

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.100 of 2017

Shanmugam

...Appellant/Accused

Vs

The State, Represented by its
The Inspector of Police,
Sriperumpudur Police Station,
Kancheepuram District, ...Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C.,
against the Judgment of conviction and sentence imposed by the
learned Sessions Judge, Sessions Court No. II, Kancheepuram dated
18.04.2015 in S.C.No. 84 of 2010.

For Appellant : Mr.M.G.Udhayakumar
For Respondent: Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by Dr.Anita Sumanth.J)
The appellant is the sole accused in Sessions Case No. 84 of
2010 on the file of the Sessions Court No.II kancheepuram. He
takes charge for offence under section 302 of the IPC
and vide Judgment dated 18.04.2015, the trial court
convicted him of the charge, sentencing him to undergo
imprisonment for life and to pay a sum of Rs.1,000 in default of
which, he was directed to undergo rigorous imprisonment for 3
months. The present criminal appeal is filed by the appellant
challenging the aforesaid conviction and sentence.

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

The deceased is one Nagaraj. He, along with the
accused were engaged by Nokia company as lorry drivers and were
thus acquainted with each other. On 03.06.2009, the deceased had
borrowed an amount of Rs.300 from the accused. Thereafter, they

attended to their work during the day and parked their lorries in front of the Nokia company at about 9.p.m. near the PRM Petrol Bunk on the Chennai - Bangalore National Highway, VPR Chathiram. Both the accused and deceased had consumed liquor. The deceased and Sharmila (PW1) are stated to have been in love with each other and retired to sleep in one lorry and the accused in the other. At about 11 p.m., Nagaraj went to the lorry of the accused asking for water and there appears to have been exchange of words between the deceased and the accused regarding the borrowal of money which escalated to a fight. The accused first kicked the deceased who fell on the side of the lorry. The deceased retaliated with an iron rod lying nearby, the accused grabbed it and beat him on his fore head. The noise woke Sharmila who tried to stop the fight. The deceased was taken to Government General Hospital on 04.06.2009 at 3 a.m., where he succumbed to his injuries on 5.6.2009.

3. A complaint was filed at 11.25 a.m., on 04.06.2009 with the Inspector of Police by Rajendran, Village Administrative Officer, PW4, marked as Ex.P5. On the basis of the said complaint, a case was registered in Crime No. 320 of 2009 marked as Ex.P11 by the Inspector of police, Sriperumbudur Police Station, Vinayagam, PW15. The complaint was registered by the VAO on the basis of the confession of the appellant to the effect that he had committed the murder of the deceased on 3.6.09 at around 11 p.m.

4. The files were thereafter handed over to the Investigating Officer, John Victor PW16, who, upon receipt of F.I.R., in Crime No. 320 of 2009 went to the place of occurrence on 4.6.2009 by about 4 p.m. He prepared an observation mahazar (Ex.P.7) and rough sketch (Ex.P.12) of the site in the presence of prosecution witnesses, Baskar, Deva Anbu and Premkumar. He inspected the lorry bearing Registration No. T.D.Q. 9892 in which, the occurrence took place. He also recovered a piece of blood stained wood piece and regular wood piece, blood stained tarpaulin and regular tarpaulin and samples of blood stained and regular soil found on the lorry and on the ground adjacent to it. Material objects in M.O. Nos. 1 to 12 were forwarded for forensic analysis.

5. The body of the deceased was entrusted to Srikanthan Head Constable, PW13 for transmission to the Rajiv Gandhi General Hospital on 05.06.2009 for post mortem. Post mortem was conducted by Dr.Christi Jayamurugan PW12. The Investigating Officer, PW16 then proceeded to take the appellant to the mortuary where the deceased Nagaraj was being kept along with PW2 Ragavan, the manager of Nokia Company and the employer of the appellant herein.

6. The clothes worn by the appellant were blood strained and the same were taken for the purposes of investigation as material objects M.O.2 and M.O.3. The investigating officer proceeded to take the evidence of various witnesses and upon completion of investigation submitted his report laying charge sheet against the accused, the appellant herein.

7. Based on the above materials the Trial Court framed charges as detailed in the first paragraph of this judgment. When the same were put to the appellant, he denied the same as false but did not choose to let in evidence either oral or by way of exhibits. The prosecution, in order to prove its case, examined as many as 16 witnesses, filed 18 exhibits and marked 12 material objects. Upon hearing the matter, the court proceeded to confirm the charges laid against the accused as stated earlier and the appellant is before challenging the same.

