

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.381 of 2014

Vadiappan @ Chinraj ... Appellant/Sole Accused

Vs

State rep. By
Inspector of Police,
Kurubarapalli Police Station,
Krishnagiri Taluk & District,
Crime No.434 of 2009 ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the order imposing life imprisonment on the appellant by the judgment dated 08.03.2013 passed in S.C.No.137 of 2010 on the file of Additional District and Sessions Judge, Krishnagiri.

For Appellant : Mr.Mukund R.Pandiyar

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

JUDGEMENT

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

The sole accused in S.C.No.137 of 2010 on the file of the Additional District and Sessions Court, Krishnagiri, is the appellant herein. He stood charged for the offences under Sections 302 IPC and Section 25(1-B) of Arms Act. The trial Court, by judgment dated 08.03.2013, convicted the appellant/accused and sentenced him to undergo Imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo six

months simple imprisonment for the offence under Section 302 IPC and to undergo three years rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo one month simple imprisonment for the offence under Section 25 (1-B) Arms Act. The trial Court has directed the sentences imposed on the accused to run concurrently. 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 in this case one Kannaiyan is the brother of the accused. There is a dispute between the accused and the deceased with regard to cutting of trees, in their undivided share. On 09.11.2009, at about 01.00 p.m., there was a quarrel between the accused and the deceased and in that quarrel, the deceased pushed the accused down. Hence, on the same day, at about 4.00 p.m., he shot the accused with an unlicensed country made gun and caused the death of the deceased.

3. There are four eyewitnesses to the occurrence, viz, P.Ws.1 to 4. P.W.1 is the son of the deceased. When P.W.1 along with his mother(P.W.3), brother of the deceased (P.W.2), aunt (P.W.4), the wife of P.W.2, working in the field, the accused came there with country made gun and shot the deceased on the right side of his chest. Immediately, P.W.1 took the deceased to their house, where the deceased died, then, P.W.1 gave a complaint (Ex.P1) before P.W.10, the then Sub-Inspector of Police.

4. On receipt of the said complaint Ex.P1, P.W.10 registered a case in Crime No.434 of 2009 for offences under sections 302, 506(ii) IPC and Section 25(1)(A) Arms Act. Thereafter, he forwarded the complaint (Ex.P.1) and First Information Report(Ex.P.12) to the higher officials and to the Court.

5. P.W.13, the then Inspector of Police, took up the case for investigation and on 10.11.2009, at 6.30 a.m., he went to the place of occurrence and prepared an Observation Mahazar (Ex.P2) and a Rough Sketch (Ex.P.20) in the presence of P.W.6 and another witness and also recovered blood stained soil (M.O.2) and sample soil(M.O.3). He also prepared another Observation Mahazar (Ex.P3) and Rough Sketch (Ex.P.21), in the place where the dead body of the deceased was kept and recovered blood stained blanket(M.O.4), blood stained soil (M.O.5), and sample soil (M.O.6). He conducted inquest on the body of the deceased in the presence of panchayathars and

prepared Inquest Report (Ex.P.22) and sent the body for postmortem. He also recorded the statement of the other witnesses.

6. On 10.11.2009, at 01.10 p.m, P.W.8, Civil Surgeon, working in the Government Hospital, Uthangarai, conducted postmortem on the body of the deceased and found the following injuries:

" External Injuries :
penetrating injuries- Thorax-measuring 1 x 1 cm edguae burnt.
Internal injuries :
Ribs-intact. Left lung lower lobe penetrate injury. Left ventricle of heart bleeding at pericardium 30 ml blood. Measuring 2 x 2 cm bullet removed "

Ex.P.9 is the Postmortem Report and also gave opinion that the deceased would have died due to penetration of bullet into the vital organs, viz., heart and lungs and he recovered the bullet (M.07) from the body of the deceased .

7. P.W.13, arrested the accused at about 3.00 p.m., at Chennasanthiram Bus Stop, in the presence of P.W.7 and other witness. On such arrest, the accused gave a voluntary confession and based on the disclosure statement, P.W.13 recovered the Country made gun (M.O.1) in the presence of witnesses. Then, he sent the accused to judicial custody and also handed over the Material Object to the Court. Since, he was transferred, the investigation was taken up by his successor P.W.14.

8. P.W.14 proceeded with the investigation and recorded the statement of the other witnesses and also sent the material objects for chemical examination and on completing investigation, he laid charge sheet on 05.07.2010 against the accused.

9. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. 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 23 documents were exhibited, besides marking 13 Material Objects.

10. Out of the said witnesses, P.Ws 1 to 4 are the eye witnesses to the occurrence and they have witnessed the entire occurrence which took place on 09.11.2009. According to the said witnesses, on 09.11.2009, at about 1.00 p.m., there was a

quarrel between the deceased and the accused with regard to the cutting of trees in their undivided share and in which, the deceased pushed the accused down. Hence, on the same day, at about 4.00 p.m, while the deceased and P.Ws. 1 to 4 were working in the field, the accused came with a country made rifle and shot the deceased, and caused his death. P.W.2, who is the another brother of the deceased has also witnessed the entire occurrence and he has also reiterated the same. P.W.3 is the wife of the deceased. P.W.4 is the wife of P.W.2. When all of them were working in the field, where the occurrence had taken place and all of them saw the accused shooting the deceased with country made gun. P.W.5, who purchased the disputed trees, has spoken about the earlier occurrence at about 1.00 p.m. P.W.6, the then Village Administrative Officer, Bemandaballi, is a mahazar witness and he also witnessed the recovery of M.Os.2 to 6. P.W.7, Village Administrative Officer, Chennashanthiram, is a witness to the arrest and the recovery of M.O.1, based on the disclosure statement of the accused. P.W.8 is the Doctor, who conducted postmortem on the dead body and gave opinion regarding the cause of death. P.W.9, Head Clerk, working in the Judicial Magistrate Court No.2, Krishnagiri, sent the material objects for chemical examination. P.W.10, Sub-Inspector of Police, registered the First Information report based on the complaint given by P.W.1. P.W.11, Head Constable, took the dead body to the hospital for postmortem. P.W.12 is the Assistant Director in the Forensic Science Department. He examined country made gun and bullet and gave ballistic report (Ex.P.12). P.W.13 Inspector of police, commenced the investigation and examined the witnesses and arrested the accused. P.W.14, another Inspector of Police, continued the investigation and laid the charge sheet.

