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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED : 23.10.2017

PRONOUNCED : 15.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**

AND

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.A[MD].No.181 of 2016

Ashok Kumar : Appellant/Accused No.1

Vs.

State, Represented by
The Inspector of Police,
Thoothukudi North Police Station,
Thoothukudi, Thoothukudi District,
[Crime No.605/2014] : Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 23.03.2016 made in S.C.No.190 of 2015, on the file of the learned Second Additional District and Sessions Judge, Thoothukudi, Thoothukudi District.

For Appellant : Mr.A.Thiruvadikumar
For Respondent : Mr.R.Ramachandran
Additional Public Prosecutor

JUDGMENT

R.SUBBIAH, J.

The appellant is the first accused in S.C.No.190 of 2015, on the file of the learned Second Additional District and Sessions Judge, Thoothukudi, Thoothukudi District. Totally, there were as many as five accused in this case. The Trial Court framed as many as six charges, as detailed below.

Charge	Accused	Penal Provisions
1	2 to 5	147 IPC
2	1	148 IPC
3	1 to 5	294 (b) IPC
4	1	302 IPC
5	2 to 5	302 r/w 149 IPC
6	1 to 5	506(ii) IPC



2. By Judgment dated 23.03.2016, the Trial Court acquitted the accused Nos.2 to 5 of all charges and the first accused from the charges under Sections 148, 294(b) and 506(ii) of the Indian Penal Code, however, the Trial Court convicted the first accused and sentenced him, as detailed below:-

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Section of Law	Sentence of imprisonment	Fine amount
302 IPC	To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for one year.

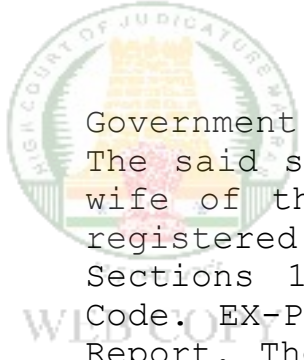
Challenging the said conviction and sentence, the first accused/the appellant has come up with this Criminal Appeal.

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

The deceased, in this case, was one Mr.Ilayaperumal @ Durai. He was residing at Polpet, Tuticorin. The accused was in the habit of eve-teasing PW-5, who is the daughter of the deceased's brother. Few months prior to the occurrence, the first accused had teased PW-5, who was residing at Selvanayakapuram. Hence, the first accused was forced to vacate the house and shift the place of residence to Ashok Fathima Nagar, Shanmugapuram by the deceased.

3.2. While so, on 16.09.2014, when the deceased went to the house of his brother, he found the first accused standing there along with another person. The deceased scolded them as to why they were standing there and asked them to go away from the said place. The first accused left the place. On the same day, at about 05.45 PM, while the deceased was proceeding near a Welding Workshop situated near the Murugan Hall, the first accused was standing there along with some other persons. On seeing the deceased, the first accused had abused him in filthy language and took out a knife, which was in his possession and stabbed the deceased on his left portion of the abdomen, left shoulder, right shoulder and left side of the back. The deceased fell down. On seeing the occurrence, PW-2, the brother of the deceased and one Rajagopal [PW-3] raised alarm. Immediately, all the accused fled away from the scene of occurrence.

3.3. On hearing about the occurrence, PW-1, the wife of the deceased rushed to the place of occurrence and took the deceased to the Tuticorin Government Hospital in an Auto for treatment. PW-7, a nurse at the hospital, admitted him in the hospital and issued Accident Register [EX-P4]. On intimation from the hospital authorities, PW-15, the then Sub-Inspector of Police, proceeded to the Tuticorin



Government Hospital and recorded the statement of the deceased. The said statement was signed by the deceased and attested by the wife of the deceased. On returning to the Police Station, PW-15 registered a case in Crime No.605 of 2014 for the offences under Sections 147, 148, 294(b), 307 and 506(ii) of the Indian Penal Code. EX-P1 is the complaint and EX-P20 is the First Information Report. Then, PW-15 forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

3.4. Taking up the case for investigation, at 09.30 PM, on 16.09.2014, PW-16 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of PW-6 and another witness. He recovered bloodstained earth [MO-4] and sample earth [MO-5] from the place of occurrence. Thereafter, he recorded the statement of the deceased, while he was taking treatment in the hospital as an in-patient. Then, he recorded the statements of PW-6 and PW-1, the wife of the deceased. PW-1 handed over the bloodstained baniyan and lungi. On 17.09.2014, PW-16 arrested all the five accused near Tuticorin New Bus Stand in the presence of PW-13 and another witness.

