

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25-09-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Appeal No.1068 of 2007

Nirmal @ Nirmal Kumar

... Appellant/Accused

Vs.

The State of Tamil Nadu
Rep by Inspector of Police
Thambampatti Police Station
Cr.No.109 of 2007
Salem District.

... Respondent/Complainant

Criminal Appeal under Section 374(2) of Cr.P.C., against the order of conviction passed by the Principal District and Sessions Judge, Salem in S.C.No.131 of 2007 dated 28-11-2007, convicting the appellant under Section 304 (2) IPC and imposed a sentence of four years RI.

For appellant :: Mr. M. Devaraj

For respondent :: Mr. P. Govinddarajan, Addl.P.P

JUDGMENT

The conviction and sentence dated 28-11-2007 passed in Sessions Case No.131 of 2007 by the Principal District and Sessions Court, Salem are being challenged in the present criminal appeal.

2. The epitome of the case of the prosecution is that on 19-03-2007 at about 3:30 p.m., cortege of one Gnanaprakasam has proceeded in Koneripatty Colony, Thammampatti Road and due to previous animosity, the accused has attacked the deceased by name, Soundararajan by using a stone and due to his overt acts the deceased has sustained fatal injuries and subsequently, passed away. After occurrence one of the sons of the deceased by name David, as defacto complainant has given the complaint, in question and the same has been registered in Crime No.109 of 2007. The complaint given by the defacto complainant has been marked as Ex-P1.

3. On receipt of Ex-P1, the Investigating Officer viz., P.W.1, has taken up investigation examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, Doctor Ashok Kumar(P.W.8) has conducted post mortem and he found the following external and internal injuries on the body of the deceased.

வலது நெற்றி பொட்டில் ஒரு கன்றிய காயம் மட்டும் உள்ளது.

The postmortem certificate has been marked as Ex-P5. The Investigating Officer has conducted further investigation and after completing the same, laid a final report on the file of the Judicial Magistrate- II, Athur and the same has been taken on file in P.R.C.No.10 of 2007.

4. The Judicial Magistrate II, Athur after considering the facts that the offence alleged to have been committed by the accused is triable by the Sessions Court, has committed the case to the Court of Sessions, Salem Division and the same has been taken on file in Sessions Case No.31 of 2007.

5. The Trial Court after hearing both sides and upon perusing the relevant records has framed a charge against the accused under Section 302, IPC and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 10 have been examined and Exs-P1 to P8 and M.O.1, have been marked.

7. When the accused has been questioned under Section 313, Cr.P.C., as respects incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of the accused, Exs-D1 to D3, have been marked.

8. The Trial Court after hearing both sides and upon perusing the relevant evidence available on record has found the accused guilty under Section 304(2), IPC and sentenced him to undergo four years RI. Against the conviction and sentence passed by the Trial Court, the present criminal appeal has been preferred at the instance of the accused, as appellant.

9. The learned counsel appearing for the appellant/accused has raised the following points so as to set aside the conviction and sentence passed by the Trial Court.

(a) The accused has sustained some injuries and the same have not been explained by the prosecution;

(b) The complaint alleged to have been given by the defacto complainant has been registered by P.W.9 and his specific evidence is that he prepared the FIR and the same has been marked as Ex-P6 and in between Exs-P6 and P1, some contradictions are available and the same have not been explained on the side of the prosecution and therefore, Ex-P1 is nothing but a fabricated document;

(c) The prosecution has not clearly established the scene of occurrence;

(d) The prosecution has not adduced proper evidence with regard to recovery of M.O.1 from the place of occurrence;

(e) The accused at the time of answering questions under Section 313, Cr.P.C., has given proper explanation as to how he

has no connection whatsoever with the alleged offence and the Trial Court has failed to look into it.

10. Per contra, the learned Additional Public Prosecutor has contended that in the instant case, the defacto complainant has been examined as P.W.1 and his sister has been examined as P.W.2 and two independent witnesses have been examined as P.Ws.4 and 5. All of them have consistently stated in their evidence about the overt acts alleged to have been made by the accused on the person of the deceased and further, the Investigating Officer has clearly explained as to how the accused has sustained injuries. The Trial Court after considering the overall evidence available on record has rightly found the deceased guilty under Section 304(2), IPC and therefore, the conviction and sentence passed by the Trial Court do not warrant interference.

