



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.09.2017

DELIVERED ON : 20.09.2017

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CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
CRIMINAL APPEAL (MD).No.202 of 2016

Selvam @ Mariselvam

.. Appellant/Sole Accused

Vs.

The State, rep by
The Inspector of Police,
Mukkudal Police Station,
Tirunelveli District.
(Crime No.65/2008)

.. Respondent/ Complainant

PRAYER: Appeal is filed under Section 378(4) of the Code of Criminal Procedure against the Judgment and Sentence passed by the learned II-Additional Sessions Judge, Tirunelveli, in S.C.No.127 of 2008, dated 11.04.2016 for the offence under Section 506(ii) and 302 IPC.

For Appellant : Mr.P.Ramasamy

For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **N.SATHISH KUMAR,J.**]

The appellant is the sole accused in S.C.No.127 of 2008, on the file of the learned II-Additional Sessions Judge, Tirunelveli. He stood charged for the offence punishable under Section 294(b), 302, 506(ii) I.P.C. and Section 3(1)(x) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. By Judgment dated 11.04.2016, he was acquitted from the charges under Sections 3(1)(x) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and he was convicted under Section 506(ii) I.P.C. and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for six months and he was also convicted under Section 302 I.P.C. and sentenced to undergo Life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo simple imprisonment for one year and both the sentences shall run

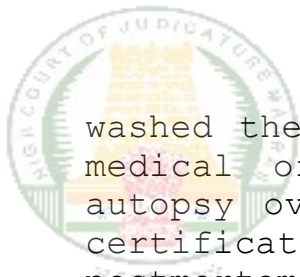


concurrently. Aggrieved over the said conviction and sentence, the appellant has come up with this Criminal Appeal.

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

i) The deceased in this case is the husband of P.W.1-Lalitha and P.W.2-Venkatesh is the son of the deceased and P.W.6-Ragasudha is the daughter of the deceased. The accused and the deceased were the resident of Ariyanayakipuram. P.W.3 is a resident of the same village. On 16.05.2008 at about 5 p.m, the accused tried to attack one Selvam, S/o.Velayutham, who was an insane person. The deceased interfered and pacified the accused and separated him from the altercation and sent him to his house. At about 6.00 p.m., the accused again came with M.O.1, Aruval to attack the said insane Selvam. On seeing the accused again coming to attack the said Selvam, the deceased again went to pacify the accused. At that time, the accused tried to attack the deceased. However, the deceased overturned and P.W.1, P.W.2 and P.W.6 also followed the deceased. P.W.1 retrieved the Aruval from the accused. At that time, the accused took M.O.2-a wooden log and repeatedly beat the deceased on the head and face, besides he has also threatened P.W.1. P.W.1, P.W.2, P.W.3 and P.W.6 witnessed the occurrence. Immediately with the help of one Indira, who telephoned to the ambulance, the deceased was taken to the hospital, where he was declared dead. Thereafter, P.W.1 went to the police station and gave the complaint at 11.00 p.m. P.W.16-the then Inspector of Police, Mukkudal Police Station received the complaint and registered the case in Crime No.65 of 2008, for the offence under Sections 294(b), 302, 506(ii) I.P.C. and Section 3(1)(x) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Ex.P1 is the complaint and Ex.P8 is the First Information Report. He forwarded the complaint and the FIR to the learned Judicial Magistrate concerned through P.W.15-police constable, who handed over the FIR to the Judicial Magistrate at 3.35 a.m., on 10.05.2008. P.W.16-the then Inspector of Police forwarded the copy of the FIR for investigation purpose to P.W.19-the then Deputy Superintendent of Police, Ambasamuthiram, who was in-charge of Cheranmahadevi Sub-Division. P.W.19 took up the case for investigation and went to the place of occurrence and prepared observation Mahazar (Ex.P3) and rough sketch (Ex.P.12) in the presence of the witnesses. P.W.10-Subbiah and one Arumugam were the witnesses, signed in the observation mahazar (Ex.P3). On 17.05.2008, at about 10.00 a.m., P.W.19 conducted the inquest over the dead body in the presence of the panchayatar and prepared the inquest report-Ex.P.13 and made requisition to the medical officer to conduct the autopsy.

