

IN 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.532 of 2016

A.Kumar

... Appellant/Accused

Vs

State by,
Inspector of Police,
Vaduvor Police Station,
Thiruvarur District.
(Crime No.24/2012)

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., to call for the records and to set aside the conviction and sentence imposed against the appellant on 16.12.2013 in S.C.No.61/2012, on the file of the learned Principal District and Sessions Judge, Tiruvarur.

For Appellant : Mr.P.Pugalenth

For Respondent : Mr.P.Govindarajan,

Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.61/2012 on the file of the learned Principal District and Sessions Judge, Tiruvarur. He stood charged for offence under Section 302 I.P.C. The trial Court by judgment dated 16.12.2013, convicted the accused for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine of

Rs.1,000/-, in default to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellant is before this Court, with this Criminal Appeal.

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

P.W.2 is a resident of Annapuram North Street, Melanemili Village, Mannarkudi Taluk. The deceased, Mr.Shankar was his son. He has got yet another son, by name, Mr.Radha. Mrs.Latha is the wife of Mr.Radha. It is alleged that the accused had illicit intimacy with Mrs.Latha. When this came to light, the deceased got wild. He reprimanded the accused for his alleged illicit intimacy with the wife of his brother, Mrs.Latha, bringing damage to the family reputation and honour. But, the accused did not stop his relationship with Mrs.Latha. In respect of the same, on an earlier occasion, the accused and one Mr.Rajendran had attacked the deceased with iron rod and caused hurt. A case was registered in respect of the same against the accused and Mr.Rajendran and the same was pending before the learned Assistant Sessions Judge, Mannargudi. This is stated to be the motive for the occurrence.

3.The accused was in prison in connection with the said case and later, he was released on bail on 23.01.2012. P.W.3 is the wife of P.W.2. On 23.01.2012, around 10.00 pm, P.Ws.2 & 3 had gone to the house of Mr.Perumal (P.W.6) to borrow a sum of Rs.1,000/-. When they were returning from the house of P.W.6, they found the deceased sitting near the public water tap near the house of one Mr.Sepan. The accused suddenly emerged there and rushed to the house of one Mrs.Selvi, came out with a spade with handle and mounted attacking the deceased. He cut the deceased with spade on his forehead, neck and other parts of the body. The deceased fell down. He continued to attack him. P.Ws.2 & 3 raised alarm. The accused ran away from the scene of occurrence. P.Ws.2 & 3 then, with the help of 108 Ambulance, took the deceased to the Government hospital at Mannargudi. On examination, the Doctor wanted them to rush to the Medical College Hospital at Thanjavur. Accordingly, they were rushing to the Medical College Hospital at Thanjavur. While passing through a village known as Pudukottai, the deceased died. Therefore, they brought back the dead body to the Government hospital at Mannargudi and kept it there. Thereafter, P.W.2 went to the Police Station and made a complaint around 4.00 am on the same day. On the basis of the said complaint, P.W.13 registered a case in Crime No.24/2012 for offence under Section 302 I.P.C., against the accused. Ex.P.1 is the complaint and Ex.P.13 is the F.I.R. He forwarded both the documents to Court which were received by the learned Judicial Magistrate on 24.01.2012 at 11.45 am.

4.P.W.17, the then Inspector of Police, took up the case for investigation. He went to the place of occurrence, examined

P.Ws.2 & 3 and few more witnesses. He prepared an observation mahazar and a rough sketch in the presence of witnesses and recovered the blood stained earth and the sample earth from the place of occurrence. On going over to the hospital, he conducted inquest on the body of the deceased and forwarded the same for post mortem.

5.P.W.16 - Dr.Sureshkumar conducted autopsy on the body of the deceased on 24.01.2012 at 11.50 am. He found the following injuries:-

"External Injuries:-
1.3x2xexposing brain matter - laceration in right fronto parietal area
2.2x1xexposing skull bone laceration just above
3.1x1x0.5cm laceration in right parietal area
4.Multiple skull abrasion in right post articular area
5.6x1xskull exposes laceration in left fronto temporal area
6.Multiple small abrasions surrounding contusion of various dimensions in neck
7.1x1cm abrasion just above left eye
8.2x1x1 cm lacerations in both jaw
9.1x1cm abrasion in right arm
10.multiple small abrasion in left side of back."

Ex.P.16 is the post mortem certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to multiple injuries found on the body of the deceased.

