

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.684 of 2015

Kumar

... Appellant

vs.

The State,by
The Inspector of Police,
Thalavadi Police Station,
Thalavadi, Erode District.
(Crime No.3 of 2012)

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 15.06.2015 passed by the learned
Sessions Judge, (Magalir Fast Track Court), Erode, in S.C.No.128 of
2014.

For Appellant : Mr.B.Kumaraswamy for
Mr.K.Govi Ganesan

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.128 of 2014, on the file of the learned Sessions

Judge, (Magalir Fast Track Court), Erode. He stood charged for an offence punishable under Section 302 of IPC. The Trial Court, by judgement dated 15.06.2015, convicted the accused for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.2000/-, in default, to undergo simple imprisonment for six months. 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 Marisithamma is the grandmother of the accused. The deceased was receiving old age pension. Earlier, the deceased was living alone and 20 days prior to the occurrence, she went to his brother P.W.8's house and living with him. Apprehending that the deceased would give the old age pension to P.W.8, the accused quarrelled with the deceased. On the date of occurrence, P.W.6, wife of P.W.8 and the deceased were sitting and speaking together near a well. At that time, the accused came there and attacked the deceased with a sharpened stick and ran away. On hearing the noise, people nearby came to the scene of occurrence and took the deceased to Government Hospital, Thalavadi in an Ambulance. Thereafter, P.W.6 went to the respondent police and gave a statement before P.W.14, in-

charge Inspector of Police. Since P.W.6's mother tongue is Kannada, she does not know Tamil and hence her statement was translated by P.W.9 and P.W.14, Special Sub Inspector of Police, recorded the statement in Tamil and based on the statement (Ex.P2), he registered a case in Crime No.3 of 2012 for the offence under Section 302 of IPC, prepared FIR (Ex.P9) and sent the same to the Judicial Magistrate Court and copies to the higher officials.

(ii) P.W.16, the regular Inspector of Police, working in the respondent police, on receipt of the FIR commenced the investigation, visited the scene of occurrence and prepared an Observation Mahazar Ex.P3, drew a Rough Sketch Ex.P11 and recovered M.O.1, blood stained soil, M.O.2 sample soil under Ex.P1, seizure mahazar, in the presence of witnesses. On 03.01.2013, he conducted inquest over the dead body, in the presence of panchayatars, between 7.00 a.m., and 9.00 a.m., and prepared an inquest report Ex.P12 and after completion of inquest, he sent the dead body to the Government Hospital, Thalavadi, for post- mortem autopsy, through P.W.13, Head Constable. He made a request to the Doctor for conducting Postmortem of the dead body. Requisition letter is Ex.P.13. He examined the witnesses and recorded their statements. At about 2.00 p.m., he arrested the accused and on such arrest, the accused voluntarily gave a

confession and based on the disclosure statement (Ex.P14), he recovered M.O.1, blood stained sharpened stick, in the presence of witnesses.

(iii) P.W.10, Assistant Civil Surgeon, working in the Thalavadi Government Hospital, conducted postmortem autopsy on the dead body of the deceased and found the following injuries.

External Injuries:

- (1) Laceration left parietal area (3 x 2 x 1 cm).
- (2) Laceration left occipital area (3 x 2 x 1 cm).
- (3) Laceration left occipital area (2 x 2 x 1 cm).
- (4) Laceration left side behind ear (1 x 1 x 0.5 cm).
- (5) Laceration midline of parietal area (2 x 2 x 1 cm).
- (6) Laceration left parietal area (4 x 4 cm).

Internal Examination:

Skull - left parietal bone, Brain congested(1200 gms). Hyoid - Intact 100 gms of sub scapal Haematoma about left parietal area DH about 100 gms over left parietal area. Ribs Intact, Lungs pale(right 450 gms left 400 gms). Heart - Pale, c/s empty (300 gm) Liver - Pale (1300 gm), Spleen - Pale (100 gm). Kidneys - Pale (150 gm), Stomach - filled 150 ml of partially digested food particles. Intestines - Partially distended, Gall bladder empty.

He opined that the deceased appear to have died of head injuries,

lead to Shock and Haemorrhage. He gave Postmortem Certificate [Ex.P5].

(iv) P.W.16, continued the investigation, examined the Doctor, who conducted post mortem and recorded his statement, sent the material objects for chemical examination and after completion of investigation, he laid 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 16 witnesses were examined, 17 documents exhibited and 6 material object were marked.

4. Out of the said witnesses examined, P.W.1 is a neighbour of the deceased. According to him, on the date of occurrence, at about 3.30 p.m., on hearing the noise of the deceased and P.W.6, he, along with P.W.3 and others, rushed to the spot and found the deceased lying down with head injuries and they saw the accused running away, and thereafter he, along with others, took the deceased to the Government Hospital, in an ambulance. P.W.2 is a resident of Simittahalli village and he has turned hostile. P.W.3 is also a resident of Simittahalli village. According to him, on hearing the noise of the deceased and P.W.6,

