

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2016

CORAM:

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

Criminal Appeal No.322 of 2013

Gandhikumar

... Appellant/Accused

Vs

State rep. By
Inspector of Police,
Thirumanur Police Station,
Thirumanur
(Crime No.118/2009)

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the conviction and sentence passed by the learned Additional District and Sessions Judge, Ariyalur dated 18.06.2012 in S.C.No.56 of 2009 convicting the appellant/accused under Section 302 I.P.C., to undergo life imprisonment and also imposed a fine of Rs.5,000/- in default to undergo rigorous imprisonment for one year.

For Appellant : Mr.B.Rajamani

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

JUDGEMENT

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

The appellant is the sole accused in S.C.No.56 of 2009 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Ariyalur. He stood charged for offence under Section 302 I.P.C. By judgment dated 18.06.2012, the trial Court convicted the accused for offence under Section 302 I.P.C., and sentenced him to under go imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the accused/appellant is before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Murugan. The accused is his brother. P.W.3 is their father. P.W.3 is a retired

employee drawing pension. P.W.3 was residing with the deceased whereas, the accused was living separately. P.W.3 was paying the entire pension amount to the deceased without giving any amount to the accused. This resulted in frequent quarrels. Further, P.W.3 had a motor pumpset but P.W.3 and the deceased had declined to allow the accused to take water from the said pump set. These instances resulted in an enmity between them. This is stated to be the motive for the accused to commit murder of the deceased.

3. On 16.03.2009 at about 9.00 pm the deceased was standing in front of his house under construction. At that time, the accused came there and developed quarrel with the deceased. The accused questioned the deceased as to why he had declined to pay any amount from the pension drawn by his father. At the end of the quarrel, it is alleged that the accused took out a wooden log and attacked him indiscriminately on his head. It was witnessed by P.Ws.1 to 3. When they attempted to catch-hold of the accused, the accused threatened them and fled away from the scene of occurrence. P.W.1 immediately, rushed the deceased to the Thanjavur Medical College and Hospital and admitted him as in-patient. At that time, the deceased was unconscious. The doctor who admitted the deceased at the hospital duly gave intimation to the police.

4. P.W.12, the then Sub Inspector of Police Thirumanur Police Station on receiving the said intimation went to the Thanjavur Medical College and Hospital. Since the deceased was unconscious, he recorded the statement of P.W.1 namely the wife of the deceased who claims to have witnessed the occurrence. On returning to the Police Station, he registered a case in Crime No.118 of 2009 for offence under Section 307 I.P.C. Ex.P.1 is the complaint given by P.W.1 and Ex. P.6 is the F.I.R. P.W.12 proceeded to the place of occurrence and prepared an observation mahazar at 10.00 am on 19.03.2009 in the presence of P.W.7 and another witness. He also prepared a rough sketch showing the place of occurrence (vide Ex.P.7- Observation Mahazar and Ex.P.8 - Rough Sketch). Then, he examined P.Ws.1 to 5 and recorded their statements. On 18.03.2009, at about 6.00 am., at Thirumazhapadi, P.W.12 arrested the accused in the presence of P.W.6 and another witness. On such arrest, the accused made a voluntary confession in which, he had disclosed the place where he had hidden the wooden log. In pursuance of the same, P.W.12 took the accused to Thirumazhapadi Kollidam River Bank and produced the wooden log (M.O.2). P.W.12 recovered the wooden log (M.O.2) under mahazar in the presence of witnesses. P.W.12 also recovered a blood stained lungi worn by the deceased at the time of occurrence (M.O.1) under a mahazar in the presence of the same witnesses. On returning to the police station, P.W.12 sent the accused to the Court for judicial

remand and also handed over the material objects to the Court. Thereafter, P.W.12 forwarded the case diary to the then Inspector of Police, attached to Thirumanur Police Station, for further investigation.

5.P.W.13, the then Inspector of Police took up the case for further investigation. While the case was under investigation, the deceased died on 20.03.2009 at 7.00 pm. in the hospital succumbing to the head injuries. Thereafter, P.W.13 altered the case into one under Section 302 I.P.C. He conducted inquest on the body of the deceased, in the presence of the witnesses and then, forwarded the body for post mortem.

6.P.W.15 Dr.A.R.Sampath, conducted autopsy on the body of the deceased. He found the following injuries on the body of the deceased :-

"External Injuries

1.Laceration measuring 2x1x1 cm over the lower lip.

