

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Appeal No.493 of 2012

Ganesan

... Appellant

-Versus-

State Rep. by
Sub Inspector of Police,
Vedaranyam Police Station,
Nagapattinam District.
[Crime No.424 of 2007]

... Respondent

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the Sessions Judge, Nagapattinam, Nagapattinam District, in S.C.No.162 of 2008 dated 19.01.2012.

For Appellant : Mr.Sunanda Suren

For Respondent : Mr.V.M.Rajendran, APP

JUDGEMENT

[Judgement of the court was delivered by S.NAGAMUTHU.J,]

The appellant is the sole accused in S.C.No.162 of 2008 on the file of the learned Sessions Judge, Nagapattinam District. He stood charged for offence under Section 302 of IPC. By judgement dated 19.01.2012, the trial court convicted him under Section 302 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.3,000/- in default to undergo simple imprisonment for three years. Challenging the said conviction and sentence, the sole accused is now 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 Mrs.Amsavalli. Her husband is one Mr.Arumugha Gounder. Mr.Arumuga Gounder had two brothers by name Mr.Kunju Gounder and Mr.Srinivasa Gounder. There was a joint family property in Marangayanallur Village belonging to these three brothers. In a Village Panchayat, a partition was effected, in which, they were allotted 20 kuzhis each. The accused is the son of Mr.Srinivasa Gounder. Before the partition, the accused was residing in a small hut put up on a portion of the said land. In the partition, the said

portion was allotted to Mr.Arumugha Gounder. Therefore, the deceased Mrs.Amsavalli, wife of Armugha Gounder, was demanding the accused to vacate and handover the vacant possession to her. One Mr.Sundari @ Sundaram is her son. But, the accused was evasive. This resulted in frequent quarrels between them. This is stated to be the motive for the occurrence.

3. On 27.08.2007 at about 06.00 p.m., the deceased was at her house. In respect of the above dispute, there arose quarrel between the accused and the deceased. In the course of the said quarrel, it is alleged that accused took out an aruval and cut the deceased indiscriminately. This was witnessed by the son of the deceased and P.W.1 and P.W.2. After cutting the deceased, the accused fled away from the scene of occurrence with the weapon.

4. Immediately, P.W.1 and Mr.Sundaram took the deceased to the Government Hospital at Vedaranyam and admitted her as inpatient. After treatment, the Doctor, who was on duty at the said Government Hospital, referred her to Thanjavur Government Medical College Hospital. Accordingly, P.W.1 and Mr.Sundaram took the deceased to Thanjavur Government Medical College Hospital and admitted her at 07.30 a.m. When the deceased was in the Government Hospital at Vedaranyam, on receiving intimation from the hospital authorities, P.W.13, the then Sub Inspector of Police, Vedaranyam Police Station, rushed to the hospital. Since the deceased was in coma, he recorded the statement of Mr.Sundari @ Sundaram and on returning to the police station, he registered a case in Crime No.424 of 2007 under Sections 307 and 506(ii) of IPC. Ex.P.1 is the complaint and Ex.P.19 is the FIR. He forwarded both the complaint and the FIR to the court and handed over the case diary to the Inspector of Police for investigation.

5. P.W.11, the then Inspector of Police, Vedaranyam Police Station, took up the case for investigation and proceeded to the place of occurrence at 09.00 p.m. on 27.08.2007. Then, he examined P.Ws.1 to 3 and recorded their statements. He prepared an observation mahazar (Ex.P2) and rough sketch (Ex.P13) in the presence of P.W.4 and another witnesses. He also recovered some blood stained earth (M.O.2) and sample earth (M.O.3) from the place of occurrence in the presence of the same witnesses under a mahazar (Ex.P.3).

