

(2004) 07 MAD CK 0030
In the Madras High Court
Case No : Criminal Appeal No. 410 of 1996

Mathiayan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-07-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2004) 07 MAD CK 0030

Hon'ble Judges : S.K. Krishnan, J; M. Karpagavinayagam, J

Bench : Division Bench

Advocate : R. Sankara Subbu, for the Appellant; E. Raja, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—Mathiayan the appellant herein was convicted for an offence u/s 302 IPC for having caused injury on his father-

in-law Ariya Gounder, which resulted in his death. This appeal is filed challenging the same.

2. The facts in brief leading to the conviction are as follows:

a) The accused Mathiayan married one Devaki, the daughter of the deceased Ariya Gounder. It was 13 years prior to the date of occurrence. Out

of their wedlock, three children were born. The deceased Ariya Gounder did not have any male issue. Therefore, he executed a settlement deed in

respect of his land property in the name of his daughter Devaki.

b) Two years prior to the date of occurrence, Devaki, the daughter of the deceased died. Despite the fact that there were three children and in

spite of the objection raised by the deceased father-in-law, the accused chose to re-marry one Deivanai. Since he got married again, the deceased

Ariya Gounder refused to hand over the possession of the property to the accused, which was originally executed in favour of his wife, Devaki.

So, with reference to this, a civil suit was filed by the deceased against the accused and ultimately, the deceased got a decree in his favour. In the

panchayat held, it was directed that the accused should not enter into the land belonging to the deceased.

c) In the meantime, the accused got dejected over the attitude of the deceased in not handing over the possession of the land, which was originally

handed over to his wife. He also felt that his children were not properly looked after by his second wife. So, he felt aggrieved that for all these

sufferings, the deceased was responsible.

d) The occurrence had taken place on 14.07.1989 at about 11.00 p.m. when the deceased was laying down in a cot in his field, the accused came

to the field of the deceased with M.O.1-Koduval and gave cuts on the right and left leg of the deceased. The deceased cried aloud. Upon hearing

the sound, the witnesses P.W.2 and P.W.3, the neighbours came to the scene. On seeing them, the accused ran away from the scene.

e) Since the deceased was lying with cut injuries, he was taken to the Government Hospital, Dharmapuri immediately, where P.W.9, the Doctor

gave treatment to the deceased and issued Accident Register, Ex.P-8. A message was then sent to the Out Post police station.

f) On receipt of the same, P.W.8, the Head Constable proceeded to the Hospital and recorded Ex.P-6, the statement from the deceased at 2.00

p.m., which was attested by P.W.9 and P.W.5. P.W.12, the Head Constable attached to Papparapatti Police Station at the relevant time,

received Ex.P-8 and on the basis of that, he registered a case for an offence u/s 307 IPC at 3.00 a.m in Crime No.223 of 1989.

g) On 15.07.1989 at 3.45 a.m., the deceased died. P.W.10, the Doctor sent Death intimation, Ex.P-10 to the police station. P.W.11, the

Inspector of Police, on receipt of Ex.P-10, altered Section 307 IPC into Section 302 IPC.

h) In the meantime, the accused went to the Village Administrative Officer, P.W.1 and gave an Extra Judicial Confession at 5.45 a.m, which was

reduced into writing by P.W.1, marked as Ex.P-1. He then took the accused and handed him over to the police along with the Koduval-M.O.1

and Ex.P-1, the statement. The complaint Ex.P-2 was thereafter given by P.W.1.

i) Then, P.W.13, the Inspector of Police went to the scene and prepared Observation Mahazar and Rough Sketch. He recovered bloodstained

earth and sample earth and then, he went to the Dharmapuri Government Hospital and conducted inquest over the body of the deceased between

11.00 a.m and 2.00 p.m on 15.07.89.

j) P.W.11, the Doctor conducted postmortem on the body of the deceased on 15.07.1989 at 3.00 p.m. He found two injuries on the body of the

deceased and opined that the deceased would have died of shock and haemorrhage due to injury No.2. The postmortem certificate is Ex.P-12.

k) The material objects were sent for chemical analysis. After concluding the investigation, P.W.13 filed the final report against the accused for an

offence u/s 302 IPC.

l) During the course of the trial, on behalf of the prosecution, P.Ws.1 to P.W.13 were examined, Exs.P-1 to P-20 were marked and M.Os.1 to 5

were produced.

m) The accused in the questioning u/s 313 Cr.P.C. denied his complicity in the crime in question.

n) The trial Court accepted the evidence of the prosecution and found the accused guilty u/s 302 IPC and convicted him thereunder. Hence this

appeal.

