

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.865 of 2012

Rajesh

.. Appellant / Accused

vs

State, Rep. By,
The Inspector of Police,
Vengal Police Station,
Tiruvallur District
(Cr. No.76/2010)

.. Respondent / Complainant

Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code, against the judgment of the learned Principal I Additional District Sessions Judge at Tiruvallur, in S.C.No.113 of 2010, dated 15.10.2012.

For Appellant : Mr. T.K.S.Bharathy Anantharaj
For Respondent : Mr. E.Raja, A.P.P.,

J U D G M E N T

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

The appellant is the sole accused in S.C.No.113 of 2010 on the file of the learned I Additional District Sessions Judge, Tiruvallur. He stood charge for the offence under Section 302 IPC. By judgment, dated 15.10.2012, the trial court convicted him for the offence under Section 302 IPC and sentenced him to undergo Imprisonment for life and to pay a fine of Rs.2,000/-, in default, to undergo Rigorous Imprisonment for one year. 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:-

The accused hails from the State of Odisha. He was residing at Jarmuntha Village in Valangi District. The deceased, in this case, was one Mr.Sanantho Dabha. P.W.1 is his brother. They also hail from the State of Odisha. They were the permanent residents of Jarmunda Village in Valangi District. P.W.2 also hails from Odisha. The accused, deceased, P.W.1 and P.W.2 had come down to Tamil Nadu in search of a coolie work. They were staying at Thamaraipakkam Village, in Tiruvallur District, and

doing work as coolies in a Brick line at Tamaraipakkam. After sometime of their arrival, the accused intended to go back to Odisha. On 11.02.2010, around 08.00 pm, he told P.W.1 and the deceased that he intended to go back to Odisha. But P.W.1 and the deceased told that, having received an advance amount from the employer, it would not be appropriate and also not possible for him to go back to Odisha. This resulted in a quarrel. The deceased, in the said quarrel, attacked the accused with hands. In the said quarrel, it is further stated that the accused took out a spade with handle lying there, and attacked the deceased on his head. When P.Ws.1 and 2 tried to get him hold, the accused escaped from the place of occurrence. P.Ws.1 and 2 immediately took the deceased to Thiruvallur Government Hospital. The Doctor declared him dead. Therefore, P.W.1 went to Vengal Police Station, on 11.02.2010, and at 11.15 pm, made a complaint. P.W.14, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.76 of 2010 under Section 302 IPC. Ex.P-1 is the complaint and Ex.P-12 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Magistrate at 12.15 am on 12.02.2010.

3. P.W.15 took-up the case for investigation. He went to the Place of occurrence at 06.00 am on 12.02.2010, prepared an observation mahazar and a rough sketch in the presence of P.W.7 and another witness. He recovered blood stained earth and sample earth from the place of occurrence, in the presence of witnesses. Then, he conducted inquest on the body of the deceased between 09.00 am and 12.00 noon and forwarded the same for post-mortem. P.W.12, Dr.Sekar, conducted autopsy on the body of the deceased on 12.02.2010. He found the following injuries:-

"External Injuries:

Deep lacerated cut injuries found on occipital region just above the neck, transverse in clavateen, about 10x4x4 cm in size. Blood clot found exposing brain tissue. Occipital bone broken.

Deep lacerated injuries on just below the above injuries measuring 6x2x3 cms in size.

Internal injuries:-

Head Intact. Contused bleed found on occipital bone. Parietal Bone, Brain tissue Contused. Lower occipital bone broken in four pieces. Thorax Head - empty soft, pale. Liver - soft and pale; Abdomen and All internal organs - soft and pale."

4. Ex.P-11 is the post-mortem certificate. P.W.12 gave opinion that the death of the deceased was due to shock and haemorrhage as a result of the injuries sustained. P.W.15

recovered the blood stained cloth from the body of the deceased and forwarded the same to the Court. On the same day, at 03.00 pm, he arrested the accused in the presence of P.W.9 and other witnesses. On such arrest, he gave 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 the witnesses to the place of hideout and produced the spade with handle (M.O.1). Then, on returning to the Police Station, he forwarded the accused to judicial remand and handed over the material objects also to the Court. At his request, material objects were sent for chemical examination. The report revealed that there were blood stains on all the material objects, except the spade. On completing the investigation, he laid the charge sheet against the accused.

5. Based on the above materials, the trial court framed charges as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 15 witnesses were examined and 23 documents were exhibited, besides marking 5 Material Objects.

6. Out of the said witnesses, P.W.1 is the brother of the deceased and P.W.2 is the co-worker. P.Ws.1 and 2 did not know to speak Tamil, therefore, P.W.3, during the course of investigation, assisted the Investigating Officer to translate the statements of P.Ws.1 and 2. P.W.4 is the employer of the deceased. He has not stated anything incriminating against the accused. P.W.5 has stated that he heard about the occurrence and then took the deceased to the hospital. P.W.6 has also stated that he came to the place of occurrence only after the occurrence was over. P.W.7 has spoken about the preparation of the Observation Mahazar and the Rough sketch. P.W.8 has also spoken about the same facts. P.W.9 has spoken about the arrest of the accused and the consequential recovery of the spade with handle on his disclosure statement. P.W.10 has spoken about the photographs taken in the place of occurrence. P.W.11, Dr.Jagadesh Kumar, has stated that on 11.02.2010, when he was on duty, at the Government Hospital, the deceased was brought to him for treatment. He found him dead and accordingly, he declared. P.W.12, Dr.P.Sekar, has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.14 has stated about the registration of the case. P.W.15 has spoken about the investigation done and the final report filed.

