

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

and

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.404 of 2013

and

Miscellaneous Petition No.2 of 2013

Azhakumuthu .. Appellant/Accused (A1)

- Vs -

State by

The Inspector of Police,
Sendurai Police Station,
Ariyalur District.

(Cr.No.241 of 2011)

.. Respondent/Complainant

Prayer:- Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Additional District and Sessions Judge, Ariyalur, in S.C.No.100 of 2012 dated 19.04.2013.

For Appellant : Mr.S.Paneerselvam

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 first accused in S.C.No.100 of 2012, on the file of the learned Additional District and Sessions Judge, Ariyalur. The second accused was his wife Mrs.Manimehalai. The appellant stood charged for offences under Sections 294(b), 341, 307 and 302 IPC and the second accused stood charged for offence under Section 323 (2 counts). By judgment dated 19.04.2013, the Trial Court acquitted the second accused and convicted the appellant under Sections 341, 307 and 302 I.P.C. and sentenced him to undergo simple imprisonment for one month and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one week for offence under Section 341 IPC, to undergo rigorous imprisonment for five years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for one year for

offence under Section 307 IPC and to under go imprisonment for life and to pay a fine of Rs.5,000/- in default to under go rigorous imprisonment for one year for offence under Section 302 IPC. 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 deceased in this case, was one Mr.Sellamuthu. P.W.1 is his wife. The appellant is the first son of the deceased. The second accused is the wife of the appellant. P.W.2 is the brother of the appellant. The appellant and the second accused were living as husband and wife separately. The deceased and P.Ws.1 to 3 were residing together in their ancestral house. P.W.3 is the sister of the appellant. The family had an ancestral property measuring three acres. The appellant was demanding for partition and for separate possession of the joint family property. The appellant was in Dubai for quite sometime and returned to his native place six months prior to the occurrence. From then onwards, he was demanding partition of the property. This resulted in ill-feeling between the two families.

2.2 On 13.09.2011, at about 8.00 p.m. P.Ws.1 to 3 and the deceased were in their ancestral house and at that time, both the accused came to the house demanding partition and the appellant started abusing P.W.2 and the deceased. P.W.2 came out of the house and tried to persuade the appellant not to quarrel. He assured him that the issue could be settled on the next day. Even when P.W.2 was passively persuading the appellant, the accused took out a knife from his waist and stabbed P.W.2 on the left side of his chest. The second accused took a stick lying there and attacked P.W.2. The deceased and P.W.1 who were inside the house, on hearing the alarm raised by P.W.2, rushed out of the house. By the time, the appellant and the second accused had left the place and they were proceeding to their house via Sriram Nursery School. The deceased went to the school and intercepted the first accused and questioned him as to why he stabbed P.W.2. Suddenly, the appellant, with the very same knife, stabbed the deceased on the middle of his chest. The deceased fell down in a pool of blood. Both the accused fled away from the scene of occurrence. This was witnessed by P.Ws.1 to 4.

2.3. P.W.1 and others took P.W.2 immediately to the Government Hospital at Ariyalur. P.W.24, Dr.Arunshankar examined P.W.2 on 13.09.2011. He found the following injuries on P.W.2:

"Injuries: 1) A cut injury over the left side of chest measuring 2 x 0.5 x 0.2 cm (2) Abrasion below left eye measuring 6 x 0.1 cm (3) Abrasion over the right knee measuring 1 x 1 cm (4) Abrasion over medial aspect of right knee measuring 1 x 1 cm"

He admitted him as inpatient and after treatment, he was discharged from the hospital on 20.09.2011. Ex.P22 is the accident register. The injuries on him, according to P.W.24 were grievous in nature.

2.4. The deceased died instantaneously on the spot succumbing to the injury. P.W.1 immediately went to the police station and made a complaint at 11.30 p.m. on 13.09.2011.

2.5. P.W.19, the then Sub Inspector of Police on receipt of the said complaint under Ex.P1, registered a case in Crime No.241 of 2011 under Sections 341, 294(b), 323, 324, 307 and 302 I.P.C. Ex.P10 is the F.I.R. He forwarded both the documents to Court which were received by the learned Magistrate at 6.00 a.m. on 14.09.2011.

