

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.06.2016

CORAM:

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

Cr1.A.No.451 of 2014

M.Srinivasan

... Appellant/A1

Vs.

The State,by
The Inspector of Police,
Aruvankadu Police Station,
(Crime No.65 of 2011)

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 21.12.2013 passed by the learned
Sessions Judge, Nilgiris at Uthagamandalam, in S.C.No.9 of
2012.

For Appellant : Mr.R.Mohandoss
(Legal Aid Counsel)

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

JUDGMENT

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

The appellant in this appeal is the sole accused in
Sessions Case No.9 of 2012, on the file of the learned
Sessions Judge, Uthagamandalam. He stood charged for an
offence under Section 302 of IPC. After trial, the Trial
Court, by judgement dated 21.12.2013, convicted the accused
under Section 302 IPC and sentenced him to undergo life
imprisonment and also imposed a fine of Rs.5000/-, in default,
to undergo rigorous imprisonment for six months. Challenging
the above said conviction and sentence, the appellant/accused
is before this Court with this appeal. There were two accused
in this case, another accused one Mani @ Manikandan was a
Juvenile.

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

(i) The deceased, in this case, one Nagaraj and accused
are permanent residents of Pazhathottam Village. Earlier,

there was a quarrel between them in a Mariamman Temple festival. Subsequently, on 18.04.2011 at about 2.00 p.m., again there was a quarrel between the deceased and the accused, near the wine shop and during the said quarrel, Juvenile accused Mani @ Manikandan, caught hold of the deceased and the appellant attacked the deceased, with a broken beer bottle, in the neck and thereafter both the accused ran away. P.W.1, the uncle of the deceased, on hearing the news through P.W.7, the Village President, rushed to the scene of occurrence and saw the deceased lying dead. Immediately, he went to the respondent police and lodged a complaint (Ex.P1).

(ii) P.W.13, the Sub Inspector of Police, working in the Aruvankadu Police Station, on receipt of the complaint from P.W.1, registered a case in Crime No.65 of 2011 under Section 302 IPC and prepared FIR (Ex.P11) and sent the same to the higher officials and also to the Judicial Magistrate Court.

(iii) P.W.16, the Inspector of Police, working in the Aruvankadu Police Station, on receipt of the FIR, commenced the investigation, proceeded to the scene of occurrence, prepared an Observation Mahazar (Ex.P2), Rough Sketch (Ex.P15), photographed the scene of occurrence, conducted inquest over the dead body in the presence of panchayatdars, between 7.15 p.m., and 10.45 p.m., and sent the dead body to the Government Hospital for post mortem. Thereafter, he took the assistance of forensic expert. P.W.9, Assistant Director, Forensic Lab, Uthagamandalam, visited the scene of occurrence and collected Blood stained soil (M.O.16), Sample soil (M.O.17), and blood stained broken beer bottle (M.O.18). P.W.16, recovered the same under a cover of mahazar (Ex.P19), and sent the same to the Judicial Magistrate Court.

(iv) P.W.10, a Doctor, working in the Government Hospital, Coonoor, conducted post mortem autopsy on the dead body of the deceased and found the following injuries:-

"Moderately nourished. Body lies on its back, Vitiligo present over the chest, right and left arms, neck, lip, left lower limbs. Post burns contracture present over the neck. (1) A laceration of around 2 x 5 cm present over the midline of neck (2) A 5x2x2 cms (depth) cut injury present on the right side of neck. A piece of crushed bottle seen within the wound. Semen discharge from penis present. Jaws clenched; teeth complete. Right internal jugular vein-complete tear. Thorax-well formed. Abdomen normal. No rib fractures. Heart, great Vessels normal. Lungs 500gms, cross section pale; hyoid intact, stomach empty, pancreas, liver normal

cross section pale, Gall Bladder distended with
bite Spleen normal cross section pale, kidneys
normal cross section pale, intestine distended
with gas, brain normal cross Section-pale, spine
No fracture injuries.

He opined that the deceased would appear to have died of
haemorrhage, followed by shock, due to complete tear of
internal jugular vein on the right side of the neck. He issued
Postmortem Certificate (Ex.P9).

