

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.07.2018

CORAM :

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No. 513 of 2010

Subramani @ Subramanian

Appellant

Vs.

State by
Inspector of Police,
G-4 Uthiramerur Police Station
Uthiramerur
Crime No.531 of 2008

Respondent

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., to set aside the conviction and sentence dated 20.08.2010 made in S.C.No.21 of 2010 on the file of the learned Sessions Court No.II, Kancheepuram.

For Appellant : Mr.P. Dinesh Kumar

For Respondent : Mrs.T.P. Savitha

Government Advocate(Criminal Side)

JUDGMENT

सत्यमेव जयते

The sole accused in S.C.No.21 of 2010 on the file of the learned Sessions Judge, Kancheepuram is the appellant herein. He stood charged for the offence under Section 302 IPC. The accused denied the charges and opted for trial. Therefore, he was put on trial on the charges. After full-fledged trial, the learned Sessions Judge found him guilty of offence under Section 304(2) of IPC. The accused was accordingly convicted and sentenced to undergo rigorous imprisonment for 5 years. Challenging the conviction and sentence, the accused is before this Court with the present Criminal

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

PW 1 and PW 2 are the son and mother of the deceased Nagappan respectively. Previous to the occurrence, all of them were residing in Ilangar Village. The accused is also residing in the same village, same street next to the house of PW 1. Before the occurrence, the accused thought that PW 1 Kishore Kumar is having love affair with his daughter, for which, on 03.09.2008, at about 6.00pm, he invited the PW 1 to his house and assaulted him. On the next day, PW 1 informed the assault made by the accused to his mother. In turn, PW 2 informed to her husband. After knowing the said incident on 04.09.2008, at about 4.45 hours, the deceased Nagappan went to the house of the accused and asked about the assault made against the PW 1. Thereafter, both of them made wordy altercation and resultantly, the accused took the brick and attacked the accused on his forehead and near to the left eyebrow. Due to the attack made by the accused, the deceased fell down and thereafter the accused with the cheppals kicked the deceased on his abdomen. Further, he had attacked the deceased all over the body. The said occurrence was witnessed by one Kandasamy and Jayabal. After the occurrence, PW 1 and PW 2 made arrangements for admitting the deceased in the Hospital, for which one Sivanandham and PW 3 were helped them. On the way to the Hospital, the injured Nagappan was declared as dead. Hence, the persons accompanying with the said Nagappan brought the dead body to the house of the Nagappan and thereafter, PW 1 lodged the complaint before the police station under Ex.P.1.

3) On receipt of the complaint given by PW 1, on 05.09.2008, at about

of 2008 under Section 302 IPC. Ex.P.12 is the First Information Report.

4) After registration of the case, he made arrangements for sending the First Information Report to the Court having jurisdiction. Subsequently, on the same day, he went over to the scene of occurrence, in the presence of one Venkataraman and one Palani, he prepared an Observation Mahazar under Ex.P.5. Further, he drawn a Rough Sketch under Ex.P.13, in the presence of the same witnesses. The brick which was used for the commission of offence was seized under Ex.P.6 Seizure Mahazar. On the same day, at about 2.00pm, in the presence of panchayatar, he conducted an enquiry over the dead body of Nagappan and prepared Inquest report under Ex.P.14. He made requisition to the Government authorities, Chengalpattu for conducting autopsy over the dead body of deceased Nagappan. PW 4 Dr. Parasakthi working as Professor in Government Hospital, Chennai, on receipt of requisition letter given by PW 8 conducting autopsy and found the following injuries.

- Abrasions seen on left temporal region 2cm x 2cm, front of left shoulder 6 cm x 4cm, front of left knee 4cm x 3cm (Reddish brown in colour)
- Peritsneal cavity contained 400 ml of fluid blood
- Diffuse contusion seen on proximal part of small intestine and corner pending omentum
- Two perforations seen on the anterior surface of proximal part of small intestine 1 feet apart measuring 0.4cm x 0.3cms with irregular margins. Skull-intact brain – BAD

5) During the time of completing the post mortem, he collected viscera

on the dead body of Nagappan and sent it for chemical examination. In the chemical

examination, it was found that no alcohol or other poison were found in the dead body. Further, he gave opinion as the deceased Nagappan appears to be died due to the injuries sustained by him in the abdomen.

6) In continuance of investigation, PW 8 collected the blood stained Dhoti, white towel removed from the dead body of Nagappan and thereafter, he submitted a request to the Magistrate for sending the collected material objects for chemical examination. Accordingly, he made arrangements for examining the blood stained material objects and on examination, it was identified that the blood found in the material objects and the blood found in the dead body belongs to A-Group.

