



BAIL SLIP

The Appellant/Sole Accused namely, Pokkaran, S/o.Muthu Asari was released on bail by this Hon'ble Court order made in CRL MP(MD) No.8653/2017 in CRL A(MD) No.382/2017 dated 05.10.2017.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2019

CORAM

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

Criminal Appeal (MD)No.382 of 2017

Pokkaran ... Appellant/ Sole Accused

Vs.

The State represented by
The Inspector of Police,
Nayinar Kovil Police Station,
Paramakudi. (Cr. No.86 of 2010) ... Respondent/Complainant

Prayer : Appeal filed under Section 374 (2) of the Code of Criminal Procedure, against the judgment dated 27.07.2017 passed in S.C.No.118 of 2011 by the learned Additional District Judge (Fast Track Court), Paramakudi.

For Appellant : Ms.R.Pranavi
for Mr.M.Siddharthan

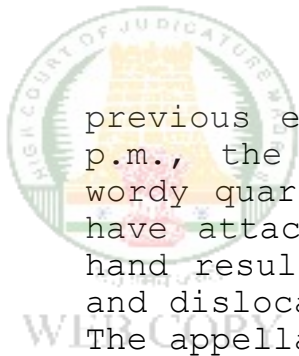
For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

JUDGMENT

The present Criminal Appeal has been filed by the appellant aggrieved by the judgment of the Additional District and Sessions Court (Fast Track Court), Paramakudi, made in S.C.No.118 of 2011, dated 27.07.2017. The appellant was convicted for the offence under Section 302 I.P.C. and was sentenced to undergo life imprisonment and to pay a fine of a sum of Rs.1,000/- (Rupees One Thousand only) and in default, to undergo one year rigorous imprisonment.

Facts of the case in brief:

2. There was a property dispute between the appellant and the deceased for more than three years and therefore, there was a



previous enmity between the parties. On 26.07.2010 at about 06.30 p.m., the deceased was standing in the property and there was a wordy quarrel between them. At that time, the appellant is said to have attacked the deceased with M.O.1 on the forearm of his left hand resulting in the privation of the left forearm from the joint and dislocation of the bone. The same resulted in severe blood loss. The appellant ran away from the place of occurrence and the deceased was taken to the hospital by P.W.1 to P.W.4 in the auto belonging to P.W.5 and thereafter, he was shifted to an ambulance and brought to Government Hospital, Paramakudi, where he was declared to have been brought dead.

Complaint and the materials collected in the course of investigation:

3. The daughter of the deceased (P.W.1), after returning back from the hospital, went to Nayinar Kovil Police Station and gave a complaint to the Special Sub Inspector of Police (P.W.14) at about 23.30 hours. An F.I.R., came to be registered in Cr.No.86 of 2010 for the offence under Section 302 I.P.C. The Express F.I.R., was handed over to the Head Constable (P.W.15) and he, in turn, submitted the same before the Judicial Magistrate, Paramakudi, on 27.07.2010 at about 04.00 a.m.

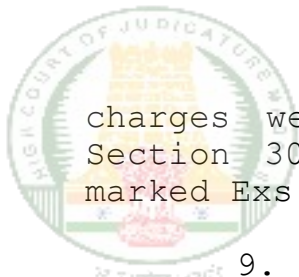
4. The investigation was taken up by the Inspector of Police (P.W.17) and he went to the scene of occurrence on 27.07.2010 at about 06.00 a.m. He prepared the Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.11) in the presence of the witnesses (P.W.6 and P.W.8). He also collected the material objects from the scene of occurrence. The material objects were sent to the Court through P.W.13 under Form 95.

5. The Investigation Officer, thereafter, proceeded to the Government Hospital, Paramakudi and in the presence of Panchayatdars, he conducted inquest between 08.00 a.m., and 10.00 a.m. and prepared the Inquest Report (Ex.P.12). He handed over the body to the Head Constable (P.W.12) with a requisition to conduct the post-mortem and thereafter, hand over the body to the relatives.

