



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.09.2016
CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.A.[MD].No.204 of 2015

and

Crl.M.P.(MD).No.5618 of 2016

M.Arumugam : Appellant/Sole accused

Vs.

State rep. by
the Inspector of Police,
Thenkasi Police Station,
Tirunelveli District.
(Crime No.391/2009)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 25.07.2011, made in S.C.No.479 of 2009, by the learned I-Additional Sessions Judge, Tirunelveli.

For appellant : Mr.V.Sasikumar
For respondent : Mr.C.Ramesh,
Additional Public Prosecutor

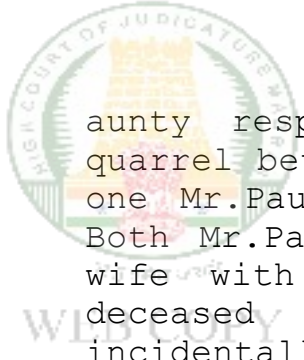
JUDGMENT

(Judgment of the Court was made by **S.NAGAMUTHU, J.**)

The appellant is the sole accused in S.C.No.479 of 2009 on the file of the learned I-Additional Sessions Judge, Tirunelveli. He stood charged for the offences under Sections 302 and 506(ii) IPC. By judgment dated 25.07.2011, the trial Court convicted the appellant/accused under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for three months for the offence under Section 302 IPC and to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for one month for the offence under Section 506(ii) IPC. Challenging the said conviction and sentence, the appellant/accused is before this Court with this appeal.

2. The case of the prosecution in brief is as follows;

(a) The deceased in this case is one Mr.Esakkimuthu. The accused is a resident of Melapuliyoor Village, Tenkasi Taluk and one Mr.Thangaiah and Mrs.Mariamammal are his paternal uncle and



aunty respectively. On 19.07.2009 at 06.30 p.m. there was a quarrel between Mr.Thangaiah and Mrs.Mariamammal on the one side and one Mr.Paulkutti and his son - Mr.Marimuthu on the other side. Both Mr.Paulkutti and Mr.Marimuthu attacked Mr.Thangaiah and his wife with hands. This happened in the very presence of the deceased Esakkimuthu and one Mr.Kumar (PW1). The accused incidentally came there, intervened, separated them and rescued Mr.Thangaiah and Mrs.Mariamammal. The deceased Esakkimuthu and PW1 did not intervene in the same. The accused got wild. He questioned the deceased and PW1 as to why they did not intervene in the same so as to prevent the occurrence. They did not give response positively. This further provoked the accused. He scolded PW1 and the deceased and went away. PW1 and the deceased, thereafter, went to Tenkasi Police Station and gave a complaint in respect of the above act of the accused. A Police Constable from the said Police Station came to the village so as to call the accused to the Police Station for an enquiry. But, the accused was not there. His mother informed the Police about the same. The Policeman returned. This action of the deceased further provoked the accused.

(b) It is alleged that on the same day, at 11.00 p.m. PW1 and the deceased were chatting standing by the side of a electric post light in the village and under the said electric light, they were engaged in chatting. At that time, the accused came there. He again questioned them as to why they did not intervene when his uncle and aunty were being attacked by Paulkutti and his son. This resulted in a quarrel between them. It is stated that at the end of the said quarrel, the accused took out a knife and gave a single stab on the deceased and ran away from the scene of occurrence with knife.

(c) PW1 raised alarming which attracted the neighbour and then, PW1 and others took the deceased to the Government Hospital. The Doctor, after examination, declared him dead. Thereafter, PW1 went to Tenkasi Police Station and made a complaint at 12.15 a.m. on 20.07.2009. Based on the said complaint, a case was registered in Crime No.391 of 2009 under Sections 302 and 506(ii) IPC against the accused. Ex.P1 is the complaint and Ex.P16 is the FIR.

(d) PW17, the then Inspector of Police, took up the case for investigation. At 12.45 p.m. on 20.07.2009, he went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of PW10 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence in the presence of witnesses. Then, he went to the Government Hospital, Tenkasi, where in the mortuary he held inquest on the body of the deceased and forwarded the same for postmortem.

<https://hcservices.ecourts.gov.in> (e) PW18, Assistant Surgeon at Tenkasi Government Hospital, conducted autopsy on the body of the deceased on 20.07.2009 at 12.30 p.m. and found the following injuries:



"External injuries : (1) A cut injury on left chest 3 x 2 x 4 inch. No other external injuries.

