

(2009) 12 MAD CK 0137
In the Madras High Court
Case No : Criminal Appeal No. 633 of 2009

Raja

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

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

Citation : (2009) 12 MAD CK 0137

Hon'ble Judges : V. Periya Karupiah, J; M. Chockalingam, J

Bench : Division Bench

Advocate : M.N. Balakrishnan, for the Appellant; Babu Muthu Meeran, Addl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—Challenge is made to the judgment of the Additional District and Sessions Division, Fast Track Court-I, Chengleput, made in S.C. No. 32/2000, whereby the appellant shown as A2 stood charged u/s 302 r/w 34 IPC, tried and on trial, he was found guilty u/s 302 r/w 34 IPC along with A1 and awarded life imprisonment.

2. The short facts necessary for the disposal of this appeal can be stated as follows:

(a) P.W. 1 is the father of the deceased Moosa. P.W. 2 is the mother of P.W. 1. P.W. 3 is the son-in-law of P.W. 1. They were all residing together. They belonged to one place called Kottakarai. A1 and A2 were doing fish vending business in the marker. A week prior to the occurrence, when P.W. 5, relative of P.W. 1 to 3 was going towards the vegetable market, A1 and A2 teased her. On noticing this, the deceased who is the relative of P.W. 5, questioned the same. On 18.5.1999 at about 9.00 a.m., the deceased went to the market. A1 and A2 caught hold of the shirt of the deceased and threatened him that if he interfere in the matter, they would finish him off. P.W. 5 also witnessed the same. The deceased went home

and informed the same to the family members. At about 6.30 p.m., when P.W. 4 was selling plastic goods in the market, he heard A1 and A2 talking about their plan to finish off the deceased.

(b) P.W. 1 went along with the deceased to the market and they were returning home. At about 8.00 p.m., when they were just crossing Rajeswari Theatre, P.Ws. 2 and 3 came in the opposite direction. At that time, A1 and A2 armed with knife came there. A1 attacked the deceased on his shoulder. A2 attacked the deceased on the chest and on different parts of the body. The same was witnessed by P.Ws. 1 to 3. On hearing the distress cry, crowd gathered there and both the accused fled away from the place of occurrence. The deceased died instantaneously.

(c) P.W. 1 went to the respondent Police Station and gave a complaint, Ex. P1 to P.W. 11 Sub-Inspector of Police. On the strength of the complaint, Ex. P1, a case came to be registered in Crime No. 183/1999 u/s 302 IPC. The express F.I.R., Ex.P. 10 was despatched to Court.

(d) P.W. 13, Inspector of Police took up investigation. He proceeded to the spot, made an inspection and prepared the observation mahazar, Ex. P2 in the presence of witnesses and panchayatdars and also drew a rough sketch, Ex.P. 12. He recovered the blood stained earth, M.O. 3 and sample earth, M.O. 4 under a cover of mahazar. Thereafter, he conducted inquest on the dead body of the deceased and prepared the inquest report, Ex. P13 in the presence of witnesses. The dead body of the deceased was sent for conduct of post mortem.

(e) P.W. 12, doctor attached to Ponneri Government Hospital conducted autopsy on the dead body of the deceased Moosa and issued the post mortem certificate, Ex. P11 wherein he has opined that the deceased would appear to have died out of the stab injuries sustained by him.

(f) Pending investigation at about 12.00 noon, A1 was arrested. He came forward to give confessional statement voluntarily and the same was recorded in the presence of witnesses. The admissible part of the confessional statement made by A1 was marked as Ex. P14. Pursuant to the confessional statement, A1 produced M.O. 1 knife which was recovered under a cover of mahazar. Thereafter, at about 12.30 p.m., A2 was arrested who came forward to give confessional statement. The same was recorded in the presence of witnesses and the admissible part was marked as Ex. P12 Pursuant to the confessional statement, A2 produced M.O. 2 knife and the same was recovered under a cover of mahazar. All the material objects recovered from the place of occurrence, from the dead body of the deceased and M.Os. 1 and 2 knives recovered from the accused pursuant to their confessional statement were subjected to chemical analysis on the requisition made by the Investigating Officer which resulted in Ex. P. 8, Biology report and Ex.P. 9, serologist report which were placed before the Court. On completion of the investigation, the investigating officer filed a final report.

(g) The case was committed to the Court of Sessions. Necessary charges were framed. In order to substantiate the charges the prosecution examined 13 witnesses and relied on 17 exhibits and 18 material objects. 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 prosecution witnesses and they denied them as false. No defence witness was examined. On hearing the arguments advanced on either side, the trial Court took the view that the prosecution has proved the case beyond reasonable doubt and rendered the judgment of conviction and sentence as referred to above. Aggrieved second accused/appellant has brought forth this appeal.