(v) P.W.16, on 20.04.2011, arrested both the accused and
on such arrest, the accused given a voluntary confession,
based on the disclosure statement (Ex.P4), he seized the blood
stained broken bottle pieces, black colour chappal belonged to
the accused, a blood stained pant and shirt of the accused
under a seizure mahazar (Ex.P15), thereafter he sent the
accused to the judicial custody. He examined the postmortem
Doctor and other witnesses and recorded their statements and
handed over the case records to P.W.17, the regular Inspector
of Police. P.W.17, after receipt of the case records,
received chemical analysis report and after completion of
investigation, he laid charge sheet.

3. Based on the above materials, the Trial Court framed
charges as detailed above and the accused denied the same as
false. In order to prove the case of prosecution, as many as
17 witnesses were examined and 25 documents exhibited and 23
material object were marked.

4. Out of the said witnesses examined, P.W.1 is the uncle
of the deceased and he is the author of the first information
report. P.W.2 is an eye witness to the occurrence. According
to him, on 18.04.2011 at about 2.45 p.m., there was a quarrel
between the accused and the deceased near the wine shop and
during the quarrel, the juvenile accused Mani @ Manikandan
caught hold of the deceased and the accused/appellant attacked
him with broken liquor bottle on his neck, then both the
accused ran away. Immediately, he informed the same to P.W.7,
the Village President, and other people. P.W.3 is also an eye
witness to the occurrence. According to him, he knew both the
accused and deceased, on 18.04.2011 at about 2.15 p.m., when
both the accused and the deceased were quarrelling with each
other, he and P.W.2 intervened and compromised them. He has
further stated that at that time, the juvenile accused caught
hold of the deceased and the accused/appellant attacked the
deceased with a broken liquor bottle on his neck. P.W.4 is a
cook in the Bar attached to the wine shop. He is witness to
the quarrel between the accused and deceased before the
occurrence. According to him, he also pacified them and after
that he went to the shop. P.W.5 is witness to Ex.P3 mahazar
and also to recovery of broken beer bottle pieces (M.O.2

series), Woollen muffler (M.O.3), Black colour chappal (M.O.4), Pant (M.O.5), Cap (M.O.6), One pair of chappal (M.O.7), Hand kerchief (M.O.8), blood stained soil (M.O.9) and Sample soil (M.O.10). P.W.6 is a building contractor, under whom the accused/appellant was working, he identified the accused to the police. P.W.7 is a resident of Pazhathottam. According to him, both the accused and deceased were known to him and he wrote the complaint as stated by P.W.1 and he has also spoken about the motive for the occurrence. P.W.8 is a resident of Pazhathottam. His evidence is to the effect that he also witnessed the quarrel between the accused and deceased. P.W.9, Assistant Director, working in the Forensic Department, Coimbatore, has spoken about collecting material objects from the scene of occurrence. P.W.10, Assistant Civil Surgeon, working in the Government Hospital, Coonnoor, has stated that he conducted post mortem on the dead body of the deceased and issued Postmortem Certificate (Ex.P8). P.W.11, photographer, has stated that he took photographs of the scene of occurrence and dead body. P.W.12 is the Scientific Officer who conducted viscera test and issued report Ex.P10. P.W.13, Sub Inspector of Police, working in the respondent police, has stated that he received the complaint and registered the first information report Ex.P11. P.W.14 is a witness to the arrest of the accused and confession statement made by the accused and also recovery of material objects. P.W.15, Junior Scientific Officer, Forensic Lab at Chennai, has stated that he examined the blood stained material objects and submitted the report, Ex.P14. P.W.16, Investigating Officer, has stated that he conducted investigation, examined the witnesses and recorded their statements, seized the materials objects, arrested the accused and handed over the case records to P.W.17, his successor. P.W.17, Inspector of Police, has deposed that he continued the investigation, examined the remaining witnesses and recorded their statements and after completion of investigation, laid the charge sheet.

5. 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. The accused did not examine any witness and no document was marked on his side.

6. Having considered all the above, the Trial Court convicted the accused as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court.

