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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.10.2016

DELIVERED ON : 07.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.A.[MD].No.311 of 2013

Chinnadaikkan .. Appellant/Sole accused

Vs.

State through
the Inspector of Police,
Natham Police Station,
Dindigul District.
(Crime No.93 of 2009).

.. Respondent/ Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the judgment, dated 30.11.2012, made in S.C.No.268 of 2010, by the learned Principal Sessions Judge, Dindigul District.

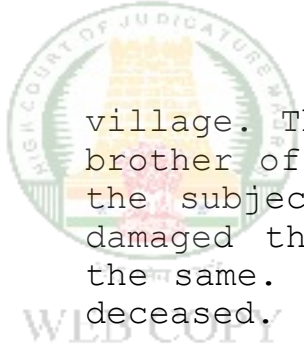
For appellant : Mr.R.Alagumani

For respondent : Mr.K.S.Duraipandian,
Additional Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in S.C.No.268 of 2010 on the file of the learned Principal Sessions Judge, Dindigul. He stood charged for the offences under Section 302 IPC and Section 25(1-a) of the Arms Act. By judgment dated 30.11.2012, 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.1,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 302 IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 25(1-a) of the Arms Act. Challenging the said conviction and sentence, the appellant/accused is before this Court with this appeal.



village. The deceased in this case was one Mr.Kannan. He was the brother of PW1. One week before the alleged occurrence, which is the subject matter of the case, the goats belonging to PW1 had damaged the crops raised by the accused. The accused questioned the same. This resulted in a quarrel between the accused and the deceased. This is stated to be the motive for the occurrence.

(b) On 18.02.2009 around 09.00 a.m. PW1 and the deceased had gone to Kodangiputhu hill, which is situated somewhere near Palanipatti Village for the purpose of collecting wood for constructing a small hut. When they were together at the said place, the accused came to the said place. The accused questioned PW1 and the deceased as to why they had come there. PW1 and the deceased told that they had come there to collect wood for constructing a hut. PW1 asked the accused as to why he had come to that place. The accused told that he had come there to hunt forest goats. Then, they went to collect wood. It is alleged that the accused suddenly took out his gun and shot the deceased. Actual shooting was not witnessed by PW1. He heard the firing sound and the alarm raised by the deceased and therefore, he rushed towards his brother. The deceased was lying in a pool of blood with pellet injuries. He told PW1 that the accused had shot him with gun. On seeing PW1, the accused fled away from the scene of occurrence with the gun. Within a short while, the deceased succumbed to the injuries.

(c) PW1 tried to carry the dead body of the deceased, but he could not. Therefore, he went to the village leaving the dead body at the place of occurrence. He informed PW2 and others about the occurrence. Then, all of them went to the place of occurrence. They brought down the dead body from the hill station to Kattayambalam forest. Leaving the dead body on a Coir cot, PWs.1 and 2 went to the Police Station and made a complaint under Ex.P1. Based on the same, PW8, the then Sub Inspector of Police, registered a case in Crime No.93 of 2009 under Sections 302 IPC and 25(1-b) (a) of the Arms Act. Ex.P9 is the FIR. He forwarded both the documents to the Court.

(d) The investigation was taken up by PW11, the then Inspector of Police. He went to the place of occurrence, recovered bloodstained earth and sample earth from the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of PW4 and another witness. Then, he conducted inquest on the body of the deceased and forward the same for postmortem.

(e) PW5 - Dr.Natarjan, a Doctor attached to the Government Hospital, Madurai, conducted autopsy on the body of the deceased on 19.02.2009 at 10.15 a.m. He found the following injuries:

<https://hcservices.ecourts.gov.in/hcservices> (1) Penetrating wound with inverted, irregular margin measuring 0.5.cm in diameter noted on outer aspect of right side of chest, 12



cms below and lateral to nipple.

On dissection, the wound passes obliquely towards the left and penetrating the underlying muscles, vessels and nerves in the 6th intercostals space and the underlying pleura and lower lobe of right lung and a pellet found embedded in the lower lobe of right lung. Right pleural cavity contains 400 ml of blood with clots. Left pleura cavity empty.

