

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.305 of 2014

Selvam

... Appellant

Vs

State of Tamilnadu
rep. By
Inspector of Police,
Fair Lands Police Station,
Salem District.
Cr.No.1496 of 2011

... Respondent

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the judgment dated 17.04.2014 passed in S.C.No.48 of 2013 by the I Additional District and Sessions, Salem.

For Appellant : Mr.A.Raghunathan,
Senior Counsel,
for Mr.K.Elangovan

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

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JUDGEMENT

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

The sole accused in S.C.No.48 of 2013 on the file of the I Additional District and Sessions Court, Salem, is the appellant herein. He stood charged for an offence under Section 302 IPC. By judgment dated 17.04.2014, the trial Court convicted the appellant/accused for the offence under Section

302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2000/-, in default to undergo Simple Imprisonment for six months. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased one Ravi Bommanna is the husband of P.W.1. There was a money dispute between the brother of the deceased, namely, one Prabu Shankar and the accused. Based on a complaint given by the accused, Prabu Shankar was arrested, and the deceased had taken steps to release him on bail. Due to that the accused developed enmity against the deceased and the accused also was frequently threatening the deceased. On 27.12.2011, at about 4.00 p.m., the deceased gone to the office of one K.P.N. Travels for booking ticket for his daughter, P.W.2, who was studying at Bangalore. At about 5.15 p.m., the deceased contacted P.W.1 over mobile phone and informed her that the ticket available only for 11.45 bus and he booked the ticket. After some time, at about 5.30 p.m., P.W.1 received another phone call from the deceased mobile phone informing her that the deceased was attacked by somebody near one V.L.Motors opposite to T.V.S Petrol Bunk. Immediately, P.Ws.1 and 2 went to the scene of occurrence and saw the deceased with injuries in a pool of blood. At that time, an ambulance came, P.Ws.1 and 2 took the deceased in the hospital and somebody handed over the mobile phone of the deceased to P.W.1, and the deceased was conscious, but not in a position to speak. When, P.W.1, asked the deceased who attacked him, by sign he said that it is the accused, and, the deceased was admitted in the Mohan Kumara Mangalam Government Medical College Hospital, salem.

3. P.W.12 admitted the deceased and found injury on the right side of his neck and also issued Accident Register (Ex.P.15). After that, at about 7.00 p.m., the deceased succumbed to the injury. Immediately, at about 9.30 p.m., P.W.1 went to the respondent police and lodged a complaint (Ex.P.1). P.W.9, a Sub-Inspector of Police, registered a case in Crime No.1496/2011, for an offence under Section 302 IPC. He forwarded the First Information Report (Ex.P.14) to the Higher Officials and to the Court.

4. P.W.14, on receipt of the First Information Report, proceeded to the scene of occurrence and prepared Observation Mahazar (Ex.P.3) and Rough Sketch(Ex.P.17) and also recovered blood stained soil (M.O.4), sample soil (M.O.5) under Mahazar (Ex.P.4) in the presence of P.W.4 and another witness. He also recovered a plastic handle (M.O.6) and one pair chappal (M.O.7) under Mahazar (Ex.P.5) in the presence of the same witnesses. On 28.12.2011, he conducted inquest on the dead body of the deceased at the Government Hospital in the presence of

panchayathars and prepared Inquest Report (Ex.P.18). On the same day, P.W.14, examined P.Ws.1 and 2 and other witnesses and sent a request for postmortem through P.W.11, Head Constable.

5. On 28.12.2011, at 12.35 p.m., P.W.5, Dr.G.Panneer Selvam, conducted autopsy on the body of the deceased and found the following injuries:

" 1. An oblique cut throat incised wound over front, right side of neck extending to left lower part of neck M-13 cms in length, width M-6cms exposing distal cut end of trachea and it is situated 90 cms below mid chin and 4 cms above supra sternal notch and 8 cms below right mastoid process and 16 cms below left mastoid process. The edges are everted margins.

2. Another incised wound over left side lower part of neck 4 x 2 x Exposing underlying soft tissues and it is 1cm lateral to the previous injury.

3. Incised injury (defence injury) over WEB of the right thumb and index finger m-12x2xexposing underlying bones. "

Ex.P.7 is the Postmortem Certificate. He gave final opinion (Ex.P.9) that the deceased might have died of effects of shock and hemorrhage due to cut injury in his throat.

6. After postmortem, P.W.14 recovered the blood stained shirt, baniyan and track suit of the deceased, viz., M.Os 1 to 3. On 29.12.2011, at about 4.30 p.m., he arrested the accused in the presence of P.W.8 and another witness and on such arrest, he voluntarily gave a confession and based on the disclosure portion of the confession (Ex.P.10), he recovered blood stained shirt(M.O.8), pant(M.O.9) of the accused and M.O.10, knife, and he also recovered the TVS Scooty Pep (M.O.11) under the Mahazar (Ex.P.11). Since the accused also sustained small injury on his hand, he was taken to the Government Hospital, Salem under a Memo.

