

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.285 of 2014

Rajan @ David Raja ... Appellant/Accused.

-Vs-

State

Rep. by Inspector of Police
Aanaimalai Police Station,
Coimbatore District.
(Crime No.337/2004)

... Respondent/
complainant.

This Criminal Appeal has been preferred to set aside the conviction and sentenced imposed by judgment dated 01.08.2011 made in S.C.No.159 of 2005 on the file of the Additional District and Sessions Judge (FTC -1), Coimbatore, by allowing this appeal.

For Appellant : Mr.T.Muruganantham

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T
सत्यमेव जयते

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C.No.159 of 2005 on the file of the Additional District and Sessions Judge, (FTC -I) Coimbatore. He stood charged for offences under Sections 302, and 506(ii) IPC (2 counts). By judgment dated 01.08.2011, the Trial Court convicted him under Section 302 IPC alone and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for 3 months. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

The accused is the resident of Udaikulam village, Coimbatore District. P.W.7 - Krishnaveni alias Mary is the wife of the accused. The deceased viz., Sivaraj also hailed from the same village. Out of the said wedlock between the accused and P.W.7, P.W.7 became pregnant. But there were frequent quarrels between them. While so, the deceased had eloped with P.W.7 one month before the occurrence. Elsewhere, they stayed together. The accused was in search of them. But he could not locate them anywhere. Finally, P.W.7 and the deceased returned to the village at the instance of the village elders. The village elders tried to persuade P.W.7 to return to the matrimonial home of the accused. But she refused and went to the house of her parents. The deceased returned to his house.

3. On 02.10.2004, around 6.30 p.m., the deceased had gone to the tailoring shop owned by P.W.1 in the same village. After having spoken to him for few minutes, the deceased went to the barber shop near the shop of P.W.1. When the deceased was in the barber shop, the accused suddenly emerged there. He was having an aruval in his hand. He attacked the deceased with Aruval indiscriminately on his head, hands and other parts of the body. The occurrence was witnessed by P.Ws.1 and 2. On seeing them, the accused fled away from the scene of occurrence with the weapon. P.Ws.1 and 2 cried for help. P.W.3 rushed to the place of occurrence and at that time, he found the accused fleeing away from the scene of occurrence. P.W.4 also came to the place of occurrence. Then P.Ws.1 to 4 took the deceased to a private hospital at 7.45 p.m. Dr.K.S.Alva examined the deceased at 7.45 p.m. on 02.10.2004 at his private hospital. He found cut injuries on the head of the deceased and there was profuse bleeding. Since the condition of the deceased was critical, he gave transfusion of blood to retrieve him. He referred him to the Coimbatore Government Hospital, since there was no improvement in the condition of the deceased. P.W.10 - Dr.R.Sekar admitted him at the Coimbatore Government Hospital at 10.00 p.m. on 02.10.2004. At that time, the deceased was unconscious. He gave treatment to him. At 1.20 p.m. he died in the hospital succumbing to the injuries.

4. After admitting the deceased in the hospital, P.W.1 went to the Annaimalai Police Station and made a complaint at 9.30 p.m., on 02.10.2004. P.W.12 - the then Head constable of the said Police Station on receipt of the said complaint in Ex.P1 registered a case in Crime No.337 of 2004 under Sections 324 and 506(ii) IPC. He forwarded both the documents Ex.P1 - Complaint and Ex.P10 - FIR to the Court, which were received by the learned Magistrate. Thereafter, he handed over the case diary to

P.W.14, the Inspector of Police for investigation.

