



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

AND

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**

CRIMINAL APPEAL (MD) .No. 213 of 2016

Ramu
S/o.Vadivel
M.Kovilpatti Village
Thirupathur Taluk
Sivagangai District : Appellant

Vs.

State through
The Inspector of Police
S.V.Mangalam Police Station
Sivagangai District
in Crime No.47/2007 : Respondent

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the Sessions Judge, Sivagangai, in S.C.No.14 of 2008 dated 29.02.2016.

For Appellant : Mr.M.Subash Babu

For Respondent : Mr.R.Ramachandran
Additional Public Prosecutor
assisted by Mr.A.K.Manickam

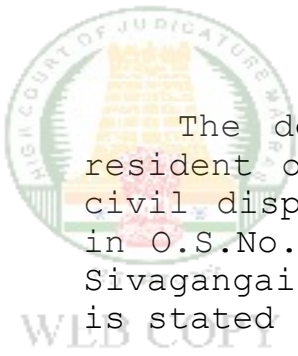
Judgment

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

The appellant is the sole accused in S.C.No.14/2008 on the file of the learned Sessions Judge, Sivagangai. He stood charged for the offences under Section 302 IPC. By judgment dated 29.02.2016, the trial Court convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for two months. Challenging the said conviction and sentence, the appellant has come up with this appeal.

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



The deceased in this case was one Mr.Chinnaiah. He was a resident of M.Koilpatti Village in Sivagangai Taluk. There was a civil dispute between the deceased and the father of the accused in O.S.No.682/1994 on the file of the Additional District Munsif, Sivagangai. The suit was decreed in favour of the accused. This is stated to be motive for the occurrence.

2.1. On 19.05.2007, around 6.15 a.m., the deceased was returning to his village. He was coming on walking pushing in his bicycle. At that time, the accused came from behind with an aruval in his hands. He approached the deceased menacingly and cut him with aruval repeatedly. The deceased fell down in a pool of blood. The accused ran away from the scene of occurrence. The occurrence was witnessed by P.W.1. He raised alarm, which attracted the people to the place of occurrence. The deceased died instantaneously. Thereafter, P.W.1 went to S.V.Mangalam Police Station and made a complaint at 8.00 a.m. on 19.05.2007. P.W.8 - the then Sub Inspector of Police, on receipt of the complaint (Ex.P1), registered a case in Crime No.47/2007 under Section 302 IPC. Ex.P10 is the FIR. She forwarded both the documents to the Court, which were received by the learned Magistrate on 19.05.2007.

2.2. P.W.11 took up the case for investigation. He went to the place of occurrence at 9 a.m., on 19.05.2007, prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered the bloodstained earth and sample earth and also an Atlas bicycle from the place of occurrence under a mahazar. Then, he conducted inquest on the body of the deceased and forwarded the body for postmortem.

2.3. P.W.7 - Dr.Balasubramanian conducted autopsy on the body of the deceased at 1.30 p.m. on 19.05.2007. He found the following injuries:

1.Right knee joint completely severed exposing both ends of the joint with hanging of the leg with skin support only. Reddish brown in colour.

2.A curved cut injury about 20 cm x brain depth x 6 cm in wide on the left parietal bone. The injury extends from joint above left ear to the forehead. Reddish brown in colour.

3.A cut injury about 10 cm x bone depth x 5 cm in eye exposing two ends of the joint of right elbow joint reddish brown colour.

4.A cut injury about 10 cm x bone depth x 6 cm on the right forearm. Reddish brown in colour.

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Ex.P9 is the postmortem certificate. He gave opinion that the injuries found on the body of the deceased could have been caused



by a weapon like M.O.4 - aruval. He further opined that the death of the deceased was due to shock and haemorrhage due to the said injuries.

2.4. P.W.11, during course of investigation, recovered bloodstained cloth from the body of the deceased and forwarded the same for chemical examination. On 20.05.2007 at 7.00 a.m., near Manakudi Bus Stop, he arrested the accused in the presence of witnesses. On such arrest, he made a voluntary confession, in which, he disclosed the place, where he had hidden an aruval. In pursuance of the same, he took the police and the witnesses to the place of occurrence and produced M.O.4 - aruval. P.W.11 recovered the same under a mahazar in the presence of the witnesses. Then, he forwarded the accused to judicial remand and handed over the material objects to the Court. At his request, the material objects, including aruval, were sent for chemical examination, which revealed that there were human blood on all the material objects including aruval. On completing the investigation, he laid chargesheet against the accused.