7) On 05.09.2008 at about 17.00 hours in the presence of one Venkatraman and one Selvam, he arrested the accused and recorded the confession statement. Thereafter, he made arrangements for sending the accused to judicial custody. After completing the investigation, on 23.12.2008, he filed a final report against the accused for the offence punishable under Section 302 IPC.

8) Based on the available materials on record, the trial Court framed the charges against the accused as stated in the 1st para of this judgment, for which the accused denied the same. In the trial Court, in order to prove the case of the prosecution, as many as 8 witnesses were examined as PW 1 to PW 8, 16 documents are exhibited as Ex.P.1 to Ex.P.16. Besides 3 material objects.

9) Out of the said witnesses, PW 1 Kishorekumar is the son of the deceased Nagappan. Along with his parents, he was residing in Ilanagar Village and the appellant / accused also residing in the same street, in which the deceased was

resided. On 03.09.2008, at about 6.00 pm, the accused invited the PW 1 and assaulted him for the reason that PW 1 is having a love affair with the daughter of the accused. The said incident was conveyed to the mother of PW 1 on the same day. He has further stated that on 04.09.2008 at about 2.45 pm, PW 2 informed the said occurrence to the deceased. After hearing the same, on the same day at about 3.00pm, the deceased, PW 1 and PW 2 came out of his house and at the same time, the accused came from the opposite direction. After seeing the accused, the deceased asked about the yesterday's incident, due to which, both the deceased and the accused made a wordy altercation. Subsequently, by using the brick, the accused assaulted the deceased on his forehead and on the left eyebrow, due to which the deceased sustained injury and went to the stage of unconscious. When PW 1 attempted to give first aid to the deceased, the accused kicked the deceased nearly for 6 times on his abdomen. Further, by using the cheppal, he assaulted the deceased all over the body. The said occurrence was witnessed by one Kandasamy and one Jayapaul. He has stated after the occurrence, with the help of neighbours took the deceased to the Hospital. But, on the way to Hospital, it was observed as he is died. So the dead body of the Nagappan was brought to his house and thereafter, he lodged a complaint before the police.

10) PW 2 Andai is the wife of the deceased. She has stated about the occurrence as stated by PW 1.

11) PW 3 Anandababu is the deceased brother's son. He is residing in the same village. He has stated that on 04.09.2008 at about 3.00 pm, when he was in his house, he heard the noise and immediately came out from his house and on seeing the accused and deceased, they were quarrelled with each other. He has further

stated subsequent to the wordy altercation, the accused took the brick and attacked the deceased on his forehead and thereafter the deceased went to the stage of unconscious and fell down in the street.

12) He has further stated even after falling down, the accused repeatedly kicked the deceased on his abdomen, and ran away from the scene of occurrence. Subsequent to that, PW 1 and PW2 took the deceased in an auto to the hospital. But on the way to hospital, it was observed that he was dead.

13) PW 4 Dr. Prashanth, who was working as a Doctor at Chengalpat Government Hospital has stated that on receipt of requisition, conducted the autopsy over the dead body of the deceased Nagappan and he issued a final opinion as the deceased Nagappan was died due to the injuries found in the abdomen. Viscera Report, Post Mortem Certificate and Doctors Final Opinion are marked as Ex.P.2 to Ex.4 respectively.

14) PW 5 Venkatraman has stated that on 04.09.2008, at about 11.00 pm, PW 8 came to the house of accused and prepared Observation Mahazar. He has further stated that in the scene of occurrence, he recovered the brick under Seizure Mahazar and on 05.09.2018, at about 4.00 am, he recovered the Dhoti and towel from the PW 2 under the cover of Mahazar.

15) PW 6 is the Chemical examiner working in the Forensic Science Laboratory, Chennai has stated that on 09.09.2008, when he was working in the same Department, she received a request for chemical examination of the dhoti and towel collected from the dead body. In the examination, it was found that the blood found in

the material objects and the sample blood taken from the dead body are the human blood, after completing his examination he sent the same for further chemical examination.

16) PW 7 Bhavani, Scientific Officer has stated that on analysing the blood found in the material objects, it was identified as it belongs to A Group.

17) PW 8 Kannan, the Inspector of Police, Uthramerur who is the Investigation Officer in this case has stated about the registration of the case, details of investigation, recovery of material objects and about the filing of Final Report against the accused.

18) The learned trial Judge, with reference to the incriminating evidence adduced by the prosecution, questioned the accused under section 313 Cr.P.C. and for which, he denied the same as false. However, he did not choose to examine any witness nor he did not mark any documents on his side.

19) Having considered all the above, the trial court convicted him as detailed above. Challenging the above said conviction and sentence, the accused is now before this Court with the present criminal appeal.

20) I have heard Mr.P. Dinesh Kumar, learned Counsel for the appellant, Mrs. T.P. Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the records carefully.

