



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

CRL.A. (MD) NO.213 OF 2015

T.Kannan

.. Appellant

VS.

State rep. by
The Inspector of Police
Thiruvekampadhur Police Station
Sivagangai District.
Crime No.10 of 2012

.. Respondent

PRAYER: Criminal Appeal filed Section 374 (2) of the Criminal Procedure Code against the judgment dated 19.06.2015 passed in S.C.No.57 of 2012 by the District and Sessions Judge, Sivagangai and acquit the appellant / sole accused of the charge.

For Appellant : Mr.E.Somasundaram

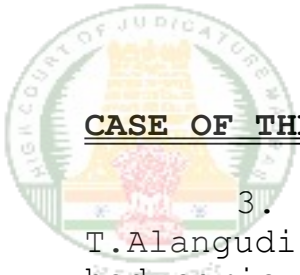
For Respondent : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was made by M.GOVINDARAJ, J.)

This Criminal Appeal is preferred against the judgment dated 19.06.2015, passed in S.C.No.57 of 2012, by the learned District and Sessions Judge, Sivagangai, by the sole accused T.Kannan.

2. The appellant / accused was charged under Sections 294 (b), 302 and 506(ii) IPC and was found guilty under Sections 506 (ii) and 302 IPC. He was sentenced to undergo life imprisonment with fine of Rs.500/-, in default, three months rigorous imprisonment, under Section 302 IPC and three years rigorous imprisonment with fine of Rs.500/-, under Section 506(ii) IPC, both sentences to run concurrently and was acquitted for the offence under Section 294(b) IPC.



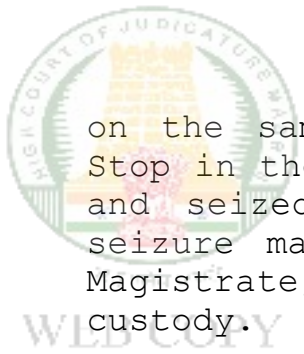
CASE OF THE PROSECUTION

3. The appellant and the deceased were neighbours living in T.Alangudi Village, Devakottai Taluk, in Sivagangai District. They had agricultural lands adjacent to each others in the village and they had dispute over irrigation of the lands. One month prior to the incident, there was an altercation between the accused and the deceased. Ever since they were not in talking terms and the cold war continued with unpleasant comments uttered by the accused.

4. On the auspicious day of "Thai Poosam" viz., on 09.02.2012, the villagers assembled at Dharma Muneeswarar Temple for worship. The deceased, along with his family members, had been to the temple at 08.00 a.m., in the morning. The accused, who was present at the temple, abusing the deceased uttering "ஏன்டா நீ ஏன்டா தகராறு பண்ணுகிறாய்" drawn the scythe (aruval) MO-1 hidden in the back of the shirt and cut the deceased on his left chest. The deceased in the attempt to flee from the spot, slipped and fell down on his face. The accused repeatedly inflicted cut injuries on his back with MO-1. While the wife of the deceased (P.W.1) and others assembled therein rushed near him, to prevent the assault, the accused threatened them with dire consequences to their life and ran into the lake on the eastern side with MO-1 scythe (Aruval). The deceased suffered a cut injury on the back of right ear, two on the right shoulder, one on back of the neck and one on right side of the back. P.W.3 - Manickam, Kalimuthu, Ammasi, P.W.5 Krishnan Poosari, P.W.2 Pushpam were present at the scene of occurrence. Immediately, phone calls were made and the body of the deceased was transported to Government Hospital, Devakottai. The doctor who examined the body, had opined that the person was brought dead.

5. P.W.1 wife lodged a complaint on 09.02.2012 with P.W.8 Sub-Inspector of Police, Nagaraj at Thiruvekampadthur Police Station. P.W.8 recorded the statement Ex.P1 at the hospital and filed a First Information Report in Crime No.10/2012 dated 09.02.2012, vide Ex.P7, at about 12.30 p.m. under Section 302 IPC and sent the same by express post to Judicial Magistrate, Devakottai. On the basis of the same, P.W.10 - Investigation Officer conducted an inquest at the mortuary of Government Hospital, in the presence of five respectable persons of the area and prepared an inquest report Ex.P11. Thereafter, P.W.10 - Inspector of Police, vide Ex.P8, requested P.W.9 - Doctor to conduct postmortem of the body of the deceased.

