

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Criminal Appeal No.347 of 2016

Palani

... Appellant/Accused

-Vs-

State Rep. by
The Inspector of Police
Oragadam Police Station,
Oragadam, Kanchipuram District. ... Respondent/Complainant

This Criminal Appeal has been filed under Section 374(2) of Cr.P.C., preferred to set aside the conviction and sentence imposed by judgment dated 29.02.1016 made in S.C.No.20 of 2011 on the file of the Sessions Judge -II, Kanchipuram.

For Appellant : Mr.R.Karthikeyan for
Mr.T.Sathiyamoorthy

For Respondent : Mr.E.Raja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.20 of 2011 on the file of the learned Sessions Judge No.2 Kanchipuram. He stood charged for offences under Section 302, 307, 324 (2 counts) and 326 IPC. By judgment dated 29.02.2016, the Trial Court convicted him under Sections 302, 324 (2 counts) and 326 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for one year for offence under Section 302 IPC and to undergo rigorous imprisonment for one year for each count for offence under Section 324 IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for three months for the offence under Section 326 IPC. The Trial Court acquitted him from the charge under Section 307 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

P.W.1 and the accused are relatives. They were residing at Bajanai Koil Street, Panruti Kandigai at Sriperambudur. The deceased in this case was one Ajithkumar. He is sister's son of P.W.1. P.W.4 is the mother of the deceased. For a long time, there was enmity between the accused on one side and P.W.1 and the deceased on the other side in respect of sharing of a common property. Further, the wife of the accused had deserted him. The accused had suspicion that it happened because of the evil advise of P.W.1. These are all stated to be the motive for the accused against the deceased and P.W.1.

3. It is further alleged that on 28.04.2009 at about 9.30 p.m., the deceased and P.W.4, mother of the deceased were sleeping in their house. P.W.5 - mother of P.W.1 and P.W.6 - brother of P.W.1 were residing near the house of the deceased. At that time, the accused came to the house of the deceased armed with a knife. On reaching the house, he cut the deceased indiscriminately. P.Ws.4 to 6 intervened. The accused attacked them also with knife. Thus P.Ws.4 to 6 sustained injuries. P.Ws.1 to 3 witnessed the occurrence. The deceased fell down in a pool of blood and died instantaneously. The accused ran away from the place of occurrence with the knife.

4. Immediately, P.Ws.1 to 3 took P.Ws.4 to 6 to the hospital and admitted them as inpatient. P.W.1 then went to Oragadam Police Station and made a complaint at 12.00 midnight on 28.04.2009 (24 hrs). P.W.12 the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.76 of 2009 under Sections 324 and 302 IPC. Ex.P1 is the complaint and Ex.P16 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Judicial Magistrate on 29.04.2009 at 01.00 p.m.

5. P.W.14, the then Inspector of Police took up the case for investigation. He went to the place of occurrence at 6.00 a.m. on 29.04.2009 and prepared an Observation Mahazar and a Rough Sketch in the presence of Selvaraj and Suresh. He recovered blood stained earth and sample earth from the place of occurrence. He recovered the mat with blood stains, found at the place of occurrence under a Mahazar. Then on going over to the hospital, he conducted inquest on the body of the deceased between 8.30 a.m. and 10.00 a.m. on the same day, in the presence of panchayatdars. Then he forwarded the body for post-mortem.

6. P.W.11 - Dr.Parasakthi conducted autopsy on the body of the deceased on 29.04.2009 at 1.00 p.m. He found the following injuries:

"An oblique cut injury with clear cut and accute ends seen on the front of meddle of left side neck measuring 4 cm x 2 cm x bone deep.

Muscles and blood vessels found cut trachea, oesophagus, hyoid bone, thyroid and critical cartilage intact. Skull - intact. Brain - pale. Stomach contained 100 gms of partly digested cooked food particles."

Ex.P.15 is the post-mortem certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage and due to multiple injuries found on the body of the deceased.

7. P.W.14 during the course of investigation arrested the accused on 29.04.2009 at 1.00 p.m. near Vallakottai bus stand in the presence of Selvaraj and Suresh. On such arrest, he made voluntary confession in which he disclosed the place where he had hidden the Vettukathi (knife). In pursuance of the same, he took the police and the witnesses to the said place and produced the knife, shirt and lungi, all with blood stained. He recovered the same under a Mahazar. On returning, he handed over the accused to the Court for judicial remand. The collected material objects were also submitted to court. He collected medical records pertaining to the treatment given to P.Ws.4 to 6. Then the investigation was taken over by his successor P.W.15. On completing the investigation, P.W.15 laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed charges, as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 15 witnesses were examined and 22 documents were exhibited, besides 12 material objects.

9. Out of the said witnesses, P.Ws.1 to 6 are the eye witnesses to the occurrence. P.Ws.4 to 6 are the injured eye witnesses. They have vividly spoken about the entire occurrence including the overt act of the accused and injuries inflicted on the deceased as well as P.Ws.4 to 6. P.W.7 has spoken about the preparation of observation mahazar and rough sketch. P.W.8- Dr.Sujatha has stated that on 28.04.2009 at 11.15 p.m., when she was in the Chengalpattu Medical College hospital, the deceased was brought to the hospital. She was told that on the same day at 9.30 p.m., at his house, he was cut by two known persons. She found him dead. Ex.P9 is the accident register. She forwarded the body to the mortuary.

9(i) On the same day at 11.25 p.m., she examined P.W.6. He told that on 28.04.2009 at 9.30 p.m., he was attacked by two known persons. She found the following injuries on him:

1. a lacerated injury measuring 3 x 1 x 0.5cm on the left shoulder
2. an abrasion measuring 10 x 1 cm on the right scapula
3. an abrasion measuring 4 x 1 cm on the back of chest.