7. 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 witness nor mark any document, on his side. Having considered all the above, the

trial Court convicted the accused under Section 302 IPC. Challenging the same, the appellant is before this Court with this Criminal Appeal.

8. During the course of hearing this appeal, as per the judgement of the trial court, at the time of occurrence, the accused was aged 20 years. On that premise, the trial court treated him as an adult, went on with the trial and finally convicted. During the course of this appeal, a plea was taken by the learned counsel for the appellant / accused that, on the date of the alleged commission of the crime, the accused was only a Juvenile and therefore, the entire trial is vitiated.

9. Having heard the said submissions, a Bench of this Court issued a direction to the Trial Court to hold an enquiry under Section 7 (A) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, to ascertain the age. After holding an enquiry, the learned Judge, who presided over the Trial Court, submitted a report under D.No.547/2015, dated 30.10.2015, that as on the date of the occurrence, the accused had completed only 17 years, 7 months and 37 days and thus, he was a Juvenile.

10. On going through the report of the learned Judge, another Division Bench (M.Jaichandren, J., and S.Nagamuthu, J.,) expressed our dis-satisfaction about the way in which the enquiry had been conducted, because, we felt that the relevant materials to ascertain the age had not been placed by way of evidence and in a mechanical way, the report had been submitted. Therefore, we directed further enquiry to be held by the learned Judge.

11. Now, the I Additional District and Sessions Judge, Thiruvallur, under D.No.316/2016, dated 16.08.2016, has submitted a report, wherein she has stated that, as on the date of the alleged occurrence, the accused was not a Juvenile.

12. Having seen the said report, the learned counsel for the appellant did not press for any further adjudication on the issue of juvenality of the accused. Therefore, we have heard the learned counsel for the appellant, the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

13. A perusal of the records would go to show that P.Ws.1 and 2 claim to be eye-witnesses. They were working along with the deceased and the accused. Their presence at the place of occurrence cannot be doubted. They have no axe to grind against the accused also. They had only taken the deceased to the hospital for treatment. The complaint was lodged only by P.W.1.

Though these two witnesses have been cross-examined at length, nothing could be elicited from them, so as to doubt their credibility. Further, P.Ws.3 and 4 have also spoken about the presence of these two witnesses. From the evidences of P.Ws.1 and 2, we are of the view that the prosecution has clearly established, without any doubt, that, it was this accused, who attacked the deceased with the spade and caused injuries on the deceased.

14. The Doctor, who conducted autopsy has given a clear opinion that the death of the deceased was due to shock and haemorrhage caused on account of the injuries found on the body of the deceased. We have no reason to reject the said opinion of the Doctor. By these things, the prosecution has established that it was this accused, who caused homicide of the deceased.

15. Having come to the said conclusion, now we have to examine as to what was the offence that was committed by the accused by the said act.

16. As we have already pointed out, it is in evidence that the deceased, the accused and P.Ws.1 and 2 had come all the way from Odisha in search of coolie work and they were working together. There was no motive or enmity between them. When the accused wanted to go back, P.W.1 and the deceased had told him that it would not be appropriate for him to leave to Odisha, since he had received advance amount from the employer. This has resulted in a quarrel. It was only the deceased, who attacked him first. In retaliation, the accused had attacked the deceased with the spade, which was lying there, at the work-spot. Thus, it is crystal clear that the occurrence was not a premeditated one. It happened in a spur of the moment. The said quarrel, ultimately resulted in a fight. The accused had not acted in a cruel manner. Thus, in our considered view, though the act of the accused would fall squarely within the third limb of Section 300 IPC, the same would squarely fall within the fourth exception to Section 300 IPC. Therefore, the appellant is liable to be punished only for the offence under Section 304 (1) IPC.

17. Now turning to the quantum of punishment, at the time of occurrence, the accused was hardly 20 years old. There are lot of chances for reformation. He has got no bad antecedents. The occurrence was not premeditated one as it happened in a spur of the moment and in a heat of passion. Having regard to the aggravating and mitigating circumstances, we are of the view that sentencing the accused to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.500/-, for the offence under Section 304 (i) IPC would meet the ends of justice.

18. In the result, this Criminal Appeal is partly-allowed. The conviction and sentence imposed on the accused for the offence under Section 302 IPC is set-aside and instead, he is convicted under Section 304 (1) IPC and sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.500/-, in default, to undergo Rigorous Imprisonment for two weeks. It is directed that the period of sentence already undergone by the accused shall be set-off, as provided under Section 428 of the Criminal Procedure Code.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

srk

To

1. I Additional District Sessions Judge, Tiruvallur
 - 2 The Superintendent of Prison, Central Prison, Puzhal, Chennai
 - 3 The District Collector
Thiruvallur
 - 4 The Director General of Police Mylapore, Chennai 4
 - 5.The Public Prosecutor, Madras.
 - 6 Copy to:
The Section Officer,
Crl.Section, High Court, Madras
- +1 CC to Mr. T.K.S. Bharathy Anandraj, Sr.No.47114

Crl.A.No.865 of 2012

VGI (CO)
MD : 22/09/2016

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