

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.02.2017

DELIVERED ON : 09.10.2018

CORAM

THE HONOURABLE MR. JUSTICE S.BASKARAN

Criminal Appeal No.619 of 2010

Shanmugam

Vs.

... Appellant / Accused

State rep. by
The Inspector of Police,
Tiruvarur Police Station,
Tiruvarur District
Crime No.486 of 2008

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 Cr.P.C., seeking to set aside the conviction and sentence made in S.C.No.70 of 2009 dated 30.09.2010 on the file of District and Sessions Court, Tiruvarur.

For Appellant : Mr. D.Veerasekaran

For Respondent : Mr.E.Raja, Additional Public Prosecutor

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JUDGMENT

The above Criminal Appeal is filed u/s 374 of Cr.P.C.1973 against the judgment of conviction and sentence made in Sessions Case No.70 of 2009. Dated 30-09-2010 on the file of District and Sessions Judge, Tiruvarur.

IPC to undergo 3 months rigorous imprisonment for the offence U/s 324 of IPC and imposed a fine of Rs.500 i/d to undergo one month Simple imprisonment and also sentenced to undergo rigorous imprisonment for 10 years for the offence U/s 304(II) of IPC and imposed a fine of Rs.1000/- i/d to undergo six months Simple imprisonment. Aggrieved by the said conviction and sentence, this appeal has been filed by the appellant. Now, it is to be seen whether the appeal is to be entertained.

2. Prosecution Case in brief:-

The Accused Shanmugam is the brother of PW-1's husband. The deceased is the daughter of PW.1 and his father in law and mother in law had Nanja and Punja lands at Samanthanpalayam village, Thiruvarur Taluk. It is an undivided property. Without consent of PW-1's husband the accused was constructing a storage building in the plot of PW1's mother in law. The accused very often insisted the PW1's husband to execute a deed in favour of him. Since the PW1's husband continuously refused to execute a deed, there was enmity between the accused and the PW1's family.

(b). On 02.08-2008 at about 6.30 am PW-1 and her daughter Indira the deceased were talking in front of their house, at that time the accused came there and asked about PW-1's husband, making allegation against PW1's husband regarding non-execution of deed in favour of him and also abused in filthy language. Agitated over the same, PW-1 replied

that her husband will not execute any document in favour of the accused and also asked the accused to give due respect to her husband. Enraged by that the accused took a wooden log lying nearby and beat P.W.1 on the head, left shoulder and left leg and also unleashed words of threat with dire consequences to the life of PW-1. Further the accused beat on the head of PW-1's daughter while she tried to prevent the attack and she fell down unconscious. The same was witnessed by PW1's husband Pasupathy and her son PW-2 Vasudevan and others. Immediately PW1 and her daughter were brought to Government Hospital, Tiruvarur. Thereafter PW-1 was treated as outpatient and after giving first aid to PW1's daughter, she was shifted to Government Medical College Hospital, Thanjavur for further treatment and thereafter she was shifted to the Vinodagan Hospital, Thanjavur for better treatment.

c) On receipt of message from GH, Thiruvarur the Head Constable PW-5, went to Vinodagan Hospital at Thanjavur and recorded the statement of PW-1 and registered a case in Cr.No.486 of 2008 for the offence U/s 294(b), 324 and 307 of IPC.

d) On 03-08-2008 evening PW-1's daughter Indira died at Vinodagan Hospital, Thanjavur. Thereafter, the Inspector of Police altered the section to 294(b), 307 and 302 of IPC. After investigation, final report was laid by the Inspector of Police.

3. The trial court framed charges for the offences u/s 307 and 302 IPC as against the accused. During trial, on the side of Prosecution, PW1 to PW 9 were examined, Ex.P1 to P 14 and M.O.1 & M.O.2 were marked. On the side of appellant DW.1 and DW2 were examined and Ex.D1 was marked. When the accused was examined under section 313 of Cr.P.C, the accused filed detailed written reply along with documents and denied his complicity in the crime. After completion of trial, the learned District Judge found that the Accused was guilty of the offences u/s 304 (Part-II) and 324 I.P.C and sentenced him to undergo 3 months rigorous imprisonment for the offence U/s 324 of IPC and imposed a fine of Rs.500 i/d to undergo one month Simple imprisonment and also sentenced to undergo rigorous imprisonment for 10 years for the offence U/s 304(II) of IPC and imposed a fine of Rs.1000/- i/d to undergo six months Simple imprisonment. The Accused was not found guilty under Section 294(b), 307 and 302 of IPC. As against the judgment, this appeal has been preferred by the accused/convict.

