

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM:

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

Criminal Appeal No.656 of 2017

Velayutham : Appellant/Accused

Vs.

State: Represented by
The Inspector of Police
Keezhkuppam Police Station,
Villupuram District.
Cr.No.89 of 2015 : Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the order of conviction and sentence passed by the learned III Additional Sessions Judge, Kallakurichi at Villupuram District in S.C.No.76 of 2016 dated 22.12.2016 and acquit the appellant.

For Appellant : Mr. K. Thilageswaran for
Ms. M. Subha

For Respondent : Ms. M. Prabhavathi
Additional Public Prosecutor

JUDGMENT

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

1. Aggrieved over the conviction and sentence of life imprisonment and fine of Rs.5,000/-, in default to undergo simple imprisonment for six months, for the offence under Section 302 I.P.C., the present appeal came to be filed by the appellant.

2. The brief facts of the prosecution in nutshell is as follows:

2. (a) The accused is the third son of P.W.1 and the deceased. P.W.5 is the brother of the accused. P.W.12 is the sister of of the accused. The accused was working in Dubai for some time and he came for marriage of another brother, 1 1/2 months prior to the occurrence. As the deceased has already

given property to other brothers, the accused demanded partition from his father's property. On 4.6.2005, the accused demanded a partition from his father and brought P.W.2, P.W.3 and one Karunakaran to Panchayat. P.W.12 was cooking in the house at the relevant time. When the accused demanded partition, the deceased viz., his father told the accused that he will give the property after all other sisters came to his house. During such discussion, the accused removed the knife M.O.1 from his waist and stabbed his father on the stomach, forehead, thigh and right hand. P.W.12 sister of the accused has also witnessed the occurrence and P.W.5 another brother of the accused, on hearing the incident, ran to the spot and found that his father was seriously injured and accused fled away from the place of occurrence. Immediately, P.W.5 took the deceased to the Kallakurichi Government Hospital along with P.W.1. After given first aid, while P.W.5 and others were taking the deceased to the Government Hospital, Salem, he succumbed to injuries at 10.30 a.m. After the dead body was kept in the Government Hospital, Kallakurichi, P.W.1 lodged Ex.P.1 complaint.

2.(b) P.W.2 also aware that there was a meeting with regard to the partition in the month of June. On the date of occurrence, he also heard about the injuries caused to the deceased. P.W.17 Special Sub-Inspector of police received the complaint Ex.P.1 and registered the case in Cr.No.89 of 2015 u/s 302 I.P.C. under Ex.P.11 F.I.R. P.W.16 Inspector of Police took up the case for investigation and went to the place of occurrence and prepared observation mahazar Ex.P.12 and rough sketch Ex.P.13 in the presence of P.W.10 one Rajesh. He has also seized bloodstained cement plaster and sample cement plaster under Ex.P.14 seizure mahazar. Thereafter he conducted Inquest over the dead body and prepared Inquest Report under Ex.P.15. He sent requisition to the doctor to conduct post mortem.

2.(c) P.W.13 Assistant Surgeon attached to the Government Hospital, Kallakurichi, conducted autopsy over the dead body and found the following injuries:

1. A lacerated wound 10 x 4 x 3 cm over the right thigh on medial aspect
2. A lacerated wound 4 x 2 x 1 cm over the right elbow
3. A lacerated wound 3 x 2 x 1 cm over the frontal region of scalp
4. A incised wound 4 x 2 deep over the abdomen (upper) in midline exposing peritoneum.

and P.W.13 has opined that the deceased would appear to have died of intra abdominal bleeding injuries and also due to the injuries sustained. The post mortem certificate is marked as Ex.P.7.

2.(d) In the meanwhile, P.W.6 Village Administrative Officer while she was in office along with her menial P.W.7, the accused appeared before them and confessed the guilt of the offence. P.W.6 recorded in extra judicial confession into writing and sent the accused along with special report Ex.P.2 and P.W.6 to the police station through P.W.7. Thereafter, she went to the police station and the police examined the accused and recorded his confession statement. Pursuant to the admissible portion of the confession statement of the accused, P.W.16 seized bloodstained dresses from the accused. Further, in continuation of his investigation, he examined the witnesses, recorded their statements, seized other material objects and sent the same to the Court. After completion of investigation, he laid final report as against the accused under Section 302 I.P.C.

3. The accused was put on trial. In order to establish the case, the prosecution examined P.Ws.1 to 17; marked Exs.P.1 to P.17 and M.Os.1 to 7. 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 the accused under Section 302 I.P.C. and sentenced to undergo Life Imprisonment and a fine of Rs.5,000/- in default to undergo simple imprisonment for 6 months. Aggrieved over the same, the appellant has filed the present appeal.