6. On the same day, viz., 09.02.2012, P.W.10 had visited the scene of occurrence at 13.15 hours and collected samples of bloodstained earth MO-2 and soil without bloodstain - MO3 and prepared the observation mahazar - Ex.P6. Thereafter, P.W.10 - Inspector of Police had arrested the accused at around 18.30 hours



on the same day viz., 09.02.2012 at Orumaniyendhal Vilakku Bus Stop in the presence of P.W.6 Samayathurai and one Muthuramalingam and seized the MO-1 Aruval with wooden handle and prepared a seizure mahazar Ex.P4. The accused was produced before Judicial Magistrate, Devakottai at 08.30 p.m., and remanded to judicial custody.

7. Postmortem was conducted by P.W.9 doctor and a report Ex.P9 was given finding the external injuries as under:

"External injuries: -

1) 7 cm x 3 cm penetrating (incised) injury over Left side of chest - 1 cm from sternal midline at the level of 2nd intercostal space extending curvilinear shape upto 5th intercostal space. Ribs were exposed. On palpating the injury discontinuity fracture in Left 4th, 5th, 6th rib and 7th costal cartilage.

2) 5cm x 2 cm x bone depth incised wound behind. The right ear mastoid bone exposed.

3) A incised wound 4 cm x 2 cm x 4cm depth over right side back side of neck. It extends 5 cm from midline at level of C6 and extends towards midline and end 1cm from midline at the level of T2 vertebra.

4) A vertical incised wound 7 cm x 3 cm x bone depth seen along the medial border of right scapula at the level from T2 to T6 level.

5) A incised would over right side of back 2cm above 4th wound and 2 cm lateral to 3rd wound, measuring 5 cm x 10 cm x depth varying from skin depth to subcutaneous depth.

6) A incised would over left side of back, medial to scapula 3 cm x 1 cm x depth varying from skin to subcutaneous tissue.

7) A vertical incised would on right side of back 5cm from parallel to midline measuring 4 cm x 2 cm x 4cm depth extending from T11 vertebra level to L1 vertebra on palpating discontinuity in T11 T12 vertebra.

On opening fracture of left 4th, 5th, 6th



ribs and 7th costal cartilage. 200 ml blood seen around the heart. 200 ml of blood in thoracic cavity on examining heart - 2 cm x 0.5 incised wound seen on anterior surface of heart corresponding to injury No.1. There is exist wound on apex of heart 1 cm x 0.25 cm corresponding to injury No.1. Injury No.1 caused through (entry) and through (exit) injury to heart.

Lungs : Pale

Hyoid bone : intact

abdomen : not distended

Stomach, liver / spleen, intestine - Pale

Peritoneal cavity: 50 ml of blood clot seen on right Netro Peritoneal (NC) corresponding to injury no.7"

P.W.9 - Doctor, opined that the deceased would appear to have died of injuries to vital organ heart and bleeding.

8. On 10.02.2012, P.W.10 submitted the MO-1 to 3 to the Judicial Magistrate with a request to send them to Forensic Science Laboratory, Ramnad, for chemical examination and accordingly, the same was forwarded to the Forensic Science Laboratory, for examination, vide Ex.P12, on 14.02.2012. The Forensic Science Laboratory had sent its report, vide Ex.P13, on 20.02.2012.

9. The contents of the Forensic Science Laboratory report Ex.P13 reads as under:

"A sealed wooden box containing the following items were received here on 15.02.2012 through SVG Gr.I 1693 Tr.Periyakaruppan under unbroken seals which corresponded with the sample seal sent viz:-

Item 1: Earth mixed with stones and vegetable matter on which were dark brown stains.