(2) Penetrating wound with inverted, irregular margin measuring 0.5 cm in diameter noted on outer aspect of right side of chest 12 cms below the right axilla in mid axillary line.

On dissection the wound passes obliquely towards the left and penetrating the underlying muscles, vessels and nerves in the 6th intercostals space and underlying pleura and lower lobe of right lung and entering into oesophagus.

(3) Penetrating wound with inverted irregular margin measuring 1.00 in diameter noted on cms below to injury No.1.

On dissection, the wound Passes obliquely towards the left and penetrating the underlying muscles, vessels and nerves in the 8th intercostals space and underlying pleura and lower lobe of right lung and entering into oesophagus.

(4) Penetrating wound with inverted irregular margin 1.0 diameter noted on 2 cm below the injury No.3.

On dissection, the wound passes obliquely towards the left and penetrating the underlying muscles, vessels and nerves in the 9th intercostal space and pellet found embedded in right lobe of liver. Peritoneal cavity contains 650 ml of fluid blood with clots.

(5) Penetrating wound with inverted irregular margins measuring 1 cm in diameter noted on right side of lateral chest 5 cms below and lateral to injury No.4.

On dissection the wound passes obliquely, medially, towards the left and penetrating the underlying muscles, vessels, and nerves and mesentery and a pellet found embedded in the right side of prevertebral muscles at the level of L1 vertebra.



(6) Penetrating wound with inverted irregular margins measuring 1 cm in diameter noted on right side of lateral chest 5 cms below and lateral to injury No.5

On dissection the wound passes obliquely, medially towards the left and penetrating the underlying muscles, vessels and nerves and mesentery and a pellet found embedded in the right side of prevertebral muscles at the level of L3 vertebra.

(7) Penetrating wound with inverted irregular margins measuring 0.5 cm in diameter noted on right lateral chest, 3 cms posterior to injury No.5.

On dissection the wound passes obliquely, medially anteriorly and penetrating the underlying muscles, vessels and nerves and pellet found embedded in the mesentery.

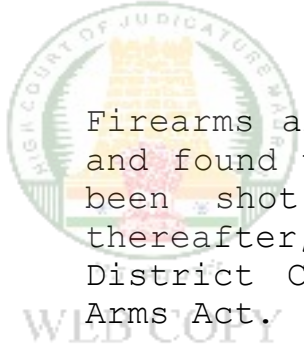
(8) Penetrating wound with inverted irregular margins measuring 0.5 cms in diameter noted on the back of middle of right upper arm.

On dissection the wound passes obliquely anteriorly and penetrating the underlying muscles vessels and nerves and a pellet found embedded under the muscle.

(9) Abrasion 1 cm x 0.5 cm noted on the front of right side of chest, 3 cms lateral to nipple."

Ex.P6 is the Postmortem Certificate. He recovered pellets from the body of the deceased underneath some of the injuries. He opined that the death of the deceased was due to shock and haemorrhage due to pellet injuries found on the body of the deceased.

(f) The accused surrendered before the Court on 19.02.2009. The attempt made by PW11 to take the accused under the Police custody failed. Then, PW9 who is the successor of PW11, continued the investigation. After the accused was released on bail by the Court, he appeared before PW9 on 17.08.2009 at 11.00 a.m., in pursuance of the conditions imposed by the Court. At that time, PW11 interrogated him. The accused, during interrogation, gave a voluntary confession in the presence of the witnesses. In the said confession statement, he disclosed the place where he had hidden a gun. In pursuance of the same, he took the Police and the witnesses to the place of hide out and produced the gun (M.O.1.). PW9 recovered the same under a mahazar and forwarded MO.1 to the Court and at his request, the pellets recovered from the dead body and M.O.1 were sent for examination to the forensic lab. PW7, the



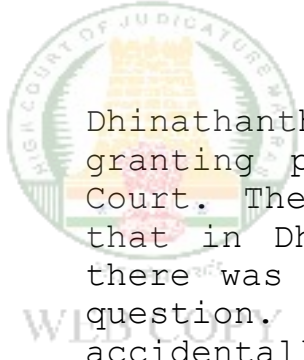
Firearms and Ballistics Expert, conducted examination on the same and found that the pellets recovered from the dead body could have been shot by a weapon like MO.1. The investigation was, thereafter, continued by PW13. He obtained sanction from the District Collector for prosecution under Section 25(1-a) of the Arms Act. Subsequently, he laid charge sheet against the accused.

