

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2018

CORAM:

THE HON'BLE MRS. JUSTICE S.VIMALA

AND

THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Criminal Appeal No.761 of 2017

Crl.M.P.No.1847 of 2018

Gunasekaran ... Appellant / Accused

versus

State, Rep. by,

The Inspector of Police,

Kadampuliyur Police Station,

Cuddalore District

(Cr. No.366 of 2016) ... Respondents

Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code against the judgment, dated 10.11.2017, made in S.C.No.124 of 2017 on the file of the learned Sessions Judge, District Mahila Court, Cuddalore.

For Appellant : Mr. S.Ashok Kumar, Sr. Counsel, for,

Mr. K.Gandhi Kumar

For Respondent : Mrs.Prabhavathi, APP.,

JUDGMENT

(Judgment of the Court was delivered by S.Vimala, J.,)

The conviction and sentence passed by the Mahila Court, Cuddalore, in S.C.No.124 of 2017 dated 10.11.2017, is under challenge in this Appeal.

2. The appellant belongs to Sathamampattu Village, Silambinathanpettai, Chidambaram Taluk, Tamil Nadu. There was previous enmity between this accused and one Dhanapathi (Banumathi's (P.W.1's) sister's husband). There was a complaint to the Police by Danapathi that the accused had caused damage to his vehicle, Tata Ace, by breaking the mirror. On account of that the accused is stated to have developed enmity. This incident was on 20.11.2016. Two days thereafter, i.e., on 22.11.2016, at about 01.00 pm, Banumathi (P.W.1) and her mother Dhanam, on the way to the land of Banumathi was crossing the house of Rasathi. At that point of time, the accused waylaid Banumathi and Dhanam and scolded Dhanam saying that if her life is finished, her son-in-law would withdraw the complaint and so saying, with an intention to commit murder, he caused beatings in the right hand by using log and when she fell down, he smashed the head by using rock stone.

3. The injured was taken to Cuddalore Government Hospital, from where she was referred to JIPMER Hospital, Puducherry. She was taken to the said hospital by his grandson, Muthukumar (P.W.2). The version before the Doctor was that she was hit by a known person around 12.30 pm. There was swelling in the right hand. There was cut injury to the extent of 2x1x1 cm in the left parietal region. There was inflammation over the right forehead. The accident register copy is Ex.P-5, which was issued by P.W.5-Dr.Jebica.

4. The complaint preferred by P.W.1 was received by P.W.8 Ganapathy, the Special Sub-Inspector of Police and a case was registered in Kaadampuliyur Police Station in Cr.No.366 of 2016 under Sections 341, 294(b), 324, 336 and 506 (i) IPC. The printed FIR is Ex.P-8. It was entrusted to P.W.9-Harikrishnan, Sub-Inspector of Police, for further investigation.

5. P.W.9 on the next day, in the early morning, visited the place of occurrence and prepared the observation mahazar and sketch, Exs.P-2 and P-9, respectively. After examining the witnesses, he went to Puducherry, to record the statement of Dhanam and as she was unconscious, no statement could be recorded. She died later. On account of the death, the Sections of the case were altered (Ex.P-10) into one under Sections 341, 294(b), 324, 336 and 302 IPC.

6. The further investigation was continued by Venkatesan, Inspector of Police (P.W.10). He arranged for the inquest of the deceased and the inquest report is Ex.P-11. Then, the body was sent for postmortem and the postmortem report is Ex.P-7. The toxicology report under Ex.P-6 ruled out that the death on account of poisoning. Then, he took the accused into the police custody and thereafter he arrested the accused on 02.12.2016 in the presence of Michael Raj, Village Administrative Officer (P.W.4) and Assistant Rajaboopathy. While arresting the accused, the accused gave a confession and the admissible portion of the confession is Ex.P-3. He recovered rock stone-M.O.1 and log-M.O.2. After completing the investigation, he laid the final report against the accused.

7. The prosecution has examined ten witnesses, marked 11 documents and exhibited two material objects.

8. When the incriminating circumstances which appeared against the accused were put to him, he has denied the same.

9. The trial court has found the accused guilty under Sections 341 and 302 IPC and for the major offence, life imprisonment has been imposed.

10. The appellant / accused has preferred this appeal, challenging the conviction and sentence.

11. The first contention of the learned counsel appearing for the appellant / accused is that the entire prosecution case is fabricated against this accused; the delay in lodging the complaint and the delay in dispatching the FIR to the Court would speak about the efforts made by the prosecution witnesses to implicate the accused and therefore, the judgment of the trial court is liable to be set-aside. It is pointed out that the occurrence was on 22.11.2016 at about 01.00 pm. The complaint has been lodged only on 23.11.2016 at about 09.30 pm. The complaint has been sent to the Court on 25.11.2016.

