

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.56 of 2017

1.Kamalesh [A1]
2.Murugan [A2]

.... Appellants/Accused

-Versus-

State Rep. by
The Inspector of Police,
M1, Madhavaram Police Station,
[Crime No.475 of 2009]

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C against the judgement of conviction and sentence imposed by the learned IV Additional District and Sessions Judge, Tiruvallur at Ponneri S.C.No.67 of 2012 dated 09.11.2016.

For Appellants

: Mr.M.L.Ramesh

For Respondent

: Mr.P.Govindaraj, APP

JUDGEMENT

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

The appellants are Accused Nos.1 and 2 in S.C.No.67 of 2012 on the file of the learned Sessions Judge, Thiruvallur at Ponneri. They stood charged for offences under Sections 341, 302 and 506(ii) of IPC. By judgement dated 09.11.2016, the trial court convicted both the accused under all the three charges and sentenced them to undergo simple imprisonment for one month for offence under Section 341 of IPC; to undergo imprisonment for life and to pay a fine of Rs.1,000/- each in default to suffer rigorous imprisonment for two years for the offence under

Section 302 of IPC; and to undergo rigorous imprisonment for two years for offence under Section 506(ii) of IPC. Challenging the above said conviction and sentences, A1 and A2 are before this court with the present criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mr.Dinesh, hardly aged about 19 years. P.W.1 is his elder brother. They were residing in Madhavaram, Tiruvallur District. P.Ws.2, 3 and one Vinoth were their friends. The deceased and P.Ws.1 to 3, on 30.08.2009 had gone to the temple festival at Chelliamman Temple in Madhavaram. Around 06.00 p.m. after having darshan in the temple, they were all returning to their respective house. When they were just passing in front Agurchand College, these two accused suddenly emerged their and they were armed with one knife each. On reaching the deceased, A1 stabbed the deceased on his left flank and A2 stabbed the deceased on the chest and shoulder, left elbow, back of the head and other parts of the body. P.Ws.1 to 3 tried to rescue the deceased. Both the accused brandished the knives against them and intimidated them. Therefore, they could not go near the deceased. The deceased fell down in a pool of blood. Both the accused then ran away from the scene of occurrence with the weapons. P.W.1 and others immediately took the deceased in an auto rickshaw and rushed him to Government Stanley Medical College Hospital. The doctor, on examining the deceased, declared him dead. Leaving the body in the hospital itself, P.W.1 went to Madhavaram Police Station and made a complaint (Ex.P.1) at 10.00 p.m. on 30.08.2009. On the said complaint, a case was registered in Crime No.475 of 2009 under Section 302 of IPC against both the accused. Ex.P.12 is the FIR. Then, both the documents were forwarded to the jurisdictional court which were received by the learned Magistrate on the next day at 10.00 a.m.

3. In the mean time, P.W.16, the then Inspector of Police, took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough in the presence of the witnesses. He recovered some blood stained earth and sample earth from the place of occurrence under a mahazar in the presence of the same witnesses. Between 11.00 p.m. on 30.08.2009 and 01.00 a.m. on 31.08.2009, he conducted inquest on the body of the deceased in the hospital itself. Then, he forwarded the dead body for postmortem. P.W.15, Dr.Santhakumar, conducted autopsy on the body of the deceased on 31.08.2009. He found the following injuries:-

Injuries: (1) Irregular abrasion 1.5 x 0.7 cm which loss of cuticle on the left lateral aspect of lower part of chest along the posterior axillary line.

(2) An oblique stab wound 3 x 0.2 cm x 6.4 cm on the upper part of right side of the back; the lower, inner blunt end was 1 cm right lateral to the midline of the back at the plane of the spine of the right scapula; the upper, outer end was acute; on dissection; the wound had entered through the underlying subcutaneous soft tissues and the underlying muscles obliquely downwards up to the spinous process of fourth thoracic vertebra; the direction of the wound was forwards, downwards; and inwards.

