

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.19 of 2016

and

Cr1.M.P.No.5646 of 2016

1. Bharathi

2. Bala @ Balachandran ..Appellants/Accused

Vs

State rep. By
Inspector of Police,
Saalavakkam Police Station,
Uthiramerur, Kancheepuram,
Cr.No.94 of 2011 ..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
to set aside the conviction and sentence imposed on the
appellants, by the judgment, dated 03.11.2015, passed in
S.C.No.88 of 2011, on the file of learned Sessions Judge
No.II, Kancheepuram.

For Appellants : Mr.P.Raghupathy

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

JUDGEMENT

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

The appellants are A1 and A2 in S.C.No.88 of 2011 on
the file of the Sessions Court No-II, Kanchipuram. They stood
charged for the offences punishable under Sections 323, 294(b)
and 302 IPC. After trial, by judgment dated 03.11.2015, the
trial Court convicted the appellants/accused for the offences
under Sections 323, 294(b) and 302 IPC and sentenced each of
them to undergo Simple Imprisonment for 3 months for the
offence under Section 323 IPC and to undergo Simple
Imprisonment for one month for the offence under Section 294

(b) IPC and to undergo imprisonment for life and to pay a fine of Rs.1,000/-, each in default to undergo Rigorous Imprisonment for three months. The trial Court also directed the sentences to run concurrently. 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:-

Deceased, in this case, one Marimuthu, is the brother of P.W.1. P.W.1 was working as a watchman in a 'Hollow Block' company. One and half years prior to the occurrence, A2 in this case and some other persons quarreled with P.W.1 and caused damage to his T.V and other house-hold articles. Subsequently, on 04.03.2011, at about 8.30 p.m., while P.W.1 was in the 'Hollow Block' company, the appellants went there and beat him. P.W.1 informed the same to the deceased and his wife/P.W.3. When, P.Ws.1, 2 and 3 along with the deceased, questioned the accused with regard to the attack made by them, near Asiyak school building, A1 attacked the deceased with a wooden log, on his head. A2 also attacked him with another wooden log on his head and chest. The deceased died on the spot. When P.W.1 tried to prevent the accused, the accused also attacked P.W.1 and caused injuries. Thereafter, P.W.1 was taken to Government Hospital, Chengalpet and admitted there.

3. P.W.15, Sub-Inspector of Police, attached to the respondent police, on receipt of a memo from the hospital, went to the Hospital and obtained a statement from P.W.1. Based on the same, P.W.15 register a case in Crime No.94/2011 for the offences under Section 294(b), 324 and 302 IPC. He forwarded the express First Information Report, Ex.P.16, to the Judicial Magistrate Court and copies to the higher police officials.

4. P.W.17, Inspector of Police, on receipt of First Information Report, proceeded to the Scene of Occurrence and prepared Observation Mahazar, Ex.P.18 and Rough Sketch, Ex.P.19 in the presence of witnesses. He also recovered bloodstained earth(M.O.8), sample earth (M.O.9) under a cover of Mahazar (Ex.P.20). P.W.17 also went to the place, where the accused beat P.W.1 and prepared Observation Mahazar, Ex.P.21 and rough Sketch, Ex.P.22, Between 7.30 a.m and 9.00 a.m. On 05.03.2011, P.W.17 conducted inquest on the dead body of the deceased, in the presence of panchayathars and prepared an Inquest Report, Ex.P.23. Then, he sent the dead body of the deceased for postmortem to Government Hospital, Chengalpet.

5. P.W.9, Assistant Professor, working in the Government Hospital, Chengalpet, on 05.03.2011, at 11.50 a.m., conducted autopsy on the dead body of the deceased and found the following injuries:

"External injuries found are linear abrasion right upper chest and axillary region with underlying, soft tissue contusion each approximately 12 cm x 3 cm , abrasion seen in right ear lobe 4 cm x 2 cm x 2 cm. Avulsion laceration running from right side of frontal region of scalp involving. Right eye lids, eyes forehead with soft tissue contusions. Laceration of upper and lower lips on right side 5 cm x 3 cm x 3 cm exposing the tooth socket". The scalp shows laceration in occipital region 7 cm x 2 cm x bone depth. "

Ex.P.7 is the Postmortem Certificate issued by P.W.9. He was of the opinion that the deceased died of cumulative effects of multiple injuries and compressive force over the neck.

