

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31-10-2008

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM
AND
THE HONOURABLE MR.JUSTICE S.RAJESWARAN

CRL.A.No.684 of 2007

Erudhayaraj @ Mackacholam

.. Appellant/Accused

vs

State by:

The Inspector of Police
H-1 Washermenpet Police Station
Chennai
(Cr.No.843/2006)

.. Respondent/Complainant

Criminal appeal preferred under Sec.374(2) of Cr.P.C. against the judgment of the Additional District and Sessions Judge/Fast Track Court II, Chennai, in S.C.No.42 of 2007 dated 11.7.2007.

For Appellant : Mr.T.K.Sampath
For Respondent : Mr.R.Balasubramanian
Additional Public
Prosecutor
JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

This appeal challenges a judgment of the Additional Sessions Division, Fast Track Court No.II, Madras, in S.C.No.42 of 2007 whereby the sole accused/appellant stood charged, tried and found guilty as per the charge of murder and awarded life imprisonment along with a fine of Rs.10,000/- and default sentence.

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

(a) P.W.1 is a resident of Katpada Main Road, Washermenpet. P.W.2 is the son of P.W.3, and they are also residents of adjacent houses. The accused/appellant is also a neighbour to P.W.3, and P.W.4 is the elder brother of the deceased Nagalingam. The deceased was also staying along with his relatives namely P.Ws.1 to 3. On the date of occurrence i.e., 6.11.2006, at about 4.00 P.M., the deceased came to the house of P.W.1 and was asking for money from his brother Velavan who is the husband of P.W.3. At that time, P.W.2 came out of the house. The accused also came out and asked the deceased why he was always creating problems. In turn, the deceased replied that it was a family affair,

and he should not interfere. On hearing this, the accused uttered "I know how to deal with this". Then, he took a knife and stabbed Nagalingam on the left chest. This was actually witnessed by P.Ws.1 to 4. When there was hue and cry, the accused left the place of occurrence. Immediately, P.Ws.1 to 4 and others took the victim to the Government Stanley Hospital, where P.W.13 was the Doctor in charge. It was he who admitted the victim at 4.10 P.M., and the statement of the victim was recorded by him. The same is found in the accident register copy marked as Ex.P13.

(b) On receipt of the information at 5.00 P.M., P.W.12, the Sub Inspector of Police, attached to H1 Washermenpet Police Station, went to the hospital and took the statement of the deceased. The signature of the deceased in the complaint is marked as Ex.P2. On the strength of the said complaint, P.W.12 registered a case in Crime No.843 of 2006 under Sections 341, 307 and 506(2) of IPC. The printed FIR, Ex.P12, was despatched to the Court. The further treatment was given by P.W.14, the Doctor, who conducted operation on Nagalingam.

(c) On receipt of the copy of the FIR, P.W.17, the Inspector of Police, H1 Washermenpet Police Station, took up investigation, proceeded to the place of occurrence, made an inspection and prepared an observation mahazar, Ex.P2, and a rough sketch, Ex.P3. He also recovered the material objects from the place of occurrence and went to the Government Stanley Hospital. He recorded the statement of the deceased which was also placed before the Court.

(d) On receipt of an intimation, P.W.8, the XIII Metropolitan Magistrate, Madras, proceeded to the hospital and the deceased Nagalingam was identified; but, he could not record his statement since he was unconscious. The report given by him, is marked as Ex.P7.

(e) While the deceased was under treatment, he died on 7.11.2006. Following the same, the case was altered to Sec.302 of I.P.C. The express report, Ex.P19, was despatched to the Court. Then, the Investigating Officer conducted inquest on the dead body in the presence of witnesses and panchayatdars and prepared an inquest report, Ex.P20. He also gave a requisition to the hospital authorities for conduct of autopsy.

(f) P.W.15, the Assistant Professor, Department of Forensic Medicine, Government Stanley Medical College, conducted autopsy on the dead body of Nagalingam and issued Ex.P15, the postmortem certificate, with his opinion that the deceased would appear to have died of shock and haemorrhage due to stab injury on the left side of the chest.

