

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.06.2019

Delivered on : 4.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.659 of 2017

Gnanasekaran A, M/A 32 years
Son of Annamalai,
Mariathal Street, Akkur Village,
Pannayur P.O., Aarani Taluk,
Thiruvannamalai District
now incarcerating at Central Prison for
convicts, Puzhal. ... Appellant/Accused

Vs.

State represented by
The Inspector of Police,
T-5, Thiruverkadu Police Station,
Chennai-77.
(Crime No.1411 of 2012) .. Respondent/complainant

Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code to set aside the conviction and sentence passed by the III Additional District Judge, Poonamallee, by Judgment dated 20.03.2014 in S.C.No.202 of 2013 convicting the appellant/accused herein to undergo life imprisonment for offence under Sections 302 IPC and to pay a fine of Rs.500/- in default to undergo 2 months rigorous imprisonment.

For Appellant : Mr.K.Shankar
For respondent : Mr.R.Prathap Kumar,
Additional Public Prosecutor

JUDGMENT

M.M.SUNDRESH, J.

The appellant, who is the sole accused, stood charged and convicted for the offence under Section 302 IPC to undergo sentence of life imprisonment in S.C.No.202 of 2013 on the file

of III Additional District Judge, Poonamallee. To set aside the aforesaid judgment and conviction rendered by the trial Court, the appellant has come before us.

2. Facts in Brief:

The appellant and P.W.5-Gowri are the husband and wife. There were frequent quarrels between the appellant and P.W.5 over the frequent visit of the deceased-Selvam, who was none other than her maternal uncle. On 03.11.2012 at about 9.00a.m., the appellant attacked the deceased with a wooden log on the head, face and chest. The deceased died of shock and hemorrhage due to multiple injuries. P.Ws.1 to 4 heard the cry of the deceased and saw the appellant running from the scene of occurrence. They also saw the body of the deceased at the house of the appellant. P.W.1-Harisudhanan gave the complaint at about 10.30 a.m., for the occurrence said to have happened at 9.30 a.m., on 03.11.2012. P.Ws.2 to 4 are the neighbors of the appellant. On receipt of the complaint under Ex.P1, P.W.14-Jeyachandran, who is the Inspector of Police, registered the First Information Report under Ex.P11. Thereafter, Ex.P12 Observation Mahazar and Sketch were prepared and the Inquest Report has also been made ready under Ex.P13 by P.W.14. P.W.14 arrested the appellant at about 14.30 hours and recorded his confession statement in the presence of P.Ws.8-Jagadeesh and one Thanikachalam. Recovery of Material Objects were made thereafter. At about 16 hours, the recovered Material Objects were sent under Form 95 by P.W.14. The statement under Section 164 Cr.P.C., was recorded on 15.12.2012. P.W.13-Dr.Selvakumar is the doctor, who conducted post mortem. Ex.P10 dated 04.11.2012 is the Post Mortem Report. The Post Mortem Report suggested the following injuries.

INJURIES:-

1. Oblique laceration 3 x 1 cm x Bone deep on front of centre of forehead in between the eyebrows extending upto the roof of nose.
2. Oblique laceration 4 x 1cm x muscle deep over left side of face below and outer to angle of mouth on the left side;
3. Oblique laceration 2 x 1 x 0.5 cm over left side of face below and outer of angle of mouth on the left side.
4. Oblique laceration 6 x 2 cm x bone deep over front of centre of chest.
5. Laceration 1 x 0.5 x 0.5 cm over right side of chin.
6. Laceration 5 x 1 cm x bone deep below the lower lip exposing the underlying fractured end of mandible.
7. Laceration 2 x 1 x 0.5 cm over the septum of nose.

8. Vertical laceration 3.5 x 1 x 0.5 cm over right side of nose.

9. Reddish brown abrasions measuring:

- 5 x 1.5 cm over right cheek.
- 2.5 x 1.5 cm right side of nose.
- 2 x 0.5 cm over upper part of centre & right side of nose.

3 Abrasions measuring:

- 0.5 x 0.5cm, 0.5 x 1cm, 1 x 0.5 cm over right cheek.
- 2 x 1 cm below left cheek
- 0.5 x 0.5 cm top of left shoulder

On dissection of Head:

- Bluish black contusion 3 x 2 x 0.5 cm over left temporal region of scalp.
- Bluish black contusion 4 x 3 x 0.5 cm over right temporal region of scalp.
- Base of skull: fracture of Anterior cranial fossa on both sides,
- Membranes - Intact, Sub-arachnoid haemorrhage present over both cerebral hemispheres.
- Brain- Normal in size c/s. NAD.

