

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Appeal No.660 of 2012

Chinnasamy

.. Appellant/Accused

- Vs -

State by

The Inspector of Police,
Kandhli Police Station,
Crime No.751/2009,
Thirupathur, Vellore District.

.. Respondent

Prayer:- Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the learned Additional District Sessions Judge, Fast Track Court, Thirupathur, Vellore District, in S.C.No.39 of 2011 dated 11.01.2012.

For Appellant : Mr.M.G.Udhayashankar
for Ms.S.Shanthakumari

For Respondent : Mr.M.Maharaja
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.39 of 2011 on the file of the learned Additional District Sessions Judge, Fast Track Court, Thirupathur, Vellore District. He stood charged for offence under Section 302 IPC. By judgment dated 11.01.2012, the trial Court convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for six months. 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:

2.1. The accused is the husband of the deceased. P.Ws. 1 to 4 are the son, mother, daughter and brother respectively of the deceased. The deceased was residing along with the accused and other family members at her house at Aryamatrapalli Village. Frequently the accused used to take liquor and in an inebriated condition he used to develop quarrel with the deceased. On 01.11.2009, at about 5.00 p.m., the deceased and P.Ws.1 and 2 were in the house. The accused returned to the house and wanted the deceased to give money for his expenses. The deceased told that she had no money to give and this resulted in a wordy duel between the accused and the deceased. Suddenly, the accused took out a knife from the house and stabbed her repeatedly. She sustained injuries on her head, hand and fingers. P.Ws.1 and 2 raised alarm and the accused fled away from the scene of occurrence. P.Ws.1 and 2 with the help of P.W.6 took the deceased to the hospital. P.W.12. Dr.Sudarkodi, examined the deceased at Tirupattur Government Hospital and at that time the deceased was unconscious. P.Ws.1 and 2 told the doctor that the deceased was attacked with a knife by a known person. P.W.12 found the following injuries on the deceased viz.,

"(i) Lacerated injury of 10 cm length on the left parietal region of the head and the bone was found exposed.

(ii) Lacerated injury measuring 5 cm on the left cheek.

(iii) Lacerated injury measuring 10 cm on the lower jaw and the lower jaw was found fractured.

(iv) The right ring finger was found cut.

(v) Lacerated injury measuring 5 cm on the left elbow, bone was exposed.

(vi) Another lacerated injury measuring 10 cm on the left hand."

P.W.12 admitted her in the hospital as an inpatient. Ex.P6 is the accident register. P.W.12 gave intimation to the police about the same.

2.2 On receipt of the said intimation, P.W.14 the then Head Constable attached to Kandhli Police Station rushed to the hospital and he found the deceased unconscious. Therefore, he recorded the statement of P.W.1 and returned to the Police Station. On 02.11.2009 at 8.30 a.m. he handed over the same to the Sub Inspector of Police.

2.3. P.W.15, the then Sub Inspector of Police received the said statement (vide Ex.P1) and registered a case in Crime No.751 of 2009 under Section 307 I.P.C. Ex.P10 is the FIR. He forwarded both the documents to Court and handed over the investigation to P.W.16 the then Inspector of Police for further investigation.

2.4. P.W.16 took up the case for investigation. On 02.11.2009 at 10.00 am, he proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.8 and another witness. Then he examined P.Ws.1 to 6 and few more witnesses and recorded their statements. Since he was transferred, he handed over the case diary to his successor viz P.W.17.

2.5. P.W.17 took up the case for further investigation. While so, the deceased died in the hospital succumbing to the injuries on 26.11.2009. P.W.17 went to the hospital and conducted inquest on the body of the deceased in the presence of witnesses and altered the case into one of 302 IPC. Ex.P12 is the alteration report. Ex.P14 is the inquest report. Then he forwarded the body for postmortem.

2.6. P.W.13 Dr.Seethalakshmi conducted autopsy on the body of the deceased on 26.11.2009 at 3.55 p.m. She found the following injuries :

"I. Injuries : (1) Tracheotomy wound seen at the classical site.

(2) Healed Abrasions with white scar seen at the classical site (a) 1x1 cm-Right shoulder (b) 6x1-back of right little finger (c) 2x1 cm - back of right ring finger with amputated distal phalanx (d) 8x1 cm - back of the left hand (e) 2x1 cm back of middle 1/3 of left forearm.

