

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 16.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

CrI.A.No.589 of 2012

Doss

... Appellant/Accused

vs.

State, rep.by
Inspector of Police,
Poonamallee Police Station,
Poonamallee
P.S.Cr.No.711 of 2004

... Respondent/Respondent

Criminal appeal preferred under Section 374 Cr.P.C.,
against the judgement dated 12.8.2005 passed by the Fast Track
Judge-III, Poonamallee, in S.C.No.50 of 2005

For Appellant : Mr.S.Senthilvel, Legal Aid counsel

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu,J.)

The appellant is the sole accused in Sessions Case No.50 of 2005, on the file of the Additional District and Sessions Judge, Fast Track Court-III, Chengalpattu, at Poonamallee. He stood charged for the offence under Section 302 of the Indian Penal Code. By judgement dated 12.08.2005, the trial Court convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for two years. 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:

(a) The deceased in this case was one Mr.Velan @ Vela. The deceased Velan @ Vela had illicit intimacy with one Sathya. Sathya is none other than the aunt of the accused.

The accused took exception to the said conduct of the deceased in having illicit intimacy with his aunt. This is stated to be an initial motive for the accused against the deceased. Subsequently, the accused had fallen in love with one Latha. But the deceased Velan @ Vela, arranged for marriage between Latha and one Mr.Babu. This is stated to be the further motive for the accused against the deceased.

(b) On 14.06.2004, the accused had come to meet Latha. The deceased questioned the same and slapped the accused on his cheek. After this incident, when the deceased was returning, the accused followed with an intention to do away with him. At around 9.45 p.m. on 14.06.2004, the accused took a Pepsi bottle from the shop of P.W.6, with that he attacked the deceased on his head. The deceased entered into Rukmani 1st Cross Street. The accused followed him. There, he attacked the deceased with a wooden log and also with a stone. The deceased fell down with injuries. The occurrence was witnessed by P.Ws.1, 3 and 4. They raised alarm. Leaving the dead body, the accused fled away from the scene of occurrence. On hearing the alarm raised, the villagers gathered there. Then, P.W.1 went to Poonamallee Police station and made a complaint at 11.00 p.m. on 14.6.2004. P.W.11, the then Inspector of Police, on receipt of the said complaint, registered a case in Crime No.711 of 2004, under Section 302 of the Indian Penal Code, against the accused. Ex.P.8 is the First Information Report. He forwarded Ex.P.1 and Ex.P.8 to the Court, which were received by the learned Magistrate at 8.00 a.m. on 15.06.2004. Taking up the case for investigation, he proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch, in the presence of P.W.5 and another witness. From the place of occurrence, he recovered a blood stained wooden log, a pepsi broken bottle, blood stained earth and sample earth, under a mahazar, in the presence of the same witnesses. Then, at 12.30 a.m. on 15.06.2004, he conducted inquest on the body of the deceased and forwarded the body for postmortem. P.W.2, Dr.Manohar, conducted autopsy on the body of the deceased, on 15.06.2004 at 2.30 p.m. He found the following injuries:

"Injuries: (1) Lacerated wounds over right side of occipital region 5 x 2 x 1 cm. over left eyebrow 6x3x2 cm middle of upper lip 2x1x1 cm Middle of lower lip 2x1x1 cm. Middle of chin 2 x 1 cm Left side of chin 3 x 3 x 1 cm. O/d (2) Fracture of body of Left Mandible with Haematoma (3) Brown color broad abrasion over front of right shoulder 10 x 4 cm. (4) Reddish sub scalp contusion over right side of occipital and mid frontal region (5) Reddish sub dural and sub arachnoid haemorrhage over front Pavieto

temporal lobes on both sides and right occipital lobe (6) Fissured fracture of anterior and middle cranial fossa at middle (7) Reddish subcutaneous contusion over middle of chest neck and left clavicular region (8) Lacerated wound over left chest 6 x2x1 cm. All the above injuries one antemortem in nature Heart: Intact contents fluid blood in all chambers valves: Normal Coronaries : Patent Hyoid bone : Intact Stomach : 200 gms of partially digested food substance present. Lungs Liver spleen kidney Normal C/s. congested Intestines : Distended with gas. Bladder : Empty Pelvis : Intact. Scalp bones, Membranes, Brain:vide injury column Spinal Column : Intact."

