling arrack. Few days prior to the occurrence, the deceased Poongavanam was released on bail. Hence, there has been an enmity between the accused and the deceased Poongavanam over the trivial issues. Admittedly, on the date of occurrence that the accused Kuppan due to oral altercation with deceased Poongavanam, assaulted the deceased with stick and stones, the injuries sustained by Poongavanam are simple in nature and there was no visible external injuries. The weapon is also not lethal weapon. So the entire occurrence arises out of a sudden quarrel and he has caused injuries without any intention to cause the death of the deceased.

16. Hence, we are of the considered opinion that the act of the accused comes under Exception IV of Section 300 I.P.C. punishable u/s 304(II)

I.P.C.

17. In the result, this appeal is allowed in part. The conviction of the appellant/accused is modified u/s 304(II) IPC, instead of Section 302 IPC.

Accordingly, the sentence of life imprisonment imposed u/s 302 IPC is modified and the appellant/accused is sentenced to undergo Rigorous

Imprisonment for a period of five years for the offence u/s 304(II) IPC. The fine amount of Rs. 10,000/- imposed by the trial Court for the offence

u/s 302 IPC, shall be treated as the fine imposed by this Court for the offence u/s 304(II) IPC.

18. The learned Sessions Judge is directed to take steps to secure the accused and commit him to the prison to undergo the remaining period of

sentence. The bail bond executed by the appellant/accused shall stand cancelled.