

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.07.2016

CORAM:

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

Crl.A.No.290 of 2015

M.Senthilkumar ... Appellant

vs.

The State, by
The Inspector of Police,
Chidambaram Taluk Police Station,
Cuddalore District.
(Crime No.177 of 2013) ... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 30.03.2015 passed by the learned II
Additional District and Sessions Judge, Chidambaram, in
S.C.No.228 of 2013.

For Appellant : Mr.S.Kumaradevan

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

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

The appellant in this appeal is the sole accused in Sessions
Case No.228 of 2013, on the file of the learned II Additional District
and Sessions Judge, Chidambaram. The appellant/accused stood

charged as detailed below;

<i>Sl.No.</i>	<i>Charge(s) framed against</i>	<i>Charge(s) framed</i>
1.	Sole Accused	U/s.341, 302 of IPC

The Trial Court, after trial, by judgement dated 30.03.2015, convicted the appellant/accused and sentenced him as detailed below:-

<i>Rank of the accused</i>	<i>Penal provision(s) under which convicted</i>	<i>Sentenced to undergo</i>
Sole accused	U/s. 341 of IPC U/s. 302 of IP	Simple imprisonment for one month Life Imprisonment and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for three months.

The trial Court directed both the sentences to run concurrently. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) The deceased in this case one Appadurai was the husband of P.W.1. The accused was the son in law of the deceased and he married the elder daughter of the deceased one Sathiya(P.W.7). The accused suspecting the fidelity of his wife P.W.7, frequently quarrelled with her. The accused suspecting his wife as if she was having illicit intimacy with her father/deceased,

unable to bear the harassment of the accused, P.W.7 went to her parental house with her children. When the accused came to the house of the deceased and requested the deceased to send his wife along with him, but he refused. Hence, the accused has grievance against the deceased. After two days, P.W.7 along with her children went to the house of the accused. In order to take a revenge, on 29.05.2013 at about 4.45 p.m., while the deceased was walking near the bus stop, the accused attacked him with iron rod on his head and face and ran away. At that time, P.Ws.2 and 3, came there in the moped and saw the occurrence, they called the ambulance and sent the deceased to the Hospital. Then, they have informed the same to P.W.1, the wife of the deceased. Immediately, P.Ws.1 and 4, the wife and daughter of the deceased rushed the scene of occurrence, took the deceased to the Raja Muthaiah Medical College Hospital, Chidhambaram, where, the deceased was declared dead. Then, P.W.1 has given a complaint (Ex.P1) before the respondent police.

(ii) P.W.14, Sub Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.177 of 2013, under Section 341 and 302 of IPC, prepared first information report (Ex.P11) and sent the first information report to the learned Judicial Magistrate No.II, Chidhambaram and copy of the same to the higher officials.

(iii) P.W.15, Inspector of Police, working in the respondent police station, on receipt of the first information report, on 29.05.2013 at about 10.15 p.m., proceeded to the scene of occurrence, prepared an Observation Mahazar(Ex.P6) drew Rough Sketch (Ex.P12) in the presence of witnesses. He recovered (M.O.2), blood stained soil, (M.O.3), Sample soil and (M.O.4), blood stained white colour shirt and (M.O.5) Half hand shirt in the presence of witnesses. On 30.05.2013, at about 7.00 a.m., P.W.15 conducted inquest over the dead body of the deceased in presence of Panchayatdars and prepared inquest report (Ex.P13). He sent the dead body along with a requisition letter to the Government Hospital, Chidhambaram for postmortem through P.W.13, Head Constable. He examined some witnesses and recorded their statements. On the same day, at about 12.30 pm., P.W.15 arrested the accused and on such arrest, he voluntarily gave confession and based on the disclosure statement (Ex.P8), he seized M.O.1 iron rod under (Ex.P9) Mahazar in the presence of witnesses. Then, he remanded the accused to the judicial custody. Thereafter, P.W.15 handed over the investigation to P.W.16, his successor.

