

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.614 of 2015

Rajendran

.. Appellant

- Vs -

State rep by Inspector of Police,  
Cuddalore O.T Mudhu Nagar Police Station.  
(Cr.No.487 of 2013)

.. Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge, Mahila Court, Cuddalore in S.C.No.117 of 2014 dated 21.08.2015.

For Appellant : Mr.R.John Sathyan

For Respondent : Mr.M.Maharaja  
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.117 of 2014 on the file of the Mahila Sessions Court, Cuddalore. He stood charged for offences under Section 294B, 307 and 302 I.P.C. By judgment dated 21.08.2015, the trial Court convicted him under all the three charges and sentenced him to undergo simple imprisonment for three years for offence under Section 294B I.P.C., to undergo rigorous imprisonment for ten years and pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for six months for the offence under Section 307 I.P.C. and to undergo imprisonment for life and pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for six months for offence under Section 302 I.P.C. 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 Mrs.Baby. She was a resident of Karaikadu village in Cuddalore taluk. P.W.1 is her husband. He was a driver by profession. The accused is also related to the deceased. He was also residing in the same village. There is a public water tap on the street somewhere near the house of the deceased.

2.2. On 03.09.2013, around 07.45 a.m. the deceased had gone to the said public water tap and she was taking water. P.W.1 was also there. At that time, the accused came there and he shouted at the deceased not to take water from that tap. This resulted in a quarrel. In the said quarrel, it is alleged that the accused took out a spade and attacked P.W.1 with the spade on his head and caused a simple hurt. When the deceased intervened, he inflicted a single blow on the head with the spade. Then the accused ran away from the scene of occurrence along with the weapon.

2.3. Then the neighbours who were there, arranged for an ambulance and took both P.W.1 and the deceased to the Government hospital at Cuddalore. The doctors there, referred them immediately to JIPMER hospital, Puducherry. Accordingly, they were admitted as inpatients at JIPMER hospital.

2.4. When P.W.1 and the deceased were in the Government hospital at Cuddalore, on intimation from the hospital authorities, P.W.7 the then Special Sub Inspector of Police, Cuddalore O.T. Police Station, rushed to the hospital, recorded the statement of P.W.1 and on returning to the police station at 11.30 a.m. he registered a case in Crime No.487 of 2013 under Sections 294B and 307 I.P.C. Ex.P6 is the F.I.R. He forwarded the complaint (Ex.P.1) and F.I.R. (Ex.P6) to the Court, which was received by the learned Magistrate at 01.40 p.m.

2.5. P.W.11, took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.9 and another witness. Then, he rushed to JIPMER hospital. He found the deceased unconscious. He examined P.W.1 and recovered the bloodstained clothes from him. On 04.09.2013 at 07.00 a.m. he arrested the accused at Eachanthangal in the presence of P.W.5 and another witness. On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden the spade with wooden handle. In pursuance of the same, he took

the police and the witnesses to his house and produced M.O.1. P.W.11 recovered the same under a mahazar.

2.6. At 10.15 p.m. on the same day, the deceased died in the hospital. Therefore P.W.11 altered the case into one under Section 302 I.P.C. Ex.P11 is the alteration report. Then, going over to the hospital, he held inquest on the body of the deceased between 09.00 a.m to 10.30 a.m. on 05.09.2013 and then forwarded the body for postmortem. P.W.8 Dr.Siddhartha Das conducted autopsy on the body of the deceased on 05.09.2013 at 12.10 p.m. He found the following injuries:

"Injuries: (a) stitched lacerated wound of size 3x1.5 cm containing 3 black coloured sutures present 12 cm above the left mastoid. Dark red coloured blood clots present along the margins of the wound. On opening the sutures, wound is found to be skull deep and the corresponding area of the skull contains clotted blood.

(b) 'C' shaped surgical incision present in the right fronto-parieto-temporal area of scalp, starting from point 1 cm in front of tragus of right ear, goes towards the frontal bone of length 7.5 cm, then turns backwards of length 7 cm, then turns downwards of length 6 cm to end 2 cm above the mastoid process.

(c) Stitched lacerated wound of size 4 cm containing 4 black coloured sutures present in the right-temporal part starting from the junction of the anterior and middle arm of the above mentioned 'C' shaped surgical incision.

