

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2018

PRONOUNCED ON : 09.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.680 of 2011

1.Karthick
2.Mani
3.Muniammal Appellants
Vs

State by
The Inspector of Police,
Uthiramerur Police Station,
Kancheepuram District.
Crime No.205/2009 Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment passed by the learned Sessions Judge, Kancheepuram in S.C.No.53 of 2010, dated 10.10.2011 convicted them under Section 304 part I and sentenced them to undergo 10 years Rigorous Imprisonment and also imposed fine of Rs.1,000/- in default to undergo 6 months simple imprisonment, to set aside the same.

For Appellant : Mr.M.G.Udayashankar for
Ms.S.Shantha Kumari

For Respondent : Ms.T.P.Savitha,
Government Advocate (Crl.Side)

JUDGMENT

The appellants are arrived as A1 to A3, in SC.No.53 of 2010 on the file of the Additional Sessions Judge No.2, Kancheepuram. The appellants stood charged for the offence under section 302 IPC. By Judgment dated 10.10.2011, the Trial Court convicted them under section 304 □ Part I IPC and sentenced to undergo ten years Rigorous Imprisonment and imposed a fine of Rs.1,000/- (Rupees one thousand only) in default to undergo six months simple imprisonment. Challenging the said conviction and sentence, the appellants is before this Court with this appeal.

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

The deceased in this case is one Shankar who is the husband of PW-1. After the death of 1st wife Chellammal, the deceased married PW-1 as his 2nd wife. After their marriage they are blessed with one female child. All the accused in this case are neighbours to the deceased. Their houses are

situated left to the house of the deceased. Prior to the occurrence due to the land dispute all the accused frequently quarreled with the deceased.

3. On 31.03.2009, at about 9.00 p.m., the deceased Shankar and his son Saran Raj returned to the house after completing their regular work. At that time, a dog came from the accused house and admitted to bite the deceased. So, the deceased asked the 2nd accused to tie the dog, encroached over the house of the deceased. The 2nd accused in this case, abused the deceased by using filthy language. Further, the 2nd accused through his leg kicked the deceased on the abdominal area. While so, the 3rd accused Muniammal came and by her hand assaulted the deceased on his nose. Further, the 1st accused Karthik took a black stone and attacked on the abdominal part of the deceased. Due to the attack made by the 1st accused, the deceased fell down near his house. Further, the 1st accused by using another black stone assaulted the deceased on the right forehead. Meanwhile, after seeing, the Raman (P.W.3) who is brother's son of the deceased, all the accused went to their house. Subsequent to that PW-1 and PW-3, admitted the deceased in Chengalpattu Hospital. At that time of admitting the deceased in the said hospital, the time is about 12.00' clock mid night in the said hospital. Meanwhile, on the day of occurrence at about 9.30 hours PW-6, Vijaybanu admitted the injured as an in-patient in Chengalpattu Hospital and noticed the injuries found on his body. In this regard, he issued AR copy under Ex.P.3. Subsequently, the injured was referred to the Government General Hospital for further treatment. Next day early morning at about 4.00 pm, PW-11 Duraisamy, the Sub Inspector, Uttiramerur Police station came to the hospital and recorded statement from the deceased. Ex.P.1 is the statement given by the deceased. After recording the statement, PW-11 returned to the Police Station and registered the case in Crime No.205 of 2009 under section 294(b), 323, 324 and 506 (2) IPC. Ex.P.10 is the printed F.I.R. On the same day, about about 17 hours, he went to the Scene of Occurrence and in the presence of PW-5, Sarathkumar and one Nagarajan, he prepared the observation mahazaar Ex.P.2. Further he drew the rough sketch under Ex.P.11. At about 18 hours, in the presence of the same witness he recovered two black rocks M.O.1 and M.O.2 under recovery mahazaar Ex.P.2. He also examined PWs-2 to PW-7 and recorded their statements.