(g) Pending the investigation, the Investigator came to know that the accused surrendered before the Judicial Magistrate, Thiruvottriur. Then, the police custody was asked for, and as per the request, it was ordered. He was taken to police custody on 10.11.2006. At the time of interrogation, the accused gave a confessional statement which was recorded in the presence of two witnesses. Pursuant to the confessional statement, he produced M.O.1, knife, which was recovered under a mahazar, Ex.P7. He also produced bloodstained shirt and also a lungi

which were recovered under another mahazar. He was sent for judicial remand again.

(h) All the material objects recovered from the place of occurrence and from the dead body, and also the material objects which were recovered from the accused on production, were subjected to chemical analysis by the Forensic Sciences Department, which resulted in two reports namely Ex.P16, the Chemical Analyst's report, and Ex.P17, the Serologist's report. On completion of investigation, the Investigator filed the final report.

3.The case was committed to Court of Session, and necessary charge was framed. In order to substantiate the charge, the prosecution examined 17 witnesses and also relied on 21 exhibits and 5 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses which he flatly denied as false. No defence witness was examined. The Court below heard the arguments advanced, scrutinised the materials available and took the view that the prosecution has proved the case beyond reasonable doubt and hence found him guilty as per the charge of murder and awarded life imprisonment which is the subject matter of challenge before this Court.

4.Advancing arguments on behalf of the appellant, the learned Counsel Mr.T.K.Sampath made the following submissions:

(i) According to the prosecution, the occurrence has taken place on 6.11.2006 at 4.00 P.M., and P.Ws.1 to 4 were eyewitnesses. Even as per the prosecution case, they were all closely related, and thus, they were all interested witnesses.

(ii) From the evidence of P.Ws.1 to 4, it would be quite clear that the family of the accused and the family of the prosecution witnesses were not in talking terms for a longtime, and they were on inimical terms. Even as per the evidence available, it would be quite evident that the deceased was in a drunken mood and used to be creating problems, and he had got many enemies. Thus, someone would have murdered him. In order to take revenge, all the prosecution witnesses have come forward to give a false complaint against the accused.

(iii) According to the evidence of P.W.1, P.W.2 has already given a complaint to the police; but, that complaint has been suppressed. Had that complaint been produced before the Court, the truth would have come out, and hence it is a fit case where adverse inference has got to be drawn.

5.Added further the learned Counsel that in the instant case, according to the evidence of P.W.8, the XIII Metropolitan Magistrate, he proceeded to the hospital at about 11.40 P.M., and he could not record the dying declaration of the deceased Nagalingam since he was unconscious; but, according to P.W.13, the Doctor, the deceased Nagalingam was first seen by him at 4.10 P.M.; that it could be well seen that Nagalingam could not have taken liquor in the hospital; that the occurrence should have taken place at 4.00 P.M. And he should have taken liquor earlier to the occurrence; that if to be so, when the Metropolitan Magistrate has seen him at about 11.40 P.M., the liquor

should have become subsided; but, the Magistrate has found him unconscious; that it would be quite clear that even before 4.10 P.M., when he was seen by P.W.13, the Doctor, he would have been unconscious; that under the circumstances, the statement of the Doctor as found in Ex.P13, the accident register copy, as if he gave the statement to him and the case of the prosecution that it was he who gave the complaint to P.W.12, the Sub Inspector of Police, H1 Washermenpet Police Station, and thereafter, to the Inspector of Police, P.W.17, were all nothing but false introduction, and they have got to be rejected.

6.The learned Counsel would further submit that the evidence put forth by the prosecution that he was taken to police custody, and at the time of interrogation he came forward with a confessional statement, and it was also recorded in the presence of witnesses following which M.O.1, knife, has also been recovered from him were nothing but introduction in order to suit the prosecution case; that it is not only a case where the prosecution lacked evidence, but also it is a case where the prosecution had no evidence worth-mentioning to offer; that the lower Court has not considered any one of the factual positions, but has found him guilty, and hence he has got to be acquitted by this Court.

