

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 08.06.2016

Judgement pronounced on: 10..06.2016

CORAM

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU
AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN
Criminal Appeal No.457 of 2014

Tharani @ Tharanidevan

... Appellant

-Versus-

State Rep. by
The Inspector of Police,
Neyveli Town Police Station,
Cuddalore District.
[Crime No.315 of 2013]

... Respondent

Criminal Appeals filed under Section 374 of Cr.P.C. challenging the conviction and sentence imposed on the appellants by the learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam in S.C.No.44 of 2014 dated 31.07.2014.

For Appellant (s) : Mr.R.Sankarasubbu

For Respondent : Mr.M.Maharaja, APP

JUDGEMENT

S.NAGAMUTHU, J.

The appellant, the sole accused in S.C.No.44 of 2014 on the file of the III Additional Sessions Judge, Cuddalore at Virudhachalam, stood charged for offences under Sections 294(b), 506(ii), 323 and 302 of IPC. By judgment dated 31.07.2014, the trial court sentenced the accused to undergo rigorous imprisonment one month for the offence under Section 294(b) of IPC; to undergo rigorous imprisonment for six months for the offence under Section 506(ii) of IPC; to undergo rigorous imprisonment for one month for the offence under Section 323 of IPC; and to undergo imprisonment for life and to pay of fine of Rs.1,000/- in default to undergo rigorous imprisonment for one year for the offence under Section 302 of IPC.

2. The case of the prosecution in brief is as follows:- The deceased in this case one Nallalan @ Nallalamurthy. P.W.1,

P.W.2, and P.W.3 are the wife, mother and father of the deceased. P.Ws.1 to 3 and the deceased were living as a joint family at Vadakkumelur Village in Cuddalore District. In that village, there was a temple common to all the villagers. 25.04.2013 was the day of Chitra Pournami. On that day, deepam was not lit in the said temple. The accused was disturbed over the same. At 08.00 p.m. the accused came to the house of the deceased and questioned P.W.2 as to why she did not come to the temple to lit deepam. He scolded her in filthy language. P.W.1, in turn, informed the father of the accused about the same and wanted him to come and take back the accused. Accordingly, his father came and took the accused with him. While leaving, the accused further shouted at P.W.2 as well as the other family members of the deceased. He told that he would take revenge soon.

3. On the same day, at about 09.00 p.m., the deceased returned home. P.W.1 informed about the above occurrence to him. He told her not to worry as he would take care of the situation. Then, all of them went to bed. The deceased was sleeping just in front of the house on a cot. P.W.1 was sleeping on the varandah. P.Ws.2 and 3 were sleeping in the shed where there was a kitchen. During midnight, when the deceased was sleeping, the accused came, shouted and cut the deceased with spear on his neck. On hearing the distress call made by the deceased, P.Ws.1 to 3 rushed to the said place of occurrence. The accused pushed P.W.1 aside and ran away with the spear. P.Ws.1 to 3 raised alarm. P.W.4 a neighbour and few others including P.W.5 came to the place of occurrence. The deceased was struggling for life and he was in a pool of blood. Immediately, they arranged for an ambulance and in the mean time, they arranged for a taxi belonging to P.W.5. They took the deceased in the taxi driven by P.W.5 to Kurnchipadi Government Hospital and on their way they shifted the deceased to the ambulance which was coming in the opposite direction at Vadalur Railway Gate.

4. P.W.9, Dr. Ilavarasi examined the deceased at 03.10 a.m. on 26.04.2013. At that time, the deceased was in a critical condition. But, he was able to speak. He told the Doctor that he was stabbed by a known person at his house. P.W.9-the Doctor, found a deep cut injury measuring 6 x 3 x 2 cms on the right side of the neck. Blood was profusely bleeding. Ex.P.7 is the accident register. Since the condition of the deceased was critical, P.W.9 referred him to the Government Hospital at Cuddalore, wherefrom, the deceased was taken to JIPMER Hospital at Puducherry.

5. P.W.10 examined the deceased on 26.04.2013 at 05.30 a.m. at JIMPER Hospital. The deceased was then in need of an emergency surgery. P.W.11-the Doctor in the JIMPER Hospital conducted surgery on the deceased which was an emergency surgery

as the deceased was in a very critical condition. Despite the efforts of the doctors, the deceased breathed his last at 05.15 a.m. on 29.04.2013. Thereafter, an intimation was given from the hospital to the police station about the death of the deceased.

