

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.21 of 2017
and
Crl.M.P.No.555 of 2017

Jaisanth Dhakkarey ... Appellant/Sole
Accused

Vs

State rep. By
Inspector of Police,
Neyveli Township Police Station,
(Crime No.58/2014) ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the judgment of the learned Principal Sessions Judge,
Cuddalore dated 20.08.2015 passed in S.C.No.210 of 2014.

For Appellant : Mr.J.Stalin

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.210 of 2014 on the file of the learned Principal Sessions Judge, Cuddalore. He stood charged for offence under Section 302 I.P.C. By judgment dated 20.08.2015, the trial Court convicted and sentenced the accused to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for four years for the offence under Section 302 I.P.C. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The accused hails from the State of Madhya Pradesh. The deceased in this case was one Mr.Raghul. He also hailed from the state of Madhya Pradesh. The accused, deceased and few other persons from the state of Madhya Pradesh were all working as construction labours in Sri Maruthi Real Estate and

Builders at Neyveli. During the relevant period, two buildings were under construction at Indira Nagar, Neyveli, by the said company. These labourers were staying in a Tin Shed situated on the said building premises.

3.It is alleged that on 02.03.2014, the accused and the deceased had purchased chicken meat and one Mr.Rajendra, a fellow worker cooked the same. All the three ate. Thereafter, the accused demanded from the deceased his equal share in the amount spent for purchasing chicken and other materials. The deceased refused to pay. This resulted in a quarrel between them and this is stated to be the motive for the occurrence.

4.On 03.03.2014, around 8.00 am, the accused and the deceased met P.W.1 took leave and went to their shed. They told that they were not feeling well. Accordingly, they went to the shed where they were staying. In the shed, except the accused and deceased there was nobody else. Around 11.30 am, P.W.1 went to the Tin shed. He found the accused moving away from the Tin shed. When he entered into the shed, he found the deceased lying dead in a pool of blood and there was a huge stone lying behind the deceased thereby indicating that the deceased had been hit by the said stone which resulted in his death.

5.P.W.1 thereafter, went to the Neyveli Police Station and made a complaint at 1.30 pm on 03.03.2014. A case was registered on the same in Crime No.58/2014 for offence under Section 302 I.P.C., against the accused. Ex.P.1 is the complaint and Ex.P.12 is the F.I.R. P.W.12, the then Sub Inspector of Police, who registered the case has forwarded both the documents to Court which were received by the learned Judicial Magistrate at 3.00 pm on 03.03.2014.

6.The case was taken up for investigation by P.W.13, the then Inspector of Police. He went to the place of occurrence; prepared an observation mahazar; rough sketch; recovered blood stained earth and the sample earth under a mahazar and recorded the statement of some witnesses. Then, he conducted inquest on the body of the deceased and forwarded the same to Doctor for post mortem.

7.P.W.9 - Dr.Gitanjali, conducted autopsy on the body of the deceased at 12.30 pm on 04.03.2014 and found the following injuries:-

"External examination:-

All finger nails cyanosed Eyes closed
mouth closed (1) swelling and deformity
seen over the whole of the left side of
face including forehead cheek & lower jaw

(2) Red color contused abrasion seen
over (a) upper half of the left eye brow 4
cm x 0.5cm x 0.5 cm

(b) Outer half of the left eye brow
5cm x 3cm x 1cm

(c) left side of fore head above left
eye brow 3cm x 3cm x 1cm x 4 cm x 2cm x
0.5cm

(d) outer aspect of left eye
4cm x 2cm x 0.5cm

(e) upper lip left side
6cm x 1.5cm x 0.5cm left side of lower lip
2cm x 1cm x 0.5cm - loss of teeth right upper
central incisors, left upper

(f) lateral incisors teeth sockets
contused and abraded

(g) fracture of lower jaw in the
midline with surrounding tissue contusion

(g) over chin left side two nos
1.5cm x 1.5cm x 0.5cm, 2cm x 0.5cm x 0.5cm over
centre of chin 1cm x 0.5cm x 0.5cm

(i) over left side of nose 1.5cm
x 0.5cm x 0.5cm

(j) over right forehead 2cm x 2cm x 1cm

(k) behind left ear 2cm x 1cm x 0.5cm

(3) Laceration seen over (a) posterior
parietal region right side 3cm x 2cm x 1cm

(b) over palmar aspect of right hand
base of little finger 2cm x 1cm x 1cm on
further dissection underlying bones
fractures and tissues contused."