he and others rushed to the scene of occurrence and saw the deceased lying down with head injuries and they sent the deceased to the Government Hospital. P.W.4 is also a resident of Simittahalli village. According to him, on hearing the noise of the deceased and P.W.6, he and others rushed to the scene of occurrence and saw the deceased lying down, with head injuries and he called the ambulance and send the deceased to the Government Hospital, Thalavadi. P.W.5 is a witness to the arrest and confession of the accused and recovery of M.O.1, sharpened stick. P.W.6 is an eye witness to the occurrence. She is the brother's wife of the deceased. According to her, she, along with the deceased, was sitting and speaking near a well and at that time, the accused came there and quarrelled with the deceased, demanded old age pension and during the quarrel, he attacked the deceased with a sharpened stick on her head and ran away and she took the deceased to the Government Hospital, Thalavadi, where, the deceased was declared dead and thereafter she went to the respondent police and gave a complaint. P.W.7 is the brother of the deceased and the husband of P.W.6. After the occurrence, he came to the scene of occurrence. P.W.8 is the witness to the Observation Mahazar and also recovery of blood stained soil M.O.2 and Sample soil M.O.3. P.W.9 is the translator, who translated the statement of P.W.6 from Kannada language to Tamil. P.W.10,

Doctor, working in the Government Hospital, Thalavadi, has stated that he conducted post mortem autopsy on the dead body of the deceased and issued Postmortem Certificate, Ex.P.5. P.W.11, Head Clerk, working in the Judicial Magistrate Court, Sathiyamangalam, has stated that he sent the material objects for chemical examination. P.W.12, Head Constable, attached to the respondent police, has stated that he handed over the First Information Report to the Judicial Magistrate Court, Sathiyamangalam. P.W.13, Head Constable, working in the respondent police, has deposed that he accompanied the dead body to the Government Hospital and identified the dead body for postmortem. P.W.14, Sub Inspector of Police, attached to the respondent police, has stated that after receipt of the complaint, he registered a case, sent the FIR to the Judicial Magistrate Court and copies of the same to the Higher Officials. P.W.15, Assistant Director, working in the Forensic Department, Coimbatore, has stated that he examined the material objects and gave a report Ex.P.10. P.W.16, Inspector of Police, working in the respondent police, has stated that he continued the investigation, examined the postmortem Doctor and recorded his statement, received the chemical analysis report and after completion of investigation, 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, the Trial Court convicted 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.B.Kumaraswamy, 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 the instant case, P.W.6 is the sole eye witnesses to the occurrence. She is the brother's wife of the deceased. According to her, on the date of occurrence, she and the deceased were speaking together near the well and at that time, the accused came there and quarrelled with the deceased by demanding old age pension and during the quarrel, the accused attacked the deceased with a sharpened stick on her head and he ran away and at that time, peoples nearby came there and took the deceased to the Hospital. In his evidence, P.W.1 has said that after the occurrence, he saw the accused running away with a sharpened stick. P.W.3 says that after the occurrence, the accused ran away

from the scene of occurrence. Subsequently, the accused has been arrested and on such arrest, he has given a voluntary confession and based on the disclosure statement, M.O.1 sharpened stick has been recovered. P.W.10, Doctor, who conducted postmortem autopsy, in his evidence says, that he found injuries on the head of the deceased and he is of the opinion that the deceased appear to have died of head injuries led to Shock and Haemorrhage. Hence, the medical evidence also supports the case of the prosecution. Even though, P.W.6 is related to the deceased, her evidence cannot brush aside. The presence of P.W.6 in the scene of occurrence is natural. It shows from the evidence at the time of occurrence, the deceased and P.W.6 were speaking together near the well and at the time, the accused had attacked the deceased with a sharpened stick and it is she only took the deceased to the Hospital and subsequently she has given a complaint before the respondent police. Hence, we have no reason to disbelieve the evidence of P.W.6. Therefore, we are of the considered view that the prosecution has clearly established that it is this accused who had attacked the deceased with a sharpened stick on the head of the deceased and caused her death.

9. Now, the question is what was the offence that was

committed by the accused by the said act. Even, according to P.W.6, at the time of occurrence, there was a wordy quarrel between the accused and the deceased, when the accused demanded old age pension from the deceased and at the end of the quarrel, the accused attacked the deceased with a sharpened stick. From the evidence of P.W.6, an eye witness, it is clear that the accused, at the end of the quarrel, he lost his mental balance and out of the sudden provocation, had attacked the deceased with a sharpened stick which was available there. The accused would not have had any intention to cause the death of the deceased. But, certainly, he had the intention to cause bodily injury on the head of the deceased, which was 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.

10. So far as the quantum of punishment is concerned, it is not a premeditated murder. The accused is a poor man and he has no bad antecedence. The occurrence has taken place out of sudden wordy quarrel and provocation and having lost his mental faculty, the accused had attacked the deceased, which resulted in

the sudden death of the deceased. Taking into consideration the mitigating as well as the aggravating circumstances, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1000/- 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 sentence imposed on the appellant in S.C.No.128 of 2014, dated 15.06.2015, on the file of the learned Sessions Judge, (Magalir Fast Track Court), Erode, 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 to undergo rigorous imprisonment for seven 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 given set off as required under Section 428 Cr.P.C. If the appellant is on bail, bail bond executed by him shall stand cancelled, the trial Court shall take steps to secure his presence and commit to undergo the remaining period of sentence.

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

13.07.2016

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To

- 1.The Sessions Judge,
Magalir Fast Track Court,
Erode.
- 2.The Inspector of Police,
Thalavadi Police Station,
Thalavadi, Erode District.
- 3.The Public Prosecutor,
High Court, Madras.

S.NAGAMUTHU.J.,
and
V.BHARATHIDASAN.J.,
rrg

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