

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2018

CORAM:

THE HONOURABLE Mr.JUSTICE C.T.SELVAM  
AND

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

Criminal Appeal No.469 of 2018

Sampath  
S/o.Govindasamy

... Appellant/Accused

- Vs -

The State represented by  
Inspector of Police,  
Kandili Police Station,  
Vellore District.  
(Crime No.48/2014)

... Respondent/Complainant

Criminal Appeals filed u/s.374(2) Cr.P.C. against the  
judgment of learned III Additional District and Sessions Judge,  
Thirupathur, Vellore District, passed in S.C.No.164 of 2015 on  
20.10.2017.

For Appellant : Mr.V.Rajamohan

For Respondent : Mr.R.Pratap Kumar,  
Additional Public Prosecutor

JUDGMENT

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

This appeal arises against the judgment of learned III  
Additional District and Sessions Judge, Tirupathur, passed in  
S.C.No.164 of 2015 on 20.10.2017.

2. Prosecution case is that the appellant/accused was the  
maternal uncle of PW-2. PW-2 had been given in marriage to  
another maternal uncle/brother of both the accused and PW-1.  
Differences having arising between PW-2 and her husband, she had  
returned to her parental home. PW-2, her husband as also the  
accused had shared joint residence before the departure of PW-2

to her parental home. At about 5.30.p.m on 20.02.2014, the accused had gone over to PW-1's house and confronted PW-2 stating that he would taken her back to the matrimonial home if she admitted to wrong doing. An argument arose between the deceased/father of PW-2, who stated that PW-2 would be sent back to the matrimonial home if her husband, who had beaten her, came and asked for her return. The appellant/accused whipped out a button knife, which he had in his waist and stabbed the deceased on the left clavicle, resulting in death. A case was registered in Crime No.48 of 2014 on the file of Kandili Police Station for offence u/s 302 IPC. On completion of investigation and filing of charge sheet before learned Judicial Magistrate-II, Tirupattur, the case, on committal, was tried in S.C.No.164 of 2015 on the file of learned III Additional District and Sessions Judge, Tirupattur.

3. Before trial Court, prosecution examined 13 witnesses and marked 14 exhibits and 7 material objects. None were examined on the side of defence nor were any exhibits marked.

3.1. PW-1, Wife of deceased, deposed that when the accused came to their house and asked PW-2 to return to the matrimonial home, the deceased/husband of PW-1 said that the husband of PW-2 should come and call PW-2 and he would talk to him and send his daughter and he had nothing to discuss with the accused. When the deceased bent down to pick up a horse gram basket, the accused took the knife, kept in his hip and stabbed the deceased on the left side of the chest. On seeing the crowd, the accused ran away with the knife. They took the deceased to hospital by auto and the deceased died within 5 minutes of reaching the hospital. PW-1 also spoke to preferring Ex.P1, complaint to the Inspector of Police, Kandili Police Station. PW-2 & 3, daughters of deceased and PW-4, son of deceased, have spoken on the same lines.

3.2. PW-5, an agriculturist, has deposed that on the day after the occurrence at 7.30.am, the Kandhili Police came to the scene and prepared Ex.P2-observation magazar and recovered the blood stained Mud, unstained mud, unstained white colour shirt under Seizure Magazar-Ex.P3, which he attested.

3.3. PW-6 deposed that when he and one Venugopal went to Pallapalli Village, police officials were there along with the accused. They went along with the Investigating Officer and the accused took a knife from the fencing of a mango orchard and the same was seized under Seizure Mahazar Ex.P3, attested by him and Venugopal signed as witnesses.

3.4. PW-7, Doctor, Assistant Surgeon, Government Hospital, deposed that on 20.02.2014 at 6.10.p.m he treated one Natarajan,

aged about 50 years, for a 3 x 2 x 5 CM oval shaped injury on the left clavicle bone and the patient died in the I.C.U itself. His report is Ex.P6.

3.5. PW-8, Doctor, Assistant Surgeon, Government Hospital, Tirupattur, spoke to conducting post-mortem on the dead body of the deceased on receipt of Ex.P9-requisition letter from PW-10-Head Constable.

3.6. PW-9, Scientist, spoke to receiving the case properties with requisition letter Ex.P9 from Head Constable and after due examination, issuing Chemical report Ex.P10 stating that no poison or Alcohol was found.

3.7. PW-10, Head Constable, spoke to handing over the requisition letter to the duty Doctor and identifying the body towards conduct of post-mortem and on completion thereof handing over the same to the relatives of deceased.

3.8. PW-11, Special Sub Inspector of Police spoke to receiving the complaint given by PW-1 and registering case in Crime No.48/2014 for offence u/s 302 IPC and handing over investigation to Inspector of Police. Ex.P11 is the F.I.R.

3.9. PW-12, Inspector of Police, who conducted investigation in the case, spoke to visiting the scene, preparation of observation mahazar, rough sketch, recovering material objects, examining witnesses, recording confession of appellant/accused, arrest of accused, obtaining various reports. On his transfer, PW-13 Inspector of Police, took up further investigation and on completion, filed charge sheet informing commission of offences u/s.302 and 506(ii) IPC before learned Judicial Magistrate, Tirupattur. The case, on committal, was tried in S.C.No.164 of 2015 on the file of learned III Additional District and Sessions Judge, Tirupattur.

