



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.A[MD].No.463 of 2016

Petchimuthu : Appellant

Vs.

State,
Rep by the Inspector of Police,
Ettaiyapuram Police Station,
Thoothukudi District,
Crime No.42 of 2013. : Respondent

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 05.10.2016 made in S.C.No.156 of 2014, on the file of the learned Principal Sessions Judge, Thoothukudi.

For Appellant : Mr.S.Mahendrapathy
For M/s.Polax Legal Solutions

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in S.C.No.156 of 2014, on the file of the learned Principal Sessions Judge, Thoothukudi. He stood charged for the offences punishable under Sections 294(b), 302 and 506(ii) of the Indian Penal Code.

2. By Judgment dated 05.10.2016, the Trial Court has convicted the accused and sentenced him, as detailed below:-

Section of Law	Sentence of imprisonment	Fine amount
294(b) IPC	To undergo rigorous imprisonment for one month.	No fine.



302 IPC	To undergo imprisonment for life.	Rs.1,000/- in default to undergo rigorous imprisonment for six months.
506(ii) IPC	To undergo rigorous imprisonment for three years.	No fine.

The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

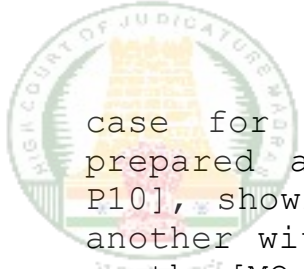
3. The case of the prosecution, as put forth by its witnesses, is consciously narrated below:-

The deceased, in this case, was one Mr.Muthu Irulappan. PW-1 is his wife. PW-1 is a resident of Kalamman Kovil Street, Ettaiyapuram, Tuticorin District. PW-2 is the sister of the deceased. PW-3 is the son of the deceased. The house of the accused is situated just adjacent to the house of PW-1. The accused can have access to his house only through a lane, situated by the side of the house of PW-1. There was a long standing enmity between the accused and the deceased in respect of the usage of the said lane.

3.2. On 12.03.2013, in the evening, with regard to the usage of the said lane, there was a quarrel between the deceased and the grandmother of the accused. On 14.03.2013, at 07.45 PM, when the deceased, PW-1, PW-2 and PW-3 were in front of their house, the accused came and attacked him on the backside of the head with stick. The deceased fell down. The accused again attacked the deceased on his forehead. PW-1 to PW-3 tried to prevent the accused from attacking further. The accused threatened PW-1 to PW-3 of dire consequences. Then, the accused fled away from the scene of occurrence. The deceased died instantaneously. PW-1 immediately went to Ettaiyapuram Police Station and made a complaint.

3.3. On receipt of the complaint, PW-13 registered a case in Crime No.42 of 3013, for the offences under Sections 294(b), 302 and 506(ii) of the Indian Penal Code. EX-P1 is the complaint and EX-P9 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

3.4. Originally, one Mr.Sankar Dev, [hereinafter referred to as the "Investigating Officer"] took up the case for investigation. Since he died during trial, PW-13 was examined to speak about the investigation done by the Investigating Officer, as he was assisting him all along for investigation. On 14.03.2013, at 09.30 PM, the Investigating Officer, taking up the



case for investigation, proceeded to the place of occurrence, prepared an Observation Mahazer [EX-P2] and a Rough Sketch[EX-P10], showing the place of occurrence in the presence of PW-8 and another witness. He recovered bloodstained earth [MO-4] and sample earth [MO-5] from the place of occurrence. Then, he conducted inquest on the body of the deceased in the presence of the panchayatars. EX-P11 is the inquest report. Then, he forwarded the dead body for postmortem.

3.5. PW-11 - Dr.Valamarthi conducted autopsy on the body of the deceased, on 15.03.2013. EX-P8 is the postmortem certificate. She noticed the following injuries:-

"Injuries:

1)A lacerated injury on back of head, about 10 cm x 6 cm x 3 cm on exploration of wound, there is fracture involved in occipital, right and left parietal bone, into the multiple pieces also fracture in membrane at the level of occipital and right and left parietal bone. The fractured bone pieces puncturing the brain matter, bleeding through the wound.

2)An abrasion on right eyebrow about 2 x 2 cm.

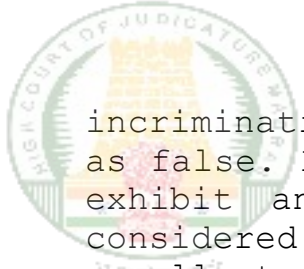
3)Lacerated injury on left side ear about 4 x 2 x 3 cm."

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

3.6. At 01.00 PM, on 15.03.2013, the Investigating Officer arrested the accused in front of Hansapuram Bus Stop in the presence of PW-8 and another witness. On such arrest, he gave a voluntary confession, in which he disclosed the place, where he had hidden the stick. In pursuance of the same, the accused took the police and the witnesses to the hide out and produced the stick. The Investigating Officer recovered the same under a mahazer. On returning to the Police Station, he forwarded the accused to the Court for judicial remand. He also handed over the material objects to the Court. Then, he examined PW-8 to PW-10 and recorded their statements. Then, he examined PW-11, the doctor, who conducted autopsy on the body of the deceased and recorded her statement. On completing the investigation, he laid charge sheet against the accused, on 26.06.2013.

3.7. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the prosecution, 13 witnesses were examined, 16 documents and five material objects were marked.

