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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:15.02.2018
CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

CrI.A.(MD) No.55 of 2018 and
CrI.M.P(MD) No.794 of 2018

Muthupandi @ Muthukalai ... Petitioner/Appellant/Sole Accused

-vs-

State through
The Inspector of Police,
Chokampatti Police Station,
Tenkasi, Tirunelveli District.
(in Crime No.102 of 2012) ... Respondent/Respondent/Complainant

Prayer: Appeal filed under Section 374 of the Code of Criminal Procedure praying to call for the entire records connected to the judgment in S.C.No.182 of 2013 on the file of the Hon'ble III Additional District and Sessions Court, Tirunelveli dated 12.09.2014 and set aside the conviction and sentence imposed against the appellant and pass such further or other orders as this Hon'ble Court deems fit and proper in the circumstances of the case and thus render justice.

For Appellant : Mr.R.Alagumani
For Respondent : Mr.K.S.Duraipandian
Addl. Public Prosecutor

J U D G M E N T

S.VIMALA, J. ,

The accused was found guilty under Sections 302 IPC and 506 (ii) IPC. The conviction and sentence is as follows:

Sl.No	Offence	Conviction and Sentence
1.	Section 302 IPC	Life imprisonment and a fine of Rs.1000/- in default to undergo six months Rigorous Imprisonment
2.	Section 506(ii) IPC	one year Rigorous Imprisonment

Challenging both the conviction and sentence, the accused has filed this appeal.

<https://hcservices.ecourts.gov.in/hcservices/>

The facts in brief:

2. On 23.05.2012 at 5:00am in the early morning, the



appellant brutally attacked the deceased by name Sangaiathevar by using wooden log and caused grievous injuries in the forehead, right eyebrow and in the head and thus committed murder of the deceased. It is alleged that the defacto complainant was threatened by the accused in the same incident and to cause intimidation, knife was used.

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2.1. In respect of this occurrence, a case has been registered in Crime No.102 of 2012 on the basis of the complaint given by the defacto complainant. After investigation, charge sheet was laid before the concerned Court. On denial of charges, in order to substantiate the offence against the accused persons, the prosecution has examined 16 witnesses, marked 18 documents and exhibited 5 MOs.

2.2. It is alleged that the murder in this case is intentional and there was a clear motive for the accused in causing the death of the deceased. The motive for the occurrence is stated to be an incident that occurred nearly one year before. Allegedly, during night hours, one Shanmugathai was taking water using the hand pump, which created a disturbing sounds and that irked the accused and the accused picked up quarrel on the ground that the noise created disturbance to his sleep; on account of the wordy altercations, the accused attacked the deceased and PW1 (husband of the grand daughter of the deceased) with stick and in respect of the same, FIR was registered and after trial, the accused was found guilty and he was imprisoned for a period of 10 months and thereafter, the accused was released. This heart burning for the accused is stated to be the motive for the murder of the deceased.

2.3. On 23.05.2012, PW1 came to the village of the deceased for temple festival and at about 5:00am., PWs. 1 & 2 along with the deceased went to the bus stop and at that time, the accused attacked the deceased by using the wooden log and when this attempt was sought to be thwarted by PWs.1 and 2, the accused threatened them by showing the knife and escaped from that place. PW1 preferred the complaint at about 7:00am and it has been received by the Judicial Magistrate at about 10:35pm.

3. The learned counsel for the appellant would contend that this unexplained delay of 15 hours 35 minutes is the time taken for setting up witnesses for the occurrence and therefore, Ex.P1 / complaint could not have been preferred at the time alleged and PWs.1 & 2 could not have been the eyewitnesses to the occurrence.

3.1. For this contention, the learned counsel for the appellant found corroboration from the evidence of PW9, where he would state that even before the receipt of complaint from PW1, the Police officials received information by phone and they were in the place of occurrence before the receipt of complaint. The genuineness of the Ex.P1 / complaint is also disputed by pointing out the contradictions in the evidence of Pws.1 & 9; PW1 would state that immediately after the occurrence, as the shops were not opened, he went to the Police Station and after receiving papers from Police



Station, he gave the written complaint, whereas PW9 would state that PW1 brought the written complaint and thumb impression of PW1 was very well available in the complaint.

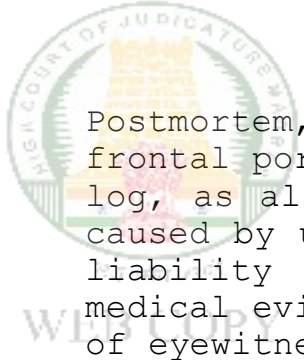
4. Whether this could be stated to be material contradiction affecting the veracity of Ex.P1 / complaint is the issue to be decided. Consequently, whether the delay in sending the FIR to the Court can be construed as delay affecting the genuineness of the prosecution case.

5. It is the contention of the learned Additional Public Prosecutor that the delay is not inordinate and that it would not affect the merits of the prosecution case. As contended by the learned counsel for the respondent, the delay involved having regard to the time of occurrence, cannot be said to be an inordinate delay. Even assuming that there is some amount of delay, when the medical evidence proves the cause of death and there are eyewitnesses, speaking about the participation of the accused, the delay involved would not materially affect the genuineness of the prosecution case. Therefore, we are of the view that the delay is not inordinate and therefore, the minimal delay can be ignored.

