

(2016) 03 MAD CK 0165

In the Madras High Court

Case No : Criminal Appeal No. 826 of 2013 (S.C. No. 265 of 2008)

Prabakaran

APPELLANT

Vs

State Rep. by The Inspector of Police

RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:

Evidence Act, 1872 — Section 32

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 324, 341

Citation : (2016) 3 MLJ Criminal 493

Hon'ble Judges : Mr. S. Nagamuthu and Mr. M. Sathyanarayanan, JJ.

Bench : Division Bench

Advocate : Mr. N.R. Elango, Senior Counsel Assisted by Mr. Raj Tilak and Mr. S. Manoharan, Advocates, Mr. T.P. Kathiravan, Advocate, for the Appellant; Mr. M. Maharaja, APP, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—The appellants in CrI.A.No.826 of 2013 are the Accused Nos.1, 2 and 5 to 7 and the appellant in CrI.A.No.15 of 2014 is the 4th Accused in S.C.No.265 of 2008 on the file of the learned IV Additional Sessions Judge, Ponneri, Tiruvallur District. The trial court framed as many as three charges against the accused. The first charge was under Section 148 of IPC against A1 and under Section 147 of IPC as against A2 to A7; the second charge was under Section 341 r/w 149 of IPC as against A1 to A7; and the third charge was under Section 302 of IPC as against A1 to A5 and under Section 302 r/w 149 of IPC as against A6 and A7. The 3rd Accused was one Anthony, son of Munusamy. Since he died during trial, the charges against him stood abated. The trial court, by JUDGMENT dated 29.11.2013, convicted and sentenced A1, A2 and A4 to A7 for various offences as detailed below:-

Array of Accused

Convicted under what penal provision

Sentenced to

A1

Section 148 of IPC

Rigorous imprisonment for three years

Section 341 r/w 149 of IPC

Simple imprisonment for one month

Section 302 of IPC

Imprisonment for Life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months

A2, A4 and A5

Section 147 of IPC

Rigorous imprisonment for two years

Section 341 r/w 149 of IPC

Simple imprisonment for one month each

Section 302 of IPC

Imprisonment for Life and to pay a fine of Rs.1,000/- each in default to undergo rigorous imprisonment for three months

A6 and A7

Section 147 of IPC

Rigorous imprisonment for two years

Section 341 r/w 149 of IPC

Simple imprisonment for one month each

Section 302 r/w 149 of IPC

Imprisonment for Life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months

Challenging the same, A1, A2 and A4 to A7 have come up with these criminal appeals.

2.0. The case of the prosecution in brief is as follows:- The deceased in this case was one Subramani. He was a resident of Arani Village, Ponneri Taluk in Tiruvallur District. He was one of the leading personalities in the village. He was responsible, along with few other leaders of the village, for organising the village temple festival every year in the month of October. All these accused also hail from the same village. For quite some time, there was some misunderstanding

between two groups of people in respect of the conduct of the said village temple festival. For the year 2006, the deceased and the other leaders were involved in organising the said village temple festival which was scheduled to be celebrated on 21.10.2006. These accused objected to the same. But, the deceased and the others went ahead with the proposal.

2.1. The festival was celebrated on 21.10.2006. As a part of the festival, the deity of Perumal Temple would be taken in procession through the streets of the village. As per the usual practise, on 21.10.2006 also, the deity was taken in procession through the streets. By about 10.30 p.m., the procession was nearing a place known as "Shesharao Handloom Mills". At that time, all the seven accused came there. They objected to the festival. The deceased questioned A1 as to why he was behaving in such a manner to disrupt the procession of the deity. Enraged over the same, it is alleged that, A1 took out a stick lying there and gave a single blow on the head of the deceased. The deceased lost his balance and fell down. A2 to A7 kicked him with legs. This happened in the presence of a huge crowd of the villagers including P.Ws.1 to 13 and 15. P.Ws.1 and 2 are the sons of the deceased. Having witnessed the said occurrence, they immediately took the deceased to the Government Hospital, Ponneri, where the deceased was admitted as inpatient. On the next day, by around 05.30 a.m. the condition of the deceased became suddenly bad. Therefore, the deceased was referred to the Government Stanley Medical College Hospital at Chennai.

