

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08..02..2017

CORAM

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

Criminal Appeal No.774 of 2016

Periyapaiyar
@ Balakrishnan

... Appellant/Accused

-Versus-

State Rep. by
The Inspector of Police,
Varapalayam Police Station,
Nambiyur,
Erode.
[Crime No.65 of 2013]

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C against the judgement of conviction and sentence passed by the learned I Additional Sessions Judge, Erode, Erode District, in S.C.No.78 of 2013 dated 09.10.2013.

For Appellant : Mr.J.Muruganantham

For Respondent : Mr.P.Govindarajan, APP

JUDGEMENT

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

The appellant, the sole accused in S.C.No.78 of 2013 on the file of the learned Additional Sessions Judge, Erode, Erode District, stood charged for offence under Section 302 of IPC. The trial court, by judgement dated 09.10.2013, convicted him under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to suffer simple imprisonment for one year. Challenging the above said conviction and sentence, the accused is now before this court.

2. The case of the prosecution in brief is as follows:-
The accused is a resident of Rayarpalayam village. The deceased

- Mr.Pongiyan also was a resident of the same village. On an earlier occasion, it is alleged that at the instance of the deceased, the police took action against the accused in connection with theft. The accused was aggrieved over the said action of the deceased. This is stated to be the motive for the occurrence.

3. On 28.03.2013, around 08.15 p.m. the accused had gone to Mariamman Temple in the same village where, Plantain and other trees were tied in front of the temple for the celebration of the temple festival. The accused who went there damaged plantain trees. On noticing the same P.W.1, the grand son of the deceased questioned the accused. The accused told him that he would not spare the deceased who had involved him in a theft case. At that time, the deceased came to the temple. On noticing that the accused causing damage to the plantain trees tied in front of temple, he returned to the village and brought few people to the place of occurrence to question the accused. This resulted in a quarrel. Suddenly the accused rushed to his house, took one axe wooden handle, returned to the place occurrence and attacked the deceased with the same. The deceased fell down. The accused ran away from the scene of occurrence with the weapon. Immediately, P.W.1 and others took the deceased to the Government Hospital at Gopichettipalayam. On examining him, the Doctor declared him dead.

4. Thereafter, P.W.1 went to Varapalayam Police Station and made a complaint at 11.00 p.m. on 28.03.2013. P.W.13, the Sub Inspector of Police, registered a case in Crime No.65 of 2013 against the accused under Section 302 of IPC. Ex.P.1 is the complaint and Ex.P.17 is the FIR. He forwarded both the complaint (Ex.P.1) and the FIR (Ex.P.17) to the court which were received by the learned Magistrate at 02.00 a.m. on 29.03.2013. Then, he handed over the case diary to the Inspector of Police for investigation.

5. P.W.14, the Inspector of Police, took up the case for investigation, visited the place of occurrence and prepared an observation mahazar (Ex.P.2) and a rough sketch (Ex.P.18) at the place of occurrence. He recovered the blood stained earth and sample earth from the place of occurrence. He conducted inquest on the body of the deceased and then forwarded the body to the hospital for postmortem.

6. P.W.6, Dr.Ramesh Babu, conducted autopsy on the body of the deceased at 09.50 a.m. on 29.03.2013. He found the following injuries:-

- (1) Lacerated injury with abrasion behind left ear 1.5 x 1/2 cm
- (2) Contusion from the base of head to left ear 10 cm x 7cm bluish discoloration.

(3) Lacerated injury 1 cm left eye brow with contusion around.

(4) Multiple abrasion over anterior part of neck and left shoulder ranging from 1 to 1.5 cm.

(5) Extensive contusion over left side neck to left shoulder - oblique 20 cm x 7 cm with bluish discoloration.

Eyes closed. No discharge from mouth or nose. Tongue inside the mouth. Teeth 8/8 - 8/8

O/D Neck - External contusion of the neck muscle with extravasation blood. Thorax - No fracture of ribs. Heart 270 grams - right 200 ml fluid blood - left empty. Lungs right 280, left 230 grams. congested. Stomach - 220 ml partially digested food with smell of alcohol. Hyoid left cornua fractured. Liver 1200 grams contested. All other visceral organs congested. Head No fracture of skull. Membranes intact.

7. P.W.14, during the course of investigation, arrested the accused on 30.01.2013 at 06.15 a.m. in the presence of the witnesses. While in custody, the accused made a voluntary confession in which he disclosed the place where he had hidden the axe handle. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the same. P.W.14, recovered the same under a mahazar in the presence of the same witnesses. On returning to the police station, he forwarded the accused to the court for judicial remand. He also forwarded the material object to the court. At his request, the material objects were sent for chemical examination. On completing the investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial court framed a lone under Section 302 of IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined, 21 documents and 4 material objects were marked.

9. Out of the said witnesses, P.Ws.1 and 2 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.3, the wife of the deceased, has stated that he heard about the occurrence. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence. P.W.5 Dr.Kalyani, has stated that he examined the deceased at 09.30 p.m. 28.03.2013 at Gopichettipalayam Government Hospital and declared him as dead. P.W.6 has spoken about the postmortem conducted and his final

opinion regarding the cause of death of the deceased. P.W.7, the Village Administrative Officer has spoken about the arrest of the accused, disclosure statement made by him and the consequential recovery of wooden handle of Axe (M.O.1). P.W.8 has spoken about the motive. P.W.9 has stated that at the place of occurrence, there was enough light. P.W.10, Head Clerk of the Court has stated that he forwarded the material objects for chemical examined as directed by the learned Magistrate at the request of the investigating officer. P.W.11 has stated that he handed over the dead body to the doctor for postmortem. P.W.12 has spoken about the fact that he handed over the FIR to the learned Magistrate. P.W.13 has spoken about the registration of the case and P.W.14 has spoken about the investigation done and the filing of final report.

10. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

11. Having considered all the above, the trial court convicted the appellant/accused as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the accused is now before this Court with the present criminal appeal.

12. We have heard the learned counsel appearing for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

13. In this case, as we have already narrated, the prosecution mainly relies on the eye witness account of P.Ws.1 and 2. P.W.1 is the grand son of the deceased and P.W.2 is a local resident of the same village. They have stated that when they were in the temple, they found the accused causing damage to the plantain trees tied in front of the temple in connection with the temple festival. The deceased came there and on noticing the accused causing damage, went back and brought few people to the place of occurrence. When they questioned, it resulted in quarrel. It was only in that quarrel, the accused took up the wooden axe handle and attacked the deceased. Though these two witnesses have been cross examined at length, nothing has been elicited. Their presence at the place of occurrence has been duly explained away by P.Ws.1 and 2. Their evidence has also been duly corroborated by medical evidence. The learned counsel for the appellant would submit that the evidence of P.W.7, Doctor, who conducted autopsy on the body of the deceased does not corroborate the eye witnesses account. We find no force at all in the said argument. According to the learned counsel,

the doctor has opined that the death was due to asphyxia due to throttling whereas according to the prosecution, the deceased was attacked with wooden handle of axe. In this regard, we have to state that absolutely there is no contradiction. Throttling need not be committed manually by hands. It can also be caused by attacking on the posterior aspect of neck with a weapon like M.O.1 also. In the instant case, P.W.7 has categorically stated that hyoid bone would have got fractured on account of inflicting a blow with M.O.1 on the neck and because of the said shock and fracture of the hyoid bone, the deceased died. Thus, the medical opinion clearly corroborates the eye witness account of P.Ws.1 and 2. P.W.8 has stated about the immediate past occurrence in front of the temple where the accused was found causing damage to the plantain trees. This evidence of P.W.8 also duly corroborates the eye witness account of P.Ws.1 and 2. From these evidences, we are of the view that the prosecution has clearly established without any doubt that it was this accused who caused the death of the deceased.

14. Having come to the said conclusion, now the question is, Who were the perpetrators of the crime? It is in evidence that the accused was causing damage to the plantain trees which were tied in front of the temple in connection with the temple festival. The deceased came there with few people and questioned the accused. This resulted in quarrel. It was only in that quarrel, it is alleged that the accused took out a wooden handle of Axe and attacked the deceased. There was no premeditation at all. The occurrence was so sudden in a heat of passion. In our considered view though the act of the accused would squarely fall within the fourth limb of Section 300 of IPC, it would also fall under the fourth exception to Section 300 of IPC and, therefore, he is liable to be punished under Section 304(ii) of IPC. Though the learned Additional Public Prosecutor contended that the act of the accused would fall within the third limb of Section 300 of IPC, we find it difficult to accept the said argument inasmuch as the accused would not have intended to cause the death of the deceased or to cause such bodily injury which is sufficient in the ordinary course of nature to cause the death. But, at the same time, he could be attributed with knowledge that any injury caused with stick on the neck would be imminently danger to the life. Therefore, we hold that the act of the accused would only fall under the fourth limb of Section 300 of IPC and also exception (4) to Section 300 of IPC. Thus, we hold that the accused is liable to be punished only for offence under Section 304(ii) of IPC.

15. Now, turning to the quantum of sentence, at the time of occurrence, the accused was hardly aged about 45 years. He has got family to take care of and he has got no bad antecedents. There are lot of chances for his reformation. Having regard to these mitigating as well as the aggravating circumstances, we

are of the view that sentencing the appellant/accused to rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- would meet the ends of justice.

16. In the result, the criminal appeal is partly allowed. The conviction and sentence imposed on the appellant/accused by judgement dated 09.10.2013 in S.C.No.78 of 2013 by the learned I Additional Sessions Judge, Erode, Erode District, are set aside and instead, he is convicted under Section 304(ii) of IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- in default he shall suffer simple imprisonment for four weeks. It is further directed that the period of detention already undergone by the appellant/accused shall be given set off as required under Section 428 of Cr.P.C.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

kmk

To

- 1.The I Additional Sessions Judge, Erode, Erode District.
 - 2.The Inspector of Police, Varapalayam Police Station, Nambiyur, Erode.
 - 3.The Judicial Magistrate-2, Gobichettipalayam
 - 4.Thro 'The Chief Judicial Magistrate, Erode.
 - 5.The Superintendent of Police, Erode District.
 - 6.The Superintendent, Central Prison, Coimbatore
 - 7.The Director General of Police, Mylapore, Chennai-4.
 - 8.The District Collector, Erode District.
 - 9.The Public Prosecutor, High Court, Chennai.
 - 10.The Section Officer, Criminal Section, High Court, Madras.
- +1cc to M/s.P.Palaninathan, Advocate sr.8084
+1cc to M/s.T.Muruganantham, Advocate sr.8526

CrI.A.No.774 of 2016

gm1 (co)
ss(11/5/2017)