2.Two lacerated injuries measuring 2x1x1 cm and 3x2x1 cm over the left side and middle of nose.

3.'L' shaped sutured lacerated wound measuring 10x3cm x 2 cm over left forehead.

4.Sutured lacerated wound measuring 6x3x2 cm noted over the right cheek

5.Surgically made tracheotomy wound for treatment purpose noted at the anterior aspect lower part of neck.

7.Abrasion measuring 2x1cm noted over top of left shoulder.

8.Abrasion measuring 2x1cm noted over the left elbow posterior aspect.

9.Abrasion measuring 2x1cm noted over the left clavicle on the medial aspect.

INTERNAL INJURIES:

On reflecting the scalp, subscalpal contusion noted over right frontal and temporal region and in the left temporal region. On opening the vault of skull, contusions noted over the temporo-parietal regions of both cerebral hemispheres. Sub arachnoid hemorrhages and intra cerebral

hemorrhages noted. On examining the base of skull fracture of anterior cranial fossa and middle cranial fossa noted on both sides.

Maxillary and mandibular fractures are noted over the both sides of face with surrounding contusions."

7.Ex.P.4 is the Post mortem certificate. P.W.15 gave opinion that the death was due to shock and hemorrhage. P.W.13 - the then Inspector of Police, continued the investigation and collected the medical records of the deceased, examined a few more witnesses. On a request made by him, the material objects were sent for chemical examination. On completing investigation, finally, he laid charge sheet against the accused for offence under Section 302 I.P.C.

8.Based on the above materials, the trial Court framed a lone charge against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 15 witnesses were examined and 16 documents were exhibited, besides 2 material objects.

9.Out of the said witnesses, P.Ws.1 to 3 are the eye witnesses to the occurrence. They have vividly spoken about the same. P.W.4 has spoken to the fact that he went to the hospital and found the deceased taking treatment. P.Ws.5 to 7 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.8 has spoken about the autopsy conducted by him on the body of the deceased and he also gave opinion regarding the cause of the death. P.W.9 is the chemical analyst who has stated that there were blood stains on the material objects including the wooden log. P.W.10 has stated that he carried the altered F.I.R., from the Police Station and handed over the same to the jurisdictional Court. P.W.11 has spoken about the fact that he took the body for post mortem and handed over the same to the Doctor. P.Ws.12 and 13 have spoken about the investigation done by them. P.Ws.14 and 15 have spoken about the treatment given by them to the deceased in the hospital.

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 of the witnesses on his side.

11.Having considered all the above, the trial Court found the accused guilty under the said charge and accordingly sentenced him to undergo life imprisonment. Aggrieved over the same, the accused/appellant is before this Court with this

appeal.

12.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.

13.The learned counsel appearing for the appellant would submit that the presence of P.Ws.1 to 3 at the place of occurrence is highly doubtful. But, we find no force in the said contention. The presence of P.Ws.1 to 3 cannot be doubted at all because the occurrence had taken place just by the side of the house of the deceased and the accused. P.Ws.1 to 3 had no axe to grind against the accused. Though P.Ws.1 to 4 had been subjected to lengthy cross examination, nothing has been elicited to disbelieve their evidences. They have categorically stated that the accused attacked the deceased with the wooden log repeatedly and caused injuries. The deceased was taken to the hospital only by P.W.1 and other relatives immediately. Thus, we do not find any reason to dis-believe the presence of P.Ws.1 to 3 and their veracity.

14.The medical evidence duly corroborates the evidence of P.Ws.1 to 3. According to P.W.8, Dr.Jeneeta Christiyana Ranjana, the death of the deceased was due to head injuries. P.Ws.14 and 15 have elaborately spoken about the nature of the injuries sustained by the deceased and the treatment given to him. These medical evidences clearly corroborate the eye witness account.

15.The recovery of M.O.2, the wooden log and the blood stained cloth on the disclosure statement by the accused would also further lends support to the case of the prosecution. From all these evidences, we have no doubt that the prosecution has clearly established that it was this accused who attacked the deceased and caused his death.

16.The next question is what is the offence that the accused had committed by his act. From the narration of facts as stated by the P.Ws.1 to 3, it is crystal clear that there was some wordy quarrel between the accused and the deceased. There was no premeditation on the part of the accused. At the end of the quarrel, the accused is stated to have taken the wooden log lying there and attacked the deceased on his head repeatedly. The death was also not instantaneous. From these facts, we are of the view that the accused would not have intended to cause the death of the deceased at all. At the same time, it is crystal clear that the accused had intended to cause injuries found on the deceased, which were sufficient in the ordinary course of nature, to cause his death. Thus, the act of the accused would fall within the third limb of Section 300 I.P.C.

