

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

CrI.A.No.382 of 2015

R.Subramani

...

Appellant/Accused

vs.

The State,by
The Inspector of Police,
Tirupur North Police Station,
Tirupur District.
(Crime No.2055 of 2009)

...

Respondent/Complaint

Criminal appeal preferred under Section 374(2)
Cr.P.C., against the judgement dated 11.01.2012 passed by the
learned Additional District and Sessions Judge, (Fast Track
Court5) Coimbatore at Tiruppur, in S.C.No.67 of 2011.

For Appellant : Mr.T.Muruganantham

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.67 of 2011, on the file of the learned Additional District and Sessions Judge, (Fast Track Court), Coimbatore at Tirupur. The appellant/accused stood charged for the offence under Section 302 of IPC. The Trial Court, after trial, by judgement dated 11.01.2012, convicted the appellant/accused for the offence under Section 302 IPC., and sentenced him to undergo life imprisonment and no fine amount was imposed. 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 Arulvanan was the co-brother of the accused. The accused married the sister of the deceased wife. They are permanent resident at Gudiyatham. At the time of occurrence, the accused family settled at Tirupur. There was frequent quarrel between the accused and his wife, and the wife of the deceased (P.W.5) mediate between them. At one point of time, the wife of the accused along with her two daughters came to the house of the deceased and living with them for sometime. Thereafter, he accused took his wife and daughters to his native place at Gudiyatham, but once again the wife of the accused along with two daughters came back to Tirupur and they lived with the deceased family for some time. Then, both the deceased and P.W.5 arranged a separate house for them near AKT Mill, Palladam Road at Tirupur. But the accused did not know the place where his wife and two daughters were residing. In the above circumstances, on 26.07.2009 at about 5.30 p.m., the deceased and P.W.1 went out for purchasing spare parts, while they returning back near the Sivan Theatre at Tirupur, the accused waylaid them and questioned the deceased regarding where about of his wife and daughters, and there was a wordy quarrel between them, during the quarrel, the accused attacked the deceased with wooden log, which was available in the scene of occurrence and caused injuries on the head and face of the deceased. Immediately, P.W.1 sent the deceased to the Government Hospital, Tirupur in a ambulance and he went to the house of the deceased to inform about the same, but the house was locked, then he proceeded to the Government Hospital, Tirupur, where, he was informed that the deceased already died. Then, P.W.1 went to the respondent police and lodged a complaint (Ex.P1).

(ii) P.W.10, then Sub Inspector of Police, working in the respondent police, on receipt of the complaint, registered a case in Crime No.2055 of 2009 for the offence punishable under Section 302 of IPC, prepared FIR (Ex.P11) and sent the same to the Judicial Magistrate Court and the copy of the same to the higher officials.

(iii) P.W.11, Inspector of Police attached to the respondent police. On receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence, prepared an Observation Mahazar (Ex.P3), drew Rough Sketch (Ex.P12). He recovered Blood stained soil (M.O.2), Sample soil (M.O.3), Hercules cycle (M.O.4) and shirt (M.O.5) in the scene of occurrence in the presence of witnesses. He examined some witnesses and recorded their statements. Then, P.W.11 proceeded to the Government Hospital, Tirupur and conducted inquest over the dead body of the deceased in the presence of panchayatdars between 8.30 a.m. and 11.30 a.m., prepared inquest report (Ex.P13), and sent the dead body along

with a requisition letter for postmortem through Head Constable. On 27.07.2009 at about 2.00 p.m., P.W.11 arrested the accused, on such arrest, he voluntarily given a confession, based on the disclosure statement (Ex.P4), P.W.11 seized wooden log (M.O.1), Blood stained shirt (M.O.6), Blood stained pant (M.O.7), Green colour brief (M.O.8), Banian (M.O.9), Black rope (M.O.10) and Black coloured rope (M.O.11) in the presence of witnesses under (Ex.P15) seizure mahazar. Then, he sent the blood stained materials for chemical examination, and sent the accused for judicial custody. He examined some witnesses and recorded their statements then he handed over the investigation to P.W.12, his successor.