5. P.W.14 the Inspector of Police went to the place of occurrence and prepared an Observation Mahazar and a rough sketch in the presence of P.W.5 and another witness at 6.00 a.m. on 03.10.2004. He recovered blood stained earth, sample earth and also blood stained newspaper lying at the place of occurrence under a Mahazar. He examined P.Ws.1 to 4 and recorded their statements. Since the deceased was unconscious, P.W.14 could not examine him. Then he arrested the accused on the same day at 1.00 p.m. in the presence of P.W.6 and another witness. On such arrest, the accused gave voluntary confession, in which, he disclosed the place where he had hidden the Aruval. In pursuance of the same, he took the Police and the witnesses to the place of hide out and produced M.O.1 Aruval. P.W.14 recovered the same under a Mahazar. Then he forwarded the accused to Court for judicial remand. On 04.10.2004 after getting intimation from the hospital that the deceased had succumbed to injuries, he altered the case into one under Sections 302 and 506(ii) IPC. Ex.P13 is the alteration report. Then he conducted inquest on the body of the deceased and forwarded the same for post-mortem.

6. P.W.13 conducted autopsy on the body of the deceased on 05.10.2004 at 10.45 a.m. He found the following injuries:

- "1. Sutured wound of 1.5 cms length with one suture seen over the front of upper part of left leg, with a trailing abrasion of 3 cms length seen on the left side of the wound, and the wound is 5 cms below the left knee joint.
2. Sutured wound of 4 cms length with 4 sutures seen over the middle finger of right hand.
3. Sutured wound of 5 cms length with 4 sutures seen over the lower part of medial aspect of left forearm. On dissection underlying muscles, vessels and nerves found cut on the line of the wound. Underlying bone also found partly cut on the line of the wound.
4. Incised like cut wound of 5 cms length seen over the palmar aspect of left hand, 3 cms below the left little finger.
5. Sutured wound of 14 cms in length with 11 sutures seen involving left frontal region to the right parietal region crossing the midline. The lower end of the wound is 7 cms above the lateral end of left eyebrow and the upper end is 9 cms above the right ear lobule. On dissection of scalp subscalpal haematoma seen over both

frontal and right parietal regions of the scalp. Crack fracture of 15 cms length seen involving both frontal bone of the vault. Extra dural haematoma (clot) seen over the left frontal lobe of the dural surface. Subdural and subarachnoid haemorrhage seen over both frontal and right temporo-parietal regions of the brain surface."

Ex.P11 is the post-mortem certificate. He gave opinion that the death of the deceased was due to cut injury on the head and its complications.

7. P.W.14 collected the medical records and examined the doctors. He forwarded the material objects to the Court with a request to forward the same for medical examination. The report revealed that there were human blood on all the material objects including the bill hook recovered from the accused. On completing the investigation, P.W.14 laid charge sheet against the accused

8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 19 documents were exhibited, besides 6 material objects were marked.

9. Out of the said witnesses, P.Ws.1 and 2 are the eye witnesses to the occurrence. They have vividly spoken about the same. They have spoken about the motive also. P.W.3 has stated that he heard the human cry and rushed to the place of occurrence. At that time, he found the accused fleeing away from the scene of occurrence with aruval in his hand and he found the deceased lying in a pool of blood with cut injuries. P.W.4 has stated that he joined P.Ws.1 to 3 and took the deceased to the hospital run by P.W.8. P.W.5 has spoken about the observation mahazar and rough sketch prepared and the recovery of Material Objects from the place of occurrence. P.W.6 has spoken about the arrest of the accused by P.W.14. and the recovery of M.O.1 on the disclosure statement made by the accused. P.W.7 - wife of the accused has spoken about the motive. P.W.8 has spoken about the treatment given. P.W.10 has stated that he admitted the deceased at 10.00 p.m. at Coimbatore Government Hospital. At that time, the deceased was unconscious. P.W.9 has stated that the deceased died at 1.30 a.m. P.W.11 has stated that he took the deceased to the Coimbatore Government Hospital from the hospital run by P.W.8. P.W.12 has spoken about the registration of the case and the complaint of P.W.1. P.W.13 has spoken about the post-mortem

conducted and his final opinion. P.W.14 has spoken about the investigation done and final report filed.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, he denied the same as false. His defence was a total denial.

11. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how the appellant is before this Court with this appeal.

12. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

13. As we have already pointed out, in this case, the prosecution mainly relies on the evidences of P.Ws.1 to 3. PWs.1 and 2 are the eye witnesses to the occurrence. They have not seen the entire occurrence. They have seen only part of the occurrence. According to them, when they entered on hearing the alarm raised by the deceased, they found the accused cutting the deceased with aruval. P.W.3 has stated that he found the accused fleeing away from the scene of occurrence. The presence of these three witnesses at the place of occurrence cannot be doubted, because they were running shops near the place of occurrence. Therefore, their conduct in rushing the deceased to the hospital immediately also would add strength to the case of the prosecution that they were present at the place of occurrence. Though these three witnesses have been cross examined at length, nothing has been elicited so as to doubt the credibility of these three witnesses. From these three witnesses, we have no hesitation to hold that it was this accused, who cut the deceased. According to the medical evidence, the death was due to the cut injury caused on the head of the deceased. Thus, in our considered view, the prosecution has clearly established beyond any doubt that it was this accused who cut the deceased and caused death. The recovery of M.O.1 Aruval from the possession of the accused, in pursuance of the disclosure statement made by him also would add strength to the case of the prosecution.

14. Now the question is as to what was the offence that was committed by the accused by his act. P.W.7 the wife of the deceased has stated that out of the wedlock, she was pregnant by some months. At that time, the deceased had eloped with her. They stayed elsewhere for one month and had illicit intimacy. They returned to the village, i.e, one day prior to the

occurrence. Quite naturally, the accused would have had depression out of the said event. On the day of occurrence, the accused would not have anticipated the deceased in the saloon. P.W.7 was staying with her parents. The deceased had come to the village. His coming to the saloon was not previously known to the accused. Thus, the meeting of the deceased at the saloon by the accused was purely accidental. What transpired at that time before the actual attack was made was not known. No witness has spoken about the same, because P.Ws.1 and 2 went to the place of occurrence only at the time when the actual cut was made by the accused. Thus, there is total absence of any evidence, as to what transpired preceding the actual attack made by the accused.

15. In our considered view, going by the natural human conduct, on seeing the deceased coming to the saloon, the accused would have questioned him as to why he had taken his wife. Certainly, this would have resulted in a quarrel. This should have been the immediate provocation for the accused. Already, because of the conduct of the deceased in taking his wife for one month and keeping her with him in illicit relationship would have had sustained provocation in him. Coupled with the above sustained provocation; the immediate provocation and due to the altercation, the accused had lost his mental balance and had caused the death of the deceased. Thus, in our considered view, the act of the accused would squarely fall within the third limb of Section 300 I.P.C., and the first exception to Section 300 I.P.C. Therefore, the accused is liable to be punished for offence under Section 304 (i) I.P.C.

16. Now, turning to the quantum of punishment, the accused is a young man aged hardly 30 years. The occurrence was not pre-meditated and it was out of sustained provocation and also due to some unexpected sudden provocation. Further, there are lot of chances for reformation. The accused had no bad antecedents. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for five years and to pay a fine of Rs.,5000/- in default to undergo rigorous imprisonment for 6 weeks would meet the ends of justice.

17. In the result, the appeal is partly allowed and the conviction and sentence imposed on the appellant for the offence under Section 302 IPC is set aside and instead, he is convicted for offence under Section 304(i) IPC and sentenced to under rigorous imprisonment for 5 years and to pay a fine of Rs.5,000/ in default to undergo rigorous imprisonment for six weeks. It is

directed that the period of detention already undergone shall be set off as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

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To

- 1.The Inspector of Police,
Aanaimalai Police Station,
Coimbatore District.
 2. The Principal Sessions Judge, Coimbatore.
 3. The Chief Judicial Magistrate, Coimbatore.
 4. The Collector, Coimbatore.
 5. The Director General of Police, Mylapore.
 - 6.The Additional District and Sessions Judge (FTC -1),
Coimbatore
 7. The Superintendent, Central Prison, Coimbatore.
 - 8.The Public Prosecutor
High Court, Chennai.
- + 1 CC to M/s.T.Muruganatham, Advocate SR NO 33110

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Cr1.A.No.285 of 2014

AD[CPO]
GP/22.7.

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