



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2015

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THE HONOURABLE MR. JUSTICE A.SELVAM

and

THE HONOURABLE MR. JUSTICE T.MATHIVANAN

Cr1.A.(MD)No.28 of 2014

MP(MD)NO.1 of 2014

Arivalagan .. Appellant/Sole Accused

Vs.

State rep.by
The Inspector of Police,
Woraiyur Police Station,
Trichirapalli District,
Crime No.1221 of 2012. .. Respondent/Complainant

Criminal appeal filed under Section 374 of Cr.P.C. against the conviction and sentence dated 18.12.2013 passed in Sessions Case No.83 of 2013 by the Principal District and Sessions Court, Tiruchirapalli Division.

For Appellant : Mr.T.Leninkumar
For Respondent : Mr.K.S.Duraipandian
Addl.Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by **A.SELVAM, J.**)

Challenge in this Criminal Appeal is to the conviction and sentence dated 18.12.2013 passed in Sessions Case No.83 of 2013 by the District and Sessions Court, Tiruchirapalli Division.

2. The nub of the case of the prosecution is that in between the deceased Marappan and father of the accused by name Dhandapani, previous animosity has been in existence with regard to institution of a civil suit in respect of a compound wall. The accused has used to peep through compound wall while the daughters of the deceased have worked in the house of the deceased. On 08.11.2012 at about 07.30 am, the accused has hurled invectives against one of the daughters of the deceased by name Vani and the deceased has questioned the same. All of the sudden the accused has taken a knife from his waist and attacked on the person of the deceased and due to his overtacts, the deceased has passed away. After occurrence, one of the daughters of the deceased by name Vani as defacto complainant has given a complaint to PW18, Chithra, Sub Inspector of Police and the same has been registered in Crime No.1221 of 2012. The complaint given by the defacto complainant has been marked as Ex.P1.



3. On receipt of Ex.P1, the Inspector of Police viz., PW19 has taken up investigation, examined connected witnesses and made arrangements to conduct autopsy on the body of the deceased. The doctor by name Ravikumar viz., PW13 has conducted autopsy and he found the following internal and external injuries:

Wounds

(1) Dark brown colour abrasions on the front of left knee 5 cm x 2 cm, front of right knee 6 cm x 2 cm and left side of face below the lower eye lid 3 cm x 2 cm.

(2) An oblique stab wound 4 cm x 1 cm x cavity deep present on the front of lower part of left side of chest, 14 cm from mid line. O/E the edges are clean cut, upper end is blunt and lower end is sharp. On further dissection, a stab wound of 3 cm x 1 cm x cavity deep was present on the 8th intercostals space O/E intercostal muscle blood vessels and nerves are found cut. The thoracic cavity contains fluid blood.

(3) A transverse stab wound 8 cm x 0.5 cm x muscle deep on the centre of back of trunk. O/E the edges are clean.

(4) An oblique stab wound near the mid line on the right side of back of abdomen 5 cm below the above wound 6 cm x 1 x cavity deep. O/E the edges are clean cut. The upper end is blunt, lower end is sharp. On further dissection a stab wound on the 10th inter costal space 5 cm x 3 cm x cavity, deep O/E the intercostals muscles blood vessels and nerves are found out. On further examination the omentum is cut and through to through stab wound on the spleen present 4 cm x 0.5 cm peritoneal cavity contains fluid blood.

(5) A traverse stab wound on the side aspect of left side of back 4 cm x 0.5 cm muscle deep.

4. The postmortem certificate has been marked as Ex.P11. After completing investigation, PW19 has laid a final report on the file of the Judicial Magistrate Court No.IV, Tiruchirapalli and the same has been taken on file in PRC No.4 of 2013.

5. The Judicial Magistrate Court No.IV, Tiruchirapalli after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions and the same has been taken on file in Sessions Case No.83 of 2013.

6. The trial court after hearing both sides and upon perusing relevant records has framed first charge against the accused under Section 294 (b), second charge under Section 302 of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

7. On the side of the prosecution, PWs.1 to 19 have been examined and Exs.P1 to P25 and M.Os.1 to 10 have been marked.

8. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime.



On the side of the accused DWs.1 to 3 have been examined and Exs.D1 to D9 have been marked.

9. The trial Court after considering the available evidence on record has found the accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. The trial Court has acquitted the accused in respect of the charge framed against him under Section 294(b) of the Indian Penal Code. 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.

10. The consistent case of the prosecution is that the deceased and accused are neighbours and in respect of a compound wall, a civil suit has become emerged betwixt the deceased and father of the accused by name Dhandayutham. The accused has used to peep through compound wall, while daughters of the deceased have worked in their house. On 08.11.2012 at about 07.30 am, the accused has hurled invectives against one of the daughters of the deceased by name Vani and the same has been questioned by the deceased and all of a sudden, the accused has taken a knife from his waist and stabbed the deceased and due to his overtacts, the deceased has passed away.