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4. The learned Counsel for the Appellant submits that the Lower Court has not properly appreciated the evidence of PW.1 and PW-2 who are the mother and brother of the deceased Indira, who are the eye witnesses to the alleged occurrence. Further he argued that no independent witness was examined even though the alleged occurrence

was witnessed by the public. Further the prosecution has not explained the injuries sustained by the accused which is clearly established by the defense witnesses DW1, DW2 and document marked as Ex.D1. It is further argued that the prosecution has not examined PW1's husband Bagavathy and also Arivazhagan Illangovan and Ganesan who are said to be the eye witnesses to the occurrence. The documents submitted along with the written reply to the 313 Cr.P.C., questioning would disprove the alleged motive established by the prosecution and also the above documents are in support of the defense. Thus it is prayed for acquittal of the appellant.

5. Per contra, the learned Additional Public Prosecutor would submit that even though PW-1 and 2 are close relatives; because of their close relationship, their evidence cannot be eschewed but the veracity and genuineness of the evidence given by the said witnesses is to be taken into consideration. In this case, though PW-1 sustained injuries and complaint was registered immediately, the documentary evidence of ExP.11 to P.14 and the oral evidence of PW 7 to 9 would corroborate the evidence of PW1 and PW2. Further the prosecution has clearly established the motive for occurrence. It is further argued that the cogent evidence of PW1 the injured, PW-2 the eye witness and other witnesses along with Ex.P1 to P14 would clinchingly prove the case of the prosecution. Further it is argued that the trial court had given its verdict

after the elaborate discussion and the appreciation of evidence and therefore there is no necessity to set-aside the trial court judgment and prayed to dismiss the appeal.

6. Point for consideration:-

Whether the judgment of conviction and sentence imposed by the trial court is legally sustainable:-

a) The accused/appellant herein is the brother of Complainant/P.W.1's husband. According to the Prosecution, 02.08.2008, at about 6.00 a.m., while P.W.1 and her daughter Indra were talking in front of the home, the husband of P.W.1 and their son P.W.2 Vasudevan were inside their house. At about 6.30 a.m., the accused came there, abused them and took out M.O.1 log, which was lying nearby and assaulted P.W.1 on her head, left shoulder and left neck. When the deceased Indra tried to intervene and prevent the accused from assaulting her mother, the accused gave one blow on the head of the deceased and the deceased fell down unconscious with bleeding injuries. On hearing the noise, the husband of P.W.1 and their son P.W.2 came out from the home. Likewise, Arivalagan, Ilangovan and Ganesan also came to the spot. On seeing them, the accused ran away leaving behind M.O.1 Wooden log near the community hall. Thereafter, P.W.1 and Indra were taken in an Auto to Tiruvarur G.H., by P.W.1's husband Bagavathy.

(b). The doctor who deposed as P.W.7 stated that on 02.08.2008 while he was on duty at Thiruvavarur Medical College Hospital, at about 8.45 a.m., one Indra was brought by her father and she was unconscious. P.W.7 stated that he found blood clot in the left side of the head and the certificate issued by him is Ex.P.11. He also stated that he recommended further treatment at Tanjore Medical College Hospital. Likewise, on the same day, at 9.00 a.m., one IllaraJothi aged 40 years came for treatment. On examination, he found a lacerated injury on her head and the Accident Register copy issued by him is Ex.P.12. She was treated as outpatient.

(c) The other doctor who deposed as P.W.8 stated that on 02.08.2008 while he was on duty in Tanjore Medical College Hospital, at about 11.05 a.m., one Indra was brought by her father and she was unconscious. She was admitted as inpatient and the certificate issued by him is Ex.P.13.