2.2. P.W.20 Dr. N. Selvaraj examined the deceased at Government Stanley Medical College Hospital on 22.10.2006 at 7.05 a.m. He found a sutured wound on the head of the deceased. He gave first aid treatment to him and admitted him as inpatient at Ward No.109. Ex.P.14 is the accident register. At that time, the deceased was conscious and oriented. He told the Doctor that he was assaulted by one known person on 21.10.2006 at 11.20 p.m. with a wooden log.

2.3. P.W.1, thereafter, went to Arani police station at 08.00 a.m. on 22.10.2006 and made a complaint [Ex.P1]. P.W.18, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.77 of 2006 under Sections 147, 148, 341, 323, 324, 506(ii) and 307 of IPC against all the seven accused. Ex.P.10 is the FIR. He forwarded both the complaint-Ex.P.1 and the FIR-Ex.P.10 to the court which were received by the learned jurisdictional Magistrate at 06.10 p.m. on 22.10.2006. In the mean time, he handed over the case diary to the Inspector of Police for investigation.

2.4. P.W.19, the Inspector of Police, took up the case for investigation. He went to the place of occurrence at 09.30 a.m. and prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P11) in the presence of P.W.11 and another witnesses. Then, he examined P.Ws.1 to 13 and few other witnesses and recorded their statements. On the same day, at 02.30 p.m., the deceased died in the hospital. On receiving the intimation, P.W.19 altered the case into one under Section 302 of IPC and submitted an alteration report (Ex.P12). Then, he conducted inquest on the body of the deceased at the mortuary and prepared an

inquest report (Ex.P13). Thereafter, he forwarded the body for postmortem.

2.5. P.W.14-an Assistant Professor, Department of Forensic Medicine, Government Stanley Medical College, Chennai, conducted autopsy on the body of the deceased at 01.35 p.m. on 23.10.2006. He found the following injuries:-

"A sutured wound 5 cm long in right side frontal region of scalp. On removal of sutures the edges are irregular and contused 5 x 1 x skin deep (lacerated wound).

Heart: Enlarged, pericardial pad of fat seen. Left ventricle thickened, raised Atheromatous plaques seen in root of aorta and in the lumen of coronary arteries. Coronary arteries narrowed and thickened. An area of 1.5 x 1 cm greyish discolouration surrounded with a zone of hyperaemia seen near the apex of Heart in the left ventricle (Anterior aspect). Chambers contain fluid blood.

Lungs: Odematous, cut section: congested.

Liver: Normal in size, cut section : congested.

Kidneys: Normal in size, cut section congested.

Stomach: contains 50 ml of straw coloured fluid with no specific odour. Hyoid bone: Intact. Spleen: Normal in size, cut section : congested. Urinary bladder: Empty. Pelvis & Spinal column intact.

Brain: Normal in size. No abnormality detected.

He forwarded the visceral organs of the deceased for chemical analysis. Ex.P.5 is the postmortem certificate. After having received the chemical analysis report [Ex.P.6], P.W.14-the Doctor gave his final opinion that the deceased would appear to have died of acute heart failure due to coronary heart disease with head injury.

2.6. P.W.19, in the course of his further investigation, arrested all the accused on 23.10.2006 in the presence of P.W.13 and another witness. On such arrest, A1 gave a voluntary confession in which he disclosed the place where he had hidden a wooden log. In pursuance of the said confession, he took the police and the witnesses to his house and produced the wooden log (M.O.1). P.W.18 recovered the same under a mahazar (Ex.P4) in the presence of the same witnesses. Then, P.W.19 forwarded all the accused to the court for judicial remand. He also forwarded the material objects to the court. On his transfer, P.W.19 handed over the case diary to P.W.21. P.W.21, who took up the case for further investigation, examined official witnesses, collected the medical records and other reports and recorded their statements. On completing the investigation, he laid the final report against the accused.

