



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
03.04.2019	11.04.2019

CORAM:

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR. JUSTICE B.PUGALENDHI**

Cr1. A(MD)No.233 of 2017

Murugan : Appellant/Sole Accused

Vs.

State represented by the
Inspector of Police
Pasuvanthanai Police Station
Tuticorin District
in Crime No.48/2012

: Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the judgment dated 22.01.2016 in S.C.No.219/2014 on the file of the Principal Sessions Judge, Tuticorin.

For Appellant : Mr.K.Vinayagam
For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

JUDGMENT

P.N.PRAKASH, J.

This criminal appeal is filed against the judgment dated 22.01.2016 in S.C.No.219/2014 on the file of the Principal Sessions Judge, Tuticorin. By the said Judgment, the trial Court convicted and sentenced the appellant/accused to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 302 IPC. Challenging the said conviction and sentence, the appellant has come up in this Criminal Appeal.

2. The facts in a nutshell leading to the filing of this criminal appeal are as follows:

It is the case of the prosecution that the appellant and the deceased were having a land dispute and that the appellant was demanding the transfer of a piece of land measuring ½ cent, in lieu of which, he was willing to give the deceased another piece of land lying on the western side of the house of the deceased. The



deceased was not agreeable to this and so, there were frequent quarrels between the two.

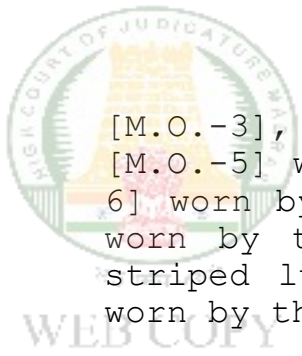
2.1. It is alleged that on 18.06.2012, around 3.30 p.m., a quarrel ensued between the deceased and the appellant, in which, the appellant is said to have assaulted the deceased on his head with a bamboo stick (M.O.-1), which proved fatal. This incident was witnessed by Gandhilakshmi [P.W.-1], the daughter of the deceased and Nagalingam [P.W.-2] the nephew of the deceased. After the incident, Gandhilakshmi [P.W.-1] gave a written complaint [Ex.P-1], based on which, Rajeswari [P.W.-12] Sub Inspector of Police, registered a case in Pasuvanthanai Police Station Crime No.48/2012 under Sections 294(b), 302 and 506(II) IPC on 18.06.2012 at 17 hrs. and prepared the printed FIR [Ex.P-9], which reached the jurisdictional Magistrate at 19.50 hrs., as could be seen from the endorsement thereon.

2.2. Investigation of the case was taken over by Mahendran [P.W.-14] Inspector of Police, who went to the place of occurrence and prepared the observation mahazar [Ex.P-2] and rough sketch [Ex.P-12]. From the place of occurrence, he seized two broken pieces of bamboo sticks [M.O.-2 series] under the cover of mahazar [Ex.P-3] in the presence of witnesses Gurusamy [P.W.-7] and Paramasivan [P.W.-8]. The Investigating Officer [P.W.-14] conducted inquest over the body of the deceased at the place of occurrence and prepared the inquest report [Ex.P-13]. The Investigating Officer [P.W.-14] despatched the body of the deceased to the Government Hospital, Kovilpatti for postmortem, where, Dr.Venkatesa Perumal [P.W.-13] performed autopsy and issued the postmortem certificate [Ex.P-11], in which, four external injuries were noted and a depressed fracture over the right lower temporal bone of 2 x 2 cms depth was noticed on opening the head. After obtaining the viscera report, the postmortem Doctor [P.W.-13] has given the final opinion as follows:

"The deceased appeared to have died of shock and hemorrhage due to injuries sustained."

2.3. The Investigating Officer [P.W.-14] arrested the appellant on 20.06.2012 at 14 hrs. and recorded the confession statement, pursuant to which, he seized the base portion of a bamboo stick [M.O.-1], bloodstained white full shirt [M.O.-6] and bloodstained blue, white and black colour striped lungi [M.O.-8] of the appellant under the cover of mahazar [Ex.P-5]. The bloodstained clothes of the deceased, namely, green colour lungi with white, yellow and black stripes [M.O.-5], Blue and white checked shirt [M.O.-7] and vest [M.O.9], which were worn by the deceased, were obtained after postmortem. The seized objects were sent through Court to the Tamil Nadu Forensic Sciences Department for examination and report.

2.4. The biology report [Ex.P.16] shows the presence of human blood in the bamboo sticks [M.O.-2 series], soil with bloodstain



[M.O.-3], green colour lungi with white, yellow and black stripes [M.O.-5] worn by the deceased, bloodstained white full shirt [M.O.-6] worn by the accused, shirt with blue and white stripes [M.O.-7] worn by the deceased, bloodstained blue, white and black colour striped lungi [M.O.-8] worn by the accused and the vest [M.O.-9] worn by the deceased.

2.5. The Serology report [Ex.P-17] shows that human blood found in the apparel worn by the deceased is 'Human A' and the one that was recovered from the deceased also had 'Human A' bloodstains.

2.6. After examining witnesses and collecting various reports, the Investigating Officer completed the investigation and filed final report in P.R.C.No.1/2013 before the Judicial Magistrate No.II, Kovilpatti, for offences under Sections 294(b), 302 and 506(II) IPC against the appellant. On the appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.219/2014.

