

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.89 of 2017

Umashankar

Appellant/Accused

Vs

The State Rep. By
Inspector of Police,
Sathiyamangalam Police Station.
Erode.
[Crime No 45 of 2015]

Respondent

Prayer:- Criminal Appeal filed under Section 374 I.P.C.,
against the judgment passed in S.C.No.146 of 2015 on the file of
III Additional District Sessions Court, Gobichettipalayam dated
18.04.2016.

For Appellants : Mr.T.Muruganantham

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.146 of 2015 on the file of the learned III Additional District and Sessions Judge, Gobichettipalayam. He stood charged for offence under Section 302 I.P.C. By judgment dated 18.04.2016, the trial Court convicted the accused for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one month. 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 deceased in this case was one Mr.Suppan. He was working in Bannari Temple at Bannari, as a Sanitary Worker, on contract basis. On 23.01.2005, around 9.00 pm, the deceased was on duty. The devotees who visited the temple, while putting coins into the Hundi of the temple, had thrown some coins around the Hundi also. In normal course, the said coins should have been collected and put into the Hundi. But, the accused who came there was picking up the coins. This was objected by the deceased. This resulted in a quarrel. This is stated to be the motive for the occurrence.

3.On 24.01.2005, around 5.00 am, the accused removed the iron Trisulam from the temple and threatened the devotees who were sleeping. The deceased and others questioned the accused. This again resulted in a quarrel between the accused and the deceased. In that quarrel, it is alleged that the accused attacked the deceased with the blunt portion of Trisulam on his head and chest. The deceased fell down. The accused ran away from the scene of occurrence. In the same transaction, some devotees had attacked the accused also. The deceased died on the spot. P.W.1 who was in the temple, caught hold the accused and tied him into the post. Then, P.W.1 made arrangement for 108 Ambulance, in which, they took the accused to the hospital for the injuries sustained in the said occurrence.

4.P.W.1 thereafter, went to Sathiyamangalam Police Station, and made a complaint at 10.00 am on 24.01.2015. A case was registered on the same, in Crime No.45/2015, for offence under Section 302 I.P.C., against the accused. Ex.P.1 is the complaint and Ex.P.14 is the F.I.R. Both the documents were sent to Court and the same were received by the learned Judicial Magistrate at 11.00 am on 24.01.2015.

5.P.W.14, the then Inspector of Police, took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and rough sketch. He recovered the blood stained earth and the sample earth from the place of occurrence, in the presence of witnesses. After holding inquest at 1.15 pm, on the same day, he forwarded the body for post mortem.

6.P.W.6 Dr.Abilasha, conducted autopsy on the body of the deceased on 24.01.2015 at 3.50 pm. She found the following injuries:-

"1)Cut injury - scalp about 10X3X1cm horizontally involving right and left parietal region.

2) Contusion in left side of chest wall and upper abdomen of about 6 X 4 cm."

Ex.P.7 is the Post mortem certificate. She opined that the death of the deceased was due to shock and hemorrhage due to the multiple injuries found on the body of the deceased.

7.P.W.1 handed over the accused to P.W.14. He arrested him at 3.50 pm. P.W.14 recovered the blood stained clothes from the body of the deceased and forwarded the same to Court. At his request, the material objects were sent for chemical analysis which revealed that there were human blood stains on all the material objects. On completing investigation, he laid charge sheet against the accused.

8.Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined and 21 documents were marked besides 7 material objects. On the side of the accused, no witness was examined however, the Accident Register pertaining to the treatment given to the accused was marked as Ex.D.1.

9.Out of the said witnesses, P.W.1 claims to have witnessed the entire occurrence. He has vividly spoken about the entire occurrence. He has further stated that, in the same occurrence, some devotees attacked the accused, in which, he also sustained injuries. He has further spoken about the complaint made to the Police and he has also spoken about the fact that he took the accused to the hospital in an 108 ambulance, for treatment.