6. In the mean time, on getting intimation from the Kurinchipadi Government Hospital, P.W.14, the then Sub Inspector of Police, went to the said Hospital, recorded the statement of P.W.1. On returning to the police station at 06.30 p.m. on 26.04.2013, he registered a case in crime No.315 of 2013 under Sections 294(b), 323, 506(ii) and 307 of IPC. Then, he forwarded both the complaint under Ex.P.1 and the FIR-Ex.P13 to the court which were received by the jurisdictional Magistrate at 08.00 a.m. on 27.04.2013.

7. Taking up the case for investigation, P.W.14 went to the place of occurrence, prepared an observation mahazar (Ex.P.2) and a rough sketch (Ex.P14) in the presence of P.W.7 and another witnesses. He recovered a shawl (M.O.2) and a woolen blanket [M.O.1] from the place of occurrence in the presence of the same witnesses under a mahazar (Ex.P3). He forwarded the same to the court.

8. When the investigation was in progress, the accused on his own went to P.W.8, the local Village Administrative Officer on 29.04.2013 at 07.00 a.m. and he wanted to confess. P.W.8, in turn, reduced into writing, the confession made by the accused orally. Ex.P.4 is the said extra judicial confession. In the said confession, the accused admitted that it was he who caused injury on the deceased. P.W.8, thereafter, took the accused along with the said extra judicial confession to the police station and produced the accused before P.W.14. On such production, P.W.14 arrested the accused in the presence of P.W.8 and another witnesses. While in custody, the accused gave a voluntary confession in the presence of the same witnesses in which he disclosed the place where he had hidden the spear. Ex.P.5 is the disclosure statement. In pursuance of the same, he took the police and the witnesses to the said place of hide out namely, Vadakkumelur Angalamman Temple and from behind the temple, he produced the spear [M.O.3]. P.W.14 recovered the same under a mahazar (Ex.P6) in the presence of the same witnesses. Thereafter, since death intimation was received, P.W.14 altered the case into one under Section 302 of IPC and submitted an alteration report (Ex.P15) to the court. Then, he handed over the case diary to the inspector of Police for further investigation.

9. P.W.16, the Inspector of Police, taking up the case for further investigation, visited the place of occurrence. Then, on returning to the hospital, he conducted inquest on the body of the deceased at 01.30 p.m. and then forwarded the body for postmortem.

10. P.W.12-Dr.Siddhartha Das, Assistant Professor, Forensic Medicine & Toxicology, JIPMER, Puducherry, conducted autopsy on the body of the deceased on 29.04.2013 at 03.45 p.m. He found the following injuries on the body of the deceased:-

"Injuries:

A sutured wound of length 17 cms containing 19 black coloured sutures present horizontally on the neck. It begins at a point 6cms below and 4 cms posterior to the right mastoid process and then runs horizontally in front of neck up to a point 2 cms below the body of mandible on the left side.

Internal Examination:

Head: (a) Scalp: intact and oedematous; (b) Skull-Intact; (3) Meninges - Intact; and (d) Brain-Intact, congested and oedematous.

Neck structures: On cutting open the sutures of external injury mentioned above, the opposing margins of the wound were found clean cut. Sternocleidomastoid muscle of right side surgically sutured. Contusion of sternocleidomastoid muscle and other muscle of antero-lateral part of neck. Pharyngeal mucosa surgically sutured at the level of vallecula. Ligation of facial artery of right side. Mucosa of larynx, trachea and oesophagus deeply congested. Clotted blood of around 50 ml present in the lumen of larynx. Hyoid bone intact. Muscles attached to hyoid bone found contused."

Ex.P.11 is the postmortem certificate. P.W.12 is his final opinion. He opined that the death of the deceased was due to shock and haemorrhage due to the injuries found on the deceased. He further opined that the head injury could have been caused by a weapon, like M.O.3 [spear].

11. P.W.16 continued investigation, examined few more witnesses, recorded their statements, collected the medical records and the chemical analysis report. The chemical analysis report revealed that there was no poison in any of the internal organs of the deceased. The chemical analysis conducted on the material objects revealed that there were blood stains on all the material objects. However, the serology report has not been marked in evidence. The investigation was, thereafter, taken over by his successor (P.W.17). On completing the investigation, P.W.17 laid charge sheet against the accused.

12. Based on the above materials, the trial court framed as many as four charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the

case, on the side of the prosecution, as many as 17 witnesses were examined, 19 documents and 3 material objects were marked.

