

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 21.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.33 of 2016
and Crl.M.P.No.8954 of 2017

Kannaiyan

... Appellant

*Versus*State by Inspector of Police,
Erode Town Police Station,
Erode District.

... Respondent

Prayer: Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, against the judgment dated 27.11.2015 passed in S.C.No.80 of 2015, on the file of the I Additional Sessions Judge, Erode.

For Appellant : Mr.M.Guruprasad

For Respondent : Mr.R.Sekar

Government Advocate (Crl. Side)

J U D G M E N T

The accused is the appellant.

2. This appeal is directed against the conviction and sentence imposed in S.C.No.80 of 2015, on the file of the learned I Additional Sessions Judge, Erode, ordering the accused to undergo Rigorous Imprisonment for 10 years and also to pay a fine of Rs.10,000/-, in default, to undergo further period of 1 year Rigorous Imprisonment for the offence under Section 304(I) IPC.

3. The facts necessary for the disposal of the appeal, are as follows:-

[i] Ganesan [the deceased], Palraj [P.W.2] and the accused Kannian are brothers. Ruckmani [P.W.1] is the wife of the deceased. Nagaraj [P.W.5] is the son-in-law of the deceased. Santhosh [P.W.6] is their relative. The said brothers owned a family house. The accused and Ganesan [deceased] were in possession of the house. P.W.2 demanded division of the house and his share in the property, as he was not in enjoyment of the family house. The accused was not inclined to give his [P.W.2] share in the house.

[ii] On 24.01.2015, around 03.00 p.m, there occurred a quarrel between the accused and Palraj [P.W.2], over division of the family house. Ganesan sided with Palraj [P.W.2] and told that P.W.2 was justified in demanding his share. Angered by the intervention of the deceased, the accused went inside his house and brought M.O.1 Knife and stabbed the deceased on his stomach. When Palraj [P.W.2] intervened, the accused bit him on his left forearm. Then, the accused injured himself using M.O.1 Knife.

[iii] Nagaraj [P.W.5] took injured Ganesan to Government Headquarters Hospital, Erode. Dr.V.A.Anandakumar, Civil Assistant Surgeon [P.W.4] attached to the said Hospital, examined Ganesan at 5.40p.m. on 24.01.2015 for the injuries sustained by him and said to have been caused at about 3.00p.m. on 24.01.2015 at his house and to be due to assault by one known person [தம்பி]. He found the following injury: “stab injury about 5 x 1 x 15 cm in size extended into the periphoreum over the right lumbar region of the abdomen.” Dr.V.A.Anandakumar [P.W.4] admitted him as inpatient for further treatment at emergency ward. Ex.P.2 is the duplicate of the Accident Register issued by P.W.4.

[iv] On the same day, at about 5.57 p.m. Dr.V.A.Anandakumar [P.W.4] examined Kannaiyan [accused] for the injuries sustained by him and said to have been caused at about 3.00p.m. on 24.01.2015 at his house and to be due to assault by two known persons [Ganesan, Palraj [P.W.2]]. He found the following injury: “1.Multiple abrasions about 8 to 10 M.O.S on the front of the chest. 2. Complaint of Pain on the right upper arm.” Ex.P.4 is the duplicate of the Accident Registers issued by Kannaiyan.

[v] On the same day, at about 5.59 p.m. Dr.V.A.Anandakumar [P.W.4] examined Palraj [P.W.2] for the injuries sustained by him and said to have been caused at about 3.00p.m. on 24.01.2015 at his house and to be due to assault by one known person [Kannaiyan]. He found the following injury: "1.Abrasions 3 x 1 cm on the left fore arm." Ex.P.5 is the duplicate of the Accident Register issued by Palraj [P.W.2].

[vi] The Sub Inspector of Police, Erode Town Police Station [P.W.12], on receipt of information from the Government Headquarters Hospital, Erode, visited the Hospital and recorded the statement [Ex.P.22] of Ganesan around 6.00p.m. and obtained his thumb impression in the presence of Doctor [P.W.4] and Nagaraj [P.W.5]. Doctor [P.W.4] certified that "[Ganesan] conscious and oriented at the time of declaration." On the basis of the complaint, he [P.W.12] registered a case in Crime No.76 of 2015 for the offences under Sections 307, 324 and 506(ii) IPC. Ex.P.23 is the First Information Report.

[vii] The Inspector of Police, Erode Town Police Station [P.W.13]

took up the investigation and visited the place of occurrence on the very same day around 7.45a.m. He prepared Observation Mahazar [Ex.P.24] and Rough Sketch [Ex.P.25] of the scene of occurrence. Police Photographer [P.W.8] took

photographs of the scene of occurrence. The Investigating Officer [P.W.13] collected blood stained earth and sample earth from the place of occurrence. He visited the Hospital and seized blood stained dhoti and shirt worn by Ganesan at the time of occurrence. On 25.01.2015, at 8.00a.m., he arrested the accused in the presence of Village Administrative Officer [P.W.7] and his Assistant. He interrogated the accused. In pursuance of the statement of the accused, he recovered the M.O.1 Knife.