6. On 28.08.2007, at 08.15 a.m., P.W.11 arrested the accused at Appakanni Bus Stop 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 aruval and a shirt. In pursuance of the said disclosure statement, he took P.W.11 and the witnesses to a Casuarina Grove at Ponnangadu in Marangayanallur Village and produced an aruval (M.O.1) and blood stained shirt (M.O.7) from the hide out. P.W.11 recovered the same under a mahazar (Ex.P.15). On

returning to the police station, he forwarded the accused to the court for judicial remand and also handed over the material objects to the court. While so, on 28.08.2007, at about 04.30 p.m., the deceased died at Thanjavur Government Medical College Hospital. P.W.11, therefore, altered the case into one under Section 302 of IPC and forwarded the alteration report at 06.45 p.m. to the court. On 29.08.2007, at 08.00 a.m. he conducted inquest on the body of the deceased at the mortuary of the Tanjavur Government Medical College Hospital. Then, he forwarded the body for postmortem.

7. One Dr.S.Vijayalakshmi, the then Professor & Police Surgeon, Department of Forensic Medicine, Tanjavur Government Medical College Hospital, conducted autopsy on the body of the deceased on 29.08.2007 at 12.50 Noon. [The said Doctor could not be examined as a witness as she was unable to attend the court due to serious illness]. Dr.S.Vijayalakshmi noticed the following injuries:

" External Injuries:

1. A curved oblique sutured cut wound over the lower part of occipital region of scalp measuring 8 cm x 2 cm x bone deep with cut fracture of the underlying bone.

2. A transversely placed sutured cut wound over the right supra scapula area measuring 10 cm x 2 cm x bone deep with cut fracture of the underlying bone.

3. An oblique sutured cut wound over the middle of right scapular area measuring 5 cm x 1 cm x bone deep with scratch abrasions of 4 cm in length at both ends.

4. An elliptical stab wound - 2 cm x 1 cm x muscle deep over the inter scapular area.

5. A curved wide chop wound over the lower part of occipital region of scalp measuring 25 cm x 7 cm x bone deep with chip fracture of occipital bone.

6. A transverse cut wound measuring 8 cm x 3 cm x bone deep just below the wound No.5 over the back of upper part of neck with cut fracture of C1, C2, C3 cervical vertebrae.

7. Just below the above wound No.6, another cut wound measuring 9 cm x 2 cm x bone deep with cut fracture of the underlying cervical vertebrae - C3, C5, C5 with cut laceration of the underlying spinal cord.

8. An elliptical cut wound over the back of right shoulder region measuring 2 cm x 1 cm x muscle deep.

9. An oblique sutured cut wound below the back of middle of right shoulder region over the scapular area measuring 2 cm x 1 cm x bone deep with cut fracture of the body of scapula bone.

Internal Injuries:

10. On dissection of neck - contusion of whole of cervical region with cut fracture of all the cervical vertebrae with cut laceration of the underlying spinal cord.

11. On reflecting the scalp skin - sub scalp contusion noted over sub dural, sub arachnoid and intra cerebral hemorrhages with sub dural basal blood clots. Contusion of whole of both sides cerebellum with bilateral intra cerebellar hemorrhages.

All the above mentioned injuries were antemortem in nature as a result of assault by some heavy cutting weapon like Arival."

Ex.P.8 is the postmortem certificate. She opined that the deceased would appear to have died of shock and heamorrhages due to cut injuries.

8. P.W.11 examined the Doctor and collected the postmortem certificate. Then, he made a request to the court to forward the material objects for chemical analysis. The chemical analysis report revealed that there were blood stains on all material objects including bill-hook. After him, the investigation was taken up by P.W.12 and finally, charge sheet was laid against the appellant/accused for offence under Section 302 of PC before the learned Judicial Magistrate, Thiruthuraipoondi.

9. Based on the above materials, the trial court framed a lone charge under Section 302 of IPC against the accused. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 13 witnesses were examined, 19 documents and 7 materials objects were marked.