(3) A horizontally oblique stab wound 3.5 x 0.2 cm x cavity deep on the middle part of the left side of the back; the inner, upper, acute end was 2 cm left lateral to the midline of the back; the lower, outer ends was blunt; on dissection; the wound had entered through the underlying subcutaneous soft tissues and underlying erector spinae muscle, 0.5 cm oblique cut fractured on the lower margin of the underlying twelfth rib of the left side entered into the abdominal cavity; the direction of the wound was forwards, downwards and inwards.

(4) A vertically oblique perforating stab wound on the back of upper third of right forearm; the inner entry wound was 2.2 x 0.5 - 0.2 cm and was skin deep; the upper end of the entry wound was blunt, and the lower end was acute; the exit wound was 1.7 cm outer to the entry wound and was 1.4 x 2.2 cm x skin deep; the upper end of the exit wound was blunt and the lower end was acute.

(5) A vertically oblique stab wound 3.5 x 0.2 cm x cavity deep on the upper part of right side of the chest; the lower, inner, acute end was 8.8 cm right lateral to the lower part of midline of the neck; the upper end was blunt; On dissection : the wound had entered through the underlying subcutaneous soft tissues and the muscles of the right second intercostal space and had entered into the right thoracic cavity, and had caused a through and through stab wound 4x 0.2 cm, on the lower part of upper lobe of right lung; right thoracic cavity contained 490 ml of fluid blood; right lung was found collapsed.

(6) A vertically oblique stab wound 4 x

0.2 cm x cavity deep, on the upper part of the left side of the chest; the acute inner end was 3.5 cm left lateral to the midline of the neck, at the plane of supra sternal notch; On dissection: the wound had entered through the underlying subcutaneous soft tissues and muscles of left first intercostal space and entered into the left thoracic cavity and had caused a stab wound 3 x 0.2 x 1 cm on the underlying upper lobe of the left lung; left thoracic cavity contained 30 ml of fluid blood; left lung was found collapsed.

(7) A vertically oblique stab wound 4.2 x 0.3 x 4.5 cm on the outer aspect of back of left elbow.

(8) An oblique wound 4 x 0.2 cm x cavity deep on the lower part of left lateral aspect of the chest; 20 cm below the left axilla; the upper posterior end was blunt and the lower anterior end was acute; a portion of intestinal coil 7 cm, was protruding out through the stab wound; abdominal cavity contained 170 ml of fluid blood.

Heart: Normal in size; C/S All chambers empty; Valves: Normal; Coronaries: Patent; Great Vessels: Normal.

Lungs: Both lungs were collapsed: Larynx & Trachea: Empty. Hyoid Bone: Intact.

Stomach: Contained 550 ml of thick yellowish brown partly digested cooked rice particles: no definite smell: Mucosa: Pale.

Liver, Spleen & Kidneys: Normal in size; C/S: Pale.

Intestine: Contained yellowish brown chyme. Bladder: Empty.

Pelvis & Spinal Column: Intact Brain: Normal in size; Surface vessels congested."

Ex.P.11 is the postmortem certificate. He gave opinion that the said injuries could have been caused by weapons like knives and further opined that the death of the deceased was due to shock and hemorrhage due to multiple injuries found on the dead body. After the postmortem was over, P.W.16, recovered the blood stained dresses from the body of the deceased and forwarded the same also to the court with a request to send the same to the forensic science laboratory for chemical examination. On 31.08.2009, he arrested both A1 and A2 at Madavaram New Bus Stand and on such arrest, from the possession of A1, M.O.8 knife and from the possession of A2, M.O.9 knife were recovered in the presence of the witnesses under a mahazar. Then, on returning to

the police station, P.W.16 forwarded both the accused to court for judicial remand. He also forwarded the material objects to the court with a request to forward the same to the forensic science laboratory for chemical examination. The report revealed that there were human blood stains on the material objects including the knives. On completing the investigation, P.W.16 laid charge sheet against both the accused.

4. Based on the above materials, the trial court framed as many as three charges 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 16 witnesses were examined, 17 documents and 9 material objects were marked.