7. P.W.13, Doctor, working in Government Mohan Kumara Mangalam Medical College Hospital, treated the accused as outpatient and found a small injury on his hand and O.P. sheet is Ex.P.16. Since, P.W.14 was transferred, the investigation was taken up by his successor P.W.15. P.W.15 continued the investigation and after completing investigation, he filed the final report.

8. Based on the above materials, the trial Court framed the charge against the accused for the offence under Section 302 IPC. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as

15 witnesses were examined and 23 documents were exhibited, besides 11 Material Objects were marked.

9. Out of the said witnesses, P.W.1 is the wife of the deceased. According to her, there is a previous enmity between the accused and the deceased. The brother of the deceased, one Prabu Sankar, borrowed money from the accused and based on the complaint given by the accused, Prabu Sankar was arrested and the deceased took steps to release him on bail. Due to the same, there is enmity between the accused and the deceased, and the accused frequently threatening the deceased to finish him off. On 27.12.2011, the deceased had gone to book a bus ticket for his daughter, and at about 5.30 p.m., P.W.1 received a phone call from her husband mobile phone that somebody has cut the deceased on his neck. Immediately, P.W.1 along with her daughter, P.W.2 went to the place of occurrence and they saw the deceased with serious injuries in a pool of blood. Immediately, she took the deceased to the hospital and lodged a complaint.

10. P.W.2 is the daughter of the deceased and she also says about the motive and she along with P.W.1 took the deceased to the hospital. P.W.3 is an eyewitness to the occurrence. At about 5.30 p.m., he saw both the accused and the deceased quarreling with each other and the deceased told the accused that he will not pay the money and challenged him to do whatever he like. At that time, the accused tried to stab the deceased, when the deceased warded off the attack, sustained minor injury in the hands and he fell down then the accused cut him on his neck. Immediately, the deceased called P.W.1 through his cellphone, since he could not speak, he handed over the mobile phone to P.W.3, and P.W.3, in turn informed P.W.1 about the occurrence and after P.W.1 reached the scene of occurrence, he handed over the cellphone to her.

11. P.W.4 is the witness to the Observation Mahazar and also witness to the recovery of M.Os.4 to 7. P.W.5 is the Doctor, who conducted postmortem on the dead body of the deceased and gave Postmortem Certificate(Ex.P7) and Ex.P9, Final opinion with regard to the cause of death. P.W.6 is a Scientific Officer in the Forensic Lab, Salem. He examined the internal organs of the deceased and given a Vicera Report (Ex.P.8). P.W.7 is another eye-witness to the occurrence. He knew the accused and on the date of occurrence, he saw the quarrel between the accused and the deceased, and according to him, during the quarrel, the accused cut the deceased on his neck and ran away. Then the deceased took his cellphone and try to call somebody and handed over the phone to one person standing nearby. Within 10 minutes, P.Ws.1 and 2 came to the scene of occurrence and took the deceased in an ambulance. P.W.8 is the Village Administrative Officer. He is an eyewitness to the arrest and the confession statement of the accused and recovery

of knife (M.O.10), blood stained shirt and pant of the accused, (M.Os.8 and 9).

12. P.W.9, Sub-Inspector of Police, registered the complaint and forwarded the First Information report through P.W.10, Head Constable, to the Court. P.W.10, the then Head Constable, who took the First Information Report from the police and handed over the same to the Jurisdictional Magistrate. P.W.11, the then Head Constable, identified the dead body for Postmortem and recovered the dress of the deceased. P.W.12 is the doctor, who admitted the deceased in the hospital and gave the Accident Register (Ex.P.15). P.W.13, the Doctor, examined the accused and found a small 1 x 1 x .05 cm injury in the finger of the accused and treated him as outpatient. P.W.14 is the Investigating Officer, who conducted investigation, arrested the accused and recovered material objects and recorded the statement of the witnesses. P.W.15, Inspector of Police, completed the investigation and filed the charge sheet.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witnesses nor did he mark any documents on his side.

14. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

15. We have heard Mr.A.Raghunathan, Senior Counsel appearing for the learned counsel for the appellant and Mr. M.Maharaja, the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

16. The learned Senior Counsel for the appellant would submit that even though on 28.12.2011, the investigating officer recorded the statement of P.Ws.3 and 7 eyewitnesses under Section 161 Cr.P.C, it reached the Court only on 16.07.2012 along with Final Report. Hence, there is a long delay in sending the statements to the Court and it creates a doubt over the prosecution case. He would further submit that P.W.3 cannot be an eyewitness to the occurrence and his presence in the scene of occurrence is highly doubtful. Apart from that the motive for the murder was also not established by the prosecution, and the prosecution did not prove the guilt of the accused beyond reasonable doubt and sought for acquittal of the accused.