3.8. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the



incriminating evidences available against him, he denied the same as false. However, he neither choose to examine any witness nor to exhibit any document. His defence was a total denial. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

4. The learned counsel appearing for the appellant would submit that PW-1 to PW-3 are interested witnesses and therefore, their evidences should be rejected. Further, no witnesses were examined to corroborate the evidences of PW-1 to PW-3. The learned counsel appearing for the appellant would also submit that PW-1, in her chief-examination, has stated that the complaint was lodged at about 08.30 PM by her in the Police Station, whereas in her cross-examination, she has deposed that the police came to the place of occurrence and received the complaint. Further, the learned counsel for the appellant would submit that PW-1 in her chief-examination, has stated that the accused attacked the deceased without any quarrel, whereas in her cross-examination, she has stated that there was a wordy quarrel for five minutes and thereafter, the occurrence took place. The above contradictions, according to the learned counsel for the appellant, create doubt in the case of the prosecution. Pointing out the above, the learned counsel would submit that the accused is entitled for acquittal.

5. 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. 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 accused is liable to be punished under Section 304(ii) of the Indian Penal Code.

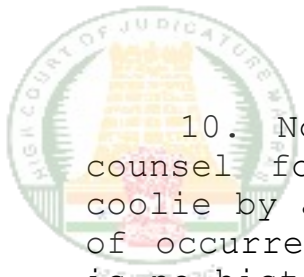
6. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, the prosecution has clearly proved the case with cogent and convincing evidences let in by PW-1 to PW-3. Under such circumstances, no infirmity can be found on the conviction and sentence recorded by the Trial Court. Thus, the learned Additional Public Prosecutor prayed for dismissal of the Criminal Appeal.

7. 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.



8. In order to prove the occurrence, the prosecution mainly relies on the evidences of PW-1 to PW-3. PW-1 is the wife of the deceased, PW-2 is the sister of the deceased and PW-3 is the son of the deceased. Though the learned counsel appearing for the appellant would submit that PW-1 to PW-3 are interested witnesses and therefore, their evidences should be rejected, we are not convinced by the said argument at all. It is not the law that the evidence of an interested witness should be rejected under all circumstances. It all depends upon the facts and circumstances of each case. If the evidence of an witness inspires the confidence of the Court, then, there cannot be any legal impediment to act upon the said evidence. Prudence requires only close scrutiny of their evidences. In this case, the occurrence took place in front of the house of the deceased. Thus, the presence of PW-1 to PW-3, who are all blood relatives of the deceased, cannot be doubted and their presence is highly natural. Moreover, a close analysis of the evidences of PW-1 to PW-3 would go to show that there is nothing on record to create even a slightest doubt in respect of the credibility of PW-1 to PW-3. Their evidences are duly corroborated by the medical evidence as well. Thus, we do not find any reason to reject the evidences of PW-1 to PW-3. Though the learned counsel appearing for the appellant would point out certain contradictions, in our considered view, they are all very minor in nature and these are all not at all contradictions in legal parlance.

9. Now, turning to the alternative submission made by the learned counsel for the appellant, the occurrence took place in a sudden quarrel between the accused and the deceased. In fact, PW-1 had stated in her cross-examination that there was a quarrel between the accused and the deceased for about five minutes prior to the occurrence. Thus, it is clear that there was no premeditation for the accused to commit the crime. It was purely sudden. In our considered view, there is every possibility that the deceased would have provoked the accused during the quarrel. It is highly improbable that but for the said provocation, the accused would have attacked the deceased. Therefore, we are able to presume under Section 114 of the Indian Evidence Act, 1872, that there would have been provocation at the end of the quarrel emanating from the deceased and in our considered view, the said provocation was grave enough to make the accused to lose his mental balance. The accused was not armed with any lethal weapon. He did not make any further attempt to cause any more injury on the body of the deceased. Thus, in our considered view, though the act of the accused would squarely fall within the Third Limb of Section 300 of the Indian Penal Code, the same would fall within the First Exception to Section 300 of the Indian Penal Code and the accused is liable to be punished under Section 304(ii) of the Indian Penal Code.



10. Now, coming to the quantum of punishment, the learned counsel for the appellant would submit that the accused is a coolie by avocation. He was hardly aged about 28 years at the time of occurrence. The occurrence was not a pre-meditated one. There is no history of the accused having bad antecedents. His family is in penury. Having regard to all the mitigating and aggravating circumstances, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for seven 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. Insofar as the conviction and sentence imposed on the accused for the offences under Section 294(b) and 506(ii) of the Indian Penal Code are concerned, they are liable to be confirmed.

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

- The conviction and sentence imposed by the Trial Court on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304(ii) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.10,000/- [Rupees Ten Thousand only], in default to undergo rigorous imprisonment for eight weeks.
- The conviction and sentence imposed on the appellant/accused under Sections 294(b) and 506(ii) of the Indian Penal Code is confirmed.
- It is directed that all these sentences shall run concurrently.
- It is further directed that the period of sentence already undergone by the appellant/accused shall be set off under Section 428 of the Code of Criminal Procedure.
- Fine amount, if any paid by the appellant/accused, shall be adjusted towards the fine amount now imposed.

Sd/-

Assistant Registrar(AE)

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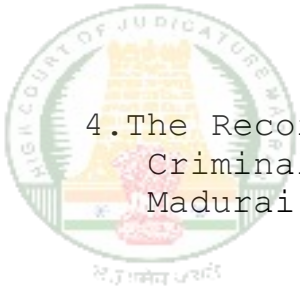
Sub Assistant Registrar

To

1.The Principal Sessions Judge, Thoothukudi.

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

3.The Additional Public Prosecutor,
Madurai.
Madurai.



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

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