



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 27.10.2017

CORAM:

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

Crl.A.[MD].No.334 of 2017

V.Pandian .. Appellant/Sole accused

Vs.

State rep. by the
Inspector of Police,
Oddanchatram Police Station,
Dindigul District.
(Crime No.103 of 2010)

..Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the judgment, dated 08.02.2012, made in S.C.No.42 of 2011, by the learned Principal District and Sessions Judge, Dindigul.

For appellant : Mrs.M.Krishnaveni

For respondent : Mr.C.Ramesh,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J.]

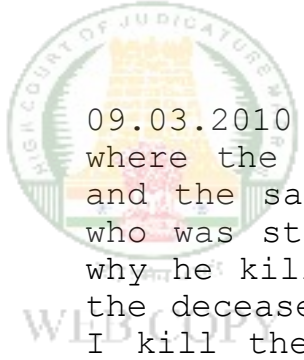
This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 08.02.2012, made in S.C.No.42 of 2011 by the learned Principal District and Sessions Judge, Dindigul.

2.The appellant stood convicted and sentenced to undergo imprisonment as detailed hereunder:

Conviction U/s.	Sentence	Fine amount
302 IPC	To undergo imprisonment for life.	To pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for one year.

3.The case of the prosecution is consciously narrated below:

(a) The deceased Shyamala is the first wife of one Raja. PW1
<https://hcservices.hccourts.gov.in/hcservices/> life of the said Raja. The deceased, PW1 and their
husband - Raja were residing under one and the same roof at
Oddanchatram. The accused was also residing at Oddanchatram. On



09.03.2010 at 5.45 p.m., the accused, who was moving in the street where the deceased was residing, attacked a dog with a wooden log and the said dog died on the spot. On seeing this, the deceased, who was standing in front of her house, asked the accused as to why he killed the dog. Annoyed by the same, the accused attacked the deceased on her head forcibly with wooden log by saying that if I kill the dog, how does it bother you?. On receiving the said attack, the deceased fell down and died instantaneously. PW1, who was returning to her home after purchasing groceries, saw the occurrence. PW3, PW5 and PW6, who were there, also witnessed the occurrence. On seeing them, the accused fled away from the scene of occurrence with wooden log. Immediately after the occurrence at 6.30 p.m. PW1 lodged a complaint which was attested by PW2.

(b) PW9 - the Sub Inspector of Police received the complaint lodged by PW1 and registered a case in Crime No.103 of 2010 under Section 302 IPC and forwarded the Ex.P1 - Complaint and FIR - Ex.P8 to the Court and to the Inspector of Police - PW10.

(c) PW10 - the Inspector of Police took up the investigation on 09.03.2010 at 7.30 p.m., proceeded to the place of occurrence, prepared an observation mahazar (Ex.P2) and rough sketch (Ex.P9) in the presence of PW4 and one Duraiyan. Thereafter, in the presence of panchayatars, PW10 conducted inquest on the body of the deceased. Ex.P10 is the inquest report. Then, PW10 recorded the statement of PW1, PW5 and PW6 and recovered bloodstained earth and sample earth from the place of occurrence under mahazar in the presence of PW4 and the said Duraiyan. Thereafter, he forwarded the body to the hospital for postmortem.

(d) PW7 - Dr.Muthuchamy had conducted postmortem on the dead body of the deceased on 09.03.2010 at 11.15 p.m. He found the following injuries on the dead body of the deceased:

"External:

Skull bone crushed, brain matter lacking through the wound. There is no other external injuries notices.

Internal :

- 1) Hyoid bone intact.
- 2) Thoracic on opening of the thoracic no bony injury present. Lungs congested.
- 3) Heart Pale.
- 4) Abdomen : Stomach empty, other organs are normal.
- 5) Pelvis and spinal cord intact:
- 6) Scalp and skull on opening of scalp skull bone multiple fracture present. Left ear to right ear con sized fracture. Brain matter Oozing through the wound 50 ml of blood clotted in cranial cavity."



