

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.388 of 2014

Velu @ Velayudham

... Appellant

-Versus-

State Rep. by
The Inspector of Police,
Thammanpatti Police Station,
Salem, Salem District.
[Crime No.445 of 211]

... Respondents

This Criminal Appeal filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellant by the learned Principal Sessions Judge, Salem, in S.C.No.200 of 2011 dated 28.01.2012.

For Appellant : Mrs.T.Rama Devi

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

J U D G M E N T

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

The appellant is the sole accused in S.C.No.200 of 2011 on the file of the learned Principal Sessions Judge, Salem. He stood charged for offences under Sections 302 and 307 of IPC. By judgement dated 28.11.2012, the trial court convicted him under Sections 302 of IPC for murder of the deceased and instead of offence under Section 307 of IPC for attempt to murder of P.W.2, the trial court convicted the accused for offence under Section 324 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- for offence under Section 302 of IPC [no default sentence was imposed]; and to undergo rigorous imprisonment for two years for offence under Section 324 of IPC. Challenging the above said conviction and sentences, the sole accused is now before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mrs.Anjalai @ Kalaiselvi. The accused is her husband. P.W.2, Mrs.Anaiammal is the mother of the accused. All the three were living together at Sentharapatti Village. On 22.05.2011, the accused, the deceased and P.W.2 had gone to Pallakadu Village to participate in a family function. At 03.00 p.m. after the function was over, they had started the return journey by a bus. After alighting the bus at Thammampatti Bus Stand, the accused demanded the balance of money which was in the possession of P.W.2, after spending the ticket fare. The accused was then under influence of alcohol. P.W.2 refused to part away with any amount to the accused. The accused developed quarrel with P.W.2. The deceased slapped the accused on his cheek repeatedly. The accused got enraged over the same. From the bus stop, they came to their house at Sentharapatti Village and P.W.2 and the deceased immediately started doing some domestic work inside the house. There ensued a quarrel again between the accused and the deceased. In the quarrel the deceased cut the accused with an aruvamanai [vegetable cutter]. The accused immediately took out a knife and attempted to stab her. In that course, he caused a simple hurt on P.W.2. The deceased directed the accused to go out of the house and not to return at all. This further infuriated the accused. He immediately stabbed the deceased also with the knife and ran away from the scene of occurrence. P.W.2 having sustained injuries fainted at the place of occurrence. On hearing the commotion, P.W.3, a neighbour rushed to the place of occurrence. He found the accused fleeing away from the scene of occurrence. P.W.1 is the brother of the deceased. At about 05.00 p.m., he received a phone call from one Mr.Chinnasamy about the occurrence. Immediately, he rushed to the place of occurrence at 05.45 p.m. When he reached the house of the deceased, he found the deceased lying with stab injuries on her chest, neck and all other parts of the body. The accused was not present there. With the help of the neighbours, he arranged for an ambulance and took the deceased to Gangavalli Government Hospital. Since there was no Doctor readily available in the Gangavalli Government Hospital, wherefrom he took the deceased to Athur Government Hospital.

3. P.W.5, Dr.Kannan, examined the deceased on 23.05.2011 at 12.00 midnight. He found that the condition of the deceased was very critical. Despite the efforts taken by him at about 12.20 p.m. the deceased succumbed to the injuries in the hospital itself. P.W.5 then gave an intimation to the police about the same. P.W.1, thereafter, went to Thammampatti Police Station and made a complaint under Ex.P.1. P.W.8, the then Sub Inspector of Police, on receipt of the said complaint at 05.00 a.m. on 23.05.2011, registered a case in Crime No.445 of 2011 under

Sections 302 and 307 of IPC. Ex.P.15 is the FIR. Then, he forwarded both the complaint (Ex.P.1) and the FIR (Ex.P.15) to the court which were received by the learned jurisdictional Magistrate at 04.50 p.m. on the same day. In the mean time, P.W.8 handed over the case diary to the Inspector of Police for investigation.