6. P.W.17 recorded the statement of the Doctor, who conducted postmortem on the dead body of the deceased and other witnesses. On 08.03.2011, both the accused surrendered before Judicial Magistrate No.I, Chengalpet. On 09.03.2011, P.W.17, took both the accused into police custody and on enquiry, they gave voluntary confession statement and based on the disclosure statement of A1, P.W.17 recovered Wooden Log (M.O.1) and knife. Based on the disclosure statement of A2, P.W.17 recovered another wooden log (M.O.2) in the presence of the witnesses. On completing investigation, P.W.17 laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges against the accused for the offences as mentioned in paragraph No.1 of this judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 17 witnesses were examined and 29 documents were exhibited, besides 9 material objects were marked.

8. Out of the witnesses examined, P.W.1 is an eyewitness to the occurrence. He is the brother of the deceased. He has deposed that prior to the occurrence, A2 and others quarreled with him and caused extensive damage to his household articles and thereafter, on the date of occurrence, at about 8.30 p.m., A1 and A2 came to the Company, where he was working and beat him thoroughly and therefore, he complained the same to the deceased. He has further stated that then, the deceased along with him and P.Ws.2 and 3 questioned the accused with regard to the attack made by them and at that time, A1 and A2 attacked the deceased with wooden logs and caused head injury and the deceased died on the spot and when he tried to prevent A1 and A2 from attacking the deceased, they also attacked him and for the injuries sustained by him, he was also admitted in the Government Hospital, where, P.W.15 recorded his statement and registered the complaint.

9. P.W.2 is a daughter of the deceased. She is also an eye-witness to the occurrence. She has stated that when she, along with deceased, P.Ws.1 and 3, questioned the accused, they attacked the deceased with wooden logs and also caused injuries to P.W.1. P.W.3 is the wife of P.W.1. She is also an eyewitness to the occurrence. According to her, she also went along with the deceased and questioned the accused. P.W.4 has spoken about the previous quarrel between P.W.1 and A2 and others. He has also stated that at the time of occurrence, he saw A1 and A2 running away with wooden logs. He called the ambulance and sent P.W.1 to Government Hospital. P.W.5, has also seen the accused running away with wooden logs, at the time of occurrence.

10. P.W.6, Village Administrative Officer, is also a witness to the Observation Mahazar and Rough Sketch. P.W.7 is a wireman, working in the Tamilnadu Electricity Board. According to him, there was no power cut at the time of occurrence. P.W.8 is an Assistant Professor, working in the Government Medical College Hospital, Chengalpet, admitted P.W.1 and issued Accident Register, Ex.P.6 and he found minor abrasion in the ear and pain in the shoulder and chest. P.W.9, is the Doctor, who conducted postmortem on the dead body of the deceased and gave opinion with regard to the cause of death. P.W.10, Head Constable, attached to the respondent police, has stated that he identified the dead body of the deceased for postmortem and after postmortem, he handed over the dead to the relatives of the deceased.

11. P.Ws.11 and 12 turned hostile. P.W.13 is the photographer, who took photographs of the dead body of the deceased at the place of occurrence. P.W.14, Head Constable, submitted the express First Information Report to the Judicial Magistrate Court. P.W.15, Sub-Inspector of Police, who obtained the statement from P.W.1 in the hospital, registered the First Information Report. P.W.16 is the doctor, who treated P.W.1 in the Government Medical College Hospital, Chengalpet. P.W.17, Inspector of Police, has spoken about the investigation done and filing of final report.

12. 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 or mark any documents on their side.

13. 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 appellants/accused are before this Court with this Criminal Appeal.

14. We have heard Mr. P.Raghupathy, learned counsel appearing for the appellants and Mr. E.Raja, Additional Public Prosecutor, appearing for the State and we have also perused the records, carefully.