4. The learned counsel appearing for the appellant would contend that there are serious discrepancies in the eye witnesses version. Therefore, their evidence are not reliable. The learned counsel would also contend that there is a delay in sending the F.I.R.to Court. At any event, it is the contention of the learned counsel that the occurrence took place due to provocation. Therefore, offence under Section 302 I.P.C. would not be attracted. The accused can be convicted only under Section 300 I.P.C.

5. Whereas the learned Additional Public Prosecutor submitted that the accused has caused severe injuries on the vital parts of the deceased by knife. The mother and sister of the accused have given clear evidence against the accused. There was no motive for the mother to implicate her own son in an offence. Therefore, he submitted that the offence under Section 302 I.P.C. alone is made out and hence he prayed for

dismissal of the appeal.

6. 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?"

7. The accused is the son of the deceased and P.W.1. P.W.12 is the sister of the accused and daughter of P.W.1. P.W.5 is another brother of the accused. This fact is not in dispute. P.W.1 mother of the accused, in her evidence has stated that the accused on the date of occurrence came with P.W.2 and one Manoharan and Karunakaran, demanded partition of the property from his father and questioned his father as to why he has not given any property to him. During the above discussion, the accused removed knife from his waist and stabbed the deceased indiscriminately on the stomach, right thigh, left hand, etc., which was witnessed by P.W.12, who was very much present in the place of occurrence. Immediately, P.W.5 and another brother rushed to the place and took the deceased to the Kallakurichi hospital, where first aid was given. While the deceased was taken to the Government hospital, Salem, he succumbed to injuries. Therefore, she lodged complaint Ex.P.1.

8. It is to be noted that the presence of the accused in the place of occurrence is not in dispute. The only contention of the accused is that the deceased fell down on the sharp object, which was placed there for erecting temporary shed made of plaited coconut leaves (Panthal) and sustained injuries. The defence suggested by the accused is improbable in view of the medical officer's evidence. The Medical Officer has noted three lacerated wounds on the right thigh, right elbow and forehead and also stab injury 4 x 2 cm deep over the abdomen (upper) in mid-line exposing peritoneum. A person fall on any object is not possible to sustain so many injuries on various parts of the body. P.W.1 is the mother and P.W.12 is the sister of the accused. In their evidence, they have stated that only the accused stabbed the deceased on the stomach and other parts of the body. It is to be noted that P.W.1 and P.W.12 are mother and sister of the accused. There was no reason for a mother to implicate her son falsely. Similarly P.W.12 sister was very much present in the house and cooking. Her evidence is natural. Unless there is serious motive, their evidence cannot be rejected. P.W.5 also brother of the accused. He also supported the version of P.W.1 and P.W.12. P.W.5 also in the house at the relevant point of time. He rushed to the spot immediately and took the deceased to the hospital. The evidence of P.W.1 does not suffer any infirmity. She has categorically stated that only the accused stabbed her husband viz., his father and as a result, the intestine came out. The evidence of Medical Officer who conducted Post-Mortem also clearly shows that peritoneum was

exposed and small intestine could be seen exposing peritoneum. It is to be noted that the deceased was given first aid at Kallakurichi Government Hospital. Though the prosecution has not filed any documents in this regard, the evidence of P.W.1 and P.W.5 would clearly show that the deceased was given first aid in the Kallakurichi Government Hospital. The Medical Officer's evidence is corroborated with the evidence of P.W.1 and P.W.12 and the complaint Ex.P.1 was also lodged at 12.00 noon. It is to be noted that the injured was taken to the hospital and after given first aid he was referred to the Government Hospital, Salem. While they started to proceed to Government Hospital, Salem, he died. So, the dead body of the deceased was kept in the Kallakurichi Government Hospital. Thereafter, F.I.R. came to be filed at 12.00 noon and the same was reached the Court on the same day at 1.30 p.m. These facts clearly show that the prosecution has proved the guilt of the offence.

9. P.W.1 mother of the deceased has categorically stated in her evidence about the accused, who stabbed the deceased, is none other than his father. The evidence of the Medical Officer/P.W.13 was to the effect that the deceased was admitted in the hospital before his death. Investigating Officer P.W.16 and Village Administrative Officer P.W.6 evidence prove the arrest and seizure of the knife and bloodstained cloth from the accused. Serology Report Ex.P.10 proves that the blood contained in the knife and the bloodstained dresses seized from the accused tallied with the blood of the deceased found in the dhoti. These facts clearly show that only the accused committed the offence and the prosecution has clearly established the charges against the accused.

10. The learned counsel for the appellant would contend that the entire occurrence took place in a sudden clash. It is to be noted that on a perusal of the entire evidence of P.W.1 and P.W.12, the accused demanded property from his father. He brought some people for that purpose. Though P.Ws.2 and 3 turned hostile, their evidence also shows that the accused demanded property from his father. P.W.2 also requested the deceased to give some property to the accused. Thereafter, there were some discussion. However, he has also heard about the injury to the deceased on the same day. It is to be noted that the nature of injuries sustained by the deceased clearly prove the intention of the accused to cause such bad injury which is likely to cause death.