Internal Examination : On open the thorax a cut injury on heart seems 3 x 1 inch length on right ventricle of heart chamber. 500 ml of blood seen in peritoneal cavity. Liver pale, lungs pale, stomach 50 ml of undigested food seen. Spleen pale, kidney pale, brain water normal."

Ex.P5 is the postmortem certificate. He gave opinion that the single stab injury found on the body of the deceased could have been caused by a knife like MO.1. He further opined that the death of the deceased was due to shock and haemorrhage due to said injury.

(f) PW17, during the course of investigation, recovered bloodstained cloth from the body of the deceased. On 20.07.2009 at 11.00 a.m., he arrested the accused in the presence of PW11 and another witness. On such arrest, he gave a disclosure statement, in which he disclosed the place where he had hidden a knife and bloodstained cloth. In pursuance of the said disclosure statement, he took the Police to the place where he had hidden the said material objects and produced the same. PW17 recovered the same under a mahazar. On returning to the Police Station, he forwarded the accused to the Court and also handed over the material objects to the Court. He examined many more witnesses, including the Doctor and collected Postmortem Certificate. On his request, the material objects were sent for chemical examination. The chemical examination report revealed that there were human blood on all the material objects including knife. On completing the investigation, he laid charge sheet against the accused.

(g) Based on the above materials, the trial Court framed charges under Sections 302 and 506(ii) IPC. He denied the same. In order to prove the charges, on the side of the prosecution, as many as 17 witnesses were examined, 19 documents and 8 material objects were marked.

(h) Out of the said witnesses, PWs.1 to 3 are eyewitnesses to the occurrence. They have vividly spoken about the entire occurrence. PW1 has further spoken about the previous motive. He has also stated that he took the deceased to the Government Hospital, Tenkasi, where he declared dead by the Doctor. He further stated about the complaint made to the Police. PW4 is the mother of the deceased. She has not stated anything incriminating against the accused and she has spoken only on hearsay. PW5 has spoken about the preparation of observation mahazar and the rough sketch. PW5 has also spoken about the complaint made by PW1 in his presence. PW6 has spoken about the



attack made by Paulkutti and another at 6.30 p.m. on the said date of occurrence. PW7 - Paulkutti has also spoken about the occurrence happened at 6.30 p.m.

(i) PW8 - Dr.Muthukumarasamy has stated that at 11.30 p.m. on 20.07.2009, when he was on duty at the Government Hospital, Tenkasi, the deceased was brought to the hospital and on examination, he found him dead. PW9 - Dr.Joel Davidson has spoken about the postmortem conducted and his final opinion regarding the cause of death. PW10 - the then Village Administrative Officer has spoken about the preparation of observation mahazar and the rough sketch and recovery of bloodstained earth and sample earth from the place of occurrence. PW11, another VAO, has spoken about the arrest of the accused, the disclosure statement made by the accused and the consequential recoveries of material objects.

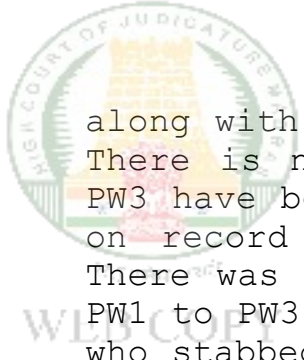
(j) PW12 - the official from the Tamil Nadu Electricity Board has stated that on the date of occurrence, at the place and time of the occurrence, there was no electricity failure. According to him, the light was on at that time. PW13 - the Assistant in the Judicial Magistrate Court has stated that he forwarded the material objects for chemical examination, as directed by the learned Magistrate. PW14 has spoken about the chemical examination conducted. PW15 has stated that he handed over the FIR to the learned Magistrate, as directed by the investigating officer. PW16 has spoken about the fact that he handed over the dead body to the Doctor for postmortem, as directed by the investigating officer. PW17 has spoken about the registration of the case as well as the investigation done.

(k) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor to mark any document on his side. The defence of the accused was total denial. Having considered all the above, the trial Court convicted him, as detailed in the first paragraph of this judgment. That is how he is before this Court with this appeal.

3.We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and we have also perused the records carefully.

4.In this case, PW1 to PW3 are the eyewitnesses to the occurrence. It was PW1, who took the deceased immediately to the hospital, where the deceased was declared dead. Therefore, the presence of PW1, at the place of occurrence, cannot be doubted.

