

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2016

CORAM:

**THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE G.CHOCKALINGAM**

Criminal Appeal No.92 of 2015

Markabandhu

.. Appellant / Sole Accused

Vs

State By:

The Inspector of Police,

Ponnai Police Station,

Vellore District

(Crime No.162 of 2012)

.. Respondent / complainant

Prayer:- Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to set-aside the conviction and sentence imposed in the judgment, dated 11.12.2014, made in S.C.No.241 of 2012, on the file of the learned II Additional District and Sessions Judge, Vellore at Ranipet, by allowing this Criminal Appeal.

For Appellant : Mr. K.S.Suresh

For Respondent : Mr. V.M.R.Rajentren, A.P.P.,

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J U D G E M E N T

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

The appellant is the sole accused in S.C.No.241 of 2012 on the file of the II Additional District and Sessions Judge, Vellore District at Ranipet. He stood charged for the offence under Section 302 IPC.

By judgment, dated 11.12.2014, the trial court convicted him under Section 302 IPC and sentenced to undergo Imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo Simple Imprisonment for three months. Challenging the said conviction and sentence, the appellant is before this Court, with this Criminal Appeal.

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

The deceased, in this case, was one Mr.Easwaran. P.W.1 is the elder brother of the deceased. They were all residing at Chinna Kammarajapuram Village, in Vellore District. The accused and the deceased used to consume liquor together. It is alleged that, on 09.07.2012 around 06.00 pm, near a Poultry Farm of one Duraimurugan, on the Palleri Main Road, the accused and the deceased were consuming liquor together. In an inebriated condition, when they were talking, it is alleged that the deceased questioned the sexual potency of the accused. This resulted in a quarrel. It is further alleged that immediately the accused took out a knife and stabbed the deceased indiscriminately. The deceased died on the spot. The occurrence was witnessed by P.W.1 and others. P.W.1 immediately went to Ponnai Police Station, in Vellore District, at 08.30 pm and made a complaint. P.W.14, the then Sub Inspector of Police, registered a case in Crime No.162 of 2012, under Section 302 IPC, on the complaint of P.W.1. Ex.P-1 is the

complaint and Ex.P-10 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Magistrate at 10.45 am on 10.07.2012.

3. P.W.15, the Inspector of Police, took up the case for further investigation. He went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.7 and another witness. He recovered blood stained earth and sample earth from the place of occurrence. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem. P.W.16, Dr. Selvaraj, conducted autopsy on the body of the deceased on 10.07.2012 at 2.05 pm. He found the following injuries:-

“Injuries Noted:

1. Transverse Incised wound with clean margins on the forehead (near the hair-line) 10 cm x 1 cm x brain depth. The value of the skull is cut open and the brain is seen.
2. Another transverse incised wound with clean largins just above the eyebrows, 17 cm x 3 cm x brain deep. Here also the value of the skull is cut open.
3. Oblique incised wound with clear margins on the right side of the face infront of the ear 5x1x1 cm.
4. Oblique incised wound on the right jaw 9x1x1 cm, the underlying right jaw bone cut.
5. Oblique incised wound 6x6x1 cm on the left jaw.

Underlying (L) jaw bone cut.

6. Transverse incised wound on the right arm 5x1 cm x bone deep. Underlying arm bone humerus cut in its lower third.
7. Three incised wounds on the back of head, behind the left external ear each measuring 6x1 cm x bone dep.
8. Transverse incised wound on the right knee 5x1 cm x bone deep.
9. Three stab injuries on the front of chest right side two above the nipple and one below the nipple. All the stab injuries are 4 cm x 1 cm x lung deep. One edge is blunt and the other sharp. All the stab wounds have punctured the pleural cavity.
10. Two stab injuries on the front of chest left side one above the nipple and one below the nipple. Both the stab injuries are 4 cm x 1 cm x lung deep, have one edge blunt and other sharp. Both stab wounds have punctured the pleura.
11. Oblique stab injury on the upper part of abdomen, right side one cm below the right costal margin, 4 cm x 1 cm x liver deep. The right lobe of liver shows a stab injury 1x1x1 cm. The peritoneal cavity contains 600 ml of blood.
12. Three stab injuries on the upper part of abdomen, left side one below the left costal margin, other two 2 cm away from the umbilicus. All the three stab injuries are 4 cm x 1 cm x 4 cm deep.
13. Incised wound on the left palm middle finger 3x1 cm x bone deep. The middle phalanx of left middle finger is cut.