ii) P.W.7 is also the resident of the same village, who had seen the deceased lying in a pool of blood. P.W..8 also pacified the accused when he involved altercation with one Velayutham, father of the said insane Selvam. The deceased body was found dead in front of the house of P.W.12. P.W.12 and her sister immediately



washed the blood stains without knowing the consequences. P.W.18-medical officer attached to the Government Hospital conducted autopsy over the dead body on 17.05.2008 and issued postmortem certificate in Ex.P.11 and noted the following injuries in the postmortem certificate:

" 1. incised wound 3x5 cm on the right eyebrow.

2. irregular laceration of nose with fracture of nasal bones with tearing of upper lip.

3. incised wound 6x1 cm x muscle deep on the centre of scalp.

4. Irregular abrasions seen on the right cheek, front of neck right cheek and right side of neck, left side of lower jaw."

He opined that the deceased would appear to have died of complications of multiple injuries.

iii) P.W.19, continuation of the investigation, arrested the accused on 18.05.2008 in the presence of P.W.14 and one Annadurai and recorded his voluntary confession under Ex.P.14. Pursuant to the same, he seized M.O.2 under Ex.P.15 and forwarded the accused before the learned Judicial Magistrate and handed over the case file to his successor. P.W.20- Deputy Superintendent of Police, Cheranmahadevi, took up the further investigation as per the orders under Ex.P.16 and also obtained community certificates of the deceased from the Tahsildar (Ex.P.9) as well as the accused from the Zonal Deputy Tahsildar (Ex.P.1) and also forwarded the recorded statements of the other witnesses and also made requisition to send the material objects to the Forensic Science Lab under Ex.P.17 and thereafter got the Forensic Science Lab report under Ex.P.18 and finally laid a charge sheet against the accused.

3. Based on the above evidence and materials, the learned trial Judge found the accused guilty under Sections 302 and 506 (ii) IPC and convicted and sentenced the accused for the offences as stated in the first paragraph of this judgment. However the learned trial Judge acquitted the accused from the offence under Section 294(b) IPC and Section 3(2)(v) and 3(1)(x) of Scheduled Castes and Scheduled Tribes (Preventions of Atrocities) Act, 1989. Aggrieved over the same, the present appeal has been filed.

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 main contention of the learned counsel for the appellant is that all the witnesses are relatives of the deceased. ~~These evidences cannot be given much importance, since they are interested witnesses. It is the further contention of the learned counsel for the appellant that there was no previous~~

premedita

appeal.

available on record carefully.

seen that,

- the accused beyond reasonable doubt;

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deceased rushed to the place of occurrence from his house and tried to prevent the accused from attacking the said Selvam and P.W.1, P.W.2 and P.W.6 followed the deceased. At that time, P.W.1 snatched the M.O.1-Aruval from the accused and the deceased and the accused rolled down and thereafter immediately the accused took the M.O.2-wooden log and beat the deceased on head and face repeatedly, besides threatening P.W.1. As a result, the deceased succumbed to injuries and deceased also fell down in front of the house of one Shunmugathai, P.W.12. Evidences of P.W.1, P.W.2, P.W.3 and P.W.6 have spoken about the above facts in one voice.

