



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2017

CORAM:

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THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.A. (MD) .No.238 of 2017

G.Selvam

.. Appellant/Accused

Vs.

The state,
Rep by the Inspector of Police,
Velayudampillai Police Station,
Karur.
(Crime No.364 of 2013)

.. Respondent/Complainant

PRAYER: Appeal filed under Section 374 of Cr.P.C. to set aside the conviction and sentence imposed by Mahalir Fast Track Court, Karur, in S.C.No.72 of 2015, dated 16.12.2015, by allowing this criminal appeal.

For Appellant : Mr.A.Haja Mohideen
For Respondent : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH ,J.)**

The appellant is the sole accused in S.C.No.72 of 2015, dated 16.12.2015 on the file of Mahilar Fast Track Court, Karur and he faced the trial on the allegation that on 29.08.2015 at about 9.00 p.m. the deceased Gunasekaran asked the accused not to come to his house. Enraged over the same, the accused brutally attacked the deceased using a wooden plank with an intention to murder him and thereby caused his death and thereafter he ran away from the scene of occurrence after threatening PW1 and PW3, who tried to catch the accused. Thus, he committed the offence punishable under Sections 294(b), 302 and 506(ii) IPC. The learned Trial Judge on completion of the trial by judgment dated 16.12.2015, found the accused guilty and sentenced as under:

Conviction	Sentence
Section 302 IPC	Life imprisonment + fine Rs.1,000/- in default 1 month S.I.



Challenging the said conviction and sentence, the appellant is before this Court with this criminal appeal.

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

a) The deceased Gunasekaran is the father of PW1. The deceased developed an intimacy with PW2, 20 years back. Thereafter, he got separated from his family and was living with PW2. The deceased and PW2 were residing at Alampalayam for about 2 to 3 years prior to the date of occurrence. Since the accused was living alone, he was staying along with PW2 in the same house.

b) While so residing, there was some misunderstanding between the accused and the deceased with regard to the relationship with PW2. The deceased called his son PW1 to his house and PW1 came along with PW3, who is son-in-law of the deceased. While PW1, PW3 and Gunasekaran were conversing among themselves, the accused came there.

c) The accused asked the deceased why he was quarrelling with PW2. The deceased shouted at him by saying that he should not get involved in his family matters and asked him not to enter his house. Enraged over the same, the accused shouted back at the deceased by using filthy language and took up the wooden plank, which was used as a slide to move the two wheeler inside the house and attacked the deceased on the right side of head. PW1 and PW3 made an attempt to catch the accused, but the accused threatened them by saying that, if they tried to come close to him, he would attack them with wooden plank and by saying so he fled away from the scene of occurrence with the wooden plank.

d) Immediately PW1 called the ambulance and took the deceased to Karur Government Hospital, where first aid was given to him. Thereafter, the deceased was taken to Karur Amarapathi private Hospital. Intimation was given by Karur Amarapathi Hospital and the same was received by PW16/Special Sub Inspector of Police.

e) PW16 came to Karur Amarapathi Hospital and since the victim was not in a position to speak, he recorded the statement of PW1, who was present there and thereafter, came to the police station and registered a First Information Report on 30.08.2015 at 5.30 a.m. for the offences punishable under Sections 506(ii), 294(b) and 307 IPC in Crime No.364 of 2015. Ex.P11 is the printed First Information Report.

f) PW17/Investigation Officer has received an intimation from the Out Post Police Station, Madurai Rajaji Government Hospital, that the deceased died. PW17 thereafter altered the FIR from one under Sections 294(b), 506(ii) and 302 IPC at 12.30 p.m. on 30.08.2015 and forwarded the altered First Information Report to the District Magistrate Court. Thereafter, on 01.09.2015 conducted inquest on the dead body of the deceased in the presence of Panchayatdars and prepared the inquest report/Ex.P14.



g) Further, PW17 proceeded to the scene of occurrence and prepared observation mahazar/Ex.P2 and rough sketch/Ex.P12 respectively in the presence of PW6 and one Periyasami and recorded the statement of PW1 to PW3. On the same day PW17 arrested the accused in the presence of witnesses PW7 and one Subramani. The accused made a voluntary confession statement and the admissible portion thereof was marked as Ex.P3 and subsequent to such statement, wooden plank (MO1) came to be recovered under the mahazar/Ex.P4 in the presence of PW7 and one Subramani. Thereafter the accused was produced before the Magistrate for judicial custody. PW17 also recorded the statement of some witnesses residing near the place of occurrence on 01.09.2015 at about 10.15 a.m. Thereafter he sent the dead body to mortuary with a request/Ex.P9 to the medical officer to conduct postmortem on the body of the deceased through PW15 to the Government Rajaji Hospital, Madurai.

h) Postmortem Doctor, PW14, on receipt of the information from the Investigation Officer, conducted autopsy over the dead body of the deceased on 02.09.2015 at 10.35 a.m. and issued postmortem certificate Ex.P10, wherein the following injuries are found:-

"The following ante mortem injuries are noted on the body:

1."C" shaped craniotomy wound 33 cm x 1 cm x brain deep noted on right fronto parieto temporo occipital region.

