

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2016

CORAM

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

Criminal Appeal No.134 of 2015

Anandakumar

... Appellant/Accused

-Vs-

State by Inspector of Police
Erode Town Police Station,
Erode
(Crime No.21/2014)

... Respondent/Complainant

This Criminal Appeal has been preferred u/s. 374(2) of Cr.P.C. to set aside the conviction and sentenced imposed by judgment dated 05.01.2015 made in S.C.No.67 of 2014 on the file of the Principal District and Sessions Judge, Erode, by allowing this appeal.

For Appellant : Mr.A.K.Kumarasamy

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 sole accused in S.C.No.67 of 2014 on the file of Principal District and Sessions Judge, Erode. He stood charged for offence under Section 302 IPC. By judgment dated 05.01.2015, the Trial Court convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay fine of Rs.5000/- in default to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellant is before this court with this appeal.

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

a) The deceased in this case was one Mr.Raja. He used to sell groundnut pockets in the Erode Bus stand by entering into the bus to the passengers. P.W.2 - Umesh was also doing the same

business. P.W.1 used to sell pieces of pineapple fruit to the passengers. Thus, all the three were known to each other. On 12.01.2014, around 4.00 p.m., when all the three were selling the above, one person was sleeping in the bus stand; yet another person attempted to pick the pocket of the person who was sleeping. The accused questioned him. The deceased Raja in turn told the accused not to take risk in interfering in the above incident. At that time, P.W.11 a Police Constable, who was on guard duty incidentally came to the place of occurrence. On seeing him, the person who was attempting to pick pocket ran away. But the deceased told P.W.11 that the accused attempted to pickpocket. P.W.11 therefore slapped the accused. The deceased Raja also slapped him. Then they dispersed from the place of occurrence. The accused was enraged over the above act of the deceased in telling P.W.11 that it was he who attempted to pick pocket. This is said to be the motive for the occurrence.

b) Around 6.45 p.m., on the same day, P.W.1 and the deceased were near the platform meant for Tiruppur buses in the Erode Bus Stand. P.W.1 was standing 8 feet away from the place, where the deceased and P.W.2 were walking. At that time, the accused came there and quarreled with the deceased as to why he informed P.W.11 falsely that it was he who attempted to pick pocket. This resulted in a quarrel. In the said quarrel, it is alleged that the accused took out a knife and stabbed the deceased on the back of the chest. The deceased fell down in a pool of blood. The accused ran away from the scene of occurrence with the knife. P.W.1 held the deceased and made him to sit. Then P.Ws.1 and 2 took the deceased to the Government Hospital at Erode. P.W.7 - the Doctor examined him at 6.55 p.m. and declared him dead. He forwarded the body to the mortuary and gave intimation to the Police.

3. On receiving the said intimation, P.W.15, the then Special Sub-Inspector of Police, Erode Town Police Station rushed to the hospital and recorded the statement of P.W.1. On returning to the Police Station, at 9.00 p.m., she registered a case in Crime No.21 of 2014 under Section 302 IPC against the accused. Ex.P13 is the FIR. She forwarded both the documents Ex.P1 - Complaint and Ex.P13 FIR to the Court, which were received by the learned Judicial Magistrate at 10.30 p.m., on 12.01.2014.

4. P.W.16 took up the case for investigation. He proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.5 and another witness. Then on going over to the hospital, he conducted inquest on the body of the deceased between 6.30 and 10.00 a.m. on 13.01.2014 and forwarded the body for post-mortem.

5. P.W.8 - Dr.Shyam Sundar, conducted autopsy on the body of the deceased on 13.01.2014 at 10.20 a.m. He found the following injuries:

"External Injury: Clean Incised wound in left side 2 cm from midline and 2 cm from left scapula medial border.

Upper border of wound - 5 cm from C2

Lower border of wound - 12 cm from C2

Shape of wound - convex

Edges - sharp

Dimensions of wound - 2 x 8 x 16 cm

Direction of wound - Towards left side and upwards direction"

Ex.P7 is the post-mortem Certificate. He gave opinion that the deceased had died due to the stab injury and the said injury could have been caused by a weapon like M.O.1- Knife.

