THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20..02..2017
CORAM
THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE DR. JUSTICE ANITA SUMANTH
Criminal Appeal No.48 of 2017

Annamalai
... Appellant/Accused NO.1

-Versus-

State Rep. by
The Inspector of Police,
Ennore Police Station,
Thiruvallur District.
[Crime No.81 of 2002]
... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C against the judgement of conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court-IV, Poonamallee, Tiruvallur District, in S.C.No.102 of 2006 dated 29.02.2008.

For Appellant : Mr.C.T.Murugappan
For Respondent : Mr.P.Govindarajan, Additional Public Prosecutor

JUDGEMENT

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

The appellant is Accused No.1 in S.C.No.102 of 2006 on the file of the learned Additional Sessions Judge, Fast Track Court-IV, Poonamallee. Accused No.2 was one Karmegam. They stood charged for offence under Section 302 r/w 34 of IPC. By judgement dated 29.02.2008, the trial court convicted both A1 and A2 for offence under Section 302 of IPC and to undergo imprisonment for life, however, no fine was imposed on both the accused. Challenging the above conviction and sentence, A1 is before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Shanmugam. P.W.3-Muthumani @ Sudhakar is his son and P.W.4-Tmt.Sagunthala is his wife. They were all residing at Annai Sivagami Nagar in Erode. The deceased was constructing buildings on contract basis. A1 and A2

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were working under him. It is alleged that there was some amount due from the deceased for the work done by A1 and A2. The deceased did not pay the same on time. This is stated to be the motive for the occurrence.

3. It is further alleged that on 21.02.2002 around 08.30 p.m., the deceased was standing near a Fast Food Shop at 5th Street in Sivagami Nagar. P.Ws.1, 2 and few others were in front of the Community Hall situated near the said Fast Food Shop. P.W.3 was returning from his tution class. At that time, these two accused suddenly emerged at the place of occurrence each one armed with an aruval. On reaching the deceased, they surrounded him. A1 attacked the deceased with aruval on his fore-head and A2 attacked him on the back of his head. The deceased fell down in a pool of blood. Then, A1 and A2 indiscriminately cut the deceased with aruval and ran away from the scene of occurrence. The occurrence was witnessed by P.Ws.1 and 2 and few others. P.W.3 immediately rushed to his house to inform his mother. Then, P.Ws.3 and 4 returned to the place of occurrence. In the mean while, P.W.2 took the deceased to a private hospital at Thiruvottiyur and from where immediately he rushed him to Stanley Medical College Hospital, Royapuram, Chennai after first aid. The doctor at Stanley Government Medical College Hospital advised him to be taken immediately to Government General Hospital, Chennai. Accordingly, the deceased was taken there. But, despite treatment, the deceased died around 05.40 a.m. on the next day.

4. In the meanwhile, P.W.1 went to Ennore Police Station and made a complaint (Ex.P.1) at 09.30 p.m. on 21.02.2002. On the said complaint, a case was registered in Crime No.81 of 2002 under Section 341 and 307 of IPC against both A1 and A2. Ex.P.20 is the FIR. Both the complaint (Ex.P.1) and the FIR (Ex.P.20) were forwarded to the jurisdictional court which were received by the learned Magistrate at 12.45 p.m on 22.02.2002.

5. P.W.14, the then Inspector of Police, who registered the case, immediately rushed to the place of occurrence and prepared an observation mahazar and a rough sketch at the place of occurrence in the presence of the witnesses. He also recovered some blood stained earth and sample earth from the place of occurrence under a mahazar in the presence of the same witnesses. But, since the deceased was unconscious, he could not examine him. P.W.14, however, recovered the blood stained cloths from the person of the deceased. After the death of the deceased at 05.40 a.m. on the next day, he altered the case into one under Section 302 of IPC. Ex.P.21 is the alteration report. Then, he conducted inquest on the body of the deceased at the mortuary and after the inquest was over, he gave a requisition to the doctor for post-mortem.

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6. P.W.9, Dr.Selvakumar, who conducted autopsy on the body of the deceased at 12.50 p.m. on 22.02.2002, found the following injuries:-

"Injuries:

(1) Oblique sutured wound over forehead below the hair margin extending from the outer margin of left orbit to a point 5 cm above the centre of right eye brow.

On removal of sutures the margins are clean cut and bone deep. On dissection of scalp: Dark red contusion 11 x 6 x 0.5 cm in the frontal region of scalp. Cut fracture along the line of wound. Meninges cut below the fracture line.

Laceration 4 x 3 x 0.5 cm in the left frontal lobe of brain.

Laceration 3 x 2 x 0.5 cm in the right frontal lobe of brain.

Diffuse sub dural and sub arachnoid haemorrhage over entire brain surface.

(2) Vertical incised wound 5 x 0.5 x 0.5 cm over back of head in the left parietal region of scalp 1 cm inner to the midline.