Ex.P10 is the accident register. The injuries according to her opinion were of simple in nature.

9(ii) On the same day at 11.35 p.m., she examined P.W.4. She told that at 9.30 p.m., on 28.04.2009, she was attacked by two known persons. She found the following injuries:

1. a lacerated injury measuring 7 x 2 x 1 cm on the right side of the neck.

2. a lacerated injury measuring 5 x 2 x 1 cm on the right shoulder.

Ex.P11 is the accident register. According to her, the said injuries were simple in nature.

9(iii) On the same day, at 11.45 p.m., she examined P.W.5. She also told that at 9.30 p.m on the same day she was attacked by two known persons. P.W.8 found the following injuries on her:

1. a lacerated injury measuring 15 x 3 x 4 cm on the right cheek. Ex.P.12 is the accident register. According to her, the said injuries were grievous in nature.

10. P.W.9 has spoken about the fact that he handed over the dead body to the doctor for post-mortem. P.W.10 has spoken about the chemical analysis from the Tamil Nadu Forensic lab. He has stated that he examined material objects and found blood stains on all the material objects including the Vettukathi (Knife). P.W.11 has spoken about the post-mortem conducted and her final opinion regarding the cause of death. P.W.12 has spoken about the registration of the case and investigation done. P.W.13 has spoken about the treatment given to P.W.5. P.Ws.14 and 15 have spoken about the investigation done and final report filed.

11. 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 marked any document on his side. His defence was a total denial.

12. Having considered all the above materials, the trial Court convicted the appellant herein as detailed in the first paragraph of this judgment and that is how the appellant is 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 State and we have also perused the records carefully.

14. The learned counsel for the appellant would submit that though P.Ws.4 to 6 are the injured eye witnesses and though P.Ws.1 to 3 have claimed that they witnessed the occurrence, they cannot be believed for the simple reason that at the earliest point of time, P.Ws.4 to 6 have told P.W.8 Dr.Sujatha that they were attacked by two known persons. Subsequently, during investigation, they have changed their version and stated that it is only the appellant, who caused

the injuries on them. This according to the learned counsel for the appellant is material contradiction. In our considered view, it is not so. Admittedly, P.Ws.4 to 6 sustained injuries in the same occurrence in which deceased sustained injuries and died. Therefore, the presence of P.Ws.4 to 6 at the place of occurrence cannot be disbelieved. Accordingly, the presence of P.Ws.1 to 3 also cannot be disbelieved because P.W.1 is the family member of the deceased, who was residing with the deceased and P.Ws. 2 and 3 are the neighbours. Admittedly, the deceased had breathed his last on his way to the hospital. P.Ws.4 to 6 also accompanied him. They went to the hospital. In such a situation, when the doctor had enquired them as to the number of persons who attacked them, P.Ws.4 to 6, in such a disturbed mood would have said something erroneously about the number of assailants and that cannot be given much weightage. Therefore, this argument of the learned counsel for the appellant that there were two assailants, as spoken by these three witnesses at the earliest point of time cannot be given any weightage. Further, it is not as though the accused is an alien to these witnesses. There is no need for these witnesses to omit the real culprit and to falsely implicate the accused, had it been true that there were two assailants who were different persons. Therefore, this argument of the learned counsel for the appellant is rejected.

15. The next argument of the learned counsel for the appellant is that the entire family members of the accused were taken to the police station after the occurrence. Of course, it is in the evidence of P.W.1. It may be true that other family members of the accused had also been taken to the Police Station for the purpose of interrogation. But that would not in any manner create any doubt in the credibility of evidences of P.Ws.1 to 6.

16. Further, the medical evidence duly corroborates the eye witness account of P.Ws.1 to 6. There was no delay in preferring the complaint also. P.W.1, after admitting P.Ws.4 to 6 in the hospital and after having come to know that the deceased was dead, had gone to the Police Station and made Ex.P1 complaint. The learned counsel for the appellant is not in a position to point out any infirmity in the evidence of these eye witnesses. Thus in our considered view, eye witness account which draws adequate corroboration from the medical evidence prove the guilt of the accused beyond reasonable doubts. Thus in our considered view, the Trial Court was right in convicting the accused under Sections 302 and 324 (2 counts) and 326 IPC.

17. Now turning to the quantum of punishment, in our considered view, the Trial Court has imposed only proportionate punishment, by having regard to mitigating as

well as aggravating circumstances. Thus, we do not find any reason to interfere with the quantum of punishment also. We do not find any merit at all in this appeal.

18. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The conviction and sentence imposed by the Trial Court is hereby confirmed. It is reported that the appellant is in jail. The appellant is directed to undergo the remaining period of sentence as imposed by the trial Court.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

svki

To

- 1.The Inspector of Police
Oragadam Police Station,
Oragadam, Kanchipuram District.
- 2.The Sessions Judge -II,
Kanchipuram.
- 3.The Principal District and Sessions Judge,
Kanchipuram at Chengalpet.
- 4.The District Musif Cum Judicial Magistrate,
Sriperumbudur, Kanchipuram District.
- 5.Do Through The Chief Judicial Magistrate,
Kanchipuram.
- 6.The Superintendent,
Central Prison,
Vellore.
- 7.The Public Prosecutor
High Court, Chennai.

+1cc to Mr.T.Sathiyamoorthy, Advocate, S.R.No.47433

Cr1.A.No.347 of 2016

NRJK (CO)
CA(28/09/2016)