

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

and

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.676 of 2012

1. Appu @ Appuraj

2. Peter ... Appellants /Accused

- Vs -

State rep by
Inspector of Police,
F2, Egmore Police Station,
Chennai.
(Cr.No.458 of 2010)

.. Respondent/Complainant

Prayer:- Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned VI Additional Sessions Judge, Chennai in S.C.No.509 of 2010 dated 03.12.2011.

For Appellants : Mr.R.Sankarasubbu
for Mr.S.Nambirajan

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 appellants are the accused 1 and 2 in S.C.No.509 of 2010 on the file of the learned VI Additional Sessions Judge, Chennai. They stood charged for offences under Section 302 I.P.C. and Section 506(ii) read with Section 34 I.P.C. By judgment dated 03.12.2011, the trial Court convicted both the accused under both the charges and sentenced them to undergo imprisonment for life for the offence under Section 302 I.P.C. and rigorous imprisonment for one year for the offence under Section 506(ii) read with Section 34 I.P.C. No fine has been imposed. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

2.1. The deceased in this case was one Mr.Murugan. P.Ws.1 and 2 are the wife and son respectively of the deceased. One month prior to the occurrence, P.W.2 and one Sathish had a quarrel, in which, P.W.2 attacked Mr.Sathish. In the said occurrence, Mr.Sathish suffered fracture. These two accused are the friends of Mr.Sathish. They demanded money from the family of P.W.1 to meet out the medical expenses of Mr.Sathish. The deceased and P.W.1 gave Rs.5,000/-. But the accused were not satisfied with the same, they were demanding more amount from the deceased. The deceased did not parted with any more amount. This is stated to be motive for the occurrence.

2.2. On 07.06.2010, P.Ws.1 and 2 and the deceased were sitting just in front of their house and at about 5.30 p.m., both the accused came to the house of the deceased, each armed with a wooden log. They demanded Rs.1,000/- from the deceased for giving treatment to Mr.Sathish. The deceased told that he had no money readily available and he would give soon. The accused 1 and 2 led the deceased to Coom river. P.Ws.1 and 2 followed them. On the bank of Coom river, the accused again and again insisted the deceased for Rs.1,000/-. The deceased was also repeating the same. Immediately, the first accused attacked the deceased with the wooden log on the head. Following him, the second accused also attacked the deceased with the wooden log on the head. P.Ws.1 and 2 as well as P.W.3 who was also incidentally there, rushed to the rescue of the deceased. But both the accused pushed the deceased into Coom river and fled away from the scene of occurrence via Co-opetex road. P.Ws.1 to 3 cried for help, then all of them rescued the deceased from the Coom river.

2.3. P.W.1 gave a complaint under Ex.P1. P.W.14 the then Inspector of Police, on receipt of the said complaint under Ex.P.1, registered a case in Crime No.458 of 2010 at 06.50 p.m against both the accused under Sections 302 and 506(ii) I.P.C. He forwarded both the documents to Court and took 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.8 and another witness. Then, he recovered the bloodstained earth and sample earth from the place of occurrence under a mahazar in the presence of the same witness. He forwarded the dead body to the hospital for being kept in the mortuary.

2.4. P.W.9 Dr.K.Vasumathy, received the body at 09.45 p.m. on 07.06.2010, made entries in the accident register (vide Ex.P9) and kept the body in the mortuary. On 08.06.2010, P.W.14 conducted inquest on the body of the deceased between 07.00 a.m. to 09.00 a.m. and then he forwarded the body for postmortem.

2.5. P.W.10, Dr.M.Seethalakshmi, conducted autopsy on the body of the deceased on 08.06.2010 at 12.55 p.m. She founded the following injuries:

"I Injuries:

(1) An old scar of size 34x19 cm seen extending from right side of chest to right side of upper abdomen.

(2) (a) A burrisental incomplete reddish brown abrasion seen over front and left side of neck. Length of the abrasion - 15 cm. On front - 10 cm above the suprasternal notch width - 3cm. On left side - 7 cm below the left mastoid process. width - 2 cm.

(b) A reddish brown abrasion of size 3 x 1 cm seen over inner aspect of left medial malleolus.