[viii] On 26.01.2015, the Investigating Officer [P.W.13] examined Ganesan, who was undergoing treatment at the Hospital and recorded his statement [Ex.P.22]. On 27.01.2015, at about 9.40p.m. injured Ganesan died. Doctor [P.W.3] sent death intimation [Ex.P.1] to the Police. The Investigating Officer [P.W.13] on receipt of death intimation altered the case into one under Section 302, 324 and 506(ii) IPC and sent a report to the Court concerned.

[ix] The Investigating Officer [P.W.13] held inquest over the body of Ganesan on 27.01.2015 at 12.00 noon. Ex.P.31 is the Inquest Report. Doctor [P.W.4] on the basis requisition [Ex.P.6] sent by the Investigating Officer [P.W.13] conducted autopsy on the dead body of Ganesan. He found the following injuries:

“External Injuries:

“1. A sutured wound about 5 x 1/2 cm over the right side of abdomen 4cms away from the umbilicus, 2.A vertical surgical sutured wound about 20 x 1/2 cm in size over middle of abdomen, 3. Drainage tube two in number both sides of abdomen.”

Internal Injuries:

“Ribs - Intact, Heart - 150 gms pale, Lungs - 400 gms, congested on both sides, Hyoid Bone - Intact, Stomach & Intestines - Empty, Liver - 1000 grams, laceration about 4 x 0.3cms in size over the right lobe of liver, Spleen - 90 gms, Kidney - Each 90 gms, congested on both sides, Intestines - contusion 2 x 2 x 2 cms, Melecolon to traverse colon right side, Bladder - Empty, Brain - 1350 gms pale, Blood preserved and sent for analysis.”

He opined that the deceased would have died, at 9.40a.m., on 27.01.2015 due to cardiac respiratory arrest due to septicaemia and its complications with liver injury. After completing the investigation, P.W.13 filed the Final Report.

[x] The Trial Court framed charges under Sections 302, 324 and 506(ii) IPC. The accused pleaded not guilty. His case is that the deceased was assaulted by four unknown persons while he [the accused] was chatting with Palraj [P.W.2]. The Trial Court partly accepted the case of the prosecution. The accused was convicted only under Section 304(I) IPC. Challenging the order of conviction, the present appeal has been filed.

4. The learned counsel appearing for the appellant would submit that the Trial Court has committed error in placing reliance on Ex.P.22 [statement of the deceased Ganesan]. According to him, the deceased was not in a state of mind at the time of declaration [Ex.P.22] that no attempt has been made to record the statement of the deceased by a Judicial Magistrate, that the Doctor has not certified that the deceased was in a fit state of mind and that, the deceased, who use to sign affix thumb mark in the statement. The learned counsel would submit that the Trial Court failed to take note of the contradictions found in the evidence given by the prosecution witnesses.

5. The learned Government Advocate [Criminal Side] supported the judgment of the Trial Court. According to him, there are enough materials to convict the appellant.

6. Admittedly, Ganesan [the deceased], Palraj [P.W.2] and the accused Kanniyar are brothers. Ruckmani [P.W.1] is the wife of the deceased. Nagaraj [P.W.5] is the son-in-law of the deceased. Santhosh [P.W.6] is their relative. It is significant to note that P.W.1, P.W.2, P.W.5 and P.W.6 turned hostile.

7. The case of the prosecution hinges on the statement of the deceased. According to the prosecution, the occurrence at 3.00p.m. on 24.01.2015 in front of the house of the accused and the deceased. The deceased was examined by Dr.V.A.Anandakumar, Civil Assistant Surgeon [P.W.4], at 5.40p.m. on 24.01.2015 for the injuries said to have been caused at about 3.00p.m. on 24.01.2015 at his house and to be due to assault by one known person [தம்பி]. He found the following injury: “Stab injury about 5 x 1 x 15 cm in size extended into the periphoreum over the right lumbar region of the abdomen.” The Sub-Inspector of Police, visited the hospital and recorded the statement [Ex.P.22] of the deceased at about 6.00p.m.

8. The contention of the learned counsel appearing for the appellant is that the endorsement made by the Doctor [P.W.4] had been inserted for the purpose of the case. He has also pointed out that Nagaraj [P.W.5], who attested the statement of the deceased did not support the case of the prosecution. Doctor [P.W.4] endorsed on the statement [Ex.P.22] thus: “patient [Ganesan] conscious, oriented at the time of declaration.”. The Doctor [P.W.4] omitted to make an endorsement to the effect that the injured was in a fit state of mind to give a statement. In this connection, the learned counsel relied on a judgment in *T.JAYAPAL vs. STATE ((2016) 2 MLJ (Crl)*

402), wherein the dying declaration was rejected by the Court on the ground that the Magistrate failed to ascertain mental fitness of the deceased before recording the same. In the case at hand, the Doctor [P.W.4] in his endorsement on the statement [Ex.P.22] has not stated that the deceased was in a fit state of mind at the time of recording the statement. He has stated that the deceased was conscious. However, it is important to note that the statement of the deceased was recorded by a Police Officer as a complaint and not as a dying declaration. The deceased was admitted to the Hospital on 24.01.2015 and he died on 27.01.2015 at 9.40p.m. The Investigating Officer [P.W.13] on oath has stated that he recorded the statement of the deceased on 26.01.2015 at the Hospital. Therefore, the statement [Ex.P.22] of the deceased cannot be rejected.

