

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 1611 of 2008

R. Rangasamy

.. Petitioner/PW2

Versus

1. Ayyasamy
2. Eswari

..1st&2nd Respondent/Accused

3. The Inspector of Police  
Annur Police Station  
Coimbatore District  
(Crime No.388/2004)

..3rd Respondent/Complainant

Criminal Revision Case filed under Sections 397 read with Sec. 401 of Cr.P.C. to call for the records and set aside the Judgment dated 19.01.2007 made in S.C. No. 80 of 2006 on the file of Additional Sessions Judge, Fast Track Court No.IV, Coimbatore at Tirupur and to convict the respondents 1 and 2 for offences under Section 302 and 307 of IPC and 302 read with 34/109, 307 read with 34/109 of IPC respectively and impose maximum punishment against them.

For Petitioner : Mr. P.M. Duraisamy

For Respondent : Mr. M. Vijayakumaran for RR1 and 2

Mr. V. Arul,

Government Advocate (Crl.side) for R3

ORDER

The revision petitioner, who was examined as PW2 during the trial in the Sessions Case and husband of the deceased Arukkaniammal, has come forward with this Criminal Revision Case challenging the Judgment dated 19.01.2007 passed by the trial Court. By the said Judgment dated 19.01.2007, the trial court convicted the first accused/first respondent herein for the offences punishable under Section 326 and 304 Part (ii) of IPC and sentenced him to undergo rigorous imprisonment for one year for the offence under Section 326 with fine of Rs.1,000/- failing which to undergo 3 months rigorous imprisonment. For the offence under Section 304 part (ii) of IPC, the first accused was sentenced to undergo three years rigorous imprisonment with fine of Rs.10,000/- failing which to undergo two years rigorous imprisonment. However, the sentences were ordered to run concurrently. However, the trial court acquitted both the accused for the offences under Sections 302, 307, 309 read with 34/109 and 307 read with 34/109 of IPC. In other words, the second accused was acquitted of all the charges.

2. The case of the prosecution is that PW2 is the husband of the deceased Arukaniammal and father of PW1. The first accused is the brother of the deceased Arukaniammal and the second accused is the wife of the first accused. On 27.07.2004 at about 4.30 p.m. it is alleged that the deceased Arukaniammal and PW1 went to the disputed land where the accused were engaged in field work and questioned them as to how they can remain in possession of the land in spite of the judgment dated 19.11.2003 passed by the Civil Court granting permanent injunction against the accused and in favour of the deceased Arukaniammal. At that time, the second accused said to have instigated the first accused and handed over to him Aruval (Mol) to the second accused and asked him to cut the deceased so that all the problems will be solved. On such instigation, the first accused caused cut injuries on vital parts of the body of the deceased Arukaniammal such as neck and legs. On seeing this, PW1, son of the deceased came to her rescue but he was also inflicted with cut injuries by the first accused with MO1 on several parts of his body. PW1 also sustained grievous injuries in his finger and one of his fingers was almost severed. PW1 was immediately taken to the police station from where he was referred to Government Hospital with a memo. During the course of treatment of PW1, the respondent police recorded his statement and registered the case in Crime No. 388 of 2004 for the offences punishable under Section 302 and 307 of IPC. After investigation, the respondent police filed the charge sheet against the respondents 1 and 2 herein for the offences punishable under Section 302 and 307 of IPC and 302 read with 34/109 and 307 read with 34/109 of IPC respectively.

3. During the course of trial, in order to strengthen the case of prosecution, as many as 17 witnesses were examined and Exs. P1 to P17 were marked. The prosecution also produced Mos 1 to 11 before the trial Court. On behalf of the accused, Ex.D1, order passed in WP Nos. 30442 of 2002 and 44800 of 2002 dated 26.07.2002 was marked. After conclusion of trial, the trial court, while convicting the first accused for the offence punishable under Sections 326 and 304 Part (ii) of IPC, acquitted the second accused of all the charges.

