

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.317 of 2016

Neelakandan

... Appellant

Vs

State rep. By
Inspector of Police,
Kanchee Taluk Police Station,
Kancheepuram,
(Cr.No.1024 of 2012)

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the learned Sessions Judge No.II, Kancheepuram, by judgment dated 02.03.2016, passed in S.C.No.50 of 2013.

For Appellant : Mr.M.G.Udhayashankar

For Respondent : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

JUDGEMENT

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

The sole accused in S.C.No.50 of 2013 on the file of Sessions Court No.2, Kancheepuram, is the appellant herein. He stood charged for the offences under Sections 302 and 201 IPC. After trial, by judgment dated 02.03.2016, the trial court convicted the appellant on both the charges and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.2000/-, in default to under go Rigorous Imprisonment for one year for the offence under Section 302 IPC and for the offence under Section 201 IPC, the appellant was sentenced to undergo Rigorous Imprisonment for 3 years and also to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for 6 months. The trial

Court ordered the sentences imposed to run concurrently. Challenging the above said conviction and sentence, the appellant is before this Court, with this appeal.

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

The deceased, in this case, Santhosh @ Santhoshkumar, is the friend of the accused. Both the appellant and the deceased were working as painters in the same company. On 23.11.2012, at about 11.30 p.m., both the accused and the deceased consumed liquor in the house of the accused. At that time, there was a quarrel between them. During the quarrel, due to sudden provocation, the appellant dashed the head of the deceased against the wall, forcibly, and caused severe injuries and in the result, the deceased died. Then, the accused threw the body of the deceased in the septic tank of his house.

3. On the next day, P.W.1, brother of the deceased, found the deceased missing and he searched for him. When he enquired the accused about the whereabouts of his brother, the deceased, the accused told him that both of them consumed liquor in his house on the previous day night and during the quarrel, he dashed the head of the deceased against the wall and caused his death and then, he ran away. Immediately, P.W.1 lodged a complaint, Ex.P.1, before the respondent police at about 11.30 a.m.

4. P.W.12, the then Sub-Inspector of Police, Kancheepuram Taluk Police Station, on receipt of the complaint, registered a case in Crime No.1024/2012 under Sections 302 and 201 IPC. Thereafter, he sent the Express First Information Report, Ex.P.15, to the jurisdictional Magistrate Court and copies of the same to higher police officials.

5. P.W.13, Inspector of Police, attached to the respondent police, on receipt of First Information Report, commenced investigation and proceeded to the scene of occurrence and prepared an Observation Mahazar(Ex.P2) and drew a Rough Sketch(Ex.P.16), in the presence of witnesses. He also recovered two stainless steel tumblers (M.Os.3 & 4) and a match box (M.O.5) under a cover of Mahazar, Ex.P.4. Since the body was thrown inside the septic tank, he made arrangements to pump out the water from the tank and recovered the dead body from the septic tank. Then, P.W.13 conducted inquest on the dead body of the deceased, between 1.30 p.m. and 3.00 p.m., in the presence of panchayathars and prepared an Inquest Report, Ex.P.18. Then, he sent the dead body for autopsy to the Government Hospital, Kancheepuram, through P.W.10, Special Sub-Inspector of Police.

6. P.W.11, Doctor, working in the Government Hospital, Kancheepuram, on 25.11.2012, at 11.00 a.m., conducted autopsy on the dead body of the deceased and found the following injuries:-

" external injuries : Lacerated wound on the vertex of scalp measuring 2 x 1 cm LW 6 x 4 cm over occipital region of scalp. No other injuries"

He has given a postmortem report, Ex.P.14 and he was of the opinion that the deceased died due to head injury with neurogenic shock.

7. On the same day, the accused appeared before P.W.7, Village Administrative Officer, and voluntarily gave a confession. After recording the confession statement of the accused, P.W.7 produced him before the respondent police. P.W.17 arrested the accused and on such arrest, the accused gave a voluntary confession. Based on the disclosure statement of the accused, P.W.17 recovered the bloodstained pant of the accused (M.O.9). Then, he sent the accused to judicial custody. P.W.13 recorded the statements of the doctor, who conducted postmortem on the dead body of the deceased and other witnesses. On completion of investigation, he laid charge sheet against the accused.

8. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same. In order to prove the case of prosecution, as many as 13 witnesses were examined and 23 documents were exhibited, besides 9 material objects.

