



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2016

CORAM:

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

Cr1.A(MD)No.288 of 2016

Senthilkumar .. Appellant/Sole Accused

Vs.

State rep. by
The Inspector of Police,
Kumbakonam West Police Station,
Thanjavur District.
(Crime No.400 of 2001). .. Respondent/ Complainant

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge and Chief Judicial Magistrate, Thanjavur at Kumbakonam, in S.C.No.74 of 2002, dated 16.10.2002.

For Appellant : Mr.P.T.Ramesh Raja
For Respondent : Mr.C.Ramesh,
Addl. Public Prosecutor.

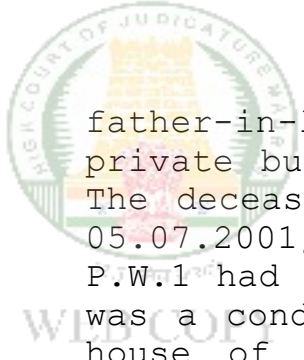
JUDGMENT

[Judgment of the Court was made by **S.NAGAMUTHU, J**]

The appellant is the sole accused in S.C.No.74 of 2002, on the file of the learned Additional District and Sessions Judge cum Chief Judicial Magistrate, Thanjavur at Kumbakonam. He stood charged for the offences under Sections 302 and 506(i) I.P.C. By Judgment, dated 16.10.2002, the Trial Court convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for one year. The Trial Court acquitted him from the charge under Section 506(i) IPC. Challenging the said conviction and sentence, the appellant is before this Court, with this Criminal Appeal.

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

(i) The deceased in this case was one Mr.Kannan. He was the



father-in-law of the accused. The deceased was a driver in a private bus company. P.W.1 was the manager of the said company. The deceased was residing at Uppukkara Street at Kumbakonam. On 05.07.2001, around 03.10 p.m., the deceased was at his house. P.W.1 had gone to the house of the deceased along with P.W.2, who was a conductor in the said bus company. When they reached the house of the deceased, they found that a clash was going on between the accused and the deceased. At the end of the said quarrel, there were exchange of blows between the accused and the deceased. P.W.1 and P.W.2 separated them. At that time, the deceased shouted at the accused and told that he was prepared to have sex with the mother of the accused, provided she was brought by the accused to him. The deceased also used all sorts of abusive language against the accused. Enraged over the same, suddenly, the accused took out a wooden log and attacked the deceased on his forehead. The deceased fell down. The accused immediately lifted a stone lying there and dropped the same on the leg of the deceased. Then, he ran away from the scene of occurrence, along with the wooden log. P.W.1 and P.W.2 immediately informed the same to their company and then they took the deceased to Kumbakonam Government Hospital.

(ii) On getting intimation from the hospital, P.W.10, the then Head Constable, attached to Kumbakonam West Police Station, rushed to the Government Hospital, Kumbakonam. But, in the meanwhile, P.W.1 rushed to Kumbakonam West Police Station and made a complaint at 05.30 p.m. on 05.07.2001. P.W.10 registered a case on the said complaint in Crime No.400 of 2001, under Section 302 IPC against the accused.

(iii) P.W.14, took up the case for investigation. He went to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch in the presence of witnesses. Then, he recovered bloodstained earth and sample earth from the place of occurrence and also the stone lying at the place of occurrence. Then, on the next day, at 06.00 a.m. in the hospital, he conducted inquest on the body of the deceased and thereafter forwarded the same for postmortem.

(iv) P.W.5, Dr. Palanivelu, conducted autopsy on the body of the deceased on 06.07.2001 at 11.30 a.m. He found the following injuries:

- "1) A linear lacerated injury on the forehead vertical overlying the left eyebrow. 5 cm x 1 cm x bone depth.
- 2) A lacerated injury on the lower jaw overlying the mandible on left side 2 cm x 1 cm x bone depth.
- 3) A lacerated injury on the left side of neck just below the angle of mandible 2 cm x 1 cm x 1 cm.
- 4) An abrasion on the left arm medical aspect 5 cm x 5 cm.
5. An abrasion on the left side of abdomen at the level of subcostal region 12 cm x 6 cm.



6) An abrasion on the left forearm posterior aspect 10 cm x 3 cm.

7) A lacerated injury on the right leg on the anterior aspect from knee to mid point of leg 20 cm x 8 cm x 3 cm exposing thro bone on muscle.

