
(2010) 10 MAD CK 0118
In the Madras High Court
Case No : Criminal A. No. 553 of 2010

Theerthamalai @ Theertham

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313
Penal Code, 1860 (IPC) — Section 302, 304I

Citation : (2010) 10 MAD CK 0118

Hon'ble Judges : M. Chockalingam, J;C.S. Karnan, J

Bench : Division Bench

Advocate : Jayasri Baskar, for the Appellant; V.R. Balasubramanian, Assistant Public Prosecutor, for the Respondent

Judgement

M. Chockalingam, J.—This appeal challenges the judgment dated 12.3.2010 passed by the learned Additional District and Sessions Judge,

Fast Track Court No. V, Chennai in S.C. No. 38 of 2010, whereby the sole accused stood charged, tried and found guilty for the offence u/s 302

of the Indian Penal Code and sentenced to undergo life imprisonment and to pay a fine of Rs. 5,000/- in default to undergo rigorous imprisonment

for six months.

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

(i) P.W.1 is working as Watchman in Kalaisekaran boat. On 28.9.2009, during morning hours between 6 and 7 a.m., he found the dead body of a

male near the fisherman godown. Immediately, he went to the police station and gave a complaint to P.W.13, on the strength of which a case came

to be registered in Crime No. 246 of 2009 for the offence u/s 174 of the Code of Criminal Procedure. First Information Report Ex.P7 was

despatched to the Court.

(ii) Thereafter, P.W.13 went to the place of occurrence, made an inspection and prepared Observation mahazar Ex.P8 and rough sketch Ex.P9.

He also recovered blood stained stones M.O.7 series, shirt M.O.2, blood stained fishing net M.O.4, plain fishing net M.O.5, bottle pieces M.O.6

from the place of occurrence under the cover of mahazar Ex.P10 in the presence of witnesses. P.W.13 also took photographs of the dead body

through P.W.10 Photographer. M.O.8 series are the photographs.

(iii) Thereafter, P.W.13 conducted inquest on the dead body and prepared Ex.P11 inquest report in the presence of witnesses. Thereafter, he sent

the dead body for conducting post-mortem. P.W.12 Doctor, who conducted post-mortem, issued post-mortem Certificate Ex.P6 where he has

opined that the deceased would appear to have died of shock and hemorrhage and due to multiple injuries sustained by him. After post-mortem is

over, the shirt was removed from the dead body, from where the name of "Kishore Menswear" was found.

(iv) Immediately, P.W.13 took a clue from the shirt and proceeded to the address and met P.W.4 Tailor. After verifying the records in register, he

informed P.W.13 about the address of the person, who had stitched M.O.2 shirt in his shop. Taking the address, P.W.13 proceeded to the place,

met P.W.5 and interrogated him. In reply, P.W.5 stated that it was the shirt given by him to the deceased. Immediately after verifying the same,

P.W.7 father of the deceased was informed. He identified the shirt and also identified the body of the deceased.

(v) After receipt of post-mortem Certificate Ex.P6, the case was altered to one u/s 302 of the Indian Penal Code. Altered First Information Report

Ex.P12 was despatched to the Court. Pending investigation, P.W.13 has also interrogated P.W.6, who was also the Watchman in the boat. P.W.6

gave statement to the effect that on the night hours of 28.9.2009, he saw both the accused/appellant and the deceased in a drunken mood and they

were quarreling. Thereafter, on the morning hours of 29.9.2009, after taking tea, when he was coming back to the boat, he saw the deceased was

lying down at that time and the accused was entering into the shed from outside. Thereafter, the accused threw the brick plastered with cement on

the deceased and shouted at the deceased that he should die with that and

thereafter, he left the place. In the grip of fear, P.W.6 did not tell the same to anybody. Equally, P.W.8 has also seen both the deceased and the accused in a drunken mood on 28.9.2009 at 10 p.m. and they were quarreling with each other. Their statements were also recorded.

(vi) Following the same, P.W.13 arrested the accused and on arrest, the accused came forward to give confession statement voluntarily and the same was recorded in the presence of witnesses and the accused was sent for judicial remand. On completion of investigation, final report is filed.

The case was committed to the Court of Sessions. Necessary charges were framed against the accused.

3. In order to substantiate its case, the prosecution examined 13 witnesses and relied on 17 documents and also relied on M.Os.1 to 8. On

completion of examination of witnesses on the side of the prosecution, when the accused was questioned u/s 313 of the Criminal Procedure Code,

he denied them as false. No witness was examined on the side of the accused.

4. The Trial Court, after hearing the arguments advanced by either side and scrutinizing the materials available on record, found the accused guilty

u/s 302 of the Indian Penal Code and awarded punishment as referred to above. Hence this appeal is filed at the instance of the appellant.

5. Advancing arguments on behalf of the appellant, learned Counsel would submit that in the instant case, the prosecution has miserably failed to

prove its case. According to the prosecution, the occurrence had taken place at about 5.30 a.m. on 29.9.2009. P.W.6 was marched as eye

witness to the occurrence. It is a matter of surprise to note that P.W.6 has deposed that he saw the occurrence at 5 a.m. on 29.9.2009. But he

was examined by the Investigator only on 1.10.2009 i.e. after few days. The silence on the part of P.W.6 would indicate the fact that he was the

planted witness. If really he had seen the occurrence, he would have come out with the truth, but he had not done so, which would clearly indicate

the fact that he has not actually seen the occurrence.