(3) Infected wounds seen at the following site: (a) 8x1 cm occipital region (b) 2x1cm - left posterior region (c) 3x1 cm - left forehead (d) 3x1 cm - outer part of left eye (e) 9x1 cm left upper cheek (f) 8x2 cm - left middle cheek (g) 5x3 cm - left arm outer upper (h) 8x3 cm - back of left forearm (i) 8x1 cm - palm (j) 5x1 cm - back of inner left hand with underlying metacarpal bone fractured with resolving contusion (k) 6x2 cm - back of outer left hand with underlying metacarpal bone fractured with resolving contusion. (l) 6x1 cm - front of right little finger, the above all infected wounds show greenish discharge.

(4) Sutured wound of 5 cm long with 5 intact sutures seen over front of right wrist on removal of sutures, margins are clean cut.

II. On dissection of head: scalp - contusion of size 6x4x0.5 cm seen over right temporal region and contusion of size 8x6x0.5 cm seen over occipital region vault - linear fissure fracture of 2 cm long seen over occipital bone dural -intact Brain - sub arachnoid hemorrhage seen over right occipital lobe. C/s congested, base-intact.

III. On dissection of thorax : Ribs - intact. Heart - Normal in size. Chambers contain fluid blood corneas, great vessels, valves - intact. Multiple atheromatous plaques seen on inner surface of roof of aorta, lungs - normal in size c/s congested.

IV. On dissection of Abdomen : Stomach contains 150 ml of white coloured fluid. Nill specific odour, mucosa - intact, liver, spleen, kidney - normal in size c/s congested uterus measures 8x9x3 cm c/z empty, bladder - empty.

V. Hyoid, pelvis, spinal column - intact."

Ex.P7 is the postmortem certificate. According to her, the death of the deceased was due to the effects of the head injury.

2.7. During the course of the investigation on 20.03.2010, he arrested the accused at 9.00 am in the presence of P.Ws.10 and 11. On such arrest, the accused gave a voluntary confession, in which, he disclosed the place, where he has hidden the knife. In pursuance of the said disclosure statement, he took P.Ws.17, 10 and 11 to a bush near the place of occurrence and took out M.O.1 and produced the same. P.W.17 recorded the same under a Mahazar and returned to the police station and forwarded the case to the Court and handed over him also to the Court. On completing the investigation, he filed the final report.

2.8. Based on the above materials, the trial Court framed a lone charge under Section 302 IPC, which the accused denied. In order to prove the case, on the side of the prosecution, as many as 17 witnesses were examined, 14 documents and 1 material object were marked.

2.9. Out of the said witnesses, P.Ws.1 and 2 are the eye witnesses to the occurrence who have vividly spoken about the same. P.Ws.3 and 4 have not witnessed the occurrence but have spoken about the frequent quarrel between the accused and the

deceased. P.W.5 is the neighbour of the deceased, who is stated to have heard the alarm and when she rushed into the house of the deceased, she found the deceased with bleeding injuries and at that time P.Ws.1 and 2 were present. P.W.6 is the one who took the deceased to the hospital along with P.Ws.1 and 2. 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 observation mahazar and the rough sketch. P.W.9 a relative of the deceased has turned hostile and he has not supported the case of the prosecution in any manner. P.W.10 spoke about the arrest of the accused and he has not supported the case of the prosecution in respect of the disclosure statement made by the accused. P.W.11 is the brother-in-law, who has also spoken about the frequent quarrel between the accused and the deceased. P.W.12 has spoken about the treatment given to the deceased at the hospital. P.W.13 has spoken about the autopsy conducted and her final opinion regarding the cause of death. P.W.14 has spoken about the statement recorded from P.W.1 under Ex.P1. P.W.15 has spoken about the registration of the case. P.Ws.16 and 17 have spoken about the investigation done. P.W.17 has further spoken about the arrest of the accused, disclosure statement made by him and the subsequent recovery of M.O.1 (knife).

2.10. 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 witnesses nor to mark any documents. Having considered all the above, the trial Court convicted him under Section 302 IPC and that is how, the accused is before this Court with this appeal.

3. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State as well as perused the records carefully.