5. Out of the said witnesses, P.Ws.1 to 3 have spoken about the entire occurrence including the overt acts. P.W.1 has further stated that he took the deceased to the Government Stanley Hospital, Royapuram, Chennai, where he was declared dead. He has also spoken about the complaint made by him to the police. P.W.4 has stated that he took the deceased in his auto rickshaw to the Government Stanley Medical College Hospital around 08.00 p.m. on 30.08.2009. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 has spoken about the tube lights burning at the place of occurrence which were put up for the purpose of festival. Thus, according to him, there was enough light at the place of occurrence. P.W.7 has also spoken about the same facts. P.W.8 has spoken about the photographs taken of the dead body at the place of occurrence at the request made by the investigating officer. P.W.9, the Doctor, has stated that at 08.20 p.m. on 30.08.2009, the deceased was brought to Government Stanley Medical College Hospital, Chennai, when he was on duty. He opined that the deceased was brought by P.W.1. At that time, the deceased was found dead. P.W.1 told him that the deceased was stabbed by two known persons. He recorded the same in Ex.P.3 Accident Register. P.W.10, the learned Judicial Magistrate has spoken about the recording of the statement of the witnesses under Section 164 of Cr.P.C. P.W.11, the Head Constable, has stated that he handed over the dead body to the doctor for postmortem. P.W.12, the Analyst, who conducted chemical examination, has stated that there were human blood stains found on the material objects including the knives. P.W.13 has spoken about the serology examination conducted on the material objects. According to her, the blood stain was of 'A' Group. P.W.14 has spoken about the arrest of the accused and the consequential recoveries of M.Os.8 & 9-Knives from the possession of A1 and A2 respectively. P.W.15 has spoken about the postmortem conducted on the body of the deceased and his opinion regarding the cause of death. P.W.16 has spoken about

the registration of the case, investigation done by him in this case and the filing of charge sheet.

6. 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.

7. Having considered all the above, the trial court convicted the appellants/A1 and A2 and sentenced them as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, A1 and A2 are now before this Court with the present criminal appeal.

8. We have heard the learned counsel appearing for the appellants/A1 and A2 and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

9. In this case, as we have already pointed out, P.Ws.1 to 3 have been examined as eye witnesses to the occurrence. The learned counsel for the appellants/A1 and A2 would submit that the presence of P.Ws.1 to 3 at the place of occurrence is doubtful. He would further submit that their presence at the place of occurrence was by chance. At any rate, according to the learned counsel, since they are interested eye witnesses their evidence could be rejected. But, we are not persuaded by the said argument. It is true that P.Ws.1 to 3 are interested eye witnesses. But, on that score, we cannot afford to reject the evidences of these witnesses, the prudence requires that we should closely scrutinize their evidences. It is the settled law that if a witness claimed to have been present at the place of occurrence by chance, he should explain to the satisfaction of the court the reasons or occasion for his presence at the crucial moment at the place of occurrence. In this case, P.Ws.1 to 3 have categorically stated that they accompanied the deceased when they were all returning from the temple festival towards their respective house. Thus, the explanation of P.Ws.1 to 3 for their presence at the place of occurrence is fully and satisfactorily explained. P.W.9, the doctor, who declared the deceased dead has stated that P.W.1 brought the deceased at 08.20 p.m. on 30.08.2009. He told the doctor that the deceased was stabbed by two known persons. This would also go to further strengthen the case of the prosecution that P.W.1 was very much present at the place of occurrence. Though P.Ws.1 to 3 have been cross examined, at length, we could find nothing in their evidences to create any doubt in their veracity. Thus, from the evidences of P.Ws.1 to 3 it is crystal clear that it was these two accused who indiscriminately stabbed the deceased and caused his death.

10. P.W.4 has stated that he took the deceased to the hospital from the place of occurrence in his auto rickshaw at 08.00 p.m. on 30.08.2009. Thus, the deceased was stabbed at 08.00 p.m. and was taken to the Government Stanley Medical College Hospital at 08.20 p.m., that was, hardly within twenty minutes after the occurrence. This circumstance would also further strengthen the case of the prosecution. After the arrest of both A1 and A2, M.Os.8 and 9 knives were recovered from their respective possession. The knives (M.Os.8 &9) contained human blood stains. They would also further strengthen the case of the prosecution. From these evidences, in our considered view, the prosecution has clearly established that A1 and A2 alone had stabbed the deceased indiscriminately. According to the medical evidence, the death was due to shock and haemorrhage due to multiple injuries found on the dead body. Thus, the prosecution has clearly established that these two accused alone caused the death of the deceased.

