

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.193 of 2019

and Crl.M.P.No.4817 of 2019

Anbazhagan

...Appellant

-Vs-

The State Rep. by
The Inspector of Police,
Jedarpalayam Police Station,
Namakkal District.
(Crime No.183 of 2015)

...Respondent

This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence imposed on the Appellant herein by the learned Additional District Sessions Judge, Namakkal in S.C.No.41 of 2017 dated 22.02.2019.

For Appellant : Mr.R.Arun Dattan

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

JUDGMENT

This criminal appeal has been filed to set aside the conviction and sentence imposed on the Appellant herein by the learned Additional District Sessions Judge, Namakkal in S.C.No.41 of 2017 dated 22.02.2019.

2. The case of the prosecution is that the appellant is the first accused. A1 is the son of A2 and both are doing agricultural works. The deceased did agriculture in his land which is situated at Sirukinathupalayam where A1 and A2 have land adjacent to the land of deceased Balasubramaniam. There was a pathway dispute between the accused and the deceased. A1 and A2 were used to quarrel with the deceased regarding the pathway.

3. On 25.10.2015 at about 7.30 am, when A1 and A2 harvested tapioca plants and loaded in a lorry bearing registration No.TN 33 AF 3114, belonging to one Palanivel and at about 11.30 a.m. when A1 and A2 were ready to ply the lorry through the disputed pathway, the deceased Balasubramaniam intercepted, abstained, not to go in the disputed pathway. The same was questioned by A1 and A2, quarrel arose. The deceased pushed the A2 to the ground and abused him. On seeing this A1 got aggravated and on sudden provocation, A1 and A2 assaulted the deceased, A1 beat him with

a weeding cut-axe on his head and face and A2 pelted stones to him, which caused head injury and made him fell unconscious. Thereafter, the victim was taken to hospital, due to head injury, he died.

4. The respondent police has registered a case in Crime No.183 of 2015 against A1 and A2 for offence under Section 302 IPC. After investigation, they have filed charge sheet against them before the learned Judicial Magistrate, Paramathy. The learned Magistrate committed the case to the learned Sessions Judge, Namakkal. The learned Sessions Judge taken the case on file in S.C.No.41 of 2017 and made over the case to the learned Additional District and Sessions Judge, Namakkal. During the trial, in order to prove the case of the prosecution, examined as many as 22 witnesses viz., P.W.1 to P.W.22 and marked 41 documents viz., Ex.P1 to Ex.P47 and produced 5 material objects viz., M.O.1 to M.O.5. After completing the prosecution side evidence, when the above incriminating materials were put before the appellant/accused under section 313 Cr.P.C, he denied the same and on the side of the defense, no witness was examined and no document was marked. The learned Sessions Judge, after advertng to the materials placed on record and after hearing both the parties, by judgment dated 22.02.2017, found guilty for the offence under Section 304(I) IPC against A1 and found not guilty for the offence under Section 302 IPC against A1 and A2 and acquitted the A2 and convicted the A1 and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,000/- in default, to undergo one year rigorous imprisonment. However the prosecution has not established the charge under Section 302 IPC against A1 and A2 beyond all reasonable doubts for which they are entitled to acquit from the charge under Section 302 IPC thereby they are acquitted under Section 235(1) Cr.P.C. from charge under Section 302 IPC.

5. Aggrieved by the said judgment of conviction and sentence, the A1 has preferred the present criminal appeal before this Court.

6. The learned counsel for the appellant would submit that there is a material contradiction between the prosecution side witnesses. P.W.1/wife of the deceased, P.W.8 and P.W.9 have stated that P.W.1 came only after 10 minutes of the occurrence. Therefore, P.W.1 may not be the eye witness and the evidence of P.W.1 relied on for recording the conviction. P.W.8 is an eyewitness and there is material contradiction established by the defence during the cross examination. Therefore, his evidence cannot be relied on for recording the conviction and the other eyewitnesses have not corroborated with the evidence of P.W.8. The evidence of P.W.8 has not been corroborated by the

other witnesses. The evidence of Doctor has also not support the case of the prosecution. The appellant is innocent person and false case foisted against him. The learned Sessions Judge failed to consider the material contradiction and also the prosecution has failed to prove its case beyond reasonable doubt. A1 caused injury to the deceased. Therefore, extending benefit of doubts in favour of the appellant and rightly acquitted for offence under section 302 IPC but erroneously convicted for the offence under Section 304(i) IPC, which warrants interference.

7. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that the evidence of P.W.8 and P.W.9 have clearly stated that the A1 attacked the deceased with cut-axe. Therefore, P.W.1 / wife of the deceased also came to place of the occurrence, which was supported the case of the prosecution. The evidence of Doctor was also stated that the deceased sustained injury on the head. The Postmortem Certificate has clearly proved that the deceased sustained grievous injuries on his face and head. Due to that injuries, he died. The learned Sessions Judge rightly convicted the accused for offence under sections 304(i) IPC and awarded minimum sentence, does not warrant interference.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. The case of the prosecution is that there was a pathway dispute between the accused and the deceased. A1 and A2 always used to quarrel with the deceased regarding the pathway. On 25.10.2015 at about 7.30 am, when A1 and A2 harvested tapioca plants and loaded in a lorry, when A1 and A2 were ready to ply the lorry through the disputed pathway, the deceased Balasubramaniam intercepted, abstained, not to go in the disputed pathway. The same was questioned by A1 and A2, quarrel arose. The deceased pushed the A2 to the ground and abused him. On seeing this A1 got aggravated and on sudden provocation, A1 and A2 assaulted the deceased, A1 beat him with a weeding cut-axe on his head and face and A2 pelted stones to him, which caused head injury and made him fell unconscious. Thereafter, the victim was taken to hospital, due to head injury, he died.

10. On the side of the prosecution, 22 witnesses were examined. From reading of the evidence of the witnesses, P.W.1/wife may not be eyewitness. Even otherwise she can be say that she is interested witness. She has exaggerated the events due to the death of his husband. But it is not in dispute that P.W.8/driver, who was engaged by the appellant for transporting the tapioca plant. Therefore, it is not in dispute on the day of harvesting the plant, P.W.8 was engaged by the appellant for

loading the tapioca plant. P.W.8 was the driver one who drove the lorry bearing registration No.TN 33 AF 3114 that was not disputed on the side of the defence. Therefore P.W.8 and P.W.9 are the eyewitnesses. The main defence taken by the learned counsel for the appellant is that there are material contradictions from the evidence of P.W.8 and P.W.9 during the cross examination. But statements of P.W.8 to P.W.10 and P.W.12 were recorded by the learned Magistrate under Section 164 Cr.P.C. From the evidence of P.W.8 to 10 and also P.W.34 and 36, the prosecution has clearly proved that the appellant one who caused injuries to the deceased, due to the injury sustained, he died. The Doctor who done the postmortem clearly proved that the deceased died due to the injuries. This Court finds that the deceased was aggravator, however, the appellant used weapon like weeding cut-axe and caused injuries on the head and face of the deceased which leads to the conclusion that the accused has committed the offence under Section 304(I) IPC. Since the prosecution has not established that due to previous enmity or pre-planned, the appellant committed the offence. From the evidence of P.W.8 to P.W.10 clearly says that the occurrence took place all of sudden provocation when the lorry was tried to pass through disputed pathway. Due to the sudden fight, the appellant took the cut axe and cut on his head and face. Therefore, the appellant committed the offence. This Court has also finds that the appellant committed the offence under Section 304(i) IPC Therefore, this Court does not find any merit and no reason to interfere with the judgment passed by the learned Additional Sessions Judge, Namakkal.

11. Under these circumstances, this Criminal Appeal is dismissed and the conviction and sentence passed by the learned Additional Session Judge, Namakkal in C.A.S.C.No.41 of 2017 dated 22.02.2019 is hereby confirmed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Paramathy.

2.do Thro The Chief Judicial Magistrate,
Namakkal.

3. The Additional District Sessions Court,
Namakkal.

4. The Inspector of Police,
Jedarpalayam Police Station,
Namakkal District.

5. The Public Prosecutor,
High Court of Madras.

6.The Superintendent,
Central Prison,
Coimbatore.

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nr 03/07/2019



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