(iv) P.W.9, Doctor, working in the Government Hospital, Tirupur, conducted postmortem autopsy on the dead body of the deceased on 27.07.2009, at about 12.40 a.m., and found the following injuries.

Cut like laceration 4x2cmx6cm depth noted on the left side forehead. 2. Cut like laceration 8x1cmx1cm muscle clay noted on left side eyebrow and upper cheek underlying dissection zygomatic bone found to be fractured. 3. Contraction 6cmx4cmx 1cm muscle deep noted on left side angle of mouth and lower jaw and dissection underlying mandible found fractured with surrounding tissue contusion and loosening of first and second molar left side upper and lower jaw. Alveolar cavity filled with blood clots. Dissection of scalp skull and dura subscarpal contusion 8cmx6cm noted on left side front parietal region. A crack fracture 6cm in length noted on left front parietal bone diffused subdural and subarachnoid haemorrhage noted on both cerebral hemisphere about 50 gms of subdural clot noted on left side of front parietal region.

He was of the opinion that the deceased appeared to have died of shock and haemorrhage due to the multiple injuries. He issued Postmortem Certificate (Ex.P13).

(v) P.W.12, Inspector of Police attached to the respondent police continued the investigation, examined the postmortem Doctor and recorded his statement and after completion of investigation, he laid 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 its case, the prosecution examined as many as 12 witnesses, exhibited 14 documents, besides marking 11 material objects.

4. Out of the witnesses examined, P.W.1 was the friend of the deceased. According to him, on 26.07.2009 at about 3.00 p.m. both the deceased and P.W.1 went out their company for purchasing some spare parts, and when they are returning back at about 5.30 p.m., near TMR play ground, the accused was standing near the play ground, and on seeing the deceased, the accused questioned the where about of his wife and daughters, the deceased replied him that he was not aware about it, at that time, the accused attacked the deceased with wooden log which was available in the scene of occurrence and caused injuries on his head and face. Immediately, he called the ambulance and sent the deceased to the Government Hospital, Tirupur. Subsequently, the deceased died at about 7.00 p.m., then he went to the police station and lodged a complaint (Ex.P1). P.W.2 was the another eye witness to the occurrence. According to him, while he was sitting near the scene of occurrence, there was a quarrel between the deceased and the accused, the accused kicked his cycle and the deceased fallen down with cycle, then the accused attacked the deceased with wooden log which was available near the scene of occurrence. Then, he sent the deceased to the Government Hospital, Tirupur in ambulance. P.W.3 was an another eye witness to the occurrence. According to him, while he was standing in the petty shop near the scene of occurrence, two persons came in a cycle, the deceased kicked the cycle and both of them fall down, then the accused attacked the deceased with wooden log on the head and face of the deceased. P.W.4 was the witness to the Observation Mahazar and recovery of M.Os.2 to 4. P.W.5 was the wife of the deceased, and also sister of the accused wife. She has spoken about the quarrel between the accused and his wife. According to her, there were quarrel between the accused and his wife, and the wife of the accused along with two daughters came to the house of the deceased and living with them. Then, the accused took his wife and daughters to his native place at Gudiyatham. After some time, the wife of the accused along with two daughters came back to Tirupur and they lived with her family for some time. Then, the deceased and P.W.5 arranged a separate house, and without knowing the where about of his wife and daughters, the accused quarrel with the deceased and attacked him. P.W.6 was the son of the deceased. He has spoken about the quarrel between the deceased and the accused. P.W.7 was the witness to the arrest of the accused and also recovery of M.O.1 wooden log. P.W.8 is the Head Constable attached to the respondent police. He identified the dead body for postmortem and also recovered blood stained shirt and pant of the deceased and after postmortem he handed over the dead body to the relatives of the deceased. P.W.9 is a Doctor, conducted postmortem autopsy on the dead body of the deceased and gave Postmortem report. P.W.10-Sub Inspector of Police attached to the respondent police. According to him, on receipt of the complaint he

registered the case, prepared FIR and sent the same to the Judicial Magistrate Court. P.W.11 is the Inspector of Police attached to the respondent police. In his evidence he stated that on receipt of the first information report, he commenced the investigation, examined the witnesses and recorded their statements, arrested the accused and recovered the material objects and after completion of investigation, he laid the charge sheet against the accused.

