

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.751 of 2016

Murugan

... Appellant

- Vs -

State rep by Inspector of Police,
Pennadam Police Station.
(Cr.No.176 of 2015)

... Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam in S.C.No.73 of 2016 dated 26.10.2016.

For Appellant : Mr.M.L.Ramesh

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.73 of 2016 on the file of the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam. He stood charged for offences under Sections 302 and 294(B) I.P.C. By judgment dated 26.10.2016, the trial Court convicted him under Section 302 I.P.C. alone and sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for two years. The trial Court however acquitted him from the charge under Section 294(B) 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. The deceased in this case was one Mr.Karthick. He was residing at V.P.Singh street at Pe.Ponneri. P.W.1 Miss.Santhi is his sister. The accused was residing in the neighbouring house.

2.2. On 09.09.2015, it rained and the rain water stagnated in front of the house of the deceased. P.W.1 was putting sand to pave way for the rain water to drain. The wife of the accused objected to the same. The accused intervened and developed a quarrel with P.W.1 Miss.Santhi. P.W.1 told the accused to talk to her brother namely the deceased about the issue. Then, P.W.1 went out and brought the deceased to her house. On reaching the house, the deceased questioned the accused and his wife as to why they had developed quarrel with P.W.1 a young woman. This resulted in further quarrel between them. At the end of the quarrel, it is stated that the accused suddenly took out a koduval knife and cut the deceased on his neck. The deceased sustained injury and fell down in a pool of blood. The accused ran away from the scene of occurrence. The deceased died instantaneously.

2.3. Then, P.W.1 informed her father and others about the occurrence over phone. Immediately, thereafter, she went to Pennadam police station and made a complaint at 08.15 a.m. on 09.09.2015.

2.4. P.W.11 the Sub Inspector of Police registered a case in Crime No.176 of 2015 under Sections 294(B) and 302 I.P.C. Ex.P1 is the complaint and Ex.P8 is the F.I.R. He forwarded both the documents to Court which was received by the learned Magistrate at 01.10 p.m. on 09.09.2015.

2.5. The case was taken up for investigation by P.W.15. He went to the place of occurrence, prepared an observation mahazar and a rough sketch. He also recovered the bloodstained earth and sample earth from the place of occurrence. He conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.6. P.W.12 Dr.Savitha conducted autopsy on the body of the deceased on 09.09.2015 at 03.00 p.m. She found the following injuries:

"External examination: Head severed from torso with just 10 cm of posterior skin attached to it. Lacerated injuries of size 5x2 cm on right palm, left shoulder, deep lacerated injury of size 8cm x 5 cm x 5 cm

present. No other antemortem injuries seen.

Internal examination: Thorax and abdomen - intact, open opening; both lungs pale and intact; heart - pale and intact; stomach, liver, spleen, both kidneys - intact and pale; intestines, urinary bladder - pale, intact and empty."

Ex.P9 is the postmortem certificate. She gave opinion that the injuries found on the body of the deceased could have been caused by a weapon like koduval and further opined that the death of the deceased was due to shock and hemorrhage due to the said injuries.

2.7. During the course of investigation, P.W.15 arrested the accused on 09.09.2015 at 04.20 p.m. On such arrest, he gave a voluntary confession, in which he disclosed the place where he had hidden the koduval knife. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the same. P.W.15 recovered the same and on returning to the police station, he forwarded the accused to Court and also forwarded the material objects to the Court. At his request, the material objects were sent for chemical examination. The report revealed that there were human bloodstains on all the material objects including the koduval. On completing the investigation, P.W.15 laid chargesheet against the accused.

2.8. Based on the above, 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, 16 documents and 7 material objects were marked.

2.9. Out of the said witnesses, P.W.1 alone is the eyewitness to the occurrence. She has vividly spoken about the entire occurrence. She has also spoken about the complaint made to the police. P.Ws.2 and 3 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.4 is the grandfather of the accused. He has not stated anything incriminating. P.W.5 is the uncle of the accused and father of the deceased. He has spoken only on hearsay information.

2.10. P.W.6 has spoken about the preparation of the observation mahazar and the rough sketch. P.W.7 has also spoken about the same facts. P.W.8 is a neighbour of the deceased and he has turned hostile. P.W.9 the Village Administrative Officer has spoken about the arrest of the accused, the disclosure statement made by the accused and the consequential recovery of koduval knife from his possession. P.W.10 has stated that he

handed over the dead body of the deceased to the doctor for postmortem.