9. Out of the witnesses examined, P.W.1 is the brother of the deceased. According to him, on 23.11.2012, his father met with an accident and he was admitted in the Government Hospital, Kancheepuram and both the accused and the deceased went to the hospital and met his father in the hospital. He has further stated that on the next day, i.e. on 24.11.2012, the deceased was found missing and therefore, he searched for him and at about 7.15 a.m, he went to the house of the accused and enquired him about the whereabouts of the deceased and at that time, the accused told him that on the night of previous day, both the accused and the deceased consumed liquor in the house of the accused and at that time, there was a quarrel between them and due to sudden provocation, he dashed the head of the deceased against the wall and caused his death and then, the accused ran away. Immediately, P.W.1 lodged a complaint before the respondent police at about 11.30 a.m.

10. P.W.2 is a witness to the Observation Mahazar and also a witness for recovery of M.Os.1 to 5. P.W.3 is a co-employee of the accused and the deceased. He is residing in the opposite house of the accused. According to him, on the date of occurrence, at about 11.30 p.m., he heard some noise from the house of the accused and when he came out, he could not see any person and on the next day morning, at about 6.30 a.m., the accused told him that in the previous night, there was a quarrel

between him and the deceased and during the quarrel, he pushed the deceased against the wall and caused his death.

11. P.W.4 is a neighbour of the accused and the deceased. According to him, he also heard some noise at about 11.30 p.m, from the house of the accused and on the next day morning, the accused told him that he had murdered the deceased. P.W.5 has stated that he drained water from the septic tank, by using his vehicle and pulled out the dead body of the deceased from the septic tank. P.W.6, a friend of the deceased, has stated that he helped to bring the dead body from the septic tank and identified the body. P.W.7, Village Administrative Officer, before whom the accused is said to have given an extra judicial confession, has turned hostile. So, he has not supported the case of the prosecution. P.W.8, Village Assistant, has also turned hostile. P.W.9, another Village Assistant, working under P.W.7, has also turned hostile.

12. P.W.10 is the Special Sub Inspector of Police, who accompanied the dead body to Government Hospital, Kancheepuram and identified the dead body for postmortem. P.W.11, Doctor, working in the Government Hospital, has stated that he conducted autopsy on the dead body of the deceased and gave opinion with regard to the cause of death. P.W.12 is the Sub-Inspector of Police, attached the respondent police, who registered the complaint. P.W.13, Inspector of Police, has deposed that he conducted investigation, arrested the accused and recovered material objects. After recording the statement of the witnesses and on completion of investigation, he has laid charge sheet against the accused.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor mark any documents.

14. Having considered all the above, the Trial Court convicted the accused for the offences as stated in the first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

15. We have heard Mr.M.G.Udhayashankar, learned counsel for the appellant and Mr.V.M.R.Rajendran, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

16. It is a case of circumstantial evidence. Even though, the accused is said to have given an extra judicial confession before the Village Administrative Officer, P.W.7, he had turned hostile and the extra judicial confession was also

not marked before the Court. However, there are other circumstances relied on by the prosecution to prove the guilt of the accused.

17. The first and the foremost circumstance is that both the accused and the deceased were seen together on 23.11.2012 and then, they have gone to the Government Hospital, Kancheepuram, where the father of the deceased was admitted. On the next day morning, the deceased was found missing and when P.W.1, brother of the deceased, enquired about the deceased, the accused had voluntarily given a confession that on the previous day night, he and the deceased consumed liquor, together and at that time, there was a quarrel between them and during that quarrel, out of provocation, he dashed the head of the deceased against the wall and caused injuries on the head of the deceased and he succumbed to injuries. The medical evidence also corroborates the same.

18. The next circumstance is the body of the deceased was found in the Septic tank in the house of the accused and only on the confession of the accused, the dead body was found. It is one of the strong circumstances against the accused. It is a consistent hypothesis that it is only this accused, who had caused the death of the deceased, as there is no alternative hypothesis available. Hence, we are of the considered view that the prosecution has proved the circumstances beyond any reasonable doubt unerringly pointing the guilt of the accused.

19. The next question is what was the offence that was committed by the accused by the said act?. The accused and the deceased were close friends. At the time of occurrence, both of them have consumed liquor and both of them were highly intoxicated. At that time, there was a quarrel between the accused and the deceased. During the quarrel, the accused, being provoked by the words of the deceased, which was so sudden and grave, dashed the head of the deceased against the wall and caused head injuries and the deceased succumbed to the injuries. It is not a premeditated murder. Even though the accused would not have had any intention to cause the death of the deceased, definitely, he could have had the knowledge that his act would be imminently dangerous and it must, in all probability, would cause death or such bodily injury as is likely to cause death. Hence, the act of the accused will only fall under the fourth limb of Section 300 IPC and also fourth exception of Section 300 IPC. Hence, the appellant/accused is liable to be punished under Section 304 (ii) IPC.