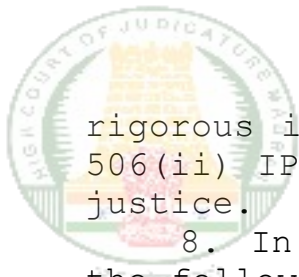
5.The learned counsel appearing for the appellant would submit that since at the hour, PW1 to PW3 would not have been present at the place of occurrence at all. But, we find no force at all in this argument, because PW1 has categorically stated that he was,



along with the deceased, under the light post engaged in chatting. There is no reason to reject the evidence of PW1. Though PW1 to PW3 have been extensively cross-examined, nothing has been brought on record to create even a slightest doubt in their evidence. There was no delay in making the complaint also. The evidences of PW1 to PW3 would clearly go to establish that it was this accused, who stabbed the deceased, which resulted in his death. The Doctor, who conducted autopsy, would submit that the death was due to single stab injury found on the deceased. He has further stated that the said injury would have been caused by a weapon like MO.1 - knife. MO.1 was recovered only on the basis of disclosure statement made by the accused. The appreciation of all these evidences would clearly give rise to the only conclusion that it was this accused who caused the death of the deceased.

6. Having come to the said conclusion, now we have to examine as to what offence the accused committed. PW1 admitted in his evidence that there was no specific motive for the accused at all. The occurrence was stated to be happened only on account of the non intervention of the deceased and PW1 in the quarrel in which the paternal uncle and aunty of the accused were attacked by one Paulkutti and Muthaiah. But, immediately after the said occurrence, the accused only questioned the deceased and PW1 as to why they did not make any attempt to prevent the occurrence when his paternal uncle and aunty were attacked, scolded them and left away. Again, during the occurrence, when the deceased was stabbed, the presence of the deceased at the place of occurrence could not have been anticipated by the accused. The accused came there in a casual manner and when he again questioned the deceased and PW1 as to why they did not intervene in the occurrence when his paternal uncle and aunty were attacked, there arose a quarrel. Then, it was only in that quarrel provoked by the words of the deceased, the accused took out a knife and gave the single stab and ran away from the place of occurrence. From the evidences available on record, it is inferable that the accused had lost his mental balance on account of the provocation made by the deceased and PW1, and the said provocation was also grave enough. Thus, the act of the accused would clearly fall within the third limb of Section 300 IPC and therefore, the accused is liable to be punished only under Section 304(i) IPC.

7. Now, turning to the quantum of punishment, the accused, at the time of occurrence, was hardly aged about 24 years and the occurrence was not a premeditated one and it was happened out of the sudden quarrel. There are lot of chances for reformation of the accused. He has got no bad antecedents. After the occurrence also, it is not reported that he was involved in any other crime. Having considered all these mitigating as well as aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- for the offence under Section 304(i) IPC and to undergo



rigorous imprisonment for one month for the offence under Section 506(ii) IPC and to pay a fine of Rs.1,000/- would meet the ends of justice.

8. In the result, this Criminal Appeal is partly allowed in the following terms:

(a) The conviction and sentence imposed on the appellant for the offence under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks.

(b) The conviction imposed on the appellant for the offence under Section 506(ii) IPC is confirmed. However, the sentence is reduced to rigorous imprisonment for one month and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks.

(c) The sentences shall run concurrently. Fine amount, if any, paid by the accused shall be adjusted. The balance amount, if any, shall be refunded to the appellant. The sentences already undergone by him shall be given set off.

9. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

/True copy/

Sub Assistant Registrar

To

1. The I-Additional Sessions Judge, Tirunelveli.
2. The Principal District and Sessions Judge, Tirunelveli District, Tirunelveli.
3. The Judicial Magistrate, Tenkasi.
4. The Chief Judicial Magistrate, Tirunelveli District.
5. The Director General of Police, Mylapore, Chennai.
6. The Superintendent of Central Prison, Palayamkottai, Tirunelveli.
7. The Inspector of Police, Thenkasi Police Station, Tirunelveli District.
8. The Registrar (Judicial) Madurai Bench of Madras High Court, Madurai.
9. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer, (Criminal Records)
Madurai Bench of Madras High Court, Madurai.
+1 CC to Mr.V.SASIKUMAR, Advocate, SR No.51574

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Dated: 09.09.2016