7.Added further the learned Counsel in the second line of his argument that in the instant case, even as per the Doctor's evidence, he was in a drunken mood; that the evidence of P.W.2 would clearly indicate that there was a wordy altercation; that the same gave him sudden provocation in which he has acted so, and hence, it was neither intentional nor premeditated; that it was only by the circumstances which provoked him by the deceased; that it would not attract the penal provision of murder, and this legal position has got to be considered by the Court if the Court takes the view that it was the accused who actually stabbed him accepting the factual position as put forth by the prosecution.

8.The Court heard the learned Additional Public Prosecutor on all the above contentions and paid its anxious consideration on the submissions made.

9.It is not in controversy that one Nagalingam the brother of P.W.4, following an incident that took place on 6.11.2006 at 4.00 P.M., in front of his house, was taken to the Government Stanley Hospital, and despite treatment, he died on 7.11.2006. Following the inquest made by P.W.17, the Inspector of Police, the dead body was subjected to postmortem by P.W.15, the Doctor, who has given his categorical opinion that Nagalingam died out of shock and haemorrhage due to the injuries sustained on the chest and also corresponding internal injuries. The fact that Nagalingam died out of homicidal violence was never disputed by the appellant/accused at any stage of the proceedings. Hence without any impediment it could be recorded so.

10.In order to substantiate the fact that it was the accused who stabbed the deceased on the chest and as a consequence, he died, the prosecution examined four witnesses P.Ws.1 to 4. The first comment made by the learned Counsel for the appellant that P.Ws.1 to 4 were closely related, and hence they have falsely implicated the accused has got to

be discountenanced. It is well settled proposition of law that even if the eyewitnesses happened to be related witnesses, before accepting their evidence, the Court must exercise the test of careful scrutiny, and if the Court is satisfied, it can take the evidence and act upon the same. In the instant case, the evidence of P.Ws.1 to 4 even if the careful scrutiny test is applied, has inspired the confidence of the Court. All the four witnesses have spoken to the effect that they were all available at the place of occurrence; that it was the deceased who came to his brother Velavan and demanded money; that when they were talking to each other, it was the accused who intervened; that there was a wordy altercation between the deceased and the accused; and that the accused stabbed him on the chest and fled away from the place of occurrence. As far as this factual position is concerned, despite full cross-examination of P.Ws.1 to 4, they have all spoken in one voice, and their evidence remained unshaken. Their evidence has got to be acted upon in the considered opinion of the Court.

11.The next piece of evidence available for the prosecution is that of the evidence of P.W.13, the Doctor, attached to the Government Stanley Hospital. According to the Doctor, the deceased Nagalingam was taken to the hospital at 4.10 P.M. i.e., within 10 minutes from the time of occurrence, and he was examined by him. According to the Doctor, he gave a statement that he was stabbed by a known person at 4.00 P.M. in his residence. Now, the contention put forth by the learned Counsel for the appellant that at about 11.40 P.M., P.W.8, the XIII Metropolitan Magistrate, went to the hospital; that he could not record the dying declaration since he was unconscious; that if this fact is taken into consideration, at about 4.10 P.M., he should have been certainly unconscious, and hence he could not have given any statement to the Doctor, P.W.13, though attractive at the first instance, it does not stand scrutiny for the simple reason that P.W.13 is the Doctor attached to the Government Stanley Hospital. When he has been cross-examined to the effect that whether Nagalingam was unconscious, he has categorically denied the same. The Doctor would state that it was Nagalingam who gave the statement, and he has also recorded the same.