Internal Examination: Head: (a) Skull bone of size 10x9 cm surgically removed from the right fronto-parieto-temporal area. It contains 3 burr holes along the superior margin of this surgical wound. Dura mater of corresponding size found surgically cut. Blood stained mesh of corresponding size present over the brain.

(b) Extra dural hemorrhage of size 14x13x0.5 cm present over both the parietal and frontal lobe of brain. (c) Contusion of under surface of right temporal lobe of brain. (d) Intraparenchymal petechial hemorrhage present in the right temporal lobe of brain.

Neck Structures: intact; Thorax - intact; Abdomen and pelvis - Intact."

Ex.P8 is the postmortem certificate. He gave opinion that the injuries found on the deceased could 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 found on the body of the deceased.

2.7. On completing the investigation, he laid chargesheet against the accused.

2.8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused denied. In order to prove the case, on the side of the prosecution, as many as 11 witnesses were examined, 13 documents and 4 material objects were marked.

2.9. Out of the said witnesses, P.Ws.1 to 4 are the eyewitnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.5 has spoken about the arrest of the accused and the consequential recovery of M.O.1 from his possession on the disclosure statement made by him. P.W.6 Dr.Durgavathi has stated that on 03.09.2013 when she was on duty at Cuddalore Government Hospital, she examined the deceased. She found a lacerated injuries on the head measuring 3x1x1 cms. Ex.P4 is the accident register. On the same day, she examined P.W.1 and found a lacerated injury measuring 3x1x1 cms on his head. Ex.P5 is the accident register.

2.10. P.W.7 has spoken about the registration of the case on the complaint of P.W.1. P.W.8 has spoken about the postmortem conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.9 has spoken about the preparation of the observation mahazar and a rough sketch at the place of occurrence. P.W.10 is the Village Panchayat Board President, he has stated that there were frequent quarrel between the deceased and the accused with respect of the public water tap belonging to the panchayat situated near the house of P.W.1. P.W.11 has spoken about the investigation done and his final report.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor mark any document on his side. His defence was a total denial. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. In this case, the prosecution relies on the eyewitness account of P.Ws.1 to 4. P.W.1 is the injured eyewitness. He has spoken vividly about the entire occurrence. P.Ws.2 to 4, who are all the neighbours of the deceased, had also witnessed the entire occurrence. Though these four witnesses were cross examined at length, nothing has been elicited from them so as to doubt their credibility. P.Ws.2 to 4 alone had taken the deceased and P.W.1 to the Government Hospital at Cuddalore. P.W.6 had examined P.W.1 as well as the deceased and found a lacerated injury on the head of the deceased and similarly a lacerated injury on the head of P.W.1. From these evidences, the prosecution has clearly established that it was this accused who caused one lacerated injury on the head of the deceased and one lacerated injury on the head of P.W.1.

6. P.W.8 Dr.Siddhartha Das who conducted autopsy on the accused has opined that the death of the deceased was due to shock and hemorrhage due to the head injury found on the body of the deceased. We do not find any reason to doubt the said opinion. Thus, the prosecution has clearly established that it was this accused who caused the death of the deceased. Similarly, the prosecution has proved that it was this accused who caused injury on the head of the P.W.1 with spade.

7. Now the question is as to what is the offence that has been committed by the accused by the said act. Admittedly, there was no motive between the parties. The quarrel was sudden. The deceased was taking water from the public tap, which was opposed by the accused. This resulted in a quarrel. He was not already armed with any weapon. In the said quarrel, he took out the spade which was lying there and gave a single blow on P.W.1 as well as on the deceased. In our considered view, the act of the accused would squarely fall within the fourth limb of Section 300 I.P.C. in causing the death of the deceased. At the same time, since the act of the accused would squarely fall within the fourth exception to Section 300 I.P.C., it is in evidence that in the quarrel, in the heat of passion, the accused attacked the deceased with the spade. Therefore, for having caused the death of the deceased, the accused is liable to be punished for offence under Section 304(ii) I.P.C.

8. The accused has not attempted to murder P.W.1. The accused can be attribute to the knowledge that the injury caused on P.W.1 was imminently dangerous to cause death. But due to medical intervention, P.W.1 was saved. Thus, the act of the accused in causing injury on P.W.1, being an attempt to cause culpable homicide not amounting to murder is punishable under Section 308 I.P.C.