4. In continuation of the investigation on 02.04.2009 on the information at about 5.00 a.m at Ammai Appanallur Junction four road, he arrested all the accused and sent them to judicial custody. On the same day at about 19.30 hours, PW-12 the then Inspector of Police, Kancheepuram received the death intimation of the deceased. Subsequent to that, he altered the Section of law to 302 IPC and prepared an alteration report under Ex.P.13. On the same day, he went to the Government General Hospital, Chennai and in the presence of witnesses he prepared inquest report under Ex.P.14. Thereafter through PW-9, Rajendran, Head Constable, made request for conducting post mortem over the dead body. In this regard, he send the requisition to the hospital authorities. On receipt of requisition given by PW-12, PW-10 Dr.Parimala, who was Professor in Chennai Government General Hospital, conducted the autopsy and noted down the internal and external injuries.

Abrasion : L Elbow 1 x 1 cm, wt. Index finger 1 cm length.

O/D Skull : Scalp, Durameter, Intact, Brain Edematous c/s congested.

O/D Thorax : Heart Chambers filled with fluid, Blood Lungs, c/s Congested.

O/D Adbomen : Stomach consists 10 ml of yellow colour fluid on opening the abdomen. On cutting the suture which extends from for 28 cm of 28 sutures extending from xiphisternum.

Two drainage holes seen on both the sides of 1 cm suture for draining contusion of blood in the small intestine. Both kidneys contused, Liver c/s congested. Spleen not present, stump of the spleen seen. The serpens end to end seen in the middle, and the suture marks seen, pus seen in the Abdominal cavity. Spinal collas Pelvic, Hyod bone intact, Bladder empty.

5. After completion of the post mortem by PW.10, visera was collected and sent to the forensic laboratory for examination. In the result, the experts gave report that no poisonous material was found in the dead body of the deceased. Thereafter PW.10, gave the final report to the effect that the deceased would appear to have died of blood injury of abdominal with septicaemia. The postmortem report issued by PW-12, and the visera report were marked as Ex.P.8 and Ex.P.9 respectively. Further the Inquest report had been marked as Ex.P.14.

6. After receiving the reports, the Doctor PW-10, was examined and her statement were recorded by PW.12. Further, he examined the Doctor who gave treatment in Chengalpattu Hospital. After concluding the investigation on 18.06.2009, he filed the final report under section 302 read with Section 34 IPC.

7. Based on the above materials, Trial Court framed the charges and all the accused denied the same. In order to prove the case on the side of the prosecution as many as 12 witnesses are examined as PW-1 to PW-12 and 14 documents were marked as Ex.P.1 to Ex.P.14 besides 2 M.Os.

8. Out of the said witnesses, PW-1 is the wife of the deceased, who is the witnesses to the occurrence has stated in her evidence that due to land dispute there were frequent quarrels between the deceased and the accused. He has further stated that on the day of occurrence, A1 and A2 assaulted the deceased through leg and his hand respectively, further, stated that the 1st accused assaulted the deceased by using black rock, so, he was admitted in the Chengalpattu Government Hospital and after giving First Aid he was referred to the Government General Hospital, Chennai. She further stated in the Chengalpattu Government General Hospital itself, the police officer came and recorded the statement of the deceased.

9. PW-2, is son of the deceased, who is also one of the witness to the occurrence, deposed that there was frequent quarrel between the deceased and the accused over the land dispute. On the date of occurrence, for asking about the dog bite, all the accused in this case assaulted the deceased. Further, he stated about the treatment given to the deceased.

10. PW-3, who is the brother's son of the deceased, deposed that on the date of occurrence when he was going to his house, he saw the deceased on the side of the road with blood injuries. Immediately by using his two wheeler, PW-1 and himself admitted the deceased in Chengalpattu Government Hospital and subsequently the death had happened to Shankar in Government General Hospital, Chennai. PW-4 is the neighbour to PW-1, and he had not supported the case of the prosecution in any manner so he was treated as hostile witness. PW-5 has stated in his evidence that in his presence, the police officer prepared the observation mahazaar and recovered M.O.1 & M.O.2.