2.6. P.W.25, the then Inspector of Police took up the case for investigation and proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.Ws. 14 and 15. He also recovered blood stained earth and sample earth from both the places of occurrence. Then, he recovered M.O.6 stick found at the place of occurrence. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.7. P.W.21 conducted autopsy on the body of the deceased on 14.09.2011 at 01.15 p.m and she found the following injuries:

"Injuries : An elliptical shaped wound of size about 7 cm x 3 cm extending into the peritoneal cavity present. 5 cm below and on the right side of xiphisternum. The wound is seen in obliquely from right to left side of both edges 3 x 2 cm and clots present on the edges. On opening the wound, the wound extended to the right side of the ventricles diaphragm and into the base of the heart. There is a 3cm x 2 cm vertical depth wound present in the base of the heart. About 2000 ml of liquid blood present in the mediastinum. Ribs in tact on both sides."

She opined that the injuries on the deceased could have been caused by a weapon like knife (M.O.1). She also opined that the death was due to shock and hemorrhage due to the single stab found on the chest. Ex.P.13 is the postmortem certificate.

2.8. On 14.09.2011, P.W.25 arrested both the accused at 01.30 p.m. in the presence of P.W.16 and another witness. On such arrest, the first accused gave a voluntary confession, in which, he disclosed the place where he had hidden the knife and in pursuance of the same, he took the police and

the said witness to the said place and produced M.O.1 knife from the hideout. On returning to the police station, he forwarded the accused to Court for remand and the material objects also to Court. On completing the investigation, he laid the charge sheet against the accused.

2.9. Based on the above materials, the trial Court framed charges against both the accused as detailed in the first paragraph of the judgment, which the accused denied. In order to prove the case, on the side of the prosecution, as many as 25 witnesses were examined, 30 documents and 6 material objects were marked. On the side of the accused, the wound certificate issued to the first accused on 14.09.2011 has been marked as Ex.D1 which shows that there was some lacerated wound over the right index finger about 3 cm x 1 cm x 0.5 cm.

2.10. Out of the said witnesses, P.Ws.1 to 4 are eye witnesses to the occurrence. They have vividly spoken about the attack made by the appellant both on P.W.2 and the deceased. P.Ws.5 to 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.Ws.9 to 11 and 13 have not stated anything incriminating as they have given evidence only on hearsay information. P.W.12 has stated that he took photographs at the place of occurrence on the request made by the Inspector of Police. P.Ws.14 and 15 have spoken about the observation mahazar prepared at both the places and the material objects recovered by the police. P.W.16 has spoken about the arrest of the accused and the consequential recovery of material object knife (M.O.1) based on the disclosure statement made by the first accused. P.W.19 has spoken about the registration of the case on the complaint of P.W.1. P.W.21 has spoken about the postmortem conducted on the body of the deceased and her final opinion regarding the cause of death. P.W.22, the learned Judicial Magistrate has spoken about the statement recorded by him under Section 164 Cr.P.C. P.Ws.23 and 24 have spoken about the injuries on P.W.2 and about the treatment given. P.W.25 has spoken about the investigation done and the final report submitted.

2.11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness on their side, but marked the wound certificate of the first accused as Ex.D1. Having considered all the above, the trial Court convicted the first accused as detailed in the first paragraph of this judgment and that is how, the appellant 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 and also perused the records, carefully.

4. At the outset, we have to say that the relationship between the parties has been admitted. It is in the evidences of P.Ws.1 to 3 that the appellant was demanding for partition of the joint family property and the deceased and P.W.1 did not readily come forward for partition of the joint family property. On account of the same, the appellant had developed grudges against the deceased and P.W.2. It needs to be mentioned that the deceased, P.W.2 and P.Ws 1 and 3 were residing together, whereas, the appellant and his wife were living apart.

5. On the day of occurrence, according to the evidences of P.Ws.1 to 4, the appellant along with the second accused came to the house of the deceased and started abusing the inmates. When P.W.2 came out and tried to persuade him, he suddenly stabbed P.W.2 with a knife on his chest. This was witnessed by P.Ws.1, 3 and 4. The presence of P.Ws.1, 3 and 4 at the place of occurrence also cannot be doubted. The evidence of the injured eye witness viz., P.W.2 which is duly corroborated by the eye witnesses account of P.Ws.1,3 and 4 deserves acceptance as we do not find any reason to doubt their credibility.

