

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13.07.2016

CORAM:

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

Crl.A.No.584 of 2015

Mohan

...Appellant/Accused

vs.

The State,by
The Inspector of Police,
T-7, Avadi Tank Factory Police Station,
Chennai.
(Crime No.20 of 2011)

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 17.08.2015 passed by the learned II
Additional District and Sessions Judge, Thiruvallur at
Poonamallee, in S.C.No.72 of 2014.

For Appellant : Mr.A.M.Rahamath Ali

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.72 of 2014, on the file of the learned II Additional
District and Sessions Judge, Thiruvallur at Poonamallee. He
stood charged for offence punishable under Section 302 of IPC.
The Trial Court, by judgement dated 17.08.2015, convicted the
accused for offence under Section 302 IPC and sentenced him to
undergo life imprisonment and also imposed a fine of Rs.1000/-,
in default, to undergo simple imprisonment for one year.
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 is one Punniyakotti, was the brother of the accused. They were residing in neighbouring houses. The sewerage water of the deceased was drained into a common pathway and accumulated in front of the house of the accused. Due to the same, there were a wordy quarrel between the deceased and accused frequently. On 15.01.2011 at about 10.30 a.m., there was a quarrel between the accused and deceased, during the quarrel, the accused stabbed the deceased with a knife in the chest and abdomen. P.W.1, the son of the deceased, after hearing the noise, came out of the house and saw the accused attacking the deceased with knife, when he troed to prevent him, he ran away. P.W.2 is the another son of the deceased. P.W.3 is the wife of the deceased. At the time of occurrence, P.Ws.1 to 3 saw the accused attacking the deceased with knife in front of their house. Immediately, P.W.1 went to the respondent police station and given a complaint Ex.P1.

(ii) P.W.12, the incharge Inspector of Police, working in the respondent police station, on receipt of the complaint, registered a case in Crime No.20 of 2011, for an offence under Section 302 of IPC, prepared FIR (Ex.P12), and commenced the investigation, proceed to the scene of occurrence, prepared Observation Mahazar Ex.P2, drew a Rough Sketch Ex.P13 and recovered blood stained soil M.O.1, Sample soil M.O.2. He conducted inquest over the dead body in the presence of panchayatars and the inquest report Ex.P14. Then, he sent the dead body to the Kilpauk Medical College Hospital, Chennai, for postmortem through P.W.9 the Head Constable. He examined the witnesses and recorded their statements. Thereafter, at about 09.10 p.m., he arrested the accused and on such arrest, he voluntarily given a confession, based on the disclosure statement (Ex.P5) P.W.13 seized M.O.1 knife, M.O.4 Lungi, M.O.5 tarred trouser, M.O.6 shirt, M.O.7 blood stained shirt and M.O.8 blood stained lungi under Ex.P16 seizure mahazar in the presence of witnesses.

(iii) P.W.10, the Doctor, working in the Kilpauk Medical College Hospital, Chennai, conducted postmortem autopsy on the dead body of the deceased and found the following injuries:-

(1) Stab injury back neck of more towards the right side 10 cm from mid line 15 cm from right shoulder joint 15 cm below right mastoid process of dimension 5 x 3 x 2 cm.

(2) Stab injury in the supraclavicular area on right side over middle 1/3rd of clavicle 10 cm from mid line 5 cm from right shoulder joint 4 x 2 x 1 cm and dissection 1 + 1 communicating with pleural cavity with

laceration of upper lobe apex of right lung 2 x 1 cm.

(3) Stab injury over right anterior chest wall 5 cm above nipple 8 cm below clavicle 8 cm from mid line 9 cm from anterior axillary line of dime from 7 x 4 x 3 and dissection left communicates with right pleural cavity lacerations of right lung upper lobe 2cm x 1 cm.

(4) Stab injury left anterior chest wall 2 cm above nipple left 10 cm below left middle 1/3rd of axilla 10 cm from mid line 8 cm from left anterior axillary line of dimension 3 cm x 2 cm x 1 cm communicating with left pleural cavity.

(5) Stab injury right upper abdomen 2 cm from mid line 10 cm from anterior axillary line 12 cm below right costal margin 3 cm above umbilicus 7 cm x 3 cm x 4 cm an dissection communicating with peritoneal cavity an dissection. Haemoporitoneum about line of fluid blood present with perforation of small intestine at multiple sizes with form mesentery.

(6) cutting over chin 6 x 2 x bone deep an dissection, scalp, bones and membranes intact. Brain substance is normal. c/s. pale hyoid bones intact. Larynx and fractal empty. Heart is normal in size c/s chambers empty. Stomach is empty. Liver, Spleen and both kidneys normal in size c/s pale intestine curtains Brounish chyme. Bladder is empty. Spine and pelvis intact and normal.

He was of the opinion that the deceased would appear to have died of haemorrhage and shock due to multiple injuries. He has issued Postmortem Certificate Ex.P9.

(iv) P.W.13, the regular Inspector of Police, working in the respondent police, continued the investigation, examined the Doctor, Scientific Officer, and other witnesses and recorded their statements, and after completion of investigation he laid the charge sheet.

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 case of prosecution, as many as 13 witnesses were examined and 17 documents exhibited and 8 material object were marked.

