

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 04.04.2017

CORAM:

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

Crl.A.No.121 of 2017

Ramachandran

... Appellant

vs.

State,rep.by  
the Inspector of Police,  
Thiruvengadu Police Station,  
Thiruvengadu, Nagapattinam District

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,  
against the judgement dated 22.12.2016 passed by the Sessions  
Judge, Nagapattinam, in S.C.No.155 of 2014.

For Appellant : Mr.A.Thiagarajan,Sr.counsel for  
M/s.P.Dinesh Kumar

For Respondent : Mr.P.Govindarajan,Addl.P.P.

### **JUDGMENT**

(Judgement of the Court was delivered by **S.Nagamuthu,J.**)

The appellant is the sole accused in S.C.No.155 of 2014,  
on the file of the learned Sessions Judge, Nagapattinam. He stood

charged for the offence under Sections 294(b) and 302 IPC. By judgement dated 22.12.2016, the trial Court convicted him under both charges and sentenced him to undergo rigorous imprisonment for three months and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for 15 days for offence under Section 294(b) IPC; to undergo imprisonment for life and to pay a fine of Rs.2,500/-, in default, to undergo rigorous imprisonment for six months for offence under Section 302 IPC. Challenging the said conviction and sentences, the appellant is before this Court with this appeal.

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

(a) The deceased in this case was one Mr.Kasinathan. He was a resident of Aalangadu Village in Nagapattinam District. The accused is his neighbour. The first wife of the deceased was no more, leaving behind two children by name, Sakthivel and Sudha. P.W.1 is the second wife of the deceased. The accused is the sister's husband of P.W.1. The accused also has got two wives. Through the first wife, he had a female child by name Rajeswari and a male child by name Karthi. Then, he married one Maheswari as his second wife. Maheswari is the sister of the brother's wife of the deceased. Thus, all the families were closely related to each other and they were also neighbours.

(b) It is alleged that on 5.7.2013, around 8.00 p.m., the son of the accused had gone to a nearby shop to purchase cake. He came a bit late. The accused got wild. He abused his son and also manhandled him. This was seen by the deceased and his family members. They went to the house of the accused and questioned the accused as to why he was so cruel to his son. This resulted in a quarrel between the accused and the deceased. In the said quarrel, the accused rushed into his house, came out with an aruval and gave a single blow on the head of the deceased. Then, the accused ran away from the scene of occurrence. The deceased fell down with a bleeding injury. He was immediately taken to the Government Hospital at Sirkali, from where, he was referred to Raja Muthiah Chettiar Medical College Hospital at Chidambaram and finally he was taken to the Be Well Hospital, Puducherry. The doctor, on examining him, found that he sustained intracranial haemorrhage and advised for immediate Neuro Surgery. But the attenders were not prepared to go for such Neuro surgery. Thus, against the medical advise, he was taken back to his house. In the meanwhile, P.W.1, the wife of the deceased, made a complaint to Thiruvankadu Police Station, upon which, the present case was registered in Crime No.118 of 2013, under Sections 294(b) and 307 IPC. Ex.P1 is the complaint and Ex.P10 is the FIR. The case was taken up for investigation by the Inspector of Police. After the

death of the deceased, the case was altered into one under Section 302 IPC.

(c) P.W.12, the then Inspector of Police, went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of witnesses. After the case was altered into one under Section 302 IPC, he conducted inquest on the body of the deceased and forwarded the same for postmortem. P.W.7- Dr.Anandavaidyanathan conducted autopsy on the body of the deceased on 7.7.2013 at 1.00 p.m. He found the following injuries.

***"External Examination:*** *A sutured wound extending from root of nose across the (L) side of forehead to (L) occipital region about 25 cm present. Bleeding from suture wound present about (L) ear bleeding from nose present. Bleeding from (L) ear present. Injury to (L) eye with protrusion of (L) eye ball present.*

***Internal Examination:*** *On opening the skull, fracture of skull below the suture line 20 cm present. Subdural haemorrhage present.*

*Liver: Pale. Kidney: congested. Stomach-empty. Intestine-Pale."*

He opined that the death of the deceased was due to shock and

haemorrhage due to the head injuries. Ex.P7 is the post-mortem certificate.

(d) P.W.12, during the course of investigation recovered the blood stained clothes from the body of the deceased. On the same day, at 3.00 p.m., he arrested the accused. While in custody, he gave a voluntary confession, in which, he disclosed the place where he had hidden the 'aruval'. In pursuance of the same, he took the police and the witnesses to the place of hide-out and produced the said 'aruval'. P.W.12 recovered the same, in the presence of witnesses. On returning to the police station, he forwarded the accused to the Court and handed over the material objects also to the Court. At that stage since he was transferred, the investigation was taken over by his successor-P.W.13. The material objects were sent for chemical examination, which revealed that there were human blood stains found on all the material objects, including the 'aruval'. On completing the investigation, P.W.13 filed final report against the appellant/accused.

