
(2007) 03 MAD CK 0085

In the Madras High Court

Case No : Criminal Appeal (MD) No. 206 of 2004

Shanmugapandian

APPELLANT

Vs

The State of Tamilnadu

RESPONDENT

Date of Decision : 08-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304

Citation : (2007) 03 MAD CK 0085

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

Bench : Division Bench

Advocate : R.V. Jeganathan, for the Appellant; S.P. Samuel Raj, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—The sole accused, the appellant herein, who stood charged u/s 302 IPC, tried thereunder and found guilty as per the charge, awarded life imprisonment and also fine with default sentence, has challenged the judgment made in S.C. No. 35/2003 on the file of the Principal Sessions Judge, Dindigul.

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

(a) The accused is the nephew of the deceased. The deceased was running a tea stall in a poramboke land near the temple in Viralipatti. The family of the accused is having land abutting the tea stall. There was a dispute as to the enjoyment of the land between the families. On the day of occurrence, i.e., 5.7.2001, at about 4.00 p.m., when P.W.1, the son of the deceased and P.W.2, the wife of the deceased, along with the deceased, were in the tea stall, the accused came there and asked the deceased to vacate the tea stall. In reply, the deceased asked the accused as to why he should vacate. Hence, there was a wordy quarrel between the accused and the deceased. The accused took a knife from his waist and stabbed him on the left side of the neck. Receiving injuries, the deceased ran. He was chased by the accused. When the deceased fell down, the accused gave him

more stabs and caused his death. The occurrence was witnessed by P.Ws.1 to 4. P.W.1 took the deceased to Batlagundu Government Hospital by a car where P.W.6, the doctor attached to the Government Hospital, declared him dead and a copy of the Accident Register is marked as Ex.P.4.

(b) P.W.1 went to the respondent Police Station and gave a complaint, Ex.P.1, to P.W.12, the Sub Inspector of Police, on the strength of which a case came to be registered by the respondent Police Station u/s 302 IPC. The Express F.I.R., Ex.P.13, was despatched to the Court. P.W.13, the Inspector of Police, took up the investigation, proceeded to the scene of occurrence, made an inspection in the presence of witnesses and prepared Ex.P.2, the Observation Mahazar and Ex.P.14, the rough sketch. He also recovered the material objects including the blood stained earth and sample earth, M.Os.2 and 3 respectively, under a cover of Mahazar. In the presence of witnesses and panchayatdars, P.W.13 also conducted the inquest on the dead body and prepared Ex.P.15, the Inquest Report. The dead body was subjected to the postmortem by P.W.7, the doctor attached to Batlagundu Government Hospital, and Ex.P.6, the postmortem certificate was issued by him, wherein he opined that the deceased would appear to have died out of shock and haemorrhage due to the injuries sustained by him.

(c) Pending investigation, the accused was arrested on 6.7.2004. He volunteered to give a confessional statement in the presence of P.W.9, the Village Administrative Officer and another witness. The admissible part of the confessional statement recorded by the investigating officer is marked as Ex.P.11, pursuant to which, he recovered M.O.1-blood stained knife, under a cover of mahazar. The accused was sent for judicial remand. All the material objects recovered from the place of occurrence and from the dead body and also the blood stained knife, M.O.1, produced by the accused, were subjected to chemical analysis by the Forensic Department pursuant to a requisition forwarded by the Inspector through the concerned Court which resulted in two reports, viz., the Chemical Analyst's Report-Ex.P.9 and the Serologist's Report-Ex.P.10 respectively.

(d) On completion of the investigation, the investigating officer filed the final report and the case was committed to Court of Sessions. Necessary charge was framed. In order to substantiate its case, the prosecution marched 14 witnesses and also relied upon 15 exhibits and 4 material objects.

(e) On completion of the evidence on the side of the prosecution, the accused was questioned u/s 313 Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and he denied them as false. No defence witness was examined. The Trial Court heard the arguments advanced on either side, took the view that the prosecution has proved its case beyond reasonable doubt, found the accused guilty as per the charge u/s 302 IPC and awarded life imprisonment which is the subject matter of challenge before this Court in this appeal.