4. On questioning u/s.313 Cr.P.C., appellant/accused denied charges. On appreciation of evidence, oral and documentary, trial Court, under judgment dated 20.10.2017, convicted appellant/accused and sentenced him to Imprisonment for Life and fine of Rs.5000/- i/d 3 months S.I for offence u/s 302 IPC. Against such finding, the present appeal has been filed.

5. Heard learned counsel for appellants and learned Additional Public Prosecutor for respondent. Perused the materials on record.

6. Learned counsel for appellant submitted that as against the prosecution case and the evidence of the prosecution witnesses PWs-1 to 4 that the accused had used a button knife to

commit the offence, the knife recovered in the case M.O.1 was not a button knife but a 'soori' knife. Learned counsel submitted that though the charge against the appellant was that he had caused an injury to the left clavicle of the deceased Pws-1 to 4 have spoken to the appellant/accused having caused injury to the chest of the deceased and as such their presence at the scene was not to be believed. Further, PW-1 has not spoken to the presence of PW-3 and PW-4 at the scene. Learned counsel next submitted that even if the prosecution case be true, the case was one where conviction ought not to have been made u/s 302 IPC as the evidence of the eye witnesses would clearly reveal that exception of Sub Section 4 to Section 302 IPC was attracted. In support of such submission, learned counsel contended that admittedly, PWs-1 & 2 had taken the deceased to hospital and Ex.P6-Accident Register informed so. Even in Ex.P6 mention had been made of a quarrel before the occurrence. Such position also was informed in Ex.P1-Complaint preferred by PW-1. Though PW-1, in the course of cross-examination has denied that she had informed of quarrel, the Investigating Officer-PW-12 had admitted that she had done so. As admitted by PW-1/Wife of deceased as also PW-2/his daughter, there was no enmity between the accused and themselves and therefore, the appellant/accused had no motive to do away with the deceased. In the course of an argument between immediate relatives and relating to PW-2/daughter of the deceased and PW-1 returning to the matrimonial home, an argument had ensued and in the heat of the moment appellant has resorted to the offending act. He has not acted cruelly as the infliction of only a single injury would indicate. Learned counsel submitted that in the least, the case called for reduction of sentence.

7. Mr.K.Prabakar, learned Additional Public Prosecutor submitted that as rustic villagers PWs-1 to 4 could not be required to draw fine distinctions between injury to the clavicle area and injury to the chest. The post-mortem report in Ex.P8 clearly informed the cause of death to be the single injury suffered by the deceased. Where the witnesses had spoken clearly to the occurrence which had resulted in the death of the deceased, it was for the appellant/accused to explain how he came to be possessed of a knife at the time of occurrence. So submitting, learned Additional Public Prosecutor sought confirmation of both conviction as also sentence arrived at by Trial Court. Learned Additional Public Prosecutor fairly pointed out that even when appellant/accused was questioned by the Trial Court before sentencing him, he had answered that a wrong stood committed, he had children and hence, Court might be lenient in passing sentence against him.

8. We have considered the rival submissions.

9. Mere reference of the murder weapon as a button knife both in the complaint as also in the evidence of Prosecution Witnesses would not in any manner affect the prosecution case inasmuch as M.O.1-Knife had been identified by them in Court. There is no occasion to doubt the presence of the prosecution witnesses at the scene. PW-1 not speaking to the presence of PWs-3 & 4 would not necessarily lead to the conclusion that such witnesses were not present. The presence of PWs-1 to 4, family members of the deceased, at their house, where the occurrence took place, is natural. Ex.P6-Accident Register relating to the admission of deceased at hospital informs that PWs-1 and 2 had brought the deceased thereto. Once this Court arrives at the conclusion that the occurrence indeed had been witnessed by PWs-1 to 4, also keeping in mind the position that immediate relatives of the deceased would not allow the real assailant to go free by implicating their own brother/uncle, there is no room to doubt that deceased had died other than at the hands of the appellant/accused. However, there is quite some consistency in the prosecution case, as rightly pointed out by learned counsel for appellant, of injury having been caused to deceased by the appellant/accused in a course of a sudden quarrel. As rightly submitted, PWs-1 & 2- Wife and daughter of the deceased admit to there being no enmity. Further, that the appellant/accused has not acted cruelly, is clear from fact that he had caused only a single injury, which unfortunately had resulted in death.

11. Given the facts and circumstances of the case, we consider it appropriate to confirm the finding of conviction, but, alter the same from one u/s 302 IPC to one u/s 304(ii) IPC and direct sentence of Rigorous Imprisonment for 7 years. Fine imposed by Trial Court is confirmed.

This Criminal Appeal is ordered accordingly.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The III Additional District and Sessions Judge,  
Thirupathur, Vellore District.
2. The Inspector of Police,  
Kandili Police Station,  
Vellore District.

3.The Principal District and Sessions Judge,  
Vellore.

4.The Judicial Magistrate No.2,  
Tirupattur.

5.The Sessions Court.  
Tirupattur.

6.The Superintendent,  
Central Prison, Vellore.

7.The Public Prosecutor,  
High Court, Madras.

Copy to  
The Section Officer,  
Criminal Section,  
High Court, Madras.

+1cc to Mr.N.Mohideen Basha, Advocate, S.R.No.79741

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SR(CO)  
SRG(12/03/2019)



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