

MARIMUTHU & ORS.

v.

STATE OF TAMIL NADU  
(Crl. A. No. 74 of 2008)

JANUARY 11, 2008

[C.K. THAKKER AND ALTMAS KABIR, JJ.]

*Penal Code, 1860 – ss. 304 (Part I) and 326 – Murder and grievous injuries caused – Prosecution of seven accused – Complainant party and accused party on inimical terms – Trial court convicting all the accused u/s 302 – High Court acquitting three accused extending benefit of doubt and convicting the rest of the accused – One of the accused convicted u/s 326 in addition – On appeal, held: order of High Court justified – In the facts of the case benefit of doubt given to the acquitted accused is not extendable to the convicted accused – However, conviction u/s 302 is converted to one u/s 304 (Part I) – Conviction u/s 326 is not interfered with.*

**Appellants alongwith three others were prosecuted for having committed death of one person. Prosecution case was that the complainant party and the accused party were on inimical terms. On the day of the incident, when PW-2 was standing in front of his house, accused No. 1, abused him. The deceased, along with PW 2 and other family members proceeded to police station for lodging complaint against this incident. One hour later, when the complainant party was returning, the accused persons attacked the deceased and PW-2. This resulted in instant death of the deceased and injuries to PW-2. Statement of PW-2 was recorded as dying declaration. However, the same was later discarded as he survived. Trial court convicted all the seven accused u/s 302 IPC. High Court convicted the accused Nos. 1, 2, 3 and 5 u/s 302 IPC. Accused No. 1 was convicted u/s 326 IPC in addition.**

A However, accused Nos. 4, 6 and 7 were acquitted extending benefit of doubt. Hence the present appeal by the convicted accused.

Partly allowing the appeal, the Court

B HELD. 1. So far as the incident is concerned, both the courts have rightly believed the case of the prosecution. From the substantive evidence of prosecution witnesses, it was clearly proved that the parties were on inimical terms. [Para 10] [552-H; 553-A]

C 2. According to medical evidence it is clearly established that deceased sustained as many as eight injuries and he died due to shock and hemorrhage of the injuries received by him. It was thus a homicidal death of the deceased. It is also clear that PW-2 was injured in the incident and was one of the victims who sustained those injuries during the course of incident. [Paras 11 and 12] [553-E, F; 554-B]

E 3. It cannot be said that the benefit which had been given by the High Court to accused Nos. 4, 6 and 7 should also be given to the present appellants. Keeping in mind discrepancy in the First Information Report and so-called dying declaration of PW-2, the High Court extended benefit of doubt to accused No.6 in view of absence of his name in the dying declaration and also because of F 'superficial and minor' injuries said to have been sustained by accused Nos. 4 and 7. That does not, however, mean that appellants were not involved in the incident or they had not attacked the deceased or PW-2. [Para 12] [554-B, C, D]

G 4. However, when the case of the prosecution was that all the seven accused indiscriminately attacked the deceased and caused his death and when the High Court granted benefit of doubt and acquitted three of them (accused Nos. 4, 6 and 7), it would be appropriate H

if instead of convicting the appellants for an offence of murder punishable under Section 302, IPC, they are convicted for an offence of culpable homicide not amounting to murder punishable under Section 304, Part I, IPC. [Para 13] [554-E, F, G]

5. The order as to conviction and sentence imposed on the appellant No.1 for an offence punishable under Section 326, IPC for causing grievous injury to PW2 and also payment of fine is not disturbed. [Para 13] [555-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 74 of 2008.

From the final Judgment and Order dated 21.8.2006 of the High Court of Judicature at Madras, Bench at Madurai in Crl. A. No. 33/1998

U.U. Lalit, P.R. Kovilan Poongkuntran, V. Vasudevan, Nitin Sangra and Naresh Kumar for the Appellants.

V. Kanakaraj, S. Joseph Aristotle, S. Prabu Ramasubramanian and V.G. Pragasam for the Respondent.

The Judgment of the Court was delivered by

**C.K. THAKKER, J.** 1. Leave granted.

2. The present appeal is filed against judgment and order passed by the High Court of Madras (Madurai Bench) on August 21, 2006 in Criminal Appeal Nos.33 and 36 of 1998 by which it partly confirmed the order of conviction and sentence recorded by I Addl. District Judge-cum-Chief Judicial Magistrate, Tiruchirapalli on December 8, 1997 in Sessions Case No. 8 of 1997.

