



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2017

CORAM:

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

Crl.A.[MD].No.411 of 2016

Jeya Murugan

.. Appellant/
Sole accused

Vs.

State rep. by the
Inspector of Police,
Kuruvikulam Police Station,
Tirunelveli District.
(Crime No.145 of 2011)

.. Respondent/
Complaint

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the judgment, dated 16.06.2015, made in S.C.No.202 of 2013, by the learned IVth Additional Sessions Judge, Tirunelveli District.

For appellant : Mr.K.Samidurai

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

JUDGMENT

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

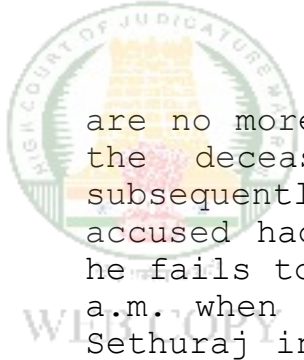
This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 16.06.2015, made in S.C.No.202 of 2013 by the learned IV Additional Sessions Judge, Tirunelveli.

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.5,000/-, in default to undergo six months simple imprisonment

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

(a) PW1 and the deceased were working in Jeyabharath Mill at Malayankulam. The accused is the son of the deceased's brother - Pothiraja. One year back, the accused, who had been working in the very same Mill, left the job. The father and mother of the accused



are no more. There was long standing enmity between the accused and the deceased with regard to partition of the property and subsequently, they partitioned the property. Even then, the accused had frequently threatened to do away with the deceased, if he fails to give more share to him. While so, on 17.07.2011 at 8.00 a.m. when the deceased was taking tea along with PW1, PW2 and one Sethuraj in PW4's Tea Stall near Malayankulam Vilakku Bus-stop, the accused came there and took out a knife, which was hidden out by him in a yellow colour cotton bag and by saying that "if you are alive, you would not partition the property properly and hence, you must die", he stabbed the deceased on his left side of upper abdomen. On seeing this, when PW1, one Sethuraj and PW2 shouted at the accused, the accused ran away from the place of occurrence with knife. Immediately, the deceased was taken to the Government Hospital at Sankarankoil in a Jeep.

(b) PW12 - Dr.Vijayakumar, who was on duty in the Government Hospital at Sankarankoil, admitted the deceased in the hospital. It was informed to PW12 that one known person assaulted the deceased with a knife at 8.00 p.m. on 17.07.2011 near Kannan Tea Shop, Malayankulam Vilakku. He found the following injury on the body of the deceased:

"L/E - Punctured wound about 2 x 1 cm. Abdomen depth with oriental prolapse over left upper abdomen."

Ex.P16 is the accident register of the deceased. Thereafter, PW12 referred the deceased to Tirunelveli Medical College Hospital for further treatment.

(c) But, the deceased was admitted in a private hospital at Tirunelveli, where the deceased succumbed to the injuries at 9.45 p.m. A death intimation (Ex.P6) was sent by the said hospital to the Police Station. Ex.P3 is the Accident Register of the deceased issued by the said Hospital.

(d) In the meanwhile, PW1 lodged a complaint in the Kuruvikulam Police Station. PW11 - the then Sub Inspector of Police, on receipt of the said complaint - Ex.P1, registered a case in Crime No.145 of 2011 under Section 307 IPC and forwarded both the complaint - Ex.P1 and FIR - Ex.P15 to the Court and also to the higher officials.

(e) On receipt of Ex.P1 - complaint and Ex.P15 - FIR, on the same day ie. on 17.07.2011, PW13 took up the investigation, rushed to the place of occurrence, prepared an observation mahazar - Ex.P2 and rough sketch - Ex.P17 in the presence of witnesses. Then, he recorded the statements of PW1, PW3 and one Sethuraj, Saravanan, PW11 and others. On the same day, at 3.00 p.m. PW13 arrested the accused near Kalugumalai Bus-stand. On such arrest, the accused gave a voluntary confession, in which he disclosed the place where he had hidden the knife and yellow colour cotton bag. In pursuance of the said disclosure statement, he took the Police and witnesses to the place of hide out and produced knife (M.O.1) and yellow colour



cotton bag (MO.2). PW13 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) On receipt of the death intimation, PW13 altered the case into one under Section 302 IPC and forwarded the alteration report - Ex.P18 to the Court. On 18.07.2017 PW13 conducted inquest on the deadbody of the deceased in the presence of panchayatars. The inquest report is marked as Ex.P19. Thereafter, he forwarded the dead body to the hospital for postmortem.

