

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 02-06-2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.APPEAL No.111 of 2014

Thirunavukarasu ... Appellant/Accused

-vs-

The State, rep.by
The Inspector of Police,
N1-Royapuram Police Station,
Chennai-13. ... Respondent/Complainant
(Crime No.898 of 2005)

Appeal against the judgment, dated 29.12.2006, made in
S.C.No.420 of 2006 on the file of Principal Sessions Judge,
Chennai.

For appellant : Mr.S.Samuel Raja Pandian
For respondent: Mr.M.Maharaja,
Additional Public Prosecutor.

JUDGMENT

(Judgment of the Court was delivered by V.Bharathidasan,J.)

Appellant is the sole accused in S.C.No.420 of 2006 on the file of Principal Sessions Court, Chennai. He stood charged for an offence punishable under Section 302 of IPC. Vide Judgment, dated 29.12.2006, the trial Court convicted the appellant/accused under Section 302 of IPC and sentenced him to undergo life imprisonment and also to pay a fine of Rs.1,000/- and, in default of payment of fine, to undergo simple imprisonment for a further period of three months. Challenging the conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows :

2.1. The deceased one Ranganathan is the father of the accused. Both of them were residing at Door No.1/2, Veerasamy Lane, Royapuram, Chennai. There was a property dispute prevailing between them, hence, with a motive to kill his father, the appellant/accused, at about 01.00 a.m., on the intervening night of 19.09.2004 and 20.09.2004, attacked the deceased with an iron rod and caused injury on the head of the deceased. Due to the said injury, the deceased was profusely bleeding from his ears, nose and mouth, thereafter, he succumbed to injuries.

2.2. P.W.1 Sanjay Jain, who was running an electrical shop near the scene of occurrence, was standing near the house of the accused with his friends, being the eve of Vinayaka Chaturthi. He heard the noise and rushed to the house and saw the accused holding an iron rod, he also saw the deceased, lying on the mat with profuse bleeding and at that time the other neighbours also arrived at the scene. He immediately went to the respondent police station and gave a complaint, Ex.P-1, at about 01.30 a.m. on 20.09.2004, based on that, P.W.11, Inspector of Police, registered a case in Crime No.898 of 2004, on the file of N-1 Royapuram Police Station, Chennai, for an offence under Section 307 of IPC and the FIR Ex.P-11. Thereafter, P.W.11 visited the scene of occurrence and sent the deceased, who was struggling for life, to Government Stanley Medical College Hospital, along with P.W.10, Sub-Inspector of Police, for treatment. He prepared Observation Mahazar Ex.P-3, and Rough Sketch Ex.P-12, in the presence of P.W.2 and other witnesses. He recovered the blood stained Mat M.O.2 under Ex.P-3, which was attested by P.W.2. He examined the witnesses, recorded their statements and proceeded to Government Stanley Medical College Hospital and examined the doctor, P.W.6, who admitted the deceased as an in-patient and issued Accident Register Ex.P-8. The deceased was, thereafter, shifted to Government General Hospital, Chennai, where he succumbed to injuries on 20.09.2004, at about 03.45 p.m. P.W.11, the Investigating Officer, on receipt of death memo, altered the charge into 302 IPC, and sent the altered F.I.R. Ex.P-13 to the Judicial Magistrate. On 21.09.2004, at about 08.15 a.m., P.W.11 conducted inquest in the presence of Panchayatdars and prepared Inquest Report Ex.P-14. Thereafter, the body was sent for post-mortem, under Ex.P-9 requisition, and he also examined P.Ws.3 and 4. On 22.09.2004, P.W.7 doctor conducted post-mortem on the body of the deceased at 11.25 a.m., issued Post-mortem Certificate Ex.P-10 and found following injuries:

"INJURIES. An abrasion 4x2 cm. with intervening intact skin seen over left temporo parietal region of scalp (which is 14 cm. from left mastoid process and 11 cm. away from midline).

- An abrasion 1x0.5 cm. seen over left earlobe.
- An abrasion 2x0.5 cm. seen just above previous injury.

- Periorbital contusion of left eye.

SCALP: On dissection extensive contusion seen over entire scalp tissue.

- A horizontal 4 cm. long fissure fracture seen over left temporal bone, which is extending through left parietal bone crossing the midline and running right parietal bone extending upto left temporo parietal suture line - the total length of fracture is 20 cm.

- On dissection of vault : Extra dural haemorrhage 18x7x0.5 cm. seen beneath the fracture line.

- On opening the dura- extensive sub dural haemorrhage seen over left parietal temporal and right parietal region of brain surface.

- On further dissection intra cerebral haemorrhage seen over both hemispheres.

Heart - Normal in size. Pericardial fat seen.

Chambers contain fluid blood.

Valves - Nothing abnormal.

Coronary .. patent.

Atheromatous plaques seen over root of Aorta.

Lungs - Cut section congested.

