

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.66 of 2017

Sanjay Singh @ Sanjay Kumar Singh

... Appellant/Single Accused

- Vs -

State rep by Inspector of Police,
Oragadam Police Station,
Kanchipuram District.
(Cr.No.313 of 2014)

... Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned District and Sessions Judge No.II, Kanchipuram in S.C.No.59 of 2015 dated 25.04.2016.

For Appellant : Mr.V.Rajamohan

For Respondent : Mr.P.Govindaraj
Additional Public Prosecutor

J U D G M E N T

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

The appellant, the sole accused in S.C.No.59 of 2015 on the file of the learned District and Sessions Judge No.II, Kanchipuram stood charged for offences under Sections 294(b), 302 and 506(ii) I.P.C. By judgment dated 25.04.2016, the trial Court convicted him under all the charges and sentenced him to undergo simple imprisonment for three months for offence under Section 294(b) I.P.C., to undergo simple imprisonment for one year for offence under Section 506(ii) I.P.C. and to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months for offence under Section 302 I.P.C. 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. P.W.1 Mrs.Mythily is the wife of the deceased Mr.Mohan. They were residing at Sholinganallur. He was working as a contractor in a private company. On 03.10.2014, the deceased and P.W.1 had gone to the house of P.W.2 at Bajanai Koil Street, Vallam village for engaging workers to work in the construction company. P.W.9 Mr.Sambasivam also accompanied them. At the house of P.W.2-Mr.Deenadayalan, few youth belonging to a Northern State were staying. The deceased called them for work in loud voice. The accused was residing in yet another room in the house of P.W.2. The accused only speaks Hindi and he hails from a Northern State, came out of the house and shouted at the deceased as to why he was crying. P.W.9 knew to speak Hindi. He translated the words of the accused to the deceased. As a matter of fact, the deceased scolded the accused in filthy language. The deceased questioned him. This resulted in a quarrel. In that quarrel, the accused suddenly rushed out of his room with a knife and stabbed him in his chest, left cheek and abdomen. The youth present there, tried to prevent the accused from further stabbing the deceased. The accused ran away from the scene of occurrence after intimidating P.W.1 also. The deceased fell down in a pool of blood. P.W.1 immediately took him to the Government hospital at Chengalpet. The doctor declared him dead.

2.2. Thereafter, P.W.1 went to Oragadam police station and made a complaint at 09.00 p.m. on 03.10.2014. On the said complaint, a case was registered under Sections 294(b), 506(ii) and 302 I.P.C against the accused. Ex.P1 is the complaint and Ex.P26 is the F.I.R. He forwarded both the documents to Court and the same was received by the learned Magistrate at 10.00 a.m. on 04.10.2014.

2.3. The case was taken up for investigation by P.W.15. He went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of witnesses. He collected the bloodstained earth and sample earth from the place of occurrence. Then, he conducted inquest on the body of the deceased at the mortuary of the Government hospital at Chengalpet and then he forwarded the body for postmortem.

2.4. P.W.7 Dr.Parasakthi conducted autopsy on the body of the deceased on 04.10.2014 at 11.40 a.m. She found the following injuries:

"Injuries: (1) An oblique stab wound seen on front of upper part of right chest at 3rd intercostal space along the midclavicular line measuring 3cm x 2 cm x lung deep passing downwards and inwards. (2) An oblique stab

wound seen on front of left chest at the level of second intercostal space along the left midclavicular lane measuring 3cm x 1cm x left lung deep passing downwards and inwards. (3) An oblique cut injury seen on left lower abdomen measuring 2 cm x 1 cm x muscle deep. All the above mentioned three injuries were reddish in colour with clear cut margins and on end obtuse and one end acute. (4) Thorax cage contained 300 ml of fluid blood. (5) An oblique cut injury seen on right cheek at its middle measuring 2 cm x 0.5 cm x muscle deep with clear cut margins. Stomach empty. No specific smell. Muscsa - NAD, all other internal organs - NAD - c/s pale. Bladder - empty."

Ex.P24 is the postmortem certificate. She gave opinion that the injuries could have been caused by a weapon like M.O.1-knife. She further opined that the death of the deceased was due to shock and hemorrhage due to the said injuries found on the body of the deceased.

2.5. P.W.15 recovered the bloodstained clothes from the body of the deceased. On 04.10.2014, at 02.00 p.m. he arrested the accused at Vallam graveyard. The accused hails from Orissa State. He did not know Tamil. P.W.4 Madhu, knew Hindi as well as Tamil language. At 02.15. p.m. in the presence of Madhu and two other witnesses the accused gave a voluntarily confession. P.W.4 translated the same into Tamil and it was reduced into writing by P.W.15.

2.6. In the said confession, he disclosed the place where he had hidden the knife, bloodstained T-shirt and a bloodstained pant. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.1 (knife), M.O.6 (bloodstained T.Shirt) and M.O.7 (pant). P.W.15 recovered the same and forwarded the same to Court. He forwarded the accused to Court for judicial remand. Test identification parade was conducted by the learned Judicial Magistrate on the request made by the investigating officer, during which, P.Ws.1, 5 and 9 identified the accused. On completing the investigation, he laid chargesheet against the accused.

2.7. 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, 35 documents and 13 material objects were marked.

2.8. Out of the said witnesses, P.Ws.1, 5 and 9 are the eyewitness to the occurrence. They have vividly spoken about the entire occurrence including the overt act of the accused. P.W.2 the owner of the house where the accused was residing has spoken about the said fact. P.W.3 the Village Administrative Officer has spoken about the arrest of the accused on 04.10.2014 at 02.15 p.m., the confession made by the accused in Hindi, the translation made by P.W.4 and the consequent recoveries of M.Os.1, 6 and 7.

