

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.741 of 2016

Thameemun Ansari Appellant /Accused

- Vs -

State rep by
The Inspector of Police,
R-8, Vadapalani Police Station,
Chennai - 600 026.
(Cr.No.550 of 2013) Respondent/Complainant

Prayer:- Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment passed by the learned VI Additional Sessions Judge, Chennai in S.C.No.173 of 2014 dated 27.07.2016.

For Appellant : Mr.R.Ganesh Kumar

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 is the sole accused in S.C.No.173 of 2014 on the file of the learned VI Additional District and Sessions Judge at Chennai. He stood charged for offence under Section 302 I.P.C. By judgment dated 27.07.2016, the trial Court convicted him under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months. 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. The deceased in this case was one Mr.Karthik. The accused is his brother-in-law. The sister of the deceased Mrs.Annapoorni is the wife of the accused. It was a love marriage. After the marriage, the accused developed drinking habit. There was also child born out of the said marriage. The accused was not taking care of his wife and his child. He was behaving like a spindrift. The accused was working in a mutton stall known as Tamil Nadu Mutton and Chicken Stall at Vadapalani main road.

2.2. On 11.04.2013, Mrs.Annapoorni had gone to the mutton stall and demanded that the accused should fix a separate rented house for her. This resulted in a quarrel between the accused and his wife. It is alleged that the accused snatched away the cellphone from his wife and through the cellphone, spoken to the deceased and shouted at him for the behaviour of his wife at his workplace. The deceased, immediately along with P.Ws.2 to 4 rushed to the mutton shop at around 08.45 p.m. The accused questioned the accused as to why he had deserted his wife. This resulted in a quarrel between the accused and the deceased. The quarrel went on for some time. During which, abusive words were hurled by the deceased as well as the accused. During the said quarrel, enraged over the behaviour of the deceased, the accused, took out a knife from the shop which is used for cutting mutton and chicken, stabbed the deceased on the forehead and right side back of his chest. The accused immediately fled away from the scene of occurrence.

2.3. P.W.1 and the wife of the accused, took the deceased to the Government hospital at K.K.Nagar. The doctor after giving first aid advised them to take the deceased to the Government General Hospital at Chennai. Accordingly, they took the deceased to the Government General Hospital, where he was declared dead. Thereafter, P.W.1 the brother of the deceased, who witnessed the occurrence, went to the police station and made a complaint at 11.00 p.m. on 11.04.2013.

2.4. P.W.15 the then Inspector of Police of R8 Vadapalani Police Station, registered a case in Crime No.550 of 2013 under Section 302 I.P.C against the accused. Ex.P1 is the complaint and Ex.P13 is the F.I.R. He forwarded both the documents to Court, which was received by the learned Magistrate at 03.00 a.m. on 12.04.2013.

2.5. P.W.15, took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered the bloodstain earth and sample earth from the place of occurrence.

He examined many more witnesses including P.Ws.1 to 5. After holding inquest on the body of the deceased, he forwarded the same for postmortem.

2.6. P.W.11 Dr.Vedanayagam conducted autopsy on the body of the deceased on 12.04.2013 at 01.10 p.m. He found the following injuries:

"Injuries: (1) A vertically oblique cut laceration of size 4x0.5 cm x bone deep just above the middle part of left eyebrow (2) A vertically oblique stab injury of size 4x1cm x cavity deep and directed forward, medially and upwards on the back; 12 cm below the angle of the right scapula and 5 cm lateral to the midline.

On Dissection: Scalp contused over the left frontal region. Skull vault and dura intact. Brain oedematous. On further dissection: Heart-Normal in size. Cut section-all chambers were empty. Lungs: both lungs normal in size. Cut section - pale. Abdominal cavity contained about 900 ml of fluid blood. An oblique torn of size 1 cm in diameter seen on the antero-medial aspect of the upper part of inferior vena cava. Stomach - contained about 50 ml of straw coloured fluid with no specific odour. Liver, Spleen and Kidneys: normal in size; cut section : pale. Pelvis, hyoid bone and spinal column - intact."

Ex.P8 is the postmortem certificate. He gave opinion that the injuries found on the body of the deceased could have been caused by a weapon like knife and he has further opined that the death of the deceased was due of shock and hemorrhage due to the injuries.

2.7. P.W.15, during the course of investigation, arrested the accused on 12.04.2013 in the presence of witnesses. While in custody, he made a voluntary confession, in which he disclosed the place where he had hidden the knife. In pursuance of the same, he took the police and witnesses to the place of hideout and produced M.O.1 knife. P.W.15 recovered the same under a mahazar. On returning to the police station, he forwarded the accused to Court and handed over the material objects also to the Court. During the course of investigation, he collected bloodstained clothes from the body of the deceased and at his request all the material objects were sent for chemical examination, which revealed that there were human bloodstain in all the material objects including the knife. On completing the investigation, he laid chargesheet against the accused.

2.8. Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C. against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined, 19 documents and 8 material objects were marked.