3. The facts of the case are as under:

4. Seven accused were prosecuted for various offences punishable under Sections 302, 307, 326 and 341 read with Sections 148 and 149 of the Indian Penal Code (IPC). The case of the prosecution was that all the accused and deceased

A Peiyakaruppan @ Chinnadurai belonged to the same village  
Santhapuram. Two years prior to the occurrence, deceased  
Chinnadurai had given evidence in a Court of Law against  
Veerabathran-accused No.2 and in favour of Maruthairaj-PW2  
in a criminal case. In connection with a water dispute, there was  
B a civil case and in that civil dispute also, the deceased had  
given evidence against the accused party. The parties were also  
on inimical terms in connection with irrigation of agricultural  
lands. On May 27, 1995, at about 3.30 p.m., PW2-Maruthairaj-  
complainant was standing in front of his house and at that time,  
C Marimuthu-accused No.1 went near the complainant and  
abused him in filthy language. Deceased Chinnadurai, father of  
PW2-Maruthairaj, along with other family members, proceeded  
to Somarasampet Police Station and lodged a complaint  
relating to the said incident. At about 4.30 p.m. on the same  
D day at Tiruchy-Vayalur Road, near Ambedkar Colony Junction,  
according to the prosecution story, all the seven accused  
persons with common object of committing murder of deceased  
Chinnadurai, attacked him with *aruval*, *bichuva*, knife and other  
lethal weapons. In that attack, Chinnadurai died instantaneously  
due to multiple injuries. The accused also caused injuries to  
E complainant Maruthairaj-PW2. FIR was lodged, being Crime  
No. 229 of 1995 on May 27, 1995. After usual investigation,  
charge was framed against the accused persons and the matter  
was committed to a Court of Sessions.

F 5. The trial Court, by a judgment and order dated  
December 8, 1997, convicted the accused persons and ordered  
them to undergo different sentences as mentioned in the  
operative part of the judgment. Being aggrieved by the said  
order, all the accused preferred appeals. The appeals were  
G partly allowed by the High Court. Accused Nos. 4, 6 and 7 came  
to be acquitted by the High Court extending benefit of doubt,  
while accused Nos. 1, 2, 3 and 5 (appellants herein) were  
convicted for offences punishable under Section 302, IPC for  
causing death of Chinnadurai. Accused No.1 was also convicted  
H for an offence punishable under Section 326. IPC for causing

grievous hurt to PW2-Maruthairaj. Being aggrieved by the said order, the appellants have approached this Court. A

6. Notice was issued on January 25, 2007. The office was directed to place the matter for final disposal and accordingly, the matter has been placed before us. B

7. We have heard learned counsel for the parties.

8. The learned counsel for the appellants submitted that when three accused (accused Nos. 4, 6 and 7) were acquitted by the High Court, it committed an error of law in convicting the remaining accused. The High Court, ought to have appreciated that when the Court observed that the prosecution had not come forward with true and complete facts and a part of the story had not been believed, it adversely affected the genesis of the incident and it ought to have acquitted all the accused. It was submitted that so-called dying declaration of PW2-Maruthairaj was rightly not treated as dying declaration as he survived. In view of the said fact, First Information Report (FIR) should have been totally discarded as certain names were sought to be added therein. The High Court, on that basis, granted benefit of doubt to three accused, but it went wrong in convicting the appellants on the basis of the said report. It was also submitted that it was proved from the record that accused Nos.4 and 7 who were acquitted by the High Court, sustained injuries. The said fact also goes to show that there was suppression of fact by the prosecution witnesses and their evidence should not have been relied upon for convicting the appellants. That circumstance supported the defence version that even if the incident had taken place, the accused had exercised right of self defence. Finally, it was submitted that in any case when three accused were acquitted by the High Court, considering the case of the prosecution that all the seven accused indiscriminately attacked deceased Chinnadurai and committed his murder, the High Court could not have convicted the appellants for an offence punishable under Section 302, IPC. At the most, the High Court could have convicted them under H

A Section 304 IPC. It was, therefore, submitted that the appeal deserves to be allowed by setting aside and/or modifying the order of conviction and sentence recorded by the High Court.

