

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM:

THE HON'BLE MR.JUSTICE C.T.SELVAM

and

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

Crl.A.No.597 of 2017

K.Venkatesan

.. Appellant/Accused

Vs.

State rep. by its

Inspector of Police

T-5, Thiruverkadu Police Station

Thiruverkadu

Chennai 600 077

Crime No.476/2011

... Respondent/Complainant

PRAYER:Criminal Appeal has been filed under Section 374 (2) of Criminal Procedure Code to set aside the Judgment of conviction and sentence passed by the Learned II Additional District Sessions Judge, Poonamallee in S.C.No.45 of 2012 dated 29.01.2015.

For Appellant : M/s.C.Samivel

For Respondent : Ms.M.Prabhavathi

Addl. Public Prosecutor

J U D G M E N T

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

The appellant/sole accused was tried in SC.No.45/2012 for commission of the offence u/s.302 IPC. The Trial Court, vide judgment dated 29.01.2015 found the appellant/accused guilty of the said offence and sentenced him to undergo life imprisonment and also pay a fine of Rs.1000/- in default to undergo simple imprisonment for one year. Aggrieved by the said conviction and sentence, the present appeal came to be filed by the appellant herein.

2.The brief facts of the prosecution case as follows:

The accused is the husband of PW3. PW1 is the mother in law of the accused and the mother of the PW3. PW2 is aunty of PW3. PW3 and accused were residing separately at Door No.81, Durga Devi Street, Anbu Nagar, Thiruverkadu and they have two

minor female children. PW3 was working in a company and the accused was working as a loadman. In order to maintain her children, PW2 was allowed to live with PW3 and accused. The accused used to quarrel with PW3 frequently. On 07.11.2011, as usual PW3 returned from the work, the accused started quarrel with PW3 as to why she has not made any food for dinner and beat PW3, when the same was questioned by PW2, the accused asked her not to interfere with the family matter. PW2 informed the same to PW1 and the deceased, who is the husband of PW1. When PW1 and her husband namely the deceased, went to the house of the PW3 and questioned the accused. The accused stabbed the deceased with scissor (MO1) on his groin. Besides, he also pushed the deceased, as a result, the deceased fell down and sustained head injury. Immediately, PW4, the brother of PW3 took the deceased to A.C.S.Hospital, from there, they took him to Kilpauk Medical College Hospital, thereafter to General Hospital and later took him to Malar Hospitals.

3.However, on 13.11.2011 the injured succumbed to injury. While the deceased was in the hospital on 08.11.2011, the statement was recorded and the same was marked as Ex.P1. PW5, the friend of PW4 also rushed to the hospital and written a complaint as instructed by PW1. PW6, Medical Officer attached to the Kilpauk Medical College Hospital on 07.11.2011 at about 9.50 p.m. admitted the deceased in respect of which he has issued Ex.P2. PW7 also a medical officer attached to Government General Hospital, admitted the deceased in the hospital and treated the deceased and the deceased was died on 13.11.2011 early morning at about 4.11 a.m.

4.In the meanwhile, PW9, Medical Officer attached to the Madras Medical College, conducted autopsy (post mortem) and issued Ex.P3, i.e. Post mortem certificate and opined that the deceased died due to head injuries and also shock and haemorrhage, wherein, he had noting down the following:

Injuries:

(1) A4 x 3.5 OMX cavity deep laceration of the (RT) side of lower part of testes was seen, exposing the testis on the (RT) side. The skin edge were irregular and contused and partly healed.

(2)A4 x 2.5 cm x cavity deep partly healed laceration was seen in the lower part of LT side of the scrotum.

