
(2007) 03 MAD CK 0172

In the Madras High Court

Case No : Criminal Appeal (MD) No. 326 of 2004

Muthu Pandi and Velsamy

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 05-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2007) 03 MAD CK 0172

Hon'ble Judges : M. Chockalingam, J;G. Rajasuria, J

Bench : Division Bench

Advocate : V. Kathirvelu, for the Appellant; P.N. Pandidurai, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—This appeal is directed against the judgment of the second Additional Sessions Court dated 30.1.2002 made in S.C. No. 472/1999 whereby both the appellants stood charged for the offence u/s 302 r/w 34 IPC, tried and found guilty on trial and awarded life imprisonment along with a fine of Rs. 3,000/- with a default sentence of one year rigorous imprisonment.

2. The short facts necessary for the disposal of the appeal can be stated thus:

(a) PW.1 Ramalakshmi is the wife of the deceased Murugiah. PW.7 is the younger brother of the deceased. There was a long pending quarrel in respect of placing fence between PW.1's father and his younger brother, the second accused. The deceased, who is the husband of PW.1, supported his father-in-law and thus, the deceased and the second accused were on inimical terms.

(b) on 14.1.1999 at about 6.00 a.m., PW.1 along with her husband since deceased, took their child to the Hospital at Vasudevanallur, and when they were proceeding crossing a bus stop, PW.7 was coming on his way after answering nature's call. At that time, A.1 and A.2 suddenly sprang with knife in their hand

and attacked the husband of PW.1 indiscriminately. Both PW.1 and PW.7 witnessed the occurrence. On hearing their cry, both the accused sped away from the place of occurrence with the weapon of crime. PW.1 and PW.7 took the injured to the Thenkasi Government Hospital by a van. PW.3 the Doctor, attached to the Government Hospital, Thenkasi, examined the injured at about 7.30 a.m., on 14.1.1999 and the injured gave a statement to him as to the occurrence. Accident Register Copy was marked as Ex.P.4. PW.1 and PW.7, thereafter, took the injured to the Government Hospital at Tirunelveli.

(c) PW.10, the police, who was on duty at Tirunelveli Government Hospital, in turn, gave an intimation to the Vasudevanallur Police Station.

(d) PW.2, the Judicial Magistrate No. 6, Tirunelveli, on receipt of intimation, proceeded to the Tirunelveli Government Hospital, verified the physical and mental condition of the injured and after receiving a certificate from the Doctor that the injured was conscious and mentally fit, recorded dying declaration from the injured. Dying Declaration was marked as Ex.P.3.

(e) PW.11, the Sub Inspector of Police, attached to the Vasudevanallur Police Station, on receipt of intimation, proceeded to the Tirunelveli Government Hospital at about 11.30 a.m., however, he could not get statement of the deceased since he could not speak and he recorded the statement of PW.1, which was marked as Ex.P.1 and on the strength of Ex.P.1, a case came to be registered in crime No. 19/99 u/s 307 IPC by the Sub Inspector of Police. F.I.R is Ex.P.19, which was despatched to the Court.

(f) On receipt of copy of the F.I.R., PW.14, the Inspector of Police, attached to Vasudevanallur Police Station took up investigation and proceeded to the scene of occurrence, made inspection of the place of occurrence and prepared an Observation Mahazar Ex.P.21 and Rough Sketch Ex.P.22.

(g) On 16.1.1999, pending investigation, A.1 was arrested by the investigator and he came forward to give confessional statement, which was recorded in the presence of two witnesses. Ex.P.12 is the admissible part of the confessional statement of A.1, following which, A.1 produced MO.3 knife, which was recovered under mahazar Ex.P.13.

(h) On 17.1.1999 at about 4.00 a.m., an intimation was received from the Tirunelveli Government Hospital stating that the injured under treatment died. Then, the case already registered u/s 307 IPC was altered into one of Section 302 IPC. Ex.P.16 is the Modified Express F.I.R, which was despatched to the Court.