2.9. P.W.4 has stated that he translated the statement of the accused in Tamil at the time of arrest of the accused. P.W.6, the learned Judicial Magistrate has spoken about the statement of the witnesses recorded under Section 164 Cr.P.C. P.W.7 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.8 an expert from the forensic lab has stated that he examined the material objects and found that there were human bloodstains on all the material objects including the knife.

2.10. P.W.10 has spoken about the registration of the case on the complaint of the P.W.1. P.W.11 has stated that he handed over the dead body of the deceased for postmortem. P.W.12 has spoken about the hearsay information about the occurrence. P.W.13 has also spoken only about the hearsay information. P.W.14 the learned Magistrate has spoken about the test identification parade conducted on 14.10.2014, in which P.Ws.1 and 9 identified the accused correctly. 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., he denied the same as false. However he did not choose to examine anyone nor mark any documents. Having considered all the above, the trial Court convicted the appellant as detailed in the first paragraph of this judgment and that is how the appellant 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. As we have already narrated, in this case, there are three eyewitnesses to the occurrence viz., P.Ws.1, 5 and 9. P.W.1 is none other than the wife of the deceased. According to her, she accompanied the deceased to the house of P.W.2 along with P.W.9. P.W.9 has also stated so. P.W.5 is one of the youth who was staying at the house of P.W.2. He has also spoken about the entire occurrence. The presence of these three

witnesses cannot be doubted at any cost. There was no motive for P.Ws.1, 5 and 9 to falsely depose against the accused. Further though these three witnesses have been cross examined at length, we do not find any material on record to doubt their credibility. The medical evidence also duly corroborates the eyewitness account. According to the doctor, there were three stab injuries on the body of the deceased. The doctor further opined that the said injury could have been caused by a weapon like M.O.1. M.O.1 was recovered from the accused on the confession made by him, which contains human bloodstain, for which the accused had got no explanation. From these evidences, the prosecution has clearly established that it was this accused who stabbed the deceased thrice and caused his death.

6. The identity of the accused also cannot be disputed. P.Ws.1, 5 and 9 have correctly identified the accused during test identification parade. P.W.5 being a neighbour residing in a room in the same house where the accused was residing has also identified the accused during trial. Thus, the identity of the accused also cannot be disputed.

7. Having come to the conclusion that it was this accused who caused the death of the deceased, now, we have to examine as to what was the offence that was committed by the accused.

8. Admittedly, there is no motive for the accused to cause the death of the deceased. The deceased had gone to the house of P.W.2, only to call the youth staying in the said house for work. Because, he called the boys in loud voice, feeling that it was a disturbance to him, the accused came out of the room and shouted in Hindi language. But it was translated to the deceased. In fact the accused had scolded the deceased in filthy language. This was the cause for the quarrel. Until then, the accused was not armed with any weapon. There was no premeditation. The quarrel was so sudden. It was only in that quarrel, the accused took out the knife from the room and caused three stab injuries on the deceased. Considering the weapon used and the situs of the injuries, in our considered view, the act of the accused would squarely fall within the fourth limb of Section 300 I.P.C. P.W.5 in his evidence has categorically stated that there was a fight and scuffle going on between the accused and the deceased. It was so sudden, it was only in that quarrel, the accused took out the knife lying there and stabbed the deceased. The accused had not taken any undue advantage. Having regard to the above facts, we are of the view that the act of the accused would squarely fall within the fourth exception to Section 300 I.P.C. and therefore, he is liable to be punished only for the offence under Section 304(i) I.P.C.

9. It is also in evidence that the accused abused the deceased in filthy language and also criminally intimidated P.W.1 when she tries to go to the rescue of the deceased. Thus the charge against the accused under Sections 294(b) and 506(ii) I.P.C. also stand proved.

10. Now turning to the quantum of punishment, at the time of occurrence, the accused was hardly aged 42 years. He is married man and he has got two children. His family members are in Orissa State and he had come to Chennai only to make out his livelihood as a coolie. He has to take care of the family members. He has been in jail from the date of his arrest. Undoubtedly he is a poor man. He has got no bad antecedents. There are lots of chances for reformation. Having regard to all these mitigating as well as the aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for seven years and pay a fine of Rs.500/- 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 District and Sessions Judge No.II, Kanchipuram in S.C.No.59 of 2015 dated 25.04.2016 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 seven years and to pay a fine of Rs.500/- and in default to undergo rigorous imprisonment for one week.

(ii) the conviction and sentence imposed on the appellant under Sections 294(b) and 506 (ii) I.P.C. are hereby confirmed.

(iii) The fine amount now imposed shall be adjusted from the fine amount already paid, if any, and the excess, if any, shall be refunded to him.

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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif Cum-Judicial Magistrate,
Sriperumbur,
Kanchipuram District.
2. -Do- Thro the Chief Judicial Magistrate,
Kanchipuram.
3. The District and Sessions Judge No.II,
Kanchipuram.
4. The Superintendent,
Central Prison, Puzhal.
5. The Superintendent,
Central Prison,
Vellore.
6. The District Collector,
Kancheepuram.
7. The Director General of Police,
Mylapore, Chennai.
8. The Inspector of Police,
Oragadam Police Station,
Kanchipuram District.
9. The Public Prosecutor,
Madras High Court.

+lcc to Mr.Mohideen Basha, Advocate Sr.12385

mg[col]
srg 11/05/2017

CrI.A.No.66 of 2017

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