21) The learned Counsel appearing for the appellant would contend that the evidence given by PW 1 to PW 8 are having lot of contradictions. Further, the evidence given by PW 3 reveals that the crowd was gathered only after hearing the noise from the street, hence it is not possible for the eyewitnesses to see the occurrence. The eyewitnesses examined on the side of the prosecution are related to the deceased. So the evidence given by them is not sufficient to hold the occurrence as true one. According to him, the prosecution has miserably failed to prove his case beyond all reasonable doubt.

22) Per contra, the learned Government Advocate would contend that the evidence given by PW 1 to PW 3 are clearly established the occurrence. Further, the evidence given by the Doctor, who conducted the post mortem supported the evidence given by PW 1 to PW 3. According to him, interference is not necessary in the judgment rendered by the trial Court.

23) I have heard the submissions made on either side.

24) With regard to the submission made by the learned Counsel for the appellant, it is an admitted fact that PW 1 and PW 2 are the son and wife of the deceased respectively. Further, PW 3 himself admitted that he is the relative of the deceased. In the said circumstances, it is necessary to find out whether any barrier is present in accepting their evidence. Recently, our Honourable Apex Court in the Judgment in (2018) 5 Supreme Court Cases 549, in which it was observed as follows:

“15. Merely because the eyewitnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established.

Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made.”

So, according to the observation made by our Honourable Apex Court, it was settled only because of the reason that the eyewitnesses to the occurrence are relatives of the deceased, their witnesses can not be discarded only on the sole basis. According to the evidence given by PW 1 to PW 3, the accused was residing near to the house of deceased. Further, both the houses are situated in the same street. Moreover, as per the case of the prosecution and evidences let in by the prosecution, clearly establishes the alleged occurrence had happened in the middle of the street. Further, the Rough Sketch drawn by PW 8 clearly shows that near to the place of occurrence, there was a brickyard, it was appeared, near to the place of occurrence, the house of the deceased situated. So in all ways, there may be possible to see the occurrence by PW 1 to PW 3. In otherwise, all of them have clearly stated about the attack made by the accused and about the kick made on the abdomen of the deceased. In the said circumstances, the Doctor who gave opinion has also stated due to the injury on the abdomen area only, the death could have caused. Absolutely, there is no contradiction is found in the evidence of PW 1 to PW 3.

25) The learned Counsel appearing for the appellant submits that all the witnesses are stated about the injury sustained by the deceased on the forehead and the eyebrow and they are not stated about the injuries sustained in the abdominal area. If really the said occurrence was seen by the PW 1 to PW 3, they should have stated about the attack made on the abdominal area. But in this case, no witnesses has stated about the injury found in the abdominal area. Therefore, the prosecution fails in its attempt to prove the case.

26) On considering the submission, it is true that according to the opinion given by the doctor, death could have caused only due to the consequential injuries found on the abdominal area. In this regard, PW 1 and PW 2 had clearly stated in their evidence, after made attack on the forehead of the deceased, the accused kicked the deceased frequently on his abdomen. Further, they have stated at the time of kicking the deceased, he fell down on the street. So the said evidence clearly establishes that the deceased sustained injury on the abdomen. Further, the evidence given by the medical officer who conducted post mortem corroborated the evidence given by PW 1 and PW 2. Hence, the evidence given by PW 1 to PW 3 is more than sufficient to prove the occurrence. Accordingly, the said submission made by the learned Counsel appearing for the appellant is rejected.

27) The learned counsel made another submission that the statements recorded by the Investigation Officer have reached the Court only on 06.09.2010 with a delay of 2 years. The said situation can not be termed that the Investigation has been completed without any omission. It is true that, the investigation Officer had sent the documents after 2 years from the date of registration of the case. For the said lapses, PW 1 and PW 2 are not at all responsible. Only the Investigation Officer

committed the said mistake. In otherwise, on the side of the defense, the accused did not indicate that in what way the accused prejudiced due to said lapses. It is held that the defective investigation can not be a ground for acquitting the accused. Thereby I am of the considered view that since such lapses can not be considered for allowing this appeal.

28) The next submission made by the learned Counsel appearing for the appellant is that the prosecution is not established the real fact in lodging the complaint given by PW 1. Further, with regard to lodging the complaint, PW 1 gave a contradictory evidence which would shaken the case of the prosecution.