Cronitonus wound:

A33 cm long sutured wound was seen on the top of front of the head. The skin edges were clean cut and contused. The wound was closed with 32 sutures. The underlying seal was contused. & bun Holes were seen

in the front part of the skull. A 16 x8 cm area of bone flap was found removed from the frontal region. Diffuse Sub Dura Haemorrhage was all over the brain surface. A layer of contusion and laceration was seen on the surface of the LT frontal lobe of the brain with intra Cerebral Head in the LT and also RT frontal lobes of the brain. There was contusion of the base both frontal lobe of the brain. C/s. Fluid blood was seen in both lateral ventricles of the brain.

5.PW10 is also the medical officer of Malar Hospital, on 08.11.2011, in fact he admitted the deceased and issued Ex.P5. PW12 the Medical Officer of A.C.S.Hospital has also noted injuries on the deceased on 07.11.2011 in their hospital and issued Ex.P8.

6.PW13 received a complaint from PW1, registered F.I.R. in Crime No.476/2011 for the offences under Section 294(b), 324 & 307 IPC. Ex.P9 is the F.I.R. PW14, the Inspector of Police took up investigation and went to the place of occurrence on 08.11.2011 and prepared a rough sketch [Ex.P.11] and observation Mahazar [Ex.P10]. PW14 examined witnesses, recorded the statement and went to the hospital and conducted the inquest and prepared inquest report [Ex.P12] and requested for post mortem. Thereafter altered the crime by alteration report Ex.P.13 and arrested the accused on 16.11.2011 and recorded statement in the presence of PW11, which is marked as Ex.P6. Thereafter, he seized MO1, scissor from the accused and sent the accused to the Court for custody, after recording the statement of witnesses and after completion of the investigation he laid final report against the accused under Section 302 IPC. Based on the evidence and materials on record, the Trial Court found the accused guilty under Section 302 IPC and imposed life imprisonment and a fine of Rs.1,000/- in default to undergo one year simple imprisonment. Challenging the conviction and sentence imposed on him by the Trial Court, the accused preferred the present appeal.

7.The learned counsel appearing for the appellant submitted that the occurrence took place due to sudden quarrel among the family members. There was no intention on the appellant to cause death of his father in law. Due to provocation during the course of wordy quarrel, the appellant pushed the deceased and the deceased fell down and sustained head injury. Further more, the occurrence took place on 07.11.2011 and after the treatment the deceased died on 13.11.2011 i.e. after five days from the

date of occurrence. Therefore, the offence under Section 302 IPC is not attracted against the accused. As there was no pre meditation and the occurrence took place in a sudden quarrel, the offence under Section 302 IPC did not attract and pray for leniency.

8.The learned Additional Public Prosecutor fairly conceded that there were quarrel between the family members. Hence, she left the matter for appreciation of the Court.

9.On the side of the prosecution P.Ws.1 to 14 were examined and Exs.P.1 to 13 were marked.

10.In the light of the above submissions, it has to be decided as to whether the prosecution has proved the guilt of the accused / appellant beyond reasonable doubt? If so Whether the act of the accused comes under any one of the exceptions under Section 300 IPC?.

11.PW1 wife of the deceased, PW2 sister of PW1, PW3 wife of the appellant stated that the accused as usual developed quarrel with PW3 and when PW2 who is residing with the appellant and PW3 intervened, the accused sent her out of the house. PW2 informed PW1 and the deceased, who are residing nearby. When PW1 and the deceased came there and questioned about the beating of their daughter, the appellant stabbed the deceased in the groin with MO1 and pushed him down. PW4 son of the deceased was also present at the scene of occurrence and took the deceased to the hospital. PW3, the wife of the appellant also supported the version of prosecution.

12.PW6 is the Doctor admitted and treated the deceased at the first instance on 07.11.2011 and issued Ex.P2 Accident Register copy, wherein he has noted down the head injury on the occipital region. PW12 is the Medical Officer of ACS General Hospital also treated the deceased and issued Ex.P8, i.e. Accident Register Copy and in fact PW12 has seen the deceased with injury at first instance thereafter only PW6, the Government Doctor has seen him. PW12 has noted down the lacerated wound in the testicle and there was bleeding.