3.5. On such arrest, the first accused gave a voluntary confession and produced the knife [MO-3]. PW-16 recovered the same under a Mahazer. On returning to the Police Station, PW-16 forwarded the accused to the Court for judicial remand. He also handed over the material objects to the Court. On 20.09.2014, the deceased succumbed to the injuries in the hospital. On receiving the death intimation, PW-16 proceeded to the Tuticorin Government Hospital at 06.00 AM and altered the case into one under Sections 147, 148, 294(b), 302 and 506(ii) r/w Section 149 of the Indian Penal Code and forwarded the alteration report [EX-P22] to the Court of Judicial Magistrate No.II, Tuticorin through PW-11. Then, he conducted inquest on the body of the deceased in the presence of panchayatars. EX-P23 is the inquest report. Then, he forwarded the dead body for postmortem.

3.6. PW-9 - Dr.M.Udhayakumar conducted autopsy on the body of the deceased. EX-P8 is the postmortem certificate. He noticed the following injuries:-

"1.A sutured wound of length 5 cms seen in the left side of back. On removal of sutures, cut injury of size 5 cms x 2 cms x bone deep.

2.A sutured wound of length 4 cms seen in the left lower arm. On removal of sutures, cut injury of size 4 cms x 2 cms x muscle deep.

3.A sutured wound of length 3 cms seen in the right shoulder. On removal of sutures, cut injury of size 3 cms x 2 cms x muscle deep.

4.A sutured wound of length 3 cms seen in the left



lower abdomen. On removal of sutures, cut injury of size 3 cms x 2 cms x abdominal cavity deep.

5. Midline laparotomy sutures and drainage tubes on both sides noted (Treatment procedure)."

He gave an opinion that the deceased would appear to have died of complications of cut and stab injuries sustained by him.

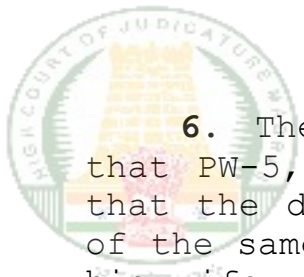
3.7. Since PW-16 was transferred, PW-17 took up the case for investigation. He recorded the statements of PW-1, PW-2, PW-7, PW-8, PW-9 and PW-14. On completing the investigation, he laid charge sheet against the accused.

3.8. 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, 17 witnesses were examined, 23 documents and five material objects were marked.

3.9. 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. On the side of the first accused, DW-1, the father of the first accused, was examined and a Ration Card [EX-A1] was marked. The defence of all the accused was a total denial. Having considered all the above materials, the Trial Court acquitted the accused Nos. 2 to 5 of all charges and the first accused from the charges under Sections 148, 294(b) and 506(ii) of the Indian Penal Code, however, the Trial Court convicted the first accused and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one year for the offence under Section 302 of the Indian Penal Code. That is how, the first accused/the appellant is now before this Court with this Criminal Appeal.

4. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

5. The learned counsel appearing for the appellant submitted that the motive projected by the prosecution that since the first accused had teased PW-5, he was forced to vacate his house from Selvanayakapuram and shift the place of residence to Ashok Fathima Nagar, Shanmugapuram, stands disproved, in view of the evidence of DW-1 who is the father of the accused, through whom the Ration Card was marked as EX-D1. At no point of time, according to the learned counsel, the accused resided at Selvanayakapuram. Moreover, PW-5 did not inform PW-16, the Investigating Officer about the eve-teasing perpetuated by the accused.



6. The learned counsel for the appellant further submitted that PW-5, during cross-examination, improved her version stating that the deceased used to visit the house of PW-5 and on account of the same, there were frequent quarrels between the deceased and his wife. Thus, PW-5 has given a go by to the earlier stand and gave a different version in her cross-examination, which would show that the evidence of PW-5 cannot be believed.

7. The learned counsel for the appellant further submitted that there is an inordinate delay in registering the complaint and forwarding the First Information Report to the Court. Though the fact remains that the deceased was taking treatment in the hospital for nearly four days, the prosecution has not chosen to obtain the dying declaration from the deceased. Thus, according to the learned counsel, EX-P1 is shrouded by suspicion, since PW-2 and PW-3 had admitted that they were unaware of EX-P1, when they were examined during investigation. The learned counsel for the appellant further submitted that the prosecution has not recovered the dress worn by the deceased at the time of occurrence. Thus, according to the learned counsel, EX-P1 is a concocted document, which has been planted by the prosecution.