6. On 13.01.2014, at 11.15 p.m., P.W.16 arrested the accused in the presence of P.W.6 and another witness. On such arrest, he made voluntary confession, in which, he disclosed the place, where he had hidden the knife. In pursuance of the same, he took the police and witnesses to the place of hide out and produced M.O.1- knife from a bush. P.W.16 recovered the same under a Mahazar. On returning to the Police Station, he forwarded the accused to the Court and handed over the Material Object also to the Court.

7. The investigation was thereafter taken over by P.W.17. He made a request to the Court to forward the Material Objects for chemical examination. The report revealed that 'O' group human blood was found on all the material objects including knife. On completing the investigation, P.W.17 laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed a lone charge for the offence under Section 302 IPC against the accused. The appellant denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined and 16 documents were exhibited; besides 7 material objects were marked.

9. Out of the said witnesses, P.Ws.1 to 4 are the eye witness to the occurrence. P.Ws.1 and 2 have spoken about the previous occurrence which had taken place at 4.00 p.m on 12.01.2014 and also the actual occurrence in which the deceased was stabbed at 6.45 p.m. P.Ws.1 and 2 have further stated that they took the deceased to the hospital, where, he was declared dead. P.W.1 has further spoken about the complaint made by him

to the Police. P.Ws.3 and 4, who are the eye witnesses have vividly spoken about the entire occurrence. P.W.5 has spoken about the preparation of Observation Mahazar and Rough Sketch. P.W.6 has spoken about the arrest of the accused; his disclosure statement and the consequential recovery of M.O.1 - knife from a bush. P.W.7 has stated that he examined the deceased at Government Hospital, Erode at 6.55 p.m and declared him dead. He has further stated that the deceased was brought to the hospital by P.W.1. P.W.8 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.9 has spoken about the medical analysis conducted on the material objects. According to him, the material objects contained 'O' group human blood. P.W.10 has stated that he was running a departmental store in the name and style of Jayasurya at Salem. He further stated that on 12.01.2014 in the branch of the said store at Erode, the accused purchased M.O.1 knife. P.W.11 has stated about the occurrence, which had taken place at 4.00 p.m. at the Erode bus stand. P.W.12 has spoken about the photographs taken at the place of occurrence. P.W.13 has stated that he handed over the FIR to the learned Magistrate at 10.30 p.m. on 12.01.2014. P.W.14 has stated that he handed over the dead body to the doctor for post-mortem and he recovered the blood stained cloth from the body of the deceased and handed over the same to the Inspector of Police. P.W.15 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.16 and 17 have spoken about the investigation done and final report filed in this case.

10. 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 on his side. His defence was a total denial. According to the appellant, in respect of the occurrence, at 4.00 p.m. on 12.01.2014, he was taken to the police station and he was kept there. Thus, at 6.45 p.m. he was not present at the place of occurrence and that he did not cause any injuries on the deceased.

11. Having considered all the above, the trial Court convicted the accused under Section 302 IPC and that is how the appellant is before this Court with this appeal.

12. 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.

13. As we have already pointed out, in this case P.Ws.1 to 4 have been examined as eye witnesses. P.Ws.1 and 2 have spoken about the occurrence on 12.01.2014 at 4.00 p.m., happened at the Erode bus stand, which gave rise to the motive for the accused

to stab the deceased at 6.45 p.m. P.W.11 has also spoken about the occurrence at 4.00 p.m.. Thus, from the evidences of P.Ws.1,2 and 11, the prosecution has clearly proved the occurrence at 4.00 p.m. So far as the actual occurrence of stabbing which had taken place at 6.45 p.m., is concerned, P.Ws.1 to 4 have also spoken about the same. We do not find any reason to reject their evidence.

14. But the learned counsel for the appellant would submit that P.W.1 has admitted that after the 4.00 clock occurrence was over, the accused was taken into the custody by the Police. Thus, from the said evidence, according to the learned counsel for the appellant, it is crystal clear that the accused would not have been present at the place of occurrence at 6.45 p.m. as it is projected by the prosecution.