8. We have heard the detailed submissions of Mr M.G.Udhayakumar for the appellant and Mr.P.Govindarajan, for the State and appreciated the evidence carefully.

9. The entire case of the prosecution rests on two factors, the confession of the appellant before the VAO and the testimony of PW1 Sharmila who was present at the scene of crime. PW1 Sharmila was present onsite at the time of occurrence sleeping along with the deceased in lorry bearing No TDQ 9892. She spoke about being awoken at approximately 1 a.m., when she felt something wet falling on her person. She spotted the appellant immediately and noticed the blood on the head of Nagaraj, the deceased. She would state that the accused, observing that she was preparing to raise an alarm, threatened that she keep silent, failing which he would kill her. She would state that she shouted for help and went seeking assistance from the persons at the nearly petrol bunk. Palani, from the petrol bunk, came with her to the scene of occurrence and rushed Nagaraj, who was still alive at the time, to the hospital for first aid.

10. PW2 Raghavan is the brother-in-law of the deceased. He would speak about being informed about the wordy quarrel between the deceased and accused leading the deceased sustaining injuries and succumbing to the same. He would however state that the aforesaid information was received by him at around 9 p m on 3.6.2009 and that he, along with Kannagi and Parimala were witnesses to the Inquest Report filed as Ex P1. The timing of the event as per this testimony however varies sharply with that mentioned by the VAO, PW 4 and Sharmila PW1.

11. PW3 Siva Prakasam, a lorry driver in Nokia, spoke about being informed about the incident that had taken place on 3.6.2009, the next morning around 8.30 a.m. He accompanied the wife of the deceased to the police station and was witness to the recording of confession of the accused, filed as Ex.P2. Pursuant to the confession, recovery had been effected of MO 2 and MO 3, blood stained yellow shirt and cement coloured pant and he bore witness to the seizure mahazar filed in this regard as Ex.P3.

12. PW4 the Village Administrative Officer would state that on 4.6.09, at around 2 p.m., the accused Shanmugam appeared before him and his assistant Sundarrajan and confessed to having murdered Nagaraj on 3.4.09 at around 11 a.m. He would give a detailed account of the confession made by the appellant before him to the effect that the appellant and deceased were known to each other and working in same company as lorry drivers. They had been an exchange of words between the accused and deceased leading to blows. The deceased had picked up a metal pipe lying nearby and attacked the accused who, as a measure of self defence, had been forced to retaliate, hitting the deceased with the same metal pipe and wounding him grievously. Though he fled the scene immediately thereafter, he was advised by an elder to confess to the crime and accordingly he appeared before the VAO, confessing to the crime and seeking protection. PW5, assistant to VAO Rajendran, corroborated the version of the facts as spoken to by the VAO, PW4.

13. PW6 Tamilselvan is working as a cashier in the petrol bunk, adjacent to the Nokia Company. He would state that his time of duty was between 6 a.m on 3.6.09 to 10 a.m on 4.6.09. On 3.6.09 at around 1 a.m he and Palani were in the bunk when he was informed by a person about the incident. They accompanied the person to the bunk, saw the injured person there and called for ambulance to take him to the hospital. The entire incident was reported in the newspaper on 5.06.2009. On the same date, police officials visited the petrol bunk in the course of investigation and recovered the metal (iron) rod, M.O 6, from a bush nearly to which he and Palani bore witness as Ex.P6.

14. PW.7 Srinivasalu, working as a security officer in Nokia Company spoke about admitting lorry bearing Reg. No. TDQ 9892 into the company premises. PW.8 Govindaraj, also working as Security in Nokia company would state that he had checked vehicle bearing Reg.No. TN 55 6181 driven by the accused into the company premises. PW.9 Kumaresan working as security in Nokia Company spoke about, admitting both lorries driven by the deceased as well as the accused into the premises of the company for collecting waste. PW.10, Baskar Deva Anbu, who was a cashier

in PRM Petrol Bunk stated that on 04.06.2009 the Inspector of Police, Sriperumbudur, came to the scene of occurrence for investigation. Samples of blood stained and regular wood, blood stained and regular earth, blood stained and regular tarpaulin and blood stained plastic bottle as well as lorry bearing Reg.No. TDQ 9892 were marked as M.O's 1 to 8 and seized under seizure mahazar Ex. P8 to which, himself and PremKumar bore witnesses.