13. Out of the said witnesses, P.Ws.1 to 3 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. They have also spoken about the earlier occurrence. P.W.4, a neighbour, has stated that on hearing the alarm raised by P.Ws.1 to 3, he rushed to the place of occurrence. At that time, he found the deceased lying with injuries. He has spoken about the presence of P.Ws.1 to 3. P.W.5 has stated that he took the deceased in his taxi along with P.Ws.1 to 3 to Kurinchipadi Hospital at Cuddalore, then to Cuddalore Government Hospital, wherefrom, finally he was taken to JIPMER Hospital at Puducherry. P.W.7 has spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence. P.W.8 has spoken about the extra judicial confession given by the accused on 29.04.2013 at 07.00 a.m. P.W.9 has spoken about the treatment given to the deceased at Kurinchipadi Government Hospital. P.W.10 has spoken about the treatment given to the deceased at JIPMER Hospital, Puducherry. P.W.11 has spoken about the surgery conducted on the deceased and his death. P.W.12 has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.13, the police constable has stated that he carried the dead and identified the same to the doctor for postmortem. P.W.14 has stated about the registration of the case on the complaint made by P.W.1 and his investigation until the demise of the deceased. He has further spoken about the production of the accused before him by P.W.8 along with the extra judicial confession of the accused. He has also spoken about the recovery of M.O.1 at the instance of the accused pursuant to his disclosure statement. P.W.15 has spoken about the chemical analysis conducted on the internal organs of the deceased which revealed that there was no poison detected. P.W.16 has spoken about the substantial portion of investigation done by him in this case. P.W.17 has spoken about the further investigation done by him and the filing of charge sheet against the accused.

14. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false. However, he did not choose to examine any witness nor he did mark any document on his side. His defence was a total denial.

15. Having considered all the above, the trial court convicted the appellant/accused as detailed in the first paragraph of this judgement. Challenging the above said convictions and sentences, the sole accused is now before this Court with the present criminal appeal.

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

17. The learned counsel for the appellant would submit that P.Ws.1 to 3 would not have seen the occurrence at all as they were sleeping inside the house. He would point out that the distance between the place where the deceased was sleeping and the place where these three witnesses were sleeping was more than 25 feet. Therefore, according to him, P.Ws.1 to 3 would not have witnessed the occurrence at all. He would further submit that the medical evidence does not corroborate the eye witnesses account inasmuch as the size of the injury noticed does not tally with the weapon.

18. The learned counsel would next contend that there is enormous delay in preferring the complaint and forwarding the same to the court which would also create doubt in the case of the prosecution. At any rate, according to the learned counsel, the offence committed by the accused would fall only under Section 304 of IPC and not under Section 302 of IPC.

19. Per contra, the learned Additional Public Prosecutor would vehemently oppose this criminal appeal. According to him, the presence of P.Ws.1 to 3 cannot be doubted in as much the occurrence had taken place just in front of their house. He would further submit that preceding the said occurrence there was a quarrel in which the accused came to the house of the deceased and scolded P.W.2. He would further submit that that awakened by the shouting of the accused as well as the deceased, they got up from the bed and they rushed to the place of occurrence where they found the accused cutting the deceased with spear. He would further submit that the medical evidences duly corroborate the eye witnesses account. Above all, according to him, the extra judicial confession given by the accused to P.W.8, an independent witness would clearly prove the guilt of the accused. Thus, according to the learned Additional Public Prosecutor, the prosecution has proved the case beyond reasonable doubts. He would further submit that the act of the accused would not fall under any of the exceptions to Section 300 of IPC. According to him, the act of the accused would only amount to murder punishable under Section 302 of IPC.

20. We have considered the above rival submissions carefully.

21. As pointed out earlier, the prosecution mainly relies on the eye witness account of P.Ws.1 to 3. Though P.Ws.1 to 3 are closely related to the deceased, on that score, their evidence cannot be rejected out right. Prudence requires only close scrutiny of their testimonies. P.W.1 has stated that the

deceased was sleeping at the entrance of the house on a cot whereas she was sleeping on the pial of the house. At that time, she was awakened by noise and thereafter, when she rushed to the place of occurrence, she saw the accused attacking the deceased.

