

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.799 of 2009

Sankar

.. Appellant

Vs

State rep. By
Inspector of Police,
Aranbakkam Police Station,
Thiruvallur District,
(Crime No.738/2007)

.. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set-aside the order of conviction and sentence imposed by the learned Additional District Sessions Judge & Fast Track Court NO.4, Ponneri, Thiruvallur District, made in S.C.No.244 of 2008, dated 06.11.2009.

For Appellant

: Mr.T.R.Ravi

For Respondent

: Mrs.M.F.Shabana,

Gov. Adv. (Crl. Side)

JUDGEMENT

The sole accused in S.C.No.244 of 2008 on the file of the Additional District and Sessions Court (Fast Track Court No.IV), Ponneri, Thiruvallur, is the appellant herein. He stood charged for an offence under Section 302 IPC. The trial court, by judgment dated 06.11.2009, convicted the appellant under Section 304(ii) IPC and sentenced him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.5000/, in default, to undergo imprisonment for one year. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

The deceased, in this case, one Rajendran is the husband of P.W.1. The accused is their neighbour and also closely related to the deceased. On 21.12.2007, at about 7.00 a.m., wife of the accused washing her clothes in front of her house and then poured the dirty water in front of the house of the deceased. When P.W.1 questioned the same, the deceased also came there and he also questioned the accused's wife. At that time, the accused came there and attacked the deceased with his hands and there was a quarrel between the

deceased and the accused, the neighbours came there and pacified them. Thereafter, the deceased went to bazar to have a cup of tea, when he was returning back, again there was a quarrel between the accused and the deceased. At that time, the accused had taken a wooden log available near his house and attacked the deceased on his head and the deceased fell down. Then, the neighbours called a taxi and took the deceased to the Government General Hospital, Chennai. Thereafter, P.W.1 lodged a complaint before the respondent police.

3. P.W.12, Sub-Inspector of Police, on receipt of the complaint, registered a case in Crime No.738 of 2007, for the offences under Sections 341, 324 IPC and prepared the First Information Report, Ex.P.7. Then, he proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.6) and Rough Sketch (Ex.P.7) in the presence of the witnesses. In the mean time, the deceased succumbed to injuries, then P.W.12 altered the F.I.R. for the offence under Sections 341 and 302 IPC and sent the alteration report to P.W.18, Inspector of Police in the respondent police station.

4. P.W.18, after receipt of the alteration report, commenced the investigation and he had made arrangement for taking

photographs of the scene of occurrence and he recorded the statement of the witnesses. Then, on 23.12.2007, at 8.00 a.m., he conducted inquest on the dead body of the deceased in the presence of the panchayathars and prepared Inquest Report, Ex.P.19. Then, he sent the dead body for postmortem with a memo.

5. P.W.14, Doctor, working in the Government General Hospital, Chennai, on 23.12.2007, at 1.30 p.m., conducted postmortem autopsy on the dead body of the deceased and found the following injuries:-

" Injuries:

1. Reddish contused abrasion size 3 x 0.5 cm seen over the right parietal region anterior aspect.

2) Reddish contused abrasion of size 1 x 0.5 cm seen over right parietal region posterior aspect.

3) Reddish incised abrasion of size 2 x 0.25 cm seen over the left frontal region.

'c' shaped curvilinear sutured wound with 30 sutures of length 30 cm seen on right fronto temporal parietal region.

On dissection of head : Diffused contusion seen all over the under surface of scalp measuring 25 x 12 cm x 0.5 cm.

A craniotomy defect measuring 11 cm x 11 cm with 5) burr holes over the right fronto temporal parietal region underlying brain. extra dual hemorrhage of size 5 x 4 x 0.5 cm seen over the left temporal region. Diffuse sub dual and sub fractured seen all over the brain surface. Brain out section edematous cut section shows 25 mg of clotted blood seen in the left vesicle.

A linear frontal fracture of size 5 cm seen on the right middle and front"

He has issued the Postmortem Certificate, Ex.P.11.

6. Then P.W.18 continued the investigation and arrested the accused on 24.12.2007 and on such arrest, he has voluntarily given a confession and based on the disclosure statement, he recovered the 4 feet wooden log (M.O.1) and he seized the same under the cover of mahazar and handed over the investigation to P.W.19. P.W.19 recorded the statement of the Doctor, who conducted postmortem on the dead body of the deceased and after completion of investigation, he laid the charge sheet.

7. Based on the above materials, the trial Court framed charges as mentioned in the first paragraph of the judgment and the

accused denied the same. In order to prove its case , on the side of the prosecution, as many as 19 witnesses were examined and 19 documents were exhibited, besides one material objection was marked.

8. Out of the witnesses examined, P.W.1 is the wife of the deceased and also eye-witness to the occurrence. According to her, on the date of occurrence, the wife of the accused washed the clothes in front of her house and poured the water in front of the house of P.W.1. When P.W.1 questioned the same, there was a quarrel and the deceased also came there and he also questioned the wife of the accused. At that time, the accused came there and attacked the deceased and there was a quarrel and the neighbours have pacified them. Then, the deceased went to have tea in the nearby tea shop, when he came back, there was another quarrel and at that time, the accused had taken a wooden log available in his house and attacked the deceased on his head and P.W.1 along with her neighbours, took the deceased to the Government Hospital, Chennai.