15. However, P.W.11 the Police Constable has stated that after the 4.00 clock occurrence was over, he warned the accused but he did not take him at all into the custody. P.W.1 also has not stated that the accused was kept in the Police Station from 4.00 p.m onwards. Therefore, from out of the evidence of P.W.1, it cannot be even remotely concluded that the accused was kept in the Police Station from 4.00 p.m onwards. Thus, the only defence set up by the accused that he was in the Police Station and he was not present at the place of occurrence at 6.45 p.m. cannot be believed. It is the law that when the accused sets up the plea of alibi, it is for him to prove the same. We are conscious of the legal position that such proof by the accused is not in the same vigour, in which the prosecution has to prove the guilt of the accused beyond reasonable doubts. It is enough if the accused is able to prove the plea of alibi by means of probabilities. In the instant case, the accused has not at all discharged his onus to prove the burden of proof of plea of alibi.

16. As we have already pointed out from the evidences of P.Ws.1 to 4, the prosecution has clearly established that at 6.45 p.m., the accused came with a knife; quarrelled with the deceased and stabbed him on his back, which resulted in his death. Thus, we hold that it was this accused who caused the death of the deceased. The recovery of M.O.1 - knife which contained 'O' group human blood also strengthens the case of the prosecution.

17. Having come to the said conclusion, now we have to examine the question as to "What was the offence that was committed by the accused by the said act?". Admittedly, there was no enmity between the deceased and the accused. After all, the deceased, P.Ws.1 and 2 and the accused were all vendors of

eatables in the bus stand. They were moving closely with each other. The occurrence which had taken place at 4.00 p.m. was an unfortunate one, which had taken place spontaneously. The accused was innocent and he did not make any attempt to pick pocket and despite the same, he got into trouble at the hands of P.W.11 because of the deceased. Quite naturally, he would have grievance against the deceased. At 6.45 p.m, on seeing the deceased, the accused had questioned him his propriety in making such false allegation against him to the Police. This had resulted in a quarrel. This went on for some time. Only in that quarrel, it is alleged that the accused caused single stab on the back of the deceased and ran away. In our considered view, the said act of the accused was out of gross and sudden provocation due to the utterances made and the act of the deceased. The said act would squarely fall within the first exception to Section 300 IPC. The very fact that the accused had caused single stab would go to show that he had no intention to kill the deceased. There was also no motive. The occurrence was not a pre-meditated one. Thus, the act of the accused would squarely fall under third limb of Section 300 IPC. Therefore, the accused is liable to be punished for offence under Section 304(i) I.P.C.

18. Now, turning to the quantum of punishment, as we have already pointed out, the accused is a young man, aged 36 years. After all, he is a poor man, who was living on the small earnings he made by vending groundnut pockets in the bus. He has got no bad antecedents. He has got a big family to take care off. After the occurrence also, it is not reported that he is not involved in any other crime. Further, there are lot of chances for reformation. So far as the aggravating circumstances are concerned, there was no pre-meditation for the accused to cause the death of the deceased. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

19. In the result, the appeal is partly allowed and the conviction and sentence imposed on the appellant for the offence u/s 302 IPC is set aside and instead, he is convicted for offence under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. It is directed that the period of detention

already undergone shall be set off as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

svki

To

- 1.The Judicial Magistrate, Erode.
2. Do Thro The chief Judicial Magistrate, Coimbatore.
3. The Additional District and Sessions Judge, Erode.
- 4.The Principal District and Sessions Judge, Erode.
- 5.The District Collector, Erode.
6. The Director General of Polcie, Mylapore, Chennai 4.
- 7.The Superintendent, Central Prison, Coimbatore.
- 8.The Inspector of Police, Erode Town Police Station, Erode.
- 9.The Public Prosecutor High Court, Chennai.

1 cc to Mr.A.K.Kumarasamy, Advocate, sr.37935

Cr1.A.No.134 of 2015

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kra 03.08.2016