(c) A reddish brown abrasion of size 1 x 1 cm seen over front of upper 1/3 of left leg.

(3) Lacerations seen at the following site (a) 4 x 2 cm x bone deep - left parietal region (b) 6 x 1 x bone deep. Right parieto occipital regions. (c) 4 x 1 cm x bone deep - Left occipital region

II. Dissection of Head:

Scalp. Diffuse contusion seen all over the scalp. Comminuted fracture of vault and base of the skull seen with involvement of all cranial fossa. Diffuse skull dura and skull arachmoid hemorrhage seen all over the cerebral hemisphere. Brain congested.

III On Dissection of Thorax:

Rile Cage - intact - Normal in size. Chambers contain few ml of fluid blood. Coronaries, great vessels, valves - intact. Lungs - Normal in size congested.

IV On dissection of abdomen:

Stomach contains 500 gms of partially digested food particles. No specific odour. Mucosa normal. Lever, spleen, kidneys - normal in size congested. bladders - empty. Pelvis - intact.

V. On dissection of neck:

The spin, soft tissues and muscles under the abrasion mark are normal. Trachea contains sand particles, hyoid bone, thyroid

cartilage, cricoid cartilage are normal. No other injuries seen anywhere in the neck. spinal column - intact."

Ex.P10 is the postmortem certificate. She opined that the death was due to shock and hemorrhage due to the head injury. She further opined that the said injuries can be caused by a weapon like wooden log.

2.6. On 09.06.2010, the accused were arrested by the Sub Inspector of Police, Mr.Ranganathan and they were produced before the Inspector of Police (P.W.14). On such arrest, they gave independent confession statement and in the same, they disclosed the place where they have hidden the wooden logs and in pursuance of the same, they took P.W.14 and witnesses to Anderson Bridge and produced the wooden logs (M.O.1 series). On returning to the police station, he forwarded the accused to Court and the material objects also to the Court. At his request, the material objects were sent for chemical examination. The report reveals that there were bloodstains in all the material objects except M.O.4 (sample earth). On completing the investigation, he laid the charge-sheet against both the accused.

2.7. Based on the above materials, the trial Court framed appropriate 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 14 witnesses were examined, 20 documents and four material objects were marked.

2.8. Out of the said witnesses, P.Ws.1 to 3 are the eye witnesses to the occurrence. They have very clearly stated about the entire occurrence. P.W.4 has spoken about the motive. P.W.6 has spoken about the arrest of the accused and the consequential recovery of the wooden logs (M.O.1 series). P.Ws.7 and 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9 Dr.Vasumathy has stated that she received the dead body from one police constable Mr.Vadivelu and kept the same in the mortuary after making necessary entries in the register. P.W.10 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.11 has spoken about the chemical analysis conducted on the material objects and P.W.12 has also spoke about the chemical analysis conducted. P.W.14 has spoken about the registration of the case, investigation done and also the final report filed by him.

2.9. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness nor mark any document on their side. Having considered all the above, the trial Court

convicted them as detailed in the first paragraph of this judgment and that is how, they are before this Court with this appeal.

3. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records, carefully.

4. The learned counsel for the appellants would submit that P.Ws.1 to 3 are the residents of Kanagi Nagar which is at a distance of 25 kilometers from the place of occurrence and therefore they were not individually present at the time of occurrence. He would further submit that though the deceased was taken to the hospital by the police constable Mr.Vadivelu, he has not been examined. The learned counsel would finally submit that assuming that it was these accused who caused the death of the deceased, their act would not amount to murder.

5. The learned Additional Public Prosecutor would vehemently oppose this appeal, according to him, though P.Ws.1 and 2 have been allotted house at Kannagi Nagar, they were present at the place of occurrence along with the deceased where they were normally residing. He would further submit that the presence of P.Ws.1 to 3 at the place of occurrence cannot be doubted. He would further submit that the dead body was taken by a police constable by name Mr.Vadivelu from the place of occurrence and therefore P.Ws.1 to 3 did not accompany with the dead body, it is the reason why, he was not examined, he contended. He would further submit that on the arrest of the accused, wooden logs (M.O.1 series) were recovered and this would strengthen the case of the prosecution, he would contend. He would further submit that motive has been spoken by P.W.4 and also by P.Ws.1 and 2. For these reasons, according to the learned Additional Public Prosecutor, the conviction and sentence imposed by the trial Court do not require any interference at the hands of this Court.