3. Mr.Sankarasubbu, the learned counsel appearing for the appellant, would take us through the entire evidence. He would contend that the

evidence available on record would suffer from various infirmities and even assuming that the evidence can be acted upon, it would be unsafe to

hold the accused guilty. The gist of the contentions raised by the counsel for the appellant is this.

1) Admittedly, there was enmity between the accused and the deceased as stated by P.W.5. In the panchayat, the land was handed over by the

accused to the deceased one year prior to the date of occurrence. There is no material to show that subsequently any incident happened.

2) With reference to the enmity, the evidence of P.W.1, the Village Administrative Officer cannot be accepted, since Ex.P-1, the Extra-Judicial

Confession given by the accused was recorded after the commencement of the investigation. The deceased gave the complaint Ex.P-6 to P.W.8,

the Head Constable at about 2.00 a.m, on the basis of which, a case was registered in Crime No.223 of 1989 at about 3.00 a.m. Only after the

commencement of the investigation, Ex.P-1, the Extra-Judicial Confession was recorded on 15.07.1989 at about 5.45 a.m. Therefore, Ex.P-1, the

Extra-Judicial Confession given by the accused, cannot be acted upon.

3) The Village Administrative Officer is a stranger to the accused and therefore, there is no possibility of the accused to approach the Village

Administrative Officer to give Extra-Judicial Confession and that the contents of Ex.P-6 cannot be true, since the Doctor did not make an

endorsement in Ex.P-6 stating that the deceased was in a conscious state.

4) Even assuming that the entire occurrence is true as per the materials available on record, the accused cannot be convicted for the offence u/s

302 IPC, since the accused caused injury only on the non vital part of the body and as such, he could be convicted only for the lesser offence.

4. On these aspects, we have heard the learned Additional Public Prosecutor.

5. We have given our thoughtful consideration to the respective submissions and gone through the records.

6. The entire case would hinge upon the circumstantial evidence. It is stated that in the case of circumstantial evidence, each circumstance should

be established by the prosecution and those circumstances must form a chain without any missing link and the circumstances so established would

not give any room for hypothesis of the innocence of the accused.

7. Keeping in mind the above principles, we have to analyse the evidence available on record. There are three pieces of evidence available in this

case.

1) The oral Dying Declaration given by the deceased to the witnesses P.Ws.2, 3 and 5, while the deceased was taken to the Hospital.

2) The Dying Declaration given by the deceased to P.W.8, the Head Constable at about 2.00 a.m on 15.07.1989, attested by P.W.9, the Doctor

and P.W.5.

3. The Extra Judicial Confession Ex.P-1, given by the accused to P.W.1 at about 5.45 a.m on 15.07.1989.

8. According to the prosecution, there was enmity between the deceased and the accused for not handing over of the possession of the land,

which was given as gift by the deceased to the wife of the accused when she was alive. There is no dispute in the fact that as per the settlement

deed executed by the deceased in favour of Devaki, the wife of the accused, the possession of the land was handed over to the accused and

Devaki and for sometime, they were enjoying the property. After the death of Devaki, the accused got remarried. This was not liked by the

deceased. Therefore, on the intervention of the panchayatdars and on the basis of the decree obtained from the civil Court, the possession was

taken back by the deceased.

9. All the efforts taken by the accused to get back the property proved to be futile and he was not able to manage his family with the income that

he was deriving from his cycle shop and he has to maintain the family with the second wife and the children born through the first wife Devaki. So,

he felt that for all these sufferings, the deceased alone was responsible and therefore, on the date of occurrence, the accused knowing that the

deceased would be available in the field, who used to take bed for guarding the crops in his field, came to the field and gave two cuts on the right

and left leg each, whereupon the deceased raised an alarm and on hearing the same, the witnesses rushed to the scene and on seeing them, the

accused ran away.

10. These factors have been given in Ex.P-6, which is the statement given by the deceased to P.W.8. This is the earliest statement, which has been

recorded at about 2.00 a.m by P.W.8. This has been spoken to by P.W.5, one of the attestors and P.W.9, the Doctor. As soon as the deceased

died at about 3.45 a.m, the case originally registered u/s 307 IPC was altered into one u/s 302 IPC. Therefore, Ex.P-6 which was given by the

deceased has become the dying declaration, which is admissible u/s 32 of the Evidence Act. There is no reason to reject this piece of document,

which has been properly marked through P.W.5 and P.W.9.

