

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.847 of 2016

Ravi

.. Appellant

- Vs -

State rep by Station House Officer,
Pennadam Police Station,
Cuddalore District.
(Cr.No.5 of 2014)

.. 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 Virudachalam in S.C.No.155 of 2014 dated 31.03.2015.

For Appellant : Mr.S.N.Arun Kumar

For Respondent : Mr.P.Govindarajan
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.155 of 2014 on the file of the learned III Additional District and Sessions Judge, Cuddalore at Virudachalam. He stood charged for offences under Sections 294(B), 341 and 302 I.P.C. By judgment dated 31.03.2015, the trial Court convicted the accused under all the three charges and sentenced him to undergo simple imprisonment for one month for the offence under Section 294(B) I.P.C. and to undergo simple imprisonment for one month for offence under Section 341 I.P.C. and to undergo imprisonment for life and pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for two years for offence under Section 302 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.Elangovan. He was a resident of Eraiyur village, Tittakudi taluk at Villupuram district. The accused is his elder brother. He was also a resident in the same village. They were residing in their ancestral house separated by a wall. There were frequent quarrels between the accused and the deceased in respect of sharing of the ancestral property. Because of the said quarrel, there was enmity between them. When the daughter of the deceased attained puberty, there was a function at the house of the deceased. But the deceased did not invite the accused for the same. This incident is stated to be the motive for the occurrence.

2.2. It is alleged that on 11.01.2014, around 05.30 p.m. the deceased came out of his house. The accused had engaged a carpenter to do some work. The carpenter was doing work just in front of the house. The deceased found that the work of the carpenter was a disturbance to him. The deceased therefore took exception for the same. This resulted in a quarrel between the accused and the deceased. P.W.1 the wife of the deceased took the deceased aside. At that time, it is stated that the accused came there with an axe and cut the deceased. P.W.1 and others raised alarm. The accused fled away from the scene of occurrence.

2.3. P.Ws.1 and 2 took the deceased to the Government hospital at Cuddalore. They were advised by the doctor to shift the deceased to Virdhachalam Government hospital and from Virdhachalam Government hospital they took him to JIPMER hospital at Puducherry.

2.4. On receipt of the intimation from the hospital that the deceased was in Vridhachalam hospital, the then Sub Inspector of Police went to the hospital, recorded the statements of P.W.1 and on returning to the police station registered a case in Crime No.5 of 2014 at 10.00 p.m. on 11.01.2014 under Sections 341, 294(b) and 307 I.P.C. against the accused. Ex.P1 is the complaint and Ex.P7 is the F.I.R. He forwarded both the documents to Court, which was received by the learned Magistrate at 08.00 p.m. on 12.01.2014.

2.5. P.W.18, took up the case for investigation. At 00.30 hours on 12.01.2014, he prepared an observation mahazar and a rough sketch at the place of occurrence. He recovered the bloodstained earth and sample earth from the place of occurrence. He examined P.W.1 and few more witnesses and recorded their statements. On 12.01.2014 at 03.10 hours the deceased died in the hospital and therefore he altered the case into one under Section 302 I.P.C. He conducted inquest on the body of the deceased and forwarded the same for

postmortem.

2.6. P.W.15 Dr.Senthil Kumaran conducted autopsy on the body of the deceased on 12.01.2014 at 10.55 a.m. He found the following injuries:

"Injuries: (1) A Chop wound of size 13 cm x 5 cm x bone deep, was found over outer aspect of right arm and forearm; starting 23 cm below the right shoulder prominence and extending upto 6 cm below the elbow joint. The margins and edges were regular, reddish coloured. There was underlying open fracture of upper one-third of right radius. (2) A sutured wound of size 8 cm x 0.2 cm bearing 6 black suture materials found on anterior aspect of middle one-third of right thigh, transversely placed 29 cm above right knee prominence and on opening the sutures a chop wound of size 8 cm x 3 cm x muscle deep (2cm). The margins and edges were regular, reddish coloured. (3) A chop wound of size 7 cm x 3 cm x bone deep, with underlying fracture upper one-third of left femur. It was transversely placed seen 4 cm below left anterior superior iliac spine. The margins and edges were regular, reddish colored. (4) A chop wound of size 3 cm x 5 cm x peritoneal cavity deep, vertically placed seen on left flank, 6 cm above the left anterior superior iliac spine and 10 cm lateral to mid line. It was directed medially and backward, the margins and edges were regular, reddish coloured.

Internal Examination: Head - brain and meninges intact, c/s congested. Thorax - intact. Abdomen : chop wound of size 8 cm x 0.3 cm through the full thickness of mesentery on left side. The margins and edges were regular and reddish coloured. Abdominal cavity - around 1.5 liter of blood tinged fluid mixed with blood clots. Contained around 100 gms of yellowish coloured fluid with partially digested food particles without any smell odour, mucosa - pale. Intestine - inflated with gases. Liver, Pancreas and spleen - intact c/s pale. Kidneys: right kidney - intact and pale. Left kidney - chop wound of size (4cm x 1.5 cm) divided into two halves transversely involving lower part of the kidney. The margins and edges were regular, reddish coloured. Bladder - intact c/s pale."

Ex.10 is the postmortem certificate. He opined that the injuries could have been caused by a weapon like M.O.1-axe. He further opined that the death of the deceased was due to shock and hemorrhage due to the multiple injuries.

2.7. During the course of investigation, P.W.18 recovered the bloodstained clothes from the body of the deceased. On 12.01.2014 at 02.30 p.m. near Pennadam Irayur railway station he arrested the accused in the presence of witnesses. On such arrest, he made a voluntary statement, in which he disclosed the place where he had hidden an axe. In pursuance of the same he took the police and the witnesses to the place of hideout and produced M.O.1 axe. P.W.18 recovered the same under a mahazar.