6. It is in evidence that after stabbing P.W.2, the appellant along with his wife was proceeding towards a school and the deceased who came out of the house, followed him and near the school when he questioned the appellant, he stabbed him once on his chest, which resulted in his death. This was also witnessed by P.Ws.1, 3 & 4. Their presence at the place of occurrence, as we have already pointed out, cannot be doubted and their veracity also cannot be doubted. The medical evidence clearly corroborated the eye witnesses account of P.Ws.1 to 4. There was no delay in preferring the complaint. Thus, the prompt launching of the FIR also, to some extent, vouches for the truthfulness of the allegations contained therein, which has been spoken by P.W.1. Ex.P1, thus duly corroborates the eye witness account also. From these evidences, in our considered view, the prosecution has clearly proved that the injuries on P.W.2 and on the deceased were caused only by this appellant.

7. Now the question is what is the offence that has been committed by the appellant by his above acts ? So far as the injuries caused on P.W.2 is concerned, though the Doctor has opined that the injury was grievous in nature as the injury was on the chest, in our considered view, the act of the accused causing injuries on P.W.2 would not make out an offence under Section 307 IPC and the same would make out an offence under Section 326 of I.P.C. alone.

8. So far as the injury caused on the deceased is concerned, it was a single stab caused by the appellant on

the chest, which resulted in the death of the deceased. The accused could not have intention to cause the death of the deceased at all. If really, he had any such intention, he could have attacked the deceased when he saw him at his house itself. But he did not choose to attack him at all. This would go to show that he did not have any intention either to cause his death or to cause even any injury. After having voluntarily caused injury on P.W.2, he returned and while he was nearing the school, it was the deceased who followed him and questioned him. Certainly, this would have resulted in a quarrel and there would have been some scuffle. The fact that the appellant had a lacerated injury in his right index finger would be indicative of the fact that there would have been a scuffle between the appellant and the deceased. The act of the deceased would have certainly provoked the appellant. In the sudden quarrel and in the heat of passion, the accused had used the very same knife and caused the death of the deceased and ran away. Thus, though the act of the accused would squarely fall within the third limb of Section 300 IPC and it would fall under the fourth exception to Section 300 I.P.C. Therefore, the appellant is liable for punishment under Section 304(i) I.P.C. for having caused the death of the deceased.

9. Now, turning to the quantum of sentence, the appellant is an young man who has got no bad antecedents. The occurrence was not pre-mediated and it was out of a quarrel when the appellant demanded for partition of the joint family properties. After the occurrence also, the appellant has not shown any deviance from the law. There are lot of chances for reformation and he has got a big family to take care of. Having regard to the mitigating as well as the aggravating circumstances, we are of the view that sentencing the appellant to undergo rigorous imprisonment for eight years and to pay a fine of Rs.5,000/- in default to under go rigorous imprisonment for four weeks would meet the ends of justice. Similarly, for the offence under Section 326 I.P.C., we are of the view that imposing punishment of rigorous imprisonment for one year and a fine of Rs.1,000/- in default to under go rigorous imprisonment for two weeks would meet the ends of justice.

10. 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 Sections 302 and 307 IPC are set aside and instead, he is convicted under Sections 304(i) and 326 IPC. For offence under Section 304(i) IPC, he is sentenced to undergo rigorous imprisonment for eight years and to pay a fine of Rs.5,000/- in default to under go rigorous imprisonment for four weeks. For offence under Section

326 IPC, he is sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/- in default to under go rigorous imprisonment for two weeks.

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

(iii) Consequently, the connected miscellaneous petition in M.P.No.2 of 2013 is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

csh/kk

To

1. The Additional District and Sessions Judge, Ariyalur.
2. -do- Through The Principal Sessions Judge, Ariyalur.
3. The Judicial Magistrate, Ariyalur.
4. -do- Through The Chief Judicial Magistrate, Ariyalur.
5. The Inspector of Police, Sendurai Police Station, Ariyalur District.
6. The Director General of Police Mylaapore, Chennai.
7. The District Collector, Ariyalur.
8. The Public Prosecutor, Madras High Court.
9. The Superintendent of Central Prison, Trichy.

Cr1.A.No.404 of 2013
and M.P.No.2 of 2013

RSI(CO)

EU 24.03.16