

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 17-06-2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.APPEAL No.286 of 2015

Annathi @ Palani .... Appellant/Accused

-vs-

State, rep.by  
Inspector of Police,  
Cheyur Police Station,  
Tiruppur District. .... Respondent/Complainant  
(Crime No.88 of 2014)

Appeal filed under section of CRPC against the judgment, dated 22.04.2015, made in S.C.No.184 of 2014 on the file of I Additional Sessions Court, Tiruppur.

For appellant : Mr.S.N.Arun Kumar

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

JUDGMENT

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

Appellant is the sole accused in S.C.No.184 of 2014 on the file of I Additional Sessions Court, Tiruppur. He stood charged for the offence under Section 302 IPC. By judgment, dated 22.04.2015, the trial Court convicted him for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a 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 :

2.1. The deceased in this case was one Pudukkan @ Palani. P.W.1 is his wife. The accused also hails from the same village. On 14.04.2014, the accused had tied his cattle on the land belonging to the deceased. He had also thrown the garbage on the land of the deceased. The deceased questioned the accused at about 12.00 midnight. This resulted in a quarrel. The deceased used abusive language. Provoked by the same, the accused with his hands strangulated the deceased by neck. The occurrence was witnessed by P.W.1. The accused fled away from the scene of occurrence.

2.2. The deceased wanted P.W.1 to go and bring P.W.4. Accordingly, she informed P.W.4 and P.W.4 rushed to the place of occurrence along with P.Ws.2,3 and a few others. They took the deceased to a private hospital, but there was no doctor available. The Compounder available in the hospital gave a few tablets to the deceased. Even after consuming tablets, the deceased told that there was pain over his neck. Then, they took the deceased to the Government Hospital. But, unfortunately, on his way to hospital, he breathed his last. The doctor at one more Government Hospital examined the deceased and declared him dead. The body was, thereafter, taken back to the house of the deceased.

2.3. Thereafter, P.W.1 went to Cheyur Police Station on 15.04.2014 at 09.00 a.m. and made a complaint under Ex.P-1. P.W.15, the then S.I. of Police, on receipt of the said complaint, registered the complaint in Crime No.88 of 2014, under Section 302 IPC. Ex.P-5 is the F.I.R. He forwarded both the documents to the Court, which were received by the learned Judicial Magistrate at 02.00 p.m. on 15.04.2014.

2.4. P.W.16 took up the case for investigation. He proceeded to the place of occurrence at 10.00 a.m. on 15.04.2014, prepared Observation Mahazar and Rough Sketch, in the presence of P.W.8 and another witness. Then, he conducted inquest on the body of the deceased and forwarded the same for post-mortem.

2.5. P.W.17, doctor, conducted autopsy on the body of the deceased on 16.04.2014 at 02.15 p.m. He found the following injuries :

"On dissection of Scalp, Skull and Dura Sub scalpal contusion reddish in colour 10x4 cm noted over right parieto occipetal region. Brain found pasty with blood tinges seen over the surface of meninges."

Ex.P-8 is the Post-mortem Certificate. Ex.P-9 is the Final Opinion, regarding the cause of death.

2.6. On the same day, at 05.00 p.m., P.W.16 arrested the accused, and, thereafter, the accused was sent for judicial remand. On completing the investigation, P.W.16 laid chargesheet against the accused.

3. Based on the above materials, the trial Court framed the lone charge against the accused under Section 302 IPC and he denied the same.

4. In order to prove the case, on the side of prosecution, as many as 17 witnesses were examined, 9 documents were marked and no material object was marked.

5. Out of the said witnesses, P.Ws.1 to 3 are the family members of the deceased and P.W.4 is a neighbourer. They are all eye witnesses to the occurrence and they have spoken vividly about the same. P.W.5 has spoken about the hearsay information he had. P.W.6 has spoken about the fact that he took the deceased to the hospital. P.W.7 has also spoken about the same facts. P.W.8 has spoken about the preparation of Observation Mahazar and Rough Sketch at the place of occurrence. P.W.9 has also spoken about the same facts. P.W.10 has spoken about the arrest of the accused on 15.04.2014. P.W.11 has also spoken about the arrest of the accused. P.W.12 is the Compounder of Karthikeyan Hospital, where the deceased was brought at 02.00 p.m. on 15.04.2014. According to him, when the deceased was brought to the hospital, no doctor was available, and then, he gave a few tablets to the deceased. P.W.13 has stated that he handed over the dead body for post-mortem. P.W.14, Head Constable, has stated that he handed over the F.I.R. to the learned Judicial Magistrate at 02.00 p.m. on 15.04.2014. P.W.15 has spoken about the registration of the case. P.W.16 has spoken about the investigation done and his final report. P.W.17 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. According to him, the death of the deceased was due to head injury, associated with aspiration. He has explained that aspiration means obstruction of air passage by food particles.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. examination, he denied the same as false. However, he did not choose to examine any witness or mark any document on his side.

7. Having considered all the above materials, the trial Court convicted the accused for the charge and sentenced him thereunder. That is how, the accused is before this Court with this appeal.

8. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the State and also perused the materials available on record.