2.9. Out of the said witnesses, P.Ws.1 to 5 are the eyewitness to the occurrence. They have vividly spoken about the entire occurrence. P.W.6 has spoken only about the hearsay information. P.W.7 has spoken about the preparation of the observation mahazar and a rough sketch at the place of occurrence. P.W.8 has spoken about the arrest of the accused, the confession made by him and the consequential recovery of M.O.1 knife from his possession. P.W.9 a police constable has stated that he handed over the dead body of the deceased to the doctor for postmortem. P.W.10 an Expert from the Forensic Science Lab has spoken about the chemical analysis he conducted on the material objects. According to him, there were human bloodstains on all the material objects including the knife. P.W.11 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.12 the doctor who examined the deceased at the Government hospital has stated that the deceased was brought to the hospital by P.W.1 for treatment. P.W.13 an official from the TNEB has stated that there was no electricity failure in the place of occurrence during the relevant time. P.W.14 Dr.Rajesh has stated that he declared the deceased dead at the Government General Hospital. P.W.15 has spoken about the registration of the case, investigation done and final report filed.

3. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine anyone nor mark any documents. His defence was a total denial. 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. The learned counsel for the appellant would submit that P.Ws.1 to 5 are closely related to the deceased and therefore their evidence should be rejected. In this regard, we have gone through the evidence of P.Ws.1 to 5. P.W.1 is the brother of the deceased. P.W.2 is not a relative of the deceased. He is a resident of Ambedkar colony at K.K.Nagar. He has stated that he

was present at the place of occurrence by chance. P.W.3 is a friend of P.W.2 and not related to the deceased. P.W.4 is a friend of the deceased. He has stated that he was present at the place of occurrence by chance. P.W.5 is the wife of the deceased. P.W.2 during the cross examination has stated that before the occurrence, he was not aware of the name and other details of both the deceased as well as the accused. He has further stated that he came to know about the name of the accused as well as the deceased only after the occurrence. Referring to the same, the learned counsel would submit that his evidence cannot be acted upon. But we find no force at all in the said argument. He has explained that for medical purpose, he was present at the place of occurrence by chance. He has further stated that the accused stabbed the deceased. It may be true that he was not aware of the name of the accused as well as the deceased, on that score, we cannot reject his entire evidence. His explanation that the occurrence had taken place at around 08.45 p.m., in which the deceased was done to death by another person, his evidence can be acted upon. The person who stabbed the deceased has been identified by P.Ws.1, 3, 4 and 5, more particularly P.Ws.1 and 5. We find no reason to reject the evidences of P.Ws.1 and 5, who were the brother and wife of the deceased, who have categorically stated that in the quarrel this accused had stabbed the deceased. Though these witnesses were cross examined at length, nothing has been elicited to create even a slightest doubt in their evidence. Thus, the evidences of P.Ws.1 to 5 are so cogent and convincing, which would clearly establish that it was this accused who stabbed the deceased and caused his death.

6. It is also seen from the records that the deceased was taken to the hospital only by P.W.1 and as soon as he was declared dead, he made a complaint to the police. There was no delay either in making the complaint or in forwarding the same to the Court. Thus, the prompt launching of the F.I.R. in this case would also go to vouch for the truthfulness of the case of the prosecution. The medical evidence also duly corroborates with the eyewitness account. Thus, from these evidences, we hold that it was this accused who caused the death of the deceased.

7. Having come to the said conclusion, we have to now examine as to what is the offence that is committed by the accused. It is in evidence that the accused was in the mutton stall where he was working at the time of occurrence. P.Ws.1, 5 and the deceased alone had gone there. The deceased, developed quarrel with the accused as he questioned the accused as to why he had deserted his wife. This quarrel went on for some time. It is also in evidence that abusive words were hurled by the deceased as well as the accused. It was only in that quarrel,

the accused having lost his temper on account of the sudden provocation made by the deceased, has taken out the knife which was in the stall and stabbed the deceased twice. The occurrence was thus not a premeditated one. The accused, thus had no intention to cause the death of the deceased but he definitely had intention to cause injury and such intended injury was sufficient in normal course of nature to cause death. Thus, the act of the accused would squarely fall within the third limb of Section 300 I.P.C. and at the same time it would fall within the first exception to Section 300 I.P.C. and therefore the accused is liable to be punished for offence under Section 304(i) I.P.C.

8. Now turning to the quantum of punishment, we have to take into account that there was no premeditation. The accused was hardly 23 years of age at the time of occurrence. There are lots of chances for reformation. He is a poor man, he has got a big family to take care of. 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 ten years and pay a fine of Rs.1,000/- for offence under Section 304(i) I.P.C. would meet the ends of justice.

9. 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 VI Additional District and Sessions Judge, Chennai in S.C.No.173 of 2014 dated 27.07.2016 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 ten years and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for four weeks.

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

WEB COPY

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The VI Additional Sessions Judge,
Chennai.
2. Thro The Principal Sessions Judge,
Chennai.
3. The XVII Metropolitan Magistrate,
Saidapet, Chennai.
4. Thro' The Chief Metropolitan Magistrate,
Egmore, Chennai.
5. The District Collector,
Chennai.
6. The Director General of Police,
Mylapore, Chennai.
7. The Superintendent,
Central Prison,
Puzhal, Chennai.
8. The Public Prosecutor,
Madras High Court.
9. The Inspector of Police,
R-8, Vadapalani Police Station,
Chennai - 600 026.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.R.Ganesh Kumar, Advocate Sr.4819

Cr1.A.No.741 of 2016

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srg 04/05/2017