Ex.P5 is the postmortem certificate. He opined that the deceased would appear to have died of injury sustained (NC) organ, brain hemorrhage and shock.

(e) On 10.03.2010, PW10 arrested the accused at Arasappapillai Patti Bus-stop in the presence of PW8 and one Pandian. On such arrest, the accused gave a voluntary confession in the presence of PW8 and the said Pandian, in which he disclosed the place where he had hidden the wooden log. The admissible portion in the confession statement is marked as Ex.P6. In pursuance of the said disclosure statement, he took the Police and witnesses to the place of hide out and produced the wooden log (MO.1). PW10 recovered the same under a mahazar. On returning to the Police Station, he forwarded the accused to the Court for judicial remand and handed over the material objects under Form 95 to the Court.

(f) Due to transfer, PW10 handed over the investigation to PW11. PW11, during the course of investigation, collected the medical records and examined medical witnesses and few more witnesses, and recorded their statements. After completion of investigation, he laid charge sheet against the accused under Section 302 IPC.

4. Based on the above materials, the trial Court had framed the charge under Section 302 IPC, against the accused. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the the prosecution, as many as 11 witnesses were examined as PW1 to PW11 and Exs.P1 to P10 were marked, besides eight Material Objects (MOs.1 to 8).

5. When the accused was questioned under Section 313 of Cr.P.C. with reference to the incriminating materials adduced by the prosecution, the accused denied his complicity in the crime and pleaded innocence. However, on the side of the accused, no one was examined and no document was marked.

6. The trial Court, after considering the oral and documentary evidence, has found the accused guilty of the charge under Section 302 IPC and accordingly, convicted and sentenced the accused, as stated supra. Challenging the said conviction and sentence, the appellant/accused has come up with this appeal.

7. The learned counsel for the appellant / accused mainly contended that there are lot of contradictions in the evidences of the prosecution witnesses and those contradictions are affecting the root of the case. In this regard, the learned counsel for the appellant took this Court through the evidences and documents and submitted as follows:

(a) PW1 has admitted in the cross examination that after the occurrence, the accused was caught hold by the village people and MO.1 was also handed over by them to the Police and therefore, the



arrest and recovery of the accused cannot be believed and that the arrest and recovery were created only for the purpose of falsely implicating the accused in this case.

(b) The root cause for the occurrence is the death of the dog. But, the dead dog was not recovered by the Police. In the rough sketch also, there is no mentioning about the place of death of the dog. The Police has also failed to conduct postmortem on the dead dog. Thus, the motive alleged by the prosecution has not been proved.

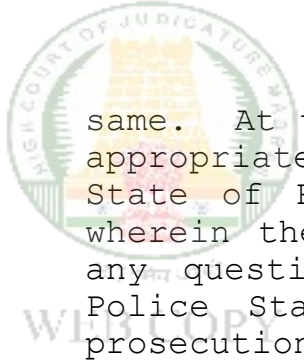
(c) Though the eyewitnesses PW5 and PW6 have categorically stated in their evidences that it was this accused, who attacked the deceased with wooden log, in the cross examination they admitted that they only heard about the occurrence and therefore, their evidences cannot be believed. Thus, the learned counsel for the appellant/accused prayed to set aside the conviction and sentence passed by the trial Court and to acquit the accused.

8. As the alternative submission, the learned counsel for the appellant submitted that there is no mens rea for the accused to commit the murder of the deceased and that the accused did not bring any wooden log either for attacking the dog or the deceased, and the occurrence had happened due to sudden provocation and thus, the act of the accused would fall only under Section 304 (i) IPC and not under Section 302 IPC. Considering the above, the sentence may be reduced.

9. Per contra, the learned Additional Public Prosecutor submitted that the occurrence happened in front of the house of the deceased and the prosecution has clearly proved the case by examining the eyewitnesses - PW1, PW3, PW5 and PW6. All the eyewitnesses have clearly deposed against the accused. The minor contradictions would not affect the root of the case. Under such circumstances, no infirmity can be found on the conviction and sentence passed by the trial Court. Thus, he prayed for dismissal of the appeal.