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.T.Muruganantham, 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 three eye witnesses to the occurrence. P.W.1 was the friend of the deceased. According to him, on 26.07.2009 at about 3.00 p.m. he along with the deceased went out company for purchasing of some spare parts for their shop and when they were returning back at about 5.30 p.m., near TMR play ground, the accused was standing there and on seeing the deceased, the accused questioned the deceased regarding where about of his wife and daughters, the deceased replied him saying he was not aware about that, at that time, the accused attacked the deceased with wooden log which was available near the scene of occurrence and caused injuries on his head and face. Immediately, he called the ambulance and sent the deceased to the Government Hospital, Tirupur. Subsequently, the deceased died at about 7.00 p.m., then he went to the police station and lodged a complaint. P.W.2 was an independent witness and an eye witness to the occurrence. According to him, while he was sitting near the scene of occurrence, there was a quarrel between the deceased and the accused, during the quarrel, the accused kicked the cycle and the deceased fall down with cycle, then the accused attacked the deceased with wooden log which was available near the scene of occurrence and caused injuries. P.W.3 was an another independent witness and also an eye witness to the occurrence. According to him, while he was standing in the petty shop near the scene of occurrence, two persons came in and one of them was the accused. The accused kicked the cycle and both of them fall

down with cycle and then the accused attacked the deceased with wooden log on the head and face of the deceased which was available near the scene of occurrence. Though, P.W.1 was the friend of the deceased, P.Ws.2 and 3 are independent witnesses, who were present near the scene of occurrence at the time of occurrence. All the three eye witnesses consistently stated that it is this accused alone attacked the deceased with wooden log which was available in the scene of occurrence on the head and face of the deceased. The medical evidence also support the prosecution case. In the presence of witnesses in the scene of occurrence is natural and P.Ws.2 and 3 are the independent witnesses and they have no axe to grind against the accused. Hence, we have no reason to disbelieve the testimony of the above said eye witnesses. In the above circumstances, we are of the considered view that the prosecution has clearly established that it is this accused alone attacked the deceased with wooden log on the head and face of the deceased and caused his death.

9. Now, the question is "what was the offence that was committed by the accused by the said act. According to the testimony of the eye witnesses, there was a quarrel between the accused and the deceased and during the quarrel, being provoked by the words, the accused lost his mental balance and attacked the deceased with wooden log, which was lying in the scene of occurrence. 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 4th 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(ii) IPC.

10. Regarding 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 attacked the deceased, which resulted in the death of the deceased. Since the appellant/accused have a wife and two daughters and the deceased being co-brother and when he questioned where about of his wife and two daughters, there was a wordy quarrel between the accused and the deceased and during the quarrel, out of sudden provocation, the accused attacked him with wooden log lying in the scene of occurrence. As stated earlier, it is not a premeditated murder. Having regard to the totality of all these circumstances, we are of the considered view that sentencing the accused/appellant to

Rs.1,000/- in default, to undergo rigorous imprisonment for four weeks would meet the ends of justice.

11. In the result, the Criminal Appeal is partly allowed and the conviction and sentenced imposed on the accused/appellant in S.C.No.67 of 2011 dated 11.01.2012 on the file of the learned Additional District and Sessions Judge, (Fast Track Court) Coimbatore at Tirupur, is set aside and instead he is convicted for an offence under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for five 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 accused/appellant 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.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

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To

1.The Additional District and Sessions Judge,
Coimbatore at Tirupur.

2.Do Through 'The principal session Judge',
Coimbatore.

3.Inspector of Police,
Tirupur North Police Station,
Tirupur District.

4.The Public Prosecutor,
High Court, Madras.

Copy to : The section officer,
Civil Section, High court,
Madras-104.

+1CC to Mr.T. Muruganatham, Advocate, SR.No.42874/16

Cr1.A.No.382 of 2015

SU(CO)
CB(20-01-2017)