11. The entire case of the prosecution is based upon Ex-P1, complaint, wherein it has been clearly stated about the cortege which has taken place at the time of occurrence. Further, in Ex-P1, it has been clearly stated about the overt acts alleged to have been committed by the accused on the person of the deceased. The author of Ex-P1 is the son of the deceased, examined as P.W.1 and Jecinta Mary, who is the sister of the deceased is examined as P.W.2 and both of them have consistently stated that in the place of occurrence, the accused has attacked on the person of the deceased by using a stone. Apart from their evidence, the prosecution has chosen to examine two independent witnesses viz., Krithu Raja and Devaprakasam as P.Ws.4 and 5 and both of them have clearly adduced evidence to the effect that the accused has attacked the deceased by using a stone. The Post-mortem Doctor has been examined as P.W.7 and he opined that the injuries sustained by the deceased would be possible, if he has been attacked by stone. Therefore, from a cumulative reading of the evidence given by P.Ws.1, 2, 4, 5 and 7 coupled with Exs-P1, complaint and P5, post-mortem certificate, it is needless to say that the prosecution has clearly established the guilt of the accused even without a speck of doubt.

12. The first and foremost contention put-forth on the side of the appellant/accused is that the accused has sustained injuries and the same have not been explained on the side of the prosecution. At this juncture, the Court has to look into the evidence given by P.W.10, Investigation Officer. Even during the course of chief examination, P.W.10 has given proper explanation to the effect that after the occurrence, the accused has scampered from the place of occurrence and after some distance, he stumbled down and due to that he sustained injuries. Since, P.W.10, has given proper explanation with regard to injuries sustained by the accused, the first and foremost contention putforth on the side of the accused is sans merit.

13. The second contention putforth on the side of the appellant-accused is that in between Exs-P1 and P6, some contradictions are available. Ofcourse, it is true that some

materials which are not found in Ex-P1, have been mentioned in ExP6 and the same would not militate the contention of the prosecution and therefore, the second contention putforth on the side of the accused also goes out without merit.

14. The third contention putforth on the side of the appellant/accused is that the prosecution has not established the scene of occurrence properly. In fact, on the side of the prosecution, a rough sketch has been marked as Ex-P7, wherein it has been clearly stated that the entire occurrence has taken place in the midst of Thammampatty road. Therefore, it is very clear that the prosecution has clearly established the scene of occurrence and on that score, the case of the prosecution cannot be rejected.

15. The fourth contention putforth on the side of the appellant/accused is that the prosecution has failed to adduce proper evidence with regard to recovery of M.O.1, stone. On the side of the prosecution, one Kailasam has been examined as P.W.6 with regard to recovery of M.O.1, from the place of occurrence. Of course, it is true that some flimsy contradictions are available with regard to recovery of M.O.1 and that itself would not pave the way for coming to a conclusion that the entire case of the prosecution is false. Therefore, the fourth contention putforth on the appellant/accused also goes out without merit.

16. It is true that at the time of posing questions under Section 313, Cr.P.C., the accused has given some explanation with regard to occurrence. Since on the side of the prosecution, P.Ws.1,2, 4 and 5 have given proper evidence with regard to the manner of occurrence, the explanation given by the accused under Section 313, Cr.P.C., cannot be accepted.

17. The learned counsel appearing for the appellant/accused has also contended to the effect that P.W.7, who conducted autopsy on the body of the deceased has opined that if the accused has fallen down he would have suffered injuries sustained by him and therefore, the case of the prosecution cannot be believed in. It is true that P.W.7 has given such kind of opinion. It is an admitted fact that P.W.7 is a Doctor who conducted autopsy and he has expressed only his opinion and the same cannot be considered as a conclusive evidence. Therefore, viewing from any angle, the contentions putforth on the side of the appellant/accused are of no use.

18. It is seen from the records that at the time of committing offence, the accused has attained the age of 31, and for flimsy reason, the entire occurrence has taken place. The Trial Court has awarded sentence of four years' RI under Section 304(2), IPC. Considering the age of the appellant/accused and also considering the reason for occurrence, this Court is of the view to modify the substantial sentence to the extent mentioned below:

In fine, this criminal appeal is allowed, in part. The conviction passed in S.C.No.131 of 2007 dated 28-11-2007, by the Principal Sessions Judge, Salem is confirmed. However, the quantum of sentence is modified as follows:

The appellant/accused is sentenced to undergo three years' R.I., instead of four years.

-sd/-

ASSISTANT REGISTRAR(CS-III)

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

glp

To

1. The Inspector of Police
Thambampatti Police Station
Salem District.
2. The Principal Sessions Judge, Salem
3. The Judicial Magistrate,
No.II, Attur.
4. The Superintendent,
Central Prison, Salem.
5. The Public Prosecutor
High Court, Madras.

+1 CC to MR.DEVARAJ ADVOCATE. SR.NO. 52382

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CO-VSJ
JD 07/10/2015

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