

(2003) 04 MAD CK 0047
In the Madras High Court
Case No : Criminal Appeal No. 614 of 2000

Muniyandi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 28-04-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374

Citation : (2003) 04 MAD CK 0047

Hon'ble Judges : M. Karpagavinayagam, J;AR. Ramalingam, J

Bench : Division Bench

Advocate : N. Mohideen Basha, Amicus Curiae, for the Appellant; E. Raja, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—The appellant/accused was convicted for the offence u/s 302 IPC and sentenced to undergo imprisonment for

life and to pay a fine of Rs. 500/-, in default to undergo rigorous imprisonment for three months by the judgment in S.C. No. 72 of 1999 on the file

of the Principal Sessions Judge, Ramanathapuram. Challenging the said conviction and sentence, the appellant/accused has preferred this appeal.

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

(a) The deceased Ramalingam is the younger brother of the accused Muniyandi. P.W.1-Sekar and P.W.3-Dhanalakshmi are respectively the son

and wife of the deceased. P.W.2-Rajeswari is the wife of P.W.1. There was dispute between the deceased Ramalingam and Muniyandi, the

accused, with reference to the incident in which the house of the accused was set fire to.

(b) One and half years prior to the date of occurrence, the deceased was

attacked by both the accused and the wife of the accused and consequently there was a case registered for the offence u/s 307 IPC, against them on the complaint given by the deceased, and ultimately the case was ended in acquittal.

(c) On 10.04.1998, the deceased set fire to the heap of fire-wood, kept in front of the house of the accused. Therefore, the accused complained

to P.W.1, the son of the deceased, about the incident and P.W.1 told him that he would warn his father suitably.

(d) On 11.04.1998 at about 6.00 P.M., the deceased went to Padippan Colony, where the house of the accused was situate, and picked up

quarrel with the accused. There was a wordy quarrel ensued initially, which ended in a scuffle between them.

(e) The said incident was witnessed by P.W.2-Rajeswari and one Ganthimathi, while they were coming back to their home at about 7.30 P.M.

after collecting the fire wood from the forest. P.W.2-Rajeswari and Ganthimathi came to the house of P.W.1 and informed the incident to P.Ws.1

and 3.

(f) On hearing the incident, P.Ws.1 and 3, respectively the son and mother of the deceased, went to the scene and saw the accused was beating

the deceased with M.O.1-babul stick (fUnty fk;g[]) repeatedly. The deceased on receipt of injuries fell down unconsciously. When P.W.1 tried to

come near the deceased, the accused threatened him that he would also be attacked.

(g) Thereupon, the accused dragged the deceased, who was unconcious then, upto the haystack kept nearby and set ablaze the haystack along

with the deceased. Within a few minutes, the deceased was engulfed by the flame and soon he died out of burn injuries. The villagers, who

gathered there, on seeing the flames in haystack, rushed to the scene and put out the fire. Thereafter, to their shock, they saw the deceased was

already dead.

(h) At about 11.00 P.M., P.W.1 accompanied by P.W.4-Paulraj, his uncle, went to Erwadi Dharga Police Station and lodged a complaint Ex.P.1

with P.W.8-Inspector of Police.

(i) On receipt of the complaint, P.W.8 registered the case for the offence u/s 302 IPC and prepared the printed First Information Report Ex.P.11

and then sent Ex.P.1 and P.11 to the Court as well as to the superior officers.

(j) On 12.04.1998, P.W.8-Inspector of Police, went to the scene of occurrence at 8.30 A.M. and prepared Observation Mahazar Ex.P.3 and

rough sketch Ex.P.12. He recovered M.O.2 ash from the burnt haystack under Ex.P.4 mahazar and conducted inquest over the body of the

deceased between 9.30 A.M. and 11.30 A.M. Ex.P.13 is the inquest report. The dead body was then sent for postmortem.

(k) P.W.5-Doctor conducted the postmortem at 2.00 P.M. on 12.04.1998. The doctor found two lacerated wounds on the body of the deceased

and the entire body was burnt and charred. He issued Ex.P.2 postmortem certificate. The Doctor opined that the deceased would appear to have

died of shock and suffocation due to thermal burns.

(l) On 13.04.1998 at 5.00 A.M. P.W.8-Inspector of Police, arrested the accused at Natham Bus Stop and on his confession M.O.1 babul stick

(fUnty fk;g[]) was recovered. He thereafter made arrangements for sending the blood stained stick (fUnty fk;g[]) M.O.1, for chemical analysis,

through Court.

(m) The investigation was thereupon taken by his successor Inspector of Police on completion of the investigation, the charge sheet was filed.

(n) During the course of trial, the prosecution examined P.Ws.1 to 8; filed Exs.P.1 to P.13 and marked M.Os.1 and 2.

(o) The plea of the accused when questioned u/s 313 Cr.P.C. was one of total denial.

(p) On appreciation of the evidence available on record, the trial Court convicted the accused for the offence u/s 302 IPC and sentenced him

thereunder as referred to above. It is against this judgment, the present appeal has been filed by the appellant/accused, before this Court.

3. Earlier when the matter was taken up for final disposal, learned counsel on record appearing for the appellant was not present. Therefore, this

Court appointed Mr. N. Mohideen Basha, as the Amicus Curiae and adjourned the matter to enable him to prepare the case. The matter was

taken up today and the same was heard.

4. Mr. N. Mohideen Basha, the Amicus Curie Counsel would take us through the entire evidence and contend that P.Ws.1 and 3 eye witnesses,

would not have seen the occurrence, as there are several contradictions in the

evidence and the other materials available on record also do not corroborate the evidence of the ocular witnesses namely, P.Ws.1 and 3 and as such the prosecution has not established its case beyond reasonable doubt and hence the accused is entitled to be acquitted.