Ex.P.7 is the Post Mortem Certificate. She gave opinion that the death of the deceased was due to shock and haemorrhage due to the multiple injuries found on the body of the deceased. She further opined that the said injuries would have been caused by dropping a stone like M.O.5.

8. The case was further taken up for investigation by P.W.14, the then Inspector of Police. He arrested the accused on 04.03.2014 at 2.00 pm in the presence of witnesses. He recorded the voluntary confession of the accused. In the said confession, he disclosed the place where he had hidden a cement concrete stone. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the cement concrete stone (M.O.5). P.W.14 recovered the same along with the other material objects under a mahazar and forwarded the same to Court. He remanded the accused also to Court for judicial remand. On completing investigation, he laid charge sheet against the accused.

9. Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C., against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 26 documents were exhibited, besides 12 Material Objects.

10. Out of the said witnesses, P.W.1 is an Engineer working in Sri Maruthi Real Estate Builders. He has stated about the motive and the fact that on 03.03.2014, at 8.00 am, the accused and the deceased went on leave. He has further stated that around 11.00 am, the dead body of the deceased was found and the accused was fleeing away from the scene of occurrence. P.W.2 is also a person hailing from the State of Madhya Pradesh. He has stated that on 03.03.2014, in the Tin shed, accused and the deceased alone were there. Around 11.30 am, when he entered into the Tin shed, the accused was fleeing away from the scene of occurrence and the deceased was found lying dead in a pool of blood, inside the Tin shed. P.W.3 yet another person who was staying along with the accused and the deceased has also spoken to the same facts. P.W.4 was working as an Electrician in Sri Maruthi Real Estate Builders. He has stated that on 03.03.2014 around 11.30 am, on hearing the alarm raised by someone, P.W.1 went to the place of occurrence followed by him and he has narrated the facts as spoken by P.W.1. He has not stated anything incriminating about the accused. P.W.5, was working as a Carpenter in Sri Maruthi Real Estate Builders and he was also employed in the same building. He has stated that on hearing the alarm raised by someone, he went to the place of occurrence and found the dead body of the deceased. P.W.6 has spoken about the preparation of observation mahazar and the rough sketch. P.W.7 has spoken about the arrest of the accused and the consequential recoveries of material objects including the concrete cement stone (M.O.5). P.W.8 has stated that he translated the statements of witnesses and the accused who have known only Hindi. P.W.9 has spoken about the post mortem conducted and the final opinion regarding the cause of death. P.W.10, a Forensic Expert has stated that he examined the internal organs of the deceased and he has opined that there was no alcohol or poison. P.W.11 has spoken about the chemical examination conducted on the material objects. P.W.12 has spoken about the registration of the case. P.Ws.13 & 14 have spoken about the investigation done and the final report filed in this case.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness nor did he mark any documents on their side.

12. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

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

14.This is a case based on circumstantial evidence. The foremost circumstance relied on by the prosecution is that on 03.03.2014, at 8.00 am, the accused and the deceased took leave from P.W.1 and returned to the shed, where they were staying. On the crucial date, both of them were found together. Around 11.30 am on 03.03.2014, the dead body of the deceased was found lying in a pool of blood in the shed. P.W.9, the Doctor who conducted autopsy on the body of the deceased has opined that the injury found on the deceased would have been caused by dropping a stone like M.O.5 on the head of the deceased and she has further opined that the death was due to multiple injuries found on the body. Thus, the prosecution has clearly established that the death of the deceased was a homicide.

15.In order to prove the case of the prosecution that the death of the deceased was caused only by the accused, the prosecution relies on the evidences of P.Ws.1 to 4. These witnesses have stated that they found the accused at the crucial point of time fleeing away from the scene of occurrence. When they entered into the shed, they found the deceased lying dead in a pool of blood. There is no reason to reject the evidences of P.Ws.1 to 4, since they have no grudges against the accused. Though, these witnesses have been cross examined at length, nothing has been elicited to create even a slightest doubt on the facts spoken by them. From these evidences, in our considered view, the prosecution has clearly proved that it was this accused who caused the death of the deceased and fled away from the scene of occurrence. The recovery of M.O.5 - blood stained stone on the disclosure statement made by the accused also lends assurance to the said confession.