2.7. Based on the above materials, the trial Court framed as many as three charges as detailed in the first paragraph of this JUDGMENT. The accused denied the same. In order to prove the case of the prosecution, on the side of the

prosecution, as many as 21 witnesses were examined and 14 documents were exhibited, besides 1 Material Object.

3.0. Out of the said witnesses, P.Ws.1 to 13 and 15 are the eye-witnesses to the occurrence. P.Ws.5, 9, 10 and 15 have turned hostile and they have not supported the case of the prosecution in any manner and the rest of the eye witnesses have vividly spoken about the occurrence. They have stated that the accused objected to the procession of the deity and at that time there arose a quarrel between A1 and the deceased, in which, A1 took out a stick and gave a single blow on the head of the deceased. P.W.1 has further stated that he took the deceased to hospital and he has also spoken about the complaint made by him to the police on the next day of occurrence at 08.00 a.m.

3.1. P.W.14-the Doctor, has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.16 is the Head Constable. He has stated that on the orders of the learned Magistrate he handed over the material objects including M.O.1-wooden log for chemical examination. The chemical analysis report revealed that there were human blood stains on the material objects including the wooden log (M.O.1). P.W.17 is also the Head Constable attached to the respondent police. He has stated that he carried the dead body from the hospital to mortuary and identified the same to the doctor for postmortem.

3.2. P.W.18, the then Sub Inspector of Police has spoken about the registration of the case at 08.00 a.m. on 22.10.2006 on the complaint made by P.W.1 at the police station. P.W.20-the Doctor, has spoken about the treatment given to the deceased at Government Stanley Medical College Hospital. P.W.19, the Inspector of Police, has spoken about the substantial portion of investigation done by him in this case. P.W.21 has spoken about the further investigation done by him and the filing of final report against the accused.

4.0. When the above incriminating materials were put to the accused, they denied the same as false. Their defence was a total denial. On their side, they examined three witnesses as D.Ws.1 to 3 respectively. D.W.1-Dr. Revathy was working as an Assistant Surgeon in the Government Hospital at Ponneri. According to her, on 21.10.2006 at 11.30 p.m., the deceased came to the hospital for treatment. The deceased told him that he was attacked with stick at 11.00 p.m. He found a single injury on his head measuring 7 x 2 x 2 cm. He has further stated that she sutured the wound and gave first aid treatment to him. At that time, his cardiovascular as well as respiratory functioning were quite normal. Ex.D.1 is the accident register and Ex.D2 is the wound certificate.

4.1. D.W.2 was then working as Assistant Surgeon at Government Stanley Medical College Hospital, Chennai. According to him, the deceased was admitted in the said hospital on 22.10.2006 at 08.25 a.m. The deceased told him that he was attacked with a stick by a known person. He further complained that he was suffering from acute chest pain from 04.00 a.m. onwards. D.W.2 has further

stated that the deceased told that he once vomited. According to him, the deceased was conscious at that time. His blood pressure was 90/60 indicating that he was suffering from low blood pressure. His pulse rate was abnormally, 104 per minute. D.W.2 found a sutured wound on the head of the deceased measuring 3 x 2 x 1 cm. Immediately, ECG was taken. According to the opinion of the Doctors, the deceased was suffering from acute myocardial infarction. On the advise of the Cardiologist, he was shifted to the cardiac ward. CT scan taken on the head revealed that there was no internal injury at all nor was there any haemorrhage corresponding to the said external injury. Then, the deceased was transferred to the Cardiology Ward at 11.20 a.m. Ex.D.3 is the primary case record.