4. P.W.2 was taken to the hospital. P.W.10, Dr.Deivasigamani, examined her on 23.05.2011 at 06.00 p.m. He found the following injuries on P.W.2:-

- "(1) A cut injury measuring 1 x 0.5 cm on the left hand;
- (2) An abrasion over the right forearm."

5. The case was thereafter taken up for investigation by P.W.11. He proceeded to the place of occurrence at 06.30 p.m., prepared an observation (Ex.P2) and a rough sketch (Ex.P19) in the presence of P.W.4 and another witnesses. He recovered a piece of blood-stained cement plaster flooring (M.O.2) and sample cement plaster flooring (M.O.3) in the presence of the same witnesses under a mahazar (Ex.P3). On going over to the Salem Government Hospital, he conducted inquest on the body of the deceased between 10.00 a.m. and 12.00 noon and prepared an inquest report (Ex.P.20). Then, he forwarded the dead body for post mortem.

6. P.W.6, Dr.Gokularamanan, conducted autopsy on the body of the deceased on 23.05.2011 at 01.15 p.m. He found the following injuries on the body of the deceased: -

- "(1) A sutured wound seen over the inner aspect of left side of chest measuring 1.2 cm with one suture. On removal of suture, an oblique stab injury seen measuring 1cm x 0.5 cm x 7cms deep. The inner end is upper than the lower, blunt and 4 cms from the midline and the outer end is lower, sharp and 5 cms from the left nipple. The centre of the wound is 12 cms from the left Mid Clavicle. On dissection the track passes through the left 3rd intercostel space an area measuring 1.3 cm x 0.5 cm with extravasation of blood into the surrounding soft tissue. The injury passes through the pericardium, an area measuring 1.2 cm x 0.7 cms. The pericardial cavity contains 120 grams of clotted blood. The stab injury passes through the anterior surface of left ventricle measuring 1.5 cms x 0.5 cm.

- (2) A sutured wound seen over the outer and upper aspect of left forearm measuring 1.5 cms with one suture. On removal of the sutures, a

stab injury seen M-1.2 cm x 0.5 cm x 1.5 cm and it is 19 cms from the outer aspect of left wrist.

(3) Another sutured wound seen 1.5 cms below the previous wound measuring 1.5 cms with one suture, on removal of suture, a cut injury seen measuring 1.3 x 0.5 x 0.7 cms.

(4) A sutured wound seen on the back of lower 1/3rd of left arm measuring 2 cms with 2 sutures. On removal of sutures, a stab injury measuring 1.7 cm x 0.7 cms x 2 cms and it is situated 25 cms from the left acromian.

(5) A sutured wound seen at the junction of middle 1/3rd and upper 1/3rd of front of left arm measuring 1.2 cms 2 with 1 suture. On removal of suture, a cut injury seen measuring 1 cm x 0.5 cm x 0.5 cms. In all the stab injuries one end is sharp and the other end is blunt and in all the cut injuries the margins are acute.

Other findings:-

1. On dissection:- Scalp, Cranial, Vault, Duramater, Base of Skull-intact. Brain - Oedematous on C/S pale.

2. On dissection:- All neck structures - Normal. Hyoid bone intact.

3. On dissection:- Rib cage - Intact. Thoroacic cavity contains about 450 ml of fluid blood. Left Lung-Collapsed. Right Lung:- Oedematous. On C/S congested. Heart: Vide injury column. On cut section chambers contain clotted blood.

4. On dissection:- Stomach contains about 70 ml of Greyish white colour fluid with no specific odour. Mucosa - Pale. Liver, Spleen, Kidneys - Normal in size. on C/S pale. Bladder - Empty. Pelvis and Spinal Column."