On dissection of scalp, skull and dura:

Sub-scalpal contusion on the frontal region. Thin sub-dural and sub-arachnoid hemorrhage seen on the frontal regions.

Pleural cavities: Empty, Heart : Normal, Chambers: Empty, coronaries: Patent.

Lungs : Pale. Hyoid Bone : Intact, Stomach : Contains 150 ml of grey-colored fluid admixed with digested food with nil specific smell. Mucosa: Pale. Small intestine : Nil specific. Spleen and Kidneys : Pale. Bladder: Empty.”

4. Ex.P-16 is the postmortem certificate. P.W.16, the Doctor, gave opinion that the death of the deceased was due to shock and hemorrhage caused on account of multiple injuries. He further opined that the injuries would have been caused by a weapon like knife (M.O.3). P.W.15 examined P.Ws.1 to 4 and many witnesses and recorded their statements. On 10.07.2012 at 12.30 pm, he arrested the accused, in the presence of P.W.8 and another witness. On such arrest, the accused made a voluntary confession, in which, he had disclosed the place where he had hidden the knife and cloth. In pursuance of the same, he took the police and the witnesses to the place of hide-out and produced the knife, blood stained full hand shirt and the blood stained lungi. P.W.15 recovered the same under a mahazar in the presence of the same witnesses. On returning to the Police Station, he forwarded the accused for Judicial remand.

He recovered the blood stained cloth from the body of the deceased and then he forwarded the same to the Court. At his request, the material objects were sent for chemical examination, which revealed that there were blood stains, on all the material objects, including the knife. On completing the investigation, he laid the charge sheet against the accused.

5. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same as false. In order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined and 16 documents were exhibited, besides 11 material objects.

6. Out of the said witnesses, P.W.1, the brother of the deceased, has stated that P.W.2 informed him that the deceased was being attacked by the accused at the place of occurrence. He further stated that, when he rushed to the place of occurrence, he found the deceased lying and the accused stabbing him, repeatedly. On seeing him, the accused ran away with the knife. He has further stated that the deceased died on the spot and then he went to the Police Station and made a complaint.

7. P.W.2 is the son of the deceased. During the relevant time, he was studying Ninth Standard. He has stated that his uncle told him that there was a fight going-on between the deceased and the accused at the place of occurrence. Immediately, he rushed to the place of occurrence, in a bicycle, and found the deceased lying and the accused sitting on him and stabbing him. Then, he saw threw the bicycle there itself and rushed back to his house and informed the same to P.W.1 and others and when then all of them went to the place of occurrence, the accused fled away from the scene of occurrence with a knife.

8. P.W.3 is a relative of the deceased. He has stated that he found the accused and the deceased fighting in an inebriated condition. He informed P.W.2 about the same. P.W.2 went to the place of occurrence in bicycle. Immediately, P.W.2 returned back and he told him that the deceased was stabbing by the accused. Then, P.W.1 and P.W.3 went back to the place of occurrence. He has further stated that, when they reached the place of occurrence, they saw the accused fleeing away with the knife. P.W.4 is the father of the deceased. He has also stated that P.W.2 came running to his house weeping. He told that the accused was stabbing the deceased. Immediately, he went along with P.Ws.1 to 3 to the place of occurrence. At that time, he found the deceased fleeing away

from the scene of occurrence. P.W.5 is the owner of the Poultry Farm, near the place of occurrence. She did not witness the occurrence. She came to the place of occurrence only after the occurrence was over and found the witnesses present at the place of occurrence. P.W.6 is the wife of the deceased. She has stated that she also rushed, along with P.Ws.1 to 3, to the place of occurrence and witnessed the occurrence. P.W.7 has spoken about the preparation of observation mahazar and the rough sketch at the place of occurrence. He also stated that he recovered blood stained earth and sample earth from the place of occurrence. P.W.8 has spoken about the arrest of the accused, confession made to him and the recovery of blood stained knife, the shirt and lungi from his possession. P.W.9 has spoken about the photographs taken at the place of occurrence. P.W.10, the Head Clerk of the Magistrate's Court, has stated that he forwarded the material objects to the Forensic Lab, as directed by the learned Magistrate, for the purpose of chemical examination. P.W.11 has spoken about the chemical analysis conducted on the material objects. He has stated that he found human blood on all the material objects, including the knife. P.W.12 has stated that he examined the visceral organs of the deceased and found that there was neither alcohol nor poison. P.W.13 has stated that he took the dead body of the deceased to the Doctor for post-mortem, as directed by the Investigating Officer.

