

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.785 of 2015

Mohanasundaram

...Appellant/Accused

Vs

State : rep. By
The Inspector of Police,
Thirukkalar Police Station,
Thirukkalar,
Mannargudi Taluk,
Tiruvarur District.
Cr.No.22 of 2014

..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the judgment dated 18.11.2015 passed in S.C.No.1 of 2015 by the learned Principal District and Sessions, Tiruvarur.

For Appellant : Mr.M.R.Sivasubramanian,

For Respondent : Mr.M.Maharaja,

Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

Accused No.1 in S.C.No.1 of 2015 on the file of the Principal District and Sessions Court, Thiruvarur, is the appellant herein. The appellant/A1 stood charged for offences under Sections 148, 294(b) and 302 IPC. A2 stood charged for offences under Sections 148, 294(b), 323 and 302 r/w.149 IPC and A3 to A6 stood charged for offences under Sections 148, 323 and 302 r/w.149 IPC. By judgment dated 18.11.2015, the trial Court convicted the appellant/A1 for offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default to undergo Rigorous Imprisonment for three months and acquitted him from the charges under Sections 148 and 294(b)IPC. The trial Court also convicted A2 to A6 for the offence under Section 323 IPC and imposed a fine of Rs.1000/- each, in default to undergo Simple Imprisonment for three months and acquitted A2 from the

offence under Sections 148, 294(b) and 302 r/w.149 IPC and A3 to A6 from the offences under Sections 148 and 302 r/w.149 IPC. Challenging the said conviction and sentence, the appellant/A1 is before this Court with this Criminal Appeal.

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

The deceased one Pethan is the husband of P.W.1. They were residing at Mariamman Koil Street, South Vattar village, Mannarkudi Taluk. The accused and the deceased are relatives. 10 days prior to the occurrence, the cattle of the deceased damaged the crops of the accused and hence there was a quarrel between them. On 12.04.2014, at about 6.00 p.m., all the accused went to the house of the deceased and quarreled with him. At that time, A1 attacked the deceased with Aruval, on his head. On seeing the above incident, P.Ws.1 and 2 rushed there. A2 attacked P.W.1 with a casuarina stick on her left hand and left leg. A3, A4 attacked P.W.2 with hands and A5 and A6 attacked P.W.2 with casuarina log and caused injuries. Then, the deceased and P.Ws.1 and 2 were taken to the Government General Hospital, Mannarkudi, where P.Ws. 1 and 2 were admitted and the deceased was referred to Government Medical College Hospital, Tanjore, where the deceased died at about 00.50 a.m., on 14.04.2014.

3. P.W.10, Special Sub Inspector of respondent police, attached to the respondent police station, on receipt of a memo from the hospital, proceeded to the Government Hospital, Mannargudi and recorded the statement of P.W.1 (Ex.P1) and on returning to the police Station, at 8.45 p.m., he registered a case in Crime No.22/2014, for the offences under Sections 147, 148, 294(b), 323, 324, 506(ii) and 307 IPC. The First Information Report is Ex.P.14.

4. Thereafter, P.W.11, Inspector of Police, commenced the investigation and since the deceased succumbed to injuries, he altered the case into Sections 147, 148, 294 (b), 323, 324, 506(ii) and 302 IPC. The altered First Information Report is Ex.P.15. On 14.04.2014, at about 7.00 a.m., P.W.11 proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.6) and a Rough Sketch (Ex.P.16), in the presence of P.W.6 and another witness and also recorded the statements of the said witnesses and P.Ws.1 and 2. Then, at about 10.30 a.m., he went to the Government Medical College Hospital, Tanjore, and conducted inquest on the body of the deceased, in the presence of panchayathars and prepared an Inquest Report (Ex.P.17) and sent a requisition letter (Ex.P.11), for conducting postmortem on the dead body of the deceased.

5. On 15.04.2014, at about 7.00 a.m., P.W.11, arrested A1 and A2 at Vattar Kamandi street bus stop. On such arrest, A1 gave a voluntary confession and based on the

disclosure statement(Ex.P.2), P.W.11 recovered M.O.1, Aruval, M.O.2(series), casuarina logs (2 nos) under Ex.P4, Mahazar in the presence of P.W.4 and another witness and remanded the accused to judicial custody.

6. On 14.04.2014, at 1.15 pm., P.W.9, Doctor, conducted autopsy on the body of the deceased, and found the following injuries:

" External injuries:

1) Abrasion of size 1 x 1 cm seen over left side of chest. Abrasion of size 1 x 1 cm over left outer aspect of abdomen. 2) sutured lacerated wound of size 31 x 2 cm noted over left side of scalp extending from frontal involving parietal, extending up to occiput. 3) A lacerated sutured wound of size 8 x 2 cm over right parietal region.

Internal injuries:

on dissection of head:

1. Diffuse contusion noted over left half of skull involving frontal, temporal, parietal & occipital region of size 22 x 12 cm.
2. Contusion of size 10 x 6 cm noted over right frontal region of scalp.
3. Bone defect of 7 x 5 cm over left temporal bone (craniotomy procedure). Gelfoam found adherent to meninges and fixed meninges by surgical sutures.
4. Subdural hemorrhage and extra dural hemorrhage over left fronto-temporo - and parietal region.
5. Intra cerebral hemorrhage noted over left frontal, & temporal region. Intra cerebellar hemorrhage noted in both hemispheres of cerebellum.
6. Blood clots present over the base of the skull"

Ex.P.12 is the Postmortem Report. He also gave opinion that the deceased appears to have died of complications of head injury and injuries to vital organ, brain. Ex.P.13 is the Final opinion.