(d) The injured Indra was subsequently shifted to a Private Hospital at Tanjore and the doctor who treated her in the said Private Hospital deposed as P.W.9 and stated that on 02.08.2008 at about 2.55 p.m., one Indra was brought for treatment and she was found unconscious and also found injury on her head and the certificate issued

by him is Ex.P.14. Inspite of treatment, the said Indra died at 5.50 p.m., on 03.08.2008 and the certificate issued by P.W.9 to that effect is produced as Ex.P.10. Thereafter the body of the deceased was taken to Tanjore G.H., where Post Mortem was conducted by P.W.4 Dr.Senthil Kumar. According to him, the death would have caused due to overbleeding caused by the head injury. The Post Mortem report is produced as Ex.P.4. Further P.W.4 Doctor opined that the injury found on the head of the deceased could have been caused if she was assaulted with wooden log like M.O.1. Thus, the prosecution case is that the victim was assaulted by the accused with M.O.1 Wooden log causing her head injury resulting in her death. The same is disputed and denied by the accused. The conclusion of the trial court that there is sufficient material on record to prove the guilt of the accused is challenged by the appellant before this court. Now it is to be seen whether the occurrence took place as alleged by the prosecution.

(e) In respect of motive, PW1 and PW-2 deposed that Bagavathi who is PW-1's husband and father of P.W.2 refused to execute a deed and give consent to transfer patta in favour of the appellant/accused; with regard to joint family property, enmity existed between the appellant/accused and his brother Bagavathi family. The same was denied by the appellant/accused. During cross examination of PW.1 she categorically deposed and admitted that the appellant/accused is living in

the disputed plot for the past 25 years and also deposed that she do not know whether the patta for the said property stands in the name of appellant/accused. Further she deposed that they have not filed any case as against the appellant/accused with regard to the disputed plot. Apart from that she has deposed that there is good relationship between their family and appellant/accused's family and furthermore she deposed the appellant/accused alone has arranged for teacher post for her daughter/deceased. PW-2 who is the son of P.W.1 and brother of the deceased also deposed that he does not know the survey number of the disputed plot and stated that there was no dispute between the appellant/accused and his family prior to the occurrence.

7. The case of the defense is that the certificates of Indira (deceased) is with appellant and PW-2 demanded the certificate from the appellant/accused with an intention to get better appointment for his sister/deceased since the appellant/accused's daughter is getting more salary than Indira's salary. However, the appellant/accused refused to give the certificates of Indira to the PW-2. Aggrieved by that the said PW-2 has beaten on the head of the appellant with a wooden log near the road at Samanthapalayam. At that time PW1 and her daughter Indira/deceased came and tried to prevent PW-2 from attacking the appellant/accused. At the time of such intervention, PW-1 and her daughter/deceased also sustained head injury caused by PW-2. Since

Indira died only due to the attack by PW-2 and in order to help and save PW-2, a false complaint is created by the Investigating officer, by obtaining signature from PW-1. It is contended by the appellant that he has not committed any offence as alleged by the prosecution.

8. The documents submitted along with written reply to the 313 Cr.P.C., questioning reveals that the disputed land stands in the name of the appellant/accused; apart from that he submitted all the certificates of deceased Indira; that would substantiate the case of the defense. On the other hand, the prosecution failed to establish the motive for the offence committed by the appellant/accused, as no relevant document was submitted or evidence adduced by the prosecution. On the other hand, both the evidence of PW1 and PW 2 would reveal that there was no previous enmity or dispute existed between the appellant/accused and the family of the deceased. Further P.W.6 Investigating Officer of the case stated that there was land dispute between the accused and deceased family and he came to know about the same on enquiry. However, P.W.6 stated that he has not ascertained from Revenue Department as to in whose name Patta stands and who is in possession and enjoyment of the property. P.W.6 also stated that he has not taken steps to examine other brothers or relatives of P.W.1's husband about the ownership and possession of the Property. Thus, it is clear that the prosecution has not come forward with acceptable evidence

to show that there was dispute existing between the family of the deceased and the accused regarding a particular piece of land. Therefore it is apparent that the alleged motive is not proved by the prosecution beyond reasonable doubt.

9. On perusal of records, it is found that during the occurrence, the appellant/accused also sustained head injury. Immediately he was given medical treatment at G.H.Thiruvarur. PW-7/DW.1 Dr.Ansari deposed that Ex.P11 and P12 are the AR copy of the deceased Indira and PW-1 dated 02-08-2008. The serial number of the Exhibits are 1117 and 1119. In between the serial number 1118 is the AR copy of the appellant/accused which is marked as Ex.D1. PW-7 Dr.Ansari deposed that on 02-08-2008 at 8.15 am the appellant/accused came for treatment. On enquiry, the accused stated that he was attacked by 3 known persons at Samanthapalayam on the same day at 6.30 pm and on examination, he found a lacerated injury on the frontal region of the appellant hand to an extent of 3 x ½ cm. The above oral evidence and contents of Ex.D1 would reveal that during the occurrence the appellant/accused also sustained head injury. It is also evident from the defence evidence that the appellant/accused was seen in Thiruvarur Town police station on the same day with head injury by DW-2. D.W.2 has stated that he was informed by one Ramalingam at about 11 am., on 18th of Tamil Month Aadi 2008, that the accused Shanmugam was injured