20. Now turning to the quantum of punishment, the accused is a poor man. He has no bad antecedent and out of sudden provocation and heat of passion, he lost his mental balance. While consuming alcohol, there was a sudden quarrel between the

accused and the deceased and due to sudden provocation only , he dashed the deceased against the wall without any intention to murder him. He is also an young man. Considering the mitigating as well as aggravating circumstances, sentencing him to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for four weeks would meets the ends of justice.

21. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed in S.C.No.50 of 2013 on the appellant for offences under Sections 201 IPC is confirmed and the sentence imposed on the appellant for the offence under Section 302 I.P.C., is set aside and instead, he is convicted for offence under Section 304(ii) 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. Both the sentences are to run concurrently. The period of sentence already undergone by appellant/accused shall be given set off under Section 428 Cr.P.C. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

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Sub-Assistant Registrar

To

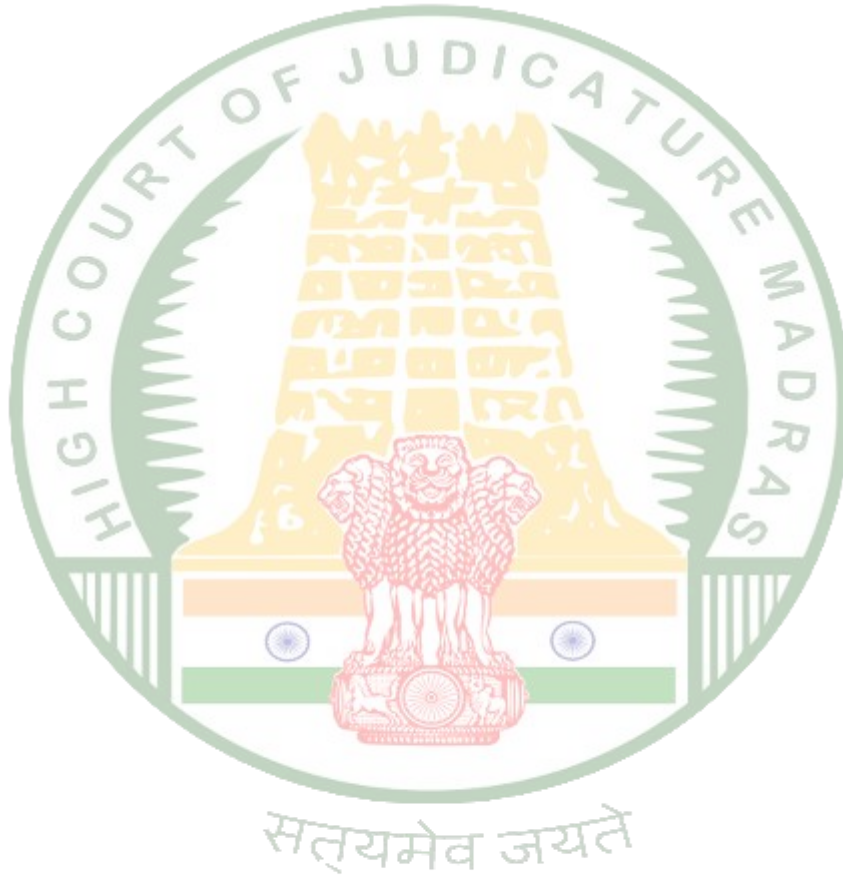
1. The Sessions Judge,
District Sessions Court No.II,
Kancheepuram.
-Do- The Principal Sessions Judge, Chengalpattu
2. The Judicial Magistrate No.II, Kancheepuram
-Do- The Chief Judicial Magistrate,, Chengalpattu
3. The District Collector, Kancheepuram
4. The Superintendent of Police, Kancheepuram
5. The Inspector of Police,
Kanchee Taluk Police Station
Kancheepuram
6. The Director General of Police, Mylapore, Chennai
7. The Superintendent, Central Prison, Vellore
8. The Public Prosecutor,
High Court, Madras.

+1 CC to M.G. Udhayashankar, sr 47655

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The Section Officer(crl. Section Records)
High Court, Madras

Crl.A.No.317 of 2016

AD (CO)
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