(g) PW6 - Dr.Sudalai Muthu conducted postmortem on 18.07.2011 at 1.15 p.m. He found the following injuries on the deadbody of the deceased:

"Antemortem injuries :

1) 18 cm long vertical suture wound (stapler) seen on the front of middle of abdomen. It extends from 2 cm below Xiphisternum to umbilicus. On removal of sutures, anterior abdominal wall found sutured in layer. Skin, sub cutaneous tissue, rectus abdominis muscle and peritoneum found sutured. Peritoneal cavity contains 1 liter of fluid blood and about 300 gms of clotted blood in the region of left hypochondrium

2) 2 cm long vertical sutured wound (stapler) seen on the other aspect of left lower chest, 20 cm below left axilla. On removal of sutures it was 0.5 c.m. Breath, posterior margin shown bevelled. Margins are regular, lower edge is sharp and upper edge is blunt. The stab enters to left lower ploural cavity between 8th and 9th rib through 8th inter costal space and pierces the parictal plcura. Underlying diaphragm found stabbed measuring 2 x 1 cm. Spleen found absent. (Splenectomy - Hospital procedure) splenic artery found ligated (surgical procedure) Approximate length of stab wound is more than 10 cms.

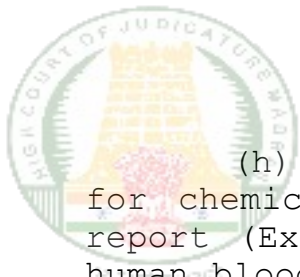
3) 0.5 x 0.5 cm x peritoneal cavity deep punctured wound seen on the left lower abdomen, 13 cm left to the umbilicus (Hospital procedure for drainage tube).

4) 0.5 x 0.5 cm x peritoneal cavity deep punctured wound seen on the right lower abdomen, 12 cm right to the umbilicus (Hospital procedure for drainage tube).

5) One needle mark seen on the right supra claviclar area (Hospital procedure).

On dissection of chest : Left plcural cavity contains about 300ml of fluid blood. Left lung found collapsed."

PW6 opined that the deceased would appear to have died of complications of stab injuries to the region of left side chest and abdomen. Ex.P8 is the postmortem certificate.



(h) At the instance of PW13, the material objects were sent for chemical examinations through Court. The chemical examination report (Ex.P13) and serological report (Ex.P14) disclosed that the human blood was there on the knife and shirt. Due to transfer, PW13 handed over the investigation to PW14.

(i) PW14, 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.

4. Based on the above materials, the trial Court had framed a 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 14 witnesses were examined as PW1 to PW14 and Exs.P1 to P20 were marked, besides three Material Objects as MOs.1 to 3.

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 would submit that in order to prove the case, on the side of the prosecution, three witnesses viz., PW1, PW2 and PW4 were examined as eyewitnesses. But, there are lot of contradictions in their evidences with regard to the place of occurrence and therefore, their evidences cannot be believed.

8. The learned counsel for the appellant would further submit that one of the eyewitnesses ie., PW2 had admitted in the cross examination that the appellant / accused dropped the knife - MO.1 which was used by the accused for stabbing the deceased, at the place of occurrence itself ie., in front of PW4 - Kannan's Tea Shop. Whereas the investigating officer - PW13 had stated that he had recovered the knife (MO-1) and yellow colour cotton bag (MO-2) from the possession of the accused at 2.30 p.m. on 17.07.2011 under a mahazar in the presence of PW7 and one Rajan. Therefore, the recovery cannot be believed.

9. The learned counsel for the appellant would further submit that there is a delay of 10 hours in reaching the FIR to the Court. The alleged occurrence took place at 8.00 a.m. on 17.07.2011 and the



FIR was registered under Section 307 IPC at 10.00 a.m. But, the same reached the learned Magistrate at 8.30 p.m. Thus, there is a delay of 10 hours in reaching the FIR to the Court. But the said delay has not been properly explained by the prosecution. By utilizing the said delay, the prosecution had deliberately fixed the appellant/accused in this case and therefore, the entire conviction and sentence passed by the trial Court are liable to be set aside.