3. Advancing the arguments on behalf of the appellant, the learned Counsel would submit that in the instant case, the prosecution has miserably failed to prove the case either by direct evidence or circumstantial evidence. In so far as the motive part was concerned, it has taken place one week prior to the occurrence. According to P.W. 5, when she was just proceeding to the market, both the accused eve teased her. Then, it was questioned by the deceased. If it is true, it should have been brought to the notice of the police or to the important person of the said place but nothing has taken place. Even assuming it is true, the incident had taken place one week prior to the occurrence and it cannot be a motive for the accused to commit such a crime of murder. So far as the eye-witnesses to the occurrence are concerned, the prosecution examined P.Ws. 1 to 3 as eye witnesses, out of whom, P.Ws. 2 and 3 were examined as chance witnesses but they would not have seen the occurrence at all. So far as P.W. 1 was concerned, he could have been present at the time of incident and only on information he would have reached the spot. Under such circumstances, the so-called eye witnesses should have been rejected by the trial Court, since they are shrouded with suspicion.

4. So far as the recovered of M.Os. 1 and 2 knives are concerned, it was only planted to suit the prosecution case. The investigator would claim that A1 was arrested at 12.00 noon and A2 was arrested at 12.30 p.m. Both gave confessional statement, pursuant to which, M.Os. 1 and 2 knives were recovered which was thoroughly unnatural. All would go to show that the prosecution has miserably failed to prove its case.

5. The learned Counsel would further argue that in the instant case if the Court comes to the conclusion that the prosecution has proved the factual position that the appellant along with other accused have caused the murder of the deceased, the act of the accused would not attract the penal provision of murder for the simple reason that the accused had no intention to murder the deceased but due to quarrel and sustained provocation, they have acted so. Under such circumstances, it has got to be considered by this Court.

6. The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made. It is not in controversy that pursuant to the incident that had taken place at 8.00 p.m. on

18.5.1999 at the place as putforth by the prosecution one Moosa, son of P.W. 1 was done o death. Following the inquest made by P.W. 13 Investigator, the dead body was subjected to post mortem. P.W. 12, doctor attached to the Government Hospital conducted autopsy and gave opinion before the Court as a witness and also through the contents of the post mortem certificate, Ex.P. 11 that the deceased would appear to have died out of the stab injuries sustained by him. The cause of death as putforth by the prosecution was never disputed by the appellant before the trial Court or before this Court. Under such circumstances, no impediment is felt by the trial Court and by this Court in recorded so.

7. In order to substantiate that it was the appellant who along with the other accused caused the death of the deceased, the prosecution marched three eye witnesses viz., P.Ws. 1 to 3. P.W. 1 is the father of the deceased. P.Ws. 2 and 3 who are related to the deceased happened to come across the street when the occurrence had taken place. It is well settled principles of law that if the eye witness happens to be the related witness, the evidence of the witness cannot be discharged but should be subjected to careful scrutiny test. Despite application of the said test, the Court is thoroughly satisfied that P.W. 1 would have seen the occurrence. His evidence remains unshaky. So far as P.W. 2 and 3 are concerned they have categorically stated in one voice that when they were returning home on the way they happened to witness the occurrence. They are independent witness and they had no axe to grind Under such circumstances, P.W. 1's evidence truthfully corroborates with the evidence of P.Ws. 2 and 3. The evidence of the post mortem doctor stood in full in corroboration with the ocular testimony projected through P.Ws. 1 to 3.

8. Yet another circumstance which is against the appellant is the recovery of M.O. 2, knife pursuant to the confessional statement which was recorded in the presence of witnesses. The admissible part of the confessional statement was marked as Ex. P15. The recovery of M.O. 2, knife from the appellant pursuant to the confessional statement points the nexus between the accused and the crime. All put together would go to show that the prosecution has abundant evidence indicating the culpability of the appellant.

9. Now the contention putforth by the learned Counsel for the appellant that though there was eve teasing, no complaint was given, cannot be a reason to suspect the prosecution case. It is further to be pointed out that in the morning of the very day of occurrence, the accused have threatened the deceased that if he interfere with their affairs they would finish him off. Therefore, it was actually a planned murder. Under such circumstances, the contention putforth by the learned Counsel for the appellant/A2 that the act of the appellant would not come under the penal provision of murder, cannot be accepted. The occurrence has taken place at 8.00 p.m. A1 and A2 were armed with deadly weapon namely knife and when P.W. 1 was accompanied by the deceased, they have attacked him severely and caused his death instantaneously. It is quite clear that they had intention to cause death. Under such circumstances, the trial Court is perfectly

correct in finding the appellant/A2 guilty as per the charge of murder and nothing is notice by this Court to disturb the same either factually or legally. Hence, the judgment of the trial Court has got to be sustained.

10. Accordingly, the appeal fails and the same is dismissed confirming the judgment of conviction and sentence passed by the trial Court.