

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2016

CORAM

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

Criminal Appeal No.599 of 2014

S.Kalidas

... Appellant

-Vs-

State

Rep. by Inspector of Police

Avinashi Police Station,

Avinashi, Tiruppur District.

(Crime No.821/2012)

... Respondent

This Criminal Appeal has been preferred to set aside the conviction imposed in judgment dated 05.08.2014 made in S.C.No.80 of 2014 on the file of the I Additional District and Sessions Judge, Tiruppur, by allowing this appeal.

For Appellant : Mr.C.S.Dhanasekaran

For Respondent : Mr.M.Maharaja

Additional Public Prosecutor

J U D G M E N T

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

The appellant is the first accused in S.C.No.80 of 2014 on the file of the I Additional District and Sessions Judge, Tiruppur. The second accused in this case was one Mr.Pavithran. The Trial Court framed charges under Sections 302, 324 and 323 IPC as against the first accused and under Section 323 IPC as against the second accused. By judgment dated 05.08.2014, the Trial Court convicted both the accused under all the charges and accordingly, punished them. The Trial Court sentenced the first accused to undergo imprisonment for life and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for one year for the offence under Section 302 IPC; to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for 6 months for the offence under Section 324 IPC and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for 3 months for the offence under Section 323 IPC. The Trial Court sentenced the second accused to pay a fine of Rs.1000/- in default to undergo

simple imprisonment for three months for the offence under Section 323 IPC. Challenging the said conviction and sentence, the appellant/first accused alone is before this Court with this appeal.

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

P.W.10 - Ms.Kalaivani was studying in Avinashi Government Higher Secondary School during the year 2011-2012. The appellant/first accused was also studying in the same school. In such a way, they were known to each other. On one occasion, the first accused told P.W.10 that he had fallen in love with her. P.W.10 did not respond positively. She got wild and informed the same to her parents. P.W.1 is the brother of P.W.10. P.W.1 and his parents, thereafter, went to the house of the first accused and informed the above incident to his parents and wanted them to warn the first accused not to behave in such a manner towards P.W.10. After this incident, the first accused stopped following her.

3. The first accused, however used to stare at P.W.1 when he used to see him. This was out of anger against P.W.1, because he spoiled the love, which he expressed towards P.W.10. On 10.11.2012, at about 6.00 p.m., P.W.1 was standing near Arun Icecream Parlour on the Avinashi - Sevrur Road. At that time, the accused 1 and 2 came to the said spot. The second accused is the friend of the first accused. Due to the above motive, on seeing P.W.1., they attacked him. P.W.1 sustained injuries on his face. Then he left the place of occurrence and went to hospital. While he was returning from the hospital, his friends namely, P.Ws.2 and 3 and the deceased met him. They enquired as to why there were contusions on the face of P.W.1. P.W.1 told them that these two accused had attacked him. The deceased consoled him and all of them were returning to the house of P.W.1. On their way, at the place of occurrence, these two accused again came. On seeing all the four persons, including the deceased, the first accused shouted at them as to whether P.W.1 had gathered his men to attack him. This resulted in a quarrel. In that quarrel, it is alleged that the first accused suddenly took out a knife from his waist and stabbed the deceased on his chest and stomach. The deceased fell down. P.W.2 tried to rescue the deceased. The first respondent stabbed him with knife on his abdomen. Then the accused 1 and 2 attacked P.W.1 on his abdomen and other parts of the body. Thereafter, both the accused fled away from the scene of occurrence. The deceased was struggling for life.

4. Immediately, P.W.1 took the deceased to the Government Hospital at Avinashi. The injured witness viz., P.Ws.2 and 3 were also taken to the same hospital. Since the condition of P.W.2 was serious, he was referred to Coimbatore Government

Hospital. The deceased was declared dead by the Doctor. Due intimation was sent by the Doctor to the Police. P.W.1, thereafter, went to Avinashi Police Station and made a complaint at 10.00 p.m. on 10.11.2012. P.W.17 - the then Sub-Inspector of Police, on receipt of the said complaint registered a case in Crime No.821 of 2012 under Sections 323, 323 and 302 IPC. He forwarded both the documents viz., Complaint (Ex.P1) and FIR (Ex.P20) to the Court, which were received by the learned Magistrate at 12 midnight on 10.11.2012.

5. The case was taken up for investigation by P.W.18 - the Inspector of Police. He proceeded to the place of occurrence and prepared an Observation Mahazar and a rough sketch in the presence of P.Ws.7 and 8. He examined P.Ws.1 to 4 and few more witnesses and recorded their statements. On 11.11.2012 at 4.00 a.m., he arrested both the accused in the presence of P.Ws.7 and 8. On such arrest, the first accused gave voluntary confession and he disclosed the place, where he had hidden the Knife. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.1 - Knife. The same was recorded under a Mahazar. On returning to the Police Station, he forwarded both the accused to the Court for judicial remand.

6. P.W.14 -Dr.Jayasingh conducted autopsy on the body of the deceased on 11.11.2012 at 11.30 a.m. He found the following injuries:

- "1) Stab Wound 1.9x1 cm noted over left side chest at the level of 6th inter costal space. On dissection the wound passes inward, upwards, obliquely and cutting the inferior border of lower lobe of left lung and piercing the pericardial sac and enter into right ventricle cavity. Left Pleural cavity contains about 1000 ml of fluid blood.
- 2) Puncture wound 0.5 x 0.5 cm x skin deep noted over epigastric region, 1 cm right to midline."

