

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Criminal Appeal No.244 of 2017

Nanda @ Nandagopal : Appellant/Accused-1

Vs.

State: Represented by
The Inspector of Police (L & O)
P-2, Otteri Police Station,
Chennai-600012.
Cr.No.492 of 2014 : Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment passed in S.C.No.13 of 2015 on the file of the XVII Additional Sessions Judge, Chennai, dated 29.07.2016 convicted u/s 341 I.P.C. and sentenced to undergo one month simple imprisonment and further convicted u/s 302 I.P.C. And sentenced to undergo Life Imprisonment and imposed fine of Rs.1500/- in default to undergo R.I. for six months and to set aside the conviction and sentence and acquit him from all charges.

For Appellant : Ms. S. Shanthakumari

For Respondent : Mr. V. Arul
Additional Public Prosecutor

JUDGMENT

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

The appeal is preferred against the conviction of the appellant under Sections 341 and 302 I.P.C. and sentenced him to undergo one month simple imprisonment for the offence u/s 341 I.P.C. and sentenced to undergo Life Imprisonment and to pay a fine of Rs.1500/- in default to undergo R.I. for six months for the offence under Section 302 I.P.C., by the learned XVII Additional Sessions Judge, Chennai, in S.C.No.13 of 2015 dated 29.07.2016. The sentences were ordered to run concurrently.

2. Deceased Karthik is brother of P.W.1 and son of P.W.2. The deceased P.W.1 and P.W.2 were residing at Door No.19/9, Varadhappan Street, Mettupalayam, Chennai-12. P.W.3 to P.W.13

are the residents of the same area. Prior to the occurrence, on one occasion, the deceased pelted a small stone on the accused. Agitated over the same, he developed grudge over the deceased. When the matter stood thus, on 07.04.2014 at about 3.15 p.m. when the deceased Karthik was standing alone in the Varadappan Street, accused came there and stabbed him on the left shoulder and back and ran away from the place. P.W.5, P.W.6 and P.W.8 and P.W.10 witnessed the occurrence and also arranged an auto and took the injured to the hospital and P.W.1 and P.W.2 brother and mother of the deceased also rushed to the hospital. P.W.11 and P.W.13 also witnessed the occurrence. P.W.13 also seen the injured and when enquired, he said that accused stabbed him. He also made arrangement to send the deceased to hospital. Thereafter, police came to the place of occurrence and prepared observation mahazar Ex.P.3 in his presence on the same day evening. He also signed in the Mahazar, his signature is Ex.P.4. In the meanwhile P.W.16 Medical Officer attached to the Kilpauk Government Hospital admitted the deceased on 7.4.2014 and noted the following injuries:

- 2 x 1 x 1 cm stab injury on his left shoulder
- 4 x 1 x 1 cm stab injury on his back
- 4 x 1 x 1 cm lacerated injury on his right thumb

He gave first aid to the injured and referred him for further treatment and gave Accident Register, which is marked as Ex.P.8.

3. P.W.1 after the occurrence, immediately lodged complaint Ex.P.1. P.W.21 Investigating Officer received the same and registered the case in Cr.No.492 of 2014 for the offences under Sectiond 341, 307 I.P.C.under Ex.P.12 F.I.R.and went to the place of occurrence and prepared Observation Mahazar Ex.P.3 and drawn rough sketch Ex.P.13 and seized the bloodstained tarred earth and normal tarred earth M.Os.5 and 6, under Ex.P.4 Seizure Mahazar. He also seized bloodstained dresses from the injured from the hospital under Ex.P.2 Mahazar and forwarded the properties to the Court under Form-95 Ex.P.14 series. On 11.4.2014 at about 7.00 a.m. he arrested the accused near Perambur Railway station in the presence of P.W.15 and one Babu and seized knife M.O.4 from the accused. Thereafter, he sent the accused to judicial custody and M.Os to the Court. P.W.19 doctor attached to Rajiv Gandhi Government Hospital on 22.4.2014 examined the injured Karthik and found that he was dead. He gave Death Report Ex.P.10. On receipt of death intimation from the hospital P.W.21 has altered the crime from Section 341, 307 I.P.C., to 341, 302 I.P.C. under Ex.P.16 Alteration Report and conducted Inquest before the Panchayatars and prepared Inquest Report Ex.P.17. He requested the Medical Officer to conduct Post Mortem. P.W.17 Assistant Professor attached to the Madras Medical College Hospital conducted autopsy on 23.4.2014 and found the following injuries:

