

MUTTAICOSE @ SUBRAMANI

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v.

STATE OF TAMIL NADU REP. BY INSPECTOR OF POLICE

(Criminal Appeal No.1206 of 2010)

JULY 03, 2017

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[PRAFULLA C. PANT AND DEEPAK GUPTA, JJ.]

Penal Code, 1860 – s.302 – Murder – Conviction by courts below – On appeal, held: appellant was armed with deadly weapon and chased the victim-deceased and assaulted twice on his head – All the eye witnesses were injured witnesses and injuries on their person were proved – Though the eye witnesses were related to deceased, their evidence was credible – Moreover, there was nothing to show that deceased provoked the appellant – Concurrent findings of courts below regarding commission of offence u/s.302 by the appellant is, therefore, not interfered with.

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Dismissing the appeal, the Court

HELD: 1. In the instant case, incident is proved to have been occurred at 4.30 p.m. on 26.03.2004. On the same day, First Information Report has been lodged at 11.30 p.m. The distance between police station and place of incident is 6 kms. The informant who got injured in the incident, was first taken to the hospital. The delay in lodging F.I.R. was explained. Therefore, there is no reason to doubt the prosecution story on the ground of alleged delay in lodging the First Information Report. [Paras 8, 10] [328-G ; 330-A]

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Ashok Kumar Chaudhary and Others v. State of Bihar (2008) 12 SCC 173 ; [2008] 7 SCR 714; Ravinder Kumar and Another v. State of Punjab (2001) 7 SCC 690 ; [2001] 2 Suppl. SCR 463 – relied on.

2. As to the testimony of the related witnesses, all the four eye witnesses PW-1, PW-2, PW-3 and PW-4 were injured eye witnesses, and injuries on their person were proved on the record. They cannot be simply disbelieved for the reason that they are related to informant. No doubt, the evidence of the interested or

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- A related witnesses is required to be scrutinized more carefully, but in the instant case, even after scrutinizing the testimony of the injured witnesses with caution, there is no reason to doubt their testimony. As to the motive or intention on the part of the A-2 to commit murder of the deceased what is important is that the appellant (A-2) who was armed with the deadly weapon chased the deceased and assaulted twice on his head. All these facts taken together clearly showed that the culpable homicide amounted to murder. There was nothing on the record to show that the deceased gave any provocation to the appellant (A-2) to make him to assault the deceased. There is no sufficient reason to interfere with the impugned order passed by the High Court affirming the conviction and sentence recorded against the appellant (A-2) in respect of offence punishable under Section 302 IPC. [Paras 11, 12] [330-B-D]

Case Law Reference

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|---|-------------------------|-----------|---------|
| D | [2008] 7 SCR 714 | relied on | Para 9 |
| | [2001] 2 Suppl. SCR 463 | relied on | Para 10 |

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1206 of 2010.

- E From the Judgment and Order dated 18.06.2009 of the High Court of Judicature at Madras in Criminal Appeal No. 618 of 2007.

V. Ganagraj, Sr. Adv., Mrs. N. Shoba, Sri Ram Adhimoolam, Shilp Vinod, Shobha Ramamoorthy, Advs. for the Appellant.

- F Ms. Nithya Srinivasan, M. Yogesh Kanna, Advs. for the Respondent.

The Judgment of the Court was delivered by

- G **PRAFULLA C. PANT, J.** 1. This appeal is directed against judgment and order dated 18.06.2009 passed by High Court of judicature at Madras in Criminal Appeal No. 618 of 2007, whereby conviction and sentence recorded by Additional Sessions Judge, Erode, qua appellant Muttaicose @ Subramani in respect of offence punishable under Section 302 I.P.C., is affirmed.

- H 2. We have learned counsel for the parties and perused the papers on record.

3. Prosecution story, in brief, is that PW-1 Sundaramurthy (informant) is son of PW-2 Chidambaram and PW-3 Smt. Papathi. PW-4 Yuvaraj and PW-12 Ramasamy are also related to the informant. They all belong to village Elavanatham. Accused Gurusamy (A-1) and PW-2 owned landed property adjacent to each other. There was a ridge between their land. Dispute arose between them over planting of coconut trees on the common ridge by both sides. On 26.03.2004, at about 9.30 a.m. appellent (A-2) along with some other co-accused came to the house of the informant and insisted on holding a Panchayat to settle the dispute to which the informant told that Panchayat could be held at some common place, not in his house. On this at about 4.30 p.m. on that day A-2 armed with 'aruval' (sickle) along with other accused, who were also armed with deadly weapons, like stick, iron rod, crowbar etc., came and on instigation of A-1 they assaulted PW-1, PW-2, PW-3, PW-4, PW-7 and Natrajan (deceased). A-2 (appellant) said to have assaulted with a sickle twice on the head of the deceased Natrajan after chasing him. Natrajan (deceased) was the person who had simply attempted to intervene between the two fighting groups. Other accused assaulted PW-1 to PW-4 and PW-7. When the crowd gathered on commotion, the accused fled away. PW-11 Eswaramurthy took all the injured to hospital but Natrajan had died. Rest of the injured (PW-1 to PW-4 and PW-7) were referred from Government Hospital, Erode to Lotus Hospital at about 9.00 p.m. On information from the hospital, Sub-Inspector (PW-27) came and recorded statement of PW-1, and registered Crime No. 42 of 2004 in respect of offences punishable under Sections 147, 148, 447, 448, 452, 427, 324, 307 and 302 I.P.C.