Ex.P.13 is the post mortem certificate. Ex.P.15 is is final opining regarding the cause of death. P.W.6 Doctor opined that death was due to shock and haemorrhage due to the injuries found on the body. He further opined that the injuries on the deceased could have been caused by a weapon, like M.O.1. After the post mortem was over, P.W.11 recovered a nighty (M.O.5) and a blouse (M.O.6) from the body of the deceased and forwarded the same to the court.

7. On 23.05.2011, at 01.00 p.m., when P.W.4, the then Village Administrative of Sentharapatti North village was in his Office the accused appeared before him on his own and gave a voluntary confession which was reduced by P.W.4 into writing.

Ex.P.4 is the extra judicial confession. Then, along with Ex.P.5, a special report, P.W.4 took up the accused to the police station and produced him before P.W.1. On such production, P.W.11, the Inspector of Police, arrested the accused in the presence of P.W.4 and another witnesses. On such arrest, the accused gave yet another confession voluntarily before P.W.11. In pursuance of the said disclosed statement, he produced a blood stained shirt (M.O.4). P.W.11 recovered the same under a mahazar (Ex.P.8) in the presence of the same witnesses. In the said confession, he also disclosed the place where he had hidden a knife. In pursuance of the same, the accused took P.W.11 and the witnesses to the place of hide out and produced the knife (M.O.1). P.W.11 recovered the same in the presence of the same witnesses under a mahazar (Ex.P.7). On returning to the police station, P.W.11 forwarded the accused to the court for judicial remand and also forwarded the material objects to the court along with a request for chemical examination. Thereafter, the investigation was taken over by P.W.12 his successor. P.W.12 continued the investigation, examined few more witnesses including the official witnesses collected, medical records and the chemical report and on completing the investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed two charges. One under Section 302 of IPC for murder and the other under Section 307 of IPC for attempt murder. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 12 witnesses were examined and 24 documents were exhibited, besides 5 Material Objects.

9. Out of the said witnesses, P.W.1 is the brother of the deceased. He has stated that on receiving the phone call, he rushed to the place of occurrence where he found the deceased with injuries and also found P.W.2 with injuries. He immediately took both of them to the Government Hospital. He has also spoken about the complaint made by him to the police.

10. P.W.2 is the injured eye witness. She has stated that she along with the deceased and the accused had gone to Pallakadu Village to attend a function. Then, all the three returned in a bus and alighted at Thammampatti Bus Stand. At that time, the accused demanded the balance of amount which remained in the hands of P.W.2 after incurring the ticket fare. When she refused, there was quarrel between the deceased and the accused. The deceased slapped him at the bus stand with hands repeatedly. Then all the three returned home. When P.W.2 and the deceased were engaged in doing some domestic work, there ensued a quarrel again between the deceased and the accused and amidst

the quarrel, the deceased took out a vegetable cutter and cut the deceased. Thereafter, the accused took out a knife and attacked P.W.2. Having sustained injury, she fainted. She has further stated that after that what had happened was not known to her.

11. P.W.3, a neighbour, has stated that on hearing the alarm raised from the house of the deceased, he rushed to the house of the deceased. He found the accused fleeing from the scene of occurrence. He also found P.W.2 and the deceased lying with injuries. P.W.4 has spoken about the preparation of the observation mahazar, rough sketch and also the recovery of material objects from the place of occurrence. He has also spoken about the extra judicial confession made by the accused on the same day. He has further stated about the recovery of knife and the blood stained earth at the instance of the accused.

12. P.W.5-the Doctor, has spoken about the treatment given to the deceased and the fact that the deceased had succumbed to the injuries at the hospital. P.W.6 has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.7 has spoken about the fact that he carried the dead body to the hospital as directed by the investigating officer and handed over the same at the hospital for post-mortem. P.W.9 has spoken about the treatment given to the accused. P.W.10 has spoken about the treatment given to P.W.2. P.W.8 has spoken about the registration of the case on the complaint made by P.W.1. P.W.11 has spoken about the substantial portion of investigation done by him. P.W.12 has spoken about the further investigation done by him and the filing of charge sheet against the accused.

13. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness nor he did mark any document in his favour. His defence was a total denial.

14. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgement. Challenging the conviction and sentences, the sole accused/appellant is now before this Court with this appeal.

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

16. In this case, the prosecution mainly relies on the evidence of P.W.2, who is the injured eye witness to the

occurrence. She has stated that in the quarrel, the deceased cut the accused with vegetable cutter. The accused wanted to go for treatment. But, P.W.2 refused to pay money. Infuriated over the same, he took out a knife and caused a simple hurt on P.W.2. According to P.W.2, after having received the said injury, she fell down and fainted. Thus, what had happened thereafter was not known to her. But, the evidence of P.W.3 would clearly go to prove that it was this accused who caused injury on the deceased also. According to him, on hearing the alarm raised from the house of the deceased, when he rushed to the house of the deceased, he found the accused fleeing away from the scene of occurrence with knife. This conduct of the accused is inconsistent with his innocence pleaded. Apart from these two evidences, the prosecution relies on the extra judicial confession given by the accused to P.W.4 on the day of occurrence itself. We do not find any reason to reject the said extra judicial confession.

17. The injuries sustained by the deceased have been spoken by P.W.5. Similarly, the injuries sustained by the accused as well as P.W.2 have been spoken by P.W.9 and P.W.10. From these evidences, we are of the considered view that the prosecution has clearly established that it was this accused, who inflicted injuries on the deceased with knife which resulted in her death. Similarly, it was this accused, who caused a simple hurt on the body of P.W.2.

18. Now, the question is "What was the offence committed by the accused by the act in causing the death of the deceased by stabbing her with knife?" The learned counsel for the appellant/accused would submit that the offence would not fall under Section 302 of IPC. I find force in the above said argument.

19. As seen from the evidence, it is crystal clear that prior to the occurrence at the bus stand it was only the deceased who attacked the accused with hands. After returning home also, in the quarrel, it was the deceased, who took out a vegetable cutter and attacked the accused. The accused sustained injury. Thereafter, when he wanted money from P.W.2 for treatment, she refused, he attacked her. After that, he had attacked the deceased also. What actually transpired preceding the accused attacking the deceased is not clear from evidence. But, in the extra judicial confession, the accused has stated that out of provocation caused by the attack made by the deceased, he retaliated and caused injuries. From this confession and from the other circumstances, it is crystal clear that the accused would have been provoked by the deceased by words as well as by attacking him with vegetable cutter and having lost his mental balance, the accused had caused injuries

on the deceased, driven by the above grave and sudden provocation. Thus, though the act of the accused would fall within the fourth limb of section 300 of IPC, his act would squarely fall within the first exception to Section 300 of IPC and so he is liable to be punished only under Section 304(ii) of IPC for having caused the death of the deceased. So far as the act of causing the injury on P.W.2 is concerned, the trial court has rightly convicted him under Section 324 of IPC.

20. Now, turning to the quantum of punishment, it is stated that from the date of arrest, namely from 23.11.2015 onwards, the accused has been in prison. Thus, he has already undergone more than five years of imprisonment. He is a poor man and he has got no bad antecedents. The occurrence was not pre-mediated. It was out of a sudden quarrel. Since the accused had acted driven by a grave and sudden provocation, having regard to the mitigating as well as aggravating circumstances, we are of the considered view that the period of sentence already undergone by him would be the sufficient punishment for the offence under Section 304(ii) of IPC. So far as the offence under Section 324 of IPC is concerned, the sentence imposed by the trial court is just and adequate which needs to be confirmed. Both the sentences shall be directed to run concurrently.