29) On go through the said submission, it is true that PW 1 in his evidence has stated that after consulting with the relatives, the complaint has been given before the Uthramerur police station. According to him, one Thirumalai has written the complaint. But on the other hand, the said Thirumalai has not been examined as a witness on the side of the prosecution. Moreover, in the cross examination of PW 1, he has stated as follows:

g";rhaj;jhu;fs; brhd;djd; ngupy; g[fhu; bfhLf;f fhty; epiyak; brd;nwd;/

vjpup brUg;g[fhyhy; vd; jfg;gdhiu vl;o cijj;jij g[fhupy; vGjg;gl;Ls;sjh

vd;gij me;j NH;epiyapy; ehd; ftdpf;ftpy;iy

So, as per the said evidence, it clearly proves at the time of lodging the complaint before the police station, PW 1 is in the tense situation. In this regard, it is necessary to see the relationship of the PW 1 with the deceased. Being the son, definitely, he would have went to the stage for getting advice from others. So, there is no fault on the side of the PW 1 in lodging the complaint belatedly. Even though, PW 1 has not stated anything in the First Information Report about the assault made by the accused

on the abdomen of the deceased, that alone is not sufficient to disbelieve the case of prosecution. According to the Doctor, the post mortem has been completed immediately on the next day. Further in the inquest report in column No.5, it has clearly mentioned about the kick made on the deceased. Furthermore, the First Information Report is not an encyclopedia, thereby since the evidence given by PW 1 to PW 3 is clearly corroborated through the evidence of medical officer. I am of the considered view the trial Court correctly considered the case in a perspective manner and convicted the accused.

30) In the light of the above discussion, this Court holds that due to the sudden provocation, the accused assaulted the deceased. Thereby, the death had occurred to the deceased.

31) In the result, the appeal is dismissed. The Judgment dated 20.08.2010 made in SC No.21 of 2010 passed by the learned Sessions Court No.II, Kancheepuram is confirmed. The learned Sessions Judge is directed to take steps to secure the accused and made arrangements for sending him to the prison for serving the remaining period of sentence. Further ordered to set off the period already undergone by the accused/appellant under section 428 of Cr.P.C.

06.07.2018

msv / vrn

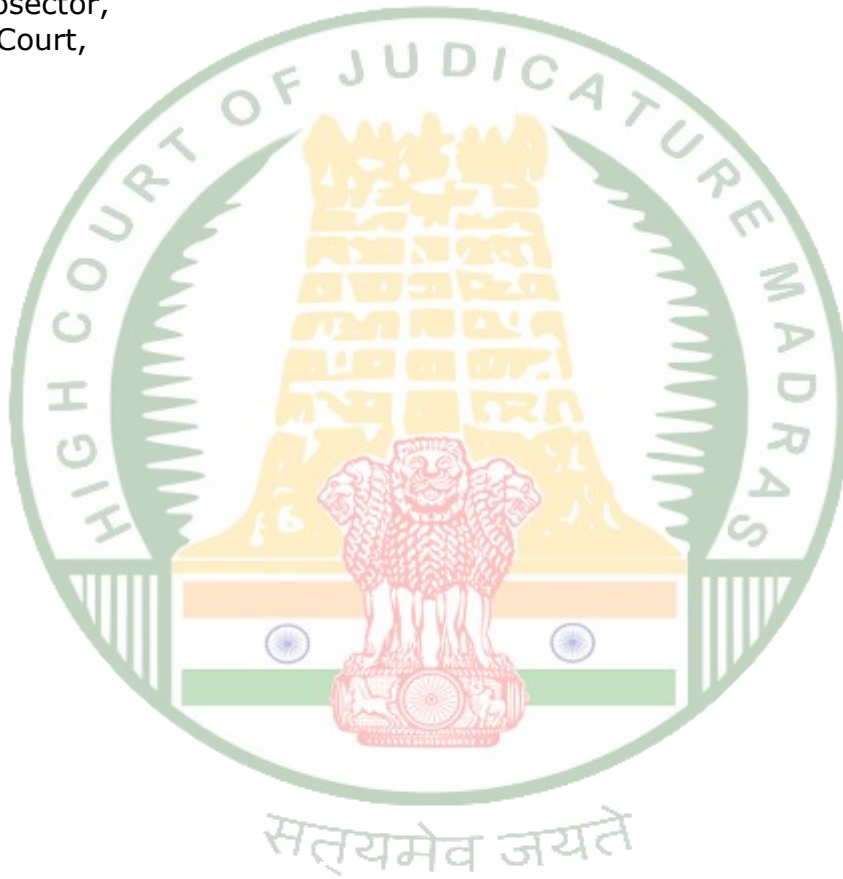
Index:Yes/No

Internet:Yes/No

Speaking order:Non-speaking order

To

1. The Sessions Court No.II
Kancheepuram
2. The Inspector of Police,
G-4 Uthiramerur Police station
Uthiramerur
- 3.The Public Prosecutor,
Madras High Court,
Madras



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R.PONGIAPPAN,J.

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Crl.A.No.513 of 2010

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06.07.2018