

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.342 of 2017

Sarath @ Sarath Kumar
S/o.Sankar

... Appellant/Accused

Vs

State represented by
Inspector of Police,
D Nagar Police Station,
Puducherry.

... Respondent/Complainant

Criminal Appeal filed u/s.374(2) Cr.P.C. against the judgment of learned Principal Sessions Judge, Puducherry, passed in S.C.No.21 of 2014 on 31.03.2016.

For Appellant : Mr.R.Thamarai Selvan

For Respondent : Mr.D.Bharatha Chakravarthy
Public Prosecutor
(Puducherry)

JUDGMENT

[Judgment of the Court was made by C.T.SELVAM, J]

This appeal arises against the judgment of learned Principal Sessions Judge, Puducherry, passed in S.C.No.21 of 2014 on 31.03.2016.

2. Case of prosecution is that between 22.00 hours on 03.07.2011 and 06.00 hours on 04.07.2011, appellant/accused, due to an argument, assaulted the deceased using a wooden log and bricks resulting in his death. On the complaint of PW-1, a case was registered in Crime No.224 of 2011 on the file of respondent for offence u/s.302 IPC. Upon completion of investigation and filing of charge sheet informing commission of offence u/s.302 IPC, the case, on committal, was tried in S.C.No.21 of 2014 on the file of learned Principal Sessions Judge, Puducherry.

3. Before trial Court, prosecution examined 21 witnesses and marked 19 exhibits and 15 material objects. None were examined on the side of defence nor were any exhibits marked.

3.1. PW-1, wife of deceased, spoke to one Chitra and her son Udayakumar quarrelling with the deceased on 03.07.2011, of Chitra shouting at the deceased stating 'you will not alive tomorrow', deceased leaving home at 10.00 p.m. and not returning thereafter, police informing that deceased was lying at 'Bharathiyar Bank' Puducherry the next day at about 06.00 a.m., rushing to see the deceased, having been informed by a lady about the death of deceased, informing police about the dispute between deceased and Chitra and her son, police arresting accused, assault on the deceased using bricks and wooden log, seeing deceased bleeding and preference of Ex.P1, complaint.

3.2. PW-2, brother of deceased, spoke to having been informed by neighbours that the deceased was lying with injuries, of rushing to the scene, seeing deceased lying in a pool of blood, seeing deceased's face disfigured and having heard of dispute between deceased and accused the previous day in the at a liquor shop and of cashier of the liquor shop having pacified them. PW-3, cousin of deceased, has also spoken on similar lines.

3.3. PW-4 spoke to deceased taking hold of his shirt and question 'did you assault me ?' on 03.07.2011 at about 02.30 p.m. of PW-3 pacifying them, accused celebrating his birthday at about 07.30 p.m. in a vacant site, accused asking P.W-4 money for drink and he refusing the same, returning home, at about 12.30 a.m., accused informing that he had assaulted a person and needed his cycle to escape and accused's grandmother informing PW-5/his mother about the death of deceased in the morning the next day. PW-5, mother of PW-4, has also spoken on similar lines.

3.4. PWs.6 and 7 have denied knowledge of the occurrence and hence, have been treated hostile.

3.5. PW-8 spoke to knowing the deceased, having worked as a cleaner in the TASMAC shop, of learning of death of deceased through newspapers, accused having taken a drink on 03.07.2011 at about 12.00 p.m. and again between 09.30 and 10.00 p.m. along with the accused, seeing both of them quarreling and of police enquiring him the next morning.

3.6. PW-9, grandmother of accused, spoke to having been informed by accused that he assaulted the deceased using stones and wooden log, of providing him a cycle and to hearing of death of the deceased the next morning.

3.7. PW-10, relative of accused, spoke to having participated in the birthday celebrations of accused, of returning home and at about 12.00 p.m. accused seeking his cycle informing that he assaulted the deceased using stones and wooden log and PW-9 providing the cycle key.

3.8. PW-11, Panchayatdar, spoke to visiting the police station on receipt of Ex.P2, summons. Ex.P3 is the inquest report.

3.9. PW-12 spoke to attesting Ex.P4, seizure mahazar for MOs.1, 2, 3, 4, 5, 6, 7 and 8 - blood stained wooden log, blood stained half brick, blood stained earth, sample earth, blood stained 'tar' drawn from the road, 'tar' drawn from the road without bloodstains, blood stained white colour shirt worn by deceased and slipper of deceased. PW-12 also spoke to attesting Ex.P5, observation mahazar and Ex.P6, crime details form.

3.10. PW-13, Doctor, who conducted postmortem, stated that the deceased appeared to have died due to head injuries and the individual has consumed alcohol.

3.11. PW-14, Senior Public Analyst and Chemical Examiner, spoke to examining the viscera of deceased and finding that the viscera is free from volatile poison, vegetable poison, metallic poison, barbiturates and phenothiazine derivatives. PW-14 also spoke to submitting Ex.P10, report.

3.12. PW-15, Village Administrative Officer, spoke to visiting the police station on the instructions of Tahsildar on 05.07.2011, attesting confession, attesting Ex.P12, seizure mahazar for MOs.9 and 10 - pant and shirt and Ex.P13 - seizure mahazar for MO-15, bicycle.