and admitted in Tiruvarur G.H. When he went there, he was informed that Shanmugam was taken to Tiruvarur Police Station. At about 11.30 a.m, he went to Tiruvarur Police Station and he found accused Shanmugam was sitting with bandage in his head. According to him, he was there at Police Station till 04.08.2008 night. Thus, D.W.2 evidence corroborates the version given by D.W.1 doctor who was initially examined on the side of Prosecution as P.W.7. PW-6 Inspector of Police also admits that appellant/accused also sustained injury on the date of occurrence and he has also took treatment at GH Tiruvarur. P.W.6 admits that he has not produced the AR copy of the accused in this case. The doctor who deposed as D.W.1 produced the A.R.Copy issued by him to the accused as Ex.D.1. Therefore it is found that the prosecution has purposely suppressed the injury sustained by the appellant/accused during the occurrence. Pointing it out, the learned counsel for the Appellant contended that the failure on the part of the prosecution to explain the injury suffered by the accused is fatal to the case of the prosecution. The said contention is appropriate and the same is to be accepted.

10. The further contention of the Defence is that the case of the Prosecution as to when complaint was lodged is itself doubtful. It is pointed out that the complainant who deposed as PW-1 in her cross examination admitted that Ex.P1 complaint shown to her was not given

by her. Ex.P.5 is the FIR and it reveals that the complaint Ex.P.1 was recorded at 19.00 hours on 2-8-2008. However, PW.1 deposed that she gave complaint at about 4.00 pm. The above evidence would support the case of the defense. Therefore doubt arises as to whether really Ex.P1 is the original complaint given by PW.1. As such, it is clear that prosecution has not come forward with clear and acceptable evidence as to when the First Information was received by the Police. Further, husband and son of complainant/P.W.1 were all along present, but they have not taken any step to lodge any complaint with the Police. That also cast doubt as to when really the complaint was lodged and by whom?

11. As per the prosecution case, PW-2, his father Bagavathy, as well Vasudevan, Arivalagan, Elangovan and Ganesan are the eye witnesses of the occurrence. Out of the six eye witnesses, Arivalagan, Elangovan and Ganesan are the independent eye witnesses and they are residing nearby the scene of occurrence. Bagavathy is the husband of PW1 and father of deceased and PW-2. He is one of the important witnesses in the respect of alleged property dispute. However, the prosecution failed to examine the said vital witness Bagavathy as well as the other independent witnesses. The Prosecution has not come forward with any explanation for non examination of those persons particularly Bagavathi, father of the victim. Their non-examination casts a shadow over the genuineness of Prosecution case.

12. PW-1 while deposing in chief examination has stated that on hearing the noise only PW-2 and her husband Bagavathy came from inside the house to the scene of occurrence. Further in the complaint also it is found that her(PW1) husband came out from the house and shouted, and thus the appellant ran away from the scene of occurrence. In Ex.P.1-complaint, nothing is found to show that the occurrence was witnessed by PW-2. Therefore it is apparent that PW-2 is not an eyewitness of the occurrence from the beginning. Further PW1 is the mother of the deceased and therefore she is an interested witness. Thus, apart from the interested evidence of P.W.1, the prosecution has not let in any independent evidence to substantiate the version of P.W.1. Further as stated earlier, P.W.2 evidence also creates doubt as to when really the accused was secured. Further, the Investigating Officer of the case who deposed as P.W.6 admitted in his cross examination that in the statement given to him, P.W.2 has stated after Indra fell down unconscious, her husband and son came out of the house. P.W.6 also stated that nothing was stated by P.W.1 in her statement about the accused assaulting the deceased after stating "You are also colluding with her father". Thus, it is apparent that there is no independent evidence let in by the Prosecution to substantiate the allegation against the accused. On that ground also, the conclusion of the trial court that the Prosecution proved the occurrence beyond reasonable doubt is

unsustainable.

