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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2017

CORAM:

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

CRL.A[MD].No.177 of 2016

M.Venkat @ Venkatesh : Appellant/Accused No.1

Vs.

The State of Tamil Nadu,
Represented by the Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam District,
[Crime No.427 of 2012]. : Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 16.04.2015 made in S.C.No.47 of 2013, on the file of the First Additional District and Sessions Judge, [PCR], Thanjavur.

For Appellant : Mr.G.Anbu Saravanan

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

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

The appellant is the first accused in S.C.No.47 of 2013, on the file of the First Additional District and Sessions Judge, [PCR], Thanjavur. There was yet another accused, by name, Muthu @ Muthukumaran. The Trial Court framed as many as three charges against the accused, as detailed below.

Charge	Accused	Penal Provisions
1	2	342 IPC
2	1	302 IPC
3	1	3(2)(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

<https://hcservices.courts.gov.in/josephcase>
By the Trial Court dated 16.04.2015, the Trial Court has convicted the accused and sentenced them, as detailed below:-



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Accused	Section of Law	Sentence of imprisonment	Fine amount
1	302 IPC	To undergo imprisonment for life.	Rs.2,000/- in default to undergo rigorous imprisonment for six months.
2	342 IPC	To undergo rigorous imprisonment for six months.	Rs.500/- in default to undergo six imprisonment for one month.

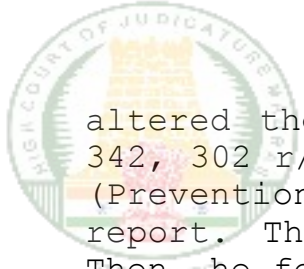
Challenging the said conviction and sentence, the appellant/the first accused has come up with this Criminal Appeal.

3. The case of the prosecution, as put forth by its witnesses, is consciously narrated below:-

The deceased, in this case, is one Mr.Dhakshinamoorthy. PW-1 is the mother of the deceased. The accused are the brother-in-laws of PW-3. On 25.11.2012, at about 08.00 PM, when the deceased was proceeding to Theemithidal situated near Nagapattinam Throupathy Amman Temple, the accused were quarreling with PW-3. The deceased intervened and pacified them. PW-1, who is the mother of the deceased, also came there and intervened. Enraged over the same, the second accused caught hold of the deceased and the first accused stabbed the deceased on his right side rib. The deceased fell down in a pool of blood. On hearing the alarm, PW-2 and PW-4 rushed to the place of occurrence. The accused fled away from the scene of occurrence. PW-2 and PW-4 took the deceased in a bike and admitted him in the Government Hospital, Nagapattinam. On intimation, the police rushed to the Government Hospital, Nagapattinam and received a complaint from the deceased. On receipt of the complaint from the deceased, PW-12 registered a case in Crime No.427 of 2012 for the offences under Sections 324 and 307 of the Indian Penal Code. EX-P1 is the complaint and EX-P11 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

3.1. Taking up the case for investigation, at 05.30 AM, on 26.11.2012, PW-20 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of PW-5 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. He examined PW-1, PW-2, PW-4 and PW-5 and recorded their statements and he handed over the investigation to the Deputy Superintendent of Police Nagapattinam Sub-Division.

3.2. PW-19, the then Deputy Superintendent of Police, Nagapattinam Sub-Division, took up the case for further investigation. At 08.30 AM, on 26.11.2012, the deceased succumbed to the injuries in the hospital. On intimation, PW-19, on 26.11.2012,



altered the case in Crime No.427 of 2012 into one under Sections 342, 302 r/w Section 3(2)(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. EX-P12 is the alteration report. Then, he conducted inquest on the body of the deceased. Then, he forwarded the dead body for postmortem.

3.3. PW-17 - Dr.M.Chandrasekaran conducted autopsy on the body of the deceased. EX-P15 is the postmortem certificate. He noticed the following injuries:-

"Ante Mortem Injuries:

3 cm long oblique sutured wound seen over outer aspect of right side of upper part of Abdomen. On removal of sutures it was peritoneal cavity deep stab wound (3x1.5cmxPeritoneal cavity deep). Margins were regular. Both margins ended as a point in lower end and blunt in upper end. The stab injury enters into the peritoneal cavity through the 9th Intercostal space. Peritoneal cavity contained about 1500 ml of fluid blood and 200 gm of clotted blood. Underlying Right lobe of liver found stabbed in a depth of 5cms (3x0.5cmx0.5cm depth). The direction Injury was Backwards and to the left side. The whole length of tract of stab injury was measured as more than 8 cms."

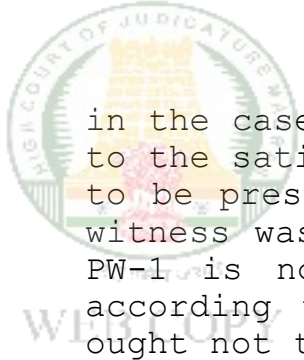
He gave an opinion that the deceased would appear to have died of shock and hemorrhage due to stab injury.

3.4. PW-21 took up the case for further investigation. On 26.11.2012, PW-21 arrested the accused at the place of Kulathukarai Nagapattinam. On returning to the Police Station, PW-21 forwarded the accused to the Court for judicial remand. He also handed over the material objects to the Court. On completing the investigation, he laid charge sheet against the accused.

3.5. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution, 21 witnesses were examined, 16 documents and three material objects were marked.

3.6. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Their defence was a total denial. Having considered all the above materials, the Trial Court convicted the accused, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the appellant/the first accused is now before this Court with this Criminal Appeal.

