

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 28.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.194 of 2016

Nataraj

... Appellant

vs.

The State, by
The Inspector of Police,
Mettur Police Station,
Salem District.
(Crime No.120 of 2011)

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 22.12.2015 passed by the learned I
Additional Sessions Judge, Salem, in S.C.No.212 of 2014.

For Appellant : Mr.M.G.Udaya Shankar

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

The appellant in this appeal is the sole accused in
Sessions Case No.212 of 2014, on the file of the learned I
Additional Sessions Judge, Salem. The appellant/accused stood
charged as detailed below;

Sl.No.	Charge(s) framed against	Charge(s) framed
1.	Sole Accused	U/s. 302 of IPC

2. The Trial Court, after trial, by judgement dated 22.12.2015, convicted the appellant/accused and sentenced him as detailed below:-

Rank of the accused	Penal provision(s) under which convicted	Sentenced to undergo
Sole accused	U/s. 302 IPC	Life Imprisonment and to pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for six months.

Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) The deceased, in this case, one Boopathy was the brother of P.Ws.1 and 2 and son of P.W.3. The deceased and the accused are the permanent resident at Periyanna Gounder Nagar, Mettur, and they were close friends. Earlier, in the year, 2011, during the pongal festival, there was a quarrel between the accused and the deceased and during the quarrel, the deceased beat the accused in a public place. Hence, the accused had a vengeance against the deceased. On 19.02.2011 at about 10.45 p.m., when the deceased came in a motor cycle, the accused waylaid him and attacked him with bill hook on his neck. On hearing the news that the quarrel going between the accused and the deceased, P.Ws.1,2 and 3, the brothers and mother of the deceased rushed the scene of occurrence and saw the accused attacking the deceased with bill hook on his neck. Immediately, P.Ws.1 and 2 took the deceased in a motor cycle to the Government Hospital, Mettur.

(ii) P.W.6-Doctor, working in the Government Hospital, Mettur, admitted and examined the deceased. Since the condition of the deceased was very serious, she referred him to the Government Mohan Kumaramangalam Medical College Hospital, Salem. She issued an Accident Register (Ex.P6). P.W.7-Assistant Surgeon, in the Government Mohan Kumaramangalam Medical College Hospital, Salem, admitted the deceased in the Hospital at about 12.35 p.m., in the I.C. Ward and issued Accident Register (Ex.P7). Subsequently, on 20.02.2011 at about 5.10.am., the deceased succumbed to the injuries.

(iii) P.W.12, Sub Inspector of Police, attached to the respondent police station, on receipt of the intimation from the Government Hospital, reached the Government Mohan Kumaramangalam Medical College Hospital, Salem and obtained statement from P.W.1 and based on the statement of P.W.1, registered a case in Crime No.120 of 2011 under Section 302 IPC, and prepared first information report [Ex.P12]. He sent the express first information report to the learned Judicial Magistrate No.I, Salem and copies of the same to the higher officials.

(iv) P.W.13, Inspector of Police, attached to the respondent police, on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence, prepared an Observation Mahazar [Ex.P2], drew a Rough Sketch [Ex.P14]. He recovered M.O.3, Bloodstained soil, M.O.4, Sample soil, M.O.5, blood stained concrete, M.O.6, Sample concrete, M.O.7, Blood stained concrete under Ex.P4 Mahazar in the presence of witnesses. P.W.13 examined some witnesses and recorded their statements. Then, he proceeded to the Government Mohan Kumaramangalam Medical College Hospital, Salem, conducted inquest over the dead body in the presence of panchayatdars between 12.30 p.m, and 3.30 p.m., and prepared inquest report [Ex.P16]. Then, he sent the dead body for postmortem with requisition letter through P.W.11, Head Constable. Thereafter, P.W.13, handed over the investigation to P.W.14, his successor.

(v) P.W.9-Lecturer, working in the Government Mohan Kumaramangalam Medical College Hospital, Salem conducted postmortem on the dead body of the deceased on 20.02.2011 at about 3.45 p.m., and found the following injuries:-

External Injuries:

Dark reddish abrasion over right foot 1 x 1 cm over lateral aspect of left elbow 1 x 0.5 cm. Tatoo mark seen over right and left arm over left arm named Ramesh Anand over right arm flower picture. An bolique sutured cut injury over left side of the neck with 6 sutures on removal measuring 12 x 4 x 7 cm with acute angle with evented edges. It is situated 8 cm below the 4 mastoid process 6cm above the mid clavicular region, 6 cm from the thyroid cartilage.

O/d. Severance of underlying soft tissue. Muscles, Blood vessels and Nerves and fracture of transverse process of C-5, C6 vertebrae left side with severance of left side para vertebral muscle and underlying spinal cord contusion. Other neck structures are normal. Hyoid bone intact. Evidence of surgical ligation of neurovascular bundle in the above mentioned cut injury. No other external injuries anywhere in the body.