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

6. We have given our anxious consideration to the rival contentions and gone through the records.

7. On a careful scrutiny of the materials placed before the Court by the prosecution, we are of the view that the prosecution has not proved its case beyond all reasonable doubts. The above conclusion has been arrived at due to the following reasons.

(i) According to P.W.1, as soon as he was informed by P.W.2 about the fighting that was going on between the deceased and the accused at the

scene of occurrence, which was situated one kilometre away from the house of P.W.1, both P.Ws.1 and 3 went to the scene of occurrence and

saw the accused beating the deceased with M.O.1. stick. It has been specifically stated both in Ex.P.1 and in the deposition of P.W.1 that only on

the information given by P.W.2, both P.Ws.1 and 3 went to the scene. Unfortunately, this aspect of the evidence has not been spoken to by

P.W.2. P.W.4 would specifically state that on seeing the flames in the haystack, he went along with others and saw that the fire was put out by the

villagers. From this, it is clear that P.W.2 would not have seen the earlier occurrence, in which the deceased was beaten by the accused by M.O.1.

Consequently it has to be held that P.W.2 would not have informed the same to P.W.1. If that be so, there is no reason as to why P.W.1 and

P.W.3 came to the scene.

(ii) Though P.W.1 would state in Ex.P.1 that he went to the Police Station at 11.00 P.M. on 11.04.1998 and gave the complaint, and the same

was registered by P.W.8 in that night itself, it is admitted that the Police Officer came to the scene at 11.30 P.M. and subsequently he was taken to

the Police Station at 2.00 A.M. and only thereafter complaint was obtained from him and therefore the evidence that complaint was lodged at

11.00 P.M. itself cannot be true.

(iii) It is the evidence of P.W.8-Insepector of Police that on receipt of the complaint at 11.00 P.M. from P.W.1, he came to the scene only at 8.30

A.M. on the next day. He did not refer to the complaint having been obtained from P.W.1 at 2.00 A.M. This is quite contradictory to the evidence

of P.W.1. From this, it is clear that one complaint must have been obtained at 11.00 P.M. on 11.4.1998 and another complaint must have been

obtained by P.W.8 at 2.00 A.M. after visiting the scene of occurrence. Therefore, it is evident that P.W.8--Inspector of Police had obtained one

more complaint from P.W.1, and the same was not placed before the Court.

(iv) According to P.W.1, after the deceased was being beaten by the accused, the deceased fell down unconsciously. He would further state that

the deceased fell down in the place, where he was repeatedly beaten. But, this aspect of the evidence has not been corroborated by other

witnesses. P.W.8 would admit in his cross-examination that he did not refer to the place where the beating took place in the sketch as well as in

the observation mahazar. Admittedly, no blood stain was recovered from the scene, though P.W.1 would state that there was a blood stain in the

scene.

(v) Furthermore, nothing has been elicited from P.W.5-Doctor that due to the beating resulting in the injury found on the body of the deceased, the

deceased would have become unconscious. It is noticed from Ex.P.2 postmortem certificate that there were two lacerated injuries on the body of

the deceased and the entire body was burnt and charred. Therefore, the evidence of P.Ws.1 and 3 that the deceased fell down unconscious on

receipt of the injuries cannot be accepted to be true.

(vi) The occurrence took place on 11.04.1998 at 7.30 P.M. The police station was situated within eight kilometres from the place of occurrence.

It is stated by P.W.8 that P.Ws.1 and 4 came to the station only at 11.00 P.M. According to P.W.1, he waited till P.W.4 comes and at about

10.30 P.M. they left the village and went to the Police Station. P.W.1 would admit in his cross examination that there are frequent buses running

from the scene village to the area where police station has been situated.

(vii) It is noticed that Ex.P.1 complaint and Ex.P.11 First Information Report reached the Court only at 4.00 P.M. on 12.04.1998. In this context,

the admission made by P.W.1 in the cross-examination that the complaint was received by the Police at 2.00 A.M. would assume significance.

P.W.5-Doctor did not give evidence as to the time of death. It is also not elicited

from P.W.5--Doctor that M.O.1 would have been used for causing the injuries on the cheek and jaw of the deceased.

(viii) It is the case of the defence that the deceased was in a drunken mood and he himself set fire to the haystack, which was situated near the house of the accused and since he has lost his balance of control, he himself fell down in the haystack and suffered with burn injuries, which

resulted in his death. This plea is more probable as it has been elicited from the witnesses that the deceased was being nick named as Thee Koluthi

(jP bfhSj;jp) by the villagers, as he used to set fire to the houses, haystack etc., in a drunken mood.

(ix) Under those circumstances, we are unable to accept the prosecution case that the accused beat the deceased made him conscious and then set

fire to the haystack after putting him in the haystack. Consequently, we have to hold that the prosecution has failed to prove its case beyond

reasonable doubt.

8. In the result, the appeal is allowed and the conviction and sentence imposed on the appellant/accused are set aside and he is acquitted of the

charge. The appellant is set at liberty forthwith, unless he is required in connection with any other case. The fine amount, if any, paid by the

appellant shall be refunded to him.

9. Before parting with this case, this Court places on record its appreciation for the valuable assistance rendered by Mr. N. Mohideen Basha,

Amicus Curiae. The State Legal Services Authority is directed to pay a sum of Rs. 1,500/- (Rupees one thousand and five hundred only) towards

his fee.