

BEFORE THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.11.2017

PRONOUNCED ON: 18.12.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl. Appeal No.9 of 2016

Selvakumar

Appellant

vs.

State by the
Deputy Superintendent of Police
Mamallapuram Division
Crime No.306 of 2007
Sadras Police Station
Kancheepuram District

Respondent

Criminal Appeal filed under Section 374 (2) Cr.P.C. seeking to set aside the conviction and sentence passed by the Principal Sessions Judge, Kancheepuram District at Chengalpattu in Sessions Case No.28 of 2008.

For appellant Mr. R. Vijayakumar

For respondent Mr. K. Madhan
Government Advocate (Crl. Side)

JUDGMENT

This Criminal Appeal has been preferred seeking to set aside the conviction and sentence passed by the Principal Sessions Judge, Kancheepuram District at Chengalpattu in Sessions Case No.28 of 2008.



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2 The case of the prosecution is as under:

- the accused belongs to a Backward community and the deceased was a member of the Adi Dravida community and both knew each other well;
- on 25.11.2007, around 18.30 hours, while the accused and the deceased were sitting in Narasakuppam bus stop, the accused, referring to his recalcitrant nephew Sekar who had not reported to duty after having received money, had commented thus: "Were you born to a Vanniya or a dalit?";
- on hearing such a statement from the accused, the deceased thought that the accused was referring to him and slipped the accused and;
- irked, the accused hurled an half brick at the deceased, on account of which, the deceased sustained an injury on his head and fell down dead;
- on the complaint lodged by Thanyan (P.W.1), the brother of the deceased, Arogyam (P.W.15), Inspector of Police, Thirukkazhukundram Police Station registered a case in Cr.No.306 of 2007 under Section 302 IPC read with Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity "the SC/ST Act") and prepared the printed FIR (Ex.P.9);
- the investigation of the case was taken over by Balasubramanian (P.W.16), Deputy Superintendent of Police, who went to the place of occurrence and prepared an Observation Mahazar (Ex.P.10) in the presence of

Arjunan (P.W.3) and Ulaganathan (P.W.5). He also prepared a rough sketch (Ex.P.11) of the place of occurrence and from the place of occurrence, he seized a pair of rubber slippers (M.O.1) and a half brick (M.O.6) under the cover of mahazar (Ex.P.12). He conducted inquest over the body of the deceased and the inquest report was marked as Ex.P.13. He took photographs of the place of occurrence (M.Os. 7 & 8 series);

- after the inquest, the body was despatched through Durai (P.W.12), Head Constable, to the Government General Hospital, Chengalpattu for post-mortem, where, Dr.Parasakthi (P.W.14) performed autopsy and issued post-mortem certificate (Ex.P.8). Dr. Parasakthi, in her evidence before the Court and in the post-mortem certificate, has opined that the deceased had died of shock due to head injuries;
- on 26.11.2007, around 3.10 p.m., Balasubramanian (P.W.16) arrested the accused in the presence of Vijayarangan (P.W.4) and had him produced before the jurisdictional Magistrate for judicial custody;
- Balasubramanian (P.W.16) examined some witnesses and obtained a certificate (Ex.P.7) from Subramanian (P.W.9), the jurisdictional Tahsildar relating to the community of the deceased which showed that the deceased belonged to Hindu Adi Dravida community (dalit); and

- after completing the investigation, Balasubramanian (P.W.16) filed a final report before the District Munsif-cum-Judicial Magistrate, Thirukkazhukundram, in P.R.C.No.37 of 2007.

3 On the appearance of the accused, he was furnished with the documents under Section 207 Cr.P.C. and the case was committed to the Court of Sessions (Special Court for SC/ST Act Cases), Kancheepuram at Chengalpattu. The Trial Court framed charges for the offences under Section 302 IPC and Section 3(2)(v) of the SC/ST Act against the accused and when questioned, the accused pleaded not guilty.

4 To prove the charges framed against the accused, the prosecution examined 16 witnesses and marked 15 exhibits and 8 M.Os. When the accused was questioned about the incriminating circumstances appearing against him, he denied the same. No witness was examined on behalf of the accused nor was any document marked on his behalf.