15. There are 3 eyewitnesses to the occurrence. P.W.1 is an injured eyewitness. He has also spoken about the motive for the occurrence. According to him, there was a previous quarrel between him and A2 and others and subsequently, on the date of occurrence, at about 8.30 a.m., A1 and A2 beat him in the place, where he was working and when, he complained the same to the deceased, the deceased and P.Ws.1 to 3, went in search of the accused and they found them near Asiya school and when the deceased questioned the accused, a quarrel arose and at that time, the accused attacked the deceased with wooden logs on his head and chest. It is in evidence that P.W.2, daughter of the deceased and P.W.3, wife of P.W.1, have also gone, along with the deceased and they are also eye-witnesses to the occurrence. P.W.1 has also sustained injuries in the same occurrence and he was admitted in the hospital, where P.W.15 has recorded the statement of P.W.1 and based on that First Information Report was registered by him. Hence, there is no reason to disbelieve the evidence of P.W.1 and P.Ws.2 and 3, who also accompanied the deceased and questioned the accused. Eventhough all the 3 witnesses are closely related to the deceased, and interested witnesses, their evidence cannot be rejected on that ground as they have consistently deposed about the occurrence. The medical evidence also corroborates the evidence of the eyewitnesses.

16. In the above circumstances, we find no reason to disbelieve the evidence of the eyewitnesses. Hence, we are of the considered view that only these appellants/accused have attacked the deceased with wooden logs and caused injuries on his head and caused his death.

17. Now, the next question arises for consideration is what was the offence that was committed by the accused by the said act?. As per the testimony of eyewitnesses, it is only the deceased and P.Ws.1 to 3 were in search of the deceased and when they found them near a school, the deceased had questioned them for beating P.W.1 and at that time, there was a quarrel. During the quarrel, being provoked by the words of the deceased and other eyewitnesses, the accused had lost their mental balance and attacked the deceased with wooden logs available there. Thus, the accused were not the aggressors and further it was not a premeditated murder. It was done due to sudden provocation, which was so sudden and grave and they had attacked the deceased with wooden logs, which were lying there. Eventhough the accused would not have any intention to cause the death of the deceased, certainly, they had the intention to cause head and chest injuries, which were sufficient in the ordinary course of nature, to cause the death of the deceased. In our considered view, the said act of the accused would squarely fall within the fourth limb and first exception under Section 300 I.P.C. Therefore, the appellants/accused are liable to be convicted under Section 304(ii) IPC.

18. So far as the quantum of punishment is concerned, the appellants are poor persons and there was no strong motive and it was also not a premeditated murder. It is only the deceased and other witnesses have gone to the place of the accused and questioned them and a quarrel has arisen between them. During the quarrel, the accused have lost their self control, on account of the provocative words spoken by the deceased and others. The said provocation was grave and also sudden and driven by the said sudden and grave provocation, the accused had attacked the deceased with wooden logs. Having regard to the mitigating as well as aggravating circumstances, sentencing each of the accused to undergo Rigorous Imprisonment for 5 years with a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for four weeks, would be sufficient to meet the ends of justice. So far as the conviction under Section 323, 294(b) IPC are concerned, there is evidence to prove that P.W.1 also sustained injuries and admitted in the hospital. Hence, the conviction under Sections 323, 294(b) IPC are liable to be confirmed.

19. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed in S.C.No.88 of 2011 on the appellants for offences under Sections 323 and 294(b) IPC are confirmed and the conviction and sentence imposed on the appellants for the offence under Section 302 I.P.C., is set aside and instead, they are convicted for the offence under Section 304(ii) I.P.C., and each of them is 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. Fine amount already paid by them shall be adjusted towards the fine now imposed. The period of sentence already undergone by appellants/accused shall be given set off under Section 428 Cr.P.C. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Sessions Judge,
District Sessions Court No.II,
Kancheepuram.
 2. The Inspector of Plice,
Salavakkam Police, Station,
Uthiramerur, Kancheepuram.
 3. The Superintendent, Central Prison,
Vellore.
(in duplicate for communication to the Accused)
 4. The Collector, Kancheepuram.
 5. The Director General of Police Chennai-4.
 4. The Public Prosecutor,
High Court, Madras.
- + 1 cc to Mr.P. Raghupathy, Advocate Sr.46839

Crl.A.No.19 of 2016

GJII(CO)
Eu 24.1.17



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