On dissection of Scalp, skull & dura:

Subscalpal contusion 10 cm x 8 cm noted on left parieto temporal region, 15cm x 12 cm noted on right parieto temporo occipital region. Bone pieces 10 cm x 8 cm surgically removed by putting 5 burr hole. Each measuring 1.05 cm diameter noted on right fronto parieto temporal region. Diffuse Subdural haemorrhage & Subarachnoid haemorrhage noted on right side hemispheres. Laceration 8 cm x 6 cm x 1 cm noted on right temporo parietal region."

The postmortem doctor opined that the deceased appeared to have died of head injuries.

3. PW17 further re-examined the witnesses PW2 and PW3, who were residing near the place of occurrence and recorded their statement on 02.09.2015. After recovery of material object/MO1, PW17 sent the material object under Form 91 on 02.09.2015 to the concerned Judicial Magistrate Court. PW17, recorded the statement of Dr.Nagaraj, who has treated the deceased. Thereafter proceeded to Private Amaravathi Hospital, Karur and recorded the statement of Dr.Velusamy, who had treated the deceased in the said hospital.

The Investigating Officer examined the witnesses and concluded the investigation and laid a final report against the accused for the offence punishable under Sections 294(b), 302 and 506(ii) IPC.



4. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. the accused pleaded innocence. During trial, on the side of prosecution as many as 17 witnesses were examined and 14 documents were marked as Exhibits P1 to P14 besides exhibiting 1 material object. On the side of the defence neither any witness was examined nor any document was marked.

5. Having considered the above materials, the trial Court found the accused guilty as detailed in the first paragraph of this judgment and accordingly, punished him and that is how the appellant is before this Court with the appeal.

6. Heard the learned Counsel for the appellant and the learned Additional Public Prosecutor for the State and also carefully perused the records.

7. The learned counsel for the appellant contended that the evidence of prosecution witnesses are contrary to each other. In this regard the learned counsel for the appellant submitted that PW1 in his evidence has stated that the deceased was attacked by the accused with the wooden plank on the right side of his head, whereas PW2 has stated in his evidence that the accused attacked the deceased on the left side of the head. In this regard, PW3 has stated that the accused attacked the deceased on the head. Further, PW4 who is the neighbour, has stated in his evidence that on the date of occurrence when he was inside his house, on hearing the noise of PW2/Bakkiam one Arukkani raised alarm, he and others came out of the place and went to the place of occurrence. If really PW1 and PW3 were present, they would have also raised alarm. Therefore, the contradictory statement made by PW1, PW2 and PW3 with regard to the attack made by the accused on the head of the deceased as well as the fact that except PW2 no other eyewitnesses raised alarm would show that the eyewitnesses PW1 and PW3 might not have been present at the place of occurrence.

8. Further the learned counsel for the appellant submitted that the prosecution has failed to establish that the accused has mens rea in committing the offence. There is no specific evidence for the motive projected by the prosecution. Even as per the prosecution, the appellant gave a single blow. There is no intention to murder the deceased. The arrest of the accused has also not been proved. Furthermore, PW2 though in her chief examination has stated that she has accompanied the deceased to the Government Hospital at Karur, in the cross-examination she has stated that she did not accompany the deceased in the ambulance, which would go to show that her evidence cannot be relied upon. In such circumstances, the conviction and sentence imposed by the trial Court under Section 302 IPC is not sustainable in the eye of law. Finally, the learned counsel would submit that assuming that the accused had attacked the deceased once, even then the offence



committed by the accused would fall within the ambit of Section 304(2) IPC.

9. Per contra, the learned Additional Public Prosecutor submitted that PW1 to PW3 had clearly narrated the motive for the occurrence and the occurrence took place in front of the house of the deceased. Furthermore, there is no infirmity in the judgment of the the Trial Court. Hence, the conviction and sentence passed by the Sessions Court has to be sustained.

10. It is the case of the prosecution that PW2 after she got separated from the family, was living with the deceased for the past 23 years. While so, the accused who was living alone was also staying along with the deceased and PW2 and there was some misunderstanding between the accused and the deceased with regard to the relationship with PW2. PW1, the son of the deceased had also clearly stated in his evidence that there was a misunderstanding between the accused and the deceased with regard to the relationship with PW2. The evidence of PW2 also confirmed the same.