3. Advancing his arguments on behalf of the appellant/accused, Mr. R.V.Jeganathan, learned Counsel inter-alia made the following submissions:

(a) In the instant case, all the eye witnesses are closely related to the deceased and thus, their evidence should have been rejected by the Trial Court, by applying the test of careful scrutiny. The medical evidence also did not support the case of the prosecution. Apart from this, the alleged confession, arrest and recovery of M.O.1, blood stained knife, were nothing but planted to suit the prosecution case and thus, the prosecution has not proved the case beyond reasonable doubt.

(b) Advancing the further arguments, the learned Counsel would submit that even assuming the prosecution has proved its case to the extent that it was the accused who attacked the deceased with knife and caused his death, the act of the accused would not attract the penal provision of murder for the reason that even as per the prosecution case, there was a wordy quarrel that preceded the occurrence and in that sudden quarrel, without any premeditation, the accused has acted and stabbed the deceased and hence, it has also got to be considered by this Court.

4. The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made and made a thorough scrutiny of the materials available.

5. In the instant case, it is not a fact in controversy that the deceased Thuluvan, the husband of P.W.1 was done to death in an incident that took place at about 4.00 p.m. at Viralipatti. The deceased was taken to hospital where he was declared dead by P.W.8, the doctor, attached to Batlagundu Government Hospital. Based on the complaint given by P.W.1, a case came to be registered by P.W.12, Sub-Inspector of police. On receipt of a copy of the F.I.R., the Investigating Officer took up investigation, conducted inquest on the dead body and P.W.8, the doctor, who has conducted the postmortem on the dead body gave his opinion that the deceased would appear to have died out of shock and haemorrhage due to the injuries sustained by him. The fact that he died out of homicidal violence was never questioned by the accused at any point of time and thus, the prosecution has proved the said fact.

6. In order to substantiate the accusation made upon the accused that it was he who stabbed the deceased at the place and time of occurrence, the prosecution marched P.Ws.1 to 4 as eye witnesses. It is true that P.Ws.1 and 2 are direct eye witnesses and are close relatives of the deceased. It is well settled proposition of law, on that ground, their evidence cannot be discarded. Despite the test of careful scrutiny test, this Court is satisfied that the evidence of P.Ws.1 and 2 has inspired the confidence of the Court.

7. The learned Counsel for the appellant further submitted that the evidence available for prosecution were safe eye witnesses. The evidence despite cross-examination in full, remained unshaken and hence, the Trial Court felt no

impediment in accepting their evidence and rightly too. The evidence projected through the eye witnesses stood fully corroborated by the medical evidence.

8. Yet another circumstance is the recovery of weapon of crime pursuant to the confession made by the accused voluntarily and a witness has also been examined to that effect. At this juncture, the contentions challenging these proved facts, put forth by the learned Counsel for the appellant have got to be rejected.

9. Coming to the nature of the act of the accused, the Court is able to see sufficient force in the contention put forth by the learned Counsel for the appellant. There was a long pending dispute between the families of the accused and the deceased in respect of the enjoyment of the property over which the deceased was running his tea stall. On the day of occurrence, the accused came there and made a demand for vacating the premises to which course, the deceased was not amenable, but, questioned as to why he should vacate. Therefore, immediately a wordy quarrel arose between the deceased and the accused. In that heated exchange of words, the accused has taken the knife and stabbed him. Even as per the evidence of P.W.1, there was a wordy quarrel preceded the occurrence and it would be clearly indicative of the fact that it is neither premeditated nor intentional, but, due to sudden quarrel that arose between the accused and the deceased and thus, the act of the accused would not attract the penal provision of murder, but only culpable homicide not amounting to murder.

10. Under such circumstances, this Court is of the considered view that it is a fit case where the conviction and sentence u/s 302 IPC can be modified to one u/s 304(i) IPC and awarding seven years of rigorous imprisonment would meet the ends of justice.

11. Hence, the conviction of the sole accused/appellant for the offence u/s 302 IPC and the sentence of life imprisonment, are modified to one u/s 304(i) of IPC and punishment of seven years rigorous imprisonment is awarded. The sentence already undergone by the appellant can be given set off. The fine amount and default sentence awarded by the Trial Court are sustained.

12. With the above modification, the criminal appeal is dismissed.