

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
AND
THE HONOURABLE MR.JUSTICE **N.AUTHINATHAN**

Crl.A.No.546 of 2016
and
Crl.M.P.No.7664 of 2016

1.Ilamurugan
2.Thenmozhi
3.Kandasamy

... Appellants

vs.

State, rep.by
Inspector of Police,
A.Pallipatti Police Station,
Kotapatti Taluk,
Dharmapuri District

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 04.04.2016 passed by the Principal
Sessions Judge, Dharmapuri in S.C.No.212 of 2014.

For Appellants : Mr.R.Thirugnanam

For Respondent : Mr.M.P.Govindarajan,Addl.P.P.

JUDGMENT

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

The appellants are accused 1 to 3 in S.C.No.212 of 2014, on the file of the Principal Sessions Judge, Dharmapuri. The trial Court framed as many as four charges against the accused. The first charge is under Section 302 of the Indian Penal Code against accused 1 and 2. The second charge is against the third accused under Section 307 IPC. The third charge is under Section 302 IPC read with Section 109 IPC against the third accused and the fourth charge is under Section 307 read with Section 109 IPC against accused 1 and 2. By judgement dated 4.4.2016, the trial Court convicted the accused 1 and 2 under Section 302 IPC; the third accused under Section 302 read with Section 109 IPC as well as under Section 324 IPC. The trial Court sentenced the accused 1 and 2 to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for two years for the offence under Section 302 IPC; sentenced the third accused to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for two years for the offence under Section 302 read with Section 109 IPC; and sentenced the third accused to undergo rigorous imprisonment for one year for the offence under section 324 IPC. Challenging the

said conviction and sentences, the appellants are before this Court with this appeal.

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

(a) The first accused is the son of the second accused. At the time of occurrence, the second accused, the woman, was aged 46 years and the third accused was aged 73 years. They were all residing at Achi Pallipatti Village in Dharmapuri District. The second accused is the first wife of one Mr.Dhanapal. The deceased Mr.Karthik was the son of Mr.Dhanapal through his second wife. Mr.Dhanapal died some years ago and in respect of his death, a case of murder was registered against the first accused. He was later on acquitted by the trial Court. From then onwards, there was no love lost between the three accused on one part and the deceased and his mother, namely, the second wife of Mr.Dhanapal, on the other side. This is stated to be the motive for the occurrence.

(b) On 22.3.2014, at around 10.00 p.m., the first accused had gone to the house of the deceased and wanted him to send his mother, namely, the second wife of Dhanapal, with him. Out of fear, the deceased came to the house of P.W.1. P.W.1 is the uncle of the deceased. He stayed at the house of P.W.1 over night and

then returned.

(c) On 26.3.2014, around 6.30 p.m., the deceased called P.W.1 over phone and informed that his mother was found missing. He wanted P.W.1 to come and accompany him to search for his mother. Accordingly, P.W.1 went to the house of the deceased and thereafter they together went in search of the mother of the deceased. When they reached the house of the third accused, in that house, they found all the three accused. The first accused was found eating his dinner. The deceased enquired the first accused about the whereabouts of his mother. The first accused replied that his mother had not come to his house and thus he was not aware of the whereabouts of his mother. Then, the deceased wanted the second accused to return his laptop, which she had earlier taken from his house. This infuriated the first accused. The first accused questioned him as to how he could brand his mother as a thief. This resulted in a quarrel. In that quarrel, it is stated that the first accused attacked the deceased with a wooden log lying there, on the head of the deceased. When P.W.1 tried to rescue the deceased, the third accused attacked him with another wooden log on his head. Then, P.W.1 and the deceased started running. P.W.1 ran along the mud road and the deceased ran towards a different direction in a different route. The accused 1 and 2 were running after the deceased; whereas, the third accused

ran after P.W.1. The accused 1 and 2 attacked the deceased at a distance, which was not noticed by P.W.1. When P.W.1 tried to return, the third accused prevented him. Then all the three accused ran away from the scene of occurrence. P.W.1 went to his house and informed his family members. Then all of them went in search of the deceased. They have found the deceased lying dead at a far of place with injuries. Thereafter, P.W.1 went to the Police station and made a complaint at 12.15 a.m., on 27.3.2014. The Sub Inspector of Police of A.Pallipatu Police Station, on receipt of the said complaint, registered a case in Crime No.58 of 2014 under Sections 302 and 307 IPC against all the three accused. Ex.P1 is the complaint and Ex.P9 is the FIR. He forwarded both the documents to Court, which were received by the learned Magistrate at 4.00 a.m. on 27.03.2014.

