

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.No.692 of 2013
R.Mani .. Appellant/Accused
Vs

State represented by
Inspector of Police
Uddanappalli Police Station
Krishnagiri District. .. Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Principal District and Sessions Judge, Krishnagiri, in S.C.No.117 of 2011 on 29.08.2013.

For Appellant : Mr.S.Suresh
for
Mr.M.P.Saravanan
For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

The sole accused in S.C.No.117 of 2011 on the file of the learned Principal District and Sessions Judge, Krishnagiri, is the appellant herein. He stood charged for an offence under Section 302 IPC. The trial Court, after trial, convicted him under the above said charge and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.1,000/-, in default to undergo six months simple imprisonment. Challenging the above said conviction and sentence, the present Appeal has been filed.

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

(i) The deceased in this case was one Munusamy. The

accused is his neighbour. On 29.07.2011, there was a quarrel between the deceased and his mother-in-law. At that time, the accused questioned the deceased as to why he was quarrelling with his mother-in-law, for which, the deceased retaliated saying that it was their family issue and he need not interfere in it. Being provoked by the same, the accused went inside his house, brought a knife and attacked the deceased on his right shoulder and caused his death.

(ii) PW.1 is the daughter of the deceased. She went to the police station and lodged a complaint.

(iii) PW.7 - Sub-Inspector of police in respondent police, on receipt of the complaint (Ex.P14), registered a case in Crime No.128 of 2011 for the offence under Section 302 IPC and sent the same to the Judicial Magistrate Court and copies thereof to the higher officials.

(iv) PW.9 - Inspector of Police, on receipt of First Information Report (Ex.P15), commenced investigation, visited the scene of occurrence, made an observation and prepared an Observation Mahazar and a rough sketch (Ex.P20). He also conducted inquest on the dead body in the presence of panchayatdars. He recovered blood stained soil (M.O.2) and also sample soil (M.O.3) under a cover of Mahazar. Thereafter, he sent the body to the Government Hospital, Hosur, for autopsy.

(v) PW.6 Doctor, at the relevant point of time, was working in Government Hospital, Hosur, and he conducted postmortem (autopsy) on the dead body and found the following injuries:-

" EXTERNAL INJURIES:

1. Two abrasions 2 cm below the (Lt) collar bone each $\frac{1}{2}$ cm x $\frac{1}{2}$ cm x $\frac{1}{2}$ cm.
2. Elliptical punctured wound 3 cm x 1 cm x 15 cm depth in (Rt) upper arm near (Rt) shoulder.

INTERNAL EXAMINATION:

1. Hyoid bone intact
2. Ribs intact
3. Heart wt. 240 gm. Chambers empty c/s. Pale
4. Lungs wt. (Rt) 400 gm (Lt) 390 gm c/s. Pale
upper lobe lung 4 x 3 x 1 cm triangular shaped punctured wound 500 ml blood in thoracic cavity.
5. Liver wt. 1350 gm. C/s pale
6. Stomach contains semidigested food particles about 100 ml.
7. Kidneys wt. 140 gm each c/s. Pale
8. Spleen wt. 120 gm c/s. Pale

9. Spleen wt 120/cs pale
10. Bladder empty
11. Skull intact
12. Membranes intact
13. Brain 1300 gm c/s pale petechia hemorrhage
14. Base of skull intact."

PW.6 gave postmortem certificate Ex.P13 and he was of the opinion that the deceased would appear to have died of shock and hemorrhage due to injuries in the vital organ viz., lungs.

(vi) PW.9 - Inspector of police, arrested the accused on 30.07.2011 in the presence of witnesses and on such arrest, the accused voluntarily gave a confession and based on the disclosure statement (Ex.P24), he recovered a blood stained knife (M.O.1) and sent the accused to judicial custody. Then, PW.9 recorded the statement of postmortem Doctor and other witnesses and after concluding investigation, he filed charge sheet.

3. Based on the above materials, the trial Court has framed charges as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the same, the prosecution examined 9 witnesses and exhibited 25 documents and marked 7 material objects.