4. The learned counsel for the revision petitioner would mainly contend that the motive for the occurrence has been clearly established by the prosecution. Even according to the accused there were prior enmity between the accused and the family of PW2 owing to possession of the land and the deceased Arukaniammal also filed O.S. No. 190 of 1998 in which a judgment dated 19.11.2003 was granted restraining the accused from interfering with the possession of Arukaniammal. It is also an admitted fact that in spite of the judgment passed by the Civil Court, the accused were in possession of the disputed land and when that was questioned, the deceased was murdered by the accused person. When the motive for the occurrence is established, the trial Court ought to have convicted the accused for the offence punishable under Section 302 of IPC and awarded maximum punishment, instead the trial court convicted only the first accused for the simple offences under Section 326 and 304 Part (ii) of IPC. The theory put forward by

the accused that there were commotion at the time of occurrence and it was not known as to who caused the cut injuries on the deceased and PW2 was rejected by the trial Court. Thus, the fact that the injuries were caused only by the first accused is well established by the prosecution. Further, the presence of the second accused in the occurrence spot is not disputed by the accused. The death of the deceased Arukaniammal was caused only by the cut injuries inflicted on her by the first accused and it was proved beyond reasonable doubt. The postmortem report of the deceased clearly indicated the number of injuries and the nature of injuries sustained by her. It is also an admitted fact that the deceased Arukaniammal died on the spot and PW1 sustained greivous injuries at the instance of the first accused by using MO1, Aruval. In fact, the right thumb finger of PW1 was almost severed. While so, the punishment imposed by the trial Court is not proportionate to the overt act attributable against the first accused. As regards the second accused is concerned, she was instrumental for the occurrence to take place as she had instigated her husband, first accused, to do away with the deceased Arukaniammal and it is only on her command the first accused caused the cut injuries on her. This was clearly established by the evidence of PW1 and PW3, who is sister of PW2. There are eye witnesses to the occurrence and they have corroborated the version of each other. The occurrence took place in broad day light. The murder of the deceased was pre-planned due to the previous enmity and love lost between the family of the accused and PW2. In such circumstances, the trial Court erred in concluding that the occurrence had taken place due to a spur of moment, anger or sudden provocation. Merely because the occurrence took place in the land where the accused were engaged in field work, it cannot be concluded that it is not the accused but PW1 is the aggressor. The reasons given by the trial Court for letting off the accused for the offence under Section 307 and convicting only the first accused under Section 326 and 304 Part (ii) of IPC and acquitting the second accused of all the charges is legally unsustainable. Both the accused had knowledge that the injuries that were inflicted on the accused would lead to their death and accordingly the mother of PW1 Arukaniammal died on the spot and PW1 sustained grievous injuries on vital parts of his body. In such circumstances, the trial Court ought to have awarded punishment for both the accused under Section 307 of IPC read with Section 34/109 of IPC and he prayed for allowing this Criminal Revision Case.

5. On the contrary, the learned counsel for the respondents 1 and 2 would contend that there was no evidence made available to show that there was prior conspiracy between the accused 1 and 2 to cause the murder of the deceased Arukaniammal and to cause cut injuries to PW1. The occurrence had taken place due to a sudden provocation and in a spur of moment, which is evident that it is the deceased Arukaniammal and PW1 have invaded into the land where the accused were engaged in field work and entered into a wordy quarrel. As regards the possession of the disputed land, even according to PW1, from the date of judgment passed in Civil suit namely 19.11.2003 till the date of occurrence on 27.07.2004, the

possession of the land vests only with the accused and this has triggered the occurrence. There was no criminal conspiracy between the accused to do away with the life of Arukaniammal and to cause injuries to PW1. In fact, there were inconsistencies in the deposition of prosecution witnesses, particularly PWs 1 to 3. PW1 in his deposition has stated that it is the second accused who had handed over MO1, Aruval to first accused and instigated him to kill the deceased Arukaniammal so that all the problems will be solved. On the contrary, PW3 has stated that second accused had given MO1 to the first accused by stating that she is the root cause for all the problems. In any event, the trial Court has rightly found that there is no evidence to show that there was conspiracy hatched between accused to commit the offence and therefore, the first accused was awarded the punishment in a spur of moment to cause cut injuries to the deceased Arukaniammal under Section 304 part (ii) of IPC and also sentenced under Section 326 for having inflicted cut injuries on PW1. At the time of occurrence first accused was 62 years and now he is 71 years old. The second accused was 43 years old at the time of occurrence and she is now 52 years old. The occurrence took place on 27.07.2004 due to a sudden provocation without any pre-plan. The trial Court had carefully appreciated the oral and documentary evidence projected by the prosecution and awarded the punishment to first accused alone and it does not call for any interference by this Court.