10. Out of the said witnesses, P.W.1 and P.W.2 are the eye witnesses to the occurrence. The son of the deceased by name Sundari @ Sundaram was not examined as he had gone abroad. P.W.3 has spoken about the partition effected between the brothers. P.W.4 has spoken about the observation mahazar. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 has spoken about the treatment given to the deceased at Thanjavur Government Medical College Hospital and he has also spoken about the

postmortem conducted by Dr.S.Vijayalakshmi. P.W.7, the Scientific Assistant, Forensic Science Department, has stated that blood stains were found on all the material objects including bill-hook. P.W.13 has spoken about the registration of the case and P.W.11 has spoken about the investigation done by him while P.W.12 has spoken about the about the further investigation done by him and the filing of charge sheet against the accused

11. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, he denied the same. However, he did not choose to examine any witness on his side nor did he mark any document. His defence was a total denial.

12. Having considered all the above, the trial court convicted the accused under section 302 of IPC and accordingly punished him as detailed in the first paragraph of this judgement. That is how, the accused is now before this court with this criminal appeal.

13. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

14. The learned counsel for the appellant/accused would submit that the presence of P.W.1 and P.W.2 is highly doubtful. He would further submit that Ex.P.1 is not admissible in evidence and, therefore, there can be no importance attached to the same. The learned counsel would further submit that the medical evidence also does not corroborate the eyewitness account of P.W.1 and P.W.2. The learned counsel would add that there is an inordinate delay in preferring the complaint which has not been explained way by the prosecution at all. The learned counsel would lastly submit that there were serious flaws in the investigation. For all these reasons, the conviction and sentence imposed on the appellant/accused requires interference at the hands of this court, he contended.

15. The learned Additional Public Prosecutor, would vehemently oppose this criminal appeal. According to him, P.W.1 and P.W.2 are natural witnesses. Their houses are situated just few yards away from the place of occurrence. Therefore, their presence at the time of occurrence cannot at all be doubted. The fact that P.W.1 alone had taken the deceased to the hospital along with his son by itself would go to show that he was present at the time of occurrence. The medical evidence also duly corroborates the eye witnesses account. He would further submit that the motive part has also been clearly established by the prosecution. Thus, according to the learned Additional Public Prosecutor, the prosecution has proved the case beyond all reasonable doubts and that the trial considered both the ocular and medical evidence in their

right perspective and accordingly convicted and sentenced the appellant which does not require any interference at all at the hands of this court.

16. We have considered the above submissions carefully.

17. P.W.1 and P.W.2 are eyewitnesses to the occurrence. It is true that the son of the deceased who was yet another eye witness has not been examined by the prosecution. However, it is explained to the court that he had gone abroad and, therefore, he was not examined. In our considered view, non examination of Sundari @ Sundaram has not caused any dent in the case of the prosecution at all. Ex.P.1 is the complaint which has been proved through P.W.1 and at the most it could be used only to prove the time at which the law was set on motion. The contents of Ex.P.1 cannot be used for any other purpose inasmuch as the maker of Ex.P.1 has not been examined.

18. Now turning to the evidence of P.W.1 and P.W.2, P.W.1 has stated that his house is situated just 20 feet away from the house of the deceased and thus at the time of occurrence, he was present. P.W.2 was also present at that time. They have vividly spoken about the entire occurrence. Though they have been subjected to a lengthy cross examination, nothing could be elicited to create any doubt in the veracity of their testimony. Their evidences have been duly corroborated by the medical evidence.

19. The learned counsel for the appellant would submit that the Doctor at Vedaranyam Government Hospital where the deceased was taken first has not been examined. Of course, it is true, but, on that score, we cannot reject the evidence of P.W.1 and P.W.2 inasmuch as their evidences are so cogent and convincing.

20. Apart from that P.W.6 Doctor, who treated the deceased at Thanjavur Government Medical College Hospital, has vividly spoken about the nature of the injuries sustained by the deceased and the treatment given by him. Though Dr.S.Vijayalakshmi, who conducted autopsy on the body of the deceased, could not be examined, P.W.6 has given evidence based on the postmortem certificate and the opinion. Thus, in our considered view the eyewitness account of P.W.1 and P.W.2 has been duly corroborated by medical evidence.