8) A lacerated on the posterior aspect of right lower limb from mid thigh to mid leg 40 cm x 12 cm x 5 cm exposing thro muscles and blood vessels. Knee joint right dislocated.

9) An abrasion on right thigh anterior aspect 2 cm x 1 cm. Internal examination: fracture ribs 6, 7 and 8 on right side and 5th on left. Lungs: right 500 left 450 pale. Heart 150 gms. Chambers empty. Stomach contains 500 ml of undigested rice. Liver-lacerated vertically into two parts.

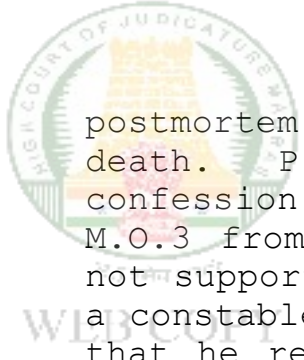
Cavity spleen 100 gms. Kidney 150 gms each pale. Intestines distended with gas. Scalp intact. Skull and membranes intact. Brain 1200 gm. Pale.

Ex.P.9 is the Postmortem Certificate, issued by P.W.5. He gave opinion that the deceased would appear to have died of shock and haemorrhage due to the multiple injuries found on the body of the deceased.

(v) P.W.14, during the course of investigation, arrested the accused on 08.07.2001 at 05.45 p.m. in the presence of witnesses and on such arrest, the accused made a voluntary confession, in which he disclosed the place, where he had hidden the wooden log and the shirt. In pursuance of the same, he took the police and witnesses to the hide-out and took out M.O.1, wooden log and M.O.3, shirt, and produced them. P.W.14 recovered the same under a mahazer. On returning to the Police Station, P.W.14 forwarded the accused to the Court for judicial remand and handed over the material objects to the Court. At his request, material objects were sent for Chemical Examination. The Chemical Examination Report revealed that there were bloodstains on the material objects, including the wooden log. He collected the Postmortem Certificate and examined the doctor. Finally, on completing the investigation, he laid the charge sheet against the accused on 07.08.2001.

3. Based on the above materials, the Trial Court framed charges under Sections 302 and 506(i) I.P.C. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as, 14 witnesses were examined and 25 documents were exhibited, besides 6 Material Objects.

4. Out of the said witnesses, P.W.1 and P.W.2 have vividly spoken about the entire occurrence as eye-witnesses. P.W.1 has spoken about the complaint made by him to the police. P.W.3 and P.W.4 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.5 has spoken about the



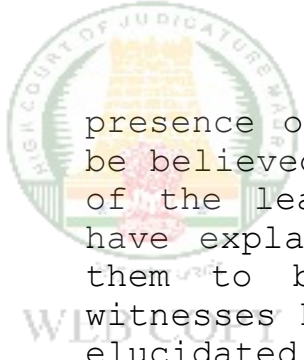
postmortem conducted and his final opinion regarding the cause of death. P.W.6 has spoken about the arrest of the accused, the confession made by him and the consequential recovery of M.O.1 to M.O.3 from his possession. P.W.7 has turned hostile and he has not supported the case of the prosecution, in any manner. P.W.8, a constable attached to Kumbakonam West Police Station, has stated that he received intimation from the hospital about the death of the deceased and then informed the same to Kumbakonam West Police Station. P.W.9 has stated that he received death intimation from P.W.8. P.W.10 has spoken about the registration of the case on the complaint of P.W.1. P.W.11 has stated that he handed over the First Information Report to the learned Magistrate at 09.40 p.m. on 05.07.2001. P.W.12, a constable attached to Kumbakonam West Police Station, has stated that he took the dead body and handed over the same to the doctor for postmortem, as directed by P.W.14. P.W.13, Head Clerk of the Judicial Magistrate's Court, has spoken about the fact of forwarding the material objects to the Forensic Lab for chemical examination, on the orders of the learned Judicial Magistrate. P.W.14 has spoken about the investigation done and filing of final report.

5. When the above 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 witness on his side or to mark any document. His defence was a total denial.

6. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and sentenced him accordingly. That is how, the appellant is before this Court with this Criminal Appeal.