11. 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 chose to examine any witness or mark any documents on his side.

12. 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.

13. We have heard Mr. Mukund R. Pandiyan, learned counsel for the appellant and Mr. Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

14. The learned counsel for the appellant would submit that even though there are 4 eyewitnesses, all the eyewitnesses are closely related to the deceased and they are all interested witnesses, their evidence cannot be believed. He would further submit that the recovery of M.O.1 is also doubtful and the motive for the occurrence was also not proved by the prosecution. He would further contend that there is lot of discrepancies in the evidence of eyewitnesses. According to the evidence of P.W.2, he did not see the accused shooting the deceased and he only heard the noise. Hence, he cannot be an eye witness to the occurrence. His further argument was that, as it is a forest area, other villagers may also have unlicensed country made gun and they used to go for hunting and hence the occurrence might have been taken place due to accidental firing by the hunters.

15. Per contra, the learned Additional Public Prosecutor would submit that there are 4 eyewitness to the occurrence. The deceased and the eye witnesses are working in the field at the time of occurrence, hence, their evidence is natural. Further, the country made gun was also recovered on the basis of the disclosure statement of the accused and there is no reason to disbelieve the evidence of the eyewitnesses and hence, he sought for dismissal of the appeal.

16. We have considered the rival submissions.

17. The accused and the deceased are brothers. P.Ws.1 to 5 have clearly spoken about the motive that on the date of occurrence, namely on 09.11.2009, at about 1.00 p.m., there was a quarrel between the accused and the deceased in respect of cutting of trees in their undivided share and at that time, the deceased pushed the accused down and in order to take revenge, the accused shot the deceased. Hence, the motive for the occurrence has been clearly established by the prosecution. P.W.1, son of the deceased; P.W.2, brother of the deceased; P.W.3, wife of P.W.2 and P.W.4, wife of the deceased, all were working along with the deceased in the field. At that time, at about 4.00 p.m., the accused came there with a country made rifle and shot the deceased. Even though, they are all closely related to the deceased, their presence at the time of occurrence is natural. Since all of them were working in the same field, from the morning onwards, they have also witnessed the previous occurrence. Hence, as their evidence is consistent, there is no reason to disbelieve their evidence and their testimony cannot be rejected only on the ground that they are interested witnesses. In a similar case reported in 1976

(3) SCC 369, SARVAN SINGH AND OTHERS VS. STATE OF PUNJAB , the Hon'ble Supreme Court held that

"It is not the law that the evidence of an interested witness should be equated with that of a tainted witness or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinized with a little care. Once that approach is made and the court is satisfied that the evidence of the interested witness has a ring of truth such evidence could be relied upon even without corroboration".

18. Apart from that the country made rifle was also recovered based on the disclosure statement of the accused. Since, the evidence of all the eyewitnesses are against the accused, the evidence of the eyewitnesses cannot be rejected only on the ground that they are all related to the deceased. So far as the contention of the learned counsel for the appellant that the occurrence might have been taken place due to the accidental firing of the hunters of the forest cannot be accepted, as not even a suggestion has been put to any of the witnesses on that aspect.

19. The learned counsel for the appellant would further submit that since the occurrence took place due to the quarrel between the deceased and the accused, who are brothers, and sought for lesser punishment. The above request of the learned counsel for the appellant cannot be considered, for a simple reason that the accused came to the scene of occurrence, where the deceased was working with an unlicensed country made gun with an intention to murder the deceased. Hence, the act of the accused squarely fall under the ambit of the first Limb to Section 300 IPC. Hence, he is liable to be punished for offence under Section 302 IPC. In our considered view, the sentence imposed by the trial court is also appropriate. In view of the above circumstances, we do not find any reason to interfere with the judgment of the trial court. Thus, the appeal is liable to be dismissed.

20. In the result, the Criminal Appeal is dismissed. The conviction and sentence imposed on the appellant by the trial Court in S.C.No.137 of 2010 Dated 08.03.2013 is hereby confirmed. It is reported that appellant/accused is in jail. The appellant/accused is directed to undergo the remaining period of sentence as imposed by the trial Court.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrp

To

- 1.The Additional District and Sessions Judge,
Krishnagiri.
- 2.The Judicial Magistrate, No.2,
Krishnagiri.
- 3.The Chief Judicial Magistrate,
Krishnagiri.
- 4.The Superintendent of Central Prison,
Vellore.
- 5.The Inspector of Police Station,
Krishnagiri Taluk & District.
- 6.The Principal District and Sessions Judge,
Krishnagiri.
- 7.The District Collector,
Krishnagiri District.
- 8.The Director General Office,
Mylapore, Chennai.
- 9.The Public Prosecutor,
High Court, Madras.

10.The Section Officer,
Criminal Section, High Court,
Chennai.

Crl.A.No.381 of 2014

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srg 06/01/2017



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