P.W.14 has spoken about the registration of the case. P.W.15 has spoken about the investigation done and the final report filed by him. P.W.16 has spoken about the post-mortem conducted and the final opinion regarding the cause of death.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, he examined one Mr. Sundaresan, as D.W.1. He has stated that during the relevant time, he was the Panchayat Board President of Palleri Village. He was residing at Kammarajapuram, Vellore District. He is related to the deceased. He was cited by the prosecution to speak about the arrest of the accused and consequential recoveries of the knife and blood stained cloth. As a defence witness, he has disowned the same.

10. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced him, as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused / appellant is before this Court with this Criminal Appeal.

11. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and

also perused the records carefully.

12. The learned counsel for the appellant would submit that the First Information Report would not have come into being at 10.45 am, on 10.07.2012, at all. He would further submit that the learned Magistrate, had received the First Information Report only at 10.45 pm, on 10.07.2012, however, according to him, the learned Magistrate has corrected the same as 10.45 am, on 10.07.2012.

13. In order to appreciate the said submission made by the learned counsel for the appellant, we perused the original records. The endorsement made on the First Information Report (Vide Ex.P-10) would show, even to a naked eye, that, the learned Magistrate has endorsed the time of receipt of the First Information Report as 10.45 pm, on 10.07.2012 and obviously the same has been corrected as 10.45 am. But the learned Magistrate was not examined as a witness. In order to get it clarified, we summoned the learned Magistrate to the Court on 19.08.2016. When we wanted him to explain, he admitted that, by mistake, he made the endorsement as 10.45 pm and immediately, he corrected the same as 10.45 am. However, this statement was made by the learned Magistrate before this Court not on oath. Therefore, we cannot treat

the same as evidence, since the prosecution has not chosen to examine the learned Judicial Magistrate, as one of the witnesses. But, we can take judicial notice of the fact that the learned Magistrate has corrected the time of receipt of the First Information Report, as 10.45 am, by overwriting. Assuming that it was received at 10.45 am on 10.07.2012, still, there is a delay of about more than 12 hours. There is no explanation by the prosecution as to why there had occurred such a long delay in forwarding the First Information Report to the Court.

14. In our considered view, going by the facts of the case and in the light of the evidences of eye-witnesses to the occurrence, the said delay, in forwarding the First Information Report to the Court, which was caused by the Police, cannot be a ground to acquit the accused by disbelieving the eye-witnesses. At the most, we can only hold that this delay creates an initial doubt in the case of the prosecution. But, this delay by itself cannot be a ground to acquit the accused by doubting the entire case of the prosecution.

15. Now turning to the occurrence, P.W.3 had seen the accused and the deceased sitting at the place of occurrence in a drunken state. They were quarreling with each other. They were still drinking. P.W.3, on returning to his house, informed P.W.2, the son

of the deceased, about the same, and wanted him to go and take the deceased to his house. Therefore, P.W.2 had gone there in a bicycle. On reaching the place of occurrence, he found, to his shock, that the deceased was lying and the accused was stabbing him with the knife. P.W.2, a young boy, aged 14 years, out of fear and shock, threw the bicycle there itself and rushed to his house and informed P.W.1 and other inmates. Though P.W.2 has been cross-examined at length, nothing has been elicited from him, so as to doubt his credibility. He has stated that P.Ws.3 and 4 only informed about the quarrel and therefore, he went to the place of occurrence in his bicycle. He has further stated that during the cross-examination that when he, along with P.W.1 and others, went to the place of occurrence, the accused was found fleeing away from the scene of occurrence with the knife.

16. We do not find any reason to reject the evidence of P.W.2. In our considered view, he (P.W.2) is the only eye-witness to the occurrence.

17. P.W.1, the brother of the deceased has stated that P.W.2 came to his house and informed him that the deceased was being stabbed by the accused. Immediately, P.Ws.1, 3 and other family members rushed to the place of occurrence. P.W.1 has stated that

when he reached the place of occurrence, he found the deceased lying and the accused stabbing him. This part of the evidence of P.W.1 cannot be believed at all. Going by the distance between the place of occurrence and the house of P.W.1, it is highly unbelievable that when P.W.1 went to the place of occurrence, the accused was still stabbing him. It is evident from the admission made by him, during cross-examination. During cross-examination, he has stated that, after P.W.2 informed about the occurrence to him, P.Ws.3 and 4 rushed to the place of occurrence first, he (P.W.1) only followed them. He has further stated that when he reached the place of occurrence, he did not see even the accused. He did not see even the knife also, at the place of occurrence. Thus, what was stated by him in the chief-examination, as an eye witness, has been clearly given a go-by, by him, during cross-examination. Therefore, as we have already concluded, P.W.1 would not have witnessed the occurrence at all.