9. In this case, P.Ws.1 to 4 are the eye witnesses to the occurrence. There was neither enmity nor motive on the part of the accused to cause the death of the deceased. The accused had tied his cattle on the land belonging to the deceased. He had also thrown garbage on the said land. This resulted in a quarrel. At that time, the accused was not armed with any weapon. It is alleged that the accused with his hands strangulated the deceased. But, the said eye witness account is completely contradicted by the medical evidence. The doctor has opined that the death of the deceased was due to head injury associated with aspiration. The doctor has found a head injury also. It is not the case of the eye witnesses that the said head injury was caused by the accused. Thus, the medical evidence relating to the head injury has not been explained by the prosecution witnesses.

10. Turning to the cause of death, the doctor had opined that the death was due to head injury, associated with aspiration. The expression 'aspiration' has been explained by him as obstruction of wind pipe by food particles. For the death of the deceased caused by wind pipe obstruction by food particles, the accused cannot be held responsible. Nowhere, it is stated that at the time when the occurrence had taken place, the accused forced the food particles through the nose or mouth of the deceased. There is no evidence as to who caused injury on the head of the deceased. Thus, the cause for the death, namely, head injury and obstruction of wind pipe, cannot be attributed to the accused. Therefore, we have no hesitation to hold that the death of the deceased was not caused by the accused.

11. Learned counsel for the appellant would point out that F.I.R. in this case was registered only at 09.00 a.m., on 15.04.2014, though it is stated that the alleged occurrence was at midnight at 00.00 hours on 14/15.04.2014. Absolutely, there is no explanation for the same. Above all, the F.I.R. had reached the hands of the learned Judicial Magistrate at 02.00 p.m, for which also, there is no explanation. P.Ws.1 to 3 are the family members of the deceased and P.W.4 is a neighbour. Though they claim to be the witnesses to the occurrence, their evidence is contradicted by the medical evidence. The unexplained delay in preferring the complaint and in forwarding

the same to the Court also add strength to the said doubts, arising out of the above contradiction. In such view of the matter, it is not safe to rely on the evidence of P.Ws.1 to 4 and sustain the conviction. Therefore, we hold that the prosecution has failed to prove the case beyond all reasonable doubts.

12. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant are set aside and the appellant is acquitted of the charge. The appellant/accused is directed to be set at liberty forthwith, unless his custody is required in connection with any other case. Fine amount, if any paid, shall be refunded.

-s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

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To

1.The I Additional Sessions Judge  
Tiruppur.

2.The Principal District Judge, Tirupur

3.The Judicial Magistrate  
Avinasi Coimbatore District

4.Th Chief Judicial Magistrate  
Coimbatore District

5.Inspector of Police,  
Cheyur Police Station,  
Tiruppur District.

6.The Superintendent  
Central Prison, Coimbatore

7.The Public Prosecutor High Court  
Madras

8.The District Collector  
Tiruppur

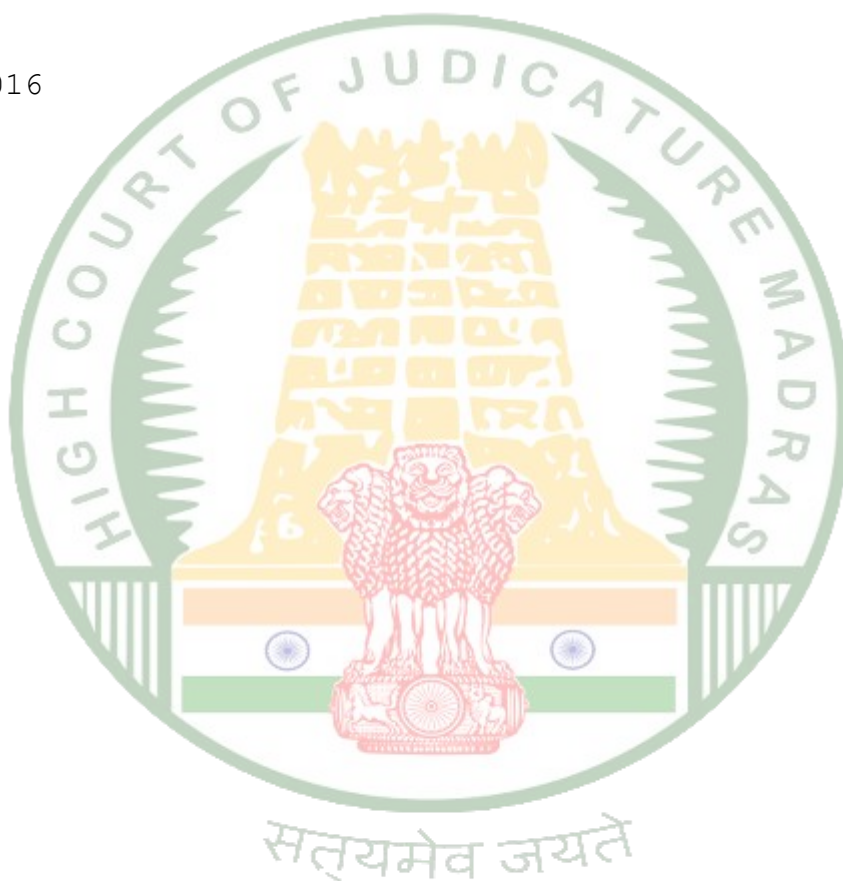
9.The Director General of Police  
Mylapore Chennai-4

10.The Section Officer  
Criminal Section High Court Madras-104

+1 cc to Mr.C.Ramkumar Advocate sr.33588/16

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