B 9. The learned counsel for the respondent-State, on the other hand, supported the order of conviction and sentence passed by the High Court. He urged that the trial Court was wholly right in convicting all the accused for various offences. It is, no doubt, true that the High Court partly allowed the appeal and granted benefit of doubt to three accused. It was because C of the fact that so-called dying declaration of PW2-Maruthairaj could not be treated as dying declaration as he survived and there was some discrepancy in the FIR recorded and the dying declaration of Maruthairaj. Taking such discrepancy into account and omission of name of accused No.6, he was acquitted. D Likewise, considering the fact that accused Nos.4 and 7 were injured, the High Court thought it fit to give benefit of doubt to them also. But it cannot be ignored that cross case filed by the accused against the complainant side in the form of First Information Report No.230 of 1995 was disposed of as 'mistake E of fact'. Moreover, it was not established that the injuries were sustained by accused Nos.4 and 7 during the course of one and the same incident. They were not proved. Nor any complaint was made by those accused when they were produced before the Magistrate. In view of all these circumstances, it cannot be F said that the High Court was in error in recording conviction against the appellants. Keeping in view injuries caused by the appellants, medical evidence and evidence of other witnesses including PW2-Maruthairaj-complainant, who was seriously injured, PW6-Annamalai and PW7-Manoharan the High Court G convicted the appellants and no fault can be found against such approach of the High Court. It was, therefore, submitted that no case has been made out by the appellants and the appeal deserves to be dismissed.

H 10. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. So far as

the incident is concerned, both the Courts have believed the case of the prosecution. From the substantive evidence of prosecution witnesses, it was clearly proved that the parties were on inimical terms. Two years before the incident, there was a criminal case against the accused and in the said case, Chinnadurai was one of the witnesses for the prosecution against the accused. There were more disputes also and deceased Chinnadurai was favouring the prosecution side and was against the accused party. It has also come in evidence and believed by both the Courts that on May 27, 1995, there were two incidents. First incident took place at about 3.30 p.m. when PW2-Maruthairaj was standing in front of his house and was abused by accused No.1. Following procedure of law, PW2-Maruthairaj and deceased Chinnadurai, went to Police Station and lodged a complaint against the said accused. There was, therefore, nothing illegal in the act of deceased and the complainant party. The accused party, however, was very much enraged. The accused assembled together and waited for complainant party to come from Police Station. They were all armed with deadly weapons and wanted to teach a lesson to deceased Chinnadurai and PW2-Maruthairaj. The complainant party was not having any weapon with them and they were unarmed. The accused persons indiscriminately assaulted deceased Chinnadurai and PW2-Maruthairaj.

11. So far as medical evidence is concerned, it clearly established that deceased Chinnadurai sustained as many as eight injuries and he died due to shock and hemorrhage of the injuries received by him. It was thus a homicidal death of the deceased.

PW5-Thirugnanam (Doctor) stated in his substantive evidence that on May 27, 1995, while he was on duty as Doctor attached to Government hospital, Tiruchirapalli, at about 6.30 p.m., Maruthairaj-PW2 was brought by his sister Saroja who had following injuries:

1. Incised wound 8" length cutting the bone underneath

A right forehead.

2. Incised wound 4" length cutting right scapula.

3. Incised wound 2" skin deep left fore arm.

B 12. Thus, it is also clear that PW2-Maruthairaj was injured in the incident and was one of the victims who sustained those injuries during the course of incident. Both the Courts, relying on the evidence of the prosecution witnesses, and particularly PW2-Maruthairaj who was injured witness and thus victim, convicted the appellants. Keeping in mind discrepancy in the C First Information Report and so-called dying declaration of PW2-Maruthairaj, the High Court extended benefit of doubt to accused No.6 in view of absence of his name in the dying declaration and also because of 'superficial and minor' injuries said to have been sustained by accused Nos. 4 and 7. That does not, D however, mean that appellants were not involved in the incident or they had not attacked deceased Chinnadurai or PW2-Maruthairaj. It, therefore, cannot be said that the benefit which had been given by the High Court to accused Nos. 4, 6 and 7 should also be given to the present appellants. We, E therefore, cannot uphold the contention of the learned counsel for the appellants that the appellants are also entitled to benefit of doubt.

F 13. But the learned counsel for the appellants is right in submitting that when the case of the prosecution was that all the seven accused indiscriminately attacked deceased Chinnadurai and caused his death and when the High Court granted benefit of doubt and acquitted three of them (Accused Nos. 4, 6 and 7), it would be appropriate if instead of convicting the appellants herein (Accused Nos. 1, 2, 3 and 5) for an offence of murder G punishable under Section 302, IPC, they are convicted for an offence of culpable homicide not amounting to murder punishable under Section 304, Part I, IPC. To that limited extent, the appeal deserves to be allowed by converting their conviction for an offence under Section 302, iPC to Section 304, Part I, H IPC. Instead of ordering the appellants herein to undergo



imprisonment for life, we direct them to undergo rigorous imprisonment for a period of ten years. The remaining order as to conviction and sentence imposed on the appellant No.1 for an offence punishable under Section 326, IPC for causing grievous injury to PW2-Maruthairaj and also payment of fine is not disturbed.

A

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14. The appeal is accordingly partly allowed to the extent indicated above.

K.K.T.

Appeal partly allowed.

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