6. The learned counsel for the appellant would argue that there is no intention at all for the accused to cause the murder of the deceased as the prosecution failed in proving that there was a previous dispute and that it was the motive for the occurrence. According to the case of the prosecution, there was a previous dispute between the accused and the deceased, when the accused questioned the noise pollution created by the one Shanmugathai while pumping out water from the hand pump, there had been an altercation, leading to prosecution of the case. Even though it is alleged by the prosecution that the case ended in conviction of the accused and incarceration is the motive for the second occurrence, the copy of the judgment in the first occurrence has not been produced by the prosecution. Not even any other document pertaining to the earlier occurrence has been filed. This non production goes to the root of the matter and it creates the doubt about the origin of the occurrence.

7. This non production of documents assumes much importance, when PW1 would state that in respect of the previous occurrence, (both, i.e., himself and his grand daughter suffered injuries, which was caused by the accused herein), they did not give any complaint. When a judgment is not produced, proving the previous occurrence, then the occurrence itself becomes doubtful, especially in the light of the statement of PW1 and we are constrained to hold that the motive for the occurrence is not proved by the prosecution.

8. The counsel for the appellant would state that in the absence of the motive for the occurrence, there could not have been any intention to commit murder and this would be fortified by the Postmortem report and the evidence of the Doctor, who conducted



Postmortem, where the Doctor would state that the injury to the frontal portion of the deceased could not have been caused by wooden log, as alleged by the prosecution and it is possible to have been caused by using heavy vehicles. The exoneration sought for from the liability of causing death of the deceased, taking advantage of medical evidence cannot be accepted, as in the light of the evidence of eyewitnesses, opinion evidence need not be given much importance, when especially injury to the front portion of the head is possible and the possibility of the injury depends upon the force with which blow is inflicted, apart from the number of beatings given. Moreover, when the deceased is aged 70 and bones are likely to be fragile and when the accused is a youth with unlimited force, this injury is possible by using wooden log. Therefore, the only question to be considered is, whether the accused caused those injuries with intention or only with knowledge that it is likely to cause the death of the deceased.

9. In respect of the occurrence, i.e. accused person causing injury to the deceased, the prosecution relies upon the evidence of eyewitnesses, namely, PWs.1 & 2. The main contention raised is that PWs.1 & 2 could not have been eyewitnesses to the occurrence and if at all, the Court finds the evidence of PWs.1 & 2, eyewitnesses as reliable and convincing, even then the act of the accused would not amount to homicide and that it would amount to culpable homicide, not amounting to murder. This is the main contention of the learned counsel for the accused. It is specifically contended that having regard to the weapon used and in the absence of motive being proved, what is made out is only knowledge and not the intention.

10. In order to appreciate this contention, the Court has to critically analyze the evidence of PWs.1 & 2. Allegedly, on the early morning of 23.05.2012, the deceased had been in the company of PWs.1 & 2, at which time the accused is stated to have caused injuries with wooden log. The origin of occurrence has not been properly explained in the evidence of PWs.1 & 2 and PWs.1 & 2 would state that by making an accusation that only because of the case preferred by the son of the deceased, the accused had to suffer imprisonment, the accused caused indiscriminate beatings leading to the death of the deceased. It is not stated whether this occurrence was immediately after the release of the accused or long thereafter. In fact, it is not even proved that the accused suffered incarceration only on account of the case filed by PW1. It is appropriate to point out that PW1 did not admit that he preferred such a complaint. Under the circumstances, there is a doubt regarding origin of occurrence. When the origin of occurrence is suppressed, we are not inclined to hold that there was intention on the part of the accused to cause the death of the deceased. When a weapon like wooden log is used in the occurrence, the logical inference could be that the accused did so with knowledge that the injuries are likely to cause death. Under the circumstances, this Court is constrained to modify the conviction and sentence passed

from Section 302 IPC to Section 304(II) IPC.

11. The conviction and sentence imposed in respect of the offence under Section 302 IPC is modified to Section 304(II) IPC. The life sentence imposed by the learned III Additional District and Sessions Court, Tirunelveli in S.C.No.182 of 2013 dated 12.09.2014 is hereby set aside. The sentence already undergone by the accused is sufficient for the conviction and sentence under Section 304(II) IPC as well as under Section 506(ii) IPC. Hence, the accused is ordered to be acquitted of the charge under Section 302 IPC and the accused is held responsible for the charge under Section 304(II) IPC. However, having regard to the period of sentence already undergone, the accused is ordered to be set at liberty, if not wanted in any other case.

12. In the result, the Criminal Appeal is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl side)

/True copy/

Sub Assistant Registrar

To:

- 1.The III Additional District and Sessions Court,
Tirunelveli.
- 2.The Principal District Judge, Tirunelveli.
- 3.The Judicial Magistrate, Tenkasi.
- 4.The Chief Judicial Magistrate, Tirunelveli.
- 5.The Inspector of Police,
Chokampatti Police Station,
Tenkasi, Tirunelveli District.
- 6.The Superintendent, Central Prison, Palayamkottai.
- 7.The District Collector, Tirunelveli.
- 8.The Director General of Police,
Mylapore, Chennai-4.
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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