

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.06.2016

CORAM

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

CRL.A.No.303/2015

Saravanan .. Appellant/sole accused

Vs

State by
The Inspector of Police,
Chithode Police Station,
Erode District. ... Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Principal Sessions Judge, Erode, made in S.C.No.93 of 2012, dated 17.09.2012.

For Appellant : Mr.Philip Ravindran Jesudoss

For Respondent : Mr.M.Maharaja,
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.93 of 2012 on the file of the learned Principal Sessions Judge, Erode. He stood charged for offences under Sections 302 and 506(ii) of IPC. By judgment dated 17.09.2012, the trial court convicted him under Sections 302 and 506(ii) of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for 2 years for the offence under Section 302 of IPC and sentenced him to undergo rigorous imprisonment for 6 months and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one month for the offence under Section 506(ii) of IPC. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

(a) The deceased in this case was one Mr.Pandy @ Ramasamy. The wife of the accused is one Mrs.Shanthi. They were all residing at Periya Semoor Village. The deceased Pandu @ Ramasamy and P.W.1 were working in a private concern. The wife of the deceased was also working in the same concern for some time. During that period, the deceased and the wife of the accused had found intimately talking among themselves. This gave rise to a suspicion that the deceased had developed illicit intimacy with the wife of the accused. The accused got enraged over the same. This is said to be the motive for the occurrence.

(b) It is alleged that on 20.05.2011 at about 08.15 a.m., the deceased had gone to a private concern where he was working. The accused also came there. Then, he took the deceased to a plant in the factory. Suddenly, the accused shouted at the deceased that he had spoiled his family and his prestige and started mounting attack on the deceased with a knife. P.Ws.1 to 3, who were witnessing the occurrence, rushed towards him to rescue the deceased. But the accused brandished the knife against them and criminally intimidated. He continued to attack the deceased repeatedly with the knife on the body of the deceased. The deceased fell down in a pool of blood. Then, the accused ran away from the scene of occurrence. P.Ws.1 to 3 went near the deceased. They found the deceased no more. Immediately, P.W.1 went to Chithode Police Station and made a complaint at 09.30 a.m. on 20.05.2011.

(c) P.W.11, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Cr.No.347 of 2011 under Sections 302 and 506(ii) of IPC against the accused. Ex.P.10 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 11.15 a.m. on 20.05.2011.

(d) The case was then taken up for investigation by P.W.12. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.4 and another witness. He recovered the blood stained earth and sample earth under a mahazar. He examined P.Ws.1 to 4 and few more witnesses at the place of occurrence. Around 12.45 p.m. to 04.15 p.m., he conducted inquest on the dead body of the deceased and forwarded the same for postmortem. On the same day at 06.30 p.m., he arrested the accused in the presence of P.W.7 and another witness. On such arrest, he made a confession in which he disclosed the place where he had hidden the knife and a blood stained pant and a blood stained shirt. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.1 Knife and M.O.6 blood stained shirt

and M.O.7 Blood Stained Pant. On coming to the police station, he forwarded the accused to court and handed over the material objects also to court.

(e) P.W.6 Doctor Ravichandraprabu conducted autopsy on the body of the deceased on 20.05.2011 at 04.50 p.m. He found the following injuries:

'External Injuries :

1. Lacerated injury over the medial and of the right sterno clavicular junction 1 1/2 c.m. length passes vertically 1/2 c.m. breadth and 1 1/2 c.m. depth;

2. Lacerated injury over the left side chest 5 c.m. below the left nipple, 1 c.m. in length passes vertically, breadth 1/2 c.m. depth 1 c.m.;

3. Lacerated injuries 3 in Nos. (i) 6 c.m below the above injury passes vertically 1 1/2 x 1 1/2 c.m. abdominal cavity depth 7 c.m. with protruding intestine and omentum; (ii) 2 c.m. medial to the (i) injury 1 x 1 size lacerated injury. (iii) 3 c.m. medial to the 2 injury lacerated injury of size 1 1/2 x 1 x 1 vertical;

4. In the middle of the lacerated injury passes vertically size of about 7 c.m. x 4 c.m. into depth of abdominal cavity protrusion of intestine and omentum;

5. 3 c.m. left to the umbilicus (horizontally left) one lacerated injury 3 x 3 abdominal cavity depth with protrusion of intestine;

6. One lacerated injury in the left thigh anterior side 17 c.m. below the anterior superior iliac spine passes vertically 6 x 2 x 6 c.m. in the left thigh; and

7. One lacerated injury over the lower part at the level of L5 horizontal lacerated injury size of about 2 x 1 x 1 c.m.

Internal Examination :

1. Abdominal Cavity : 1 1/2 litres of blood is present with clots.

2. Peritoneal Cavity : 500 ml. of blood is present.

3. Ribs 10th, 11th and 12th ribs fracture.
4. Heart : 250 grms. Pale lungs right 500 grams left 400 grams pale.
5. Hyoid bone : Intact
6. Stomach and its contents : Empty
7. Liver : 1500 grams. Punctured wound in the anterior surface of live obliquely passing 1 x 1 x 1 c.m. in size 2 in Nos.
8. Spleen : 140 grams
9. Kidney : Pale both 250 grams.
10. Intestine : Lacerated injury over the lumen size of 15 x 2 c.m. On the left side with torn mesenteric artery blood clots (over the right and left side).
11. Skull : Intact
12. Brain : 1400 grams. Pale.'