9. P.W.2 is the son of the deceased and he has also spoken about the quarrel between the wife of the accused and his father and at that time, the accused attacked the deceased on his face and thereafter, there was another quarrel. At that time, the accused

attacked the deceased with a wooden log, which was available in his house. P.W.3 is a person, who was running a petty shop near the scene of occurrence. According to him, he saw the accused carrying a big stone, when he questioned the accused, he threatened him and thereafter he saw the accused going with a wooden log. P.W.4 has turned hostile. P.W.5 is the neighbour, who saw the deceased taken to the hospital. P.W.6 is a hearsay witness. He, along with P.W.1, went to the police station and lodged a complaint. P.W.7 is the brother of P.W.1. According to him, he came to the scene of occurrence after hearing the news. P.W.8 is the witness to the Observation Mahazar. P.W.9 is the witness to the arrest and confession of the accused and also recovery of M.O.1. P.W.10 is the co-brother of the deceased and his evidence has no substance.

10. P.W.11, Assistant Director in the Forensic Science Department, examined the visceral parts of the deceased. P.W.12, Sub-Inspector of Police has spoken about the registration of the case and commencement of investigation. P.W.13, Head Clerk, working in the Judicial Magistrate Court, Ponneri, sent the material objects for chemical examination. P.W.14 is the Doctor, who conducted postmortem on the dead body of the deceased and has given the Postmortem Certificate, Ex.P.11. P.W.15 Doctor, who admitted the deceased in the hospital. According to him, at the time of admission,

the deceased told him that a known person attacked him. P.W.16, Head Constable, accompanied the dead body of the deceased to the Government General Hospital, Chennai and identified the body for postmortem. P.W.17, Judicial Magistrate, recorded the statements of the witnesses under Section 164 Cr.P.C. P.W.18, Inspector of Police, conducted inquest and recorded the statements of the witnesses and. P.W.19, continued the investigation and after completion of investigation, he laid charge sheet against the accused.

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 choose to examine any witness or mark any documents.

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. Mr. T.R.Ravi, learned counsel appearing for the appellant would submit that the appellant/accused is the neighbour of the deceased and they were closely related, on the date of occurrence, there was a small quarrel between P.W.1 and wife of the

accused. While, the deceased questioning the accused's wife, out of provocation, he attacked the deceased with a small wooden log available in his house and he has no intention nor any knowledge that it would cause death to the deceased. Out of the sudden provocation, he lost his mental balance and given a single blow with a small stick available in the scene of occurrence and there was no external injuries and only due to hemorrhage the deceased died on the next day. Hence, the act of the accused would not fall under Section 304(ii) IPC and he can only be convicted for any lesser offence.

14. Per contra, Mrs.M.F.Shabana, learned Government Advocate (Crl. side) appearing for the respondent would contend that there are two eye-witnesses to the occurrence and both of them consistently stated that it is this accused who has voluntarily gone into the conflict with the deceased and given a big blow on the head of the deceased, a vital part and the skull bone was fractured and subsequently, he died. Taking into consideration of the fact, the trial court convicted the accused under Section 304(ii) IPC and there is no reason to interfere with the judgment of the trial court and sought for dismissal of the appeal.

15. I have considered the rival submissions and perused the materials available on record carefully.

16. It could be seen from the prosecution evidence that the accused and the deceased are neighbours and they were closely related. On the date of occurrence, there was a small quarrel between the accused's wife and the deceased's wife with regard to pouring of water in front of the house of the deceased. Initially there was a quarrel between the the ladies and at that time, the deceased interfered and questioned the wife of the accused. Being agitated over the same, the accused had a quarrel with the deceased earlier and attacked him with hands and then the neighbours pacified them. Thereafter once again, there was a quarrel between the accused and the deceased. At that time, the accused being provoked by the words of the deceased, lost his mental balance and attacked the deceased with a small wooden log, which was available in his house, on the head of the deceased. Then, he was taken to the Government General Hospital, Chennai and a surgery was conducted and thereafter he died on the next day.

17. P.Ws.1 and 2 are eye-witnesses to the occurrence. P.W.1 is the wife of the deceased and P.W.2 is the son of the deceased. The occurrence took place near the house of the deceased. Hence, the presence of P.Ws.1 and 2 are quite natural and both of them consistently stated that it is this accused who had attacked the deceased with a wooden log, which was available in the

house of the accused. The medical evidence also corroborated the evidence of P.W.1. Hence, I am of the considered view that the prosecution has established that it is only this accused, who attacked the deceased with a wooden log on his head and caused his death.