11.1. The second contention is that there is discrepancy between ocular evidence and medical evidence with regard to nature of injuries sustained and this is not explained by the prosecution. According to doctor, the injury on the left side of the head was 2x1x1 cm, cut injury. But, if really, the deceased had suffered head injury on account of hitting by stone, the injury ought to have been a crush injury and it could not have been a cut injury.

11.2. The witnesses examined namely P.W.1 is the daughter of the deceased and P.W.2 is the grandson of the deceased. Apart from both of them, no independent witnesses were examined by the trial court, even though the occurrence was in the day time. The non-examining of the independent witnesses, Rasathi and Selvamani, is a fatal to the prosecution case.

11.3. It is the contention of the learned counsel appearing for the appellant / accused that the evidence of close relatives ought not to have been accepted by the trial court. Just because, the witnesses are relatives, it cannot be thrown away but it requires closer scrutiny.

11.4. The evidence of the daughter, grandson and son-in-law alone are relied upon by the trial court, who are all the close relatives of the deceased. It is pointed out that the motive for the occurrence is not proved. Even according to the prosecution, the accused caused damage to the Tata Ace car belonging to P.W.7 and when the dispute is between P.W.7 and the accused, there is no necessity for him to cause the murder of the deceased. Dhanam is the contention raised on behalf of the appellant / accused.

12. These contentions have to be accepted, in the absence of any reasonable explanation on the part of the prosecution.

13. The deceased had three daughters, by name, Yashodai, Banumathi (P.W.1) and Vijaya and two sons, by name, Pattusamy and Chandrasekaran. The accused Gunasekaran is the son of Pattusamy. Vijaya's husband is Dhanapathy (P.W.7). According to the prosecution, there had been a dispute between P.W.7 Dhanapathy and the father of the accused Pattusamy in respect of watering of the agricultural land. As an outcome of it, the accused had broken the glasses in the Tata Ace Car belonging to Dhanapathy (P.W.7), just two days prior to the occurrence. This, according to the prosecution, is the motive for the occurrence.

14. On 22.11.2016 at about 01.00 pm, when the deceased along with P.W.1 was going to the land, the accused intercepted when they were nearing the house of Rasathi and caused injuries to the deceased. While beating, allegedly, the accused was saying that only if the deceased dies, her son-in-law (P.W.7) would withdraw the case and so saying, he hit the deceased over the head by using a stone.

15. Whether this part of the allegation stands proved by the evidence of the prosecution witnesses is the issue to be considered.

16. During the cross examination of P.W.1-Banumathi it has been elicited that the accused was giving water on rental basis to P.W.7 and there was rental arrears between the accused and P.W.7. The father of the accused allegedly was not giving any Seervarisai to his sisters. These are the motives established in the cross-examination and vaguely spoken to in the chief-examination. The motive alleged is one thing and the motive established is something else. If there is convincing evidence with regard to occurrence, even the non-proof of the motive can be discarded and therefore, the question is whether the occurrence is established through evidence.

16.1. The previous enmity especially between the relatives is a double edged weapon. May be on account of previous enmity the relatives may foist a case against the accused or conversely on account of previous enmity the accused might have done the criminal act as alleged by the prosecution.

17. The burden of proof is always on the prosecution to establish the case beyond all reasonable doubts.

17.1. As contended by the learned counsel appearing for the defence, no independent witnesses are examined. The witnesses examined are the daughter of the deceased, P.W.1, grandson-P.W.2 and son-in-law-P.W.7. The deceased was admitted in the hospital at the earliest point of time by P.W.2-Muthukumar, the grandson. The version by him before the Doctor was that the deceased was attacked by one known person, by using stone (ammikkal) on 22.11.2016 at about 12.30 pm at her residence. The specific description of the stone is that it is an ammikkal. The place of occurrence specifically is the residence of the deceased. But, in the evidence, the place of occurrence is shifted to the street, i.e., in the front of house of one Rasathi. The stone is described as rock stone. The stone recovered is stated to be M.O.1 weighing about 3.700 kgs.

18. According to the prosecution, this was hidden by the accused and this was discovered from his confession. There is no evidence that whether the stone was with blood stains or not. Obviously from the description what is produced before the Court is rock stone and not ammikkal. According to the prosecution, when the deceased fell down unable to bear the injury caused by the log and after having fallen down, the accused had thrown the stone at her face leading to the head injury. In that case, the fall of 3.700 kgs. stone would have certainly caused crush injury and not lacerated injury to the extent of 2x1x1 cm, cut injury. Being an agriculturist, certainly the witness-P.W.2 must be knowing the description regarding ammikkal. When the occurrence as per prosecution is in the middle of the street at 01.00 pm, from where the accused got ammikkal is the reasonable doubt created in the evidence. Therefore, the occurrence might have taken place inside the house if the theory regarding weapon (ammikkal) is true. But why there was a deliberate shift of place of occurrence from the house to the street and why there is a mis-description in the weapon used, namely, ammikkal to rock stone, is not explained by the prosecution. This non-explanation assumes importance in the light of the non-examination of the independent witnesses.