11. Apart from that, P.W.8, who recorded the statement Ex.P-6, also would speak about this document. Added to it, we have got an oral dying

declaration made by the deceased to the witnesses. It is true that P.W.2 and P.W.3 who were examined to speak about the accused fleeing from

the scene, have not supported the prosecution. Though they have turned hostile, their evidence in chief would show that they heard the oral dying

declaration made by the deceased that the deceased was attacked by the accused. As such, the oral Dying Declaration as spoken to by P.W.2

and P.W.3 would in a way support the prosecution case as corroborated through Ex.P-6 and the evidence of P.W.5, P.W.8 and P.W.9.

12. The next piece of evidence is the Extra-Judicial Confession. Much was said about the alleged artificiality in the said statement of the accused

made to P.W.1, the Village Administrative Officer. It is true that this statement has been recorded by the Village Administrative Officer P.W.1

after the commencement of investigation and there is no material to conclude that the Village Administrative Officer-P.W.1, while recording the

statement Ex.P-1 from the accused, knew about the commencement of the investigation. The contention that the accused did not know the Village

Administrative Officer is not factually correct because the Village Administrative Officer in Chief examination would state that he knew the accused

and the accused also knew him. Therefore, both the accused and P.W.1 knew each other.

13. The occurrence took place at 11.00 p.m on 14.07.1989 and the accused escaped from the scene and then he hid himself for some time. In the

early morning at about 5.40 a.m., he went and approached the Village Administrative Officer and handed over M.O.1-Koduval. Though Section

72 of the Criminal Rules of Practice would prohibit village Munsif from recording any statement after commencement of the investigation, it does

not provide any prohibition regarding the admissibility.

14. As stated above, in this case, the Village Administrative Officer did not know about the commencement of the investigation earlier. Further,

merely because the Village Administrative Officer signed the mahazars, we cannot reject the entire evidence of P.W.1. Furthermore, Ex.P-1, the

statement, which has been obtained from the accused would corroborate Ex.P-6 in each and every material particulars. Consequently, we have to

hold that on the basis of these three pieces of evidence, coupled with the evidence of the Doctor P.W.11, the prosecution has been able to

establish the guilt against the accused.

15. The next question that has been raised by the counsel for the appellant is,

whether the offence would come under 302 IPC, or any other lesser offence. According to the learned counsel for the appellant, since non vital part was chosen for inflicting the injury, namely, legs, offence would not come u/s 302 IPC.

16. By pointing out the decision of the Apex Court rendered in Jayaraj Vs. State of Tamil Nadu, , the counsel for the appellant would submit that

in the case on hand, there is no material in the evidence of Doctor P.W.11 to show that the injuries found on the deceased are sufficient to cause death in the ordinary course of nature.

17. The main contention of the counsel for the appellant is that in the absence of the material to show that the injuries found on the accused would

be sufficient to cause the death in the ordinary course of nature and in the absence of the material to show that the accused had inflicted injury on

the vital part, it could be said that the prosecution has not established the offence u/s 302 IPC.

18. This argument, in our view does not merit consideration. This is a case where the accused went to the field with the Koduval M.O.1. Ex.P-3

mahazar would show that the blade portion of M.O.1 is 13 inches. According to prosecution, the accused gave two cuts both on the left and right

legs of the deceased, who made a hue and cry, whereupon on hearing the same, the witnesses in and around rushed to the scene and on seeing

them, the accused sped away from the scene. The particulars of the injuries are given in Ex.P-12. The information given in Ex.P-12 is that the

deceased would appear to have died of shock and haemorrhage due to injury No.2. While the Doctor P.W.11 was examined in the Court he

opined that the deceased would have died due to injury No.2. Nothing has been elicited from his cross-examination challenging this evidence.

Merely because the words ""It is sufficient to cause the death in the ordinary course of nature"" are not available, we cannot say that the wordings

used by the Doctor P.W.11 in the deposition as well as in Ex.P-12 would not convey such a meaning.

19. On the other hand, the specific opinion of the Doctor P.W.11 is that the death was due to injury No.2. A perusal of injury No.2 would indicate

that the injury inflicted by the accused is so serious. The occurrence took place on 14.7.89 at about 11.00 p.m and the deceased was immediately

taken to the Hospital at 11.30 p.m and at 3.45 a.m on 15.07.89 he died.

20. Furthermore, the weapon which was used by the accused and the wordings uttered by the accused, while attacking the deceased and the

contents of the Extra-Judicial Confession made by the accused, all would show that with the design to commit the murder of the deceased, he

came to the field and attacked the deceased, resulting in his death.

21. Therefore, we do not find any merit in any of the contentions urged by the counsel for the appellant. Consequently, the conviction and sentence

imposed on the accused are confirmed. The trial Court is directed to take steps to secure the custody of the accused to undergo the remaining

period of sentence. The appeal is dismissed accordingly.