Ex.P14 is the Post-mortem certificate. Ex.P16 is his final opinion regarding the cause of death. He opined that the injuries would have been caused by a weapon like Knife M.O.1. He further opined that the death was due to shock and haemorrhage due to the injuries. On completing the investigation, P.W.18 laid the charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges as detailed in the first para 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 18 witnesses were examined and 22 documents were exhibited, besides 6 Material Objects were marked.

8. Out of the said witnesses, P.Ws.1 to 4 are the eye witness to the occurrence, who have spoken about the entire occurrence. P.Ws.5 and 6 are the father and mother of the deceased, who have spoken about the previous motive. P.Ws.7 and 8 have spoken about the preparation of Observation Mahazar, Rough sketch, arrest of the accused and recovery of M.O.1 in pursuance of the disclosure statement made by the first accused. P.W.9 has spoken about the occurrence in part. P.W.10 has spoken about the previous motive. P.W.11 has spoken about the treatment given to P.W.2 at Avinashi Government Hospital on 10.11.2012. P.W.12 has spoken about the treatment given to P.W.2 at Coimbatore Medical College Hospital. According to him, the injuries are simple in nature. P.W.13 has spoken about the treatment given to P.W.1. P.W.14 has spoken about the Post-mortem conducted and his final opinion regarding the cause of death. P.W.15 has spoken about the fact that he handed over the dead body to the Doctor for Post-mortem. P.W.17 has spoken about the registration of the case and complaint of P.W.1. P.W.18 has spoken about the investigation done and his final report.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, they denied the same as false. However, they did not choose to examine any witness on their side nor marked any document in their favour. Their defence was a total denial.

10. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the appellant/first accused alone is before this Court with this appeal.

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

12. In this case, as we have already pointed out, there are four eye witnesses, who have vividly spoken about the entire occurrence. Out of the four witnesses, P.Ws.1 and 2 are the injured witnesses. The injuries found on them have been spoken by P.Ws.11 to 13, the Doctors who treated them. Their presence at the place of occurrence cannot be disputed. P.Ws.3 and 4 have also spoken about the entire occurrence. We do not find any reason to reject the evidences of P.Ws.1 to 4.

13. The learned counsel for the appellant would submit that though these witnesses have spoken about the occurrence, since they are interested witnesses, their evidences should be rejected. We find no force at all in this argument. Simply because, they happened to be interested in the case of the prosecution, on that score, their evidences cannot be rejected. Prudence requires only close scrutiny of their evidence. In

this case, out of four witnesses, P.Ws.1 and 2 are the injured eye witnesses. Though P.Ws.1 to 4 have been cross examined at length, nothing has been elicited to create any doubt in their evidence. From these evidences, we hold that the prosecution has proved that the death of the deceased was caused by the appellant and that he caused simple hurt to P.Ws.1 and 2. The recovery of M.O.1 knife in pursuance of the disclosure statement made by the first accused also lend support to the case of the prosecution.

14. Having come to the conclusion that the death of the deceased was caused only by the appellant, now we have to examine as to what was the offence that was committed by the accused by his act. Thus, in the evidences of all these eye witnesses, that at 6.00 p.m., on the day of occurrence, the accused 1 and 2 have attacked P.W.1, in which, he sustained injuries. He went to the Doctor. After treatment, according to him, he was returning in the company of P.Ws.2 and 3 and the deceased. It was only on seeing that the accused shouted at them as to whether P.W.1 had come there to fight with them by gathering his men. Thus, it is crystal clear that there was quarrel and in that quarrel, at the end, the first accused has caused injury. Going by the natural human conduct, we presume that the deceased, P.Ws.2 and 3 would have been gathered by P.W.1 to go and attack the accused because of the earlier incident. It was only in that quarrel, the accused had caused injury on the deceased, which resulted in death.

15. In our considered view, the act of the accused was as a result of provocation made by the deceased and his party. This provocation, in our considered view, was so grave and sudden. Therefore, for having caused the death of the deceased, the appellant is liable to be punished only for the offence under Section 304(i) IPC. For having caused injuries on witnesses, he is liable to be punished under Sections 324 and 323 IPC.

16. Now turning to the quantum of punishment, the accused is a young man, who has got no bad antecedents. He has not involved in any crime subsequent to the occurrence also. Having regard to these mitigating circumstances as well as aggravating circumstances, we are of the view that sentencing the appellant to undergo rigorous imprisonment for eight years and to pay a fine of Rs.1000/- for the offence under Section 304(i) IPC would meet the ends of justice. So far as the sentence imposed for the offence under Sections 324 and 323 IPC is concerned, the conviction and sentence are liable to be confirmed.

17. In the result, the appeal is partly allowed in the following terms:-

i) The conviction and sentence imposed on the appellant for the offence under Section 302 IPC is set aside and instead, he

is convicted under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for 8 years and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for four weeks.

ii) The conviction and sentence imposed on the appellant for the offence under Section 324 IPC is confirmed.

iii) The conviction and sentence imposed on the appellant for the offence under Section 323 IPC is also confirmed.

iv) It is directed that the sentence imposed herein would run concurrently and the period of sentence already undergone by the appellant shall be given set off, as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The I Additional District and Sessions Judge,
Tiruppur.
2. The District Collector, Tiruppur District.
3. The Director General of Police,
Mylapore, Chennai.
4. The Superintdent, Central Prison, Coimbatore.
5. The Inspector of Police
Avinashi Police Station,
Avinashi, Tiruppur District.
- 6.The Public Prosecutor
High Court, Chennai.
7. The District Collector, Coimbatore.

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PPA(CO)
EU 14.7.16