3.13. PW-16, Ward Attender, spoke to attesting Ex.P14, seizure mahazar for MOs.11 and 12 - lungi and underwear of the deceased.

3.14. PW-17, Head Constable, spoke to handing over the body of deceased to Doctor towards conduct of postmortem and on completion thereof, handing over the same to his wife.

3.15. PW-18, Police Constable, spoke to handing over MOs.1 and 2 - wooden log and brick to the Research Center at Hyderabad.

3.16. PW-19, photographer, spoke to taking photographs of the body of deceased and MOs.1 and 2 - wooden log and brick and handing over the same to police.

3.17. PW-20, Sub-Inspector of Police, spoke to registering a case, on the complaint of PW-1, in Crime No.224 of 2011 on the file of respondent for offence u/s.302 IPC and forwarding the same to Court and higher officials. PW-20 also spoke to requiring ambulance, forensic officials and photographer to be present at the scene of crime on the instructions of PW-21, Investigation Officer and handing over the case papers to PW-21.

3.18. PW-21, Investigation Officer, spoke to visiting the scene of crime, examining witnesses and recording their statements, preparation of mahazars, seizure of material objects, conducting inquest in the presence of witnesses, forwarding the body of deceased for postmortem, arrest of accused, recording his confession, forwarding the seized articles to Court under Form-95, obtaining various reports and on completion of investigation, filing of charge sheet informing commission of offence u/s.302 IPC.

4. On questioning u/s.313 Cr.P.C., appellant/accused denied charges. On appreciation of materials before it, trial Court, convicted appellant/accused for offence u/s.302 IPC and sentenced him to life imprisonment and fine of Rs.1,000/-, under judgment dated 31.03.2016. Hence, this appeal.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor for State. Perused the materials on record.

6. Pursuant to arrest of appellant/accused and his confession a pant and shirt of his bearing blood stains has been recovered under Ex.P12. Amidst other material objects seized at the scene is a blood stained brick. The forensic report in Ex.P19 reveals that the group of the blood stain detected on the brick as also the pant and shirt of the accused was 'A', which is informed to be the blood group of the deceased. The postmortem report in Ex.P7 informs the major injury suffered by the deceased as 'head deformed with side to side flattening with laceration 3cmsX ½cmX ½cm over forehead right side, abrasion all over right side of face, laceration 6cmsX1cmX ½cm over left eye brow, abrasion 6cmsX3cms left cheek, left lateral upper incisor tooth partly broken.'

7. Doctor-PW.13 who conducted postmortem has ruled out the sufferance of such injury in a drunken fall. P.W4 has spoken to the grandmother of the accused being his neighbour and as accused was a frequent visitor, P.W4 knew him. He has spoken to the birthday of the accused being celebrated on the occurrence date. He has deposed that at about 12.30 a.m his mother woke him up and informed that the accused was calling him. The accused asked for the key of the cycle belonging to P.W10. When asked

why accused informed that he had beat a person who had fainted and he wished to leave since trouble could erupt if he remained. The interaction was witnessed by P.W4's mother as also the grandmother of the accused. P.W5- mother of P.W4 has spoken in affirmation. P.W9- grandmother of accused has also affirmed the evidence of P.W4 as has P.W10 her son and owner of the cycle which was used by the accused to make a get away. Cycle-M.O.15 has been recovered from the accused under Ex.P13. P.W8- a cleaner at a liquor shop has spoken to accused and deceased consuming liquor at about 09.30 - 10.00 p.m on the night of occurrence. In the aforesaid scenario the involvement of appellant/accused in the occurrence relating to the death is evident.

8. We however are of the view that punishment u/s.302 IPC is not proper. The evidence on record indicates a drunken brawl between the accused and the deceased, the occurrence proper having taken place on the spur of the moment and without premeditation. This view finds support in the confession of the accused which the decision of this Court in Mottai Thevar vs. State, AIR 1952 Madras 586, informs can well be looked into.

9. A perusal of the confession of the accused informs that having taken a drink together and being on the road on wobbly feet, the deceased pestered him for money to buy more liquor and when appellant/accused informed that he did not have any the deceased beat him on his head with a palm thatch where upon he, angered, picked up a brick and caused injury to the deceased. On deceased falling down, he picked up a wooden log nearby and threw it upon his head. Accepting such version makes the occurrence a heat of the moment one occasioned by sudden provocation. On such reasoning we consider it appropriate, even while affirming the conviction arrived at by the Trial court to alter the same to one u/s. 304 (ii) IPC and direct a sentence of 5 years RI. Fine amount imposed by the Trial Court is confirmed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

gm

To

1.The Principal Sessions Judge,
Puducherry.

2. The Judicial Magistrate No.II
Puducherry.
3. Do Through The Chief Judicial Magistrate
Puducherry.
4. The District Collector/District Magistrate
Puducherry.
5. The Director General of Police
Puducherry.
6. The Superintendent,
Central Prison, Puducherry.
- 7.The Inspector of Police,
D Nagar Police Station,
Puducherry.
- 8.The Public Prosecutor(Puducherry),
High Court Campus, High Court
Madras.

+1 CC to Mr.P. Thamaraiselvan, Advocate sr 64664.

+1 CC to Public Prosecutor, Puducherry sr 64672.

Criminal Appeal No.342 of 2017

PM(CO)
SP(14/03/2019)

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