(g) Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgement. He denied the same. In order to prove the charges, on the side of the prosecution, as many as 14 witnesses were examined, 18 documents and 6 material objects were marked.

(h) Out of the said witnesses, PW1 is the sole eyewitness to the occurrence. He has stated about the motive as well as the entire occurrence. He has stated that there was a conversation between the accused and the deceased for a short while. He has further stated that after some time, when he was at a distance, he heard the firing sound and the alarm raised by the deceased. When he rushed to the place of occurrence, he found the deceased lying with pellet injuries. He told PW1 that the accused shot him with a gun. The accused was found fleeing away from the scene of occurrence. PW1 has further stated about the complaint made by him. PW2 has stated that PW1 informed him about the occurrence and then, he along with PW1 went to the hill and brought down the dead body from the hill and then, accompanied PW1 to the Police Station to make the complaint. PW3 is the mother of the deceased. She has stated about the motive for the occurrence. PW4 has spoken about the preparation of observation mahazar and rough sketch and recovery of the material objects from the place of occurrence.

(i) PW5 - Dr.Natarajan has spoken about the postmortem conducted and his final opinion regarding the cause of death. PW6 has turned hostile and he has not supported the case of the prosecution in any manner. PW7 is the Firearms and Ballistics Expert. He opined that the pellets recovered from the dead body could have been shot from MO.1 - gun. PW8 has spoken about the registration of the case on the complaint made by PW1 at 3.00 p.m. on 18.02.2009. PW10 has stated that he handed over the FIR and the complaint to the learned Magistrate at 3.45 p.m. on 18.02.2009. PW12 has stated he handed over the dead body of the deceased to the hospital for postmortem, as directed by the investigating officer. PW14 has spoken about the sanction granted by the District Collector for registration of the case against the accused under the Arms Act. PWs.9, 11 and 13 have spoken about the investigation done by them and the final report filed.

<https://hcservices.ecourts.gov.in/Witnesses> The above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. On his side, he examined one Saba as DW1. DW1 was a Sub Editor in



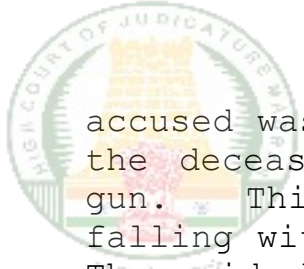
Dhinathanthi Tamil Daily. According to him, he was given a letter granting permission by his Editor to give evidence before the Court. The said letter has been marked as Ex.D1. He has stated that in Dhinathanthi Tamil Daily dated 19.02.2009 at page No.7, there was a news item published in respect of the occurrence in question. In that, it is stated that when a rabbit was shot, it accidentally hit the deceased, who was collecting wood and he died on the spot. Ex.D2 is the said report. Thus, the defence of the accused was a 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/accused and the learned Additional Public Prosecutor appearing for the respondent and we have also perused the records carefully.

4. The learned counsel appearing for the appellant/accused would rely on the evidence of DW1 and Ex.D2, the newspaper report, wherein it has been stated that while a rabbit was shot, the pellets accidentally hit the deceased and he died on the spot. In our considered view, neither the oral evidence of DW1 nor Ex.D2 could have any evidentiary value. DW1 was not the person, who collected the news. He was only a Sub Editor. He had no personal knowledge about the occurrence. His evidence is, thus, hit by hearsay rule. So far as Ex.D2, the news item in the newspaper is concerned, the person, who collected the news or who witnessed the occurrence, has not been examined. At any rate, the contents of Ex.D2 have not been proved. Even assuming that Ex.D2 is proved, the said news item would be hit by the hearsay rule. Thus, the evidence of DW1 and Ex.D2 are rejected.