10.P.W.2 who was in the temple has also spoken about the entire occurrence as an eye witness. P.W.3 yet another eye witness has also spoken about the entire occurrence. P.W.4 is the son of the deceased. He has stated that he came to know about the occurrence later and went to the place of occurrence. P.W.5 has spoken about the preparation of observation mahazar and rough sketch and the recovery of blood stained earth and the sample earth from the place of occurrence. P.W.6 - Dr.Abilasha, has spoken about the post mortem conducted and her final opinion regarding the cause of death. P.W.7 has also spoken about the entire occurrence as an eye witness. P.W.8 has spoken about the arrest of the accused. P.W.9, a Constable has stated that he handed over the dead body to the Doctor for post mortem. P.W.10 has stated that he handed over the F.I.R., to the learned Judicial Magistrate at 11.00 am on 24.01.2015. P.W.11 has also

spoken about the arrest of the accused. P.W.12, the Head Clerk of the Jurisdictional Magistrate has stated that he forwarded the material objects to the Regional Forensic Sciences Laboratory, for chemical examination. P.W.13 has spoken about the registration of the case. P.W.14 has spoken about the investigation done and the final report filed in this case.

11. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness on his side. Ex.D.1, the Accident Register alone was marked. In short, his defence was a total denial.

12. Having considered all the above, the trial Court convicted the accused for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life. That is how the accused is before this Court with this Criminal Appeal.

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

14. The learned counsel for the appellant would submit that in the instant case, there was enormous delay in making the complaint to the Police as well as forwarding the same to the learned Judicial Magistrate concerned. Though attractive, in this argument, we do not find any force at all. According to the case, soon after the occurrence, the accused was taken to the hospital and admitted. It was only thereafter, the complaint was made to the Police by P.W.1. Thus, in our considered view, there was no delay at all either in making the complaint to the Police or in forwarding the same to the Court.

15. The learned counsel would further submit that P.Ws.1 to 3 & 7 would not have witnessed the occurrence at all. He would submit that these witnesses are interested witnesses and therefore, their evidences should be rejected.

16. We are not persuaded by the said argument. Simply because these witnesses are interested witness, their evidences cannot be out-right rejected, as false. Prudence requires only close scrutiny of their evidences. If we closely look into the evidences of these witnesses, we find nothing on record to create even a slightest doubt in our mind about their veracity. Their presence at the place of occurrence is quite natural. They have further stated that the accused was caught hold red handed, at the place of occurrence and he was tied to the post and later on he was handed over to the Police. These facts would clearly go to prove that it was this accused who attacked the deceased with the blunt portion of Trisulam and caused the death of the deceased.

17.The learned counsel for the petitioner would next contend that the prosecution has failed to explain the injuries sustained by the accused. In this argument also, we find no force because, P.W.1 and the other eye witnesses have categorically stated that when the accused attacked the deceased, the other devotees caught him hold and attacked him in retaliation. It was in that process, the accused sustained injuries and he was also tied to the post. Thus, the injuries sustained by the accused have been clearly explained by the prosecution.

18.Having come to the said 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 ?". From the narration of facts, it is crystal clear that there was no strong motive for the accused to cause the death of the deceased. He had no premeditation. The occurrence was out of a sudden quarrel. The accused also sustained injuries in the same. In the said quarrel, the accused had taken Trisulam made of iron and attacked the deceased. He did not use the sharp portion of the Trisulam to cause injuries on the deceased instead, he had used only the blunt portion of the Trisulam.

19.All these facts would go to show that the intention of the accused would have been to cause bodily injuries which would be sufficient in the ordinary course of nature to cause the death of the deceased. The act of the accused would squarely fall within the first exception to Section 300 I.P.C., because, there are material to show that the accused had acted out of grave and sudden provocation. Thus, the accused is liable to be punished only for offence under Section 304(i) I.P.C.

20.Now, turning to the quantum of sentence, admittedly, the accused is a poor man. He has got no bad antecedents. At the time of occurrence, he was hardly aged 40 years. There are lot of chances for reformation. The occurrence was not a premeditated one and it was out of a sudden quarrel. Having regard to these aggravating as well as mitigating circumstances, we are of the view, that sentencing the accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

21.In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/sole accused for offence under Section 302 IPC is set aside and instead, he is convicted for offence under Section 304(i) I.P.C., and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. It is further directed that the period of detention already undergone by the

appellant/sole accused shall be given set off as required under Section 428 Cr.P.C.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The III Additional District and Sessions Judge, Gobichettipalayam.
 2. -Do Thro The Principal Sessions Judge, Erode
 3. The Judicial Magistrate Sathyamangalam
 4. The Superintendent, Central Prison Coimbatore
(with a copy to communicate accused)
 5. The District Judge Erode
 6. The Director General of Police Chennai 4
 7. The Inspector of Police Sathyamangalam Police Station Erode
 8. The Public Prosecutor High Court, Madras
- +1 CC to Mr. T. Muruganantham, Advocate sr 16176

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