5 After hearing the learned counsel on either side and appreciating the evidence adduced by the prosecution, the Trial Court acquitted the accused for the charge under Section 3(2)(v) of the SC/ST Act, but, convicted him for the offence under Section 304(ii) IPC and sentenced him to undergo 7 years rigorous imprisonment and pay fine of Rs.5,000/-, in default to undergo simple imprisonment for three months, challenging which, the accused is before this

6 Heard Mr. R. Vijayakumar, learned counsel for the appellant and Mr.K.Madhan, learned Government Advocate (Crl. Side) appearing for the respondent-State.

7 To prove the occurrence, the prosecution examined Thanyan (P.W.1), Kanniappan (P.W.2), Arjunan (P.W.3), Ulaganathan (P.W.5), Velu Prabakaran (P.W.6), Sekar (P.W.7), Vedachalam (P.W.8) and Shankar (P.W.10). On a reading of the complaint (Ex.P.1) that was lodged by Thanyan (P.W.1) which forms the basis of the registration of the FIR, it is manifest that the narration appears to be hearsay.

8 Thanyan (P.W.1) has not stated that he had seen the incident himself. Even in his evidence before the Court, he has stated that he enquired about the incident from Vedachalam (P.W.8), Shankar (P.W.10) and others and learnt as to how it had occurred. Similarly, the evidence of Kanniappan (P.W.2), Arjunan (P.W.3), Ulaganathan (P.W.5), Velu Prabakaran (P.W.6) and Sekar (P.W.7) are also not direct account of the incident and in fact, they have admitted in their evidence that they heard about the incident from other sources. As regards Vedachalam (P.W.8), he turned hostile to the prosecution case. Therefore, the Trial Court was correct in not placing reliance upon the evidence of Thanyan (P.W.1), Kanniappan (P.W.2), Arjunan (P.W.3), Ulaganathan (P.W.5), Velu Prabakaran (P.W.6), Sekar (P.W.7) and Vedachalam (P.W.8).

9 Now, what remains is only the evidence of Shankar (P.W.10). Shankar (P.W.10), in his evidence before the Court, has stated that on the 25th, he saw the accused and the deceased quarrelling with each other and the accused asked the deceased as to why he did not report to duty and when the deceased told the accused that he would come for work the next day, the accused abused him by his caste name and picked his slippers and slapped him and thereafter, took stones and hurled them on the deceased and caused his death.

10 In the court, Shankar (P.W.10) identified the slippers (M.O.1) as that belonging to the accused, whereas, it is the specific case of the prosecution that the slippers belonged to the deceased. Shankar (P.W.10) went one step ahead and stated that the accused was having two stones in both his hands, with which, he had attacked the deceased, whereas, it is the specific case of the prosecution that the accused had hurled one stone on the deceased which had resulted in his death.

11 Ergo, as stated above, it is the specific case of the prosecution that the accused did not abuse the deceased by his caste name, but, was only referring to his nephew Sekar, which was mistaken by the deceased as referring to him.

12 In such perspective of the matter, the Trial Court had rightly acquitted the accused for the offence under Section 3(2)(v) of the SC/ST Act, whereas, Shankar (P.W.10), in his evidence, has stated that the accused had abused the deceased by his caste name and also slipped him. The specific case of the prosecution is that it was the deceased who slipped the accused and the accused followed it up by hurling a stone on the deceased resulting in the death of the deceased, whereas, the version of Shankar (P.W.10) is totally contrary to the substratum of the prosecution case and the charge framed against the accused. The contradictions in the evidence of Shankar (P.W.10), *vis-a-vis* the statement to the police under Section 161 Cr.P.C. has been assiduously put to the Investigating Officer and the contradictions have been established.

13 In such view of the matter, this Court is unable to place reliance upon the conflicting testimony of Shankar (P.W.10) for sustaining the conviction of the accused.

P.N. PRAKASH, J.

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In the result, this Criminal Appeal is allowed, the conviction and sentence imposed on the appellant/accused are set aside and the appellant/accused is acquitted of the charge under Section 304(ii) IPC. The fine amount paid by the appellant/accused shall be refunded to him. The bail bond, if any executed, shall stand discharged.

18.12.2017

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Index:No

Speaking Order/Non speaking order

To

1 The Deputy Superintendent of Police
Mamallapuram Division
Crime No.306 of 2007
Sadras Police Station
Kancheepuram District

2 The Principal Sessions Judge
Kancheepuram District
Chengalpattu

3 The Public Prosecutor
Madras High Court
Chennai 600 104

Crl. Appeal No.9 of 2016