21. Though it is alleged that there was a delay in preferring the complaint, we are not persuaded by the said argument for, when the deceased was undergoing treatment at the Government Hospital, Vedaranyam, P.W.13 rushed to the hospital, obtained a statement from P.W.1 and registered the case without any delay. Thus, absolutely, there is no delay at all either in preferring the complaint or in forwarding the same to the court. We also do not find any flaw in the investigation.

22. From the eyewitness account of P.W.1 and P.W.2 and the other evidences about which we have made reference hereinabove, we hold that the prosecution has clearly proved that it was this accused who cut the deceased which resulted in her death.

23. The next question is as to what is the offence that the appellant/accused has committed by the said act. In our considered view, certainly, there is no evidence to come to the conclusion that the accused had intention to cause the death of the deceased. From the evidence of P.W.1 & P.W.2, it is crystal clear that there was a wordy quarrel going on between the accused and the deceased. The quarrel was spontaneous. The quarrel went on for some time. If the accused had intention to cause the death, he would not have quarreled with the deceased for such a long time. Therefore, we are of the view that the accused had no intention to cause the death of the deceased at all. But, he had, certainly, the intention to cause the injuries on the vital parts of the body of the deceased. The Doctor has opined that those injuries were grievous and sufficient to cause the death of the deceased. We are fully in agreement with the said opinion. Thus, we hold that the act of the accused would fall within the third limb of Section 300 of IPC. But, at the same time, there are enough materials on record to come to the conclusion that the accused was provoked by the deceased and driven by such provocation, he had cut the deceased. It is in evidence that the accused was not already armed with any weapon. The quarrel between the accused and the deceased went on for some time. Only during the said quarrel, as stated by P.W.2, within a few minutes, the accused suddenly took out the aruval and cut the deceased. Thus, going by the nature of the human conduct and from the above narration, we presume that the deceased would have provoked the accused and the said provocation was so grave which had driven him to take the aruval and to cause the injuries on the deceased. We are, therefore, of the considered view that the accused had lost his mental balance and driven by grave and sudden provocation he had caused injuries on the deceased. Thus, the act of the accused would fall within the first exception of Section 300 of IPC. Therefore, by the above act, the accused has committed an offence punishable under Section 304 (1) of IPC and he is liable to be punished accordingly.

24. Now, turning to the quantum of punishment, the appellant/accused is an young man and is having family to take care. The occurrence itself was not premeditated. It was out of sudden quarrel. It is not reported to this court that the accused was involved in any other crime after the said occurrence. Going by the mitigating and the aggregating circumstances available in this case, we are of the considered view that sentencing the appellant/accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.3,000/- would meet the ends of justice.

25. In the result, the criminal appeal is partly allowed and the conviction and sentence imposed on the appellants/accused for the offence under Section 302 of IPC by the trial court is hereby set aside and instead he is convicted under Section 304(1) of IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.3,000/- in default to undergo rigorous imprisonment for four weeks. The fine amount already paid by the appellant/accused before the trial court shall be adjusted towards the sentence of fine now imposed on him. The period of detention already undergone by the appellant/accused shall be set off under Section 428 of Cr.P.C. against the sentence of substantive imprisonment.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kmk

- 1.The District Sessions Judge, Nagapattinam, Nagapattinam District.
2. The District Munsif-cum-Judicial Magistrate, Vedaranyam.
3. The Judicial Magistrate Thiruthuraipoondi.
- 4.The Inspector of Police, Vedaranyam P.S., Nagapattinam District.
- 5.The Superintendent Central Prison, Cuddalore.
- 6.The Public Prosecutor, High Court, Madras.

Copy to: The Section Officer, Criminal Section,
High Court, Madras.

1 cc to M/s. N. Senthilkumar, Advocate Sr.6320

SNS(CO)
Eu 22.03.16

Cr1.A. No.493 of 2012