9. Now turning to the quantum of punishment, the accused is an aged around 65 years. The occurrence was not premeditate. He was not armed with any weapon. He had no intention to cause the death of the deceased or P.W.1. It was out of sudden quarrel and in the heat of passion, the occurrence had taken place. He has got a big family to take care of. Having regard to these mitigating as well as the aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for five years and pay a fine of Rs.1000/- for offence under Section 304(ii) I.P.C. and to sentence him to undergo rigorous imprisonment for two years and pay a fine of Rs.1000/- for offence under Section 308 I.P.C. would meet the ends of justice.

10. In the result, the criminal appeal is partly allowed in the following terms:

(i) The conviction and sentence imposed on the appellant by the trial Court under Sections 302 and 307 IPC are set aside and instead, he is convicted for offences under Sections 304(ii) IPC and 308 I.P.C. and he is sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for four weeks, for offence under Section 304 (ii) I.P.C. and he is sentenced to undergo rigorous imprisonment for two years and pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks for offence under Section 308 I.P.C. The conviction and sentence imposed on the accused for offence under Section 294(b) I.P.C. is confirmed.

(ii) It is directed that the above period of sentence shall run concurrently and the period of sentence already undergone by the accused shall be set off under Section 428 Cr.P.C.

Sd/-  
Assistant Registrar(CCC)

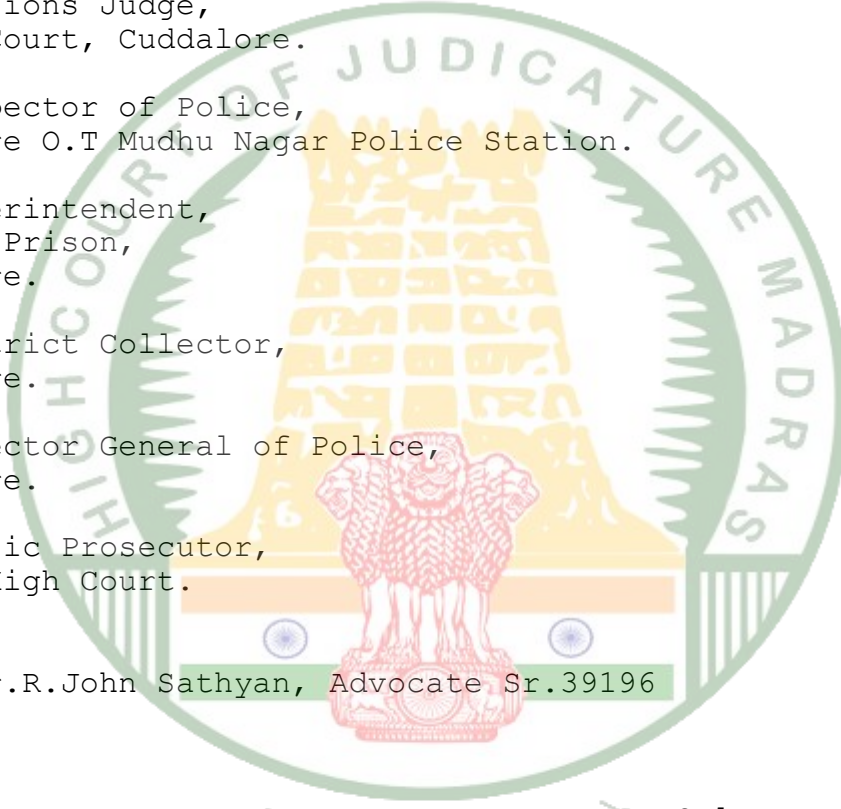
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Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.2,  
Cuddalore.
- 2.-Do- Thro The Chief Judicial Magistrate,  
Cuddalore.
- 3.The Principal District & Sessions Judge,  
Cuddalore.
- 4.The Sessions Judge,  
Mahila Court, Cuddalore.
- 5.The Inspector of Police,  
Cuddalore O.T Mudhu Nagar Police Station.
- 6.The Superintendent,  
Central Prison,  
Cuddalore.
- 7.The District Collector,  
Cuddalore.
- 8.The Director General of Police,  
Cuddalore.
- 9.The Public Prosecutor,  
Madras High Court.

+1cc to Mr.R.John Sathyan, Advocate Sr.39196



Crl.A.No.614 of 2015

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srg 05/10/2016

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