(d) The case was taken up for investigation by the Inspector of Police (P.W.24). At 2.45 a.m. he went to the hospital, examined P.W.1 and few more witnesses. At 4.30 a.m., he went to the place of occurrence, prepared an observation mahazar and a rough sketch. With the help of the photographer, he photographed the entire place of occurrence from different angles. He recovered the blood stained earth and sample earth from the place of occurrence, where the dead body of the deceased was lying. Then

he forwarded P.W.1 also to the hospital for treatment. He conducted inquest on the body of the deceased and forwarded the same for post-mortem. On 28.3.2014, at 11.00 a.m. he arrested all the three accused, in the presence of witnesses. While in custody, they gave independent voluntary confessions. In pursuance of the same, they produced two wooden logs. P.W.24 recovered the same under different mahazars. On returning to the Police Station, he forwarded all the three accused to Court for judicial remand. He collected the medical records and examined the doctors. At his request, the Judicial Magistrate forwarded the material objects for chemical examination. The report revealed that there were blood stains on all the material objects, including the two wooden logs. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed 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 28 witnesses were examined, 29 documents and 18 materials objects were marked. On the side of the accused, an acknowledgement given to the first accused, dated 24.3.2014, in respect of a complaint made by him, has been marked. Out of the said witnesses, P.W.1, an injured eyewitness,

has spoken about the entire occurrence in a vivid fashion. P.W.2 has stated that he heard about the occurrence and he went to the place of occurrence and found the dead body. P.Ws.3 and 4 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.5 has spoken only the hear say information and she has not stated anything incriminating. P.W.6 a Homeopathy Doctor has stated that he treated P.W.1 around 8.00 p.m., on the day of occurrence. P.W.7, the Village Panchayat Board President has stated that he informed the police about the occurrence. P.W.8 has not stated anything incriminating. P.W.9 is the mother of the deceased and the second wife of Mr.Dhanapalan. She has stated about the motive between the two families. P.W.10 has spoken about the preparation of observation mahazar and rough sketch and the recovery of material objects from the place of occurrence. P.W.11 has not stated anything incriminating except stating that one day the accused came and kept the motor-cycle at his house. P.W.12 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.13 has stated that he was the then Inspector of Police of A.Pallipattu Police Station. He has further stated that on 23.03.2014 at 6.00 p.m. one Mr.Dhanapal, Head Constable of the same Police Station had recorded the statement of the deceased in the hospital and handed over the same to him. The same was entered as C.S.R.No.86 of

2014 at 9.00 a.m., on 24.03.2014. He has further stated that he went to the place of occurrence and examined few more witnesses. Thus, he has spoken about the previous occurrence. He has further stated that on 26.03.2014, at 8.15 p.m., the Village Paqanchayat Board President has informed him about the present occurrence. P.W.14, a Constable, attached to A.Pallipattu Police Station, has stated that he received information from the hospital about the admission of the deceased and he in turn informed the same to the Sub-Inspector of police. P.W.15 has also spoken about the said information received from the hospital. P.W.16 has stated that he handed over the FIR to the Magistrate. P.W.17 has stated that he served a copy of the F.I.R. to P.W.1. P.W.18-Dr.Subalakshmi has stated about the treatment given to the first accused on 23.3.2014 in respect of an occurrence, which had taken place on 22.03.2014. She has further spoken about the treatment given to P.W.1 on 26.3.2014 at 9.30 p.m. She found a sutured lacerated wound on the head and a sutured lacerated wound on the right hand. P.W.19 has spoken about the treatment given to P.W.1 on 27.3.2014, at the Government Hospital, Dharmapuri. P.W.20 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.21 the Motor Vehicle Inspector has stated that he examined the motor-cycle bearing No.T.N.54-T-1059, as requested by the Inspector of Police and found that there were

some damages to the vehicle. P.W.23 has also spoken about the hospital intimation to the Police. P.W.24 has spoken about the arrest of the accused and the consequential recovery of material objects. P.W.24 has further spoken about the investigation done and the final report filed. P.W.25 the Forensic Expert has stated that he examined the material objects sent to him and on examining them, he found blood stains on all the material objects. P.W.26 has spoken about the fact that he had handed over the dead body to the Doctor for post-mortem. P.W.27 has spoken about the recovery of motor-cycle from the first accused. P.W.28 has stated that he sold the said motorcycle to one Mr.Pandian.

4. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness on their side. Their defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgement and that is how the accused are before this Court.

6. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State

and we have also perused the records carefully.

7. As we already pointed out, the prosecution, in order to prove the charges against the accused, relies mainly on the eyewitness account of P.W.1. There is no other eyewitness to the occurrence. P.W.1 has stated that he along with the deceased had gone to the house of A3 in search of the mother of the deceased. When the deceased enquired the first accused about the whereabouts of his mother, he replied that he was not aware of the same. At that time, A1 was eating his dinner. The deceased again wanted A2 to return the laptop, which she had stolen from his house. This, quite naturally, infuriated the first accused. He questioned the deceased as to how dare enough he was to brand him and his mother as thieves. This resulted in a quarrel. In that quarrel, it is alleged that the first accused attacked the deceased with a wooden log, which was lying there. The third accused attacked P.W.1 on his head. Then both the deceased and P.W.1 ran in two different directions. It is stated that the accused 1 and 2 followed the deceased. Thereafter, P.W.1 had not seen them. He has not stated that they attacked the deceased thereafter and how the dead body was found lying at a small distance. The Doctor opined that the deceased died due to head injuries.