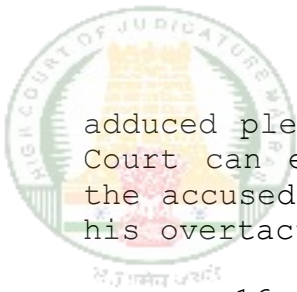
11. Before contemplating the submissions made on either side, it would be more useful to look into as to whether the prosecution has established guilt of the accused punishable under Section 302 of the Indian Penal Code.

12. The defacto complainant by name Vani has been examined as PW1 and her sister by name Rani has been examined as PW2. The son of PW1 by name Kishanth has been examined as PW3. All of them have consistently stated in their evidence that the accused has used to peep through compound wall while PWs.1 and 2 have worked in the house of the deceased and the same has been reported to the father of the accused and on the date of occurrence, the accused has hurled invectives against PW1 and the same has been questioned by her father viz., deceased and all of a sudden the accused has taken a knife from his waist and stabbed on the person of the deceased.

13. The independent witnesses namely Muthusamy, Mani, Sarath @ Sarathkumar, Ahammed Ali and Yoganathan have been examined as Pws.4 to 8 and all of them have consistently stated in their evidence that in the place of occurrence, the accused has attacked the deceased by using a knife.

14. In fact, PW1 has given evidence in consonance with the averments made in Ex.P1, complaint. The evidence given by PW1 has been clearly corroborated by the remaining prosecution witnesses namely PWs.2 to 8.

15. The doctor who conducted autopsy has been examined as PW13 and his specific evidence is that death would be possible if the deceased has been attacked by using M01, knife. Therefore, the medical evidence adduced on the side of the prosecution has clearly corroborated the ocular evidence available in the present case. Since the prosecution has



adduced plenitude of evidence with regard to motive and occurrence, the Court can easily come to a conclusion that in the place of occurrence, the accused has attacked the deceased by using MO1, knife and only due to his overtacts, the deceased has passed away.

16. The learned counsel appearing for the appellant/accused has contended that the accused has been suffering from mental illness and only during his insanity, he committed the crime and therefore, as per Section 84 of the Indian Penal Code he cannot be mulcted with liability and the trial Court has failed to look into the same.

17. Per contra, the learned Additional Public Prosecutor has contended that even though on the side of the accused both oral and documentary evidence have been let in for the purpose of proving the alleged unsoundness of the accused, on the side of the accused, no clinching evidence have been forthcoming for the purpose of showing that he committed the offence punishable under Section 302 of the Indian Penal Code during his insanity and the trial Court after considering the available evidence on record has rightly invited conviction and sentence against the accused under Section 302 of the Indian Penal Code and the same are not liable to be set aside.

18. Section 84 of the Indian Penal Code reads as follows:

Act of a person of unsound mind.- Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

19. Even from a cursory look of the provisions of the said section it is made clear that nothing is an offence if it is done by a person during his unsoundness of mind.

20. It is an admitted fact that the occurrence has taken place on 08.11.2012. Since the only defence taken on the side of the appellant/accused is that he committed the offence during his insanity, the entire burden lies upon him.

21. On the side of the appellant/accused, DWs.1 to 3 have been examined. In fact, this Court has analysed the entire evidence adduced by DWs.1 to 3 and none of them have stated that on the date of occurrence the accused has suffered from mental illness (unsoundness of mind). Further on the side of the accused, Exs.D1 to D9 have been marked and the same have become emerged after occurrence. Therefore, it is quite clear that on the side of the accused, it has not been established to the effect that on the date of occurrence, the accused has suffered from illness and only during his insanity he committed the crime. Therefore, the contention put forth on the side of the appellant/accused is of no use.

22. In fact, on the side of the appellant/accused, no mention has been made with regard to evidence adduced by PWs.1 to 8. It has already been pointed out that PWs.1 to 8 have given cogent/trustworthy evidence with regard to motive and occurrence. Further the prosecution has adduced enormous medical evidence for the purpose of showing that the deceased



has passed away only due to overtacts committed by the accused. Under the said circumstances, viewing from any angle, this Court has not found any acceptable force in the contention put forth on the side of the appellant/accused.

23. The trial Court after evaluating the available evidence on record has rightly invited conviction and sentence against the appellant/accused and therefore, the present Criminal Appeal deserves to be dismissed.

24. In fine, this Criminal Appeal is dismissed. The conviction and sentence passed in Sessions Case No.83 of 2013 by the District and Sessions Court, Tiruchirapalli Division are confirmed. Connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(Writ)

/True Copy/

Sub Assistant Registrar

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To

1.The Principal District and Sessions Judge, Tiruchirappalli.

2.The Judicial Magistrate NO.IV, Tiruchirappalli.

3.Do thro' The Chief Judicial Magistrate, Tiruchirappalli.

4.The District Collector, Tiruchirappalli.

5.The Director General of Police, Mylapure, Chennai.

6.The Superintendent, Central Prison, Tiruchirappalli.
(In Duplicate to communicate to the Accused)

7.The Inspector of Police,
Woraiyur Police Station, Trichirapalli District.

8.The Addl. Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC TO MR. T.LENIN KUMAR, ADVOCATE SR NO.6662

Judgment in
Crl.A. (MD) No.28 of 2014
12.02.2015

RG.23.02.2015 5P/12C