"Surgical incised wound 26 cm on the upper part of left chest and onto the adjoining front

of left shoulder and left axilla with extension to the back for 2 cm on the front of left shoulder; wound margins of the horizontal portion of the above mentioned wound (12 cm) on the upper part of left chest were firmly adherent to each other; wound margins of the vertically oblique portion of the above mentioned wound (14 cm) on the front of left shoulder and left axilla were regular and gaping; intact surgical sutures found in the underlying soft tissues; defect of size 1.5 cm in the upper and outer aspect of second intercostal space; transected end of axillary artery and vein with intact surgical sutures found.

2) sutures incised wound 2.5 cm on the upper third of right side of back, 3 cm to the right of midline and 10 cm below the crease of nape of neck; on removal of sutures, wound margins were firmly adherent to each other.

3) Surgical incised wound 3 x 1 cm x cavity deep with intact surgical stay sutures, on the lower and outer aspect of left chest, 19 cm from the midline and 2 cm below the left nipple in the fourth intercostal space - Intercostal drainage tube wound.

4) Surgical incised wound 3 x 1 cm x cavity deep with intact surgical stay sutures, on the lower and outer aspect of left chest, 18 cm from the midline and 9 cm below the left nipple in the sixth intercostal space - Intercostal Drainage tube wound.

5) Surgical incised wound 3 x 1 cm x cavity deep on the lower part of midline of neck with slough in the wound margins - infected tracheotomy wound.

6) Needle punctured wound on the lower third of right side of neck - Central Venous line.

7) Linear Brownish black scratch abrasions 4 cm, 3 cm on the back of middle third of right arm.

1. Infected horizontally oblique incised wound 1 x 0.5 x 0.5 cm on the front of

base of right thumb."

He issued Post-Mortem Certificate Ex.P.9 and also opined that the deceased might have died due to multiple injuries. P.W.20 Assistant Director of Forensic Laboratory received the Material Objects, examined the same and sent Biological Report Ex.P.11 to Court. P.W.21 Inspector of Police examined the witnesses and recorded their statements, sent the material objects to the Court and forensic laboratory, received the reports and completed the investigation. He filed final report against the accused under Sections 341 and 302 I.P.C.

4. The accused was put on trial. In order to establish the case, the prosecution examined P.Ws.1 to 21; marked Exs.P.1 to P.17 and M.Os.1 to 6. After the examination of prosecution witnesses the accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances for which he denied the complicity. No witness was examined on the side of accused. He has not marked any document on his side. The Trial Court, after analyzing the evidence on record, convicted and handed down the sentences on the appellant/accused as stated above.

5. Learned counsel appearing for the appellant would submit that though the eye witnesses account proves specific overt act of the accused stabbing the deceased, the injury caused by the accused was not a reason to the death of the deceased and the death was due to surgical complications. Admittedly, the deceased died on 22.04.2014 after several complications, medical evidence also shows that there was septicemia on the body of the deceased. Hence, submitted that offence under Section 302 IPC has not been made out.

6. Learned Additional Public Prosecutor has not disputed the fact that the deceased died on 22.4.2014 and there were several treatments and surgeries. Hence, he left the matter for the discretion of the Court.

7. In the light of the above submissions, now the point for consideration in this appeal is, "whether the prosecution has established the charges framed against the accused beyond all reasonable doubts?"