10. On scanning of the entire evidence of the above eyewitnesses, it could be seen that there was no previous enmity whatsoever between the accused and the deceased at any point of time. Except the incident occurred on 16.05.2008, there was no previous enmity whatsoever existed between either the deceased or the witnesses with the accused. Therefore, there is no reason for them to implicate the accused falsely as they ever had any axe to grind against the accused. Though P.W.4-mother & P.W.5 sister of the said Selvam were examined by the prosecution, they subsequently turned hostile and not supported the prosecution version. P.W.8-one Mariammal, though turned hostile, in her evidence stated that on the date of occurrence, the accused had a fight with the said Selvam and after all the said Selvam was insane at the relevant point of time. From the statement of the eyewitnesses, they had spoken in one voice that only the second time when the accused again came to attack the said insane Selvam, S/o.Velayutham, with the Aruval-M.O.1, the deceased intervened and P.W.1 removed the M.O.1-Aruval from the accused and the accused immediately took the wooden log-M.O.2 and repeatedly beat the deceased on the head and face. P.W.12 in her evidence also stated that the deceased fell down in front of her house and there were blood stains and after removal of the body, she and her sister washed the above place. This evidence is also not disputed seriously. The investigating officer has also clearly stated in his evidence that blood stains could not be noticed as the same has been cleared by the people, who are residing nearby. Therefore, merely because blood stains could not be recovered from the place of occurrence due to the reason assigned by the Investigating Officer coupled with evidence of P.W.12, we are of the view that, the same will not affect the prosecution.

11. In the specific evidence of P.W.1 that immediately after the death of the deceased, she sought the help of one Indra, who telephoned to the ambulance and the ambulance came there and the dead body was taken to the hospital. Ex.P.19 also clearly established the fact that the deceased was taken to the hospital only by P.W.1, immediately, after the occurrence. The body was taken to the hospital at 8.30 p.m., and kept in the mortuary. Thereafter P.W.1 came to the police station along with P.W.2 and others and gave a complaint (Ex.P1) and the complaint has been



received in the police station at 23.00 hours and FIR was immediately registered and despatched to the learned Judicial Magistrate at the same night. The learned Judicial Magistrate has received the FIR at 3.30 a.m., in his residence as evident from the endorsement made by the printed FIR.

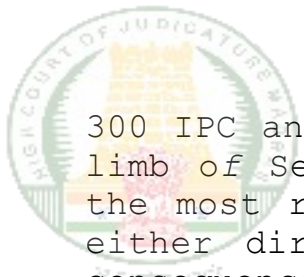
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12. Therefore from the eyewitness and other evidence, it is clear that the FIR has been registered and despatched to the learned Magistrate, we are constrained to believe the eyewitness, namely, P.W.1, P.W.2, P.W.3 and P.W.6, who narrated the genesis of occurrence. Therefore, we have no reasons to disbelieve their evidence. Merely because they happened to be the relatives of the deceased, as already stated, they have no axe to grind against the accused as there was no enmity between them. Therefore, merely because they are relatives, their evidence cannot be disbelieved. The relatives, who are the witnesses, who would not want the real culprit to escape from the clutches of law. Interested witnesses are different from the relative witnesses. Interested witnesses always have some interest and benefit to see that conviction has obtained as against the accused. Relatives were present in the place of occurrence, their presence at the relevant time of occurrence is also natural and their evidence cannot be disbelieved. Accordingly, the evidence of the eyewitnesses clearly proved the specific role of the accused in attacking the deceased.

13. The evidence of P.W.18-medical officer show there were incised wounds measuring 3x5 cm on the right eyebrow and incised wound 6x3 cm x muscle deep on the centre of the scalp and irregular laceration of nose with fracture of nasal bones with tearing of upper lip and he also opined that irregular abrasions seen on the right cheek, front of neck right cheek and right side of the neck and left side of lower jaw. He has also opined the skull fractured and massive blood clots in front of the neck including the neck muscles and hyoid bone was also fractured. Ultimately he opined that the death was due to the complication of multiple injuries.

14. It is further to be noted that the postmortem doctor also opined that the inside wound was also possible by using M.O.2-wooden log. The expert has clearly opined that such injuries are possible by M.O.2-wooden log. This is not seriously disputed by the accused. Therefore, we are of the view that the doctor has clearly established the homicidal violence and the homicidal violence was caused only by the accused. Now, we have to see whether the act of the accused would come under any of the exceptions of Section 300 IPC.

