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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A[MD].No.301 of 2014
and
M.P.(MD).No.1 of 2014

Muthu : Appellant/Sole Accused

Vs.

The Inspector of Police,
Samayapuram Police Station,
Trichy, Crime No.250 of 2013. : Respondent/Complainant.

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 15.10.2014 made in S.C.No.85 of 2014, on the file of the learned Principal Sessions Judge, Trichirappalli.

For Appellant : Mr.Veera Kathiravan
Senior Counsel for
Mr.Sathish Kumar,
For Respondent : Mr.C.Ramesh,
Additional Public Prosecutor

JUDGMENT

[JUDGMENT of the Court was delivered by S.NAGAMUTHU, J]

The appellant is the sole accused in S.C.No.85 of 2014, on the file of the learned Principal Sessions Judge, Trichirappalli. He stood charged for the offences punishable under Sections 294(b) and 302 of the Indian Penal Code. By Judgment dated 15.10.2014, the Trial Court convicted the accused and sentenced him, as detailed below:-

Section of Law	Sentence of imprisonment	Fine amount
302 IPC	To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for six months.



294(b) IPC

Rs.500/- in default
to undergo simple
imprisonment for
fifteen days.

Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

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

The deceased, in this case, was one Mr.Chinnaiyan. PW-1 and PW-2 are the sons of the deceased. They were all residing at Eachampatti Village, Manachanallur Taluk, Trichirappalli District. The deceased was looking after his livelihood by coolie work. PW-1 was also a coolie by profession. PW-2 was then aged 12 years and he was studying 7th standard in a local school. The accused also hails from the same village. There was neither ill-feeling nor any motive between these two family.

2.1. At 07.00 PM, on 25.10.2013, the accused had come to the Tea Shop situated just in front of the house of the deceased. PW-2 had gone to the said shop for purchasing some household needs. The accused was standing in the said Tea Shop. He asked PW-2 as to where was his father. PW-2 replied that he did not know as to where his father had gone. The accused quarreled with PW-2 and slapped him. PW-2, out of pain, wept and cried. Incidentally, PW-1 and the deceased came in that way and they reached the Tea Shop. On seeing them, PW-2 told about the occurrence. The deceased questioned the accused as to why he slapped his son, namely, PW-2. This resulted in a quarrel between them. At the end of the quarrel, it is stated that the accused took out a stick lying there and gave a single blow on the head of the deceased. The deceased fell down. On seeing the same, the accused ran away from the scene of occurrence.

2.2. PW-1 informed his mother about the occurrence. She came to the Tea Shop and took the deceased to the Government Hospital at Srirangam. When he was undergoing treatment, PW-1 went to the Samayapuram Police Station and made a complaint at 02.00 PM, on 25.10.2013. PW-12, the then Sub-Inspector of Police, registered a case in Crime No.250 of 2013, under Sections 294(b), 324 and 506 (ii) of the Indian Penal Code. EX-P1 is the complaint and EX-P8 is the First Information Report. Then, he forwarded both the documents to the Court.

2.3. PW-12, taking up the case for investigation, at 02.45 PM, on 25.10.2013, proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of the witnesses. He recovered bloodstained earth and sample earth from the place of occurrence. He also recovered a stick [MO-1] from the place of occurrence. At 03.30 PM, on 26.10.2013, PW-12 arrested the accused and forwarded



him to the Court for judicial remand. He examined many more witnesses, including PW-1 and PW-2 and recorded their statements.

2.4. The investigation was, thereafter, continued by PW-13. At 01.45 PM, on 07.11.2013, the deceased succumbed to the injuries in the hospital. Therefore, PW-13 altered the case into one under Section 294(b) and 302 of the Indian Penal Code. EX-P12 is the alteration report. PW-13, thereafter, conducted inquest on the body of the deceased, between 07.00 AM and 09.00 AM, on 08.11.2013. EX-P13 is the inquest report. Then, he forwarded the dead body for postmortem.