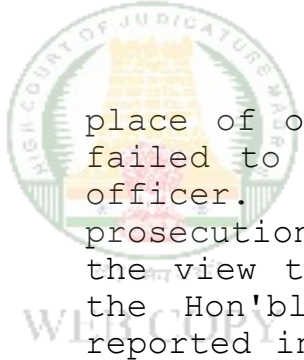
10. As an alternative submission, the learned counsel for the appellant submitted that there was no *mens rea* for the accused to commit the murder of the deceased. Due to sudden quarrel and provoked by the words and deeds of the deceased, the accused has caused a single stab injury on the hip of the deceased, which is not a vital part 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 conviction and sentence may be modified and the sentence may be reduced.

11. Per contra, the learned Additional Public Prosecutor submitted that the occurrence happened at 8.00 a.m. on 17.07.2011 in a busy locality near a tea shop and the eyewitnesses PW1, PW2 and PW4 have cogently given their evidences against the accused. Based on the said evidences, coupled with the medical evidences, the prosecution has clearly proved that it was this accused who caused the death of the deceased. The minor contradictions pointed by the learned counsel for the appellant would not cause any dent to the case of the prosecution. 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.

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

13. The first and foremost submission of the learned counsel for the appellant is that the evidences of the eyewitnesses PW1, PW2 and PW4 are contradictory to each other. But, a perusal of the evidences of PW1, PW2 and PW4 would go to show that there is no contradiction as alleged by the learned counsel for the appellant. The evidences of the eyewitnesses PW1, PW2 and PW4 are very cogent and convincing and they have clearly deposed about the place of occurrence and about their presence in the place of occurrence. They have also clearly deposed that it was this accused, who caused the death of the deceased. The evidences of PW1, PW2 and PW4 fully inspire the confidence of the Court. Therefore, the first contention of the learned counsel for the appellant is rejected.

14. The second contention of the learned counsel for the appellant is that the arrest of the accused and recovery of material objects viz., Knife (MO.1) and Yellow colour cotton bag (MO.2) cannot be believed, in view of the admission of PW2 in the cross examination that the accused ran away, leaving the knife - MO.1, which was used by the accused for stabbing the deceased, at the



place of occurrence itself. But, it is seen that the defence had failed to put any question, in this 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 second contention raised by the learned counsel for the appellant is rejected.

15. So far as the third contention of the learned counsel for the appellant is that there is a delay of 10 hours in FIR reaching the hands of the learned Magistrate and the said delay has not been explained away. It is true that there is such delay and the said delay has not been explained away by the prosecution. But, on that score, we find it difficult to discard the evidences of the eyewitnesses of PW1, PW2 and PW4, whose evidences inspire the confidence of the Court. Therefore, this argument is also rejected.

16. As stated earlier, the prosecution has clearly proved its case through the evidences of the eyewitnesses PW1, PW2 and PW4 and the medical evidences that it was this accused, who caused the death of the deceased. Having come to the said conclusion, now we have to examine as to what was the offence committed by the accused by the said act. According to the prosecution, the accused has been threatening the deceased for allotment of higher share in the common property and on 17.07.2011 at 8.00 a.m. the accused came to the place where the deceased was having a tea ie, PW4's tea shop along with PW1 and PW2 and one Sethuraj and stabbed the deceased. But, PW1 has categorically admitted in his cross examination that the occurrence went on for an about 15 minutes. If the accused had intention to do away with the deceased, on reaching the place of occurrence, he would have suddenly stabbed the deceased. The very fact that the occurrence went on for an about 15 minutes would go to show that when both the accused and the deceased met in the place of occurrence, there had arisen a quarrel and 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 stab on the deceased and ran away. More over, the stab was not on vital part. 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.

17. Now turning to the quantum of punishment, the accused is aged hardly 32 years. He is a young man. He has no bad antecedent. The occurrence also was not a premeditated one. 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.5,000/- would meet the ends of justice.

18. In the result, this Criminal Appeal is partly allowed; the conviction and sentence 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.5,000/-, 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 IVth Additional Sessions Judge,
Tirunelveli District.
 - 2.The Principal District Judge, Tirunelveli
 - 3.The Judicial Magistrate, Tirunelveli
 - 4.The Chief Judicial Magistrate, Tirunelveli
 - 5.The District Collector, Tirunelveli
 - 6.The Superintendent of Police, Tirunelveli
 - 7.The Superintendent of Central Prison, Tirunelveli
 - 8.The Inspector of Police,
Kuruvikulam Police Station,
Tirunelveli District.
 - 9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
 - 10.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai
- +One cc to Mr.K.Samidurai, Advocate, SR.No.90501

gcg
RL/13C/7P/KK/SAR1/6/2/2018

Judgment made in
Crl.A.[MD].No.411 of 2016

Dated : 28.11.2017