6.P.W.17 recovered the blood stained clothes from the body of the deceased and forwarded the same to Court. During the course of investigation, P.W.17 arrested the accused at 6.30 am on the same day at Kanchikudikadu Village in the presence of P.W.9 and another witness. On such arrest, the accused made a voluntary confession, in which, he disclosed the place where he had hidden the spade with handle. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced M.O.1 spade with handle. On returning to the Police Station, P.W.17 forwarded the accused to Court and handed over the material objects to Court. At the request made by P.W.17, the Material Objects were sent for chemical examination and the report revealed that there was human blood on all the material objects including the grinding stone which was found near the dead body.

7.Based on the above materials, the trial Court framed a lone charge for offence under Section 302 I.P.C., against the

appellant. The appellant denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined and 20 documents were exhibited, besides 5 Material Objects.

8. Out of the said witnesses, P.Ws.2 & 3 are the eye witnesses to the occurrence. They have stated vividly that it was this accused who cut the deceased with spade with handle and caused the injuries. P.W.2 has spoken about the complaint made to the Police also. P.W.1 is the Forensic Expert who has stated that he examined the material objects sent to him for chemical examination and found that there were blood stains on all the material objects including the spade with handle. P.W.4 has stated that he heard about the occurrence, rushed to the place of occurrence and took the deceased in 108 Ambulance to the hospital. P.W.5 has spoken about the preparation of observation mahazar and rough sketch and the recovery of material objects from the place of occurrence. P.W.6 is a neighbour of the deceased who have stated that around 9.30 pm on 23.01.2012, P.Ws.2 & 3 came to him to borrow a sum of Rs.1,000/-. Within a short while, after their departure, on a commotion from the place of occurrence, when he rushed to the place of occurrence, he found P.Ws.2 & 3 and he was informed that the accused had cut the deceased with spade with handle. P.W.7 is the wife of the deceased. She has spoken about the previous motive. P.W.8 has stated that he heard about the occurrence and came to the place of occurrence. P.W.9, the then Village Administrative Officer has spoken about the arrest of the accused, the confession made by him and the subsequent recovery of material objects from out of his disclosure statement. P.W.10 has also spoken about the arrest of the accused. P.W.11 has spoken about the photographs taken on the dead body, as directed by P.W.17. P.W.12 an official from the Tamil Nadu Electricity Board has stated that at the place of occurrence, there was street light and there was no electricity failure at the crucial time of occurrence. P.W.13 has spoken about the registration of the case on the complaint of P.W.2. P.W.14, a Constable has stated that he took the dead body to the Doctor and handed over the same for post mortem. P.W.15 is a Constable who has stated that he handed over the F.I.R., to the learned Judicial Magistrate as directed by P.W.13. P.W.16 has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.W.17 has spoken about the investigation done and the final report filed.

9. 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 chose to examine any witness nor did he mark any documents on his side.

10. Having considered all the above, the trial Court found the accused/appellant guilty under the said charge and

accordingly, sentenced him as detailed in the first paragraph of this judgment. That is how the appellant is before this Court with this Criminal Appeal.

11.We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12.As we have already pointed out in this case, the prosecution mainly relies on the eye witness accounts of P.Ws.2 & 3. These two witnesses have vividly narrated that when they were returning from the house of P.W.6, they found the deceased sitting near the public water tap situated near the house of one Mr.Sepan. At that time, this accused suddenly emerged there, rushed to the house of one Mrs.Selvi, came out with a spade with handle and attacked the deceased indiscriminately. The deceased was lying unconscious in a pool of blood. They have further stated that they took the deceased in an 108 Ambulance to Mannargudi Government Hospital. From there, the Doctor advised them to take the deceased to Thanjavur Medical College and Hospital. On the way to Thanjavur, the deceased died. Therefore, the dead body was brought back to the Mannargudi Government Hospital. Thereafter, on the complaint of P.W.2, P.W.13 registered the present case.

13.The learned counsel for the appellant would submit that P.Ws.2 & 3 would not have been present at the time of occurrence at all and therefore, their evidences should be rejected. In order to substantiate the said contention, the learned counsel for the appellant would mainly assail the F.I.R. He would point out that for the occurrence which had allegedly happened at 10.00 pm on 23.01.2012, the complaint was made only at 4.00 am on 24.01.2012. Absolutely, according to the learned counsel, there is no explanation for the said inordinate delay. He would further submit that the said complaint was made only after the demise of the deceased. The F.I.R., had reached the hands of the learned Judicial Magistrate only at 11.45 am on 24.01.2012, for which also, there is no explanation.

14.The learned counsel for the appellant would further point out that P.Ws.2, 3 & 6 have stated that even before the 108 Ambulance could arrive at the scene of occurrence, the Police arrived at the scene of occurrence and they only carried the deceased in the Ambulance to the Hospital. Thus, according to the learned counsel, the F.I.R., in this case is a concocted document. We find every force in the said argument of the learned counsel.

