

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.R.C.NO.1243 OF 2013

Pandian

... Revision Petitioner

Vs.

1.Ramesh
2.Ramanujam
3.Veerappan
4.Raja @ Rajasekaran
5.Krishnan @ Krishnasamy

6.The State rep. by
Inspector of Police,
Srimushnam Police Station,
Cuddalore District.

... Respondents

Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the judgment, dated 30.06.2004, passed by the Additional District and Sessions Judge, Fast Track Court No.III, Vridhachalam, in S.C.No.336 of 2003.

For Petitioner : No appearance

For R1 to R5 : Mr.G.Anabaya Chozhan

For R6 : Mr.R.Surya Prakash
Government Advocate (Crl. Side)

O R D E R

This Criminal Revision Case has been filed by Pandian, the de facto complainant in this case, through M/s.G.Pugazhenthithi & P.Nagaraju, Advocates, on 02.04.2005, challenging the acquittal of respondents 1 to 5 of the offence under Section 302 r/w. 149 IPC, and for enhancement of sentence qua the offences under Sections 294(b), 324, 148 and 506(ii) IPC.

2.For the sake of convenience, the respondents 1 to 5 will be referred to as accused.

3.It is the case of the prosecution that, due to previous enmity, the respondents 1 to 5 (accused) formed themselves into an unlawful assembly on 23.05.2001, around 07.00 a.m., and attacked Pandian (P.W.1), while he was proceeding to his farm, chased him into his house, assaulted him, his two brothers (P.Ws.2 and 3), his mother and his wife Kasthuri. On these allegations, a written complaint (Ex.P1) was given, based on which, the police registered a case in Crime No.199 of 2001 for the offences under Sections 147, 148, 341, 448, 294(b), 324, 323, 427 and 506(ii) IPC. The injured were taken to the Government Hospital, Vridhachalam, where they were examined by Dr.Subramanian (P.W.9). On 07.06.2001, around 01.45 p.m., Kasthuri died and therefore, the case was altered to one under Section 174 Cr.P.C. and thereafter, Section 302 IPC was added.

4.After completing the investigation, the police filed a final report in P.R.C.No.6 of 2003 before the Judicial Magistrate No.2, Vridhachalam, for the offences under Sections 147, 148, 294(b), 449, 427, 323, 324, 506(ii) and 302 IPC r/w. 149 IPC, against the accused. The case was committed to the Court of Session in S.C.No.336 of 2003 and was tried by the Additional District and Sessions Judge, Fast Track Court No.III, Vridhachalam.

5.The trial Court framed charges for the aforesaid offences against the accused. When questioned, the accused pleaded 'not guilty'.

6.To prove the case, the prosecution examined 15 witnesses and marked 16 Exhibits.

7.When the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. No witness was examined nor any document marked on the side of the accused.

8.After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 30.06.2004, in S.C.No.336 of 2003, acquitted all the accused of the charge under Section 302 r/w. 149 IPC, but convicted them of the offences under Sections 294(b), 324, 148 and 506(ii) IPC. The trial Court sentenced them to pay fine for the said offences.

9.Aggrieved by the acquittal of the accused of the offence under Section 302 IPC and dissatisfied with the quantum of punishment that was imposed on them by the trial Court qua convicted offences, Pandian (P.W.1) has filed the present Criminal Revision Case.

10. On 10.10.2018, the counsel for the revision petitioner withdrew his appearance and therefore, this Court directed the Registry to print the name of Pandian (petitioner) in the cause list. Thereafter, the matter was listed before this Court on various dates, but none represented Pandian. Today also, the name of Pandian is printed in the cause list, but, none appears for him. However, learned Government Advocate (Crl. Side) and learned counsel for the accused are present. Mr. R. Shankar, Sub-Inspector of Police, Srimushnam Police Station, is also present before this Court.

11. Once a revision case is admitted, this Court cannot dismiss the same for default and therefore, this Court perused the evidence on record, findings of the trial Court, and also heard the learned Government Advocate (Crl. Side) and the learned counsel for the accused.

12. The short question that falls for consideration is whether the acquittal of the accused of the offence under Section 302 r/w. 149 IPC with regard to the death of Kasthuri was improper.

13. A perusal of the complaint (Ex.P1) shows that, though Pandian (P.W.1) has mentioned about the assault amounted by the accused on him, his two brothers and his mother, there is absolutely no reference to the attack on his wife Kasthuri. Of course, that by itself cannot be said to be fatal, because F.I.R. is not an encyclopedia of the prosecution case.

14. Kasthuri was examined by Dr. Subramanian (P.W.9) at 04.45 p.m. on the date of occurrence. Dr. Subramanian (P.W.9), in his evidence, has stated that he did not find any injury on her, but she only complained of head ache and difficulty in bending her neck. In the copy of the Accident Register relating to Kasthuri (Ex.P8), her complaints are stated as under :

"1. head ache and difficulty in bending the neck;

2. back pain and pain on the left side hip"

She was treated as an out-patient and was discharged on the same day, whereas, the other injured were admitted in the hospital.