15. P.W.11 Milton, a lorry driver with Nokia, would state that he knew that on 03.06.2009 the accused had driven a lorry from Nokia Company to Nemili Village and he saw the Newspaper reports about the occurrence on 05.06.2009 to the effect that the accused had murdered an unidentified person. P.W.12 Dr. Christi Jayamurugan spoke about the examination conducted by him on an unknown person brought in by ambulance in unconscious, on 04.06.2009 at around 1 a.m. He would speak about the examination done by him and the treatment given. He referred the patient to the Government Hospital, Chennai and issued the Accident Registry Copy filed as Ex.P9. PW13 Srikandan, Head constable at Sriperumbudur, Police Station, spoke about the receipt of information from the Inspector about the occurrence. He accordingly, informed the Inspector, conveyed the news of demise of the deceased to the relatives. Pursuant to inquest conducted by the Inspector he handed over the requisition of the Inspector to the Medical Officer for Post Mortem of the deceased, after completion of Post Mortem.

16. PW 14 Dr. Gokula Ramanan had conducted the Post Mortem on 05.06.2009 at about 1.40 p.m. and opined that the internal and external injuries found by him resulted in death on ground on hemorrhage caused by attacking the deceased with an iron pipe. Post Mortem Certificate issued by him was filed as Ex.P10 contained the following findings:

'Post-Mortem Certificate
Peri-arbital contusion of left eye seen.
II A 'C' Shaped curved sutured wound seen on the left side of forehead just above the outer aspect of left eyebrow measuring 7 cms with 8 sutures. A separate sutured wound seen measuring 1 cm with one suture, above 1 cm above the Centre of the previous sutured wound. On removal of sutures and dissection of the region, scalp contusion seen over the left Fronto tempero parietal region measuring 14x10x0.5cms, exposing underlying depressed fracture measuring 9x6x2 cms over left front temporal region.

On dissection of the Vault: Dura water torn over the left frante parietal region, measuring over an area of 5*4 cms exposing the underlying brain. Diffuse sub-dural Haemanhage and diffuse sub-

arachnoid Haemorrhage seen all over the brain.

Brain: Contused laceration of left frontal region measuring 6x4x2cm.

Base: comminuted fracture of left side of Anterior Cranial fossa seen. Hinge fracture seen over the middle of pituitary fossa extending to the right side of middle cranial fossa measuring 10 cms.

Another contusion seen on the right parietal region of the scalp measuring 2.5x2x0.5 cm.

On dissection of Thorax: Rib cage - Normal

Heart: Normal in size, on cut section, chambers contain fluid blood.

Lungs: Normal in size, on cut section - congested.

On Dissection of Abdomen- Stomach: Contain 25ml of black coloured fluid, with no specific odour, Mucosa-congested liver, spleen.

Kidneys: normal in size, on cut section - congested. Bladder - empty.

Hyoid Bone, Pelvis, Spinal column - Intact.

Time Since Death - The Deceased would appear to have died 24-30hrs prior to Autopsy.

17. PW15 Vinayagam, Sub-Inspector of Police received the complaint filed by the Village Assistant, Rejendran as well as the accused. A case was registered in Cr.No. 320/2009 u/s 302 IPC and his superiors were informed. PW 16 John Victor the Sub-Inspector of Police narrated the sequence of evidence after taking over the files relating to case in crime No. 320 of 2009. He had gone to the hospital along with the accused and a constable and thereafter proceeded to the scene of crime preparing observation mahazar (Ex.P7) and rough sketch (Ex.P12). Various M.Os such as samples of earth, tarpaulin, wood, both blood stained and regular were seized and handed over to the Judicial Magistrate. Inquest was conducted and a report in Ex.P.17 were prepared and filed. Witnesses were examined and statements recorded and a Post Mortem report received from PW.14.