5. The learned counsel for the appellant/accused would submit that PW1 - the only eyewitness to the occurrence would not have witnessed the occurrence at all. We find no force at all in the said argument. He has stated that he went along with the deceased to the hill station for collecting wood for constructing a hut. Immediately, after the occurrence he rushed to the village and informed PW2 and others and brought down the dead body from the hill and thereafter, he went to the Police Station and thus, there occurred some delay in giving the complaint. Though the learned counsel for the appellant submitted that the delay in giving the complaint creates doubt in the case of the prosecution, we are unable to accept the said argument, because the delay stands duly explained away in this case.

6. In this case, PW1 has not stated that he witnessed the occurrence. He has stated that he was engaged in the work at a reasonable distance and at that time, he heard the sound of gunshot and the deceased also raised alarm and then, immediately, he rushed to the place of occurrence. According to him, the

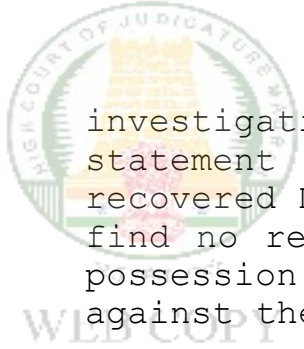


accused was fleeing away from the scene of occurrence with gun and the deceased also told PW1 that the accused only shot him with gun. This statement of the deceased is a dying declaration falling within the ambit of Section 32 of the Indian Evidence Act. The said dying declaration and the circumstance that the accused alone was fleeing away from the scene of occurrence would go to prove that it was this accused who shot the deceased.

7. The learned counsel for the appellant would submit that there is no proof that the pellets found on the dead body of the deceased could have been fired from MO.1 - gun. The gun was not immediately recovered by the Police. Actually, it was recovered from a bush, after about six months. Therefore, due to rain and other natural causes, the gunpowder in the pellets of the gun would have been destroyed. But, the Firearms and Ballistics expert has opined that the pellets found on the dead body of the deceased could have been fired by MO.1 gun. Though PW7 could not say with certainty that these pellets were shot only from MO.1 - gun, on that score, we cannot reject the case of the prosecution. To the extent that it is possible that these pellets could have been fired from MO.1 - gun, we can give evidentiary value for the evidence of PW7.

8. The learned counsel for the appellant/accused would submit that the accused surrendered before the learned Judicial Magistrate on 19.02.2009. PW11, the Investigating Officer, made an application to the learned Judicial Magistrate on 25.02.2009 seeking police custody of the accused. But, it was refused by the learned Magistrate. Therefore, the accused could not be immediately interrogated. Later on, he was released on bail. While on bail, in compliance of the conditions imposed on him, he came to the Police Station on 17.08.2009. PW9, the then Inspector of Police, interrogated him. At that time, the accused gave a voluntary confession out of which the gun was recovered from the place of hide out. Thus, the learned counsel for the appellant/accused would submit that the so called disclosure statement made by the accused after six months of the alleged occurrence cannot be given any weightage of.

9. In this regard, we have to state that we are unable to understand the reason as to why the learned Magistrate refused to grant Police custody of the accused for the purpose of further investigation, though an application was made to the learned Magistrate on time. We are also unable to understand as to why no further action was taken by the Police to challenge the order of the learned Magistrate before the higher forum. We are, at a loss, to understand as to why PW11 did not interrogate the accused at least in the prison after getting necessary permission from the learned Magistrate. Thus, PW11 was virtually either disabled by the Court or he made himself disabled from interrogating the accused on time. It was only PW9 who, after taking over the

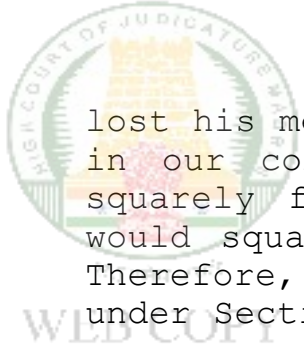


investigation, interrogated the accused, recorded the disclosure statement made by the accused and based on the said statement, recovered MO.1 - gun in the presence of independent witnesses. We find no reason to disbelieve the recovery of MO.1 - gun from the possession of the accused. It is also a strong circumstance against the accused.