(iv) P.W.12-Assistant Doctor, working in the Government Hospital, Chidhambaram, conducted the postmortem on the dead body of the deceased and found the following injuries:-

External Injuries:

(1) Lacerated wound frontal parietal region 9 x 4 x bone depth depressed fracture left frontal and left parietal bone.

(2) Left elbow lacerated wound 3 x 1 x 1 cm.

(3) Laceration left ear 1x 1 x 1cm.
Frontal examinations. Thorax symmetrical. Ribs Intact. . Heart – All chambers empty. Lungs Pale. Hyoid bone intact, Stomach contain 200 gms material. Liver, Spleen, Kidney pale. Bladder empty. Pelvis intact.

He opined that the deceased appeared to have died of head injury.

He has given Postmortem Certificate (Ex.P10).

(v) P.W.16, Inspector of Police, working in the respondent police station, continued the investigation, after completion of investigation, laid the charge sheet against the accused.

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 same, on the side of the prosecution, as many as 16 witnesses were examined, 15 documents and 5 material objects were marked.

4. Out of the witnesses examined, P.W.1 was the wife of

the deceased and mother-in-law of the accused. According to her, the accused suspecting the fidelity of his wife(P.W.7), quarrelled with her and hence P.W.7 along with her children came to P.W.1's house and thereafter the accused came to her house for taking back her daughter and their children to the accused house. He further stated that the accused had a grievance against the deceased. P.W.2 is an eye witness to the occurrence. According to him, at the time of occurrence, he along with P.W.3 came to the village in his moped near the bus stop, the accused attacked the deceased with iron rod on his head and face, when he questioned the same, the accused threatened them and ran away from the scene of occurrence. He further deposed that they have informed the same to P.W.1/the wife of the deceased. P.W.3 is the resident of Vadamur village. He is also an eye witness to the occurrence. According to him, he along with P.W.2 saw the accused attacked the deceased with iron rod and ran away. P.W.4 was the daughter of the deceased. She has spoken about the previous enmity between the accused and the deceased. P.W.5 was the resident of Vadamur Village. He is an eye witness to the occurrence. According to him, when he came to the bus stop, he saw the accused attacked the deceased with iron rod, when P.Ws.2 and 3 prevent him, the accused threatened them and ran away from the scene of occurrence. P.W.6 was the resident of Vadamur village. According

to her, when she came to the bus stop, at the time the accused attacked the deceased with iron rod and ran away. P.W.7 is the wife of the accused and daughter of the deceased. According to her, the accused suspecting her fidelity that she is having illicit intimacy with her father, the accused quarrelled with her. She further stated that the accused told her that he will murder her father. P.W.8 is the Junior Scientific Officer in the Regional Forensic Lab, Villupuram. According to him, he examined the viscera parts of the deceased and given report Ex.P2. P.W.9, Scientific Officer, Forensic Laboratory, Chennai, has examined the blood stained material objects and gave report Ex.P5. P.W.10 is the witness to the mahazar and also recovery of M.Os.2 to 5. P.W.11 is the Village Administrative Officer at Chidhambaram. He has spoken about the arrest and confession statement of the accused and recovery of M.O.1 iron rod. P.W.12-the Doctor, has spoken about the autopsy conducted on the dead body of the deceased and given postmortem certificate. P.W.13-the Head Constable, has stated that he carried the dead body, as requested by the investigating officer, for postmortem. P.W.14-Sub Inspector of Police, has spoken about the registration of the case. P.W.15-Inspector of police attached to the respondent police, conducted investigation, examined the witnesses and recorded their statements, conducted inquest, arrest of the accused recovery of material objects and thereafter he handed over

the investigation to P.W.16, his successor. P.W.16, Inspector of Police attached to the respondent police, received the case dairy and after completion of investigation, laid the charge sheet against the deceased.

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 their side.