8. The learned counsel for the appellant further submitted that the evidences of PW-2 to PW-4, who are the alleged eye-witnesses, are not trust worthy and they have been planted by the prosecution. Inviting the attention of this Court to the chief-examination of PW-1, the wife of the deceased, the learned counsel for the appellant submitted that PW-1 admitted that when she went to the place of occurrence, the body of the deceased was found lying in the drainage and two lorries were standing nearby, affecting the visibility. Thus, there is no chance for PW-2 to PW-4 to witness the occurrence. The learned counsel further submitted that PW-2 is the own brother of the deceased and PW-3 is closely related to the deceased. It is the categorical admission of PW-2 that he did not inform about his presence in the place of occurrence during investigation. Thus, according to the learned counsel, a cumulative scrutiny of the eye-witnesses, who happen to be the closely related, interested and chance witnesses, would show that their presence, at the place of occurrence, is unnatural and they have been planted as eye-witnesses.

9. While concluding, the learned counsel for the appellant, in the alternative, submitted that the act of the accused would not amount to murder. The deceased was admitted in the hospital at 06.25 PM, on 16.09.2014 and he had been declared dead at 10.45 PM, on 20.09.2014 and as per EX-P6, the death intimation, the diagnosis is septicemia due to stab injury. The learned counsel for the appellant submitted that out of four injuries sustained by the deceased, the injury found on the lower abdomen alone is on the vital part of the body and the other injuries are simple in



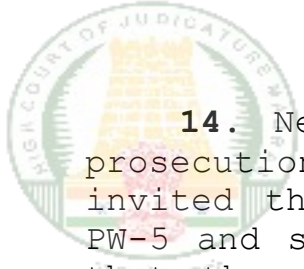
nature. However, PW-9, who conducted autopsy on the body of the deceased, had given a very vague statement in the postmortem certificate [EX-P9] that the injuries sustained by the deceased were sufficient to cause the death. Thus, the prosecution has failed to prove the cause of death, by cogent and convincing reasons, in view of EX-P6, which is against EX-P9. Thus, according to the learned counsel for the appellant, if at all this Court believes the evidence of the prosecution, even then, the act of the accused will not come 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 accused is liable to be punished either under Section 304(i) or 304(ii) of the Indian Penal Code.

10. The learned Additional Public Prosecutor, however, opposed 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.

11. We have considered the above submissions.

12. It is the submission of the learned counsel appearing for the appellant that as per the case of the prosecution, the accused was teasing PW-5, who was residing at Selvanayakapuram. Hence, the accused was forced to shift his place of residence to Ashok Fathima Nagar, Shanmugapuram, Tuticorin by the deceased. Since the deceased played a very active role in shifting the place of residence, the accused had a grudge over the deceased. On account of the same, on 16.09.2014, the first accused committed the offence by stabbing the deceased with knife. In order to disprove the motive projected by the prosecution, the father of the accused was examined as DW-1 and marked EX-D1, the Ration Card. DW-1 has deposed that his family has been residing at George Road, Tuticorin North and at no point of time, the accused resided at Selvanayakapuram. Thus, from EX-D1, according to the learned counsel for the appellant, the motive projected by the prosecution stands disproved.

13. In our considered view, on a perusal of the evidence of DW-1, we find that the Ration Card produced by the father of the accused pertained to the year 2005, whereas the occurrence took place in the year 2014. Therefore, the above submission made by the learned counsel for the appellant, by relying upon the evidence of DW-1 would not be, in any manner, helpful to disprove the motive projected by the prosecution. Thus, the said peripheral submission made by the learned counsel for the appellant is liable to be rejected and it is accordingly rejected.

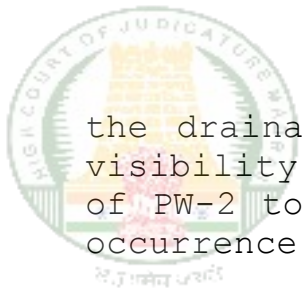


14. Next, in order to disprove the motive projected by the prosecution, the learned counsel appearing for the appellant, invited the attention of this Court to the cross-examination of PW-5 and submitted that though it is the case of the prosecution that the first accused was teasing PW-5, which resulted in the accused to shift the place of residence elsewhere, but, during cross-examination, PW-5 has given a complete different version that the deceased used to visit her house frequently and on account of the same, there were disputes between the deceased and his wife, which would go to prove that the evidence of PW-5 cannot be relied upon.