Ex.P5 is the postmortem certificate. The Doctor opined that the death was due to cumulative effect of the injuries. On 15.06.2004, P.W.11 arrested the accused at Katchipattu Colony, in the presence of P.W.8 and another witness. On such arrest, at 3.30 p.m. the accused made a voluntary confession, in the presence of P.W.8 and another witness. But no discovery of any fact was made out of the same. Then, P.W.11 forwarded the accused to the Court for judicial remand. At his request, the material objects were sent for chemical examination and according to the report, there were blood stains on all the material objects, including the wooden stick. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge against the accused under Section 302 of the Indian Penal Code. Since the accused denied the same, to prove the case, on the side of the prosecution as many as 11 witnesses were examined, 12 documents and 10 material objects were marked. Out of the said witnesses, P.Ws.1, 3 and 4 were examined as eyewitnesses to the occurrence. But, P.W.4 had turned hostile and he has not supported the case of the prosecution in any manner. P.Ws.1 and 3 have vividly spoken about the entire occurrence. They had stated that they went in search of the deceased and when they went near the shop of P.W.6, P.W.6 told them that the accused had taken a pepsi bottle from his shop, attacked the deceased and then they went to Rukmani 1st Cross Street. P.Ws.1 and 3 have further stated that when they went to Rukmani 1st Cross Street, they found the accused attacking the deceased with a wooden log and also a stone. P.W.1 has spoken about the complaint made by him also. P.W.5 has spoken about the observation mahazar and the rough sketch prepared, at the place of occurrence and the recovery of material objects. P.W.6 is the shop owner, from where the accused had taken pepsi bottle and hit the

deceased. He has spoken about the same. P.W.7 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.8 has spoken about the arrest of the accused. P.W.9 has spoken about the photographs taken at the place of occurrence. P.W.10 is the husband of Mrs.Latha, he has stated about the motive. P.W.11 has spoken about the registration of the case and the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness on his side nor mark any document. His defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused as detailed in first paragraph of this judgement and that is how the accused is before this Court.

6. In this appeal, the learned counsel Mrs.S.Rajeswari, who was on record for the appellant, did not appear before this Court, continuously. Therefore, this Court appointed Mr. Mr.S.Senthilvel as a Legal Aid counsel to argue the case. He informed the accused in prison and made his submissions. We have heard the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. As we have narrated herein above, the prosecution relies on the eyewitness account of P.Ws.1 and 3. The learned counsel for the appellant would submit that P.Ws.1 and 3 would not have witnessed the occurrence at all. In order to substantiate this contention, the learned counsel for the appellant would submit that in the evidences of P.Ws.1 and 3, they have not stated that they took any effort to rescue the deceased from being attacked by the accused. The learned counsel would further submit that P.W.1, after having witnessed the occurrence, did not go to the police and instead, he informed his relatives. P.W.3 went to his house. These attempts of P.Ws.1 and 3, according to the learned counsel, would go to show that they would not have been present at the time of occurrence at all. This argument does not persuade us at all. P.Ws.1 and 3 have in a very cogent and convincing manner stated as to why and how they went to the place of occurrence. Their presence, at the place of occurrence, has been proved by their evidences. They have offered sufficient explanation as to why they had gone to the place of occurrence. We do not find any reason to doubt the presence of P.Ws.1 and 3. Though it is argued by the learned counsel for the appellant that these two witnesses did not take any effort to rescue the deceased, it is in evidence that these two persons rushed to the rescue of the deceased and even before that, the accused finished his task and ran away

from the scene of occurrence. After the occurrence, it is quite natural for them to inform the relatives as well as P.W.2 to go to his house and then only P.W.1 had gone to the police station. Absolutely we do not find anything abnormal in the said conduct of P.Ws.1 and 3, so as to doubt their credibility. After the occurrence, P.W.1 had gone to the police station and made the complaint at 11.00 p.m., on 14.06.2004, whereas, the occurrence was at 9.45 p.m., on 14.06.2004. The First Information Report reached the hands of the Magistrate at 8.00 a.m. on 15.06.2004. Thus, there is neither delay in preferring the complaint nor in forwarding the same to the Court. The learned Counsel further submitted that the motive for the occurrence had not been proved. But P.W.1 has stated about the same. P.W.7, the husband of Latha, has also deposed to the said facts. Thus, in our considered view, the prosecution has proved the motive also. From these evidences, we hold that the prosecution has proved that it was this accused, who attacked the deceased, caused injuries and eventually caused the death of the deceased.