On dissection of scalp: Dark red contusion 3 x 2 x 0.5 cm in the left parietal region of scalp.

(3) Oblique incised wound 7 x 0.5 x 0.5 cm over right side of back of head 1 cm inner to the midline.

On dissection of scalp: Dark red contusion 8 x 4 x 0.5 cm in the right parietal region of scalp with a superficial cut over the right parietal bone.

(4) Flap cut wound 4 x 3 cm x bone deep on top of left shoulder exposing the underlying soft tissues.

(5) Vertical incised wound 8 x 0.3 x 0.3 cm over outer aspect of upper part of left arm.

(6) Vertical incised wound 7 x 0.3 x 0.3 cm crossing the wound No.5 at its middle.

(7) A curved chop wound 15 x 5 cm x bone deep with a convexity outwards over front and outer aspect of left knee with a cut fracture of upper part of lateral condyle of left femur exposing the joint space.

(8) Transverse chop wound 13 x 4 cm x bone deep over middle one-third of back of left forearm. It has cut the underlying muscles, vessels, nerves. Cut fracture over middle one - third of both bones of left forearm with surrounding contusion.

(9) Chop wound over back of lower one-third

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of left forearm measuring 6 x 2 cm x bone deep. It has cut the underlying muscles, vessels and nerves over back of hand.

Cut fracture of lower one-third of both bones of left forearm with surrounding contusion.

(10) Vertical gaping incised wound measuring 15 x 3 cm x bone deep with bruised margins over the upper one-third of outer aspect of left leg.

(11) Incised wound 3 x 0.3 cm x skin deep on back of right ring finger and little finger near the base."

Ex.P.14 is the post-mortem certificate. He opined that the death of the deceased was due to shock and hemorrhage as a result of multiple injuries found on the body of the deceased. He further opined that the injuries found on the deceased could have been caused by weapons like M.Os.1 and 2 - Aruvals.

7. P.W.14 during the course of investigation, arrested A1 and A2 at 04.00 p.m. on 24.02.2002 in the presence of the witnesses. On such arrest A1 and A2 gave confessions one after the another. In pursuance of the said confession, A1 took the police and the witnesses to the place of hide out and produced an aruval (M.O.1) and A2, thereafter, took the police to the place of hide out and produced an aruval (M.O.2). P.W.14 recovered the same under a mahazar. The, he forwarded both A1 and A2 to the Tahsildar, Ambattur on 24.02.2002 for recording their confessions. Accordingly, the Tahsildar, Ambattur, recorded the confessions of A1 and A2. At the request of P.W.14, the material objects were forwarded to the forensic science laboratory by the court for chemical examination. The chemical analysis report revealed that there were blood stains on the material objects including the weapons recovered from the possession of the respective accused. On completing the investigation, P.W.14 laid charge sheet against the accused.

8. Based on the above materials, the trial court framed a lone charge under Section 302 r/w 34 of IPC against both A1 and A2. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined, 38 documents and 12 material objects were marked.

9. Out of the said witnesses, P.Ws.1 to 3 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence including the overt acts of both A1 and A2. P.W.1 has further spoken about the complaint made by him to the police. P.W.2 has further spoken about the fact that he took the deceased to a private hospital and then to Government Stanley Hospital at Royapuram in Chennai and finally to the Government General Hospital, Chennai. He has further stated that on the next day morning at 05.40 a.m. the deceased died at the

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hospital. P.W.3, the wife of the deceased has stated that on being informed by P.W.1, she rushed to the place of occurrence and by that time, the deceased was taken to the hospital.

10. P.W.5 has spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence and also the recovery of material objects from the place of occurrence. P.W.6 has stated that the deceased deceased was taken in his auto-rickshaw to the hospital. P.W.7 has spoken about the arrest of both A1 and A2 and the disclosure statements made by them and the consequential recoveries of M.Os.1 and 2 from the possession of the respective accused.

11. P.W.8, the then Tahsildar, Ambattur, has stated that he recorded the confessions of both A1 and A2 (Ex.P.12 and Ex.P13 - confessions of A1 and A2 respectively). P.W.9 has spoken about the postmortem conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.10, yet another eye witness, has also spoken about the occurrence. P.W.11, the doctor who was on duty at Government Stanley Hospital at the relevant point of time has stated that the deceased was brought to the hospital by his brother at 10.00 p.m. on 21.02.2002 and at that time, the deceased was unconscious. According to him, he noted down the injuries on the deceased in Ex.P.17 Accident Register and then advised him to be taken to Government General Hosptial, Chennai. P.W.12 has spoken about the photographs taken at the place of occurrence. P.W.13, the doctor, who was at Government General Hospital, has stated that the deceased died at 05.40 a.m. on 22.02.2002. P.W.14 has spoken about the registration of the FIR and the investigation done by him and also the filing of charge sheet against the accused.

12.1 When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness nor did they mark any document on their side. Their defence was a total denial.