6. We have considered the above submissions.

7. P.Ws.1 to 3 have been examined as eyewitnesses and they have vividly spoken about the entire occurrence. Though it is stated by the learned counsel for the appellants that P.Ws.1 and 2 were living in a house allotted by the Government at Kannagi Nagar, which is situated at a distance of 25 kilometers from the place of occurrence, they have categorically stated that they remained at the place of occurrence and continue to reside there. Thus, the presence of P.Ws.1 and 2 at the place of occurrence cannot be doubted. After all P.Ws.1 and 2 are the wife and son of the deceased who were sitting along with the deceased at the place of occurrence. The motive of the occurrence has also been spoken by P.Ws.1, 2 and 4. Medical

evidence also duly corroborate the eyewitnesses account of P.Ws.1 to 3. Thus, we do not find any reason to reject the evidence of P.Ws.1 to 3 at all. Though, P.Ws.1 and 2 happens to be the wife and son respectively of the deceased, on that score, we cannot reject their evidence.

8. The learned counsel for the appellants is not able to point out any material on record to doubt their veracity. Thus, we hold that the evidences of P.Ws.1 to 3 do not suffer from any discredit. From their evidences coupled with the medical evidence, the prosecution has clearly proved that it was these two accused who attacked the deceased with wooden log and caused his death.

9. The learned counsel for the appellants would submit that the deceased was taken to the hospital by one police constable Mr.Vadivelu which is evident from the entries made in the accident register by P.W.9 but the said Mr.Vadivelu has not been examined. It is in the evidence of P.W.14 that the dead body after having been taken out from Cooum river was kept at the place of occurrence and after the case was registered, he went to the place of occurrence and made arrangements for taking the dead body to the hospital in a police van and that is how the police constable Mr.Vadivelu took the dead body to the hospital. In our considered view, in these circumstances, non-examination of the police constable Mr.Vadivelu has not affected the case of the prosecution in any manner as his evidence would not be of any help either to the prosecution or to arrive at a right conclusion in the case. Apart from that, the recovery of the wooden logs also support the case of the prosecution.

10. Now the question is what was the offence that these two accused committed by the said act. It is in the evidence of P.Ws.1 to 3 that these two accused came to the place of occurrence already armed with weapons. This shows their intention. They demanded Rs.1,000/- from the deceased. The deceased was not ready to pay any amount. Then, they took him to the bank of Cooum river, where they attacked the deceased one after the other. At that time, P.Ws.1 to 3 rushed towards them to rescue the deceased. Had the accused had no intention to kill the deceased, they would have abandoned the deceased and fled away from the scene of crime but it is in evidence that they pushed the deceased into the Cooum river. This shows the determination of the accused to do away with the deceased. Thus, the act of the accused, in our considered view would squarely fall within the first limb of Section 300 I.P.C. and absolutely there is no evidence to bring the act of the accused either within the scope of Exception No.1 or Exception No.4 of Section 300 I.P.C. Therefore, the appellants are liable to be punished for the offence of murder under Section 302 I.P.C. and for having criminally intimidated the P.Ws.1 and 2 they are liable

to be punished for offences under Section 506(ii) I.P.C. r/w Section 34 I.P.C. The trial Court was thus right in convicting the accused under both the charges.

11. So far as the quantum of punishment is concerned, the trial Court has imposed only the minimum sentence which also does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

12. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the accused by the learned VI Additional Sessions Judge, Chennai in S.C.No.509 of 2010 dated 03.12.2011, is hereby confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The VI Additional Sessions Judge,
Chennai.
2. The Principal Session Judge,
Chennai.
3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Inspector of Police,
F2, Egmore Police Station,
Chennai.
5. The Public Prosecutor,
Madras High Court.

CrI.A.No.676 of 2012

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srg 27/04/2016