On dissection of Face:

- Mandible fractured irregularly at the level of chin with surrounding contusion.
- An medical Incisors missing with bruising of the sockets.
- Fracture of maxilla at its centre with surrounding contusion.
- Bridge of nose found fractured with surrounding contusion.
- Right cheek bone found fractured with surrounding bruising.

On dissection of Neck:

Extensive bluish black contusion seen in the neck tissues over upper part of neck on both sides.

On dissection of Chest:

Sternum found fractured at its middle 1/3 with surrounding contusion.

Ribs: Left side ribs 2nd & 3rd fractured in the mid clavicular line with surrounding contusion.

On dissection of Abdomen:

Stomach: empty, no specific smell, mucosa; normal

Intestines: distended with gas;

Liver : normal in size, c/s Congested.
Spleen: Normal in size c/s Congested,
Both kidneys: normal in size c/s Congested.
Bladder: empty.
Pelvis and spinal column: intact.

3. The trial Court framed a charge for the offence punishable under Section 302 of Indian Penal Code(IPC).

4. The prosecution examined 14 witnesses and marked Exs.P1 to P13 and M.Os.1 to 7. M.O.1 is the wooden log used by the appellant while attacking the deceased.

5. The incriminating materials were examined and placed before the appellant. The appellant denied the charge as well as materials produced. The trial Court convicted the appellant for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and pay a fine of Rs.500/- and in default, to undergo simple imprisonment for two months. Challenging the same, the present criminal appeal is filed by the appellant.

6. The learned counsel appearing for the appellant would submit that the evidence of P.Ws.1 to 4 is not natural. They have neither taken the deceased to the hospital nor attended him. There are contradictions available between the evidence of P.Ws.1 to 4. Storage contradiction is available between the evidence of P.W.5, who is the wife of the appellant and P.W.6, the mother-in-law. No digested food particles were found in the body of the deceased. Inquest Report says that only the accused and the deceased were together. There is absolutely no evidence to show about the prior quarrel between the appellant and the deceased. There is no pre medication involved. Even assuming that the occurrence is true, the conviction and sentence rendered under Section 302 IPC cannot be workable, as at best, the appellant is liable for the punishment under Section 304(i) or (ii) of IPC as the case may be. There are sufficient evidence to show the illicit relationship between P.W.5 and the deceased. The deceased had come to the house of the appellant to see P.W.5 and thereafter, the occurrence would have happened. Thus, the conviction and sentence as awarded by the trial Court would require interference.

7. The learned Additional Public Prosecutor appearing for the State has submitted that four witnesses have clearly spoken about the presence of the deceased and the appellant inside the house. They also saw the appellant running away from the scene of occurrence. The body of the deceased was found thereafter. The evidence of P.Ws.1 to 4 have to be seen in tune

with the evidence of P.Ws.5 and 6. The evidence of P.W.13 also corroborates the same. As the trial Court considered the relevant materials, no interference is warranted.

8. Let us analyse the evidence available on record. P.Ws. 1 to 4 are the witnesses, who saw the appellant attacking the deceased and thereafter ran from the place of occurrence. Except P.W.2, who is the wife of P.W.1, all other witnesses have stated that they only saw the appellant attacking the deceased with the wooden log. After seeing P.Ws.1 to 4, the appellant ran away from the scene of occurrence. There is no material to suggest that these witnesses are inimical towards the appellant. These witnesses being eye witnesses, there is nothing to discredit the same. However, except P.W.2, none of the other witnesses have seen the appellant and the deceased getting into the house. We find that both P.Ws 1 and 2 were together being the husband and wife. When P.W.1 has not stated about the entry of the deceased in the appellant's house, such a statement by P.W.2 alone cannot be accepted. P.W.2 further stated that she did not know in which house he entered. All these witnesses also speak about their knowledge about the frequent quarrel between the appellant and P.W.5 over the continued presence of the deceased and the alleged illicit relationship. Thus, while we agree with the evidence of P.Ws.1 to 4 with respect to witnessing the alleged occurrence, the solitary evidence of P.W.2 that she saw the appellant and the deceased together cannot be believed. We also find that there is contradiction between the evidence of P.W.2 and P.W.5 as P.W.5 has stated that the appellant was inside the house, at the time when she left at 8.30 a.m.

