

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31/07/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.322 OF 1996

1. Raju
2. Thangavelu @ Kitchan
3. Chinnu .. Appellants

Vs.

State

by Inspector of Police

Thathaiyengarpettai

Pulivalam Police Station .. Respondent

This criminal appeal is preferred under Section 374 of Cr.P.C.
against the judgment of the learned I Additional Sessions Judge,
Tiruchirapalli made in SC No.187 of 1995 dated 29.3.1996.

! For Appellants : Ms. J. Juliet Pushpa
for Mr.K.N. Basha

^ For Respondent : Mr.O.Srinath,
Govt. Advocate (Crl. Side)

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:JUDGMENT

The appellants/accused Nos.1 to 3, who stood charged and tried for the offences under Section 302 IPC for A1 and Section 302 r/w 109 & 34 IPC for A2 and A3 and under Section 342 IPC against all the accused, and A1 to A3 were found guilty under Sections 342 and 304(2) and sentenced to undergo RI for one year each under Section 342 IPC and sentenced to undergo RI for four years each under Section 304(2) IPC, have brought forth this appeal.

2. The short facts necessary for the disposal of this appeal can be stated as follows:

a) P.W.1 Rajagopal is a resident of Maniyampatti and his father is a cousin of the deceased Mani @ Perumal. All the accused belonged to the same place. The first accused was doing the job of selling illicit liquor. The deceased, who initially worked in a tea shop, was working under A1 during the relevant period. The deceased was not married. b) On 13.1.1995, the deceased went through the resident of A1

at about 6.00 p.m. At that time, he found that there was heavy rush in front of the resident of A1. The first accused beat the deceased with sticks complaining that the deceased took away the amount of Rs.600/- from the pocket of A1. The remaining accused were also attacking the deceased. Then, they tied the deceased in Vadanarayana tree and beat him with sticks and the deceased fell unconscious. On seeing the deceased unconscious, the accused removed the deceased from the tree and poured some water on his face. They took him to the resident of the first accused and found him dead. Later the deceased body was covered with cloth and all the accused escaped from the place. The said occurrence was witnessed by P.Ws.1 to 3. P.W.1 has given a complaint under Ex.P.1 before P.W.4 Village Administrative Officer at 9.00 p.m. and the same was sent to the Police Station through Headman of the village. P.W.9 Sebasthian Head Constable attached to the Pulivalam Police Station received the said complaint on 13.1.1995 at about 11.00 p.m. On the strength of which, he registered a case in Crime No.3 of 1995 under Section 302 IPC. Express F.I.R. under Ex.P.11 was despatched to the concerned court. The copy of the same was forwarded to the Superior officers.

c) P.W.10 Inspector of Police on receipt of wireless message went to the Pulivalam Police Station and got a copy of F.I.R. He took up investigation, proceeded to the site of occurrence at 2.00 a.m. along with Head Constable No.306. On 14.1.1995 at 6.30 a.m. he made inspection on the site of occurrence and prepared observation mahazar in the presence of witnesses, which was marked as Ex.P.3 and rough sketch Ex.P.12. He conducted inquest on the dead body in the presence of the witnesses and prepared inquest report under Ex.P.13. He examined the witnesses and recorded their statements. The dead body was sent to Government Hospital, Thuraiyur for post-mortem. On 14.1.1995 on receipt of requisition, P.W.8 Dr.Kannabai conducted autopsy and has issued Ex.P.10 post-mortem certificate. He opined that the deceased would appear to have died of shock and haemorrhage due to injury to vital organ liver and right kidney ruptures about 20 to 22 hours prior to autopsy. On 15.1.1995, the Investigating Officer went to Maniyampatti, examined the other witnesses and recorded their statements. On information, he proceeded to Kannanur and arrested accused No.1 Raju and Chinnu. A1 gave confessional statement in the presence of the witnesses and the admissible portion of the confessional statement was marked as Ex.P.14. M.Os.1 to 3 were recovered pursuant to the confessional statement. The accused were produced before the Court and remanded to judicial custody. He examined both Pws.5 and 6 Head Constables and recorded their statements. On 18.1.1995, A2 surrendered before the learned Judicial Magistrate, Musiri. On 23.1.1995, the Investigating Officer obtained post-mortem certificate and examined P.W.8 Doctor. He also examined the photographer and obtained the statement. On completion of the investigation, he laid a charge sheet against the accused under Section 342 and 302 IPC.

3. In order to prove the charges levelled against the accused, the prosecution examined 10 witnesses and marked 14 exhibits and 3 M.Os. The accused were questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution

witnesses, which they flatly denied as false. No defence witnesses were examined. The trial court, on consideration of the rival submissions made and scrutiny of the available materials, found all the accused guilty under Section 342 and 304(2) IPC and sentenced them to undergo imprisonment as referred to above. Aggrieved accused have brought forth this appeal.