6. The Investigation Officer recorded the statements of the witnesses under Section 161(2) Cr.P.C. and collected the post-mortem certificate (Ex.P.9), serological report (Ex.P.8) and other scientific reports (Exs.P.6 and P.7).

7. The investigation was, thereafter, handed over to P.W.18, who continued to record the statements of the other witnesses. On completion of the investigation, he laid the charge sheet before the Judicial Magistrate Court, Paramakudi, on 10.01.2011.

8. The case was committed to the file of the Additional District and Sessions Court (Fast Track Court), Paramakudi and the



charges were framed against the appellant for an offence under Section 302 I.P.C. The prosecution examined P.W.1 to P.W.18 and marked Exs.P.1 to P.14 and M.O.1 to M.O.5.

9. The trial Court questioned the appellant under Section 313 (i) (b) Cr.P.C., by putting all the incriminating materials collected during the course of trial and the appellant denied the same as false.

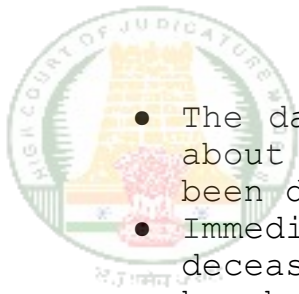
10. The trial Court after carefully considering the facts and circumstances of the case and also after analysing the oral and documentary evidence, found that the prosecution has proved the case beyond reasonable doubts and proceeded to convict and sentence the appellant in the manner indicated supra.

Submissions:

11. Ms.R.Pranavi, learned Counsel appearing on behalf of the appellant made the following submissions:

- P.W.1 has been examined as eyewitness in this case and she could not have seen the incident since her house is 1 Km., away from the place of occurrence and there was no plausible reason for the presence of P.W.1 in the scene of occurrence at the time of the incident. The cross-examination of P.W.1 clearly reveals this fact.
- Even though P.W.2 and P.W.3 were examined in order to describe the incident on the ground that they are the neighbours of the deceased, it is clear from their evidence that they came to the scene of occurrence only after the occurrence and they could not have seen the incident. That apart, P.W.2 and P.W.3 do not talk about the presence of P.W.1 in the scene of occurrence.
- There are material contradictions among the evidence of P.W.1 to P.W.3 and the same clearly discredits their evidence and makes it unreliable.
- Even if the case of the prosecution is taken to have been proved, the weapon used, the part of the body, in which, the attack was made and the nature of injury that was sustained by the deceased, will not bring this case within the requirements of Section 300 I.P.C. and therefore, the Court below went wrong in convicting the appellant under Section 302 I.P.C.
- The evidence of the post-mortem Doctor (P.W.11) and the post-mortem certificate (Ex.P.9) given by him clearly describe the injury sustained by the deceased. The final opinion of the post-mortem Doctor (P.W.11) is that the deceased died due to loss of blood and haemorrhage caused due to shock after the incident.
- The trial Court did not take into consideration these vital aspects and therefore, the judgment of the trial Court requires interference.

12. Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing on behalf of the State made the following