18. The accused was examined in the presence of witnesses Varadharajan and Sivaprakasam and a statement recorded, the admissible portion of which is Ex.P.16. Pursuant thereto recovery was effected of an Iron rod (M.O.4) in the presence of witnesses under Seizure Mahazar Ex P6. Company records were also recovered and forwarded to the Judicial Magistrate. Upon completion of investigation, a final report laying charge under Section 302 of the IPC was laid against the accused. The prosecution examined 16 witnesses, filed 18 exhibits and 12 material objects. When all the incriminating materials were put before the accused and he was called upon to make a plea, he denied all charges. He did not however examine any witness or mark Exhibits. Upon examination of the matter in detail, the charges laid against the accused were confirmed by the Trial Judge as detailed in the earlier part of this order.

19. The undisputed facts are thus to the effect that the deceased would have appeared to have died of head injury. Upon the demise of Nagaraj, the charge was altered into of one murder u/s 302 of the IPC. When all the materials were put to the accused, he would deny the same. However he did not produce any witnesses nor did he mark any documents to substantiate his plea.

20. This is a case based wholly on the confession of the appellant assumes importance and the evidence of PW 1, Sharmila. The appellant, Shanmugam, after beating the deceased with an iron pipe, himself approached the Village Administrative Officer (PW4) confessing to having committed the crime. We are inclined to believe the confession as credible for the reason that he would state that it was not his intention originally to confess, but rather, to flee from the scene of occurrence. He then advised by an elder who made him see that it would be better to confess rather than run from the law. The conduct of the appellant is believable and is not contrary to normal human behaviour. He approached the Village Administrative Officer and confessed to having committed the crime. The events narrated by him have been corroborated by PW1, Sharmila who was present at the scene of crime. Though she was asleep during the initial part of the incident, she awoke upon feeling the blood dripping on her person. The narration in the confession by the appellant thus stands corroborated by PW1. We are conscious that an extra judicial confession is not to be either believed or brushed aside lightly. It has to be scrutinized carefully and the attendant circumstances taken into account to arrive at a considered view as to whether it is credible or to be ignored. In the present case, we are left in no doubt that the confession is voluntary and has been made by the appellant to place on

record the actual sequence of facts as it happened. The evidentially value of the confession is thus, in our opinion, established as credible and believable.

21. The crime having been established to have been committed by the Appellant, we now consider the measure of the sentence to be awarded. The Learned Trial Judge has proceeded to sentence the appellant for life. We are however of the view that the appellant acted, in some measure, out of right of private defence of body. The meeting between the accused and deceased commenced with an exchange of words which escalated to blows. A kick from the accused saw the deceased fall and injure himself. Enraged, the deceased attacked the accused with an iron pipe lying nearby. The blow caused injury to the appellant and fearing for his life and provoked by the act of the deceased, the appellant picks up the same iron rod and strikes a blow on the deceased. The act is not deliberate or designed to kill and is a result of fear for his own life. In fact, the blow did not kill the deceased immediately and he died thereafter in hospital. We are thus of the view that this is a matter where the exception, (2) to section 300 can be pressed into service. The exception, as applicable to the present case is extracted below:

Exception 2.- Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

23. In the facts of the present case, since we are of the view that the act committed by the Appellant would fit into the ambit of Exception 2 extracted above, we hold that the act was one of culpable homicide not amounting to murder. Accordingly, and in terms of the provisions of section 304 Part II, IPC, we award a punishment of rigorous imprisonment for five years with a fine of Rs.1,000/- in default of which, the appellant shall undergo simple imprisonment for one month.

24. In the result, the Criminal Appeal is partly allowed and the judgment of the trial court convicting the Appellant for murder is modified to culpable homicide in terms of Section 304 Part II of the IPC.

The appellant/accused is sentenced to undergo rigorous imprisonment for five years with a fine of Rs.1,000/- in default of which, the appellant shall undergo for simple imprisonment for one month.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msv

To

1. The Sessions Judge,
Sessions Court No.II,
Kanchipuram.
2. The District Munsif Cum Judicial Magistrate,
Sriperumbudur.
3. The Director General of Police,
Mylapore, Chennai.
4. The District Collector,
Chennai.
5. The Superintendent,
Central Prison, Puzhal, Chennai.
6. The Inspector of Police,
Sriperumpudur Police Station,
Kancheepuram District.
- 7.The Public Prosecutor,
High Court, Madras.

NR II (CO)
RS (05/06/2017)

CrI.A.No.100 of 2017