

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13.04.2017

CORAM:

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

CrI.A.No.148 of 2017

1.Krishnamoorthi
2.Babu
3.Rajakumari ... Appellants/Accused A 1 to 3
vs.

State by,
The Inspector of Police,
Latheri Police Station,
Vellore ... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 13.2.2017 passed by the I
Additional District and Sessions Judge, Vellore, in
S.C.No.181 of 2013.

For Appellants : Mr.L.Mahendran

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

JUDGMENT

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

The appellants are the accused 1 to 3 in Sessions Case No.181 of 2013, on the file of the I Additional District and Sessions Judge, Vellore. The accused 1 and 2 stood charged for the offence under Section 302 IPC and the 3rd accused stood charged for the offence under Sections 342 IPC and Section 302 read with Section 109 IPC. By judgement dated 13.2.2017, the trial Court convicted them under all the charges and accordingly sentenced the accused 1 and 2 to undergo imprisonment for life and too pay a fine of Rs.1000/- each, in default, to undergo rigorous imprisonment for six months for the offence under Section 302 IPC and sentenced the third accused to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for six months for the offence under Section 302 read with Section 109 IPC and to undergo rigorous imprisonment for one year for the offence under Section 342 IPC. Challenging the said conviction and sentences, the appellants are before this Court with this Appeal.

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

(a) P.W.1 was a resident of Chinna Latheri village in Vellore District. The deceased Mrs.Rani was his mother. She was a vegetable vendor. The husband of the deceased died 25 years ago. The third accused Mrs.Rajakumari is none else than the elder sister of the deceased. The accused 1 and 2 are the sons of the third accused. There was a land near Chinna Latheri bus-stop in the village. In respect of which there were frequent quarrels between the two families, claiming rival rights. This is stated to be the motive for the occurrence.

(b) On 30.11.2012, around 1.30 p.m., the deceased returned from Vellore in a bus and got down at Chinna Latheri bus-stop. P.W.1 was waiting in the bus-stop to take her. All the three accused were also standing near the bus-stop. As soon as the deceased got down from the bus, there arose a quarrel between them in respect of the above landed property. In that quarrel, it is alleged that the first accused took a stick lying there and gave a single blow on the head of the deceased. The third accused caught her hold. The second accused took out another stick and gave a single blow on the head of the deceased. The deceased sustained bleeding injuries, fell down and died on the spot. All the three accused fed away from the scene of occurrence.

(c) P.W.1 thereafter went to the Latheri Police Station and made a complaint at 3.30 p.m. on 30.11.2012 against all the three accused. Ex.P1 is the complaint and Ex.P.11 is the FIR. The complaint and the FIR were sent to the Court, which were received by the learned Magistrate at 6.30 p.m.

(d) The case was taken up for investigation by P.W.14-the Inspector of Police. He went to the Place of occurrence and prepared an observation mahazar and a rough sketch. He recovered the blood stained earth and sample earth and also recovered the sticks lying at the place of occurrence. He recovered a Hero Honda motorcycle also from the place of occurrence. After holding inquest on the body of the deceased, he forwarded the same for post-mortem. P.W.11-Dr.Selvaraj conducted autopsy on the body of the deceased on 1.11.2004 at 11.30 a.m. He found the following injuries.

He opined that the death of the deceased was due to shock and haemorrhage due to multiple injuries found on the body of the deceased. Ex.P.13 is the post-mortem certificate.

(e) P.W.14 continued the investigation and arrested the third accused, on 3.12.2012, near Bairavar Temple. On such arrest, she made a voluntary confession. Then on 11.12.2012, he arrested the accused 1 and 2 and forwarded all the accused to the Court for judicial remand.

(f) The investigation was thereafter continued by his successor-P.W.15. He collected the medical records. At his request, the material objects were sent for chemical examination, which revealed that there were human blood stains found on all the material objects. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges against the accused, as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 15 witnesses were examined, 21 documents and 11 material objects were marked. Out of the said witnesses P.Ws.1 to 3, 10 and 13 are the eyewitnesses to the occurrence. But P.W.3 has turned hostile and he has not supported the case of the prosecution in any manner. The other eyewitnesses have spoken about the occurrence. P.W.4 has spoken about the preparation of the observation mahazar and the recovery of material objects from the place of occurrence. P.W.5 has spoken about the arrest of the accused. P.W.6 has spoken about the chemical examination conducted on the material objects. P.W.7 has spoken about the photographs taken at the place of occurrence. P.W.8 has spoken about the fact that he took the dead body to the place of occurrence and handed over the same to the Doctor for post-mortem, as directed by the investigating officer. P.W.9 has spoken about the fact that he handed over the FIR to the Magistrate. P.W.10 has spoken about the occurrence as an eyewitness. P.W.11 has spoken about the post-mortem conducted. P.W.12 has spoken about the registration of the case on the complaint of P.W.1. P.W.13 has spoken about the occurrence as an eyewitness. P.Ws.14 and 15 have spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness nor mark any document on their side.

