



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2016

CORAM:

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

CRIMINAL APPEAL (MD).No. 186 of 2016

Manikandan : Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police
Pasuvanthanai Police Station
Thoothukudi District.
in Crime No.83/ 2011

: Respondent /Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the I Additional Sessions Judge, Thoothukudi, in S.C.No.173 of 2014 dated 27.01.2016.

For Appellant	: Mr.V.Kathirvelu senior counsel for Mr.K.Prabhu
For Respondent	: Mr.C.Ramesh Additional Public Prosecutor

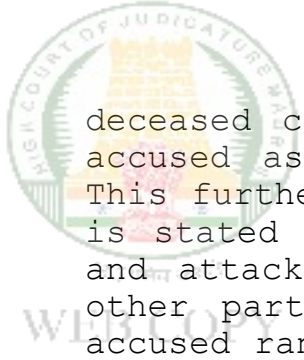
Judgment

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

The appellant is the sole accused in S.C.No.173/2014 on the file of the I Additional District & Sessions Judge, Tuticorin. He stood charged for the offence under Section 302 IPC. By judgment dated 27.01.2016, the trial Court convicted him under Section 302 IPC and sentenced him to under imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months.

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

The deceased in this case was one Mr.Shanmugavel. His wife is one Mrs.Solaiammal. They were residing at Achankulam. The accused is their neighbour. His mother is one Mrs.Ramalakshmi. The drainage water from the house of the accused was let in front of the house of the deceased. This resulted in frequent quarrels between the mother of the accused and the wife of the deceased. On 12.06.2011, around 9.30 p.m., there arose a similar quarrel between the wife of the deceased and the mother of the accused. On hearing, the quarrel the



deceased came out of his house and shouted at the mother of the accused as to why, she was frequently quarreling with his wife. This further aggravated the quarrel. At the end of the quarrel, it is stated that the accused took out a casuarina stick lying there and attacked the deceased indiscriminately at his right face and other parts of the body. P.W.1 witnessed the occurrence. The accused ran away from the scene of occurrence. Mrs.Solaiammal, the wife of the deceased went to Pasuvanthanai Police Station and made a complaint at 10.30 p.m. on 12.06.2011. The distance between the place of occurrence and the police station is hardly 6 kms. Based on the said complaint, a case was registered in Crime No.83/2011 under Sections 302 IPC against the accused. Ex.P10 is the FIR. Both the documents were forwarded to the Court, which were received by the Judicial Magistrate at 3.13 a.m. on 13.06.2011.

3. P.W.14 took up the case for investigation. He went to the place of occurrence and prepared an observation mahazar and rough sketch in the presence of witnesses at 11 p.m. on 12.06.2011, he recovered bloodstained earth and sample earth under a mahazar. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

4. P.W.8 - Dr.Kavitha Paranthaman conducted autopsy on the body of the deceased on 13.06.2011 around 12 noon. She found the following injuries:

1. Irregular lacerated wound 15 x 3 x 2 extending from right temporo mandibular joint to chin exposing the mandibular bone right side.

2. Irregular lacerated wound left fore head about 10 x 3 x 2 cm on exploration the wound fracture of left frontal parietal bone was present. Membrane tact. 20 x 15 cm subdural haemotoma was present in left frontal parietal region.

Ex.P7 is the postmortem certificate. She gave opinion that the injuries found on the body of the deceased could have been caused by a weapon like M.O.1 - casuarina stick. She further opined that the deceased would appear to have died due to the said injuries.

5. P.W.14 recovered the bloodstained cloth from the body of the deceased. During the course of investigation, on 13.06.2011, at 2 p.m., he arrested the accused at Salanayakanpatti Bus stop in the presence of witnesses. On such arrest, he made a voluntary confession, in which, he disclosed the place, where he had hidden the casuarina stick. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced a casuarina stick (M.O.1). Then, P.W.14 forwarded the accused to the Court for judicial remand and handed over the material objects to the Court. At his request, the material objects were sent for chemical examination, which reveals that there were human bloodstains on all the material objects including the stick recovered from the accused. On completing the investigation, he laid chargesheet against the



accused.

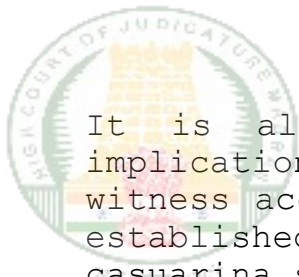
6. Based on the above materials, the trial Court framed a lone charge under Section 302 IPC. The accused denied the same. In order to prove the charge, on the side of the prosecution, as many as 14 witnesses, 16 documents and 6 material objects were marked.