19. When the place of occurrence indicates the possibility of getting too many independent witnesses and none of them are examined and the witnesses who are relatives, who are having previous enmity and when the evidence is tainted with irreconcilable contradictions, then naturally, the manner of occurrence, as alleged by the prosecution, is highly doubtful.

Origin for the occurrence:

20. It is stated that when P.W.1 and the deceased were going along in the street the accused intercepted and caused injuries to the deceased. What was the origin for the occurrence? Even though previous enmity is alleged, even that enmity should have an origin during the occurrence. The special characteristics for the human being is the ability to speak. When the communication is possible through speaking, there must have been some altercations between the deceased and the accused. Strangely, it is not explained in what way the deceased was responsible for P.W.7 not withdrawing his complaint regarding breakage of glass in the car. It is not explained in what way the deceased was responsible for the water problem between the accused and other relatives. What was the stand of the deceased on those issues? Whether she was guiding, advising, dictating or compelling the sons and grandsons to act in a particular way? Whether it was reasonable or unreasonable? Whether it was liked or not liked? Whether it was understood or not-understood? Whether it was acceptable or not acceptable? There is absolute silence on these questions. The nature of the dispute, the extent of the dispute and the nature of the solution for the problem should have been talked about in-between the parties. If that is explained, the court would be in a position to find out who is the aggressor and who should have been the perpetrator of the occurrence.

21. Whether the conduct on the part of the accused was voluntary or involuntary? There is no explanation at all. For any act of the human being, there must be some reason behind it and in fact there should be a proximate cause for that. What exactly was the starting point at the time of occurrence. Clearly there is a silent in the complaint as well as in the evidence. The Court also has not elicited anything by invoking the power under Section 165 of the Indian Evidence Act by putting questions. But the trial court seems to have taken the role of umpire like the role played by the Investigating Officer. As the origin of the occurrence is suppressed, the Court is deprived of the opportunity of finding out whether the occurrence could have taken out, as spoken to by the prosecution.

22. We are left with the defence theory only. The case of the defence is that the elderly senior citizen, i.e., the deceased, out of health issues fell down at home and while falling down, accidentally, she might have been hit by the ammikkal. This possibility also cannot be ruled out because of the number of injuries and the nature of injuries which were found during postmortem.

The nature of injury should have been more serious if she had been hit by the stone, after falling down, on account of the force used by the human agency and it is not the case here.

23. The main contention of the learned counsel appearing for the accused is that, the so-called FIR produced before the Court is not the information, first in point of time and therefore it cannot be branded as FIR as it is in fact a statement recorded in the course of investigation, which is hit under Section 161 of the Cr.P.C., (therefore, admissible only for the purpose of contradiction and not for corroboration).

24. It is pointed out that when the injured / deceased had been taken to hospitals at Naduveerapattu and Cuddalore, the hospital would have sent intimation to the Police Station and based on which the FIR ought to have been registered and that report having been suppressed it raises a reasonable doubt about the authenticity of the prosecution case. This contention cannot be brushed aside especially in the light of delay in preferring the complaint as well as the delay in sending the FIR to the court.

25. Under the circumstances, when there are serious doubts and series of doubts in the prosecution case, it is unsafe to confirm the conviction which is inflicted upon the accused by the trial court.

26. In view of the foregoing reasonings, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant / accused by the learned Sessions Judge, District Mahila Court, Cuddalore, in S.C.No.124 of 2017, by the judgment, dated 10.11.2017, are hereby set-aside. The appellant / accused is acquitted of all the charges levelled against him. The accused is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to them. Bail bond, if any, shall stand discharged. Consequently, the connected Crl.M.P. is closed.

(S.V.J.) & (S.R.T.J.,)

05.10.2018

Index : yes / no

Web : yes / no

speaking order / non-speaking order

srk

To

1. Sessions Court, District Mahila Court, Cuddalore.
2. The Public Prosecutor, High Court, Madras.

S.VIMALA, J.,

AND

S.RAMATHILAGAM, J.,

srk

Pre-Delivery Judgment in
Criminal Appeal No.761 of 2017
Crl.M.P.No.1847 of 2018

05.10.2018

Advance Order
Criminal Appeal No.761 of 2017
Crl.M.P.No.1847 of 2018

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AND
S.RAMATHILAGAM, J.,

(Judgment delivered by S.Vimala, J.,)

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(S.V.J.,) & (S.R.T.J.,)

05.10.2018

srk

To

The Superintendent of Prisons,
Central Prison, Cuddalore.