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

6. As we have already pointed out there are five eyewitnesses to the occurrence, of whom, P.W.3 has turned hostile. P.Ws.1, 2, 10 and 13 have spoken about the occurrence. But the learned Senior counsel appearing for the accused would submit that there are lot of inconsistencies and contradictions between the evidences of these witnesses. He has taken us through the evidences of these witnesses. We find force in the said submission. P.W.1 has stated that since the deceased got down from the bus, the first accused took the stick lying there and gave a single blow on the head

of the deceased. He has further stated that immediately the third accused caught her hold and the second accused took out a stick and gave a single blow on her head. P.W.2 has a different story to say. According to him, the second accused did not attack the deceased at all. It was the first accused, who attacked the deceased repeatedly. It is his case that the accused 2 and 3 were holding the deceased. P.Ws 10 and 13 have stated that the first accused inflicted a single blow and then the third accused caught her hold, followed by a single blow caused by the second accused. From these evidences, it is crystal clear that there is no consistency in the case of the prosecution. There is no explanation in respect of these anomaly pointed out. We are also of the opinion that had it been true that the deceased was caught hold by the accused 2 and 3, it is inferable that the deceased ought to have been attacked by the first accused with stick by force, which has resulted in a fracture to the skull. From the evidences of these three witnesses and the answers elicited during the cross-examination, we are of the view that it is difficult to believe that the accused 2 and 3 either caught hold the deceased or attacked the deceased. Therefore, we are inclined to acquit the accused 2 and 3.

7. So far as the first accused is concerned, it is in evidence that there was no pre-meditation. The arrival of the deceased to the bus-stop was not an anticipating event. She came in the bus and got down from the bus. The disputed land is just by the side of the bus stop. These three accused were already standing there in the field. On seeing them, it is inferable that the deceased would have questioned the first accused. It was because of the same, there could have raised a quarrel, in that quarrel, the first accused had taken the stick which was lying there and caused two blows on the head of the deceased. Thus, it is crystal clear that the first accused would not have intended to cause the death of the deceased or to cause any injury, which would be sufficient to cause the death in the ordinary course of nature. However, we are of the view that the act of the first accused would squarely fall within the 4th limb of Section 300 IPC, as it is within the knowledge that this act of giving blows on the head of the deceased with stick would be imminently dangerous to the life of the deceased. At the same time, we find force in the argument of the learned Senior counsel that the act of the first accused would fall within the fourth Exception to Section 300 IPC. From the evidences available, it is crystal clear that there was quarrel followed by a fight, in which, the first accused, without taking any undue advantage, has taken the stick and caused two blows on the head of the deceased. This act of the first accused, in our considered view, as rightly contended by the learned Senior counsel for the accused, would squarely fall within the fourth exception to Section 300 IPC and therefore, he is liable to be punished for offence under Section 304(2) IPC.

8. Now turning to the quantum of punishment, the learned Senior counsel for the appellants would submit that the first accused is aged 30 years, he has no bad antecedents, after the occurrence also he has not shown any deviance from the law. The occurrence was not a pre-meditated one. The accused was not already armed with any weapon. Having regard to all the mitigating as well as aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for five years and imposing a fine of Rs.1000/- would meet the ends of justice.

9. In the result, the appeal is partly allowed. The conviction and sentence imposed on the accused 2 and 3 are set aside and they are acquitted from the charges. The fine amount, if any paid by them shall be refunded to them forthwith. The conviction and sentence imposed on the first accused for offence under Section 302 IPC is set aside and instead he is convicted under Section 304(II) IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks. We further direct that the period of sentence already undergone by him shall be given set off under Section 482 Cr.P.C.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

msk

To

1.The Judicial Magistrate No.I,
Vellore

2.The Chief Judicial Magistrate,Vellore.

3.The Inspector of Police,
Latheri Police Station,
Vellore.

4.The I Additional District and Sessions Judge,
Vellore.

5.The Superintendent,Central Prison,Vellore

6.The Director General of Police,
Chennai-4.

<https://hcservices7.ecgdn.gov.in/hcservices7> Collector,Vellore.

8.The Superintendent,
Central Prison,Vellore for Women.

9.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.L.Mahendran,Advocate sr.23260

Cr1.A.No.148 of 2017

ks(co)
ss(19/5/2017)



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