6. Learned Counsel added further that insofar as the evidence of P.W.8 is concerned, it is not believable. His evidence was to the effect that he

saw both the accused and the deceased in a drunken mood. The evidence of P.Ws.6 and 8 should be rejected for the simple reason that

according to them, both the accused and the deceased were in drunken mood,

but the post-mortem Certificate Ex.P6 did not reveal any symptom of liquor. Hence, their evidence is doubtful.

7. Learned Counsel added further that the evidence adduced in respect of confession and arrest would not show the nexus of crime to the accused. The prosecution rests its case only on the testimony of P.W.6, but the evidence of P.W.6 is highly doubtful. Hence, the learned Trial Judge should have rejected the case of the prosecution outright, but the learned Judge has taken an erroneous view, which has got to be considered by this Court.

8. Learned Counsel in her second line of argument would submit that even if the Court comes to the conclusion that the prosecution has proved the factual matrix that it was the accused who attacked the deceased and caused his death, the act of the accused would not attract the penal provisions of murder. Even according to P.W.8, from the night of 10 O'clock, the deceased and the accused were quarreling. Even at the time of occurrence, according to P.W.6, the deceased and the accused were quarreling. Hence, due to sudden provocation, the accused has acted so. Hence the act of the accused is neither intentional nor premeditated. Hence, it has got to be considered by the Court.

9. This Court heard the learned Additional Public Prosecutor on the above contentions paid its anxious considerations on the submissions made.

10. It is not in controversy that the dead body of one Sureshkumar was found in the shed nearby boat godown. After post-mortem was over, the case, which was originally registered u/s 174 of the Criminal Procedure code, was altered to one u/s 302 of the Indian Penal Code by the Investigator. After the shirt was removed from the dead body, the Investigator got a clue from the shirt and got the address and that it was stitched by P.W.5 Tailor, from whom, it was found that it was the shirt of the deceased and the same was also identified by the father of the deceased. In respect of the identity of the dead body and cause of death, there was no quarrel before the Trial Court.

11. In order to prove the case of the prosecution that it was the accused, who attacked the deceased and also threw brick on his face, the prosecution has marched P.W.6 as the only eye witness. Indian criminal jurisprudence does not require quantity of evidence but only require

quality of evidence. According to P.W.6, he was also a Watchman and when he was in the godown during night hours on 28.9.2009, he saw both the accused and the deceased were quarreling and next day morning at 4.30 a.m., he went outside for taking tea and when he returned, he found the accused fisting the deceased and also throwing brick on the deceased. After hearing the shouting of P.W.6, the accused fled away from the scene of occurrence. The said evidence remained unshaken.

12. It is true, he gave statement only on 1.10.2009. But the witness himself has given evidence that because of fear, he did not give evidence. It is pertinent to point out that the case was originally registered u/s 174 of the Criminal Procedure Code and only after post-mortem Certificate was received, it was converted to one u/s 302 of the Indian Penal Code. It is quite clear that when the case was registered, culprit could not be fixed.

After receipt of post-mortem Certificate, it was converted to one u/s 302 of the Indian Penal code. The fact that P.W.6 was also employed as Watchman during that time and staying in the place of occurrence and the deceased and the accused were quarreling was proved and this fact was not disputed. The dead body was actually found nearby the shed. According to P.W.6, he was a Watchman and he was in the very same premises. The accused and the deceased were sleeping during the relevant time. Merely because the statement of P.W.6 was recorded after few days, the Court cannot doubt the prosecution case.

13. The added circumstance is that P.W.6 has actually seen both the deceased and the accused were quarreling in the same place on the night hours of 28.9.2009. Under such circumstances, so long as the prosecution is able to show the evidence of P.W.6 was true, the Court has to accept the evidence and sustain the conviction in the instant case. Apart from that, at the time of arrest, the accused has given confession statement, but no recovery was shown. The evidence of P.W.6 though solitary testimony, stood corroborated with the medical evidence, which would be suffice to prove the case of the prosecution that the accused attacked the deceased and done to death.

14. Insofar as the second line of argument put forth by the learned Counsel for the appellant is concerned, this Court is able to see force in her contention. It is an admitted position that accused/appellant and also the

deceased were quarreling from the night hours of 28.9.2010 and the same was witnessed by P.Ws.6 and 8. At the time of occurrence, the accused was uttering the words ""You attacked me and hence, I would finish you"".

Thus, the act of the accused was neither intentional nor premeditated, but it was due to sudden quarrel and provocation and hence the act of the

accused cannot be termed as murder, but it would be one culpable homicide not amounting to murder and therefore, the act of the accused would

attract the penal provision of Section 304(I) of the Indian Penal Code and awarding punishment of 7 years of Rigorous Imprisonment would meet

the ends of justice.

15. Accordingly, the conviction of the sentence imposed on the appellant u/s 302 of the Indian Penal Code alone are modified and instead the

appellant is convicted u/s 304(I) of the Indian Penal Code and sentenced to undergo 7 years Rigorous Imprisonment. The period of sentence

already undergone by the appellant is ordered to be given set off. The fine and default sentence imposed by the trial court u/s 302 of the Indian

Penal Code will hold good.

16. With the above modification in conviction and sentence, this criminal appeal is disposed of.