Hyoid .. Intact

Stomach .. 150 gm. of partly digested food particles with no specific odour.

Liver, Spleen, both kidneys.. Cut section congested.

Bladder .. Empty.

Pelvis .. Intact.

Spinal column .. Intact.

OPINION. DIED OF HEAD INJURY (Viscera preserved for chemical analysis report)"

P.W.7, doctor, opined that the deceased had died of head injury.

2.3. P.W.11 arrested the accused at about 11.00 a.m. on 21.09.2004, and on arrest, the accused gave a voluntary confession in the presence of P.W.3 and other witnesses. Based on the disclosure statement made by the accused, P.W.11 recovered the Iron Rod -M.O.1, under Ex.P-5 Mahazar, and sent the seized articles to the Court. Thereafter, the accused was remanded to judicial custody. After completion of investigation, P.W.11 laid a chargesheet against the accused, for the offence

punishable under Section 302 of IPC.

3. Based on the above materials, the trial Court framed the sole charge under Section 302 IPC against the accused and the accused denied the charge. In order to prove its case, the prosecution examined as many as 11 witnesses, namely, P.Ws.1 to 11; filed 14 documents vide Exs.P-1 to P-14 and marked 2 material objects.

4. Out of the 11 witnesses, P.W.1 is the complainant in the case, who was present at the scene of occurrence, heard the screaming noise from the house of the deceased, ran to the house and saw the accused with an iron rod M.O.1 and the deceased lying on the mat M.O.2, with profuse bleeding from nose, ears and mouth. Immediately, he went to the Police Station and filed a complaint Ex.P-1 at about 01.30 p.m. P.W.2, who was working in a factory near to the scene of occurrence also heard the noise and saw the accused standing with an iron rod and the deceased lying on the mat with profuse bleeding. He also signed in the Observation Mahazar, Ex.P-2, and Seizure Mahazar, Ex.P-3. P.W.3 speaks about the arrest and confession given by the accused under Ex.P-4 and also recovery of M.O.1, iron rod. P.W.4 doctor, working in the Government Stanley Medical College Hospital, admitted the deceased at about 04.00 a.m. in the hospital and spoke about the injury on the deceased and issued Accident Register Ex.P-6. P.W.5, the Assistant Professor, working in the Government General Hospital, Chennai, shifted the deceased on 20.09.2004 to the accident ward, and after the death of the deceased, issued death intimation to police, Ex.P-7. P.W.6 is the doctor working in Government General Hospital, who admitted the deceased in the hospital as an in-patient and issued Accident Register, Ex.P-8. P.W.7 is the doctor, who conducted post-mortem/autopsy on the body of the deceased on 22.09.2004 and spoke about the injuries on the deceased and also issued Post-mortem Certificate, Ex.P-10. P.W.8 was working in a mill, nearby to the scene of occurrence. P.W.9, who was running an alluminium industry, spoke about the dispute between the accused and the deceased and the motive for the murder. P.W.10 is the Sub-Inspector of Police, who took the deceased to Government Stanley Medical Hospital. P.W.11 is the Investigating Officer, who has investigated the case and filed the final report.

5. When the accused was questioned under Section 313 Cr.P.C. with regard to the incriminating materials produced by the prosecution, he denied the same as false. The accused did not choose either to examine any witnesses or to mark any documents.

6. The Trial Court, after analysing the materials available on record, convicted the appellant/accused under

Section 302 of IPC and sentenced him to undergo life imprisonment and also to pay a fine of Rs.1,000/- and, in default of payment of fine, to undergo simple imprisonment for a further period of three months. Hence, this appeal, at the instance of the appellant/accused.

7. The learned counsel for the appellant has submitted that there is no eye witness to the occurrence and that the motive is also not proved by the prosecution. He would further submit that the evidence let in by the prosecution also does not point to the guilt of the accused and, accordingly, he prayed for allowing the appeal.

8. Conversely, the learned Additional Public Prosecutor, appearing for the State, would vehemently contend that the prosecution has proved its case beyond all reasonable doubt. He would also submit that all the witnesses were independent witnesses; the occurrence took place in the house of the accused; P.Ws.1,2 and 8 also saw the accused standing with the iron rod M.O.1 at the scene of occurrence; the motive for murder is also clearly established by the evidence of P.W.9, and, accordingly, he sought for dismissal of the appeal.

9. We have heard the submissions of the learned counsel and also thoroughly perused the materials available on record.

10. There is no dispute that the accused is the son of the deceased and the occurrence took place inside the house, where the accused and the deceased were residing. The dispute between the accused and the deceased over the property has been clearly spoken to by P.W.9, who is well known to them. That apart, P.W.1, who is the complainant, is a stranger. He has clearly deposed, that while he was walking through the scene of occurrence, he heard the noise from the house; so he rushed to the house and also saw the accused standing with blood stained iron rod M.O.1 and the deceased lying on the mat, with profuse bleeding. Thereafter, he immediately lodged the complaint to the respondent police at 01.30 a.m., within half-an-hour of the occurrence. Likewise, P.W.2, working in a nearby factory, saw the accused standing with an iron rod and the deceased inside the house. Besides, the evidence of P.W.8, who was working in a mill nearby to the scene of occurrence, also corroborates the evidence of P.Ws.1 and 2 and all of them are independent witnesses and no motive is attributed to them.