6. The learned Government Advocate appearing for the prosecution would contend that the trial Court has appreciated the oral and documentary evidence produced before it by the prosecution and convicted the first accused for the offence under Section 326 and 304 Part (ii) of IPC. In so far as the second accused is concerned, except the deposition of PW1 to 3 that she instigated the second accused and handed over MO1, Aruval, there is no other corroborative evidence to implicate her. The Court below also taken note of the fact that it is the deceased Arukaniammal and PW1 have entered in to the land and questioned their possession over the said land. In such circumstances, the trial Court held that the deceased Arukaniammal and PW1 are the aggressor inasmuch as they went to the land of the accused which led to the occurrence. Therefore, the learned Government Advocate would contend that the trial Court is justified in convicting the first accused for the offences punishable under Section 326 and 304 Part (ii) of IPC and acquitting the second accused of all the charges.

7. I heard the counsel for both sides and carefully perused the materials placed on record. Though, initially the argument advanced by the learned counsel for the petitioner appears to be convincing, on careful examination of the records, judgment of the court below and the material records made available, this Court could see no reason to interfere with the order passed by the Court below.

8. According to the case of the prosecution, on 27.07.2004, the deceased Arukaniammal and PW1 went to the land of the accused and questioned their right to remain in possession of the said land

pursuant to the judgment rendered by the Civil Court in favour of Arukaniammal. A wordy quarrel emanated between the accused and Arukaniammal. At that time, it is alleged that the second accused handed over MO1, Aruval to the first accused and instigated him to do away with the life of the deceased so that all the problems will be solved. Accordingly, the first accused caused cut injuries on the deceased Arukaniammal due to which she died on the spot. On seeing the first accused causing cut injuries to her mother, PW1 came to her rescue and he also received cut injuries. The thumb finger of PW1 was almost severed due to the cut injuries received by him.

9. The main point for consideration in this case is whether the offence under Section 307 and 302 of IPC is attracted against the first accused and whether the trial Court is justified in acquitting the second accused from all the charges.

10. Admittedly, there was a land dispute between the parties. The deceased Arukaniammal has filed a suit in O.S. No. 180 of 1998 on the file of District Munsif Court, Avinashi for bare injunction against the accused in which a judgment dated 19.11.2003 (marked as Ex.P4) was passed granting permanent injunction in favour of Arukaniammal. It is an admitted fact that even after the judgment passed by the Civil Court, the accused were in possession of the land which has infuriated the said Arukaniammal. Therefore, on 27.07.2004, the deceased Arukaniammal went to the disputed land where the accused were engaged in field work. The deceased Arukaniammal questioned the accused of their right to remain in possession of the land inspite of the judgment rendered by the Civil Court. In this context, there were quarrel and ultimately the first accused caused cut injuries on the deceased with MO1 which caused her death on the spot. PW1, son of the deceased Arukaniammal also received cut injuries when he came to the rescue of her mother. Therefore it is clear that it is the deceased Arukaniammal who went to the land where the accused were engaged in field work which led to the occurrence. The deceased can therefore be construed as the aggressor. It is not the case that the accused, with a criminal conspiracy to cause the death of the deceased, have invaded into her land. Thus, the occurrence had occurred out of a sudden provocation and in a spur of moment. The death of the deceased Arukaniammal has caused suddenly without any pre-plan on the part of the accused. Therefore, I hold that the trial Court is justified in awarding the punishment to the first accused only under Section 326 and 304 Part (ii) of IPC and consequently acquitted the first accused from the offence under Section 307 read with Section 34/109 of IPC.

11. As regards the overt act attributable on the part of the second accused, the prosecution case is that she instigated the first accused to do away with the life of the deceased Arukaniammal by handing over to him MO1, Aruval. Except this, there is no other evidence made available against her. In fact, the trial Court pointed out certain discrepancies in the deposition of PW1 and PW3. While PW1 deposed that the second accused provoked the first

accused to do away with the life of the deceased Arukaniammal so that all the problems will be solved, PW3 deposed that she instigated the first accused by saying that she is (Arukaniammal) the root cause for all the problems. By pointing out this inconsistency, the trial Court acquitted the second accused. Further, PW3 is projected as an eye witness in this case. In other words, except PW1 and 3, there is no other eye witness to speak about the occurrence or the alleged overt act on the part of the second accused. In fact, PW4 was projected as an eye witness, however, it is clear that PW4 reached the occurrence spot only after hearing that the accused have killed the deceased Arukaniammal. Therefore, in my view, the court below has rightly acquitted the second accused from all the charges and it does not call for any interference by this Court.

12. In the result, the Criminal Revision Case is dismissed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Sessions Judge  
Fast Track Court No.IV  
Coimbatore

2. The Inspector of Police,  
Annur Police Station, Coimbatore District.

3. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.P.M. Duraisamy, Advocate Sr.38252

Crl RC No.1611 of 2008

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