13.Thereafter, the deceased was again taken to Malar Hospital on 08.11.2011 and was treated by PW10. He also found that there was blood clot on the testicle and oozing of blood in the brain. The Medical Officer evidence in fact corroborated

the evidence of PW1 to PW4 in respect of causing injury on the Groin of the deceased.

14.It is specifically noted from the evidence of PW1 to PW4 that the appellant pushed down the deceased as a result he sustained head injury. The post mortem report and medical officers evidence clearly show that the death occurred on 13.11.2011 was due to the head injury, despite the treatment. The evidence of family members and medical officers clearly proved the injury sustained by the deceased. The evidence of PW1 to PW4 appears to be natural, after the occurrence, they have taken the deceased to various hospitals to save his life. In the meanwhile, F.I.R. was registered for the offence under Sections 294(b), 324 & 307 IPC.

15.Thereafter, the deceased succumbed to injury despite treatment given by the Doctors. From the evidence of PW1 to PW4, we are of the view that the entire occurrence was due to the sudden quarrel between the husband and wife and at the relevant point of time the deceased intervened and questioned the accused with regard to the beating his daughter the occurrence said to have taken place. The evidence of PW1, the mother in law of the accused and the wife of the deceased clearly shows that PW1 and PW2 who came to know about the quarrel between PW3 and the deceased entered into the house of the accused and in fact he slapped the accused. Thereafter, the accused also got provoked and beat the deceased. PW1 in her cross examination had categorically admitted the above fact.

16.Similarly, PW2 also admitted that only the deceased beat the accused at the first instance and thereafter, the accused attacked the deceased. The evidence of PW3 also shows that only after the deceased questioning the appellant, the appellant pushed him as a result the deceased fell down. On a perusal of the evidences of the witnesses, it can be seen that the entire occurrence took place out of sudden quarrel, particularly, when the deceased, PW1 and other family members came and questioned the accused and the deceased slapped the accused and the accused pushed the deceased down despite causing injury on his groin.

17.From the materials, we find that there is no pre meditation on the part of the accused. The occurrence took place due to sudden quarrel among the family members. Further injury on Groin of the deceased which was not fatal. According to the eye witness, the accused pushed the deceased and the deceased fell down, according to medical evidence the deceased

died due to the head injury.

18.We are of the view that the act of the accused is certainly comes under exception 4 of Section 300 IPC. Hence, the only knowledge can be attributed to the accused for such act of pushing down the deceased which would likely to cause death. From the above circumstances, we are of the view that only the offence under Section 304(2) IPC would be made out but not the offence under section 302 IPC. Accordingly, the appellant can be convicted only for the offence under Section 304(2) IPC and not under Section 302 IPC.

19.In the result, the criminal appeal is disposed of. The judgment of conviction and sentence imposed by the Trial Court is modified. The appellant is convicted for the offence under Section 304(2) IPC instead of 302 IPC taking into consideration the nature of quarrel. In view of the above modification of the conviction, the accused is sentenced to undergo R.I. For seven years instead of life imprisonment. In all other aspects, the judgment of the Trial Court still remains unaltered.

20.It is reported that the appellant/accused is in jail. Hence, he is directed to undergo the period of modified sentence awarded. It is made clear that the period of incarceration already undergone by him, shall be given set-off u/s.428 Cr.P.C.
kas

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The II Additional District Sessions Court,
Poonamallee

2. The Inspector of Police
T-5, Thiruverkadu Police Station
Thiruverkadu
Chennai 600 077
Crime No.476/2011

3.The Superintendent of Central Prison No.I
Puzhal, Chennai

4.The Public Prosecutor
High Court, Chennai.

5.The Judicial Magistrate II, Poonamallee

6.The Chief Judicial Magistrate, Thiruvallur

7.The Superintendent of Police, Thiruvallur District

8.The Section Officer,
Criminal Section, High Court, Madras

MR(co)
sm:26.3.2018

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