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

8. In the instant case, there are two eye witnesses to the occurrence, namely, P.Ws.2 and 3. According to P.W.2, on 18.04.2011 at about 2.45 p.m., there was a quarrel between the accused and the deceased near the wine shop and during the quarrel, the juvenile accused Mani @ Manikandan caught hold of the deceased and the accused/appellant attacked the deceased with a broken liquor bottle on the neck of the deceased and, immediately the deceased fell down. P.W.3 is another eye witness to the occurrence. According to him, he saw the accused and the deceased quarrelling with each other, he and P.W.2 intervened and mediate between them and asked them not to quarrel, and after some time, he saw the juvenile accused catching hold of the deceased and the accused attacking him with a broken liquor bottle on the neck of the deceased and thereby both the accused ran away. He has also spoken about the previous quarrel between the accused and the deceased. P.W.4 was working in the Bar attached to the wine shop, as a cook. He is also a witness to the earlier quarrel between the accused and the deceased and it is his evidence that he also mediated between them. P.W.7 is also witness to the earlier quarrel between the accused and the deceased and he has spoken about the earlier quarrel at the temple festival, which is the motive for the occurrence.

9. From the above evidence, it is clear that there was previous enmity between the accused and the deceased and in continuation of the same, on 18.04.2011 there was another quarrel between them and at that time, the accused had attacked the deceased with broken liquor bottle on his neck. The medical evidence adduced also supports the case of the prosecution. It is the evidence P.W.10, the Doctor who conducted autopsy on the dead body of the deceased that he found cut injuries on the right side of the neck and also a piece of crushed bottle within the wound and he was of the opinion that the deceased would appear to have died of haemorrhage followed by shock, due to complete tear of internal jugular vein on the right side of the neck. Thus, the medical evidence also corroborate the evidence of eye witnesses.

10. From all the above evidence, it is crystal clear that it was this accused who caused a single cut injury on the neck of the deceased, which damaged the internal jugular vein on the right side and the deceased died due to shock and haemorrhage. Hence, we are of the considered opinion that the prosecution has clearly proved its case that it was this accused who caused death of the deceased.

11. Now, the question is "what was the offence that was committed by the accused by the said act." From the evidence of P.Ws.2,3,4 and 7 it is clear that there was a quarrel

between the accused and the deceased and at the end of the quarrel, the accused caused single cut injury on the vital part of the body of the deceased, namely, neck, which has damaged the internal jugular vein. It is also clear from the evidence of P.Ws.2,3,4 and 7 that the accused, at the end of the quarrel, lost his control and out of provocation, caused a single injury on the vital part of the body of the deceased. The accused would not have had any intention to cause death of the deceased. But, certainly, he had the intention to cause injury on the vital part of the deceased, which is sufficient in the ordinary course of nature to cause the death of the deceased. Thus, in our considered view, the act of the accused would squarely fall within the first exception to Section 300 of IPC and fall within the 3rd limb of Section 300 IPC., and therefore, the accused is liable to be punished under Section 304(i) IPC.

12. So far as the quantum of punishment is concerned, it is not a premeditated murder. The occurrence had taken place out of sudden quarrel and provocation and having lost his mental faculty, the accused had attacked the deceased, which resulted in the sudden death of the deceased. The accused is a poor young man and coolie. Taking into consideration of the mitigating as well as aggravating circumstance, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for 8 years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks would meet the ends of justice.

13. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and sentenced him to undergo rigorous imprisonment for eight years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks. It is directed that the period of detention already undergone by the appellant/accused shall be given set off as required under Section 428 Cr.P.C.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The District and Sessions Judge,
Nilgiris at Uthagamandalam.

2. The Principal Sessions Judge,
Nilgiris at Udhagamandalam.
3. The Judicial Magistrate,
Coonoor.
4. The Chief Judicial Magistrate,
Nilgiris at Udhagamandalam.
5. The Superintendent,
Central Prison,
Coimbatore.
6. The District Collector,
Nilgiris at Udhagamandalam.
7. The Director General of Police,
Mylapore, Chennai.
8. The Inspector of Police,
Aruvankadu Police Station,
Udhagamandalam.
9. The Public Prosecutor,
High Court, Madras.
10. The Section Officer,
Criminal Section,
High Court, Madras.

Crl.A.No.451 of 2014

PUR(CO)
CA(31/08/2016)

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