15. It is well settled in the scheme of the Penal Code that 'culpable homicide' is genus and 'murder' its specie and all 'murder' is 'culpable homicide', but not vice-versa. The first limb of Section 299 IPC corresponding to the first limb of Section



300 IPC and the third limb of 299 IPC corresponding to the fourth limb of Section 300 IPC. For both Sections 299 IPC and 300 IPC, the most requirement is that the death should have been resulted either directly by the act of the accused or from the natural consequences of the said act. In the given case, from the evidence of eyewitnesses and the opinion and evidence of the medical officer, it is concluded that the death was the direct result of the injuries caused by the accused. Section 300 IPC is as follows:

" 300. Murder –

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or–

Secondly – *If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or–*

Thirdly – *If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or–*

Fourthly – *If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.*

Exception 1 –When culpable homicide is not murder.–

Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

Exception 2 – *Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.*



Exception 3 – Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4 – Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Exception 5 – Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent."

16. On careful perusal of the above, we find that Section 300 IPC is squarely applicable to the facts of this case. Illustration (c) of Section 300 IPC is also applicable to the facts of this case that if injury has caused intentionally, which is sufficient to cause the death of the man in the ordinary course of nature.

17. The intention is different from motive or ignorance or negligence. Intention requires something more than the mere foresight of the consequences. The intention is the fact to be inferred through facts and circumstances involved in the given case, such as the gravity of the injury, seat of injury the injuries caused by force use of weapon etc.

18. Admittedly, the evidence of the eyewitnesses and the medical officer evidence clearly show that the accused have inflicted several injuries on the vital part of the head and face, which culminated into the death of the deceased. The nature of the force used and the repeated attacks itself clearly prove the factum that the accused had intention to cause of such injuries, which are sufficient in an ordinary course to cause the death. Therefore, the nature of the force and the manner of the injuries inflicted by the accused certainly falls under Section 300 IPC. The contention of the learned counsel for the appellant that the occurrence took place due to sudden quarrel. It is to be noted that there was no quarrel at all, in fact the accused due to previous altercation with one Selvam, who was insane, again came back to the place of occurrence at 06.00 p.m, with M.O.1-Aruval



carrying the wooden log M.O.2 itself clearly shows that he had an intention to cause injury to the other person. When the deceased intervened and M.O.1 was removed from him that cannot be said that he was provoked by the deceased, as a result, he caused injury. To apply exception 4 of Section 300 IPC, the following ingredients necessary;

"The occurrence would have taken place without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner"

19. Only if the above ingredients are found in favour of the accused, exception 4 of Section 300 IPC could be applied to the accused. Though there was no premeditation, it cannot be stated that there was sudden fight between the accused and the deceased. In fact, the accused had come with an intention to cause injury to the third party with the weapon M.O.1., when the deceased being a third party, intervened to pacify the accused, such circumstances cannot be stated as provocation as pleaded by the accused. Further, it is to be noted even assuming that due to removal of M.O.1 from the accused, he was provoked, it is to be noted that it is not the case of the accused that he has not taken any undue advantage or acted in a cruel manner. From the manner in which repeated attacks were unleashed on the deceased and the injuries caused by use of M.O.2, it cannot be stated by the accused that he has not taken any undue advantage at all. None of the ingredients to comply exception 4 of Section 300 IPC is available in this case. Section 301 IPC lays down the principle that a man shall be punished for the offence committed in same manner, he intended but or knew himself to be likely to commit the offence.

20. Therefore, looking at any angle, we are of the view that the act of the accused does not fall under any of the exceptions under Section 300 IPC. Therefore, we are constrained to hold that the conviction and sentence imposed on the accused by the Trial Court under Sections 302 IPC and 506(ii) IPC does not warrant any interference by this Court and the same is hereby upheld. Accordingly, this Criminal appeal is **dismissed**.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

<https://hcservices.hc.madras.gov.in/AdditionalSessionsJudge/>
Tirunelveli.



2. The Inspector of Police,
Mukkudal Police Station,
Tirunelveli District.

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

+1cc to Mr.P.RAMASWAMY, Advocate, SR. 79915

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