17.As we have already pointed out, there was no pre-meditation and the occurrence itself was out of some wordy quarrel. From the evidence available, it is presumed under Section 114 of the Indian Evidence Act, i.e., going by the natural human conduct that in the wordy quarrel, the deceased would have provoked the accused. It is only out of the sudden provocation which was also grave, the accused had attacked the deceased with the wooden log which was lying there and therefore, the act of the accused would not amount to murder and it would only amount to culpable homicide punishable under Section 304(i) I.P.C.

18.Now, turning to the quantum of punishment, at the time of occurrence, the accused was hardly 40 years old. He has to take care of his family. He had no bad antecedents. After the occurrence also, it is not reported that he was involved in any other crime. Further, there are lot of chances for reformation. So far as the aggravating circumstances are concerned, there was no pre-meditation and there was no strong motive for the accused to commit murder of the deceased. Having regard to these aggravating as well as mitigating circumstances, we hold that the sentencing the accused to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- shall be the appropriate punishment.

19.In the result, the criminal appeal is allowed in part and the conviction and sentence imposed on the appellant/accused under Section 302 I.P.C., is set aside and instead, the appellant is convicted for offence under Section 304(i) I.P.C., and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for four weeks. The period of sentence already undergone by the appellant is directed to be set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Additional District and Sessions Judge,
Ariyalur.

2.The Principal Sessions Judge,
Ariyalur.

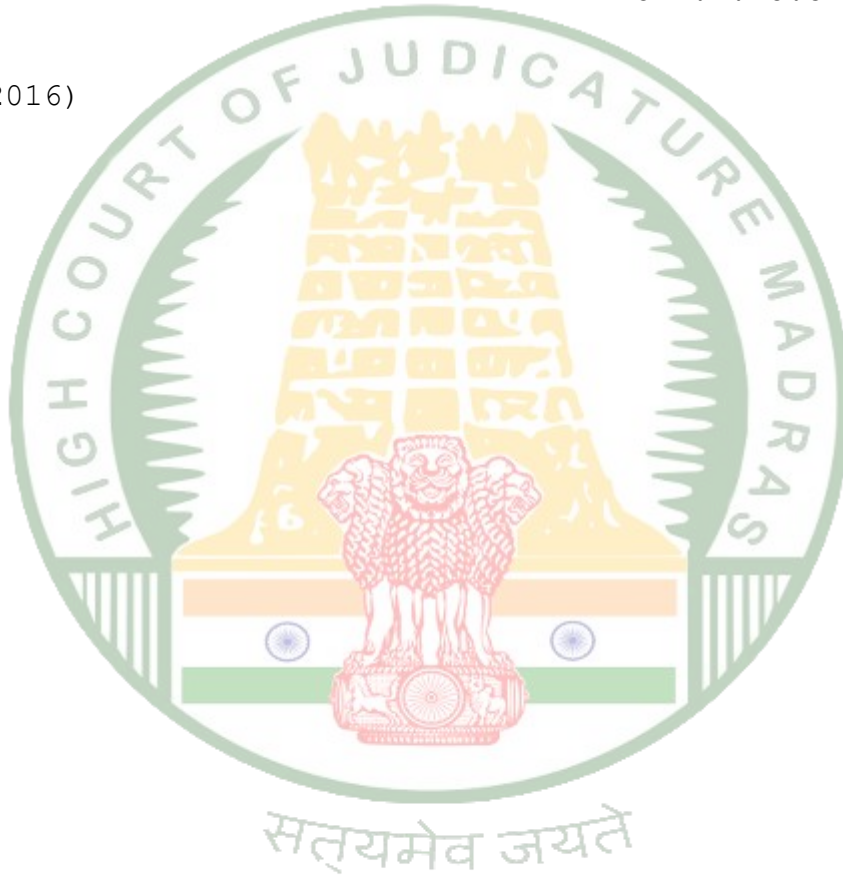
3.The Inspector of Police,
Thirumanur Police Station,
Thirumanur.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.B.Rajamani, Advocate, S.R.No.6015

Cr1.A.No.322 of 2013

GJ(CO)
CA(17/02/2016)



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