13. In view of the discussion stated supra, doubt arises regarding the commission of offence by the appellant/accused. In the eye of law, benefit of doubt always goes in favour of the accused. In view of the circumstances stated above, it is clear that the prosecution has failed to prove its case beyond reasonable doubt and therefore it cannot be contended that the appellant/accused had committed the offence either U/s 324 or U/s 304(II) of IPC. Without considering the above facts, the trial court wrongly came to the conclusion that the appellant/accused has committed the offence as alleged by the prosecution.

14. Considering the above facts and the discussion made in the foregoing paragraphs, this court is of the considered opinion that the defense version cannot be said to be wholly improbable and unacceptable and all the circumstances put together would only lead to an irresistible conclusion that those circumstances are compatible with the innocence of the Appellant. Further the trial court though has not framed charge for the offence U/s 294(b) IPC, finding is given that the accused is found not guilty U/s 294(b) and acquitted him. Further the trial court has framed charges U/s 307 and 302 IPC only and found that the accused is not guilty of the said offences, but found the accused guilty and convicted the accused U/s 324 and 304(ii) IPC and the said finding is not in accordance

with law. For the reasons stated above, the impugned judgment of the Trial Court calls for interference by this Court and the appeal is liable to be allowed.

15. In the result, the Criminal Appeal is allowed. The impugned judgment of conviction and sentence imposed on the Appellant dated 30-09-2010 passed by the Sessions Court, Tiruvarur, in Sessions Case No.70 of 2009 is set aside. The Appellant/accused is acquitted of all the charges leveled against him and finding given by the trial court are set aside. Bail bond, if any, executed by him shall stand cancelled and the fine amount if any paid by him shall be refunded forthwith.

09.10.2018

Index:Yes/No

Internet:Yes/No

nvsri

To

1.The District and Sessions Judge, Tiruvarur.

2. The Inspector of Police, Tiruvarur Police Station, Tiruvarur District

3. The Section Officer, V.R.Section, High Court, Madras.

S.BASKARAN, J.

nvsri



Criminal Appeal No.619 of 2010

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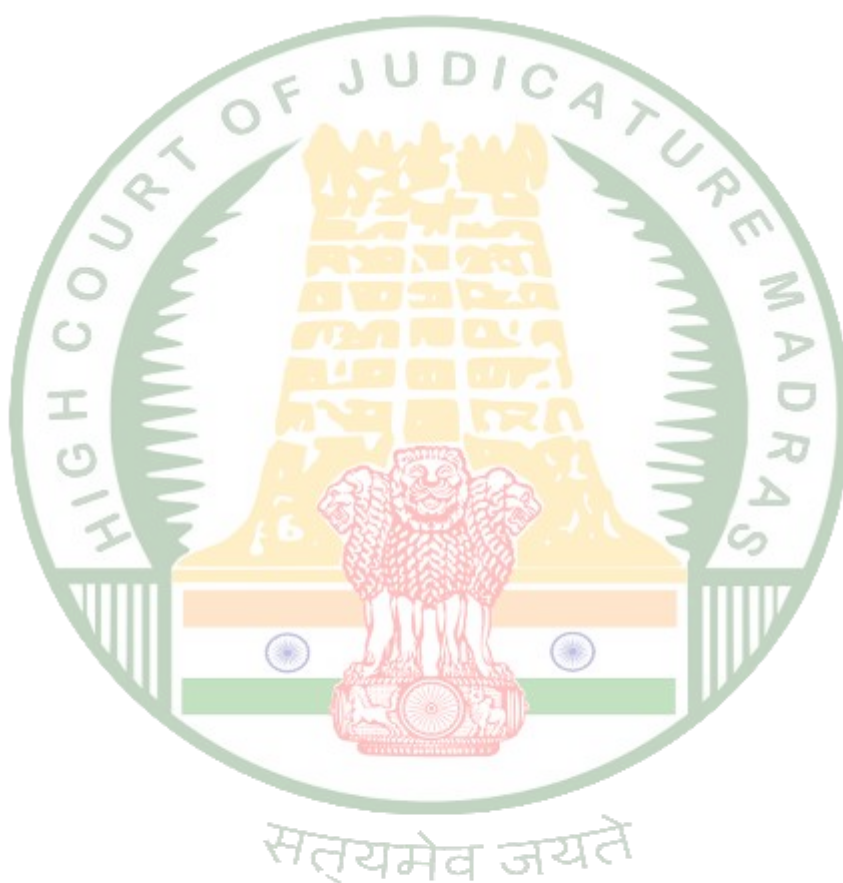
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