

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU  
and  
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.513 of 2016

Somula Bai

.. Appellant

- Vs -

State rep by Inspector of Police,  
Chidambaram Police Station,  
Chidambaram.  
(Cr.No.881 of 2012)

.. Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned II Additional District and Sessions Judge, Chidambaram in S.C.No.50 of 2013 dated 13.10.2014.

For Appellant : Mr.N.A.Nissar Ahmed

For Respondent : Mr.P.Govindarajan  
Additional Public Prosecutor

J U D G M E N T

The appellant, the sole accused in S.C.No.50 of 2013 on the file of the learned II Additional District and Sessions Judge, Chidambaram who stands convicted for offence under Section 302 I.P.C. and sentenced to undergo imprisonment for life, (no fine), has come up before this Court with this appeal challenging the said conviction and sentence.

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

2.1. The accused hails from Gujarat State. P.Ws.1, 2, 4 and 5 also hail from Gujarat State. P.W.3 had engaged them as workers for digging borewells. P.Ws.1, 2, 4 and 5 and the deceased were all staying in a rented room behind Chidambaram municipality building. The deceased-Mr.Nithin Bai also hailed from Gujarat State and engaged by P.W.3 and he was also staying along with P.Ws.1, 2, 4 and 5 in the same room.

2.2. It is alleged that few days before 26.12.2012, the accused, in his cellphone, displayed pornographic pictures to the deceased. Two days before the occurrence, the deceased

demanded money from the accused. The accused refused to part with any amount. The deceased, thereafter started to blackmail the accused and threatened him that he would forward the phonographic pictures forwarded to him by the accused in turn to the mother and the sister of the accused. This resulted in a quarrel between them. On 27.12.2012, it is alleged, around 03.30 a.m., when the deceased was sleeping, the accused took out a hammer and attacked him on his head and other parts of the body of the deceased. This was witnessed by P.Ws.1 to 5. The accused ran away from the place of occurrence. The deceased died on the spot. Thereafter, P.W.1 went to the police station and made a complaint in Hindi and the same was translated into Tamil. The said translated version of the complaint is Ex.P1. Based on the said complaint, P.W.12 registered a case in Crime No.881 of 2012 under Section 302 I.P.C. Ex.P10 is the F.I.R.

2.3. P.W.13 took up the case for investigation. He proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered the bloodstained earth, sample earth and the hammer from the place of occurrence under a Mahazar. After holding inquest on the body of the deceased, he forwarded the body of the deceased to the doctor for postmortem and thereafter he examined few more witnesses.

2.4. P.W.6 Dr.Kalaiselvi conducted autopsy on the body of the deceased on 30.12.2012. She found the following injuries:

"External injury: Contusion about 3"x3" inch above the right ear parietal occipital ? Region in other external injuries.

Internal Examination: Chest Symmetrical ribs intact. Heart all chambers empty. Both lungs pale. Stomach partially digested food about 200 gms. Liver, spleen and both kidney pale. Intestine (n.c.) with gas bladder empty. (n.c.) intact viscera preserved for biochemical analysis report. Head neck: scalp injury as mentioned above. Skull-depressed fracture of right side parieto occipital bone (n.c.) above. Right ear 2"x1". n.c. Blood clot about - 100 gms over right hemisphere at parieto occipital region. Hyoid bone intact."

Ex.P2 is the postmortem certificate. She gave opinion that the injuries found on the body of the deceased could have been caused by a weapon like M.O.1 and the death of the deceased was due to shock and hemorrhage due to the head injury.

2.5. P.W.13, during the course of investigation, recovered the bloodstained clothes from the body of the deceased. On 29.12.2012 at 10.00 a.m. he arrested the accused and forwarded him to Court for judicial remand. As a matter of fact, the inquest on the body of the deceased was held only on 30.12.2012 by P.W.13 after the arrival of the relatives of the deceased.

P.W.13 forwarded the material objects to Court and the Court in turn forwarded the same for chemical examination. The report revealed that there were human bloodstains on all the material objects including the hammer. On completing the investigation, he laid chargesheet against the accused.

2.6. 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, on the side of the prosecution, as many as 13 witnesses were examined, 13 documents and one material object (hammer) were marked.

2.7. Out of the said witnesses, P.Ws.1 to 5 are the eyewitnesses to the occurrence. P.W.1 has spoken about the motive as well as the actual assault made by the accused. He has further stated about the complaint made by him to the police. P.W.2 has also spoken about the same facts. P.W.3 has spoken about the actual assault made by the accused on the deceased. P.W.4 has stated that around 03.30 a.m. he was awakened by the commotion. At that time, he found the accused at the place of occurrence with a hammer in his hands and at the place where the deceased was lying with injuries. The deceased was dead. Thus, he has not seen the occurrence. P.W.5 has also spoken about the same facts as spoken by P.W.4.