11. PW-6, the doctor who gave initial treatment to the deceased has stated that at the time of giving treatment to the deceased, it was found that deceased had sustained lacerated injuries on the right side of the head, from the said injuries, blood oozed out. Further he could find a cut injury on the right side of the eyebrow of the deceased. He recommended for taking X-ray in the chest, head and in the abdominal area. PW-7 and PW-8 were the experts working in the forensic laboratory, Chennai. They had stated in their evidence about the test conducted by them over the visera. PW-9, the then Head constable stated in his evidence that based on the direction of P.W.12, he had handed over the dead body for conducting postmortem along with requisition. Further he stated about the handing over of M.Os and blood samples for chemical analysis.

12. PW-10 is the medical officer conducted autopsy on the dead body of the deceased and issued final report with regard to the cause of death. PW-11 is the Sub Inspector of Police who registered

the complaint. He has given evidence regarding the investigation conducted by him. PW-12 who is the Inspector of Police, stated in his evidence about the investigation made by him in this case.

13. The learned Trial Judge with regard to the incriminating materials put forth by the prosecution, questioned the accused under section 313 Cr.P.C and for which all the accused denied as false. However, they did not choose to examine any witness nor mark any documents on their side. The learned Trial Judge considering all the materials placed and considering the documents put forth by both sides convicted and sentenced the appellants as stated supra. Challenging the same, the present appeal has been filed.

14. I have heard the learned counsel for the Appellants, the learned counsel for the Respondent and perused the materials available on records carefully.

15. The learned counsel for the appellants would contend that there are lot of contradictions in the evidence of PWs-1 to PW-3. There is also a delay of two days in sending the FIR to the Magistrate. Further, the doctor opined that the death is due to the septicaemia. He would further contend that there is delay in sending the samples to forensic lab. According to him the prosecution has failed to prove its case.

16. Per contra, the learned Additional Public Prosecutor would contend that the evidence of the witnesses to the occurrence were the wife and the son of the deceased, the occurrence took place near to the house of deceased as well as to the house of accused, the Medical Officer who gave the opinion is assertive. Considering the above facts, the Trial Court has rightly convicted the appellants under section 304 Part-I IPC. Therefore, nothing was available for set aside the conviction and sentence passed by the Trial Court.

17. I have considered the rival submissions made on either side.

18. Admittedly, P.W.1 is the wife and P.W.2 is the son of the deceased. Both of them are two eye-witnesses to the occurrence. According to them, there were frequent quarrel between the accused and the deceased. Now, considering the evidence given by the Medical Officer with the evidence of P.Ws.1 and 2, the evidence given by P.Ws.1 and 2 is confirmed to the effect that all the three accused have assaulted and caused injuries on the forehead and the abdominal part of the deceased. In this regard, the Doctor P.W.6, who issued AR Copy, stated in his evidence that at the time of admitting the deceased only head injuries were found and in the report he has not stated anything about the injuries found in the abdominal part of the deceased. Only P.W.10, the Doctor who conducted autopsy, in Ex.P-8 Postmortem Report stated that there was pus () in the internal abdomen and found blood oozing on the abdominal area. She has further stated in her evidence that blood was oozing from small intestine and kidneys. She was of the opinion that the death would have been caused due to blunt injury found in the abdominal area and with septicaemia. She has also stated that knowing that no alcohol or poisonous substance in the abdomen of the deceased, she had given Ex.P-8 Postmortem Report. Now, applying the evidence of P.W.10 Doctor that no poisonous substance was found in the body of the deceased with the ocular evidence of P.Ws.1 and 2, it is apparent that the death could have been caused only due to the attack made by the deceased. Secondly, on the close scrutiny of the opinion given by the Doctor the death is not due to any poisonous substance found in the deceased, however the septicaemia or blood poisoning could have been happened after two days from the date of occurrence.