16.Having come to the said conclusion, now we have to examine the question as to, "What was the offence that was committed by the accused by the said act ?". As we have already pointed out, the actual occurrence was not witnessed by anyone. Though, it is stated that, on the previous day, there was a quarrel between the accused and the deceased in respect of share amount towards the purchase of chicken meat and other materials, there was no direct evidence for the same. Thus, there is no evidence at all to prove the motive.

17.In the morning around 10.00 am on 03.03.2014, the accused and the deceased went together to the office of P.W.1 and asked for leave on the ground that they did not feel well and returned together to their shed. This would go to show that there was no ill-will between them. They reached the room around 8.00 am. The occurrence had taken place around 11.30 am on the same day. Until then, the accused and the deceased were together in the shed. When they were so closely moving and when there was no motive, it is inferable that there would have occurred some quarrel between them inside the shed. But

for sudden provocation, the accused would not have dropped the stone on the head of the deceased. This is not a mere surmise or assumption. In our considered view, going by the natural human conduct, this is the only irresistible presumption which would arise as provided under Section 114 of the Indian Evidence Act. In this regard, we may have a quick look into Section 114 of the Indian Evidence Act which reads as follows:-

"114. Court may presume existence of certain facts.-The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

18. A close reading of the above provision would make it very clear that the Court may presume the existence of any fact which it thinks likely to have happened. Here, in this case, the fact whether the accused would have been provoked by the deceased can be presumed going by the natural human conduct that the occurrence would have happened because of the grave and sudden provocation caused by the deceased. But for the same, the accused would not have dropped the stone on the head of the deceased.

19. Similarly, we have to look into the definition of the term "proved" as made in Section 3 of the Indian Evidence Act. It contains two parts. The first part is, a fact is said to be proved when, after considering the matters before it, the Court believes it to exist. The second part is when the Court considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. Thus, the later part of the definition speaks of the supposition of a prudent man. If it is probable that the occurrence would have taken place due to sudden provocation, then the said fact shall stand proved. Thus, as per Section 114 of the Indian Evidence Act, we are inclined to presume that the accused had acted out of grave and sudden provocation and under Section 3 of the Act, we hold that the said fact stands proved.

20. Of course, there is no direct eye witness to speak about the quarrel or the sudden provocation which drove the accused to cause the death of the deceased, but it is only an inference. Therefore, in our considered view, going by all these facts and circumstances and the presumption which we have raised under Section 114 of the Indian Evidence Act, which remains un-rebutted, we hold that due to grave and sudden provocation, the accused had dropped M.O.5 on the head of the deceased and killed him. Thus, though the act of the deceased would squarely fall within the third limb of Section

300 I.P.C., it would fall under the first exception to Section 300 I.P.C., and therefore, he is liable to be punished for offence under Section 304(i) I.P.C.

21.Now, turning to the quantum of punishment, the accused has got three children, all females, and a wife. They were all in the State of Madhya Pradesh. He had come to Neyveli for their livelihood. Unfortunately, he has got involved in this crime. There was no premeditation. The occurrence was out of a sudden quarrel. He has got no bad antecedents and there are lot of chances for reformation. From the date of conviction, he has been in jail. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/- would meet the ends of justice.

22.In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for offence under Section 302 IPC is set aside and instead, he is convicted for offence under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for four weeks. It is directed that the period of detention already undergone by the accused/appellant shall be set off as required under Section 428 Cr.P.C. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jbm

To

- 1.The Principal Sessions Judge,
Cuddalore.
- 2.The Chief Judicial Magistrate,
Cuddalore.
- 3.The District Munsif Cum Judicial Magistrate,
Neyveli.
- 4.The Superintendent,
Central Prison, Cuddalore.
(With a Copy for Communication to the Accused)
- 5.The Inspector of Police,
Neyveli Township Police Station.

6.The District Collector,
Cuddalore.

7.The Director General of Police,
Mylapore, Chennai.

8.The Public Prosecutor,
High Court, Madras.

+2cc's to Mr.J.Stalin, Advocate, S.R.No.11370

Cr1.A.No.21 of 2017

KJ(CO)
CA(13/04/2017)



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