9. P.W.5, the wife of the appellant, has stated that the deceased used to come and see her in her house. It is her further statement that the appellant was suspicious of her character due to the presence of the deceased. According to her, the appellant was at home on 03.01.2012. P.W.2 has further stated that on 03.01.2012 the appellant was at home and thus did not go out for work. She has acknowledged the fact that the deceased used to drink everyday. Thus from the evidence of P.W.5, we could reasonably infer that there was a dispute between the husband and wife due to the frequent visit of the deceased, who used to drink everyday.

10. P.W.6 is the mother-in-law of the appellant and the sister of the deceased. She also knew about the frequent quarrel between the husband and wife, due to the presence of her brother. According to her, she has advised P.W.5. It is her case that on 03.01.2012, the deceased came to her house in the morning and took food. Thereafter the deceased took him out. She has further stated that the deceased used to drink every day

and picked up quarrel frequently.

11. From the evidence of P.W.6 also, we could see that the deceased used to drink everyday . She also reiterated the fact that P.W.5 and the appellant were quarrelling with each other due to the presence of the deceased in their house. According to her, the deceased quarrelled some time after taking liquor. Though she had stated that both the deceased and the appellant were present in her house at about 8.00a.m., while the deceased was taking food, the post mortem report as recorded above and the evidence of P.W.13 would clearly show that there is absolutely no food particles in the stomach of the deceased. This would falsify the case of the prosecution with reference to the fact that the accused took the deceased to his house. It would be only probable that the deceased would have visited the house of the accused uninvited and pursuant to the wordy quarrel, the occurrence would have happened. We may note the quarrel between the appellant and P.W.5 itself was due to the visit of the deceased.

12. The trial Court, in our considered view, though was correct in placing reliance upon the evidence of P.Ws.1 to 4 with reference to the occurrence, ought not to have convicted the appellant for the offence punishable under Section 302 IPC. As we discussed the evidence of witnesses available in tune with the exhibits marked, the case on hand would fall under the offence punishable under Section 304(i) IPC alone. The post mortem report would suggest the existence of multiple injuries. The intention on the part of the appellant is to cause death or of causing such bodily injury as is likely to cause death is very much clear. However we find that inasmuch the prosecution has not proved the fact that it is the appellant, who took the deceased into his house, exception to Section 300 IPC would stand attracted. The appellant was using the wooden log, which was only available in his house. Once we eschew the evidence of P.W.6 and P.W.2 with respect to the common presence of both the appellant and the deceased then the punishment under Section 302 IPC would not be attracted. Even P.W.6 has not stated that the appellant and the deceased entered into the house of the appellant. The evidence of P.W.2 as we discussed, with respect to the presence does not inspire confidence, especially when no food particle was found as stated by P.W.6. As noted, as per the evidence of P.Ws.5 and 6, notwithstanding the objection of the appellant, the deceased used to visit his home to see P.W.5. In such view of the matter, we have no hesitation in modifying the conviction and sentence rendered by the trial Court from the one punishable under Section 302 IPC to 304(i) IPC. Considering the nature of injuries as noted by P.W.13 and on perusal of Ex.P10, we are inclined to sentence the appellant for a period of 10 years of rigorous imprisonment.

13. In fine, the appeal is partly allowed and the conviction and sentence imposed on the accused/appellant under Section 302 I.P.C. by the trial court are modified and instead, he is convicted for the offence under Section 304 Part I, I.P.C. and sentenced to undergo rigorous imprisonment for a period of ten years. The accused/appellant shall undergo the remaining part of the imprisonment.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

raa

To

1.The Inspector of Police,
T-5, Thiruverkadu Police Station,
Chennai-77.
(Crime No.1411 of 2012)

2.The Public Prosecutor,
High Court, Chennai.

3. The Superintendent,
Central Prison, Puzhal.

4. The III Additional District Judge,
Poonamallee.

Copy To

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

+1cc to Mr. K.Shankar, Advocate, S.R.No. 56429

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of 2017

PA(CO)
GN(05/08/2019)