11. In so far as the motive is concerned, P.W.9, who is living near the house of the accused, is well known to both the accused and the deceased, and he spoke about the property dispute prevailing between the accused and the deceased. His evidence was not shattered in the cross-examination. Hence, the motive for the occurrence is also proved by the prosecution.

12. Admittedly, the occurrence took place in the residential house of the accused and the deceased at an odd hour and it was also not the case of the accused that apart from the accused and the deceased, some other persons were also residing in the house. All the above circumstances would clinchingly point to the guilt of the accused. Hence, we have no hesitation to hold that it was the appellant, who perpetrated the crime. As such, the prosecution has proved its case beyond all reasonable doubts.

13. Learned counsel for the appellant would submit that even if the guilt of the accused is proved, it only amounts to culpable homicide, not amounting murder, which attracts Section 304 IPC, and, therefore, he prayed for lesser sentence, as the offence falls under exceptions to Section 300 IPC.

14. We have considered the above submission of the learned counsel for the appellant. As no evidence is available on record to show that the occurrence has taken place due to sudden provocation or the act of the accused falls under any of the exceptions to Section 300 IPC, the submission of the learned counsel for the appellant in this regard cannot be accepted.

15. In the result, the appeal is dismissed, confirming the conviction and sentence, imposed by the trial Court. The trial Court is directed to take steps to secure custody of the appellant and commit him to prison to undergo the remaining period of sentence. The sentence already undergone by the appellant shall be set off under Section 428 of Cr.P.C.

-s/d-

Assistant Registrar(CSIII)

True Copy

Sub-Assistant Registrar

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To

1.The XVI Metropolitan Magistrate
George Town Chennai

2.-do- Thro'The Chief Metropolitan Magistrate
Egmore, Chennai

3.The Principal Sessions Judge,
Chennai.

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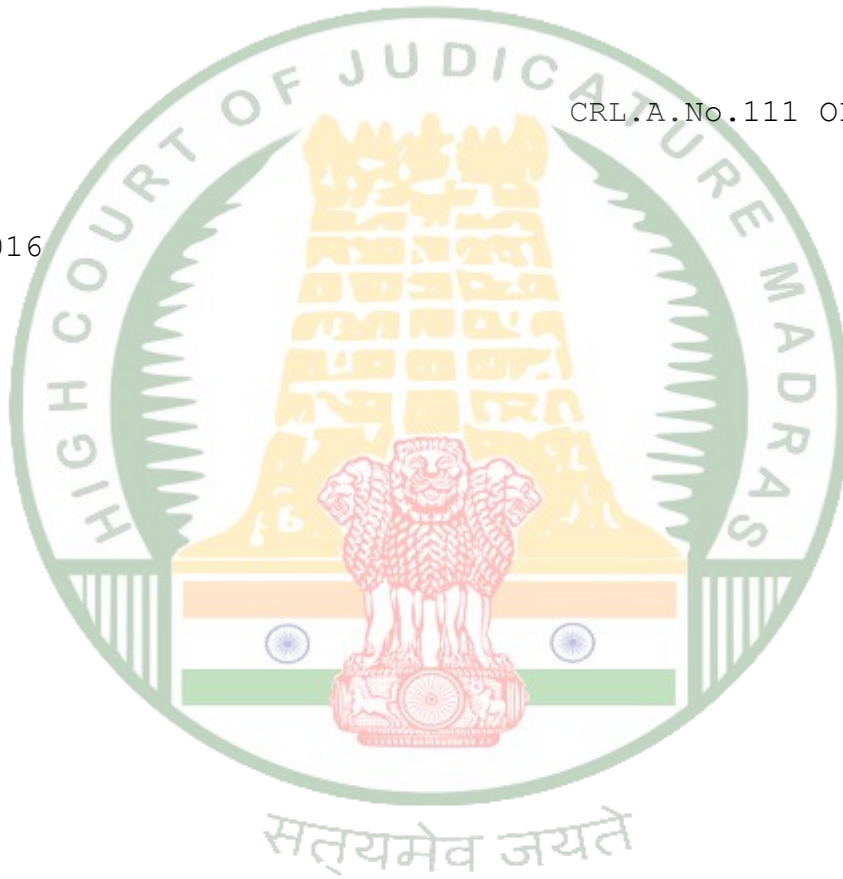
4.The Inspector of Police,
N1-Royapuram Police Station,
Chennai-13.

5.The Superintendent
Central Prison, Puzhal, Chennai
Life Convict No.1229

6.The Section Officer, Criminal Section
High Court, Madras

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