4. The learned counsel appearing for the appellant would submit that P.Ws.1 and 2 who claim to be the eye witnesses are closely related to the deceased and therefore their evidence should be rejected. He would further submit that out of frustration that the accused frequently consumed liquor and quarreled, P.Ws.1 to 4 have given evidence against the accused and therefore their evidence should be rejected. He would further submit that there is no corroboration from any other source. He would also submit that the medical evidence does not corroborate the eye witnesses account. Lastly, he would submit that even assuming that it was this accused who caused the injuries on the deceased, the death was not directly due to the injuries allegedly caused by the accused. The death occurred after several days of the occurrence and the medical records pertaining to the deceased have not been produced. The learned counsel would submit that the prosecution has failed to prove

the cause of death. At any rate, according to the learned counsel for the appellant, the accused could be punished only under Section 304 (ii) of I.P.C, in the event, this Court comes to the conclusion that it was this accused who caused the death of the deceased.

5. The learned Additional Public Prosecutor appearing for the State would vehemently oppose this appeal. He would submit that though it is true that P.Ws.1 to 4 are closely related to the deceased as family members, that cannot be a ground to reject their evidence. He would further submit that the medical evidence duly corroborates the eye witnesses account. Referring to the recovery of M.O.1, the learned Additional Public Prosecutor would submit that, it lends assurance to the case of the prosecution. He would further submit that the evidence of P.W.5 also corroborates the eye witnesses account. Thus, according to the learned Additional Public Prosecutor, the prosecution has clearly proved that it was this accused who caused the death of the deceased. He would further submit that the offence committed by the accused would clearly fall under Section 302 I.P.C. Thus, the learned Additional Public Prosecutor would contend that the conviction and sentence imposed by the trial Court does not require any interference at the hands of this Court.

6. We have considered the above submissions.

7. Admittedly, P.Ws.1 to 4 and the accused were all living under a common roof along with the deceased. Though they are closely related to the deceased, equally, they are closely related to the accused also. There is no motive for these witnesses to speak against the accused. Absolutely, no such motive against the accused has been suggested by the accused to these witnesses. The occurrence had taken place just inside the house of the deceased. Therefore, the presence of P.Ws.1 and 2 cannot be doubted at all. P.Ws.1 and 2 have stated in categorical terms about the origin of the occurrence and they have also categorically stated that it was this accused who took out M.O.1 from the house and repeatedly caused injuries on the body of the deceased. The presence of P.Ws.1 and 2 have been duly corroborated by P.W.5. P.W.5 is admittedly a neighbour and according to her, on hearing the alarm raised by the deceased when she rushed to the house of the deceased, she found the deceased with bleeding injuries and at that time she found P.Ws.1 and 2 by the side of the deceased. There is no reason to reject the evidence of P.W.5. Thus, evidence of P.W.5 duly corroborates the evidence of P.Ws.1 and 2.

8. So far as the the presence of P.Ws.1 and 2 is concerned, the conduct of P.Ws.1 and 2 also assumes much importance. These two witnesses with the help of P.W.6 had taken the deceased

immediately to the hospital. The alleged occurrence was around 5.00 p.m. and the deceased was seen by P.W.12, Dr.Sudarkodi, at 6.30 p.m. Thus, we do not find any reason to doubt the presence of P.Ws.1 and 2 and the fact that they have seen the occurrence. Though, these two witnesses have been subjected to lengthy cross examination, nothing has been elicited from them to create doubts in their veracity. Thus, from the evidences of P.Ws.1 and 2, we are of the view that the prosecution has clearly proved that it was this accused who caused injuries on the deceased.

9. The deceased died on 26.11.2009. According to the opinion of P.W.13, Dr.Seethalakshmi who conducted autopsy on the body of the deceased, the death was due to the effect of the head injury. She has further stated that all the injuries were infected. Thus, the death would have been due to septicemia. But it cannot be stated that septicemia was due to any other cause other than these injuries. We are sure that but for the injuries, the deceased would not have developed septicemia resulting in the death of the deceased. Thus, it has been clearly established that the death was attributable only to the injuries caused by the accused. Though, it is true that the nature of the treatment given to the deceased when she was in the hospital has not been proved by examining the doctors concerned, on that score, we cannot reject the case of the prosecution, because, it is no defence to say that the deceased would have been saved if proper treatment had been given. Therefore, we conclude that the death of the deceased was caused only by this accused by causing injuries.