8. Now we have to examine as to what was the offence that was committed by the accused, by the above said act?. It is in evidence that the accused had come to meet Latha, with whom he had love. This was not to the liking of the deceased. The deceased questioned the same. This resulted in a quarrel. This happened near the shop of P.W.6. It was only in the said quarrel, it is alleged that the accused took out a pepsi bottle and a stick and attacked the deceased. Though the act of the accused squarely fall within the 3rd limb of Section 300 of the Indian Penal Code, in our considered view, the same would fall under 4th exception to Section 300 of the Indian Penal Code. From the evidences available on record and going by the natural human conduct, we are able to presume that there had been fight between the accused and the deceased and only in that process, the accused had taken the wooden log and attacked the deceased. Therefore, we hold that the act of the accused would fall within the 4th Exception to Section 300 of the Indian Penal Code and therefore, he is liable to be punished only for the offence under Section 304(1) of the Indian Penal Code.

9. Now turning to the quantum of punishment, the accused, at the time of occurrence, was hardly aged 26 years. He had no bad antecedents. After this occurrence also he had not committed any crime. The occurrence was not pre-meditated, as it was out of a sudden quarrel. Having regard to all these mitigating as well as aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.500/- would meet the ends of justice.

allowed; the conviction and sentence imposed on the appellant under Section 302 of the Indian Penal Code is set aside and instead he is convicted under section 304 (1) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.500/-, in default, to undergo Rigorous Imprisonment for one week.

11. We appreciate the services rendered by Mr.S.Senthilvel, Legal Aid counsel. We request the Tamil Nadu State Legal Services Authority to pay his remuneration.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

msk

To

1. Judicial Magistrate - 2,
Poonamallee.

2.-do-The Chief Judicial Magistrate, Chengalpattu

3.The Additional District and Sessions Judge,
Fast Track Court-III, Chengalpattu, at Poonamallee

4.-do-Thro The Principal Sessions Judge, Chengalpattu.

5.The Superintendent,
Central Prison I,
Puzhal, Chennai 66.

6.Inspector of Police,
Poonamallee Police Station,
Poonamallee

7.The District Collector,
Chengalpattu.

8.The Director General of Police,
Mylapore, Chennai 4.

9.The Public Prosecutor,
High Court, Madras

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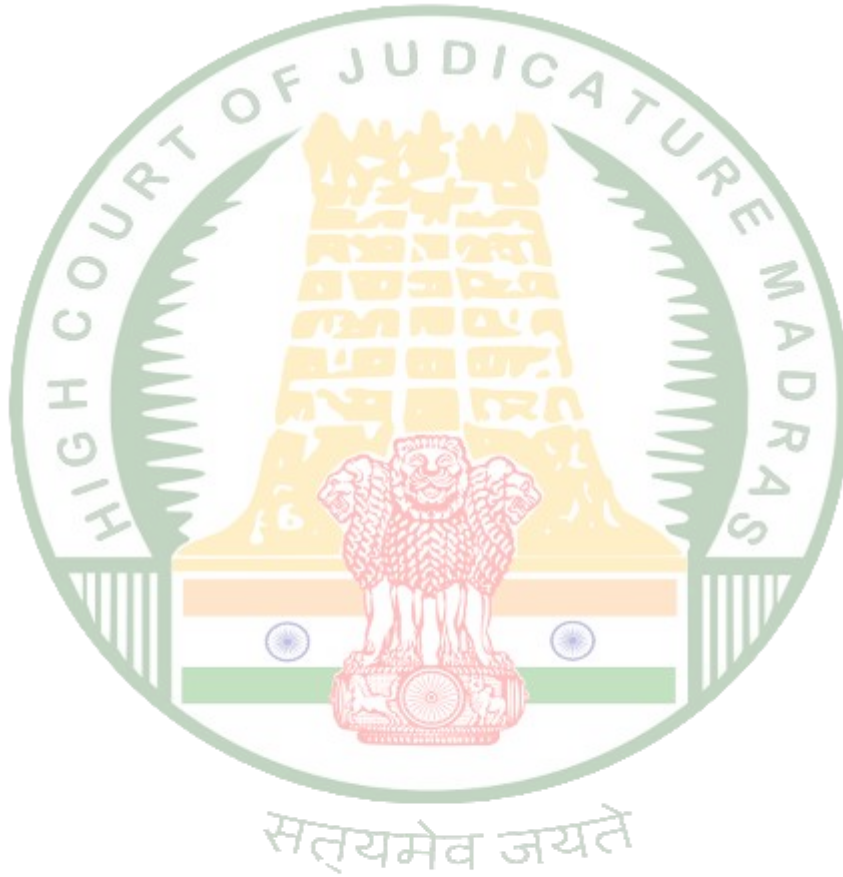
1.The Section Officer,
Criminal Section,
High Court, Madras.

2.The Secretary
Tamilnadu State Legal Service Authority,
High Court, Madras.

+1 cc to Mr.S.Senthilvel, Advocate, sr.16768

Cr1.A.No.589 of 2012

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kra 13.04.2016



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