17. Per contra, the learned Additional Public Prosecutor would submit that there are two eyewitnesses to the occurrence and both of them are independent witnesses. P.W.7 is also known

to the accused and there is no reason to disbelieve his evidence on the ground of delay in sending the 161 Cr.P.C. statement of the witnesses to the Court, the prosecution case cannot be disbelieved when eye-witness to occurrence are available. The motive has also been established by the evidences of P.Ws 1 and 2 and sought for dismissal of the appeal.

18.We have considered the rival submissions on both sides.

19.There are two eyewitnesses to the occurrence, viz., P.Ws.3 and 7. Both of them are independent witnesses. P.W.3, went to the Wine Shop, near to the scene of occurrence, at that time, he saw both the accused and the deceased quarrelling with each other and the deceased told the accused that he will not repay the amount and challenged him to do whatever he like. At that time, the accused tried to attack the deceased with a knife and when the same was ward off by the deceased, he sustained injury on his finger and fell down. Thereafter, the accused cut the neck of the deceased and ran away. Immediately, the deceased tried to contact P.W.1 through his cellphone, since, he could not speak, he handed over the mobile phone to P.W.3 and P.W.3 informed to P.W.1 about the occurrence. Immediately, P.Ws.1 and 2 came there, P.W.3 handed over the cellphone to P.W.1. P.W.7 is also another independent eyewitness and he was known to the accused earlier. He was working as a supplier in the Wine Shop and he saw both the accused and the deceased quarreling with each other in front of the Wine Shop and the accused attacked the deceased with knife on his neck. He also corroborated the evidence of P.W.3 that the deceased tried to contact somebody over cellphone, since he was not able to speak, he handed over the same to somebody.

20.Since the occurrence took place in front of the Wine shop, in which P.W.7 is working as a supplier, the presence of P.W.7 in the scene of occurrence is natural. P.W.1 also corroborated the evidence of P.Ws.3 and 7 regarding the information received by P.W.1, from the deceased mobile phone, about the occurrence and receipt of the cellphone at the scene of occurrence. Hence the presence of P.W.3 at the scene of occurrence was established by the prosecution. Hence, we have no reason to disbelieve the evidence of P.Ws. 3 and 7.

21.So far as the motive is concerned, P.Ws.1 and 2 categorically stated that there was a dispute between the deceased and the accused and the accused was continuously threatening the deceased and they also thought of giving a complaint against the accused. Hence, the motive was also established by the prosecution.

22.So far as the delay in sending the 161 Cr.P.C. statements of P.Ws 3 and 7 to the Court is concerned, there is

no cross examination to the Investigating Officer, P.W.14, regarding the reason for delay. In the absence of any such cross examination, with regard to the delay in sending the 161 Cr.P.C statement of P.Ws.3 and 7, the above plea cannot be raised at this stage. The evidence of the eye witnesses is also duly corroborated by the medical witness, P.W.5, the Doctor, who conducted postmortem also found the injuries on the neck of the deceased and also found injury on the hand of the deceased and he was of the opinion that the deceased appears to have died of effect of shock and hemorrhage due to cut injury on his neck. Hence, the prosecution has clearly proved that it was this accused who caused the death of the deceased by cutting him on the neck. So far as the injuries found on the accused is concerned, it is very minor and trivial. In a case reported in 2003(7) Supreme Court Cases 643 in Sucha Singh and another Vs State of Punjab, it has been held that

" Non-explanation of injuries by the prosecution will not affect the prosecution case where injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit worthy, that it outweighs the effect of the omission on the part of the prosecution to explain the injuries. As observed by this Court in Ramlogan Singh v. State of Bihar the prosecution is not called upon in all cases to explain the injuries received by the accused persons. It is for the defence to put questions to the prosecution witnesses regarding the injuries on the accused persons. When that is not done, there is no occasion for the prosecution witnesses to explain any injury on the person of an accused. In Hare Krishna Singh v. State of Bihar it was observed that the obligation of the prosecution to explain the injuries sustained by the accused in the same occurrence may not arise in each and every case. In other words, it is not an invariable rule that the prosecution has to explain the injuries sustained by the accused in the same occurrence. If the witnesses examined on behalf of the prosecution are believed by the court in proof of guilt of the accused beyond reasonable doubt, question of obligation of the prosecution to explain injuries sustained by the accused will not arise. When the prosecution comes with a definite case that the offence has been committed by the accused and proves its case beyond any reasonable doubt, it becomes hardly necessary for the prosecution to again explain how and under what circumstances injuries have been inflicted on the person of the accused. It is more so when the injuries are simple or

superficial in nature. In the case at hand, trifle and superficial injuries on the accused are of little assistance to them to throw doubt on the veracity of the prosecution case, particularly, when the accused who claimed to have sustained injuries has been acquitted".