Ex.P.5 is the Postmortem Certificate. He gave opinion that the injuries found on the body of the deceased would have been caused by a weapon like M.O.1. He further opined that the death of the deceased was due to shock and hemorrhage due to the injuries sustained by him.

(f) On completing the investigation, P.W.12 laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined and 14 documents and 14 material objects were also marked.

4. 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. P.W.4 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and also the recovery of the material objects from the place of occurrence. P.W.5 has stated that on 20.05.2011, the accused was produced by the police before him for examination. He found a lacerated injury measuring 6 x 4 c.ms. on his right index finger and a small abrasion on his cheek. P.W.6 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.7 has spoken about the arrest of the accused and his disclosure statement and the consequential recovery of M.O.1, M.O.6 and M.O.7. P.W.8 has spoken about the photographs taken by him at the place of occurrence. P.W.9 the Head Constable has spoken that he handed over the First Information Report to the learned Magistrate at 11.15 a.m. on 20.05.2011. P.W.10 Grade I Police Constable has spoken about the fact that he handed over

the dead body to the Government Hospital for postmortem. P.W.11 has spoken about the registration of the case on the complaint of P.W.1. P.W.12 has spoken about the investigation done and his final report.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor to mark any document on his side. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

6. 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.

7. In this case, there are three eye-witnesses to the occurrence. The learned Counsel for the appellant would submit that P.Ws.1 to 3 cannot be believed as they are interested witnesses. But, we find no force at all in this argument. The presence of P.Ws.1 to 3 in the factory where they were employed cannot be disputed. They have further stated that the accused came, took the deceased to a place, near the plant, where there was a wordy quarrel and at the end of the said quarrel, the accused cut the deceased indiscriminately. They are all independent witnesses and they have got no grudge against the accused and neither there is any contradiction nor any inconsistency in their evidences. In other words, we are fully convinced with the evidences of P.Ws.1 to 3.

8. Further, there is no delay in preferring the F.I.R. P.W.1 had gone to the police station immediately after the occurrence. The F.I.R. was registered at 09.30 a.m and the same had reached the hands of the learned Magistrate at 11.15 a.m. itself. The medical evidence also duly corroborates the eye-witness account. From these evidences, we hold that the prosecution has clearly proved that it was this accused, who caused the death of the deceased. The prosecution has further proved that this accused had criminally intimidated the witnesses, when they tried to intervene and rescue the deceased. Thus, the prosecution has proved the guilt of the accused for the offence under Section 506(ii) of IPC also.

9. Having come to the conclusion that it was this accused who caused the death of the deceased, now, we have to examine as to what was the offence that was committed by this accused. It

is in the evidence of these eye-witnesses that the wife of the accused was, for some time, working in the same concern where the deceased was working. They have further stated that the wife of the accused and the deceased were found intimately talking among themselves on many occasions. This gave rise to a reasonable suspicion that the deceased had developed illicit relationship with the wife of the accused. On the day of occurrence, the accused had gone to the factory, doubting the deceased, he took the deceased near the plant and enquired with him. From the narration of these facts, it is inferable that this resulted in a quarrel, which is not, as though, on reaching the said place, the accused suddenly took out the knife and stabbed the deceased. The quarrel went on for some time. Only at the end of the quarrel, out of provocation, the accused cut the deceased. Thus, the act of the accused would squarely fall under the first exception to Section 300 of IPC, and as his act would fall under the 3rd limb of Section 300 of IPC, he is liable to be punished for the offence under Section 304-I of IPC.

10. Now turning to the quantum of punishment, the accused is a middle aged man. He has got a family to take care of. The occurrence was not pre-meditated. He has not involved in any other crime. Having regard to these mitigating and aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks for the offence under Section 304-I of IPC would meet the ends of justice. So far as the punishment for the offence under Section 506(ii) of IPC is concerned, the punishment imposed by the trial court deserves to be confirmed.

11. In the result, the Criminal Appeal is partly allowed in the following terms:

1. The conviction and sentence imposed by the trial court on the appellant for the offence under Section 302 of IPC are set aside and instead, he is convicted under Section 304-I of IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks;

2. The conviction and sentence imposed by the trial court on the appellant for the offence under Section 506(ii) of IPC are hereby confirmed; and

3. It is directed that these sentences shall run concurrently and the period of sentence already undergone by the

accused shall be set off under Section 428 of Cr.P.C.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Chithode Police Station,
Erode District.
 2. The Principal Sessions Judge,
Erode.
 3. The Public Prosecutor,
High Court, Chennai.
 4. The Judicial Magistrate No. III
Erode.
 5. The Superintendent, Central Prison,
Coimbatore.
 6. The District Collector, Erode.
 7. The District Collector, Coimbatore.
 8. The Director General of Police,
Mylapore, Chennai.
 9. The Chief Judicial Magistrate, Erode.
- 1 cc to M/s. Philip Ravindran Jesudoss, Advocate, sr.35455

rsi co
kra 27.07.2016

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