10. We have given our anxious considerations to the rival submissions made on either side and perused the materials available on record.

11. The first and second contentions of the learned counsel for the appellant is that the arrest and recovery are not believable, in view of categorical admission of PW1 in the cross examination that the accused was caught hold by the villagers immediately after the occurrence and they produced the wooden log used by the accused to the Police, but the dead dog was not recovered and no postmortem conducted on the same. But, the defence had failed to put any question, in that regard, to the investigating officer. Thus, there was no obligation on the part of the prosecution to explain the



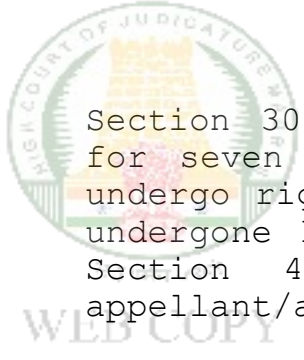
same. At this juncture, this Court is of the view that it would be appropriate to refer to the decision of the Hon'ble Supreme Court in State of Rajasthan Vs. Daud Khan reported in (2016) 2 SCC 607, wherein the Hon'ble Supreme Court has held that in the absence of any question having been asked to the officer-in-charge of the Police Station, no adverse inference can be drawn against the prosecution in that regard. The above dictum laid down by the Hon'ble Supreme Court is squarely applicable to this case. Based on the same, the first and second contentions raised by the learned counsel for the appellant are rejected.

12. As rightly contended by the learned counsel for the appellant, though in the chief examination PW5 and PW6 have clearly deposed against the accused, in the cross examination, they have stated that they only heard about the occurrence. Even eschewing the evidences of PW5 and PW6, in this case, the eyewitnesses PW1 and PW3 have clearly deposed against the accused. By the evidences of eyewitnesses PW1 and PW3 and other evidences, the prosecution has clearly proved that it was this accused who attacked the deceased with wooden log on her head and caused the death of the deceased.

13. Having come to the said conclusion that it was this accused who caused the death of the deceased, now we have to examine as to what was the offence that was committed by the accused by the said act. The meeting of the accused and the deceased in the street was only by chance. Even according to the prosecution, the accused had no premeditation to do away with the deceased. According to the prosecution, the accused did not bring any wooden log with him. In order to kill a dog, he took a wooden log in the nearby place and killed the dog. Since the deceased questioned the act of the accused, the accused attacked the deceased with wooden log on her head. It was a single attack. From the narration of the facts, it is crystal clear that since the accused attacked a dog, there had arisen a quarrel. In the said quarrel, provoked by the words and deeds of the deceased and having lost his mental balance, the accused had caused a single attack on the head of the deceased. Thus, the act of the accused would clearly fall within the third limb of Section 300 IPC. The same would also fall under the first exception to Section 300 IPC. Therefore, the accused is liable to be punished only under Section 304(i) IPC.

14. Now, turning to the quantum of punishment, the accused is aged about 45 years. He has no bad antecedent. After the occurrence also, the accused has not shown any bad conduct. Having regard to these mitigating and aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- would meet the ends of justice.

15. In the result, this Criminal Appeal is partly allowed; the conviction and sentenced imposed on the appellant/accused under Section 302 IPC is set aside and instead, he is convicted under



Section 304(i) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. The sentences already undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C. Fine amount, if any, paid by the appellant/accused shall be adjusted.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Principal District and Sessions Judge,
Dindigul.

2. The Judicial Magistrate, Oddanchatram.

3.The Inspector of Police,
Oddanchatram Police Station,
Dindigul District.

4. The Superintendent, Central Prison,
Madurai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mrs.M.Krishnaveni, Advocate, SR.No. 84319

Judgment made in
Crl.A.[MD].No.334 of 2017
Dated: 27.10.2017

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AM/SV MMS/SAR 1/08.02.2018/6P/8C