4.2. D.W.3 was the then Assistant Professor in the Department of Cardiology at Government Stanley Medical College Hospital. He has stated that on 22.10.2006 at 08.00 a.m. he examined the deceased in this case in the general ward. When he examined him, the deceased was conscious. He had not suffered any fits. There was no bleeding through nose, ears or throat. The deceased complained to the Doctor that he vomited once. He further complained to him that from 04.00 a.m. onwards he was suffering from acute chest pain. On examination, he found normal functioning of lungs, but, there was unusual sound (crepes) from lungs. Since he was suffering from acute chest pain, he was transferred to the Cardiac Ward. In the Cardiac Ward, ECG was taken as there was a doubt that he was suffering from cardiac failure. ECG revealed that he was suffering from cardiac failure. He found that there was myocardial infarction. The echocardiogram taken also confirmed the same and it came to light that there was block in aorta. He was treated for cardiac disease. Despite the efforts of the doctors, due to cardiac failure, a natural cause, he breathed his last. The efforts taken by the Doctors to revive him could not succeed. Therefore, at last, the Doctors declared him dead at 12.15 p.m. Ex.D.5 is the case sheet.

5. Having considered all the above, the trial Court convicted the accused under various offences and sentenced them accordingly as detailed in the first paragraph of this JUDGMENT. Aggrieved over the same, the appellants are before this Court with these criminal appeals.

6. We have heard the learned counsel appearing for the appellants/A1, A2, A4 to A7 and the learned Additional Public Prosecutor appearing for the respondent/ State and we have also perused the records carefully.

7. The 1st appellant/A1 has filed a petition in H.C.P.No.1739 of 2014 claiming that the conviction and sentence imposed on him by the trial court are liable to be set aside as the entire trial against him is vitiated, as according to the petitioner, on the date of occurrence, he was a juvenile in conflict with law and hence he is entitled to be inquired only by the Juvenile Justice Board.

8. But, during the course of argument, the learned counsel for the petitioner/A1 did not press the Habeas Corpus Petition requiring any adjudication regarding the

age of A1. Since the trial court has found him as an adult, we proceeded to hear the criminal appeal.

9. In this case, the prosecution relies on the eye-witness account of P.Ws.1 to 4, 6 to 8 and 11 to 13. According to these witnesses, they all participated in the village temple festival. They have stated that when the deity was taken in a procession through the street, at the place of occurrence, all these accused came and A1 quarreled with the deceased objecting to the procession. In that quarrel, it is alleged that, A1 attacked the deceased with a stick lying there. P.Ws.1 and 2 are the sons of the deceased. They have also claimed that they have witnessed the occurrence. Though they are the sons of the deceased, on that score, their evidences cannot be rejected as their evidences are so convincing. Apart from that, the other eye witnesses are independent witnesses and we have no reason to reject their evidences. Through these witnesses it has been clearly established that it was A1 who attacked the deceased with the stick on his head.

10. So far as the other accused are concerned, the allegation is that all of them kicked the deceased. This part of the evidence of the eye witnesses is unbelievable in view of the fact that at the earliest point of time, the deceased had told the Doctor that he was attacked by only one person. That is a dying declaration falling within the ambit of Section 32 of the Evidence Act. Again, he was taken to the Government Stanley Medical College Hospital at Chennai. There also he told the Doctor that he was attacked by a known person. Had it been true that he was attacked by seven persons, he would have, certainly, told the Doctors, on both the occasions, that he was attacked by seven persons. The very fact that he had stated to the Doctors on two occasions that he was attacked by only one person known to him, would go to falsify the evidences of the eye witnesses that the other accused namely, A2, A4 to A7 kicked the deceased with legs. Further, correspondingly there was no injury, like abrasion or contusion on the body of the deceased. Apart from that, according to P.W.1 from the place of occurrence, the deceased was taken to Arani Police Station and after informing about the occurrence, they took the deceased to the Government Hospital at Ponneri. But, that information has been suppressed by the police. The complaint, in this case, was made only at 08.00 a.m. on the next day of occurrence, that is, after the condition of the deceased had become serious. This also creates doubt in the case of the prosecution. This doubt also further fortify our conclusion that the eye witness account that A2 to A7 also attacked the deceased cannot be true. In such view of the matter, we are inclined to acquit A2 and A4 to A7 from all the charges.