18. The next question arises for consideration is "what is the offence that was committed by the accused by the said act?". It could be seen from the evidence of P.Ws.1 and 2 that there was a quarrel between P.W.1 and the wife of the accused. During the quarrel, being provoked by the words of the deceased, accused lost his mental balance and attacked the deceased with a wooden log, which was available in the house and caused head injury to the deceased. In the above circumstances, it could be seen that the accused had neither any intention nor knowledge that the blow is likely to cause such head injury which caused death of the deceased, only due to provocation, the accused attacked the deceased with a wooden log available in his house and caused single blow on his head. From the evidence of postmortem doctor, it could be seen that there is no external injury. In the above circumstances, the accused can only to be convicted under Section 335 IPC and not under Section 304(ii) IPC.

19. So far as the quantum of sentence is concerned, learned counsel appearing for the appellant would submit that the appellant is

a poor man and he is an agriculturist and also closely related to the deceased, he had two school going children and he is the sole bread winner of the family and he was confined for more than 4½ months and he is also willing to pay the compensation of Rs.1,00,000/- to the deceased's family.

20. Taking into consideration of the peculiar circumstances in this case and the occurrence took place out of sudden provocation and both the accused and deceased are closely related and the occurrence took place in the year 2007 and the appellant/ accused has also had a family to maintain and considering all the mitigating circumstances and in the above exceptional circumstances, appellant/accused is sentenced to undergo the period already undergone and also to pay a fine of Rs.1,00,000/-, and the fine amount is to be paid as compensation to the deceased's family under Section 357(3) Cr.P.C. सत्यमेव जयते

21. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant under Section 304(ii) I.P.C., is set aside and instead, he is convicted under Section 325 I.P.C., and period of sentence is reduced to that of the period of sentence already undergone and pay a fine of Rs.1,00,000/- and the fine amount is to be paid as compensation to the deceased family

under Section 357(3) Cr.P.C., in default to pay the fine amount directed to undergo rigorous imprisonment for 3 months and the appellant/accused is directed to deposit a sum of Rs.1,00,000/- to the credit of S.C.No.244 of 2008 on the file of the Additional District and Sessions Judge, Fast Track Court No.IV, Ponneri, within a period of 8 weeks from the date of receipt of a copy of this order. On such deposit the legal heirs of the deceased is entitled to withdraw the same.

22.02.2017

mrp

To

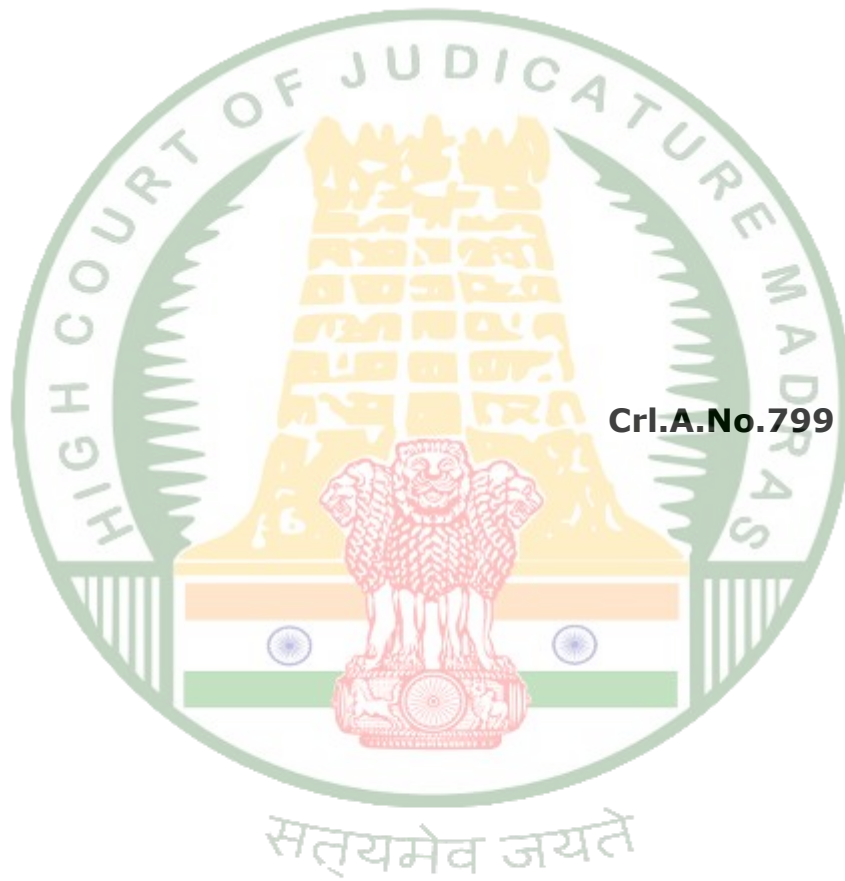
1. The Additional District and Sessions Judge,
Fast Track Court,
Ponneri, Tiruvallur.

- 2.The Public Prosecutor,
High Court, Madras.

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V.BHARATHIDASAN.J.,

mrp



Crl.A.No.799 of 2009

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