2.8. On returning to the police station, he forwarded the accused to Court and also handed over the material object to the Court. At his request, material objects were sent for chemical examination, which revealed that there were human bloodstains on all the material objects including the axe. On completing the investigation, he laid chargesheet against the accused.

2.9. Based on the above materials, 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 18 witnesses were examined, 17 documents and 2 material objects were marked.

2.10. Out of the said witnesses, P.W.1 is the wife of the deceased., P.W.2 is a neighbour of the deceased and P.W.3 is yet another neighbour of the deceased have spoken about the occurrence as eyewitnesses. P.W.4 has stated that he took the dead body to the hospital for treatment. P.W.5 is a friend of the deceased and he has stated that the deceased was taken in ambulance to the hospital for treatment from the place of occurrence. P.W.6 has spoken only on hearsay information. P.W.7 has turned hostile and she has not supported the case of the prosecution in any manner.

2.11. P.W.8 has spoken about the preparation of the observation mahazar and rough sketch at the place of occurrence. P.W.9 has spoken about the arrest of the accused, the confession made and the consequential recovery of M.O.1-axe from the place of hideout. P.W.10 is a constable who has stated that he handed over the dead body of the deceased to the doctor for postmortem. P.W.11 has spoken about the registration of the case on the complaint of P.W.1. P.W.12 is a constable has stated that he handed over the F.I.R. to the learned Magistrate.

2.12. P.W.13 Dr.Indumati has stated that when she was working in the Government Hospital at Cuddalore, around 10.25

p.m. on 11.01.2014, the deceased was brought for treatment. She gave first aid to the deceased and since his condition was very bad, she wanted him to be shifted to JIPMER hospital at Puducherry and accordingly he was shifted. P.W.14 Dr.Archana has stated that the deceased was brought to JIPMER hospital at 01.25 a.m. on 12.01.2014, she found him dead and accordingly she declared. P.W.15 the doctor has spoken about the autopsy conducted on the body of the deceased.

2.13. P.W.16 is an expert in forensic science and he has stated that he examined the material objects and opined that there were human bloodstain on all the material objects including M.O.1-axe. P.W.17 has spoken about the treatment given to the deceased at Vridhachalam Government hospital on 11.01.2014 at 07.45 p.m. according to him, the deceased was unconscious. P.W.18 has spoken about the investigation done and the final report filed.

3. 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 anyone nor mark any documents. 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. In this case, as we have already pointed out, the prosecution relies on the eyewitness account of P.Ws.1 to 3. They have stated that it was this accused who attacked the deceased with M.O.1-axe. But P.W.2 has stated that the deceased was also armed with an iron rod. He has further stated that there was a fight between the deceased and the accused for quite sometime. The accused then took out M.O.1 and attacked the deceased. He has further stated that the accused also sustained injury in the same occurrence. P.W.2 has precisely stated that the injury on the accused was caused only by the deceased. From these facts, it is crystal clear that because the deceased questioned the accused as to why he had allowed the carpenter to work in just front of the house, there was a quarrel and in that quarrel, the deceased had taken an iron rod in his hand and attempted to attack the accused. The accused in turn has taken the axe which was lying there, probably used by the carpenter and attacked the deceased. We find that the accused had exercised his right of private defence. Though it is true that the accused has not pleaded explicitly the exercise of right of private defence, this Court could gather from the evidence available on record that the accused had exercised his right of private defence. This course is permissible in law. Though it is true that the death of the deceased was caused by the accused, it is crystal

clear that there was no pre-meditation on the part of the accused.

6. From the evidences of P.Ws.1 to 3, it is crystal clear that there was a sudden quarrel and in that quarrel, it was only the deceased who took the iron rod first and attempted to attack the deceased. Since there was danger to his life, the accused had taken an axe lying there and attacked the deceased. Thus, in our considered view, though the act of the accused would squarely fall within the third limb of Section 300 I.P.C., it would fall within the second exception to Section 300 I.P.C. In our considered view, though the accused had exercised his right of private defence, going by the number of injuries caused by him, we hold that he had exceeded his right of private defence. Therefore, the act of the accused cannot be stated to be no offence but it is an offence punishable under Section 304(i) I.P.C.

7. Since there is no evidence that the accused wrongly restrained the deceased and also abused him and since we have come to the conclusion that there was a quarrel between both the accused and the deceased, we hold that the conviction of the accused under Sections 341 and 294(b) I.P.C. are not sustainable and therefore he is entitled for acquittal.

8. Now turning to the quantum of punishment, as we have already pointed out, there was no premeditation. The occurrence was due to a sudden quarrel. The accused was hardly aged about 43 years at the time of occurrence. He has got a big family to look after. He is a poor man. He has got no bad antecedents. There are lots of chances for reformation. 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 seven years and pay a fine of Rs.1,000/- for the 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 III Additional District and Sessions Judge, Cuddalore at Virudachalam in S.C.No.155 of 2014 dated 31.03.2015 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) the conviction and sentence imposed for the offence under Sections 294

(B) and 341 IPC are set aside and he is acquitted from the said charges.

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

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The III Additional District and Sessions Judge,
Cuddalore at Virudachalam.
- 2.The District Munsif cum Judicial Magistrate,
Tittagudi.
3. The Station House Officer,
Pennadam Police Station,
Cuddalore District.
- 4.The Collector, Cuddalore District
- 5.The Director General of Police,
Mylapore
6. The Public Prosecutor,
Madras High Court.
- 7.The Superintendent,Central Prison,Cuddalore.
- 8.The Section officer,Criminal Section,
High Court, Madras-104.

mp(co)
ss(23/5/2017)

CrI.A.No.847 of 2016