11. Now, turning to the case against A1, it is A1, who inflicted a single blow on the head of the deceased with stick. But, the medical evidence revealed that the death was due to acute heart failure due to coronary heart disease with head injury. Thus, from the opinion of the Doctor who conducted autopsy it is crystal clear that death was due to coronary heart disease. D.W.3, the Cardiologist from Government Stanley Medical College Hospital, who treated the deceased, has

stated that the deceased complained of chest pain from 04.00 a.m. onwards on 22.10.2006 and therefore, he suspected that the deceased was suffering from heart failure. The electrocardiograph and electrocardiogram taken also revealed that the deceased was suffering from heart attack namely, cardiac failure. There was block in aorta. D.W.3 gave treatment to resolve the block and to restore circulation. That failed. Ultimately, according to him, the deceased died due to heart disease. D.W.3 has further stated that he tried his level best to revive the deceased but he could not succeed. Thus, according to the Doctors, the deceased died due to cardiac disease. P.W.14 the Doctor, who conducted autopsy on the body of the deceased has also stated that death was due to cardiac disease. But, he has stated that death was due to cardiac disease with head injury. It is crystal clear from the medical evidence that the said injury was superficial and there was no corresponding internal injury. Neither was there any internal haemorrhage nor any rupture or contusion in the brain. D.W.3 has stated that the death was only due to cardiac disease. Absolutely, there is no acceptable evidence that the injury caused by A1 had contributed to the death of the deceased in any manner. P.W.14 has also not explained as to how the head injury had contributed for the death of the deceased. Therefore, we are unable to accept his opinion and we prefer to accept the opinion of D.W.3. Thus, we hold that the death of the deceased was due to cardiac disease, that is, due to natural cause not due to the injury inflicted by A1. In such view of the matter, A1 is liable to be convicted only for having caused simple hurt on the head of the deceased with stick. Thus, the appellant/A1 is liable to be convicted under Section 324 of IPC instead of offence under Section 302 of IPC.

12. Now, turning to the quantum of punishment, it is reported that A1 was in jail for more than three months. Thus in our considered view, sentencing the appellant/A1 to the period already undergone by him in this case shall be sufficient besides fine of Rs.5,000/- in default to undergo rigorous imprisonment for a further period of four weeks for offence under Section 324 of IPC. The appellant/A1 is entitled for acquittal from all the other charges.

13. In the result, (i) Criminal Appeal No.15 of 2014 filed by A4-Siva, is allowed. The conviction and sentences imposed on him by the trial court are set aside and he is acquitted of all the charges. Fine amount paid, if any, shall be refunded to him. His bail bond shall stand terminated.

(ii) Criminal Appeal No.826 of 2013 filed by A1-Prabakaran, A2-Ravi, A5-Hemapushnam, A6-Sankar and A7-Balakrishnan, is partly allowed.

(a) The conviction and sentences imposed on the 1st appellant/A1-Prabakaran by the trial court for offences under Sections 148, 341 r/w 149 and 302 of IPC are set aside and instead he is convicted under Section 324 of IPC alone and he is sentenced to the period of sentence already undergone besides a fine of Rs.5,000/- in default to suffer rigorous imprisonment for a further period of four weeks. The fine amount paid, if any, shall be adjusted towards the fine now imposed by this court and the 1st appellant/accused shall pay the balance of

fine. His bail bond shall stand terminated.

(b) The convictions and sentences imposed on the Appellants 2 to 5/A2, A5, A6 A7 by the trial court are set aside and they are acquitted from all the charges. Fine amount paid, if any, shall be refunded to them. Their bail bonds shall stand terminated.

(iii) H.C.P.No.1739 of 2014: This Habeas Corpus Petition is dismissed as not pressed.