7. P.W.8, who admitted P.Ws.1 and 2 in the Government Hospital, Mannarkudi, found lacerated injuries on their heads and gave Accident Registers (Ex.P.8 and Ex.P.9). P.W.11 recorded the statements of other witnesses and after completing investigating, he laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. In order to prove the case of the prosecution, as

many as 11 witnesses were examined and 21 documents were exhibited besides 3 Material Objects were marked. One document was marked on the side of the Court.

9. Out of the said witnesses, P.Ws.1 and 2 are injured eye-witnesses. P.W.1 is the wife of the deceased. According to her, on the date of occurrence, there was a quarrel between the accused family and the deceased family with regard to the damage of the crops of the accused by the cattle of the deceased and at about 6.00 p.m., all the accused came to their house and there was a quarrel and at that time, A1 attacked the deceased on his head and caused injury and other accused attacked P.Ws.1 and 2, using casuarina logs. P.W.2 is the daughter-in-law of the deceased. She was also present at the scene of occurrence and according to her, A2 and A3 attacked her on hands and also attacked her with casuarina log on her head. P.W.3 is the son of the deceased. According to him, after hearing the news, he went to the Government Hospital, Mannarkudi, where the doctors gave first aid to the deceased and referred him to Government Medical College Hospital, Tanjore. P.W.4, Village Administrative Officer, is the witness to the arrest of A1 and also recovery of M.O.1, Aruval and M.O.2(series), casuarina logs. P.W.5 was present at the time of inquest conducted on the body of the deceased and also witness to the recovery of blood stained dhoti (M.O.3) from the deceased. P.W.6 is the witness for the Observation Mahazar(Ex.P.6). P.W.7, Scientific Officer, working in the Regional Forensic Lab, examined the internal organs of the deceased and issued Ex.P.7, Toxicological Report. P.W.8 is the Doctor, who admitted P.Ws.1 and 2 and gave treatment and issued Accident Registers Ex.P.8 and Ex.P.9. He has stated that he also examined the deceased and referred him to the Government Medical College Hospital, Tanjore and issued Accident Register Ex.P.10, for the deceased. P.W.9, Doctor, has stated that he conducted postmortem on the dead body of the deceased and issued Ex.P.12, Postmortem Certificate. P.W.10, Special Sub-Inspector of respondent police has deposed that he recorded the statement of P.W.1 at the hospital and registered the First Information Report. P.W.11, the Inspector of police, altered the case into 302 IPC, recorded the statements of witnesses, arrested the accused and laid charge sheet.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witnesses nor did they mark any documents on their side. Their defence was a total denial.

11. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/A1 is before this Court with this Criminal Appeal.

12. We have heard Mr. M.R. Sivasubramanian, 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.

13. P.Ws. 1 and 2 are injured eye-witnesses. According to them, there was a quarrel between the accused family and their family quite sometime prior to the occurrence. It is their further evidence that on the date of occurrence, at about 6.00 p.m., all the accused came to the house of the deceased and quarreled with them and when the accused scolded P.W. 1, the deceased questioned the same and immediately A1 attacked the deceased on his head and caused serious injuries and other accused attacked P.Ws. 1 and 2 and caused minor injuries. The occurrence has taken place in the house of the deceased and hence the presence of P.Ws. 1 and 2 in the scene of occurrence is natural. Further they have also suffered minor injuries. Hence, there is no reason to disbelieve the evidence of P.Ws. 1 and 2. Medical evidence let in this case also corroborates the evidence of P.Ws. 1 and 2. Thus, it is crystal clear that it was A1, who caused injury on the head of the deceased. The medical evidence also goes to prove that the death of the deceased was due to the cut injury caused by A1. Thus, we are of the considered view that the prosecution has clearly proved that it was this appellant/accused who caused the death of the deceased, by cutting the deceased on his head.

14. Now, we have to consider, "what was the offence A1 has committed by the said act?". According to P.Ws. 1 and 2, there was a quarrel between the accused family and their family quite some time prior to the occurrence and on the date of occurrence also there was a quarrel and the accused scolded P.W. 1 and at that time, the deceased intervened and questioned the accused and being provoked by the words spoken by the deceased, A1 lost his self control and attacked the deceased. Though he could not have had any intention to cause the death of the deceased, from his act it becomes clear that he had the intention to cause injury, which was sufficient in the ordinary course of nature to cause the death of the deceased. Hence, the act of the accused would squarely fall under the third limb of Section 300 IPC and also fall within the first exception to Section 300 I.P.C., and therefore, he is liable to be punished under Section 304(i) IPC.

15. So far as the quantum of punishment, the appellant/A1 has no bad antecedents and he is a poor man. It is also not a premeditated murder and motive projected for the occurrence was also not proved and there are chances for his reformation. Having regard to the above circumstances, we are of the view that sentencing A1/appellant to undergo Rigorous Imprisonment for 5 years and also to pay a fine of RS. 1000/- in default to undergo Rigorous Imprisonment for four

weeks would meet the ends of justice.

16.In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for offence under Section 302 I.P.C., is set aside and instead, he is convicted for offence under Section 304(i) I.P.C., and sentenced to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for four weeks. The period of sentence already undergone by A1/appellant shall be given set off under Section 428Cr.P.C.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Judicial Magistrate,
Mannargudi.
2. Do Through the Chief Judicial Magistrate,
Thiruvarur.
3. Principal District and Sessions Judge,
Thiruvarur.
4. The Superintendant, Central Prison,
Tiruchirappalli.
5. The District Collector,
Tiruvarur.
6. The Director General of police,
Mylapore, Chennai.
7. The Public Prosecutor,
High Court, Madras.

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