4. Out of the witnesses examined, PW.1 is the daughter of the accused. Though she gave Ex.P1 complaint, she turned hostile. PW.2 is an eye witness to the occurrence and according to him, he saw the accused attacking the deceased. PW.3 is the sister of the deceased and she is also an eye witness to the occurrence. PW.4 turned hostile. PW.5 - Village Assistant is a witness to the Observation Mahazars (Ex.P8, Ex.P9, Ex.P10 and Ex.P11) and recovery of blood stained soil (M.O.2 and M.O.4) and sample soil (M.O.3 and M.O.5). PW.6 is the Doctor, who conducted postmortem (autopsy) on the dead body and gave postmortem certificate (Ex.P13). PW.7 is the Sub-Inspector of Police, who registered the complaint. PW.8 was the then Head Clerk in the Judicial Magistrate Court, Hosur, and he has deposed that he sent the material objects for chemical examination. PW.9 - Investigating Officer has spoken about recording of statements of witnesses, arrest of the accused, seizure of the material objects and filing of charge sheet after completion of investigation.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, the accused did not examine any witnesses nor he did mark any documents.

6. Considering the above materials, the trial Court convicted the accused and sentenced him as mentioned in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the accused before this Court.

7. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor for the respondent and perused the records carefully.

8. The prosecution has projected P.Ws.1 to 3 as eye witnesses to the occurrence. PW.1 is the daughter. She did not support the prosecution and turned hostile. PW.2 is the sister's son of the deceased. In his evidence, he has stated that on the date of occurrence, at about 7.30 p.m, there was a quarrel between the accused and the deceased and during the quarrel, the accused attacked the deceased with a knife on the right side shoulder and thereafter, he himself surrendered before the respondent police. PW.3, sister of the deceased, is another eye witness to the occurrence. She is also a resident of that area. According to her, on the date of occurrence, there was a quarrel between the deceased and his mother-in-law and at that time, the accused questioned the deceased and beat him and when the deceased retaliated, the accused went into his house, came back with a knife and attacked the deceased and caused injury and the deceased was taken to the hospital and on the way, the deceased died. PW.2 and PW.3, though they are related to the accused, their presence in the scene of occurrence is natural and they have also clearly stated that it is only the accused, who attacked the deceased with a knife, by giving a single stab on the chest and caused his death. The medical evidence adduced in this case also corroborates the eye evidence account of P.Ws.2 and 3. In the above circumstances, We are of the view that the prosecution has clearly established that this accused alone had attacked the deceased with knife on his chest and caused his death.

9. Now the question is as to what was the offence that the accused had committed by the said act.

10. According to PW.2 and PW.3, at the time of occurrence, there was a quarrel between the accused and the deceased. During that quarrel, out of provocation, the accused lost his mental balance and stabbed the deceased with a knife. Even though the accused had no intention to cause the death of the deceased, but definitely he had the intention to cause bodily injury, which was sufficient in the ordinary course of nature to cause death. Hence, the act of the accused would fall under the third limb of Section 300 IPC. It is not a premeditated murder

and out of sudden provocation, the accused lost the power of self-control and caused death of the deceased. Hence, it falls under first exception to Section 300 IPC. Therefore, the accused is liable to be punished under Section 304 (1) IPC alone.

11. Turning to the quantum of sentence, the accused is a poor young man and he has no bad antecedents. The occurrence was not premeditated and it was only out of provocation. Since the provocation was also sudden, he lost his mental balance and gave a single stab, which resulted in the death of the deceased. Hence, considering the mitigating and aggravating circumstances, sentencing the accused to undergo rigorous imprisonment for five years, with a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks would be sufficient to meet the ends of justice.

12. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/accused on 29.08.2013 in S.C.No.117 of 2011 on the file of the learned Principal District and Sessions Judge, Krishnagiri, under Section 302 IPC are set aside and instead, he is convicted under Section 304 (1) IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. The period of sentence already undergone by the appellant/accused shall be set off under Section 428 Cr.P.C. The trial Court is directed to secure the accused to undergo the remaining period of the sentence, if he is on bail.

Sd/-
Assistant Registrar

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
Krishnagiri.
2. The Judicial Magistrate No.2,
Hosur, Krishnagiri District.
3. The Chief Judicial Magistrate,
Krishnagoro.
4. The District Collector,
Krishnagiri District.
5. The Director General of Police,
Mylapore, Chennai-4.
6. The Inspector of Police
Uddanappalli Police Station
Krishnagiri District.
7. The Superintendent,
Central Prison, Vellore.
8. The Public Prosecutor,
High Court, Chennai.
9. The Section officer,
Criminal Section,
High Court, Madras-104.

KGK(CO)
RS(27/02/2017)

सत्यमेव जयते

Judgment in
Crl.A.No.692 of 2013

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