Item 2: A rusty metal billhook plugged with a wooden piece and totally measuring about 50.0 cm in length.

Item 3: A torn green colour lungi with yellow and white colour design on which were profuse dark brown stains.

REPORT:- Detected blood on each of the above items 1 and 3 but not on item 2."

10. A final report was filed. Based on the above materials, the Trial Court framed 3 charges under Sections 294(b), 302 and 506 of the Indian Penal Code as stated supra. The accused denied the charges. In order to prove the charges, prosecution examined 11 witnesses as P.W.1 to P.W.11 and marked 13 documents as Exs.P1 to P13 and three

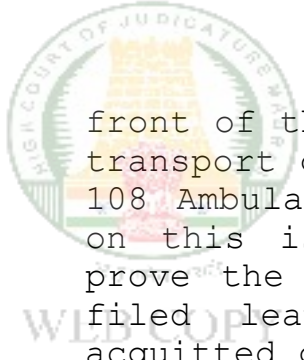
material objects were marked as MO-1 to 3.

11. During the trial, it was elicited that the accused and deceased were possessing lands adjacent to each other. There was some conflict over irrigation water to the land of the accused and altercation ensued over the same. On the fateful day, viz., 09.02.2012 at around 08.00 a.m., the deceased along with P.W.1 wife of the deceased, P.W.2 - sister of the deceased and other family members had been to Dharma Muneeswarar Temple of their village to worship the deity, on account of Thai Poosam festival. P.W.3 - relative of the deceased from the same village, P.W.5 - Poosari of the temple were also present at the scene of occurrence during the time the incident that had occurred. P.W.1, P.W.2, P.W.3 and P.W.5 are the eyewitnesses, spoke about the attack caused by the accused on the deceased at the scene of occurrence. P.W.4 is the brother of P.W.1, who spoke about transporting the body of the deceased from the scene of occurrence to hospital. P.W.6 who is related to both sides, witnessed the arrest, confession and seizure of MO1 to 3, vide Ex.P4. P.W.7 is the witness to observation mahazar Ex.P6. P.W.8 is the Sub-Inspector of Police, who recorded the statement of P.W.1 and F.I.R - Ex.P7. P.W.9 is the Doctor, who conducted post mortem. P.W.10 is the Inspector of Police, who conducted initial investigation of the case. P.W.11 is the Inspector of Police, who continued the investigation from 01.03.2012. The statement of accused was recorded and final report was filed by him before the Court. The Trial Court framed the charges, which the accused denied.

12. The Trial Court, on consideration of the evidence adduced before it and after hearing the arguments of both prosecution and defense sides, by its judgment dated 19.06.2015, had found the accused guilty of offences under Sections 506(ii) and 302 IPC and acquitted him for the offence under Section 294(b) IPC and sentenced him for life under Section 302 IPC and three years rigorous imprisonment under Section 506(ii) IPC to run concurrently, as stated supra.

13. Challenging the judgment of the Trial Court, the sole accused has preferred the present Criminal Appeal finding fault with the decision that it was arrived erroneously without considering the discrepancy as to the scene of occurrence, sequence of events and further assailed the deposition of interested witnesses, as not credible and totally unreliable. The charges, according to him, were not proved beyond reasonable doubt and the Trial Court has sentenced the accused on the basis of circumstantial evidence, without any legal basis.

14. According to the counsel for appellant, there is contradictory statements as to the time and place of incident, as the incident had taken place on the paddy fields, while returning from the temple and the other in



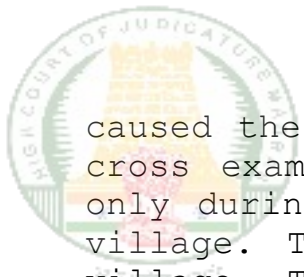
front of the temple. There is no credible evidence as well, in the transport of the deceased body as two vehicles viz., Tata Sumo and 108 Ambulance, were involved and there were lot of discrepancies on this issue. The prosecution had not examined the driver to prove the charges beyond reasonable doubt. AR copy was also not filed leaving ambiguities. Therefore, the accused shall be acquitted giving the benefit of doubt in his favour.