4. The learned counsel appearing for the appellant would submit that PW-1 is the mother of the deceased and she is highly interested



in the case of the prosecution. Thus, the prosecution should explain to the satisfaction of the Court as to what was the occasion for her to be present at the place of occurrence. Moreover, no independent witness was examined to speak about the occurrence. The evidence of PW-1 is not corroborated by any other independent source. Thus, according to the learned counsel, the eye-witness account of PW-1 ought not to have been relied upon by the Trial Court.

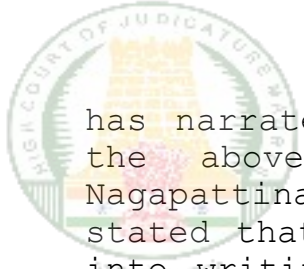
5. Furthermore, the learned counsel appearing for the appellant would submit that PW-2 has stated that he had admitted the deceased in the hospital, whereas, as per the Accident Register, EX-P13, the friends of the deceased had admitted him in the hospital. Moreover, PW-2 has stated that the deceased was assaulted by two persons, whereas as per EX-P13, only one person assaulted the deceased. Referring to the above grounds, the learned counsel for the appellant would submit that the appellant is entitled for acquittal.

6. While concluding his arguments, in the alternative, the learned counsel for the appellant would submit that the occurrence took place in a sudden quarrel. There was no premeditation for the accused to commit the crime. It was purely sudden. The motive for the occurrence has not been established. The cause for the occurrence was not known. Thus, according to the learned counsel for the appellant, if at all this Court believes the evidences of the prosecution, even then, the act of the first accused would not fall under the purview of Section 302 of the Indian Penal Code and at the most, his act would fall within the ambit of First Exception to Section 300 of the Indian Penal Code and therefore, the first accused is liable to be punished under Section 304(ii) of the Indian Penal Code.

7. The learned Additional Public Prosecutor would however, oppose this Criminal Appeal. According to him, the prosecution has clearly proved the case with cogent and convincing evidence. Under such circumstances, no infirmity can be found on the conviction and sentence recorded by the Trial Court. Thus, the learned Additional Public Prosecutor prayed for dismissal of the Criminal Appeal.

8. We have given our anxious consideration to the submissions made by the learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

9. The prosecution, in order to prove the case, relies upon the eye-witnesses account of PW-1 to PW-4. They have spoken about the occurrence in a vivid manner. Their evidences are duly corroborated by the medical evidence also. Though PW-1 to PW-4 have been subjected to lengthy cross-examination, nothing has been brought on record so as to disbelieve their version. The evidences of PW-1 to PW-4 are also duly corroborated by EX-P1. Thus, we do not find any reason to disbelieve the evidences of PW-1 to PW-4. Moreover, the complaint was made by the deceased himself, in which the deceased



has narrated the entire occurrence in a vivid fashion. Apart from the above, PW-12, who rushed to the Government Hospital, Nagapattinam, on intimation from the hospital authorities, has stated that the deceased gave an oral statement, which was reduced into writing, in which the deceased made his signature. The above statement given by the deceased amounts to dying declaration, which by itself, would be sufficient to hold that the accused is the perpetrator of the crime. Furthermore, PW-15, the Doctor, who treated the deceased at the Government Hospital, Nagapattinam and PW-16, the doctor, who treated the deceased at the Government Hospital, Thiruvavarur, have spoken that the deceased was conscious and he told them that he was attacked by a known person. The Accident Registers issued by PW-15 and PW-16 have been marked as EX-P13 and EX-P14. From the above overwhelming evidences, we have no hesitation to hold that it was he, who alone stabbed the deceased, which resulted in his death.

10. Having come to the said conclusion, now, the next immediate question is as to what was the offence, that the first accused had committed by his act. As we have already narrated, it is in evidence that the cause for the quarrel was not known. The occurrence was not a premeditated one. The arrival of the deceased at the place of occurrence was by chance. Similarly, the arrival of the first accused at the place of occurrence was also incidental. From the above, it is inferable that there is every possibility that the deceased would have provoked the accused. Thus, on account of the said provocation, the first accused would have stabbed the deceased. The first accused has caused a single stab injury on the body of the deceased and he has not caused any more injury on the accused. Thus, in our considered view, though the act of the first accused would squarely fall within the ambit of Third limb of Section 300 of the Indian Penal Code, it would squarely fall within the First Exception to Section 300 of the Indian Penal Code. Therefore, the first accused is liable to be punished under Section 304(ii) of the Indian Penal Code.

11. Now, turning to the quantum of punishment, the first accused, at the time of occurrence, was hardly aged about 32 years. Either prior to the occurrence or subsequent to the occurrence, he was not involved in any crime. The occurrence was not a premeditated one. He has got parents to be taken care of. Having regard to all the mitigating and aggravating circumstances, we are of the considered view that sentencing the first accused to undergo rigorous imprisonment for five years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for eight weeks would meet the ends of justice.

12. In the result, the Criminal Appeal is partly allowed in the following terms:-

- The conviction and sentence imposed by the Trial Court on the first accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the first accused/appellant is convicted under Section 304(i) of the Indian Penal Code and



sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.10,000/- [Rupees Ten Thousand only], in default to undergo rigorous imprisonment for eight weeks.

■ It is further directed that the period of sentence already undergone by the appellant/the first accused shall be set off under Section 428 of the Code of Criminal Procedure.

■ Fine amount, if any paid by the appellant/first accused, shall be adjusted towards the fine amount now imposed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To

1.The First Additional District and Sessions Judge, [PCR],
Thanjavur.

2.The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam District.

3.The Superintendent, Central Prison, Trichy

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

Copy to:-

The Section Officer, (2 Copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

NB

RL/7C/6P/JC/SAR1/8/1/2018

JUDGMENT MADE IN

CRL.A[MD].No.177 of 2016