



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.08.2018
PRONOUNCED ON : 23.08.2018

WEB COPY

CORAM :

**THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR**

CRL.A(MD)No.285 of 2018

Thangaraj

... Petitioner/Appellant/
Accused No.1

Vs.

State through
The Inspector of Police,
Panakudi Police Station,
Tirunelveli District.
(In Crime No.302 of 2001)

... Respondent/Respondent/
Complainant

Prayer: Appeal filed under Section 374 of the Code of Criminal Procedure, 1973, praying to call for the records connected to the judgment in S.C.No.327 of 2008 on the file of the IV Additional Sessions Court, Tirunelveli dated 11.01.2016 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani
For Respondent : Mr.S.Chandrasekar,
Additional Public Prosecutor.

JUDGMENT

N.SATHISH KUMAR, J.

This Criminal Appeal is filed against the judgment and conviction rendered by the learned Additional Sessions Court No.IV, Tirunelveli, in S.C.No.327 of 2008, dated 11.01.2016, convicting the appellant and sentencing him for the offence under Section 302 IPC to undergo life imprisonment and to pay a fine amount of Rs.1,000/- in default to undergo rigorous imprisonment for six months and sentencing him for the offence under Section 307 IPC to undergo rigorous imprisonment for seven years and to pay a fine amount of Rs.1,000/- in default to undergo rigorous imprisonment for six months. The above sentences have been ordered to run concurrently.



2.The brief facts leading to this case are as follows:-

(i)The deceased, namely, Shanthi, is the wife of P.W.1 and the mother of P.W.2 and P.W.3. They were the residents of Kavalkinaru, Alagianambipuram. The accused is a resident of Indira Colony, Aralvoimozhi. P.W.9 is a distant relative of P.W.1 and the wife of the accused. The accused abused P.W.9 in respect of which, there were some panchayats in the Village. When the matter stood thus, on 05.12.2001, P.W.9 came to the village of P.W.1. P.W.1 questioned the accused about the same. On 08.12.2001, while P.W.1 to P.W.3, the deceased and others were talking together in their village, the accused came along with two other absconding accused persons, namely, Perumal and his wife Esakkiammal, in an auto, which was driven by P.W.5 and the said Perumal, who came along with the accused herein, tried to attack P.W.1 with Aruval. However, P.W.1 held the hands of the said Perumal and P.W.1 and the said Perumal fell down on the floor. When the deceased came to rescue P.W.1, the said Perumal and his wife - Esakkiammal attacked the deceased on her head. The accused herein stabbed the deceased on her left side chest with M.O.1, knife and the deceased succumbed to the injuries and also stabbed P.W.1 on his left side abdomen. P.W.2 and P.W.3 had also seen the occurrence. P.W.5, auto driver, who dropped the accused persons, at the time of occurrence, took his auto and proceeded from the Village and P.W.1 immediately rushed to the hospital on the same date.

(ii)P.W.12, Sub Inspector of Police, after receipt of information from the hospital authorities, recorded the statements of P.W.1 (EX.P1) and registered a case in Crime No.302 of 2001 for the offences under Section 302 and 307 IPC (Ex.P13) and forwarded the First Information Report to the Court, through P.W.10, Sub Inspector of Police and sent a copy to his Superior Officer / Investigating Officer, namely, Balasubramanian, who proceeded further investigation in this case. PW-12 accompanied the Investigating Officer. The said Investigating Officer is now no more. The Investigating Officer went to the place of occurrence and prepared observation mahazar (Ex.P2) in the presence of P.W.6 and also a rough sketch (Ex.B15) and seized bloodstained soil and sample earth from the place of occurrence and also seized a pair of Cheppal (Ex.P3) and also conducted inquest over the dead body and prepared inquest report (Ex.P16) and recorded the statement of the witnesses on 10.12.2001. Thereafter, the Investigating Officer arrested all the accused persons and recorded the confession of the first accused (Ex.P4) in the presence of P.W.7. In pursuance of the same, he recovered M.O.1 from the first accused under Ex.P7, M.O.2 from the said Perumal under Ex.P.8 and M.O.3 from the other accused, namely, Esakkiammal under Ex.P.9 and sent the accused to the Court for judicial remand and also sent the properties to the Court. P.W.8, the Medical Officer, attached to the Nagercoil Government Hospital, treated P.W.1 and found the following injuries:-



“காயம் எண்.(1) இடதுபக்க மேல் வயிற்றில் ஒரு குத்து காயம் 3x1 செமீ அளவில் இருந்தது. அதன் ஆழம் அளக்கப்படவில்லை. அதன் வழியே சிறுகுடலை சுற்றியுள்ள சவ்வு (Omentum) வெளியே துரித்துக்கொண்டிருந்தது. காயத்தின் வழியாக ரத்தம் வந்து கொண்டிருந்தது. காயம் எண்.(2) தலையின் வலதுபக்கம் டெம்போரல் பகுதியில் ஒரு வீக்ககாயம் 3x1 செ.மீ. அளவில் இருந்தது. காயம் எண்.(3) வலதுபக்க கழுத்தின் பகுதியில் உரசல் காயம் அது 2x1 செ.மீ. அளவில் இருந்தது.”