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

8. As we have already narrated, in the instant case, P.W.1 and P.W.2 have vividly spoken about the entire occurrence. P.W.1 is the manager of the bus company, where the deceased was working and P.W.2 was a co-worker of the deceased. P.W.1 and P.W.2 have stated that they went to the house of the deceased to inform him to come for duty. At that time, according to them, they had seen a wordy quarrel initially going on, between the deceased and the accused. They have further stated that the said quarrel culminated in exchange of blows. They have also stated that at the end of the said incident, the deceased used all sorts of abusive language against the accused and he even shouted at the accused to bring his mother to him to have sex. According to these witnesses, it was only in that situation, the accused took <https://hccservices.courts.madras.gov.in/eservices/ncs/ncsindex.js> and attacked on the head of the deceased and thereafter dropped a stone on the leg of the deceased. The learned counsel appearing for the appellant would submit that the

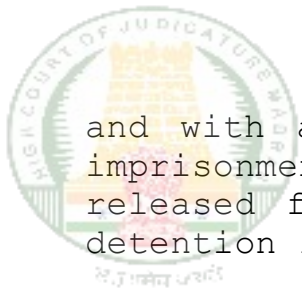


presence of these two witnesses at the time of occurrence cannot be believed in. But, we find no force at all in the said argument of the learned counsel for the appellant. These two witnesses have explained to the satisfaction of the Court as to what made them to be present at the place of occurrence. These two witnesses have been cross-examined at length and nothing have been elucidated from them to create any doubt in their veracity. Thus, from the evidence of these two witnesses, the prosecution has clearly established that the injuries found on the deceased, were caused only by the accused and the medical evidence has clearly established that death was due to the said injuries. Thus, in our considered view, the prosecution has established that it was, this accused, who had caused the death of the deceased. Recovery of wooden log, on the confession of the accused and also the bloodstained shirt further strengthens the case of prosecution.

9. Now, the next immediate question which arises for consideration is by the said act what was the offence committed by the accused? As we have already pointed out, there was no motive for the accused to kill the deceased. The occurrence was not a pre-mediated one. After all, the accused is the son-in-law of the deceased. The quarrel between the accused and the deceased was domestic in nature. Unfortunately, the quarrel culminated in exchange of blows between them. Then the deceased had abused the accused in filthy language, even shouted at the accused to bring his mother and spare her to him for having sex. Quite naturally, this would have certainly provoked the accused. Thus, it is crystal clear that having lost his self-control on account of provocation in the quarrel, which was sudden, the accused, without taking undue advantage, had taken a wooden log lying there and gave a blow to the deceased and thereafter dropped a stone on the legs of the deceased. Thus, in our considered view, though the act of the accused would clearly fall within the third limb of Section 300 IPC, the same would squarely fall within Exception (4) to Section 300 IPC. Therefore, he is liable to be punished for an offence under Section 304(i) IPC.

10. Now, turning to the quantum of punishment, it is reported that he has been in prison from the date of conviction, namely, 16.10.2002, i.e., for about 13 years and 11 months. In our considered view, the said period of sentence undergone by him already, would be the sufficient punishment for him, besides a fine of Rs.5,000/-.

11. In the result, the Criminal Appeal is partly allowed; the conviction and sentence imposed on the appellant/accused under Section 302 I.P.C. by the Additional District and Sessions Judge cum Chief Judicial Magistrate, Thanjavur at Kumbakonam, in <https://hcservices.hcservices.gov.in/hcservices>, dated 16.10.2002, is set aside and instead, he is convicted under Section 304(i) I.P.C. and the period of sentence is reduced to the period of sentence already undergone



and with a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for 4 weeks. The appellant/accused is directed to be released forthwith, if he has paid the fine and further if his detention is not required in connection with any other case.

Sd/-

Assistant Registrar-RTI

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/True Copy/

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge and
Chief Judicial Magistrate,
Thanjavur at Kumbakonam.
- 2 The Judicial Magistrate,
Kumbakonam.
- 3 Do Through The Chief Judicial Magistrate
Thanjavur
- 4 The District Collector,
Thanjavur.
- 5 The Commissioner of Police,
Thanjavur.
- 6 The Director general of Police,
Chennai.
- 7 The Superintendent of Central Prison,
Trichirappalli.
8. The Inspector of Police,
Kumbakonam West Police Station,
Thanjavur District.
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.P.T.Ramesh,Advocate Sr.No. 56928

JAM/17.10.16/GSV-PM/SAR II/6p-11c

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