10. The evidence PW2 also assumes much importance. PW2 has stated that PW1 came and told him that the deceased was shot by the accused. That was the earliest information passed on by PW1 to PW2. PW1 has also stated so. Thus, the evidence of PW2 that PW1 informed even at the earliest point of time that it was this accused, who shot the deceased, also carries weightage. From these evidences discussed above, in our considered view, the prosecution has clearly established that it was this accused, who shot the deceased and killed him.

11.1. Having come to the said conclusion, now we have to examine as to what was the offence that was committed by the accused by the said act. In this regard, we have to again look into the evidence of PW1. PW1 has stated that he went along with the deceased to the place of occurrence for collecting wood for constructing a small hut. It was a hill station and a forest area. The accused came there. The accused had asked PW1 and the deceased as to what for they had come to the said place. They replied that they had come there to collect wood. Then, PW1 asked him as to what for he had come to the said place. The accused told him that he had come there to hunt the forest goats. This conversation between the accused and PW1 and the deceased would go to show that they were in a cordial relationship. If really, there was ill-feeling and enmity between the parties, this kind of conversation indicating cordiality would not have occurred between them.

11.2. Immediately thereafter, PW1 went to a short distance to collect wood. The accused and the deceased were engaged in conversation. At that time, PW1 heard the noise of firing and the alarm raised by the deceased. When he came to the place of occurrence, he found the accused fleeing away from the scene of occurrence and the deceased lying with pool of blood. Thus, what had transpired between the accused and the deceased, after PW1 had left the place, is not on record. PW1 could not say as to what had happened after he left the place of occurrence. The fact that the accused and the deceased were engaged in conversation in a cordial manner would give an inference that during the said conversation there would have been heated exchanges of words between the accused and the deceased after PW1 had left the place. As the accused has told PW1 and the deceased that he had come only for hunting goats, it is inferable that the accused had no reason to shoot the deceased. During the conversation between the accused and the deceased, it is inferable that the accused would have been provoked by the deceased and only out of the provocation, having



lost his mental balance, the accused had shot the deceased. Thus, in our considered view, though the act of the accused would squarely fall within the 3rd limb of Section 300 IPC, the same would squarely fall within the 1st exception to Section 300 IPC. Therefore, the appellant/accused is liable to be punished only under Section 304(i) IPC.

12. Now turning to the quantum of punishment, the accused is aged 66 years. He had no bad antecedents. The occurrence was not a premeditated one. It was out of a sudden quarrel and out of provocation. Having regard to these 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.1000/-, for the offence under Section 304(i) IPC would meet the ends of justice.

13. The conviction and sentence imposed on the appellant for the offence under Section 25(1-a) of the Arms Act deserves to be confirmed.

14. In the result, this Criminal Appeal is partly allowed in the following terms;

(a) The conviction and sentence imposed on the appellant 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 and sentence imposed on the appellant under Section 25(1-a) of the Arms Act is confirmed.

(c) It is directed that the above sentences shall run concurrently. The period of sentence already undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C. Fine amount, if any, paid by the appellant/accused shall be adjusted. The bail bond, if any, executed by him shall stand cancelled.

(d) The trial Court is directed to appropriate steps to incarcerate the accused in prison so as to serve out the remaining period of sentence.

Sd/-

Assistant Registrar

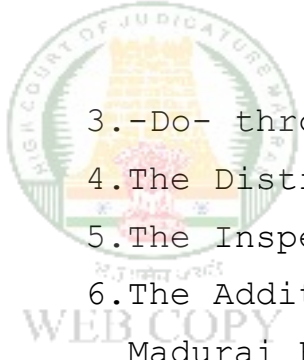
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Sub Assistant Registrar

To

<https://hcservices.ecourts.gov.in/hcservices/> 1. The Principal Sessions Judge, Dindigul.

2. The Judicial Magistrate, Dindigul.

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- 3.-Do- through the Chief Judicial Magistrate, Dindigul,
4.The District Collector, Dindigul District.
5.The Inspector of Police, Natham Police Station,Dindigul District
6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Judgement made in
Crl.A.[MD].No.311 of 2013
Dated:07.11.2016

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