15. We have heard the submissions made on either side and perused the materials available on record.

16. Whether the accused was present at the scene of occurrence on the fateful day or not is the first and foremost issue to be decided. The evidence of P.W.1, P.W.2, P.W.3 and P.W.5 state that the accused had inflicted injuries on the deceased. P.W.1 and P.W.2 are the wife and sister of the deceased. P.W.3 and P.W.5, though related, are independent witnesses. P.W.1 would depose the presence of the villagers at the time of incident. P.W.2 happened to be there on account of the auspicious day, which is natural. Both of them would explain the manner in which the deceased committed the heinous crime. P.W.3 would clearly explain the positions of the individuals at the scene of occurrence and the directions faced by them. The deposition of P.W.3 is plausible and probable. P.W.5 being a Poosari, his presence was not at all disputed by anyone. Thus, the evidence of the eyewitnesses clearly show that the accused was present at the scene of occurrence. There is no contra evidence to breach the credibility of the witnesses on this aspect. Though P.W.1 and P.W.2 are interested witnesses, their statements were supported by P.W.3 and P.W.5, since the evidence is cogent and reliable we are of the considered opinion that the presence of the accused proved.

17. The next important aspect to be decided is as to whether the evidence of P.W.1 and P.W.2 was credible and reliable in the aspect of murder and motive alleged by them? It was stated by P.W.1 that she and P.W.2 were watching the decoration made to the idol by P.W.5. Similarly, P.W.2 also had deposed that they were standing near the stage of the temple watching P.W.5 decorating the idol. P.W.3 has deposed that the accused was standing at a distance in the eastern side. On hearing the noise, P.W.1 to P.W.3 and P.W.5 ran to the spot, where the accused was found inflicting cut injuries on the deceased.

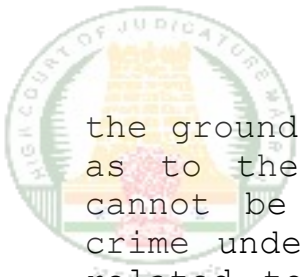
18. From the explanation of the scene of occurrence, it could be inferred that temple is situated near lake and surrounded by agricultural lands. The further deposition of all the eyewitnesses would reveal that the deceased was lying face down on the earth and the accused was found to have inflicting injuries on the chest. It goes to show that nobody was present at the threshold. Further, there is no evidence as to what



caused the murderous attack by the accused over the deceased. The cross examination of P.W.1 shows that the accused used to visit only during festival times and was not regularly residing in the village. The parents of the accused alone were residing in the village. There is no antecedent of quarrel or fisticuffs much less before the incident. P.W.3 would state that both the accused and deceased were friendly. Further, the evidence of P.W.1 shows that P.W.5 - Poosari of the temple used to keep all the pooja materials and articles at the house of the accused and on the date of incident also, it was taken to the temple, from the accused house, which included Aruval. Not even on slightest indication that the accused and deceased were having serious grudge or animosity against each other and he brought MO-1 with him and absolutely no evidence with regard to the possession of MO-1 prior to the incident. From the circumstances, it appears like usual misunderstanding among agnates in the villages. In other words, strong motive on the part of the accused to commit murder was not proved beyond reasonable doubt.