12.The contention put forth by the learned Counsel for the appellant has got to be rejected for two reasons. It is true that the XIII Metropolitan Magistrate has gone to the hospital at about 11.40 P.M. i.e., 7 hours after the occurrence. It is not the case where unconsciousness would have been caused by the liquor, but unconsciousness should have also been caused by the vigor of the injuries actually sustained by the deceased. Apart from that, it cannot be a reason to accept that a person who is in intoxication mood cannot speak. In the instant case, there was a wordy altercation just 10 or 15 minutes prior to the medical examination by P.W.13 on Nagalingam. This wordy altercation between the deceased and the accused is spoken to by P.Ws.1 to 4. All would go to show that the deceased was so conscious to give such a statement. According to P.W.13, the Doctor, he has recorded the same in Ex.P13, accident register copy, as could be seen by the Court.

<https://hcservices.ecourts.gov.in/hcservices/>

13.Added circumstance is the statement given by Nagalingam which actually formed basis for the registration of the case by P.W.12, the

Sub Inspector of Police, in Crime No.843 of 2006 originally under Sec.307 of I.P.C. Apart from that, the Inspector of Police had gone over there and recorded the statement, and only on his death, the case has been converted to Sec.302 of IPC. Now, at this juncture, the contention put forth by the learned Counsel for the appellant that originally there was a report given by P.W.2; that the same has also been suppressed; and that the non-production would be fatal to the prosecution case cannot be accepted. According to the evidence of P.W.1, a report was given by P.W.2. But from the evidence of P.W.2, it would be quite clear that a suggestion was made to P.W.2, and P.W.2 has categorically denied the suggestion that he gave a report. Merely on the evidence of P.W.1 as if P.W.2 gave a report, the Court cannot act so once that fact has been denied by P.W.2.

14. Apart from the above, the other contention that there was actually enmity between the parties, and therefore such a situation has arisen that they have implicated falsely the accused cannot be accepted because P.Ws.1 to 4 have spoken the truth that there was a wordy altercation between the deceased who was in a drunken mood, and the accused. All put together would go to show that the prosecution has brought forth the guilt of the accused.

15. Yet another circumstance in favour of the prosecution was the recovery of the weapon of crime which has also been subjected to chemical analysis, and the scientific evidence was also in favour of the prosecution. All these contentions now put forth by the learned Counsel for the appellant and narrated above, did not carry any merit. It can be well stated that the prosecution has proved that it was the accused who stabbed Nagalingam at the time and place of occurrence, and as a consequence he died. Hence it has got to be seen proved.

16. As far as the second line of argument made by the learned Counsel for the appellant is concerned, this Court is able to see sufficient force. It is true that the deceased came there in a drunken mood and was demanding money. It is also an admitted position that the accused is a neighbour who came out of the house, and he questioned the deceased why he was creating problems then and there. It is quite natural. At that time, there was a wordy altercation between the deceased and the accused, and in the course of the same transaction, the accused had taken the knife and stabbed him. Thus it would be quite clear that it is neither premeditated nor intentional, but by sudden quarrel and provocation he had acted so. This Court is of the view that it is a case where the act of the accused would not attract the penal provision of murder, but it would be culpable homicide not amounting to murder, and he has to be found guilty under Sec.304 (Part II) of I.P.C. and awarding punishment of five years Rigorous Imprisonment would meet the ends of justice.

17. Accordingly, the conviction and sentence of life imprisonment awarded by the lower Court under Sec.302 of IPC are set aside, and instead, he is convicted under Sec.304 (Part II) of IPC and is directed to suffer five years Rigorous Imprisonment. The fine and the default sentence imposed by the trial Court, will hold good. The sentence already undergone by him, shall be given set off.

18.In the result, with the above modification in conviction and sentence, this criminal appeal is dismissed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

nsv/

To.

- 1.The Additional District and Session Judge cum Fast Track Court No.II,Chennai.
- 2.-thro'-The Principal Sessions Judge, Chennai.
- 3.The Superintendent, Central Prison, Puzhal, Chennai.
- 4.The District Collector, Chennai.
- 5.The Director General of Police, Mylapore, Chennai-4.
- 6.The Inspector of Police, H1,Washermenpet Police Station, Chennai.
- 7.The Public Prosecutor,High Court, Madras.

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em/11.11.08

CRL.A.No.684 of 2007

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