7. Out of the said witnesses, P.W.1 - wife of the deceased; P.W.2 - brother-in-law of the deceased ; P.W.3 - daughter of the deceased ; P.W.4 - a neighbour of the deceased ; P.W.5 - yet another neighbour of the deceased have spoken about the occurrence. P.W.1 has further spoken about the complaint made. All these witnesses have stated that in the quarrel, the accused attacked the deceased with casuarina stick repeatedly. P.W.6 has spoken about the preparation of observation mahazar and rough sketch and the recovery of material objects from the place of occurrence. P.W.7 is the son of the deceased. He has spoken only about the previous quarrel between the two families. P.W.8 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.9 has turned hostile and he has not supported the case of the prosecution. P.W.10 - a Constable has stated that he handed over the FIR to the jurisdictional Magistrate at 3.13 am. on 13.06.2011. P.W.11 has stated that he handed over the dead body for postmortem, as directed by the investigating officer. P.W.12 has spoken about the registration of the case on the complaint of P.W.1. P.W.13 - a Head Clerk of the Judicial Magistrate Court stated that he forwarded the material objects for chemical examination as directed by the learned Magistrate at the request of the Investigating Officer. P.W.14 has spoken about the investigation done and the final report filed.

8. When the 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 witnesses nor marked any documents. Having considered all the above, the trial Court convicted him under Section 302 IPC. That is how, he is before this Court with this criminal appeal.

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

10. As we have already pointed out, this is a case based on eye witness account of P.Ws.1 to 5. Of course, P.Ws.1 to 3 are the family members of the deceased. But, on that score, their evidences cannot be outright rejected and their evidences require close scrutiny. P.Ws.4 and 5 are the independent witnesses, who have also witnessed the occurrence. Their evidences also duly corroborate the evidences of P.Ws.1 to 3. They have spoken about the presence of P.Ws.1 to 3 at the place of occurrence. The material on record shows, without there being any doubt, that there was no delay in the FIR or in the FIR in reaching the hands of the learned Magistrate.



It is also to some extent rules out the falsity or false implication. The medical evidence also duly corroborates the eye witness account. From these evidences, the prosecution has clearly established that it was this accused, who attacked the deceased with casuarina stick and caused his death.

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11. Having come to the said conclusion, now we have to examine as to what was the offence committed by the accused. As we have already pointed out that there was no strong motive between the parties. The quarrel between the wife of the deceased and the mother of the accused would not have been anticipated by the accused. It was so sudden. In that quarrel, the accused had intercepted, only with a view to persuade the quarreling women and to stop the quarrel. But, in that quarrel, it is seen that the accused had been provoked. He has also involved in the said quarrel. It was only in that quarrel, the accused had taken the casuarina stick, which was lying there. He was not already armed with any weapon. Taking out the casuarina stick, which was lying there, the accused gave blows on the deceased. This, unfortunately, resulted in his death.

12. From the narration of these facts, it is crystal clear that the accused could have never had any intention to cause the death of the deceased or to cause any such bodily injury, which is sufficient in the ordinary course of nature to cause the death of the deceased. The accused would have had no knowledge that his act would, by all probability, result in the death of the deceased. Though the act of the accused would fall within the 4th limb of Section 300 IPC, since the occurrence was not a premeditated one and since the occurrence was due to quarrel and fight and the accused did not take any undue advantage of his act by causing any more injury, it would fall within the 4th exception to Section 300 IPC. Therefore, he is liable to be punished under Section 304(ii) IPC.

13. Now, turning to the quantum of punishment, at the time of occurrence, the accused was hardly aged 32 years; he has got a big family to take care of. The act of the accused was not premeditated one, he has got no bad antecedents. After the occurrence also, he has not involved in any crime. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- would meet the ends of justice.

14. In the result, the criminal appeal is partly allowed;

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

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

(ii) It is directed that the period of sentence already undergone by the accused shall be given set off, as provided, under



Section 428 Cr.P.C.

(iii) The fine amount, if any paid already, shall be adjusted.

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Sd/-
Deputy Registrar (Admin)

/True Copy/

Sub Assistant Registrar

To

1. The I Additional Sessions Judge,
Thoothukudi.
2. The Inspector of Police
Pasuvanthanai Police Station
Thoothukudi District.
3. The Superintendent,
Central Prison,
Palayamkottai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.K.PRABHU, ADVOCATE IN SR No. 68217

RR

TE/GSV-PM/SAR-I : 04/01/2017 : 5P/6C

judgment made in
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