2.5. Based on the above materials, the trial Court framed a lone charge under Section 302 IPC against the accused. He denied the same as false. In order to prove the case, on the side of the prosecution, as many as 11 witnesses have been examined and 17 documents and 7 material objects were marked.

2.6. Out of the said witnesses, P.W.1 - a close relative of the deceased alone was the eye witness to the occurrence. He has narrated the entire occurrence and he has also spoken about the complaint made by him to the police. P.W.2 has stated that around 5 a.m., on the date of occurrence, when he was returning to his house, he found the accused fleeing away from the scene of occurrence with an aruval in his hands with bloodstains. When he went to the place of occurrence, he found the deceased lying dead. P.W.1 was standing near the dead body and raising alarm. Then he accompanied P.W.1 to go to the police station to make a complaint. P.W.3 - Village Administrative Officer has spoken about the preparation of observation mahazar and rough sketch and the recovery of bloodstained earth and sample earth and also the bicycle belonging to the deceased. P.W.4 has spoken about the photograph taken at the place of occurrence as instructed by the Investigating Officer. P.W.5 - a Head Constable has stated that he handed over the FIR to the learned Magistrate at 10 a.m. on 19.05.2007. P.W.6 - a Head Constable has stated that he took the body from the place of occurrence and handed over the same for postmortem as directed by the Investigating Officer. P.W.7 - Dr. Balasubramanian has spoken by the postmortem conducted and his final opinion regarding the cause of death. P.W.8 - the Sub Inspector of Police has spoken about the registration of the case on the complaint of P.W.1. P.W.9 the Head Clerk of the Magistrate Court has stated that he forwarded the material objects to the



forensic lab for chemical examination. P.W.10 has stated about the complaint regarding the earlier occurrence. P.W.11 has spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side, he examined three witnesses as D.Ws.1 to 3.

3.1. D.W.1 has stated that on 19.05.2007, around 4 to 4.30 a.m., when he was sleeping at his house, he heard a commotion from the place of occurrence. When he rushed to the place of occurrence, he found that five persons, who were unknown to him, cut the deceased and then all the five fled away from the scene of occurrence. Thereafter, according to him, he found P.W.1 and others. He had further stated that on the complaint made to the police, the police arrived at the scene of occurrence.

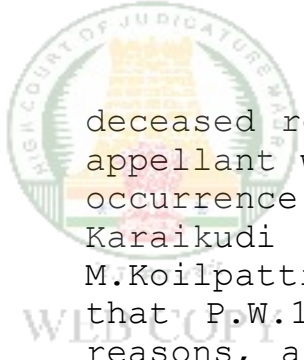
3.2. D.W.2 has stated that he did see four or five persons cutting the deceased at the place of occurrence. D.W.3 has stated that he did not tell the police that he witnessed the occurrence, as though, the accused cut the deceased.

3.3. On the side of the defence, two documents were marked, namely, certified copy of the decree in O.S.No.682/1994 and a certified copy of the judgment in S.C.No.9/2007. Ex.D2 is the judgment in the said criminal case, in which, the deceased was the first accused for offence under Section 307 IPC.

3.4. The defence of the accused was a total denial. Having considered all the above, the trial Court acquitted the accused by judgment dated 21.10.2008. Challenging the said acquittal, P.W.1 filed a revision before this Court in CrI.R.C.No.18/2009. By order dated, 08.10.2010, a learned single Judge of this Court allowed the revision, set aside the acquittal of the accused and remanded the case back to the trial Court for fresh disposal in accordance with law. On such remand, the case was further tried by the lower Court. On appreciating the evidence let in both oral and documentary on either side, the trial Court, this time, convicted him under Section 302 IPC and sentenced him to imprisonment for life and to pay a fine of Rs.1,000/-. Challenging the same, the appellant is before this Court with this appeal.

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

5. As we have already pointed out, this is a case, where the <https://hccasecourts.gov.in/hccsccs/> evidence is solely on the evidence of P.W.1, who has stated that he witnessed the entire occurrence. He has further stated that it was this accused and this accused alone, who cut the

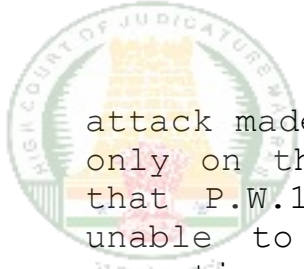


deceased repeatedly with aruval. But the learned counsel for the appellant would submit that the presence of P.W.1, at the place of occurrence is highly doubtful. According to him, P.W.1 belongs to Karaikudi and thus, there was no need for him to come to M.Koilpatti at the crucial point of time. He would further submit that P.W.1 is a close relative of the deceased and for these reasons, according to the learned counsel for the petitioner, the evidence of P.W.1 should be rejected. But we are not persuaded by the said argument of the learned counsel for the petitioner. Simply because, P.W.1 happens to be a close relative of the deceased, his evidence cannot be outright rejected. Prudence requires that his evidence should be closely scrutinised. It is true that P.W.1 claims to have been present, at the place of occurrence, by chance. Here again, on that score, we cannot doubt the presence of P.W.1, at the time of occurrence.