15. It appears that, long after the incident, Kasthuri was admitted in East Coast Hospital, Puducherry, from where, she was shifted to Government Hospital, Puducherry, on 06.06.2001, and was admitted in the Neuroscience Department at 11.00 a.m., where she was treated by Dr. Paranjothi (P.W.11). Dr. Paranjothi (P.W.11), in his evidence, has stated that, Kasthuri died of rheumatic arthritis and impairment in the heart valve, eventually causing stoppage of blood circulation to the right

side of her brain. In the cross-examination, he has stated that Kasthuri was shifted from a private hospital to the Government Hospital, Puducherry, and that was not a medico legal case.

16.The prosecution failed to produce any record to show the circumstances, under which, Kasthuri took treatment in East Coast Hospital at Puducherry. The incident in question took place on 23.05.2001 and when Kasthuri was examined by Dr.Subramanian (P.W.9) on the same day at the Government Hospital, Vridhachalam, he (P.W.9) did not find any injury on her body and she only complained of headache and pain. She was treated as an out-patient and was discharged on the same day. It is not known what had transpired between 23.05.2001 and 06.06.2001 when she was examined by Dr.Paranjothi (P.W.11) at Government Hospital, Puducherry. However, Dr.Illavarasan (P.W.12), who performed autopsy on the body of Kasthuri, has stated that, Kasthuri died due to subdural hemorrhage in the right side of the brain and also due to a depressed injury.

17.It may be apposite to extract the discussion and findings arrived at by the trial Court for acquitting the accused of the offence under Section 302 r/w. 149 IPC.

"...Dr.Paranjothi examined as P.W.11 has clearly stated that Kasthuri was not admitted to Government Hospital Pondicherry where he is working as Neuro Physician with reference to any Medico Legal case registered by any Police Station and the said Kasthuri died of rheumatic arthritis and impairment in the heart valve eventually causing stoppage of blood circulation to righthand side brain resulting in the death of Kasthuri. The death Certificate furnished by P.W.11 has been marked as Ex.P9. But P.W.12 namely Dr.Illavarasan who conducted postmortem on the dead body of Kasthuri has stated in his evidence that Kasthuri died due to subdural hemorrhage in the right hand side of the brain and also due to depressed injury in the brain and hemorrhage. The postmortem report furnished by P.W.12 has been marked as Ex.P10. The cause of death one stated by P.W.12 does not correlate with the cause of death ascertained by P.W.11. One Doctor who is neurologist by profession has stated in his evidence that Kasthuri died due to rheumatic heart disease and consequent stoppage of blood circulation to right hand side of the brain. Another doctor who conducted postmortem on the dead body of Kasthuri has attributed altogether a different reason for the death of Kasthuri. The evidence of P.W.12 almost coincides with the case of prosecution

that accused persons 1 and 3 assaulted on the head of Kasthuri and 2 or 3 days after the case occurrence Kasthuri complained of head-ache and Kasthuri was treated at Cuddalore Government Hospital Pondicherry Private Hospital and Pondicherry Government Hospital. As the cause of death of Kasthuri ascertained by P.W.11 and P.W.12 do not coincide with each other there arises 2 possibilities one favouring the accused persons and another one favouring the prosecution. If 2 views as stated above arise in a murder case the view favourable to accused must alone be taken into consideration is the settled position of law. Hence, benefit of doubt is given in favour of accused persons 1 and 3 and accordingly accused persons 1 and 3 deserve acquittal of the offence punishable under Section 302 IPC and similarly all the accused persons deserve acquittal of the offence punishable under Section 302 r/w.149 IPC."

18.In Arulvelu v. State [(2009) 10 SCC 206], the Hon'ble Supreme Court has held that, in an appeal against acquittal, when two views are possible, the one which favours the accused should merit consideration. In a revision case against acquittal, this Court cannot re-appreciate the evidence like an Appellate Court. In such view of the matter, the reasons given by the trial Court for acquitting the accused of the offence under Section 302 r/w. 149 IPC cannot be said to be perverse, warranting interference. Similarly, the quantum of punishment imposed by the trial Court on the accused for the convicted offences cannot be said to be insufficient in the facts and circumstances of the case at hand. It is not the case of the prosecution that the accused had used knives or other sharp weapons to attack P.Ws.1 to 3. The injuries suffered by P.Ws.1 to 3 are simple in nature.

As a result, this Criminal Revision Case is devoid of merits and stands dismissed and the judgment of the trial Court is confirmed.

Sd/-

Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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Copy to :

1. The Additional District and Sessions Judge,
Fast Track Court No.III,
Vridhachalam.
2. The Inspector of Police,
Srimushnam Police Station,
Cuddalore District.
3. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.1243 of 2013

BS (CO)
CS/02/03/2020