

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.134 of 2017

and

CrI.M.P.No.3705 of 2017

Kanniappan @ Josiyer Kanniappan ... Appellant/Accused A1

- Vs -

State rep by Inspector of Police,  
Balu Chettichatiram Police Station,  
Kancheepuram District.

(Cr.No.380 of 2012) ... Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge No.2, Kancheepuram in S.C.No.49 of 2013 dated 20.01.2017.

For Appellant : Mr.A.Selvendran

For Respondent : Mr.P.Govindarajan  
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the first accused in S.C.No.49 of 2013 on the file of the learned Sessions Judge No.2, Kancheepuram. There were four other accused arrayed as accused 2 to 5. The trial Court framed as many as seven charges as detailed below:

| Serial Number of charge | Charge(s) framed against | Charge(s) framed under Section |
|-------------------------|--------------------------|--------------------------------|
| 1                       | A1 to A5                 | 294(B) of IPC                  |
| 2                       | A1 & A4                  | 323 of IPC                     |
| 3                       | A2, A3 & A5              | 323 r/w 34 of IPC              |

| Serial Number of charge | Charge(s) framed against | Charge(s) framed under Section |
|-------------------------|--------------------------|--------------------------------|
| 4                       | A2                       | 307 of IPC                     |
| 5                       | A1, A3 to A5             | 307 r/w 34 of IPC              |
| 6                       | A1                       | 302 of IPC                     |
| 7                       | A2 to A5                 | 302 r/w 34 IPC                 |

By judgment dated 20.01.2017, the trial Court acquitted the accused 2 to 5 but convicted the first accused alone under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

2.1. The appellant / first accused is a resident of Chembarampakkam village in Kancheepuram district. The third accused Mr.Pugalzandhi is his son and the 5<sup>th</sup> accused Mrs.Revathi is his wife. The deceased in this case was one Mrs.Venda, she was the wife of P.W.1.

2.2. P.W.1 and the deceased are the neighbours of the first accused. In between the house of the first accused and P.W.1, there is a lane. In respect of possession of the said lane and its utility, there were frequent quarrel between the two families and this is stated to be the motive for the occurrence.

2.3. On 16.06.2012, around 09.30 a.m. the accused 3 and 4, who are coolies engaged by the first accused were digging a pit in the said disputed lane using two crowbars. On noticing the same, P.W.1 went into the lane and questioned the accused 3 and 4, as to why they were digging the pit on the disputed lane. The accused 1, 3 and 5 were also present at the time of occurrence. The accused 1 and 4 approached P.W.1 menacingly and pushed him down. The deceased rushed to the place of occurrence from her house on hearing the commotion. On seeing her, the first accused, took a crowbar and attacked her on the head. P.W.2 the son of the deceased rushed to the spot. The second accused attacked him with crowbar on his head. Both P.W.2 and the deceased fell down and fainted. The neighbours gathered at the place of occurrence. The accused fled away from the scene of occurrence.

2.4. P.W.2 and the deceased were immediately taken to the Government Head Quarters hospital at Kancheepuram and were admitted. P.W.1 went to Baluchetty Chathiram police station and made a complaint at 12.00 noon on 16.06.2012. In the complaint,

he did not mention anything about the presence and participation of the accused 2 to 5. On the said complaint, a case was registered in Crime No.380 of 2012 under Sections 294(b), 323, 324, 506(ii) I.P.C. and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act. Ex.P1 is the complaint and Ex.P22 is the F.I.R.

2.5. The case was taken up for investigation by P.W.13 the Sub Inspector of Police. He went to the place of occurrence on 16.06.2012 and prepared an observation mahazar and a rough sketch in the presence of witnesses. He examined P.Ws.1 and 2 and many more witnesses. Since the deceased was unconscious, he could not examine her. On 17.06.2012, he altered the case into one under Section 307 I.P.C.

2.6. P.W.15 the then Inspector of Police took up the case for investigation. On 18.06.2012, he examined P.W.4. The deceased who was shifted to the Ramachandra Medical College Hospital, died at 10.30 p.m. on 18.06.2012. Therefore, he altered the case into one under Section 302 I.P.C. On 19.06.2012, between 10.00 a.m. and 11.00 a.m. he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.7. P.W.11 Dr.P.Sampath Kumar conducted autopsy on the body of the deceased and he found the following injuries:

"Injuries: (1) dark brown abrasion seen over left knee joint 0.5x0.25 cm in diameter. (2) Reddish coloured sub-conjunctival haemorrhages seen in the left eye. Heart: Valves - Normal, vessels - patent. Lungs: both oedematous and congested C/s - Ooze of pink coloured fluid from cut surface of both lungs. Stomach: contains about 150 ml of pink coloured fluid with smell of medicines, Mucosa - minute petechial haemorrhages seen. Liver: C/s NAD, Spleen C/s NAD, Kidneys: C/s - both NAD, Intestines: C/s - Chyme and faecal matter present. Opening of the scalp and calvareum: (1) An unhealthy sutured wound 10 cm in length perpendicularly placed on the left side of parietal region and containing only 4 sutures with surgical showing of hair present all around. (2) Thick layer of extra dural haemorrhage seen over the posterior half of brain and extending to left temporal region in all containing 20 ml of dark coloured blood. (3) Thin layer of dark coloured sub arachnoid haemorrhage seen over the posterior aspect. (4)

Thin layer of sub dural haemorrhage seen over the posterior aspect of brain containing few cc of blood. (5) Right posterior aspect of brain in the posterior cranial fossa in thin layer of dark coloured blood seen. Brain -stem - sent for HPE. (6) Transverse fracture of base of skull dividing it into 2 halves along the stella turcica 14 cm in length with contusion of underlying structures. (7) linear fracture of left anterior cranial fossa 4 cm in length. (8) Multiple fracture of vault of skull seen depressed fracture of left parietal bone 10x4.5 cm seen, broken into 2 bones. (9) An longitudinal depressed fracture extending to centre of forehead 9 cm in length. (10) An transverse fracture extend for injury No.(1) and measuring 11 cm along the left temporal bone extending to mastoid bone. (11) An oblique fracture extending backwards from Inj.No.(1) and crossing the midline and ending near the right mastoid and measuring 17 cm. (12) Fracture of the medial end of left zygomatic arch seen."

Ex.P21 is the postmortem certificate. He opined that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body of the deceased. He further opined that the said injury on the head could have been caused by a weapon like crowbar.

2.8. P.W.15 during the course of investigation, arrested the accused 1 to 3 on 21.06.2012 at 09.00 a.m. in the presence of witnesses. On such arrest, the first accused made a voluntary confession, in which, he disclosed the place where he had hidden the crowbar. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the crowbar (M.O.1). The second accused also made a voluntary confession, in which, he disclosed the place where he had hidden the crowbar. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.2 crowbar. Then, on returning to the police station, he forwarded the accused to the Court for remand and also forwarded the material objects to the Court. On completing the investigation, he laid chargesheet against the accused.

2.9. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined, 38 documents and 5 material objects were marked.

2.10. Out of the said witnesses, P.Ws.1 to 4 have spoken about the occurrence as eyewitness. P.W.2 is the injured eyewitness. P.W.5 has stated that on hearing the commotion, when he went to the place of occurrence, he found the first accused at the place of occurrence with crowbar in his hands. He found the deceased and P.W.2 with injuries. P.W.6 has spoken about the preparation of the observation mahazar and rough sketch and the recovery of the material objects. P.W.7 has also spoken about the same facts. P.W.8 has turned hostile. P.W.9 has also turned hostile. These two witnesses were examined to speak about the arrest of the accused 1 to 3 and subsequent recovery of M.Os.1 and 2.

2.11. P.W.10 has spoken about the treatment given to the deceased and P.W.2 at the Government hospital at Kancheepuram. According to him, on 16.06.2012, at 10.15 a.m. the deceased was brought to the hospital for treatment. He found a single lacerated injury on the head measuring 10x3x3 cm. She was unconscious. Similarly, he noticed a single lacerated injury on the head of P.W.2 measuring 8x3x2 cms. He has further stated that he admitted both of them as inpatient in the hospital.

2.12. P.W.11 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.12 the constable has stated that he took the dead body of the deceased and handed over the same to the doctor for postmortem. P.W.13 has spoken about the registration of the case and the initial investigation done by him. P.W.14 has spoken about the treatment given to P.W.2 at Ramachandra Medical College hospital. P.W.15 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., they denied the same as false. However they did not choose to examine anyone nor to mark any documents. Having considered all the above, the trial Court convicted the appellant / first accused alone as detailed in the first paragraph of this judgment and that is how the appellant / first accused is before this Court with this appeal.

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

5. The learned counsel for the appellant would submit that though P.Ws.1 to 4 the eyewitnesses to the occurrence have spoken about the presence, participation and the individual overt acts of the accused 2 to 5 also, the trial Court has disbelieved them and has acquitted them. The learned counsel

would further submit that having disbelieved these witnesses as against accused 2 to 5, the trial Court ought not to have believed them as against the first accused.