(i) PW.14, the Investigating Officer, took up further investigation and conducted inquest on the dead body of the deceased in the presence of witnesses and panchayatdars and prepared Inquest Report Ex.P.23. On receipt of a requisition, PW.5, the Doctor, attached to the Tirunelveli Government Hospital conducted autopsy on the dead body of the deceased and has given a Post-mortem

Certificate, which is Ex.P.7 wherein he has opined that the deceased would appear to have died of multiple stab injuries and their complications.

(j) Thereafter, the investigating officer came to know that A.2 had surrendered before the Court. He filed an application for police custody and the same was ordered on 26.1.1999. A.2 was interrogated and he gave a confessional statement in the presence of witnesses and the same was recorded and the admissible portion of which was marked as Ex.P.14, pursuant to which, he produced MO.4 knife and the same was recovered under mahazar Ex.P.15. Then, the accused was placed before the Court for judicial remand. All the Material Objects recovered from the place of occurrence and from the body of the deceased and from the accused following the confession, were subjected to chemical analysis by Forensic Department, which resulted in Ex.P.10, Serological Report, and Ex.P.11 Chemical Report.

(k) On completion of the investigation, the Investigating Officer filed a final report against both the accused and the case was committed to the Court of Sessions, necessary charge was framed and the accused were tried by the Court of Sessions.

3. In order to substantiate the charge levelled against both the accused, the prosecution marched 15 witnesses, and marked 23 Exhibits and MOs.5

4. On completion of the evidence on the side of the prosecution, the accused were questioned u/s 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. Both the accused totally denied them as false. No defence witness was examined nor any document was marked.

5. After hearing the arguments advanced by both sides, and on scrutiny of the materials, the trial Court found both the appellants/accused guilty as per the charge and each of them awarded life imprisonment and directed to pay a fine of Rs. 3,000/- in default to undergo one year rigorous imprisonment, which is the subject matter of challenge before this Court.

6. Learned Counsel appearing for the appellants, Mr. V. Kathirvelu, while advancing his arguments on behalf of the appellants would submit as follows:

(a) the prosecution rested its case on the evidence of PW.1 and PW.7 and that PW.1 is the wife and PW.7 is the brother of the deceased and thus, they are close relatives. If the test of careful scrutiny is applied, their evidence has got to be rejected.

(b) The prosecution, before the trial Court relied on the dying declaration alleged to have been given by the deceased to PW.2, the Judicial Magistrate and the Court also accepted the same. It is highly doubtful whether such dying declaration could have been given and if at all, whether it would be without tutoring. The occurrence took place at about 6.00 a.m. on 14.1.1999. According to the prosecution, the deceased was first taken to the Thenkasi Government Hospital and thereafter, he was taken to the Tirunelveli Government Hospital and

the Dying Declaration was recorded by the Judicial Magistrate at about 2.00 p.m.,. While the deceased was admitted in the Government Hospital at Tirunelveli at about 9.30 a.m., the dying declaration was recorded only by 2.00 p.m.,. There was an interval of 4 1/2 hours and all the relatives by their side were there and they would have tutored him. In any event, PW.7, who was called himself as the eye witness was not referred to and in the dying declaration, it is found that three stab injuries were given on the back by A.2 but only one stab injury was found on the back as per the post-mortem report. In the instant case, all these aspects casts a doubt on the dying declaration.

(c) Apart from this, the driver, who took the injured from Thenkasi Government Hospital to Tirunelveli Government Hospital was not examined.

(d) PW.3, the Doctor, attached to the Thenkasi Government Hospital, who has deposed that he admitted the injured in the Thenkasi Government Hospital has stated in the Wound Certificate that the deceased was brought by PW.7 and it does not refer to PW.2 and thus, PW.2 could not have seen the occurrence at all.

(e) Added further the learned Counsel that, in the instant case, even as per the prosecution case, there was a quarrel between A.2 and his brother, who is father-in-law of the deceased and the deceased supported the case of his father-in-law and thus, there was no motive for A.1 in the case, though he was the son of A.2. In the instant case, both the accused are entitled for acquittal in the hands of this Court.