15. On a careful analysis of the evidence of PW-5, we find that in her chief-examination, she had stated that the accused was very often teasing PW-5, where ever she was going and this was questioned by the deceased, who is her paternal uncle. Even in the cross-examination, she had assertively stated that the accused was teasing her. Since she had spoken in the cross-examination about the frequent quarrel that had taken place between the deceased and his wife on account of the visit of the deceased to PW-5' house, it does not mean that she has given a go by to her earlier version, when particularly, PW-5 made an assertion in cross-examination that she was teased by the accused very often. Therefore, it is incorrect to state that PW-5 has given up her earlier version and gave a total different version in her cross-examination. Thus, we are of the view, the motive for the occurrence is duly proved by the prosecution and the submission made by the learned counsel for the appellant in this regard is rejected.

16. Though the learned counsel appearing for the appellant submitted that there is delay in registering the complaint and forwarding the First Information Report to the Court, we find that there is no delay at all. The occurrence, in this case, took place, at 05.45 PM, on 16.09.2014. The accused was admitted in the Tuticorin Government Hospital, at about 06.25 PM. On receipt of intimation from the hospital authorities, PW-15 proceeded to the hospital at about 06.30 PM and recorded the statement given by the deceased, at 08.30 PM, on 16.09.2014 and the First Information Report reached the Court, at 09.15 PM, on 16.09.2014. Thus, in our considered view, there is no delay either in preferring the complaint or forwarding the First Information Report to the Court.

17. It is yet another submission of the learned counsel for the appellant that the evidences of PW-2 to PW-4, who are closely related to the deceased, are not trust worthy and they have been planted by the prosecution. Inviting the attention of this Court to the chief-examination of PW-1, the learned counsel for the appellant submitted that PW-1 admitted that when she went to the place of occurrence, the body of the deceased was found lying in

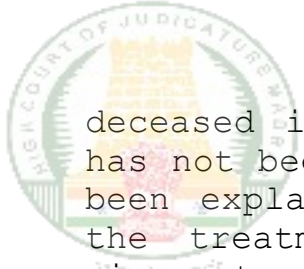


the drainage and two lorries were standing nearby, affecting the visibility. Thus, according to the learned counsel, the evidences of PW-2 to PW-4 would show that they might not have witnessed the occurrence and as such, their evidences cannot be believed.

18. We do not find any substance in the said contention taken by the learned counsel for the appellant. In fact, the evidences of PW-2 to PW-4 are cogent and convincing. Though PW-2 to PW-4 have been subjected to lengthy cross-examination, nothing has been brought on record so as to disbelieve their evidences. Their evidences are duly corroborated by the evidence of PW-1. Moreover, it is too well settled that if a witness claims to be present at the place of occurrence by chance or he is closely related to the deceased, it is necessary that the reason for his presence at the place of occurrence, by chance, should be explained to the satisfaction of the Court. In this case, the occurrence took place nearby the Welding Work Shop, at Selvanayakapuram, where PW-2, who is the own brother of the deceased, was standing. Furthermore, from the evidence of PW-2, it could be seen that all the relatives of the deceased were residing in and around the same area. Thus, the presence of PW-2, at the place of occurrence, in our considered view, cannot be doubted. The other contradictions pointed out by the learned counsel appearing for the appellant are all minor and immaterial contradictions, which cannot be taken into consideration.

19. Above all, EX-P1 was recorded by PW-15, while the deceased was taking treatment in the Tuticorin Government Hospital. The deceased died at 10.45 PM, on 20.09.2014. The above statement recorded by PW-15 amounts to dying declaration, in which the deceased has clearly mentioned that it was this first accused, who stabbed him with knife on his left portion of the abdomen, left shoulder, right shoulder and left side of the back. Though PW-15 has been cross-examined at length, nothing has been brought on record so as to discard his version. Thus, the prosecution has clearly proved the case beyond reasonable doubt that it was this first accused, who alone stabbed the deceased.