2.5. PW-10 - Dr.S.Saravanan conducted autopsy on the body of the deceased, at 12.30 PM, on 08.11.2013. EX-P7 is the postmortem certificate. He noticed the following injuries:-

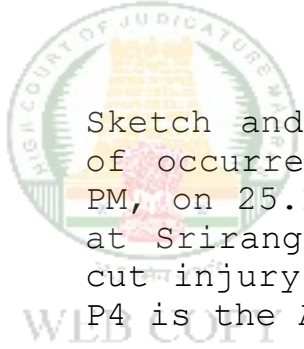
"Oblique, sutured injury 5 cm with intact sutures, on (L) temporo occipital region of the scalp; on removal of sutures, the margins were adherent with each other; on dissection of head, diffuse, resolving, yellowish coontusion on the (R) temporal region and adjoining midparietal region and the upper part of the (L) temporal region of the scalp; oblique, fissured fracture 18 cm on the (R) temporal region and adjoining midparietal region and the upper part of the (L) temporal region of the vault; dura meter; intact; diffuse, dark red subdural and subarachnoid hemorrhages on all over the brain; brain was edematous; skull base:intact":

He gave opinion that the death of the deceased was due to head injury. He further opined that the said injury could have been caused by a blow like MO-1, stick.

2.6. PW-13 collected the medical records and examined the doctors. Since he was then transferred, the investigation was taken over by his successor - PW-14. PW-14 examined few more witnesses, recorded their statements and on completing the investigation, he laid charge sheet against the accused.

2.7. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the prosecution, 14 witnesses were examined, 13 documents and one material object were marked.

2.8. Out of the said 14 witnesses, PW-1, PW-2 and PW-8 have been examined as eye-witnesses. They have vividly spoken about the circumstances surrounding the case. PW-3 has spoken about his hearsay information. Thus, his evidence is of no use for the prosecution. PW-4 has spoken about the preparation of Observation Mahazer and the Rough



Sketch and the recovery of material object [MO-1] from the place of occurrence. PW-5, Dr.N.Anbuchezhian, has stated that at 09.00 PM, on 25.10.2013, when he was on duty at the Government Hospital, at Srirangam, the deceased was brought for treatment. He found a cut injury measuring 5 X 1/4 CM on the left side of the head. EX-P4 is the Accident Register. He admitted him as an in-patient.

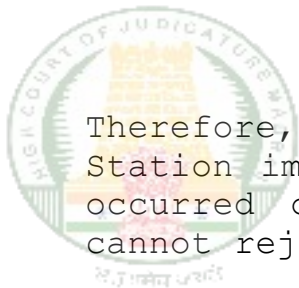
2.9. PW-6 has spoken about the treatment given to the deceased at the Mahatma Gandhi Government Hospital, Trichirappalli. PW-7, Dr.W.Edwina Vasnatha, has spoken about the death of the deceased at Annal Gandhi Government Hospital, Trichirappalli. PW-9 has spoken about the hearsay information and he has not stated anything incriminating against the accused. PW-10 has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. PW-11, a Head Constable, has stated that he handed over the dead body to the hospital for postmortem, as directed by the Investigating Officer. PW-12 has spoken about the registration of the case, on the complaint made by PW-1 and the investigation done by him. PW-13 and PW-14 have spoken about the further investigation done by them and the filing of final report.

2.10. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he did not choose to examine any witness nor to exhibit any document. His defence was a total denial. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned Senior Counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

4. In this case, the prosecution mainly relies on the eye-witness account of PW-1, PW-2 and PW-8. These three witnesses have spoken vividly about the entire occurrence. They have stated that the accused, in the quarrel, as vividly narrated, took out a stick and gave a single blow on the head of the deceased. PW-1 informed his mother about the occurrence. She came to the Tea Shop and took the deceased to the Government Hospital at Srirangam, Trichirappalli.

5. The learned Senior Counsel for the appellant would submit that there was enormous delay in making the complaint to the police, which, according to him, would create doubt in the case of the prosecution. In our considered view, it is not so. As we have ~~services and~~ <https://hsrtdrivers.gov.in/interids/> out, the deceased had sustained serious injury and immediately he was rushed to the hospital. Thus, PW-1 would have been much concerned only about the survival of the deceased.

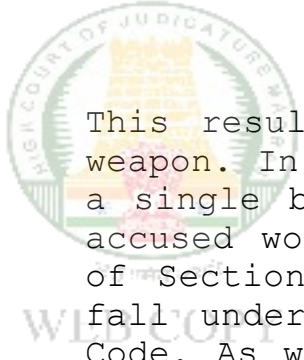


Therefore, he would not have thought of proceeding to the Police Station immediately, after the occurrence. Thus, though there had occurred delay in preferring the complaint, on that score, we cannot reject the case of the prosecution.