6. It is the settled law that if a chance witness has explained to the satisfaction of the Court as to what made him to be present at the place of occurrence, there can be no impediment for the Court to act upon his evidence. Applying this broad principle, if we look into the evidence of P.W.1, we find no reason to disbelieve him in toto. After the occurrence, he had gone to the police station and made a complaint at 8.00 a.m. and the FIR had reached the Magistrate at 10 a.m. on 19.05.2007. Thus, there was no delay in making the complaint. The medical evidence also duly corroborates the eye witness account of P.W.1. Thus, we find no reason to reject the evidence of P.W.1.

7. The learned counsel for the appellant would submit that P.W.1, during cross examination, has admitted that there were a lot of independent witnesses present at the place of occurrence, but none has been examined. The learned counsel would submit that the non examination of such independent witnesses is fatal to the case of the prosecution. But we find no force at all in the said argument. P.W.2 has stated that on hearing the commotion, when he rushed to the place of occurrence, he found the deceased lying in a pool of blood, where P.W.1 was standing and crying for help. Thus, the presence of P.W.1 has been spoken by P.W.2. P.W.2 has gone one step further by saying that he found the accused fleeing away from the scene of occurrence with an aruval. Thus, the evidence of P.W.2 also duly corroborates the evidence of P.W.1. Apart from that, as spoken by P.W.3 on the arrest of the accused, M.O.4 was recovered from his possession, which contained human blood. This would also go to further strengthened the case of the prosecution. From the above evidence, in our considered view, the prosecution has clearly established that it was this accused, who cut the deceased and caused his death.

<https://hcservices.courts.gov.in/hcservices> 8. Having come to the said conclusion, now, we have to examine as to what was the offence that was committed by the accused by his act. P.Ws.2 and 3 had not seen as to what preceded the actual



attack made by the accused on the deceased. The prosecution relies only on the evidence of P.W.1. As we have already pointed out that P.W.1 is a close relative of the deceased. Therefore, we are unable to hold that P.W.1 has come up with the entire true narration of entire facts. From various circumstances projected from the other evidences also, it is inferable that before the actual attack was made by the accused on the deceased, there should have happened a quarrel between the accused and the deceased. It was only out of loss of self control, due to sudden and grave provocation, the accused would have cut the deceased. This conclusion of ours is not based on mere surmise or assumption. It is a presumption based on the natural human conduct as provided under Section 114 of the Indian Evidence Act.

9. From the totality of the evidences available and the circumstances projected, we are able to presume that the actual attack made by the accused on the deceased was preceded by a quarrel, in which, due to the acts and deeds of the deceased, the accused had lost his power of self control and driven by his provocation, the accused had caused the death of the deceased. Thus, though the act of the accused would clearly fall within the 3rd limb of Section 300 IPC, the same would fall within the 1st exception to Section 300 IPC and therefore, the appellant is liable to be punished only for the offence under Section 304(i) IPC.

10. Now, turning to the quantum of punishment, the accused is aged about 55 years. He has got no bad antecedents. After the occurrence also, he has not committed any crime. It is on record that he is a poor man; he got a big family to take care of. Having regard to all the mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- would meet the ends of justice.

11. In the result, the criminal appeal is partly allowed; the conviction and sentence imposed on the appellant for the offence under Section 302 IPC is set aside, 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. It is further directed that the period already undergone by the accused shall be given set off under Section 428 Cr.P.C. Consequently connected Miscellaneous Petition in CrI.M.P.No.11387 of 2016 is closed.

Sd/-

Assistant Registrar(RTI)



To

1 The Judicial Magistrate, Thirupathur, Sivagangai District

2 "do thro" The Chief Judicial Magistrate, Sivagangai

3 The Sessions Judge,
Sivagangai.

4 The Superintendent,
Central Prison, Trichy

5. The Inspector of Police
S.V. Mangalam Police Station
Sivagangai District.

6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 cc to MR.M.SUBASH BABU, Advocate SR.No.70640

+1 cc to MR.A.K.MANICKAM, Advocate SR.NO.70827

Judgment made in
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18.11.2016

SMA/SS-3/SAR-2/06.01.2017:7P/9C