4. Arguing for the appellant, the learned Counsel Ms.J.Juliet Pushpa made the following submissions for consideration by this Court. The prosecution relied on the evidence of PWs.1 to 3. P.W.2 has turned hostile. Hence, what was available for the prosecution was the evidence of PWs.1 and 3. From the evidence of PW1, it would be clear that P.Ws.2 and 3 have come to the place of occurrence after the occurrence was over, and thus, what was available for the prosecution was the evidence of P.W.1. P.W.1 was a close relative of the deceased and he was interested, and hence it was uncorroborated and self inconsistent testimony. The evidence of P.W.1 should not have been relied on by the trial court for finding the accused guilty. The prosecution relied on the evidence of P.Ws.1 to 3 to the effect that the deceased was beaten with sticks. But, in the post-mortem certificate it could be seen that no external injury was found corresponding to the said version of the prosecution witnesses. Hence, the prosecution witnesses could not have seen the occurrence at all. Even assuming the prosecution version is true, no case was made out by the prosecution against A2 and A3. The medical evidence has not in any way corroborated the ocular evidence. Under the stated circumstances, the lower court should have rejected the case of the prosecution and acquitted the accused.

5. Opposing the contentions put forth by the appellants' side, the learned Government Advocate would submit that the prosecution has clearly brought home the guilt of the accused under Sections 342 and 304(2) IPC as found by the trial court. It is true that P.W.2 has turned hostile, but the prosecution relied on the evidence of P.Ws.1 and 3, who have given a cogent evidence as to the fact that it was A1 to A3 who tied the deceased in Vadanarayana tree and even before tying the deceased, they beat him and after tying also, they beat him. It is true that there was no corresponding external injury found, but it has in no way affected the case of the prosecution, because, P.W.8 Doctor has opined that the death was caused not due to injury by beating the deceased, but because of tying of rope tightly, the vital organs kidney and liver were not functioning and rupture was also found. Under the stated circumstances, it cannot be said that the ocular evidence was not corroborated by the medical evidence, and thus, the prosecution has clearly proved its case. Hence, the judgment of the trial court has got to be affirmed.

6. After careful analysis of the evidence available and consideration of the rival submissions made, this Court is unable to agree with the contentions of the appellants' side. The gist of the prosecution case was that on the date of occurrence, on entertaining suspicion that the deceased took away the amount of A1, he questioned the deceased and not satisfied with the answer, A1 beat the deceased and A2 and A3

have also joined with him. All the accused tied the deceased with a kadamba rope in Vadanarayana tree situated nearby the house of A1 and beat him. The deceased fell unconscious. Hence, the accused untied the rope and poured water on his face. They took him to the house of A1 and found him dead. They fled away from the scene of occurrence. It is true that P.W.2 has turned hostile. P.W.1 who gave a complaint was a close relative of the deceased. But, on the ground of relationship only, the Court cannot reject the testimony of P.W.1. It is pertinent to point out that the complaint was given by P.W.1 where he has given a full narration of the occurrence as he narrated the occurrence before the trial court. The occurrence was also witnessed by P.W.3. Both P.Ws.1 and 3 have categorically spoken to the fact that all the accused have tied the deceased in a tree. P.W.8 Post-mortem Doctor has given post-mortem certificate and has also deposed that when he was tied tightly there was all possibility of non functioning of vital organs, namely, kidney and liver and which caused his death. He has also noticed rope mark in the waist of the deceased. This part of the evidence coupled with the post-mortem certificate has clearly corroborated the evidence of ocular testimony of the prosecution through P.Ws.1 and 3. Under the stated circumstances, no corresponding injuries were found on the body of the deceased does not in any way affect the prosecution's case. It is not the case of the prosecution that the deceased died due to the attack made by the accused. The appellants' side is unable to show any circumstance or reason why the evidence of P.Ws.1 and 3 should be disbelieved or rejected. Hence, this court is unable to find any reason to interfere with the judgment of the court below that since it was not a pre-planned act or the death was not caused intentionally, the lower court has brought the case as one falling under Section 304(2) IPC and there was a clear evidence that the deceased was tied in a tree by all the accused, which would fall under Section 342 IPC. Hence, the findings recorded by the trial court under Sections 342 and 304(2) IPC has got to be confirmed.

7. Coming to the question of punishment, the lower court has awarded punishment of four years RI under Section 304(2) IPC. Taking into consideration the act of the accused, the Court is of the considered view that awarding punishment of three years RI under Section 304(2) IPC to the accused Nos.1 to 3 would meet the ends of justice. Accordingly, the sentence of four years RI awarded by the trial court under Section 304(2) IPC to the accused Nos.1 to 3 is reduced to three years RI. In other respect, the judgment of the trial court is confirmed. With the above modification, this criminal appeal is dismissed. The Sessions Judge shall take steps to commit the accused Nos.1 to 3 to prison, if they are on bail, to undergo the remaining period of sentence.

31.07.2003

Index : Yes

Internet : Yes

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To

1. The Judicial Magistrate, Thuraiyur
2. The Judicial Magistrate, Thuraiyur
through the Chief Judicial Magistrate, Trichy
3. The I Additional Sessions Judge, Trichy
4. The Principal Sessions Judge, Trichy
5. The Superintendent, Central Prison, Trichy
6. The Public Prosecutor, High Court, Chennai
7. The Dy. Inspector General of Police, Chennai-4
8. Mr.O.Srinath, Govt. Advocate (Criminal Side)
High Court, Chennai
9. The Inspector of Police, Thathaiyangarpettai,
Pulivalam Police Station

M. CHOCKALINGAM, J

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