19. The second contention of the appellants is to the delay in sending the FIR to the Court. The Investigating Officer has stated in his evidence that only on 02.4.2009, the FIR was sent to the

Court. In this regard, the delay was admitted by the Investigation Officer. However, in his evidence he has stated that initially the FIR was registered for the offence under section 294(b), 323, 324 and 506(ii) IPC and thereafter it was altered to Section 302 IPC.

20. Nowever, P.W.6 Dr. Vijay Babu, in his evidence has stated that he had noted down the injuries found on the injured under Ex.P-3 on 01.04.2009 at about 02.30 hrs., that means within five hours from the time of occurrence. In the trial court a plea was taken that the report given by the forensic experts and the Doctors does not support the case of the prosecution. Since the medical evidence is corroborated by ocular evidence, non-support by the reports given by the experts could not dilute the case of the prosecution.

21. Learned counsel for the appellants has also made submission that the presence of P.Ws.1 and 2 has not been stated in the statement given by the deceased before P.W.11, but, P.W.1 and P.W.2 have stated in their evidence as if they are present at the time of occurrence. Even during their examination as witnesses, there is no contradiction. P.W.1 has specifically stated about her presence at the time of occurrence. However, she has stated that at the time of occurrence she was in kitchen and when she came out, after hearing the big sound, she noticed A-3 attacking the deceased by his leg. Considering the aforesaid evidence with the relevant records available, the submission of the learned counsel for the appellants with respect to the presence of P.Ws.1 and 2 at the time of occurrence cannot be accepted. It is not disputed that there was land quarrel between the accused and the deceased and their houses are situated nearby. Moreover, the alleged offence had occurred at about 9.30 p.m. in the night and therefore there is every possibility of the presence of P.W.1 at the scene of occurrence. Accordingly, I am of the view that the evidence produced by the prosecution before the trial court had clearly proved the offence committed by the accused. In the judgment rendered by the Additional Sessions Judge / Kancheepuram, he has elaborately discussed the points raised before this Court and answered in favour of the prosecution. This Court also confirms the view taken by the learned trial Judge.

22. The learned counsel for the appellants would also contend that all the accused in this case belong to a same family and further the offence committed by them was without any motivation and intention to commit murder of the deceased Shankar. In the said circumstances, conviction and sentence of ten years and fine of Rs.1,000/- is on the higher side and he prayed for reducing the sentence.

23. This argument has to be considered on the factual aspects. From the available records it is seen that previous to the occurrence there were quarrel between the accused and the deceased on a land dispute, this aspect was not disputed by P.Ws.1 and 2 during their cross-examination. Further, at the date of occurrence, the deceased had not attacked the accused, except to ask about the dog bite. Only for that reason, all the accused joint together and assaulted the deceased. This shows that they have intention to kill the deceased. So, I am unable to accept the said contention raised by the appellant. Further, after registration of the case from the year 2010 onwards, all the appellants are facing proceedings in this case. So, considering the said facts and circumstances of the case, I am of the opinion that the period of 10 years imprisonment is excessive and reducing the same as five years would be sufficient. Accordingly, the appeal is partly allowed. The conviction and sentence awarded by the trial court is modified and the appellants are directed to undergo sentence of 5 years with fine of Rs.1,000/-, in default to undergo six months simple imprisonment. The period already undergone by the accused is set off as contemplated under Section 428 Cr.P.C.

In the result, the criminal appeal is partly allowed.

09.10.2018

Index:Yes/No

Internet:Yes/No

Speaking order/non-speaking order

drl

To

1. The Principal District and Sessions Judge,
Kancheepuram.

2. The Inspector of Police,
Uthiramerur Police Station,
Kancheepuram District.

3. The Public Prosecutor,
High Court, Madras.

R.PONGIAPPAN,J,

drl

09.10.2018