She opined that the deceased appeared to have died of shock and haemorrhage due to the cut injury sustained on the left side of the neck. She issued Postmortem Certificate (Ex.P11).

(vi) P.W.14- Inspector of Police, working in the respondent police station continued the investigation. He examined some witnesses and recorded their statements. On 22.02.2011 at about 2.00 p.m., he arrested the accused and on

such arrest, the accused voluntarily gave confession and based on the disclosure statement [Ex.P8], P.W.14, recovered M.O.1, bill hook, M.O.2, Black colour pant, M.O.3, Shirt in the presence of witnesses under Ex.P.9 mahazar. Then, he sent the accused for Judicial custody. He sent the material objects for chemical examination. He examined the Doctor, who conducted postmortem autopsy on the dead body and recorded her statement and after completion of investigation, laid the charge sheet against the accused.

4. 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 same, on the side of the prosecution, as many as 14 witnesses were examined, 22 documents and 10 material objects were marked.

5. Out of the witnesses examined, P.Ws.1,2 and 3 are the brothers and mother of the deceased and also an eye witnesses to the occurrence. According to them, on 19.02.2011 at about 10.45 p.m., they were in their house, at that time one Lakshmanan informed them that there was a quarrel between the deceased and the accused going on, immediately they rushed the place of occurrence and saw the accused attacking the deceased with bill hook on his neck and when they raised alarm, the accused ran away. They further deposed that P.Ws.1 and 2 took the deceased to the Government Hospital, Mettur, thereafter, he was referred to Government Mohan Kumaramangalam Medical College Hospital, Salem. P.W.4 turned hostile. P.W.5 is the witness to the observation mahazar and recovery of material objects 3 and 4. P.W.6 is the Doctor working in the Government Hospital, Mettur, He has given first aid treatment to the deceased and referred him to Government Mohan Kumaramangalam Medical College Hospital, Salem. He issued an Accident Register [Ex.P6]. P.W.7 is the Doctor working in the Government Mohan Kumaramangalam Medical College Hospital, Salem. He admitted the deceased in the Hospital and issued Accident Register [Ex.P7]. P.W.8 was working in the Revenue Inspector, Revenue Department, Mettur. He is witness to the arrest and confession statement of the accused and recovery of M.O.1, bill hook. P.W.9-Doctor, who conducted postmortem on the dead body of the deceased and issued postmortem certificate. P.W.10-Head Constable, who submitted the first information report to the Judicial Magistrate Court. P.W.11-Head Constable, who identified the dead body for postmortem and after completion of postmortem, handed over the dead body to the relative of the deceased. P.W.12-Sub Inspector of Police, attached to the respondent police station, who recorded the statement of P.W.1 and based on the statement registered the case in Crime No.120 of 2011 and sent the first information to the Judicial Magistrate Court and copies of the same to the higher officials. P.W.13-Inspector of police attached to the respondent police, on receipt of the first

information report, commenced the investigation, prepared an observation mahazar, conducted inquest over the dead body, examined some witnesses and recorded their statements, and then handed over the investigation to P.W.14 his successor. P.W.14, Inspector of Police attached to the respondent police, continued the investigation, arrested the accused, recovered the material objects, examined the Doctor who conducted postmortem and recorded her statement, remanded the accused to the judicial custody and after completion of investigation, he filed the charge sheet against the accused.

6. 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. He examined one Anthoniammal as D.W.1. According to her, there was a quarrel between the deceased and another person in front of her house. At the time of quarrel, there was a power cut, she saw the deceased fell down. Thereafter, P.Ws.1,2 and 3 came there and took the deceased to the hospital.

7. Having considered all the above, the Trial Court convicted and sentenced the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused are before this Court.

8. We have heard Mr.M.G.Udhaya Shankar, 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.

9. In this case, P.Ws.1 to 3 are the eye witnesses to the occurrence. Even though, they are closely related to the deceased and also interested witnesses, but their testimony is consistent. According to them, on the date of occurrence at about 10.45 p.m., one Lakshmanan informed them that there was a quarrel between the deceased and the accused, immediately they rushed the place of occurrence and saw the accused attacking the deceased with bill hook on his neck and when they raised alarm, the accused ran away. Immediately, P.Ws.1 and 2 took the deceased to the Government Hospital, Mettur, where, the deceased was referred to the Government Mohan Kumaramangalam Medical College Hospital, Salem. Merely because, they are all interested witnesses and their testimony cannot be brush aside.

10. It is well settled principle law that if the testimony of the interested witnesses are consistent, cogent and without any contradiction, it could be believed. In the instant case, P.Ws.1,2 and 3 consistently stated that the accused attacked the deceased with bill hook on the left side of his neck. The medical evidence also corroborated the evidence of eye witnesses. Hence, we have no reason to disbelieve the testimony

of eye witnesses. Even though, the accused examined one Anthoniammal as D.W.1 to prove that the occurrence took place in front of her house and only after the occurrence all the eye witnesses came to the scene of occurrence. But, it has been contradicted in the cross examination. Hence, the evidence of D.W.1 has no way helpful to the accused. In the above circumstances, we are of the considered view that it is only this accused has attacked the deceased with bill hook on the left side of his neck and caused his death.