8. From the evidence of P.W.1, it is crystal clear that the said injury was caused by A1 at his house. Thus, from the evidence of P.W.1, it has been clearly established that it was the first accused, who caused the death of the deceased. Absolutely there is no evidence that the second accused attacked the deceased and caused any injury. It is highly unbelievable that an old woman, aged about 46, could have given a chase to the deceased also. At any rate, we find no evidence against the second accused. So far as the third accused is concerned, it is the evidence that he also took out a wooden log lying there and gave blows on P.W.1. P.W.1 fled away from the scene of occurrence and went to his house and informed his relatives. When all of them returned, they found the deceased lying dead. Thus, from the evidence of P.W.1, which is corroborated by the medical evidence also, it has been clearly established that the third accused attacked P.W.1 with a wooden log. From these facts, the prosecution has established that the third accused committed offence punishable only under Section 323 IPC. The wooden log produced before the Court is not a dangerous weapon. Therefore, for having caused injury on P.W.1, the third accused is liable to be punished only under Section 323 IPC. So far as the second accused is concerned,

since there is no evidence that she either attacked the deceased or P.W.1, she is entitled for acquittal. The trial Court has however invoked Section 109 of the Indian Penal Code to convict these two accused. Absolutely there is no evidence that accused 2 and 3 instigated the first accused to attack the deceased. As we already pointed out, it was only the deceased and P.W.1 who came to the house of these accused. The very fact that the first accused was eating dinner at his house would go to show that there was no premeditation.

9. The narration of events, as made by P.W.1, would go to show that the deceased questioned the second accused and asked her to return the laptop. As a matter of fact, he called her as a thief. Infuriated by the same, the first accused suddenly took out the wooden log and attacked the deceased. Thus, there was no instigation made by the accused 2 and 3 at all. Absolutely there is no evidence that they instigated the first accused. Therefore, for the act of the first accused, the accused 2 and 3 cannot be held liable constructively in any manner.

10. Now, turning to the case against the first accused, as we have already pointed out it was he who caused the death of the deceased. But, it cannot be stated that his act would amount to an

offence of murder. As we already pointed out, the occurrence was not premeditated. The first accused was not already armed with any weapon. In the quarrel, he lost his mental balance and took out a stick lying there and gave a single blow on the deceased. These facts would cumulatively go to establish that the act of the first accused would not fall either under limb 1 or 3 of Section 300 of the Indian Penal Code. But it would certainly fall under the 4th limb of Section 300 of the Indian Penal Code. At the same time, the act of the first accused would squarely fall within the 4th exception to Section 300 of the Indian Penal Code. Therefore, he is liable to be punished only for offence under Section 304(2) of the Indian Penal Code.

11. Now turning to the quantum of punishment, the first accused, at the time of occurrence, was aged about 23 years. There is every chance of his reformation. The occurrence was not a premeditated one. He was not already armed with any weapon. The occurrence was a sudden quarrel. Having regard to all the mitigating as well as aggravating circumstances, we are of the view that convicting the first accused under Section 304(2) of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for five years and and to pay a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for four weeks, would meet the

ends of justice.

12. So far as the third accused is concerned, it is brought to our notice that he is aged 73 years. He has already spent around five to six months of imprisonment. In our considered view the said period of sentence already undergone by the third accused, would be a sufficient punishment for offence under Section 323 of the Indian Penal Code.

13. In the result, this criminal appeal is allowed in part in the following terms:

(1) The conviction of the first accused under Section 302 of the Indian Penal Code is set aside and instead, he is convicted under Section 304(2) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/- (Rupees one thousand only), in default, to undergo rigorous imprisonment for four weeks. He is acquitted from all the other charges. It is further directed that the period of sentence already undergone by him shall be given set off as required under Section 428 of the Cr.P.C.

(2) The second accused is acquitted from all charges. The bail bond, if any executed by her shall stand cancelled and the fine

amount, if any, paid by her, shall be refunded forthwith.

(3) The conviction and sentence imposed on the third accused under Section 302 read with Section 109 of the Indian Penal Code and Section 324 of the Indian Penal Code are set aside and instead he is convicted for the offence only under Section 323 of the Indian Penal Code and it is directed that the period of sentence already undergone by the third accused shall be treated as a sufficient punishment for the offence.

Consequently connected miscellaneous petition is closed.

(S.N.J.) (N.A.N.J.)
10 January 2017

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Index:Yes/No
Internet:Yes/No

To

Inspector of Police,
A.Pallipatti Police Station,
Kotapatti Taluk,
Dharmapuri District

2.The Principal Sessions Judge, Dharmapuri

3.The Public Prosecutor,
High Court, Madras

**S.NAGAMUTHU,J.
and
N.AUTHINATHAN,J.**

msk

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