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

7. We have heard Mr.S.Kumaradevan, 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 this case, there are four eye witnesses to the occurrence. According to P.Ws.2 and 3, when they came to the village in the TVS Moped near the bus stop, the accused attacked the deceased with iron rod on his head and face, when they tried to

prevent him, the accused threatened them with dire consequences and ran away. P.W.5 is also an eye witness to the occurrence. In his evidence stated that when he came to the bus stop, he saw the accused attacked the deceased with iron rod, and P.Ws.2 and 3 prevent him, but the accused threatened them with dire consequences and ran away. P.W.6 is an eye witness to the occurrence. According to her, when she was going to the bus stop for boarding a bus, the accused attacked the deceased with iron rod. She further deposed that at the time, when P.Ws.2 and 3 prevented the accused, but he threatened them with dire consequences and ran away. All the witnesses are independent witnesses and all of them consistently deposed that near the bus stop, the accused attacked the deceased with iron rod on the head and face of the deceased. The Medical evidence also corroborate the evidence of the eye witnesses. Hence, we have no reason to disbelieve the testimony of all the eye witnesses.

9. The learned counsel appearing for the appellant contended that there was a delay in filing the first information report and reaching to the Judicial Magistrate Court and the delay in filing the first information report creates doubt regarding the case of the prosecution. According to P.W.1, after the occurrence at about 5.00 p.m., P.Ws.2 and 3, the eye witnesses to the occurrence, came

to P.W.1 and informed her. Immediately P.W.1 went to the scene of occurrence and took the deceased to the Raja Muthiah Medical College Hospital, Chidhambaram, where, the deceased was declared dead and thereafter, P.W.1 went to the police station and lodged a complaint. P.Ws.1 and 4 are the wife and daughter of the deceased, both of them ladies, they took the deceased to the Hospital and after the deceased was declared dead, P.W.1 went to the police station and gave a complaint. Apart from that the first information report has reached the Judicial Magistrate Court in the same night at about 3.00 a.m., Hence, we are of the considered view that the delay in filing the first information report been has clearly explained by the prosecution. Therefore, we are of the considered view that the prosecution has clearly established that it is this accused alone attacked the deceased with iron rod on his head and caused death of the deceased.

10. Now, the question is "what was the offence that was committed by the accused by the said act. The accused is the son in law of the deceased. According to P.Ws.1 and 7, earlier there was a quarrel between the accused and the deceased, since the deceased refused to send the wife of the accused in his house. From the evidence of eye witnesses, it could be seen that at the time of occurrence, there was a quarrel between the accused and

the deceased and being provoked by the words of the deceased, the accused attacked the deceased with iron rod on his head. Though, the accused did not have any intention to cause death of the deceased, still he had an intention to cause injury, which is sufficient in the ordinary course of nature, to cause the death of the deceased. Hence, the act of the appellant/accused squarely falls within the 3rd limb of Section 300 IPC., and thus the act of the appellant/accused would squarely fall within the first exception to Section 300 of IPC. Therefore, the accused/appellant is liable to be punished for the offence under Section 304(i) IPC.

11. Turning to the quantum of punishment, the accused is a poor man and he has no bad antecedents and it was not a premeditated murder. At the time of quarrel, due to sudden provocation, the accused lost his mental faculty and had attacked the deceased, which resulted in the death of the deceased. Having regard to the totality of all these circumstances, we are of the considered view that sentencing the accused/appellant to undergo rigorous imprisonment for 7 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.

12. In the result, the Criminal Appeal is partly allowed and

the conviction and sentence imposed on the appellant/accused in S.C.No.228 of 2013 dated 30.03.2015 on the file of the learned II Additional District and Sessions Judge, Chidhambaram, is set aside and instead he is convicted for an offence under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/-, in default, to undergo four weeks rigorous imprisonment. It is directed that the period of sentence already undergone by the appellant/accused shall be given off as required under Section 428 IPC. If the appellant/accused is not in custody, the trial Court is directed to take appropriate steps to secure him and commit him to prison to undergo remaining period of sentence.

(S.N.J.,) (V.B.D.J.,)

27.07.2016

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To

- 1.The II Additional District and Sessions Judge,
Chidhambaram.
- 2.Inspector of Police,
Chidambaram Taluk Police Station,
Cuddalore District.
- 3.The Public Prosecutor,
High Court, Madras.

S.NAGAMUTHU.J.,

and

V.BHARATHIDASAN.J.,

rrg

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