15.From the evidences of these three witnesses mentioned above, it is crystal clear that the Police arrived at the scene of occurrence even before the deceased could be taken from the

place of occurrence to the hospital. There is no explanation as to what was the information which had brought the Police to the place of occurrence. The said information has been suppressed by the Police. Above all, the F.I.R., has reached the hands of the learned Judicial magistrate only at 11.45 am on 24.01.2012 and there is no explanation at all for this delay.

16. From these circumstances, as rightly pointed out by the learned counsel for the appellant, we have to infer that Ex.P.1 would not have come into being at 4.00 am on 24.01.2012 and the earlier information, which was passed on to the Police, which had brought them to the place of occurrence, has been suppressed. But now the question is, "Whether on that score, the evidences of P.Ws.2 & 3 who are the eye witnesses to the occurrence, should be rejected?". Our answer is an emphatic "no". Simply because the Police who registered and investigated the case had committed some mess, on that ground, we cannot say that P.Ws.2 & 3 are liars so as to reject their evidences. In our considered view, the presence of P.Ws.2 & 3 at the place of occurrence is quite natural and their evidences are also cogent and convincing which deserve to be accepted by this Court. Though, these two witnesses have been cross examined at length, nothing could be elicited from their evidences so as to disbelieve them.

17. Above all, P.W.6 has corroborated the evidences of P.Ws.2 & 3. According to P.Ws.2 & 3, they had gone to the house of P.W.6 to borrow Rs.1,000/-. Only when they were returning from the house of P.W.6, they witnessed the occurrence. P.W.6 has stated that after P.Ws.2 & 3 had left his house, within a short while, he heard the commotion and rushed to the place of occurrence. At the place of occurrence, he was informed that it was this accused who cut the deceased indiscriminately. This is the earliest information passed on to P.W.6 at the scene of occurrence, there being no time at all to concoct a false story. Thus, the evidence of P.W.6 stating that on hearing the information when he immediately rushed to the place of occurrence, he was told that it was this accused who cut the deceased carries weightage. This statement being the earliest statement made at the place of occurrence deserves credence. Coupled with this evidence, the evidences of P.Ws.2 & 3 would clearly go to show that it was this accused who cut the deceased which resulted in his death.

18. Now, having come to the said conclusion, we have to examine, "What was the offence that was committed by the accused by the said act?" It is in evidence that the presence of the deceased at the place of occurrence was by chance and it was not an expected one. The accused, even according to the evidence available on record, was not already armed with any weapon. It is evident that he rushed to the house of one Mrs.Selvi and took out a spade with handle which was lying there

with which, he attacked the deceased. This would indicate that there was no premeditation. The very fact that he was not already armed with any weapon and his presence at the place of occurrence was by chance, would go to show that, he had no intention at all, to cause the death of the deceased, so that his act could have under the first limb of Section 300 I.P.C. However, his act would squarely fall within the third limb of Section 300 I.P.C. But, going by the natural human conduct, in our considered view, without there being a provocation, there would have been no occasion at all for the accused to suddenly rush to the house of one Mrs.Selvi and to take out a spade with handle which was lying there and to attack the deceased who was already sitting there for some time. These facts would go to indicate that there would have been some quarrel between the accused and the deceased in which, the accused would have been provoked. Thus, we are able to cull out from the various circumstances available, more particularly, going by the natural human conduct, that the accused had attacked the deceased out of grave and sudden provocation and thus, his act would squarely fall within the first exception to Section 300 I.P.C. Thus, the accused is liable to be punished for offence under Section 304 (i) I.P.C.

19.Now turning to the quantum of punishment, at the time of occurrence, the accused was hardly aged about 23 years. He is a young man and he has got lot of chances for reformation. He has got no bad antecedents after the occurrence also. He has not committed any crime at all subsequent to the crime. He has been in jail all along from the date of conviction. He is a poor agricultural coolie by profession. Having regard to all these mitigating as well as aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks would meet the ends of the justice.

20.In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for the offence u/s 302 IPC are set aside and instead, he is convicted for offence under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. It is directed that the period of detention already undergone shall be set off as required under Section 428 Cr.P.C.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jbm

To

1.The Principal District and Sessions Judge,
Thiruvarur.

2.The District Collector Thiruvarur

3.The Judicial Magistrate No.I, Mannargudi

4.-do- Thro The Chief Judicial Magistrate
Thiruvarur

5.The Superintendent Central Prison Trichy

6.The Superintendent of Police, Thiruvarur

7.The Director General of Police, Mylapore
Chennai-4

8.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.P.Pugalenthil Advocate sr 74564/16

Crl.A.No.532 of 2016

vgi(co)
aa08/02/2017



WEB COPY