4. Out of the said witnesses examined, P.W.1 is the son of the deceased. According to him, with regard to the sewerage

water drain dispute, there were wordy quarrel between the accused and deceased. On the date of occurrence, at about 10.30 am., there was a quarrel between the accused and deceased and after hearing the noise, he along with P.Ws.2 and 3, came out of the house and saw the accused attacking the deceased with knife, and when he prevented him, the accused ran away. P.W.2 is the another son of the deceased, and he is an eye witness to the occurrence. P.W.3 is the wife of the accused and she is also an eye witness to the occurrence. P.W.4 is a relative of the accused and deceased. According to him, after hearing the noise he came the scene of occurrence, and saw the dead body of the deceased. P.W.5 is a resident of Kollumedu Village. He is a witness to the Observation Mahazar Ex.P2, and recovery of M.O.2 blood stained soil, and M.O.3, Sample soil. P.W.6 turned hostile. P.W.7 turned hostile. P.W.8, the Doctor, working in the Kilpauk Medical College Hospital, Chennai, received the dead body of the deceased and issued Accident Register Ex.P8. P.W.9, the Head Constable, working in the respondent police, accompanied the dead body of the deceased to the Hospital and identified the dead body for postmortem. P.W.10, the Doctor, working in the Kilpauk Medical College Hospital, Chennai, conducted postmortem autopsy on the dead body of the deceased and issued Postmortem Certificate Ex.P9. P.W.11, the Assistant Director, working in the Forensic Department, Chennai, examined the blood stained material objects and issued report Ex.P10. P.W.12, the incharge Inspector of Police attached to the respondent police, on receipt of the complaint, he registered a case, commenced the investigation, arrested the accused, seized the material objects, examined the witnesses and recorded their statements, thereafter handed over the case to P.W.13, the regular Inspector of Police. P.W.13, the Inspector of Police, attached to the respondent police, received the case records, continued the investigation, examined the postmortem Doctor and other witnesses, recorded their statements and after completion of investigation, he laid the charge sheet.

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 his side.

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

7. We have heard Mr.A.M.Rahamathali, 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. The learned counsel appearing for the appellant would submit that all the eye witnesses are sons and wife of the deceased and they are interested witnesses and hence their evidence cannot be relied upon. He further submitted that the motive for murder was also very trivial and recovery of material objects were not proved by the prosecution. Hence, he sought for allowing the appeal.

9. Per contra, the learned Additional Public Prosecutor would submit that even though the eye witnesses are closely related to the deceased, but in their house only the occurrence were taken place and hence their evidence cannot be brush aside only on the ground that they are interested witnesses. Apart from that the prosecution has clearly established the case beyond any reasonable doubt and he prays for dismissal of the appeal.

10. We have carefully considered the rival submissions.

11. In the instant case, there are three eye witness to the occurrence. P.Ws.1 and 2 are the sons of the deceased and P.W.3 is the wife of the deceased. The occurrence took place in front of their house. According to P.W.1, there was a previous enmity between the accused and deceased regarding the sewerage water accumulated in the front of the house of the accused and hence, the accused was quarrelling with the deceased frequently. On the date of occurrence, at about 10.30 a.m., again there was a wordy quarrel between the deceased and accused and during the quarrel, the accused attacked the deceased with knife. On hearing the noise, all the eye witnesses came out of the house and saw the accused attacking the deceased with knife indiscriminately. Since the occurrence took place in front of the house of the deceased, the presence of eye witnesses is natural and their evidence is also consistent that there was a quarrel between the deceased and accused and during the quarrel, the accused attacked the deceased indiscriminately. The medical evidence also support the case of the prosecution. In the said circumstances, we have no reason to disbelieve the evidence of eye witnesses and their evidence cannot be disbelieved only on the ground that they are interested witness. Hence, we are of the considered opinion that the prosecution has clearly proved that it was this accused caused death of the deceased.

12. Now, the question is what was the offence that was committed by the accused by the said Act. As per the evidence of

eye witnesses, there was a wordy quarrel between the deceased and accused and during the quarrel, the accused attacked the deceased with knife. From the evidence of eye witnesses, it is clear that the accused at the end of the quarrel, lost his mental balance and out of the sudden provocation, he attacked the deceased with knife. But, certainly, he has intention to cause injury on the vital part of the deceased, which is sufficient in the ordinary course of nature to cause the death of the deceased. Thus, in our considered view, the act of the accused would squarely fall within the first exception to Section 300 of IPC and fall within the 3rd limb of Section 300 IPC., and therefore, the accused is liable to be punished under Section 304(i) IPC.

13. So far as the quantum of punishment is concerned, it is not a premeditated murder. The occurrence took place out of sudden quarrel and provocation and the accused having lost his mental faculty, attacked the deceased, which resulted in the sudden death of the deceased. The accused is a poor man and coolie. Taking into consideration of the mitigating as well as the aggravating circumstance, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for 10 years and pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks would meet the ends of justice.

14. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant in S.C.No.72 of 2014 dated 17.08.2015 on the file of the learned II Additional District and Sessions Judge, Thiruvallur at Poonamallee for offence under Section 302 IPC is set aside and instead, he is convicted for an offence under Section 304 part-I IPC and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks. It is directed that the period of detention already undergone by the appellant/accused shall be set off is required under Section 428 Cr.P.C.

Sd/-

Assistant Registrar

Sub Assistant Registrar

rrg

To

1. The II Additional District and Sessions Judge,
Thiruvallur at Poonamallee.
2. -Do- Thro, The Principal Sessions Judges,
Thiruvallur.
3. The Inspector of Police,
T-7, Avadi Tank Factory Police Station,
Avadi, Chennai.
4. The Superintendant,
Central Prison,
Puzhal, Chennai -66.
5. The Public Prosecutor,
High Court, Madras.
6. The Judicoal Magistrate,
Ambattur.
7. -Do- Thro,
The Chief Judicial Magistrate,
Thiruvallur.
8. The District Collector,
Thiruvallur District.
9. The Director General of Police,
Mylapore,
Chennai - 4.

Copy to:

The Section Officer, सत्यमेव जयते
Criminal Section,
High Court, Madras

+1cc to Mr.Rahamath Ali, Advocate, S.R.No.39018.

SV(CO)
RS(25/01/2017)

Cr1.A.No.584 of 2015