18. Now turning to the evidence of P.W.3, he has stated that he found the accused and the deceased sitting together drinking liquor and quarreling. Therefore, he informed P.W.2, the son of the deceased, to go and fetch the deceased. Since P.W.3 was not in talking terms with the accused, he did not intervene in the quarrel. He has further stated that P.W.2 rushed to the place of occurrence in

bicycle, with a view to take back his father. Within a short while, he came running and he was weeping. He told P.W.3 that the deceased was being stabbed by the accused. He has further stated that immediately, he rushed to the place of occurrence. When he reached the place of occurrence, he found the accused fleeing away from the scene of occurrence with knife.

19. P.W.4 is the father of the deceased. He has also stated that on hearing the information from P.W.2, when he went to the place of occurrence, he found the accused stabbing the deceased. But during cross-examination, he has stated that when he reached the place of occurrence, the accused had already fled away from the scene of occurrence. Thus, in our considered view, P.W.4 also would not have also seen the occurrence, since he went along with P.W.3, who had only seen the accused fleeing away from the scene of occurrence.

20. P.W.6 is the wife of the deceased. She has stated that P.W.2, on rushing to her house, told that the deceased was being stabbed by the accused. Immediately, she also rushed along with the others to the place of occurrence. Though she has stated in chief examination that she witnessed the accused stabbing the deceased, in our considered view, she cannot be believed, because,

she went to the place of occurrence, only after P.W.3 had gone to the place of occurrence.

21. From these evidences, it is crystal clear that the fact that the deceased was stabbed by the accused was witnessed only by P.W.2. The other witnesses, whom we have discussed thus far, had gone to the place of occurrence, on the information passed on by P.W.2 and when they reached the place of occurrence, they had seen the accused fleeing away from the scene of occurrence. Thus, from this evidence, it has been clearly established, that it is this accused, who stabbed the deceased with knife and caused as many as thirteen injuries. The recovery of the knife from the possession of the accused, on the disclosure statement made by him, further strengthens the case of the prosecution. The Doctor, who conducted autopsy on the body of the deceased has stated that there were as many as 13 stab injuries on the body of the deceased and the death of the deceased was due to shock and hemorrhage caused on account of multiple injuries on his body. We find no reason to refuse the said opinion of the Doctor. Thus, in our considered view, the prosecution has clearly established that it was this accused, who caused the death of the deceased.

22. Having come to the said conclusion, now, we have to

examine what was the offence that was committed by the accused on the said act.

23. The learned counsel for the appellant would submit that, in an inebriated condition, in a quarrel, the accused had stabbed the deceased and therefore, his act would fall either under Exception-4 or Exception-1 under Section 300 IPC.

24. But, we are not persuaded with the said argument at all. The fact that the accused had attacked the deceased with a weapon, namely, the knife and the fact that he had caused as many as 13 injuries on all the vital parts of the body of the deceased and the fact that there is no evidence that the deceased had provoked the accused and there is no evidence that there was a fight between the accused and the deceased would all go to show that the intention of the accused is only to cause the death of the deceased, which would squarely fall within the first limb of Section 300 IPC and the same would not fall under any of the exceptions to Section 300 IPC.

25. In view of the foregoing discussions, we find no merit at all in this appeal. Thus, the conviction and sentence imposed by the trial court deserve no interference, at the hands of this Court. The conviction and sentence imposed on the accused / appellant are hereby confirmed. In the result, this Criminal Appeal fails and

accordingly, the same is dismissed.

(S.N.J.,) (G.C.J.,)
31.08.2016

Index : Yes / No
Web : Yes / No
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To

1. II Additional District and Sessions Judge, Vellore at Ranipet
2. The Public Prosecutor, High Court, Madras.

S.NAGAMUTHU, J.,
and
G.CHOCKALINGAM, J.,

srk

Crl.A.No.92 of 2015

31.08.2016

Pre-Delivery Judgment in
Criminal Appeal No.92 of 2015

To
The Hon 'ble Mr. Justice S.Nagamuthu
and
The Hon 'ble Mr. Justice G.Chockalingam

Most Respectfully submitted:

S.Ramkumar
P.A., to the Hon 'ble Judges