19. P.W.1 would state that after the incident, her husband / deceased was taken by a Tata Sumo Car brought by her brother P.W.4. Whereas, the evidence would go to show that 108 Ambulance had refused to carry the dead body and therefore, a phone call was made by P.W.4 for a Mortuary van for taking the body to the hospital. But P.W.4 would state that he had brought the vehicle in a short while, without knowing that 108 Ambulance had come. But contrary to the same, P.W.5 deposed that the villagers have shouted at the ambulance driver at around 09.30 a.m. in the morning to carry the dead body, which was refused. There is some discrepancy in the deposition as to the time of P.W.4's presence and also the vehicle which was brought by P.W.4 was whether a Mortuary van or not, was not clearly stated by P.W.1, during cross examination. The prosecution could have proved the same by examining the driver of the Tata Sumo Car, who had transported the deceased. Further, AR report was also not marked as an exhibit in this case. P.W.11 in his cross examination would state that there is no evidence with regard to the dispute alleged to have subsisted between the accused and deceased. No witnesses were available and none of the habitants of villages or adjacent land owners had come forward to let in evidence. He had not enquired as to the discrepancy in transporting the injured and had not examined the driver of the 108 ambulance. He has not obtained trip sheet of the Tata Sumo and has not examined the driver of the vehicle also. The complaint lodged by P.W.1 also does not specifically state that injuries was caused on the left chest.

20. In such circumstances, no eyewitnesses had been there in the beginning and none have witnessed as to what led to the injury on the chest was improbable as the deceased was lying on



the ground face down. Therefore, there is reasonable apprehension as to the veracity of the evidence of P.W.1 and P.W.2 and it cannot be relied on fully for the purpose of establishing the crime under Section 302 IPC and the motive as well. P.W.3 though related to both the parties, would depose that both the accused and deceased had friendly relationship other than him, none of the residents of the village or even those assembled at the time of occurrence. In the absence of strong motive, it can be safely presumed that there must have been some altercation between the deceased and the accused which could have provoked the accused beyond control. The accused must have been deprived of self control and with sudden provocation must have taken the MO-1 Aruval, which was kept for pooja and would have attacked the deceased.

21. Normally, in villages, people attached with sentiments over properties and relationships. If some sensitive issue is raised, the people get emotional and get easily provoked. From the deposition of witnesses, it could be inferred it was more probable that there was some provocation and the accused was provoked pursuant to some verbal abuse, lewd comments or altercation with the deceased. In that sudden provocation, he could have taken the Aruval brought for the pooja and attacked the deceased. Therefore, it is highly probable that the accused without any motive or intention to kill the deceased, must have inflicted injuries in a spur of the moment due to grave and sudden provocation. Therefore, we are of the considered opinion that charge under Section 302 IPC is not proved beyond reasonable doubt and there are probabilities that the offence could have taken place due to grave and sudden provocation.

22. In view of the above said discrepancies, the charge under Section 302 IPC cannot be held to be proved, beyond reasonable doubt. But from the circumstances, it can be safely inferred that the accused has lost his temper and out of grave and sudden provocation, attacked the deceased. Therefore, the offence committed by the accused will fall under exception 4 of Section 300 IPC a culpable homicide not amounting to murder and the punishment under Section 304(i) IPC would be more appropriate rather than under Section 302 IPC.

23. Considering the same, the punishment imposed by the Trial Court, under Section 302 IPC, is set aside. The punishment of life imprisonment is modified into one of 10 (Ten) years rigorous imprisonment with a fine of Rs.1000/- under Section 304 (i) IPC. In so far as the other punishment, under Section 506(ii) is concerned, the same does not require interference and the punishment imposed by the Trial Court is confirmed.

<https://hcservices.ecourts.gov.in/hcservices/>

24. In the result, the Criminal Appeal is partly allowed modifying the punishment of life imprisonment into one of 10 (Ten)



years rigorous imprisonment under Section 304(i) IPC, with fine of Rs.1000/-.. In all other aspects, the judgment of the Trial Court is confirmed.

Sd/-

Assistant Registrar(RTI)

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/True Copy/

Sub Assistant Registrar

To

1. The District and Sessions Judge
Sivagangai.
- 2.The Principal District and Sessions Judge,
Sivagangai.
- 3.The Chief Judicial Magistrate,
Sivagangai.
- 4.The Judicial Magistrate,
Devakottai
- 5.The Director General of Police,
Mylapore, Chennai-4.
- 6.The Superintendent of Police,
Central Prison,
Trichy.
7. The Inspector of Police
Thiruvekampadhur Police Station
Sivagangai District.
- 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.

TK

AE/SV MMS/SAR1/13.08.2017/9P/10C