11. Hence on the date of occurrence, on the call made by the deceased to discuss about the problem between himself and the accused, PW1 and the son-in-law of the deceased came to Alampalayam and when they were conversing among themselves, the accused came there and on seeing PW1, PW3 and the deceased, he shouted at the accused and told him not to come to his house by stating that all the problem in his house is only because of the accused. Enraged over the same, the accused took up the wooden plank from the place of occurrence, which was kept there and attacked the deceased. The evidence of PW2 is that the accused had given a single blow on the left side of the head of the deceased, whereas according to PW1 the accused attacked the deceased on the right side of the head. But, it is the evidence of PW3 that the accused attacked on the head of the deceased. Hence, it is the submissions of the learned counsel for the appellant that there was a contradiction in the evidence of PW1 to PW3 with regard to the attack by the accused on the deceased. Hence, their presence in the place of occurrence is highly doubtful. But, we do not find any contradiction in the evidence of PW1 to PW3 about the attack made by the accused on the head of the deceased. Some minor contradictions found in the evidence of witnesses, about the side of the head has no consequence at all and it assumes insignificance. We do not find any significance in the minor contradictions to doubt the entire case of the prosecution.

12. Yet another aspect is that the learned counsel for the appellant submitted that if really PW1 and PW3 were present at the occurrence, they could have raised alarm on seeing the occurrence. On the contrary, PW4 has stated in his evidence he came out of his house after hearing the alarm of PW2/Bakkiam and



one Arukkani. A perusal of the evidence of PW1 and PW3 would go to show that they categorically stated that the accused took up the wooden plank and hit the deceased. Moreover the occurrence took place in front of the house of the deceased. We do not find any material to doubt the presence of PW1 and PW3 in the place of occurrence. Though PW2 has stated in the cross examination that she did not accompany the deceased to the hospital, in the chief examination she categorically stated that she went along with the deceased to the hospital. Minor contradiction in the evidence of eyewitnesses regarding the side of the head where the accused attacked the deceased, as well as non hearing of the alarm of PW1 to PW3 by the PW4 would not brush aside the entire case of the prosecution. Looking it from any angle, the presence of PW1 and PW3 cannot be doubted. Moreover, from the postmortem certificate/Ex.P9 we could see that the accused had delivered only a single blow on head of the deceased. Moreover, the accused had picked up the wooden plank only from the place of occurrence. In such circumstances, and in the above background of facts, it is evident that there was no motive for the accused to kill the deceased, but without predetermination of mind, at the spur of moment, the occurrence took place.

13. Now, turning to the last argument of the learned counsel that even assuming that it was this accused who caused the death of the deceased, according to him, the offence would fall under Section 304(2) IPC. We find some force in the argument of the learned counsel for the appellant. We are able to cull out from the narration of facts and from the evidence of PW1 to PW3, that the occurrence was not a premeditated occurrence and the occurrence took place at the height of quarrel between the accused and the deceased. Therefore the act of the accused is only a culpable homicide not amounting to murder, would fall under Exception 4 to Section 300 IPC and is thereby liable to be punished under Section 304(2) IPC. In our considered opinion besides the other facts and circumstances of the case, it would be appropriate, just fair and reasonable to impose the sentence of rigorous imprisonment for a period of five years together with a fine of Rs.1,000/-, in default to undergo 1 month Rigorous Imprisonment.

14. In the result, the appeal is partly allowed, the conviction and sentence imposed on the appellant in S.C.No..72 of 2015 by the learned Mahalir Fast Track Judge, Karur, is set aside and instead the the appellant is convicted under Section 304 (2) IPC and sentenced to undergo rigorous imprisonment for five years and a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for one month. The period of sentence already undergone shall be given set off. The trial Court shall take steps



to secure the accused in order to undergo the remaining period of sentence, if any. The bail bond executed shall stand cancelled. Fine amount if any paid is ordered to be adjusted towards the offence now convicted.

WEB COPY

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar.

To

- 1 The Mahilar Fast Track Court, Karur.
2. THE JUDICIAL MAGISTRATE, KARUR.
3. THE CHIEF JUDICIAL MAGISTRATE, KARUR.
4. THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.
5. THE DISTRICT COLLECTOR, TRICHY.
6. THE DIRECTOR GENERAL OF POLICE, CHENNAI-4
- 7.THE INSPECTOR OF POLICE,VELAYUDAMPILLAI POLICE STATION, KARUR.
- 8.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC to Mr.A.Haja Mohideen, Advocate, SR.No. 82232

Judgement made in
CRL.A.(MD).No.238 of 2017
Dated: 07.10.2017

jikr

AM/SV MMS/SAR 3/25.10.2017/7P/10C