11. The fact that these two accused had gone to the place of occurrence both armed with one formidable weapon namely, a knife each and that there was no quarrel or provocation emanating from the deceased and also the fact that the accused had motive against the deceased as spoken by P.W.1 would all go to prove that intention of the accused was only to cause the death of the deceased and thus, their act would squarely fall within the ambit of first limb of Section 300 of IPC. The act of the accused would not fall under any of the exceptions to Section 300 of IPC also. Thus, the trial court, in our considered view, was right in convicting A1 and A2 under Sections 341, 302 and 506(ii) of IPC.

12. So far as the quantum of sentences imposed are concerned, we find no reason to interfere with the same as the trial court itself has imposed only minimum punishments. Thus, we find no material in the appeal and the same deserves only to be dismissed.

13. In the result, the criminal appeal is dismissed. The conviction and sentences imposed on the appellants/A1 and A2 are hereby confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

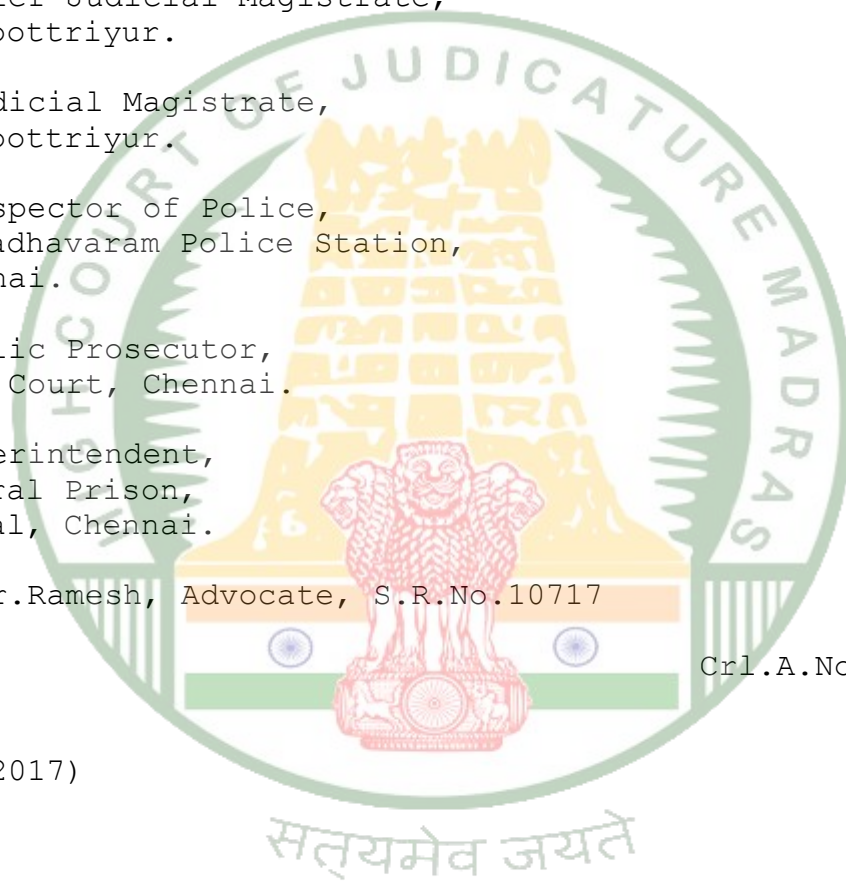
To

1. The IV Additional Sessions Judge,
Ponneri,
Tiruvallur District.
2. -do-Thro The Princiapl Sessions Judge,
Thiruvallur.
3. The Chief Judicial Magistrate,
Tiruootturiyur.
4. The Judicial Magistrate,
Tiruootturiyur.
5. The Inspector of Police,
M1, Madhavaram Police Station,
Chennai.
6. The Public Prosecutor,
High Court, Chennai.
7. The Superintendent,
Central Prison,
Puzhal, Chennai.

+1cc to Mr. Ramesh, Advocate, S.R.No.10717

Crl.A.No.56 of 2017

SV(CO)
RS(12/04/2017)



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