22. P.W.2, the mother of the deceased, has stated that she was awakened by the noise and when she rushed towards the place of occurrence, the accused pushed aside her and fled away from the scene of occurrence. P.W.3 has stated that that he found the accused fleeing away from the scene of occurrence. Thus, P.W.1 had seen the actual attack being made by the accused on the deceased and P.Ws.2 and 3 have seen the accused fleeing away from the scene of occurrence. Though P.W.1 to 3 have been cross examined at length, nothing has been elicited on record so as to doubt their credibility. In our considered view, the presence of P.Ws.1 to 3 are so cogent and convincing and thus, we find no reason to reject the same.

23. Apart from above eye witness account, prosecution next relies on the extra judicial confession given by the accused to P.W.8. P.W.8 was the then Village Administrative Officer of Vadakkumelur Village. According to her, on 29.04.2013 at 7.00 a.m. when she was at her office, the accused came and voluntarily confessed which she reduced into writing. In the said confession, the accused has narrated the entire events. There is no reason to reject the evidence of P.W.8. P.W.8 is an independent witness and a responsible officer. He has no axe to grind against the accused. Therefore, we are inclined to accept the evidence of P.W.8. Thus, the eye witness account of P.W.1, which draws corroboration from the evidence of P.Ws.2 and 3 and the extra judicial confession given by the accused to P.W.8, would clearly go to prove that it was this accused who caused the death of the deceased.

24. Now, turning to the argument of the learned counsel that the medical evidence does not corroborate the eye witnesses account, we are unable to accept the same, for, the medical evidence is, after all, the opinion referring to the size of the injury. One cannot be sure about the size of the weapon that could have been used in the commission crime. The contention of the learned counsel for the appellant is that going by the size of the weapon, it is impossible to hold that the said injury could have been caused by the said weapon. In our considered view, it all depends upon the force used, the direction from which the weapon was used and the movement of the deceased. In the absence of anything elicited from the doctor, who conducted autopsy that the injury found on the deceased would have been caused by M.O.1, it is not possible for this court to accept the contention of the learned counsel for the appellant that the injury found on the deceased would not have been caused by a spear (M.O.1). Therefore, this argument is rejected.

25. The last limb of argument of the learned counsel for the appellant is that there was enormous delay in preferring the complaint. The alleged occurrence was around 02.15 a.m. on 26.04.2013. The complaint was made at 06.30 p.m. on 26.04.2013. P.Ws.1 to 3 are poor villagers. One cannot expect them to rush to the police station during night hours. The distance, as it is seen from the FIR, is 3 kms. The FIR had reached the hands of the learned jurisdictional Magistrate at 08.00 a.m. on 27.04.2013. Of course, this delay has not been explained away by the prosecution. The said delay was caused only by the police. But, on this score, we cannot reject the other evidences, as we have already discussed herein above, which are so convincing. Thus, we conclude that it was this accused who caused the death of the deceased.

26. The learned counsel for the appellant would submit that the act of the accused would amount to an offence only under Section 304 of IPC. In order to hold so, it is necessary for the learned counsel to convince this court that the act of the accused would fall under any one of the exceptions to Section 300 of IPC or to convince the court that the act of the accused would not fall under any one of the limbs of Section 300 of IPC.

27. From the fact that the accused had gone to the house of the deceased during night hours with weapon would give an inference of intention of the accused. The weapon used, situs of the injury, time chosen would all go to prove that the intention of the accused was only to cause the death of the deceased. Thus, the act of the accused would squarely fall within the scope of first limb of section 300 of IPC. There is no evidence to prove that the act of the accused would fall under any one of the exceptions to section 300 of IPC. So, the accused is liable to be convicted only for offence punishable under Section 302 of IPC.

28. Now, turning to the quantum of punishment, the trial court itself has imposed only a proportionate punishment which does not at all require any interference at the hands of this court. Thus, we do not find any merit in this criminal appeal and the same fails.

29. In the result, the criminal appeal is dismissed. The conviction and sentences imposed on the appellant/accused are hereby confirmed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

kmk
To

1. The District Collector
Cuddalore District
 2. The III Additional Sessions Judge,
Cuddalore at Virudhachalam
 3. The Chief Judicial Magistrate
Cuddalore
 4. The District Munsif cum Judicial Magistrate,
Neyveli
 5. The Director General of Police
Chennai
 - 6.The Inspector of Police,Neyveli Town Police Station, Cuddalore
District.
 - 7.The Public Prosecutor, High Court, Chennai.
 8. The Superintendent
Central Prison
Cuddalore
- 1 cc to M./s.R. Sankarasubbu, Advocate, Sr. 31454

Crl.A.No.457 of 2014

RP (CO)
kk 5/7