6. The learned Senior Counsel for the appellant would, next, submit that PW-1, PW-2 and PW-8 are interested witnesses and therefore, their evidences should be rejected in the absence of any corroboration from any independent source. Though attractive, this argument does not persuade us. Because these witnesses are closely related, their evidences cannot be rejected outright. Prudence requires only close scrutiny of their evidences. Keeping in mind the yardstick, we have gone through the evidences of PW-1, PW-2 and PW-8 very carefully and meticulously. Though these witnesses have been subjected to lengthy cross-examination, nothing has been brought on record so as to disbelieve their version. The presence of PW-2, at the time of occurrence, cannot be disputed, because the occurrence was ignited by the slapping of PW-2 by the accused. At that time, neither PW-1 nor the accused was present. They came to the place of occurrence incidentally. The accused questioned the deceased as to why he slapped PW-2. This resulted in a quarrel between them. It was only at that time, the deceased was attacked by the accused by inflicting a single blow on the head of the deceased with a stick. Thus, the presence of PW-1 cannot be doubted. Similarly, the presence of PW-8 also cannot also be doubted.

7. From the evidences of these witnesses, in our considered view, the prosecution has established that it was this accused, who inflicted a single blow on the head of the deceased, which resulted in his death. The doctor, who conducted autopsy on the body of the deceased, found a fracture of the skull. He further opined that the death of the deceased was due to the head injury. We do not find any reason to reject the said opinion of PW-10. From this evidence, it has been clearly established that the death of the deceased was only on account of the injury inflicted by the accused.

8. Having come to the said conclusion, now, the next immediate question is as to what was the offence, that the accused had committed by his act. As we have already pointed out, there was neither ill-feeling nor any motive between these two family members. The occurrence was not a pre-meditated one. PW-2 had gone to the Tea Shop for purchasing some household needs. It was only at that time, in a casual manner, the accused had enquired as to where the deceased had gone. PW-2 had answered in a rough manner. This provoked the accused. As a result, he slapped PW-2. As we have already pointed out, at that time, neither PW-1 nor the deceased were present. Their arrival to the place of occurrence itself was by chance. On seeing them, PW-2 told the deceased about the slapping by the accused. The deceased questioned the same.



This resulted in a quarrel. The accused was not armed with any weapon. In the quarrel, he took out the stick lying there and gave a single blow on the head of the deceased. Thus, the act of the accused would not fall either under the First Limb or Third Limb of Section 300 of the Indian Penal Code. At the most, it would fall under the Fourth Limb of Section 300 of the Indian Penal Code. As we have already pointed out, but for the quarrel and the fight between the accused and the deceased, the accused would not have attacked the deceased. The accused had not taken any undue advantage and he did not cause any more injury, except the single blow. It is also seen from the records that the deceased was under the influence of alcohol. The death of the deceased was not immediate and the death had occurred after 12 days of the occurrence. Thus, it is crystal clear that the act of the accused would squarely fall within the ambit of the Fourth Exception to Section 300 of the Indian Penal Code. Therefore, the accused is liable to be punished under Section 304(ii) of the Indian Penal Code.

9. Now, turning to the quantum of punishment, the accused is a road worker and coolie by profession. Equally, the deceased was also a coolie. The accused has got two children, the mother and a wife. They are all to be taken care of by the accused. He had no bad antecedents. As we have already pointed out, the occurrence was not a pre-meditated one.

10. Having regard to all these mitigating as well as the aggravating circumstances, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for two weeks would meet the ends of justice.

11. In the result, the Criminal Appeal is partly allowed in the following terms:-

- The conviction and sentence imposed by the Trial Court on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304(ii) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000/- [Rupees One Thousand only], in default to undergo rigorous imprisonment for two weeks.
- The conviction and sentence imposed on the appellant/accused under Section 294(b) of the Indian Penal Code is confirmed.
- It is directed that the period of sentence already undergone by the appellant/accused shall be set off under Section 428 of the Code of Criminal Procedure. Fine amount, if any paid by the appellant/accused, shall be duly adjusted.



Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar(RTI)

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Sub Assistant Registrar.

To

- 1.The Principal Sessions Judge, Trichirappalli.
2. The Judicial Magistrate No.III, Tiruchirappalli.
3. The Chief Judicial Magistrate, Tiruchirappalli.
4. The District Collector, Tiruchirappalli.
5. The Director General of Police, Mylapore, Chennai.
6. The Inspector of Police, Samayapuram Police Station, Trichy.
7. The Superintendent of Central Prison, Trichy.
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High court,
Madurai.

+1CC to M/S.N.Sathesh Kumar, Advocate, SR.No. 63334

JUDGMENT MADE IN
CRL.A[MD].No.301 of 2014
24.10.2016

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