6. This argument of the learned counsel for the appellant does not persuade us at all. The principle 'falsus in uno falsus in omnibus' has not been recognised by Indian Courts. In the Indian scenario, the law is if the Court is able to separate the grain from the chaff, there is no legal impediment for the Court to act upon the separated grain. Here, in this case, the trial Court had given much weightage for the contradiction between Ex.P1 the complaint made by P.W.1 and his evidence. At the earliest point of time, in Ex.P1, the presence and participation of the accused 2 to 5 had not been mentioned. The entire allegation as per Ex.P1 is that it was only the first accused who was involved in the crime. Thus, the trial Court, for sound reasons was able to separate the grain from the chaff. In such view of the matter, the argument of the learned counsel for the appellant that the evidence of P.Ws.1 to 4 should have been in toto rejected, deserves only to be rejected.

7. P.W.2 is the injured eyewitness and his presence cannot be doubted. The presence of P.W.1 also cannot be doubted because the occurrence had taken place just in the disputed lane between the house of P.W.1 and the accused. Both P.W.2 and the deceased were immediately taken to the hospital. The doctor has found one lacerated injury on the head of each P.W.2 and the deceased. P.W.5 who is an independent witness has stated that on hearing the commotion when he rushed to the place of occurrence, he found the first accused alone standing at the place of occurrence with a crowbar in his hand. He has further stated at that time he found P.W.2 and the deceased laying with injuries. He has further stated about the presence of P.W.1 also at the place of occurrence. Though these witnesses have been cross examined at length, nothing has been brought on record to create even a slightest doubt in the veracity of these witnesses. Their evidences are duly corroborated by medical evidence also. From these evidences, it has been clearly established that it was this accused who attacked the deceased with crowbar on her head, which according to the doctor has resulted in her death. Thus, in our considered view, the prosecution has clearly established that it was this accused who caused the death of the deceased by attacking her with a crowbar on her head and causing a grievous injury. The recovery of M.O.1 crowbar from his possession would also add strength to the above conclusion.

8. Having come to the said conclusion, now we have to examine as to what was the offence that has been committed by the accused by the above act. It is the positive case of the prosecution itself that the first accused, dig a pit in the lane

under dispute. P.W.1 went there and questioned the first accused. This developed into a quarrel. It was only at that time, the deceased came and she also developed quarrel. The crowbar was used there for the purpose of digging the pit. It was only in that quarrel, the appellant / first accused had taken the said crowbar and caused a single hurt on the head of the deceased. He did not repeat the assault. These facts would clearly go to show that there is no premeditation on the part of the first accused to commit the crime. At the same time, the said act, in our considered view, would indicate that the accused had a definite intention to cause the injury on the head which resulted in her death. The said injury, undoubtedly, would be sufficient in ordinary course of nature to cause death. Thus, the act of the first accused would squarely fall within the third limb of Section 300 I.P.C., which will squarely fall within the fourth exception to Section 300 I.P.C. It is in evidence that there was a quarrel and it was only in that situation, the first accused had caused a single hurt with the crowbar in her head. Therefore, the appellant / first accused is liable to be punished for offence under Section 304(1) I.P.C.

9. Now, turning to the quantum of punishment, the learned counsel for the appellant would submit that considering his age, family background his antecedents and all the attending circumstances, leniency should be shown. He would further submit that the first accused is prepared to pay Rs.50,000/- as compensation to P.W.1.

10. Having regard to the age, family circumstance, the fact that he had got no bad antecedents and all the other mitigating as well as the aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for six years and pay a fine of Rs.50,000/- for offence under Section 304(i) I.P.C. would meet the ends of justice.

11. In the result, the criminal appeal is partly allowed in the following terms:

(i) The conviction and sentence imposed on the appellant by the learned Sessions Judge No.2, Kancheepuram in S.C.No.49 of 2013 dated 20.01.2017 under Section 302 IPC is set aside and instead, he is convicted under Section 304 (i) IPC and he is sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs.50,000/- and in default to undergo rigorous imprisonment for three months.

(ii) The fine amount, if any, paid shall be duly adjusted and the balance shall be

paid.

(iii) It is further directed that the period of detention already undergone by the accused shall be given set off under Section 428 Cr.P.C.

(iv) Out of the said fine amount of Rs.50,000/- P.Ws.1 and 2 shall be paid Rs.25,000/- each as compensation by the trial Court.

(v) Consequentially the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge No.2,  
Kancheepuram.
2. The Inspector of Police,  
Balu Chettichatiram Police Station,  
Kancheepuram District.
3. The Central Prison  
Vellore(In duplicate for communication for the detenue)
4. The Director General of Police  
Mylapore, Chennai
5. The District Collector  
Vellore.
6. The Public Prosecutor,  
Madras High Court.

CrI.A.No.134 of 2017 and  
CrI.M.P.No.3705 of 2017

NRI (CO)  
sp/19/6