2.7. The trial Court framed the following charges against the appellant:

Charges	Penal Provisions
1	294(b) IPC
2	302 IPC
3	506(II) IPC

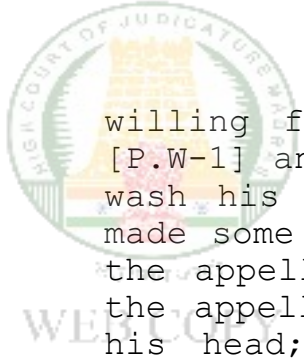
When questioned, the appellant pleaded not guilty. To prove the case, the prosecution examined 14 witnesses, marked 17 exhibits and 9 material objects.

2.8. When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document marked on behalf of the appellant.

2.9. After considering the evidence on record and on hearing either side, the trial Court, by judgment dated 22.01.2016, convicted and sentenced the appellant under Section 302 IPC as stated in paragraph No.1 above, aggrieved by which, the appellant is before this Court with this appeal.

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

4. Gandhilakshmi [P.W.-1], who was examined on 06.04.2015, in her evidence, has stated that she was studying 11th standard when the incident took place on 18.06.2012. She [P.W.-1] has further stated that the appellant was asking her father to transfer ½ a cent of land that was in her grandmother's name in exchange of another piece of land on the northern side; her father was not



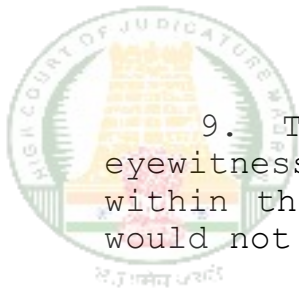
willing for the exchange; on 18.06.2012, around 3.30 p.m., she [P.W.-1] and her father had their lunch and when her father went to wash his hands, the appellant, who lives in the opposite house, made some snide remarks; when her father questioned the appellant, the appellant used abusive words and a quarrel ensued, in which, the appellant took out a bamboo stick and attacked her father on his head; when this was happening, her uncle's son Nagalingam [P.W.-2] also came to the place of occurrence and witnessed the attack; after the attack, she [P.W.-1] informed this to her mother, who had gone out; thereafter, they sprinkled water on the face of her father, but, there was no response; thereafter, she [P.W.-1] went to the police station and lodged the complaint [Ex.P-1].

5. P.W.1's evidence is substantially corroborated by Nagalingam [P.W-2], who has stated that on 18.06.2012, around 3.30 p.m., he came to the house of the deceased and at that time, he [P.W.-2] saw the appellant attacking the deceased with a stick; the deceased fell down and died. The defence was not able to make any serious dent in the testimony of these two eyewitnesses. It was suggested to both these witnesses that they were not present at the place of occurrence and that the deceased was addicted to liquor and was of loose morals, on account of which, he was attacked by some unknown persons, which suggestion, the witnesses denied.

6. The prosecution examined two witnesses, namely, Sivasubramanian [P.W.-5] and Rathnavel [P.W.-6], who have stated that there was land dispute between the appellant and the deceased, in which, they mediated to bring about a settlement between the two.

7. The most incriminating piece of evidence against the appellant is the presence of Human 'A' blood group in his clothes [M.O.-6 and M.O.8], which is that of the deceased. The appellant has not given any satisfactory explanation for that. The viscera report also does not show that the deceased had consumed liquor and therefore, the suggestion of the defence that the deceased had picked up a quarrel after drinking liquor with some unknown persons, does not merit consideration. The place of occurrence is also just in front of the house of the appellant, which is very near the house of the deceased.

8. The learned counsel for the appellant contended that the appellant is aged about 60 years and the eyewitness account shows that there was a quarrel between the two, in which, the appellant had attacked the deceased with a stick that was lying nearby resulting in fatal injuries to the deceased and that the appellant did not have any intention to commit the offence nor was the offence premeditated. The learned counsel further contended that even according to Gandhilakshmi [P.W.-1], the appellant and the deceased were quarreling for some time.



9. Thus, on an overall reading of the evidence of the eyewitnesses, it is evident that the case of the accused would fall within the ambit of the third clause of Section 299 IPC only and would not graduate to Section 300 IPC.

10. In the result, the criminal appeal is partly allowed and the conviction of the appellant under section 302 IPC is set aside and instead, he is convicted under Section 304(II) IPC and sentenced to undergo seven years rigorous imprisonment. The period of sentence already undergone by the accused/appellant is ordered to be set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

RR

TO

1. The Principal District Judge, Tuticorin.
2. The Principal Sessions Judge, Tuticorin.
3. The Judicial Magistrate, Tuticorin.
4. The Chief Judicial Magistrate, Tuticorin.
5. The Judicial Magistrate No.II, Kovilpatti.
6. The District Collector, Tuticorin.
7. The Director General of Police,
Mylapore, Chennai - 4.
8. The Superintendent of Police,
Tuticorin.
9. The Inspector of Police
Pasuvanthanai Police Station
Tuticorin District
10. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



Copy to

The Record Keeper,
Criminal Records Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.K.VINAYAGAN, Advocate Sr. No. 60968

Judgment made in
Cr1.A. (MD) No.233 of 2017
11.04.2019

TR (23.04.2019) 6P 14C