20. Now, turning to the alternative submission made by the learned counsel appearing for the appellant, in our considered view, the occurrence took place at 05.45 PM, on 16.09.2014. On the same day, at 06.25 PM, the deceased was admitted in the Tuticorin Government Hospital. He was in the hospital for four days taking treatment as an inpatient. On 20.09.2014, at 10.45 PM, the deceased was declared dead in the hospital. The doctor, who conducted autopsy on the body of the deceased, issued EX-P9, postmortem certificate, which would show that the deceased would appear to have died of complications of cut and stab injuries sustained by him. However, as per EX-P6, the diagnosis is septicemia due to stab injury. The doctor, who treated the



deceased in the Government Hospital, for a period of four days, has not been examined. The treatment given to the deceased has not been explained. Absolutely, there is no evidence with regard to the treatment given to the deceased for four days. In such circumstances, we are of the considered view, in the absence of any evidence regarding the treatment given to the deceased, it cannot be conclusively held that the cause of death, in this case, was directly attributable to the act of the accused and therefore, it cannot be conclusively held whether the injury sustained by the deceased is sufficient in the ordinary course of nature to cause the death. The prosecution, in our considered view, has miserably failed to prove the cause of death. Since we hold that the death was due to septicemia and the cause of death was not directly due to the stab injuries, the act of the accused, in our considered view, at the most, would fall within the First Exception to Section 300 of the Indian Penal Code. Therefore, the accused is liable to be punished either under Section 304(i) of the Indian Penal Code.

21. Our view is also fortified by a Judgment of a Division Bench of this Court in the case of **Marimuthu and others Vs. State, [Cr1.A.No.243 of 2010, dated 11.09.2015]**, wherein the Division Bench has held as follows:-

18. Now, let us examine about the nature of the injuries caused by the first accused. If we closely look into these injuries, except one injury, all the others are simple in nature. The death was not directly due to these injuries. The death was also not due to shock and hemorrhage due to these injuries. The Doctor has not opined that these injuries would cumulatively cause death in the ordinary course of nature. For a moment, we are not prepared to say that it is always for the Doctor to say as to whether the particular injury would be sufficient in the ordinary course of nature to cause death of an individual. Ultimately, it is the task of the Court to give verdict as to whether the particular injury or the injuries put together cumulatively is sufficient to cause death of the deceased or not. In the light of the absence of any positive evidence from the Doctor that the injuries are sufficient in the ordinary course of nature to cause death, if we look into these injuries, since the injuries are on the peripheries and except one injury, all the injuries are simple, we find it difficult to conclude that these injuries are sufficient in the ordinary course of nature to cause death, as dealt with in limb 3 of Section 300 IPC.



19. At the same time, we are of the firm view that these injuries in the ordinary course of nature would likely to cause death falling within the 2nd limb of Section 299 IPC. Therefore, in our considered view, the offence committed by the first accused is only culpable homicide and it does not amount to murder. In other words, the act of the accused falls within the 2nd limb of Section 299 IPC, which does not fall under any one of the limbs of Section 300 IPC at all. Therefore, the first accused is liable to be convicted only under Section 304(i) IPC".

22. Now, turning to the quantum of punishment, the learned counsel for the appellant submitted that the first accused was aged about 24 years at the time of occurrence. The first accused has got no history of any bad antecedents. Subsequent to the occurrence also, he has not committed any crime. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the first accused to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- would meet the ends of justice.

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

- The conviction and sentence imposed on the first accused/appellant, by Judgment dated 23.03.2016 made in S.C.No.190 of 2015, on the file of the learned Second Additional District and Sessions Judge, Thoothukudi, Thoothukudi District, 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 ten years and to pay a fine of Rs.10,000/- [Rupees Ten Thousand only], in default to undergo rigorous imprisonment for two months.
- It is further directed that the period of sentence already undergone by the appellant/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(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Second Additional District and Sessions Judge,
Thoothukudi District.



2. The Inspector of Police,
Thoothukudi North Police Station,
Thoothukudi, Thoothukudi District.

3. The Superintendent Central Prison,
Palayamkottai.

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

4. The Record Keeper, Criminal Section,
Vernacular Section, Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.Thiruvadikumar, Advocate Sr.No.87387

NB

VB/KK/SAR1/30/11/2017/11P/6C

**JUDGMENT MADE IN
CRL.A[MD].No.181 of 2016
15.11.2017**