21. In the result, this criminal appeal is partly allowed. The conviction and sentence imposed on the appellant/accused under Section 302 IPC is set aside and instead, he is convicted under Section 304(ii) IPC and the period of sentence imposed on the appellant is reduced to the period of sentence already undergone by him and he is directed to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for two weeks for offence under Section 304(ii) of IPC. The conviction and sentence imposed on the appellant/accused by the trial court for offence under Section 324 of IPC are confirmed. The sentence imposed by the trial court for offence under Section 324 of IPC and the sentence imposed by this court for the offence under Section 304 (ii) of IPC shall run concurrently. Since the accused has already undergone the entire period of sentence as imposed in this judgement, he shall be set at liberty forthwith, if his presence is not required in connection with any other case.

Sd/-
Assistant Registrar(CS IV)

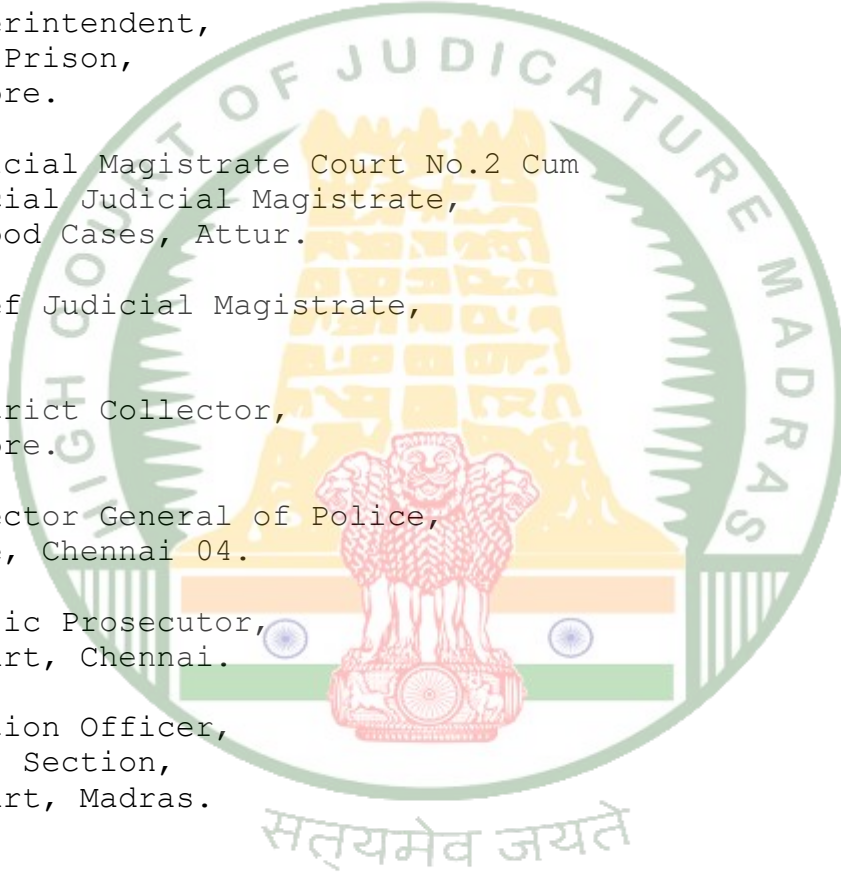
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Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge,
Salem, Salem District.
- 2.The Inspector of Police,
Thammanpatti Police Station, Salem,
Salem District.
- 3.The Superintendent,
Central Prison,
Coimbatore.
- 4.The Judicial Magistrate Court No.2 Cum
Special Judicial Magistrate,
Sandalwood Cases, Attur.
- 5.The Chief Judicial Magistrate,
Salem.
- 6.The District Collector,
Coimbatore.
- 7.The Director General of Police,
Mylapore, Chennai 04.
- 8.The Public Prosecutor,
High Court, Chennai.
- 9.The Section Officer,
Criminal Section,
High Court, Madras.



+1cc to Mr.T.Ramadevi, Advocate, S.R.No.29707

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CTR(CO)
CA(22/08/2016)