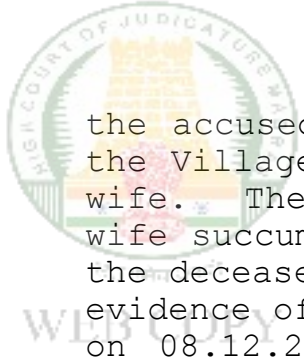
(iii)He also issued Accident Register (Ex.P.10), which shows that injury No.1 is grievous in nature and others are simple in nature. P.W.11, Dr.Ganesan, conducted autopsy over the dead body on 09.12.2001 and issued Postmortem Certificate (Ex.P12) and opined that the deceased died due to stab injury. The Investigating Officer, after concluding the investigation, laid final report against the accused persons. Though the final report was filed against three persons, the accused Nos.2 and 3 were absconded, which resulted splitting up the case.

(iv)Before the Trial Court, on the side of the prosecution, P.Ws.1 to 13 were examined, Exs.P1 to 21 were exhibited and M.O.1 to M.O.13 were marked. On the side of the appellant, none was examined and no document was marked. On questioning under Section 313 Cr.P.C., the accused person denied the charges. Based on the evidences and materials, the Trial Court found the accused guilty, convicted and sentenced him, as stated supra. Aggrieved over the same, the present Criminal Appeal came to be filed.

3.Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent.

4.The main contention of the learned counsel appearing for the appellant is that there are serious contradictions between the eye witnesses account. The evidences of P.W.1 to P.W.3 are unreliable. The First Information Report has been fabricated and no independent witnesses were examined. Hence, the learned counsel appearing for the appellant submitted that the prosecution has not proved the case beyond all reasonable doubt. Further, it is the contention of the learned counsel appearing for the appellant that there are contradictions with regard to the place of occurrence and the injuries suffered by the injured witness and the deceased. Hence, the charge under Section 302 would not attract. But only the offence under Section 304(ii) would attract. Hence, he prays for modification of the sentence.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the appellant is the husband of P.W.9 and there were some matrimonial dispute between the appellant and P.W.9, which resulted P.W.9 left the matrimonial home. P.W.1 being the distant relative of P.W.9, questioned the accused at an earlier point of time. So, in order to take revenge on P.W.1,



the accused herein along with two other accused came in an auto to the Village of P.W.1 with deadly weapons and attacked P.W.1 and his wife. Therefore, P.W.1 has sustained serious stab injury and his wife succumbed to death. P.W.2 and P.W.3 are the sons of P.W.1 and the deceased, who were also present at the place of occurrence. The evidence of P.W.4 clearly shows that the accused came to the Village on 08.12.2001 with deadly weapons, which has not been denied in cross-examination. The medical evidence also clearly corroborates the evidence of P.W.1 to P.W.3. Hence, he submitted that it is the case of murder and attempt to murder and the learned Trial Court has rightly appreciated the evidences and found the accused guilty. Hence, he prays for dismissal of this Criminal Appeal.

6. In the light of the above submissions, now, it is to be analysed whether the prosecution has proved the case beyond all reasonable doubt.

7. The death of the deceased is not in dispute. The evidence of P.W.11, who issued Postmortem Certificate, clearly shows that the deceased died due to homicidal violence. P.W.1 has also sustained injuries. P.W.8, who treated P.W.1, has given certificate (Ex.B10), which clearly indicates that P.W.1 has sustained stab injury and it is grievous in nature. When the evidence of P.W.1 carefully scanned, it is evident that on 08.12.2001, the accused along with two other accused persons, namely, Perumal and his wife Esakkiammal came in an auto to the village of P.W.1 and the said accused Perumal attacked P.W.1. When P.W.1 was holding the hands of the said Perumal, both of them fell down on the floor. When the deceased came to rescue P.W.1, the accused herein attacked the deceased with M.O.1 knife and caused death of the deceased in the place of occurrence itself. The deceased was immediately rushed to the hospital. The evidence of P.W.2 and P.W.3, who are the sons of P.W.1 and the deceased are also corroborated the evidence of P.W.1. They are also present in the place of occurrence. Their presence, at the time of occurrence, is natural, which cannot be doubted at all.

8. It is admitted that the occurrence took place in the village of P.W.1. The motive for such occurrence is that the accused abused P.W.9, which resulted P.W.9 left the matrimonial home. P.W.1 being the distant relative of P.W.9, questioned the accused, which led to this occurrence. The accused, along with two other accused, came in an auto on 08.12.2001 and attacked P.W.1 and his wife. P.W.1 also clearly spoken about the auto driver (P.W.4). The evidence of P.W.4 clearly indicates that the first accused and two other accused persons came in his auto and he dropped the accused in the village of P.W.1. His evidence and the evidence of P.W.1 to P.W.3 prove the fact that the accused and other accused came to the village of P.W.1 with deadly weapons. P.W.9, the wife of the accused, has also clearly spoken that only due to cruelty, she left the matrimonial home and reported the same to P.W.1 and P.W.1 questioned the



accused. Therefore, the husband of P.W.9 developed animosity on P.W.1 on account of the above act.