11. From the nature of the injuries found on the deceased, the intention of the accused can be very well gathered. Causing severe injuries repeatedly on the body of the deceased clearly shows that the accused had intention of causing badly injury knowingly that such injuries are likely to cause death. Hence, the contention of the learned counsel for the appellant that

only the culpable homicide is made out, cannot be countenanced. We do not find any material to show that the occurrence took place in a sudden quarrel. To bring the offence within Exception-(iv) of Section 300 I.P.C., it must be shown by the accused that the occurrence took place without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Whereas the evidence adduced on the side of the prosecution clearly establishes that the accused carried knife with him and demanded partition from his father. During such discussion, he has caused injuries. The injuries are all serious in nature as noted by the doctor who conducted the Post Mortem. All these facts clearly prove that the accused has taken undue advantage and caused severe injuries on the right thigh, right elbow, forehead and also caused deep stab injury on the abdomen, exposing peritoneum. Hence we are of the view that the offence certainly fall under Section 302 I.P.C. and does not fall any of the exceptions u/s 300 I.P.C. Accordingly, we do not find any infirmity or illegality in the judgment passed by the trial Court and the appeal is liable to be dismissed. The point is answered accordingly.

12. In fine, the criminal appeal is dismissed, confirming the conviction and sentence of the learned III Additional District and Sessions Judge, Kallakurichi, in S.C.No.76 of 2016 dated 22.12.2016.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

ggs

To

- 1.The III Additional District and Sessions Judge, Kallakurichi.
- 2.Do Thro The Chief Judicial Magistrate, Villupuram.
- 3.The Judicial Magistrate, Kallakurichi.
- 4.Do Through The Chief Judicial Magistrate, Villupuram.
- 5.The District Collector, Villupuram.
- 6.The Director General of Police, Mylapore, Chennai 4.
- 7.The The Inspector of Police, Keezhkuppam Police Station, Villupuram District.

8.The Public Prosecutor, High Court, Madras.

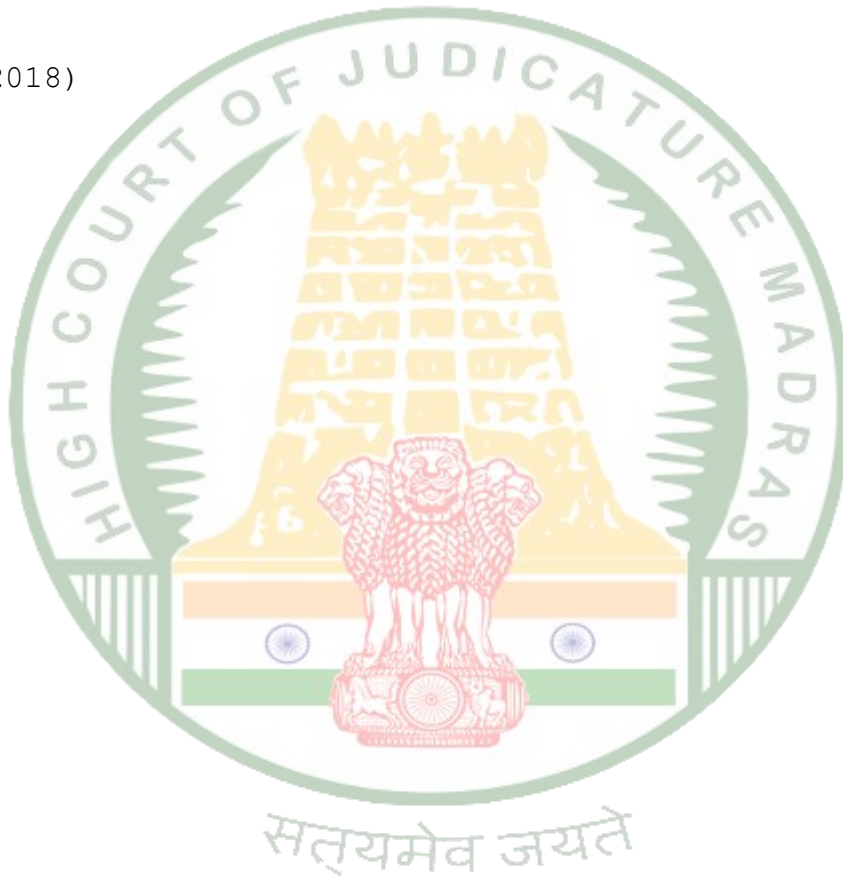
9. The Superintendent, Central Prison, Cuddalore.

10. The Section officer, Criminal Section, High Court, Madras.

+1 Cc to Mr.L. Thilagrswaran, advocate sr 16959.

Crl. A.No.656 of 2017

AK(CO)
SP(28/03/2018)



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