2.11. P.W.11 has spoken about the registration of the case. P.W.12 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.13 has stated that he examined the internal organs of the deceased and found neither alcohol nor poison. P.W.14 the Scientific Officer in the Forensic Science Laboratory, Villupuram has stated that he examined the material objects and found that there was human blood. 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, 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 under Section 302 I.P.C. alone 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. In this case, as we have already pointed out, the prosecution mainly relies on the solitary evidence of P.W.1, who has claimed to have witnessed the entire occurrence. She has categorically stated that it was this accused who cut the deceased with koduval knife which resulted in the death of the deceased. The learned counsel for the appellant would submit that the evidence of P.W.1 should be rejected as she is an interested witness and would not have witnessed the occurrence. We find no force at all in the said argument. Simply because P.W.1 happens to be the sister of the deceased, her evidence cannot be straightaway rejected, it only requires close scrutiny. It is of course true that no independent witness has supported the case of the prosecution. On that score alone, we cannot reject the evidence of P.W.1 because it is not the quantity but the quality that matters. It is settled law that if the evidence of a solitary witness inspires the fullest confidence of the Court and in the absence of any corroboration from any other source, it would be safe to convict the accused acting on such solitary evidence.

6. In this case, P.W.1 was examined in chief on 02.08.2016. But on that day, she was not cross examined by the defence counsel. She was recalled and cross examined at length on 06.09.2016. No reason whatsoever has been stated as to why this witness has not been cross examined on the same day when she was examined in chief. Though this witness was subjected to lengthy cross examination on 06.09.2016, we find nothing on record to create a slightest doubt regarding her credibility. Therefore, we find no reason to disbelieve P.W.1.

7. The learned counsel for the appellant would submit that there is delay in F.I.R., which creates doubt in the case of the prosecution. We again find no force in the said argument. For an occurrence which took place at 09.30 a.m., the case was registered at 11.00 a.m. and F.I.R. reached the hands of the learned Magistrate at 01.10 p.m., as such, virtually there is no delay either in making the complaint or the forwarding of the F.I.R. to the Court.

8. The learned counsel for the appellant would submit that the arrest of the accused and consequential recovery of Koduval knife based on the disclosure statement made by the accused cannot be believed. The Village Administrative Officer has vividly spoken about the arrest of the accused and the disclosure statement made by him and the consequential recovery of Koduval. The chemical examination conducted has revealed that there was human bloodstain on the same. We find no reason to reject the evidence of the Village Administrative Officer who is an independent and responsible witness. Thus, the recovery of M.O.1 which contains human bloodstain does corroborates the evidence of P.W.1

9. The evidence of P.W.1 which is corroborated by medical evidence and other evidences, we hold that that it was this accused who cut the deceased with koduval knife which resulted in his death. Now the question is what was the offence which is committed by the accused by his such conduct.

10. There is no prior enmity between them. After all the accused and the deceased were closely related and belongs to common ancestor. There was no motive for the accused against the deceased. The occurrence is not premeditated. As we have already seen when P.W.1 went to put up sand, the same was questioned by the wife of the accused and there arose a quarrel and even at that time the accused was not there. P.W.1 went out and brought the deceased to the spot and thereafter the deceased questioned the wife of the accused as to why they were quarreling with P.W.1 and this again resulted in a quarrel. Even at that time, the accused was not armed with any weapon. It was only at

the end of the quarrel, the accused had taken a knife and caused a single cut on the neck which resulted in his death.

11. From the narration of the facts, it is inferable that in the quarrel there was a scuffle between the accused and the deceased and in that process the accused had taken the knife lying there and caused a single blow on the deceased and thus the act of the accused would squarely fall within the third limb of Section 300 I.P.C. and the same would fall under the fourth exception to Section 300 I.P.C. Therefore, he requires to be punished for the offence only under Section 304(i) I.P.C.

12. Now turning to the quantum of punishment, at the time of occurrence, the accused was hardly aged about 35 years. He got a family to take care. He has no bad antecedents. The occurrence was not premeditated. There are lots of chances for reformation. Having regard to the 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.1,000/- would meet the ends of justice.

13. 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 III Additional District and Sessions Judge, Cuddalore at Vridhachalam in S.C.No.73 of 2016 dated 26.10.2016 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.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.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District and Sessions Judge,
Cuddalore.
- 2.-Do- Thro the Principal Sessions Judge,
Cuddalore.
3. The District Munsif-Cum-Judicial Magistrate,
Tittakudy.
4. Thro' The Chief Judicial Magistrate,
Cuddalore.
5. The Superintendent,
Central Prison,
Cuddalore.
6. The District Collector,
Cuddalore District.
7. The Director General of Police,
Mylapore, Chennai-4.
8. The Inspector of Police,
Pennadam Police Station.
9. The Public Prosecutor,
Madras High Court.

Copy to

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

+1cc to M/S.V.Rajeswari, Advocate Sr.4775

rsy[col]
srg 27/04/2017