10. Having come to the said conclusion, now we have to examine as to what is the offence that the accused has committed by his act. Admittedly, there was no motive for the accused. The occurrence was not premeditated as it was out of a sudden quarrel. It is in evidence that in the usual course, the accused wanted money from the deceased and the deceased declined to give money. This had resulted in a wordy duel between the accused and the deceased. It was at that juncture, the accused had taken out the knife which was in the house and caused injuries. As we have already pointed out, the accused would have had no intention to cause the death of the deceased at all. Similarly, there is no evidence that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause the death. But at the same time, it cannot be stated that the accused would not have had knowledge that those injuries would imminently cause the death of the deceased. Thus, in our considered view, the act of the accused would squarely fall under the fourth limb of Section 300 I.P.C. As we have already pointed out, when the accused wanted money from the deceased and having refused to part with the money, the deceased would have provoked the accused. Such provocation need not necessarily be

only by words, even by way of act, one can provoke. Here in this case, we have got reasons to hold that the deceased would have provoked the accused and such provocation was so sudden and grave. Driven by such grave and sudden provocation, the accused has caused the death of the deceased. Thus, his act would squarely fall within the first exception to Section 300 I.P.C. and therefore, the act of the accused would amount to an offence punishable under Section 304 (ii) IPC.

11. Now, turning to the quantum of sentence, the accused is an old man aged around 50 years. He has got no bad antecedents. He has a family to look after. After the occurrence, it is not reported that he has committed any other crime. There is lot of chances for reformation. Having regard to these mitigating as well as the aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for eight years and to pay a fine of Rs.1,000/- would meet the ends of justice.

12. 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 under Section 302 IPC is set aside and instead, he is convicted under Section 304(ii) IPC and he is sentenced to undergo rigorous imprisonment for eight years and to pay a fine of Rs.1,000/- (Rupees one thousand only) in default, to undergo rigorous imprisonment for four weeks.

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

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Additional District Sessions Judge,
Fast Track Court,
Thirupathur,
Vellore District.

2. The Inspector of Police,
Kandhli Police Station,
Thirupathur, Vellore District.

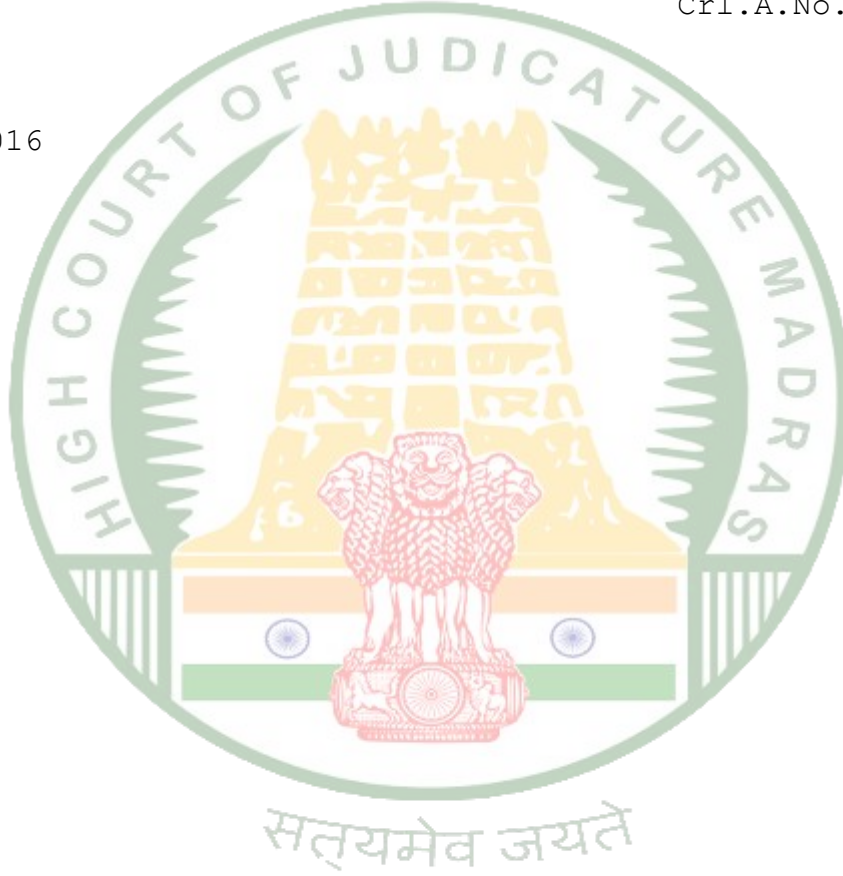
3. The Public Prosecutor,
Madras High Court.

4. The Section Officer,
Crl Section High Court Madras

+1 cc to Mrs.S.Shantha Kumari Advocate sr.4213/16

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