12.2. Having considered all the above, the trial court convicted the appellant/A1 and also A2 and sentenced them accordingly as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentence, A1 alone is now before this Court with the present criminal appeal.

13. We have heard the learned counsel appearing for the appellant/A1 and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

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14. In this case, P.Ws.1 to 3 and 10 have spoken about the entire occurrence as eye witness. P.W.10 is the proprietor of the Fast Food Shop, in front of which the occurrence had taken place. Thus, his presence at the place of occurrence cannot be doubted. P.Ws.1 and 2 have stated that they were sitting in front of the community hall situated near the place of occurrence. According to P.W.1, being an office bearer of the community, he used to be their at the place of occurrence to meet the villagers. Accordingly, on that day, P.W.2 and few others were with him. Thus, the presence of P.Ws.1 and 2 also cannot be doubted. P.W.3 the son of the deceased had stated that while he was returning from Tution Class, he witnessed the occurrence. Though it is stated by the learned counsel for the appellant/A1 that the presence of P.W.3 is also doubtful, we find no force in the said argument. We hold that the presence of P.Ws.1 to 3 and 10 at the place of occurrence is quite natural and we do not find any doubt at all about their presence at the time of occurrence at the place of occurrence.

15. Now, turning to the individual overt acts of the accused, it is stated that both A1 and A2 cut the deceased indiscriminately and the doctor who conducted autopsy has stated that all the injuries found on the body of the deceased were cut injuries and the same could have been caused by M.Os.1 and 2 Aruvals. M.Os.1 and 2 were recovered from the possession of the respective accused pursuant to their disclosure statements. The weapons also contain human blood. From these facts, though P.Ws.1 to 3 and 10 have been extensively cross examined, nothing has been elicited from them even to remotely doubt their veracity. It is true that P.W.3 is the son and the others were very close to the deceased. But, on that ground, we cannot reject their evidences. Their evidences require only close scrutiny. Applying the said yardstick, if we closely scrutinize their evidences, we find nothing on record to disbelieve their evidences. Thus, from evidences of P.Ws.1 to 3 and 10, which were corroborated by medical evidence, we find that it was A1 and A2 who caused injuries on the deceased which resulted in his death.

16. It is seen from the records that after the arrest of the accused, the investigating officer had forwarded both the accused to the Tahsildar concerned and the Tahsildar, in turn, had recorded the confessions of the accused [vide Exs.P.12 and P.13]. The trial court in ignorance of the fact that such confession made to the Executive Magistrate while in police custody is inadmissible in evidence, as the same would not satisfy the requirement of Section 26 of The Evidence Act, has admitted the same in evidence and has also placed reliance upon the same. This is illegal. Since these two confessions said to have been made by the accused to the Tahsildar are inadmissible in evidence, we eschew the same from consideration.

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17. The learned counsel for the appellant/A1 would further submit that assuming that the prosecution has proved that A1 and A2 had caused the death of the deceased, their act would not amount to offence of murder. He would, therefore, submit that the act of the accused would squarely fall within the ambit of first exception to Section 300 of IPC. We find no merit at all in the said argument. First of all, it is not as though, A1 and A2 had come to the place of occurrence without arms. From the fact that each one armed with formidable weapon namely, each one aruval, would reflect the clear intention of the accused. The motive has also been spoken. The number of injuries caused on the deceased would also go to show that the intention of A1 and A2 was only to cause the death of the deceased. Thus, the act of A1 and A2 would fall only under the first limb of Section 300 of IPC. To take the act of the accused into the first exception to Section 300 of IPC, we do not find any material at all. Though in every case, this court cannot expect the direct evidence, for grave and sudden provocation, but, at times, it is also inferable from out of the circumstantial evidence. The very fact that A1 and A2 had gone to the place of occurrence armed with formidable weapon would go to show that the accused had gone with premeditation and therefore, there would have been no provocation at all emanating from the deceased. Thus, the act of the accused would not fall under any of the exceptions to section 300 of IPC. Therefore, we hold that A1 is liable to be punished only for offence under Section 302 of IPC for murder. Though we have discussed the evidence against A1, the said discussion and the conclusion arrived at would not bind A2 at all because A2 is not before us. Any reference to A2 and the discussion about his part in the occurrence are only incidental for the purpose of deciding the case against A1 alone.

18. Now, turning to the quantum of sentence, the trial court itself has imposed only a minimum punishment provided for murder and so, the same also does not at all require any interference at the hands of this court.

19. In the result, the criminal appeal fails and the same is dismissed. The conviction and sentence imposed on the appellant/A1 by the trial court are hereby confirmed.

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-s/d-
Assistant Registrar(CSII)

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Sub-Assistant Registrar

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To

1.The Additional District and Sessions Judge,
Fast Track Court-IV, Poonamallee,
Tiruvallur District,

2.The Inspector of Police,
Ennore Police Station, Thiruvallur
District.

3.The Public Prosecutor,
High Court, Chennai.

Crl.A.No.48 of 2017

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