11. Now, the question is "what was the offence that was committed by the accused by the said act. It is the consistent evidence of all the eye witnesses that there was a quarrel between the accused and the deceased and during the quarrel, the accused attacked the deceased with billhook on the left side of his neck. From the above evidence, it would be seen that during the quarrel, being provoked by the words of the deceased, the accused attacked the deceased with bill hook on the left side of his neck by giving single cut injury on the neck. It is not a premeditated murder. Though, the accused did not have any intention to cause death of the deceased, still he had an intention to cause injury, which is sufficient in the ordinary course of nature, to cause the death of the deceased. Hence, the act of the appellant/accused squarely falls within the 3rd limb of Section 300 IPC., and thus the act of the appellant/accused would squarely fall within the first exception to Section 300 of IPC. Therefore, the accused/appellant is liable to be punished for the offence under Section 304(i) IPC.

12. Turning to the quantum of punishment, the accused is a poor man and he has no bad antecedence and it was not a premeditated murder. The accused and the deceased were friends. At the time of quarrel, due to sudden provocation, the accused lost his mental faculty and had attacked the deceased, which resulted in the death of the deceased. Having regard to the totality of all these circumstances, we are of the considered view that sentencing the accused/appellant to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/- in default, to undergo rigorous imprisonment for four weeks would meet the ends of justice.

13. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/accused in S.C.No.212 of 2014 dated 22.12.2015 on the file of the learned I Additional Sessions Judge, Salem, is set aside and instead he is convicted for an offence under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/-, in default, to undergo four weeks rigorous imprisonment. It is directed that the period of sentence already undergone by the appellant/accused shall be

given set off as required under Section 428 IPC. If the appellant/accused is not in custody, the trial Court is directed to take appropriate steps to secure him and commit him to prison to undergo remaining period of sentence.

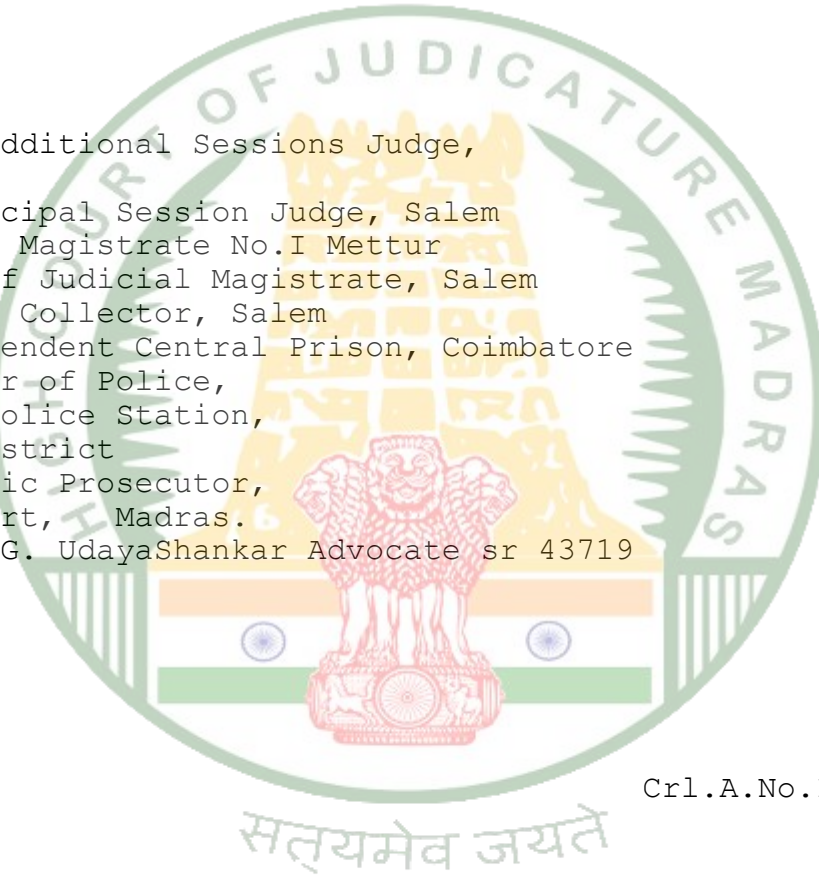
s/d-
Assistant Registrar(CS-II)

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Sub-Assistant Registrar

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To

1. The I Additional Sessions Judge, Salem.
 2. The Principal Session Judge, Salem
 3. Judicial Magistrate No.I Mettur
 4. The Chief Judicial Magistrate, Salem
 5. District Collector, Salem
 6. Superintendent Central Prison, Coimbatore
 7. Inspector of Police, Mettur Police Station, Salem District
 8. The Public Prosecutor, High Court, Madras.
- +1 CC to M.G. UdayaShankar Advocate sr 43719



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