3. Based on the above materials, the trial Court framed charges as detailed in paragraph No.1 of this judgement. The accused denied the same. The trial Court proceeded with the trial. During the trial, in order to prove the charges, on the side of the

prosecution, as many as 13 witnesses were examined, 15 documents and 3 material objects were marked. Out of the said witnesses, P.Ws.1 to 3 were examined as eyewitnesses. But, P.W.3 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.1, the wife of the deceased and P.W.2, the daughter-in-law of the deceased, have spoken about the entire occurrence in a vivid fashion. P.W.1 has spoken about the complaint made to the police also. P.W.4 has spoken about the preparation of observation mahazar and a rough sketch, at the place of occurrence. P.W.5 has spoken about the treatment given to the deceased at Sirkali Government Hospital. P.W.6 has spoken about the treatment given to the deceased at Puducherry Be Well Hospital. He has stated that on 6.7.2013, at 1.30 p.m., against the medical advise, the attenders took the deceased to their house. P.W.7 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.8 has spoken about the arrest of the accused, the confession made and the consequential recovery of the aruval, at his instance. P.W.9 has spoken about the registration of the case. P.W.10, a Constable, has stated that he handed over the FIR to the learned Magistrate. P.W.11, a Constable, has stated that he handed over the dead body to the Doctor for post-mortem. P.Ws.12 and 13 have spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness nor mark any document. His defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused under both charges as detailed in paragraph No.1 of this judgement and that is how the appellant has come up with this appeal.

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

7. As we have already narrated, out of the three eyewitnesses examined in this case, P.Ws.1 and 2 have vividly spoken about the nature of occurrence. The learned Senior counsel for the appellant would submit that there is inordinate delay in making complaint in this case, which created doubt in the case of the prosecution. We are not at all persuaded with the said argument, because, P.W.1, the wife of the deceased, would have been more worried about the condition of the deceased, as his

condition was so bad. Therefore, she had taken him to the Government Hospital at Sirkali, then to a hospital at Chidambaram and finally to the hospital at Puducherry. Thus, quite naturally there had occurred some delay in making the complaint. This delay, in our considered view, would not in any manner cause any dent in the case of the prosecution.

8. The learned Senior would next contend that P.Ws.1 and 2 would not have been present at all at the time of occurrence. The learned Senior counsel has taken us through the cross-examination of these two witnesses. But, we find nothing in the evidence of P.Ws.1 and 2 or any other circumstance available on record to doubt the veracity of the evidence of P.Ws.1 and 2. Their presence, at the time of occurrence, is quite natural, because, the occurrence had taken place just in front of their house. Thus, in our considered view, the evidence of P.Ws.1 and 2 is totally convincing, upon which, reliance could safely be made by this Court.

9. The learned Additional Public Prosecutor would submit that the medical evidence also duly corroborates the eyewitness account. We find force in the said argument. As rightly pointed by him, the medical evidence clearly corroborates the eyewitness account of P.Ws.1 and 2. From these evidences, we arrive at the

conclusion that it was this accused who scolded the deceased and then cut him with 'aruval', which resulted in his death.

10. 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 above said act.

11. The learned Senior counsel would submit that the act of the accused would not fall within the ambit of Section 302 IPC and instead would fall only under Section 304(1) IPC. We find every force in the said argument. Admittedly, the deceased and the accused were co-relatives and they were also neighbours. There was no enmity between the two families. The occurrence was not a pre-meditated one. The accused had scolded his son, because, his son had returned from the shop very late. When he manhandled his son, out of good intention, the deceased had gone to his house and questioned the accused as to why he was so cruel to his son. Thus, the rushing of the deceased to the house of the accused was only due to good intention. But unfortunately, this resulted in a quarrel. It was only in that quarrel, the accused had taken the aruval and caused a single blow on the head of the deceased. Going by the opinion of the doctor, it is crystal clear that the injury caused on the head, which was a fracture to his skull, is sufficient in the ordinary

course of nature, to cause the death. Thus, the act of the accused would squarely fall within the 3rd limb of Section 300 IPC. But at the same time, his act would also fall within the ambit of First Exception to Section 300 IPC. In our considered view, the accused had lost his mental balance out of provocation, which, in our considered view, was not only sudden, but also grave enough. Therefore, in our considered view, the act of the accused, since would fall within the First Exception to Section 300 IPC, the accused would be liable to be punished only under Section 304 (1) of the Indian Penal Code.

12. Now turning to the quantum of punishment, the learned Senior counsel for the appellant would submit that the accused is a poor man and a coolie and he has got two children and a wife to take care of. He has no bad antecedents and after the incidence also, he had not committed any crime. The learned Additional Public Prosecutor is not in a position to dispute this. Having regard to these mitigating and also the aggravating circumstances, we are of the view that sentencing the appellant/accused to undergo rigorous imprisonment for seven years and imposing a fine of Rs.1000/- would meet the ends of justice.

13. In the result, this criminal appeal is partly allowed. The conviction and sentence imposed on the appellant for offence under Section 294(b) IPC is confirmed and the conviction and sentence imposed on him for offence under Section 302 IPC are set aside and instead he is convicted under Section 304(1) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for one month. We further direct that the above sentence shall run concurrently and the period of sentence already undergone by him shall be given set off under Section 482 Cr.P.C.

**(S.N.J.) (A.S.M.J.)**  
04 April 2017

msk

Index:Yes/No  
Internet:Yes/No

To

1.The Inspector of Police,  
Thiruvengadu Police Station,  
Thiruvengadu, Nagapattinam District

2.The Sessions Judge, Nagapattinam,

3.The Public Prosecutor,  
High Court, Madras

**S.NAGAMUTHU,J.  
and  
ANITA SUMANTH,J.**

msk

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