9. It appears that no attempt has been made to record the statement of the deceased to a Judicial Magistrate. However, the statement of the deceased cannot be disbelieved in view of the fact that immediately before the arrival of the police official [P.W.12], the deceased informed the Doctor that he was stabbed by his brother [the accused]. Doctor [P.W.4] is an independent witness. There is no material to show that the Doctor had any animus against the accused. He has no personal interest in the matter. Therefore, I do not find any good reason to disbelieve his evidence.

10. The Doctor [P.W.4] has given evidence that the deceased told him that he was stabbed by his younger brother [தம்பி] at about 3.00p.m. It is also seen from his evidence that Nagaraj [P.W.5] taken the deceased to the Hospital. The accused and the deceased were also examined by Doctor on the same day and at the same time. The accused told the Doctor that he was assaulted by Ganesan and Palraj [P.W.2]. Palraj [P.W.2] told the Doctor that he was bitten by the accused at the same time and place. All these circumstances would go to show that the occurrence has taken place in the manner spoken to by the deceased in his statements. The deceased made statements to the Doctor and to the Police Officer. He made consistent statements that he was stabbed by the accused. Therefore, the statement of the deceased cannot be rejected simple because the investigating agency had not called for the Judicial Magistrate for recording the statement of the deceased.

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11. As already noticed, he was admitted to the Hospital at 4.00p.m. on 24.01.2015 and he died on 27.01.2015 at 9.40p.m. Therefore, I have no hesitation to hold that the deceased was in a fit state of mind at the time of his statement to the Doctor and the Sub-Inspector of Police [PW.12]. It

is well settled that conviction can be based on solely on the dying declaration without any corroboration, if the same is not suffering from any infirmity. In the case at hand, as the prosecution has established that the deceased made a consistent statement that he was stabbed by the accused, Court can act on the statements of the deceased. His statement [Ex.P.22] to the Police Officer is amply corroborated by the evidence given by the Doctor [P.W.4]. Therefore, I hold that the accused stabbed the deceased and caused the injury as noted in the Accident Register [Ex.P.2].

12. It now remains to be seen on the materials available on record as to the nature and character of the offence committed by the accused. The learned counsel for the appellant would submit that no intention or knowledge can be attributed to the accused. The Trial Court convicted the accused only under Section 304(I) IPC. However, the Court has not assigned any reason for convicting the accused under Section 304(I) IPC.

13. As already pointed out, the occurrence had taken place on the spur of the moment. There is no prior motive. The medical evidence [Ex.P.4] and the statements [Ex.P.22] of the deceased would show that the accused gave only one blow which landed on his abdomen. Under these circumstances, the accused could not be imputed with the intention to cause

death. As per the post-mortem report [Ex.P.7] the deceased would appear to have died, at 9.40a.m., on 27.01.2015 due to cardiac respiratory arrest due to septicaemia and its complications with liver injury. He died after three days. Though the accused had no intention to kill or to cause such bodily injury as is likely to cause death, it would be reasonable to infer that he had the knowledge that the injury was likely to cause death. In my considered view, the act of the accused is liable to be punished only under Section 304(II) IPC.

14. The accused was sentenced to undergo 10 years imprisonment. The learned counsel appearing for the appellant would submit that now the families of the accused and the deceased are living together and the appellant has to take care of the two families and that, therefore leniency may be shown to the accused.

15. The antecedents of the accused are not reported to be bad. As already noticed that the occurrence had taken place in a sudden quarrel. The accused has to take care of the children of the deceased also. In these circumstances, I feel the accused is entitled to sympathetic considerations and the ends of justice would be met by awarding a lesser punishment.

16. For the reasons stated above, this Criminal Appeal is allowed in part. The conviction and the sentence imposed on the appellant for the offence under Section 304 (I) IPC by the learned I Additional Sessions Judge, Erode in S.C.No.80 of 2015 dated 27.11.2015 are set aside and he is convicted of the offence under Section 304(II) IPC, and is sentenced to undergo 4 years Rigorous Imprisonment. The sentence of fine shall remain unaltered. Consequently, connected Miscellaneous Petition is closed.

21.08.2017

Index : Yes / No
Internet: Yes

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To

1.The I Additional Sessions Judge,
Erode District,
Erode.

2.The Inspector of Police,
Government of Tamil Nadu,
Erode Town Police Station,
Erode District.

3.The Public Prosecutor,
High Court, Madras.

N.AUTHINATHAN, J.,

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Criminal Appeal No.33 of 2016

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