4. During investigation, PW-28 Ravindran who was Inspector of Police, went to the place of occurrence and inspected the same. He also went to the hospital and prepared the inquest report of the dead body of Natrajan. PW-10 Dr. Parameswaran conducted autopsy on 27.03.2004 on the dead body of the deceased and recorded ante mortem injuries. He opined that the deceased had died due to shock and haemorrhage. PW-8 Dr. Kanagachalakumar recorded the injuries on the person of injured (eye witnesses). The Investigation Officer after collecting evidence and on completion of investigation submitted charge sheet against all the 14 accused, including appellent Muttaicose @ Subramani.

5. On committal of the case, the Court of Session, after hearing the parties, framed charge in respect of offences punishable under

A Sections 147, 450, 307, 324, 302 I.P.C. and in respect of offence punishable under Section 3 of Tamil Nadu Properties (Damage and Loss) Prevention Act against all the accused to which they pleaded not guilty and claimed to be tried. The prosecution got examined as many as 28 witnesses, and proved various documentary evidence on record which was put to the accused. They alleged that the evidence against them was false. In
B defence they got examined DW-1 Dr. Velusamy. The trial court found that A-1, A-2, A-4 and A-5 guilty of charge of offence punishable under Section 302 read with Section 149 I.P.C. in respect of commission of murder of Natrajan. The convicts filed criminal appeal before the High Court.

C 6. The High Court, after re-appreciating the evidence, found that appellant (A-2) has assaulted the deceased twice on his head, after chasing him, as such only he is guilty of offence punishable under Section 302 I.P.C. and affirmed the sentence of imprisonment for life and fine of Rs. 2,000/- awarded by the trial court against him, and A-1, A-4, and A-
D 5 who had assaulted other witnesses were convicted only under Section 324 I.P.C. and sentenced each one of them to imprisonment already undergone. This appeal is filed by A-2 in respect of whom the conviction and sentence regarding offence punishable under Section 302 I.P.C. is upheld by the High Court.

E 7. Learned counsel for the appellant argued before us that in the present case the First Information Report (for short 'F.I.R'.) is delayed, and contains an afterthought story, by implicating several persons, including A-2. It is further argued on behalf of the appellant that PW-1, PW-2, PW-3 and PW-4 are related to each other as such their testimony is not trustworthy. It is also contended that even otherwise it's a case of
F sudden fight and there could not have been any motive or intention on the part of the A-2 to commit murder of Natrajan. It is also pointed out that A-2 is languishing in jail for last seven years.

G 8. We have considered the submissions of learned counsel for the appellant and reply given by the learned counsel for the State. In the present case incident is proved to have been occurred at 4.30 p.m. on 26.03.2004. On the same day First Information Report has been lodged at 11.30 p.m. The distance between police station and place of incident is six (6) kms. Here, it is relevant to mention that the informant who got injured in the incident, was first taken to the hospital. In the circumstances,
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we do not find any force in the arguments advanced on behalf of the appellant that the delay in F.I.R. is not explained. A

9. In *Ashok Kumar Chaudhary and Others Vs. State of Bihar*¹, this court has observed as under:

“16. It is trite that mere delay in lodging the first information report is not by itself fatal to the case of the prosecution. Nevertheless, it is a relevant factor of which the court is obliged to take notice and examine whether any explanation for the delay has been offered and if offered, whether it is satisfactory or not. If no satisfactory explanation is forthcoming, an adverse inference may be drawn against the prosecution. However, in the event, the delay is properly and satisfactorily explained; the prosecution case cannot be thrown out merely on the ground of delay in lodging the FIR. Obviously, the explanation has to be considered in the light of the totality of the facts and circumstances of the case.” B C

10. In *Ravinder Kumar and Another Vs. State of Punjab*², this court has observed as under: D

“14. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquility of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.” E F G

¹ (2008) 12 SCC 173

² (2001) 7 SCC 690

A In view of the above settled position of law, and considering the explanation of prosecution, we do not find any reason to doubt the prosecution story on the ground of alleged delay in lodging the First Information Report.

B 11. As to the testimony of the related witnesses, it is clear from the record that all the four eye witnesses PW-1, PW-2, PW-3 and PW-4 are injured eye witnesses, and injuries on their person are proved on the record. They cannot be simply disbelieved for the reason that they are related to informant. No doubt, the evidence of the interested or related witnesses is required to be scrutinized more carefully, but in the present case, even after scrutinizing the testimony of the injured witnesses with caution, we do not find any reason to doubt their testimony.

C 12. As to the motive or intention on the part of the A-2 to commit murder of the deceased what is important is that the appellant (A-2) who was armed with the deadly weapon chased the deceased and assaulted twice on his head. All these facts taken together clearly show that the culpable homicide in the present case amounts to murder. D Needless to say that there is nothing on the record to show that the deceased gave any provocation to the appellant (A-2) to make him to assault the deceased.

E 13. For the reasons as discussed above, we do not find any sufficient reason to interfere with the impugned order passed by the High Court affirming the conviction and sentence recorded against the appellant (A-2) in respect of offence punishable under Section 302 I.P.C.

F 14. Therefore, we do not find any merit in this appeal and the same is dismissed.