8. It is the case of prosecution that there were some quarrel and dispute between the deceased and the accused. One occasion, when the deceased thrown a small stone over his friend, which has mistakenly hit the accused, which was taken very seriously by the accused and they quarreled with each other in that regard. When the matter stood thus, on 7.4.2014 at about 3.15 p.m. while the deceased was alone in his street, the

accused stabbed him by M.O.4. P.W.3 and P.W.4 neighbours spoken about accused stabbing the deceased. In fact, P.W.4's evidence remain unchallenged. He was not cross examined. P.W.5 to P.W.8 and P.W.11 in one voice stated that the accused only stabbed the deceased and immediately, the deceased was taken to the hospital and P.W.1 brother, P.W.2 Mother also rushed to the hospital. Thereafter P.W.1 laid Ex.P.1 F.I.R. P.W.3 also seen the injured in the place of occurrence. From the above evidence, the prosecution has clearly established the specific overt act of the accused stabbing deceased. P.W.16 who admitted the injured in the hospital immediately he noted down the stab injuries on the left shoulder, back and lacerated injury on the right thumb of the deceased.

9. Admittedly, the deceased died on 22.04.2014. Post Mortem report and evidence of medical officer shows that there were six surgical wounds ranging from 26 cm, 12 cm, 14 cm, 2.5 cm, 19 cm, 18 cm etc., The evidence of P.W.16 also shows that the Trachea spread with septicemia and there was surgical wound of the trachea. From the above evidence it is seen that the deceased died due to the complications viz., injuries caused by the accused, surgical injuries and also septicemia. Nature of treatment given by the hospital authorities and case sheets have not been produced before the Court. When P.W.16 also noted down the nature of the injuries caused by the knife, the seat of the injuries at the first instance when the deceased admitted in the hospital i.e., 2 x 1 x 1 cm stab injury on his left shoulder; 4 x 1 x 1 cm stab injury on his back and 4 x 1 x 1 cm lacerated injury on his right thumb, the depth of the injuries have not been noted down. The intention of the accused can be seen that he stabbed the deceased by knife repeatedly. The intention of causing such injury which is likely to cause the death can be inferred from the nature of the injury. Though the prosecution has not proved in this case intended injuries inflicted by the accused were direct result of death, the fact remains that the complications are certainly a result of injuries caused by the accused with knife.

10. Admittedly, in this case, the deceased died in the hospital on 22.04.2014 due to various complications namely septicemia and surgical injuries etc., In view of the same, we are of the view that, since the prosecution has not established which injury was direct cause of death, offence u/s 302 I.P.C. would not be attracted as the death was result of other complications also. Hence we are of the view that though the death was due to other complications also the primary reason for such complications are result of injuries caused by the accused. Hence, we hold that the accused is guilty under Section 304 [part-I] I.P.C. The point is answered accordingly.

11. Accordingly, the conviction and sentence imposed on the appellant/accused for offence u/s.302 IPC made in SC.No.13 of 2015 by the learned XVII Additional Sessions Judge, Chennai, in impugned judgment dated 29.07.2016 are hereby modified to Section 304 [Part I] I.P.C., and the appellant/accused is convicted for offence u/s.304 [Part I] IPC and sentenced to undergo seven years rigorous imprisonment. Fine amount and other directions imposed by the Trial Court, remains unchanged.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

ggs

To

1. The XVII Additional Sessions Judge
Chennai 01.
Do Thro The Principal Sessions Judge
Chennai 01.
 2. The X Metropolitan Magistrate,
Egmore, Chennai 8.
 3. The Superintendent
Central Prison for Men II
Puzhal, Chennai.(2 copies)
 - 4.The Inspector of Police (L & O)
P-2, Otteri Police Station,
Chennai-600012.
 5. The Public Prosecutor, High Court, Madras
- +1 CC to Mrs.S. Shanthakumari, advocate sr 13732.

Cr1. A.No.244 of 2017

SSD(CO)
SP(09/04/2018)