7. The Court heard the learned Addl.Public Prosecutor appearing for the State on the above contentions and paid its anxious consideration on the rival submissions made and also perused the recorded evidence, both oral and documentary.

8. It is not in controversy that the deceased Murigiah died out of homicidal violence. From the evidence of the Doctor, PW.5, who conducted autopsy and who issued the post-mortem certificate Ex.P.7, it would be quite clear that the deceased died out of homicidal violence.

9. The appellants have not disputed the cause of death of the deceased either before the trial Court or before this Court. Thus, it can be safely recorded that the deceased Murugiah died out of homicidal violence and also recorded so.

10. After careful examination of the materials available, this Court is of the considered opinion that the prosecution to its advantage has got sufficient evidence in the instant case.

11. PW.1 and PW.7 are the eye witnesses to the occurrence. It is true, PW.1 is the wife and PW.7 is the brother of the deceased but on the ground of relationship, their evidence cannot be discarded. They have categorically spoken to the fact that PW.1 along with her husband and child proceeded towards the bus stop in order to go to Vasudevanallur Government Hospital and when they were proceeding crossing the bus stop, both the accused armed with knife sprang over her husband and attacked him indiscriminately and the deceased

sustained grievous injuries and he was taken to the Thenkasi Government Hospital and subsequently, to the Tirunelveli Government Hospital wherein he died.

12. It is pertinent to point out that both these witnesses have taken the injured to the Thenkasi Government Hospital immediately, whereat, PW.3 was the Doctor on duty, when he enquired the injured, he told that he was attacked by known persons. Subsequently, he was taken to the Tirunelveli Government Hospital. On receipt of requisition for recording dying declaration, the Judicial Magistrate No. 6, Tirunelveli proceeded to the Government Hospital, Tirunelveli and after being certified that the deceased was in a fit mental condition to give such a declaration, recorded the dying declaration of the deceased, which was marked as Ex.P.3.

13. The contention put-forth by the learned Counsel for the appellants attacking the dying declaration though attractive at the first instance, did not merit acceptance. According to the learned Counsel, the injured was admitted at 9.30 a.m. but the dying declaration was recorded at 2.00 p.m., and hence, there was possibility of tutoring the deceased before giving dying declaration. In the instant case, the earliest document is the Accident Register Ex.P.4, which clearly accounts the place of occurrence, the time of the occurrence and also by the known persons and with the weapons of crime viz., knives. When the Judicial Magistrate No. 6, after being satisfied and, that too, after receipt of the certificate from the Doctor that the injured was fit enough to give declaration, has recorded the same. The deceased has clearly narrated the occurrence to the Judicial Magistrate, who recorded the dying declaration, which would be sufficient, in the instant case, to sustain the conviction and that there was nothing to infer that there was any tutoring either. The declarant has stated that A.2 stabbed at the back but three injuries were found cannot be a reason to reject the dying declaration for the simple reason that, at the time, when a declaration is given, the Court must look into the mental condition of the person who gives declaration and minor discrepancy cannot be taken into account to reject the dying declaration.

14. In the instant case, even as per the prosecution, A.2 is the junior paternal uncle of PW.1, the wife of the deceased. There was a quarrel between the father-in-law of the deceased and his brother A.2 and the deceased supported his father-in-law, and thus, there was sufficient motive for A.2 to commit the crime. It is pertinent to point out that A.1 is none else than the son of A.2. Hence, they had acted together at the time and place of the occurrence, both armed with knives, attacked the deceased indiscriminately, would clearly indicative of the fact that they shared the common intention and thus the trial Court after marshalling the evidence has taken a correct view that both the accused have shared the common intention in causing the death as per the charge of murder levelled against both the accused, which in the opinion of the Court is perfectly correct. This Court is unable to find any ground to interfere with the judgment of the trial

Court. The Criminal Appeal fails and the same is dismissed.