Hence, non-explanation of such injuries will not affect the prosecution case.

23.The next question arises for consideration is "what is the offence that was committed by the accused ?. From the evidence of P.Ws.3 and 7, it is clear that before the occurrence there was a quarrel between the accused and the deceased. According to P.W.3, the accused demanded money from the deceased and the deceased told that he will not repay the money and challenged him that he can do whatever he like. Being provoked by the words spoken by the deceased, the accused attacked the deceased. In our considered view, the said act of the accused would squarely fall within the first exception under Section 300 I.P.C. Though the accused would not have any intention to cause death of the deceased, certainly, he had the intention to cause injury, which was sufficient in the ordinary course of nature, to cause the death of the deceased. Hence, the act of the accused squarely fall within the third limb of Section 300 I.P.C. Therefore, he is liable to be punished under Section 304 (i) IPC.

24.Turning to the quantum of punishment, taking into consideration of the age and other mitigating circumstances, it is appropriate to sentence him to undergo Rigorous Imprisonment for 8 years with a fine of Rs.1,000/-, which would meet the ends of justice.

25.In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for offence under Section 302 I.P.C., is set aside and instead, he is convicted for offence under Section 304(i) I.P.C., and sentenced him to undergo Rigorous Imprisonment for 8 years with a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks. The period of sentence already undergone by appellant/accused shall be set off under Section 428Cr.P.C.

-Sd/-

Asst.Registrar

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Sub Asst. Registrar

To

1. I Additional District and Sessions Judge,
Salem.

2.-do- Principal Sessions Judge Salem

3.The Judicial Magistrate V Salem

4.-do- The Chief Judicial Magistrate
Salem

5.The Inspector of Police
Fair Lords Police Station
Salem District

6.The Superintendent
Central Prison Salem

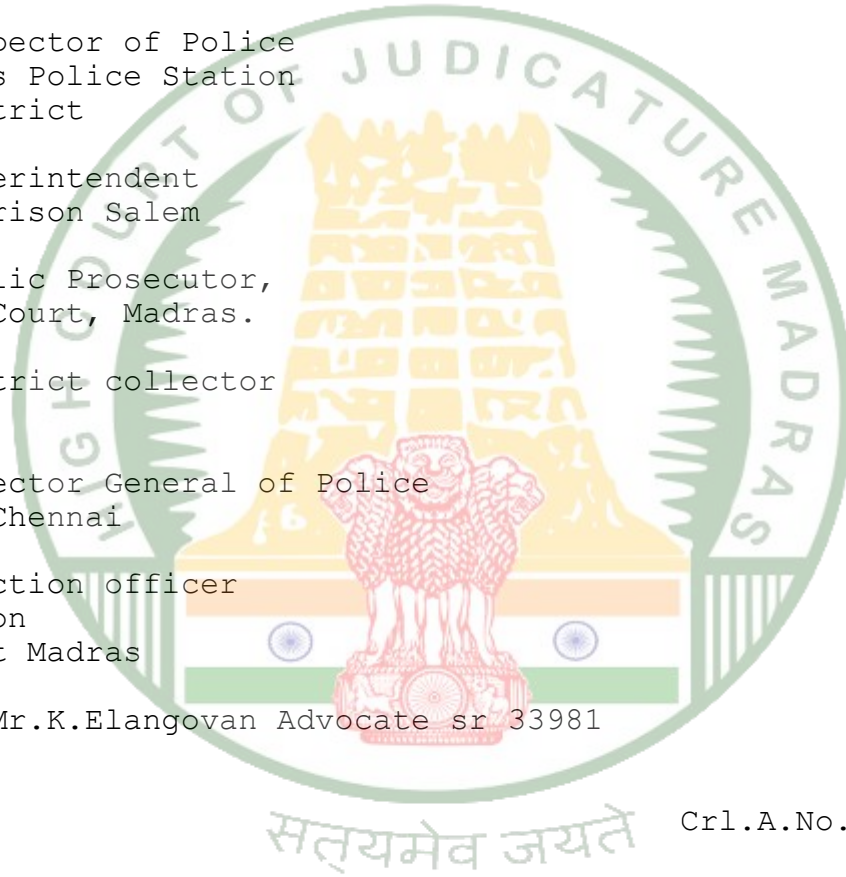
7.The Public Prosecutor,
High Court, Madras.

8.The District collector
Salem

9.the Director General of Police
Mylapore Chennai

10.The Section officer
Crl Section
High Court Madras

+1 cc to Mr.K.Elangovan Advocate sr 33981



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