2.8. P.W.6 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.7 has spoken about the preparation of observation mahazar and the rough sketch. He has also spoken about the arrest of the accused. P.W.8 has stated that he was working as an Assistant Librarian in Annamalai University. According to him, on the date of occurrence, he was requested by the police to come to the police station to translate. In his presence, P.W.1 made a oral complaint between 05.45 a.m. to 06.00 a.m. He reduced the same originally in Hindi and then translated the same to Tamil. The Tamil translation of the complaint is Ex.P1. On the said complaint, according to him, this case was registered. Ex.P6 is the complaint in Hindi reduced into writing by P.W.8.

2.9. P.W.9, a constable, has stated that he handed over the material objects to the forensic lab for chemical examination. P.Ws.10 and 11 have spoken about the chemical examination conducted. P.W.12 has spoken about the registration of the case. P.W.13 has spoken about the investigation done and the final report filed.

3. 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 file any document nor to examine any witness. His defence was a total denial. Having considered all the above, the trial Court convicted him as detailed in the first paragraph of this judgment and that is how he is before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing

for the State and also perused the records, carefully.

5. As we have already narrated, P.Ws.1 to 3 had seen the actual assault being made by the accused on the deceased. P.Ws.4 and 5 had seen the accused standing at the place of occurrence with a hammer and the dead body of the deceased with injuries. The learned counsel for the appellant would submit that none of them would have witnessed the occurrence because the occurrence had taken place when all of them were fast asleep. But we find it difficult to get ourselves persuaded by the said argument.

6. From the evidences of P.Ws.1 to 3 it could be culled out that there was a quarrel between the accused and the deceased because the deceased blackmailed the accused that he would send the phonographic pictures forwarded by the accused in turn to the mother and sister of the accused. He further demanded money from the accused for not sending the phonographic pictures to the mother and sister of the accused. When this quarrel was going on, the occurrence had taken place. Thus the deceased, at that time, would not have been sleeping. P.Ws.4 and 5 alone would have been sleeping and not the others. From these evidences, in our considered view, the prosecution has clearly established that a quarrel preceded the actual assault, the accused got provoked and he attacked the deceased with hammer and caused his death.

7. Having come to the said conclusion, now we have to examine as to what is the offence that has been committed by the accused by the said act. From the evidences of P.W.1 and 2, it is crystal clear that the accused, a young man, had for fun, forwarded pornographic pictures to the cell phone of the deceased. But the deceased started blackmailing the accused. He also demanded money from the accused. This has resulted in a quarrel and in that quarrel, provoked by the utterances made by the deceased, the accused had taken a hammer which was lying there and inflicted blows on the deceased, which resulted in his death. In our considered view, going by the natural human conduct and from the various circumstances it could be culled out from the evidences that it is crystal clear that the accused had been provoked by the deceased and such provocation was grave and sudden. It was only due to the said grave and sudden provocation, having lost his control over his mental faculties, the accused had attacked the deceased. Thus, though the act of the accused squarely falls within the third limb of Section 300 I.P.C., it would also fall under the first exception to Section 300 I.P.C. and therefore he is liable to be punished only under Section 304(i) I.P.C.

8. Now turning to the quantum of punishment, the accused is a poor man. He had come to Tamil Nadu from Gujarat only as a coolie. The occurrence was not pre-meditated. The accused was also not armed already with any weapon. It was out of a sudden quarrel. He has got no bad antecedents. Having regard to all the above mitigating as well as the aggravating circumstance, we

are of the view that sentencing him to undergo rigorous imprisonment for ten years and pay a fine of Rs.1000 would meet the ends of justice.

9. In the result, the criminal appeal is partly allowed in the following terms:

(i) The conviction and sentence imposed on the appellant by the trial Court for the offence under Section 302 I.P.c. is set aside and instead he is convicted under Section 304(i) I.P.C. and sentenced to undergo rigorous imprisonment for ten years and pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for four weeks.

(ii) It is further directed that the period of sentence already undergone by the accused shall be set off as provided under Section 428 Cr.P.C.

s/d-  
Assistant Registrar(CS-III)

//True Copy//

Sub-Assistant Registrar

To

1. The II Additional District and Sessions Judge, Chidambaram.
2. The District Sessions Judge, Cuddalore.
3. The Judicial Magistrate No2, Chidambaram
4. The Chief Judicial Magistrate, Cuddalore
5. The Superintendent, Central Prison, Cuddalore
6. The District Collector, Cuddalore
7. The Director General Of Police, TamilNadu Mylapore, Chennai
8. The Inspector of Police, Chidambaram Police Station, Chidambaram.
9. The Public Prosecutor, Madras High Court.
10. The Section Officer, Criminal Section, High Court, Madras

+1 CC to M/s. N.A. Nissar Ahmed, Advocate in sr 74166

Cr1.A.No.513 of 2016

sp/6/2