9. We have no hesitation in mind to hold that only the accused caused the death of the deceased by stabbing her and also caused injury to P.W.1. The First Information Report was lodged on the same date, promptly while P.W.1 in the hospital. Though P.W.10 registered the First Information Report at 6.00 p.m., he handed over the same to the Court at 09.00 p.m. Hence, we are of the view that the minor contradictions pointed out by the learned counsel for the appellant would not affect the prosecution case. In fact, the occurrence took place in the year 2001 and the witnesses were examined in the year 2015, viz., after lapse of 14 years. Therefore, in our considered view, there may be some minor contradictions. However, on a careful perusal of the entire materials, no major discrepancies or contradictions in the witnesses' statements have been found. Hence, we hold that it was this accused, who committed the offence.

10. With regard to the contention of the learned counsel for the appellant that the act of the accused would fall only within ambit of Section 302 (ii) IPC, we do not find any reason to accept the said contention, for the simple reason that the evidence available on record clearly established that the accused came to the village of P.W.1 with deadly weapons along with two other accused persons. The evidence of PW-1 clearly indicates that the other two accused also carried a stick and M.O.2 long knife. The evidence of P.W.4 also substantiated the same.

11. The evidence of P.W.9 clearly indicates that only on questioning the accused herein, P.W.1 came to her house. Further, there is no evidence to show that there was a sudden quarrel between the parties. In fact, one Perumal tried to attack P.W.1 with Aruval. In continuation, the appellant, with an intention of causing bodily injury, has inflicted stab injury. Causing knife injury on the chest itself is sufficient to cause the death. Therefore, the intention of the accused can be inferred from the nature of the injuries found on the body of the deceased and the weapons used by the accused. Causing such injuries on vital part cannot be said that the accused had no intention to cause injury, which is sufficient in the ordinary course of nature to cause the death. Similarly, the accused, apart from stabbing the deceased with knife, did not stop and he caused injury on P.W.1 also. Thus, in order to bring the act of the accused within any of the Exceptions to Section 300 of the Indian Penal Code, it must be shown that the death took place without any premeditation. However, from the materials available on record, it is seen that the act of the accused would not fall under any of the Exceptions to Section 300 IPC. Further, there are no materials to show that the accused had lost his self-control and on account of the same, he had caused such bodily injury.



12. Moreover, Material Object M.O.1 seized from the accused contains 'B' Group. Ex.P.20 shows that 'B' Group human blood contained in all the dresses seized from the deceased body and P.W.1. The above fact clearly established the presence of the accused at the time of occurrence.

13. From the evidence placed on record, it is seen that the accused carried deadly weapons and he has not only caused death of the deceased, but also took advantage in causing injury on P.W.1. All these facts clearly indicate that the act of the accused would not fall under any of the Exceptions to Section 300 IPC. Thus, we do not find any ground to modify the sentence.

14. The learned counsel appearing for the appellant has relied upon the judgment in the case of **Jagtar Singh Vs. State of Punjab** reported in **(1983) 2 SCC 342** to show that the accused caused single knife blow. Therefore, Section 302 IPC would not attract and only Section 304(ii) IPC would attract.

15. In the above case, the Hon'ble Supreme Court of India, taking into consideration of the said fact that the quarrel took place without any premeditation, has held that the offence under Section 302 would not attract and Section 304(ii) would attract. In the catena of judgments, it is held that there can be no straight jacket formula, based on which the common intention can be inferred, as proven facts of each case will be a determinative factor. It cannot be laid down as a rule of universal application that whenever one blow is given, Section 302 IPC ruled out. It would depend upon the weapon used, the size of it, in some cases, force with which the blow was given, the part of the body on which the blow was given and several such relevant factors have to be taken into consideration. Hence, the judgment cited by the learned counsel for the appellant is not applicable in the facts of the present case.

16. In the result, this Criminal Appeal is dismissed; the conviction and sentence imposed on the appellant by Judgment dated 11.01.2016, made in S.C.No.327 of 2008, on the file of the learned IV Additional Sessions Court, Tirunelveli, is confirmed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)



To

1. The Judicial Magistrate,
Valliyoor, Tirunelveli.
2. -do- through The Chief Judicial Magistrate,
Tirunelveli.
3. The IV Additional Sessions Judge,
Tirunelveli.
4. The Director General of Police,
Mylapore, Chennai.
5. The Superintendent of Central Prison,
Palayamkottai.
6. The Commissioner of Police,
Tirunelveli.
7. The Inspector of Police,
Panakudi Police Station,
Tirunelveli District.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To:-

The Section Officer/Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.R.ALAGUMANI, ADVOCATE IN SR No. 16034

MYR

TE/SKN/SAR-1 : 07/09/2018 : 7P/12C

Judgment made in
CRL.A(MD)No.285 of 2018
Delivered on:
23.08.2018