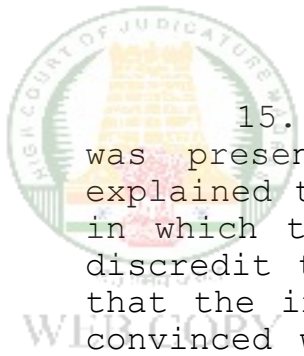


- The daughter of the deceased, namely, P.W.1 has clearly spoken about the incident in a cogent manner and her evidence has not been discredited in the cross-examination.
- Immediately after the incident, P.W.2 to P.W.4 had taken the deceased to the hospital in the auto belonging to P.W.5. This has been spoken to by all the witnesses.
- The arrest and recovery have been clearly spoken to by the witness (P.W.9).
- The incident took place at 08.30 p.m., on 26.07.2010 and the injured was taken to the hospital where he was declared to be brought dead. Thereafter, P.W.1 had gone to the Police Station and given the complaint and the F.I.R. was registered by P.W.14 at about 23.30 hours and the Express F.I.R., had reached the Court next day at 04.00 a.m. The Investigation Officer was present at the scene of occurrence at 06.00 a.m. on 27.07.2010. Therefore, there is absolutely no delay at any stage and the entire investigation has been carried out in an effective manner.
- The nature of injuries sustained by the deceased has been spoken to by the post-mortem Doctor (P.W.11) and the injury has also been described in the post-mortem certificate (Ex.P.9). Even though the deceased was cut in the forearm of his left hand by the appellant, the weapon used and the power with which the blow was given, had resulted in the forearm coming out of the joint and was hanging and adjacent muscles and vital nerves were also cut, resulting in severe loss of blood. Therefore, the nature of injury was such that the appellant had knowledge that it is likely to cause the death of the deceased.
- In the alternative, the learned Additional Public Prosecutor appearing on behalf of the State also submitted that if in case, this Court is to come to the conclusion that the facts of this case will not fall within the requirements of Section 300 I.P.C., this case will squarely fall under Section 307 I.P.C., since there was an attempt to murder the deceased and the deceased warded off the attack, resulting in grievous injury sustained in the forearm.

Discussion:

13. This Court has carefully considered the submissions made on either side and scrutinised the oral and documentary evidence placed on record.

14. It is clear from the evidence that there was a previous enmity between the parties for nearly three years on a property dispute. On the date of occurrence, the deceased was standing in the property and this was questioned by the appellant resulting in a wordy quarrel and the appellant had attacked the deceased with M.O.1 on his hand. The post-mortem Doctor (P.W.11) has given a final opinion to the effect that the death was caused due to loss of blood and haemorrhage caused due to the shock after the incident.



15. A careful reading of the evidence of P.W.1 shows that she was present in the scene of occurrence and she has cogently explained the manner in which the incident took place and the manner in which the appellant attacked the deceased. There is nothing to discredit the evidence of this witness and this Court has no doubt that the incident was, in fact, seen by P.W.1. Since this Court is convinced with the evidence of P.W.1, it is not necessary to look for corroboration with regard to the incident.

16. The evidence of P.W.2 to P.W.4 clearly explains as to what happened after the incident. The deceased had fallen down and there was severe blood loss and therefore, he was carried by P.W.2 and P.W.3, helped by P.W.4, in the auto belonging to P.W.5. P.W.5 - auto driver, has also clearly spoken about the same. When the auto was progressing towards the Government Hospital, the ambulance was on its way and therefore, the deceased was shifted to the ambulance. The deceased on reaching the hospital, was tested and was declared to be brought dead.

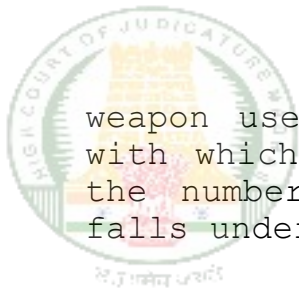
17. The availability of light in the scene of occurrence has been spoken to by the Electricity Board Official, who was examined as P.W.7 and the availability of the light is also clear from the Rough Sketch which was marked as Ex.P.11.

18. The arrest and recovery by the Investigation Officer has been spoken to by P.W.9.

19. In view of the above discussion, this Court is convinced that the prosecution has proved the case beyond reasonable doubts with regard to the incident, attack, injury and the reason for death of the deceased.

20. The only other issue that requires consideration is whether on the facts of the present case, the offence can be brought within the requirements of Section 300 I.P.C?

21. There was a previous enmity for nearly three years on a property dispute and on the date of the incident, there was a wordy quarrel, as a result of which, the appellant gave one blow with M.O.1 on the forearm of left hand of the deceased. Except for this single blow, there was no other attack that was attempted to be made by the appellant. What differentiates the offence of murder from the culpable homicide not amounting to murder is the presence of the special mens rea, which is described in the four limbs of Section 300 I.P.C. If at all, the appellant had an intention to commit the murder of the deceased, he would not have let off the deceased with one single blow on the hand and he would have continued the attack. Therefore, it is clear that the appellant had reacted in a heat of passion upon a sudden quarrel and used M.O.1 to give a single blow to the deceased in his hand. Even a single blow can be brought within the requirements of Section 300 I.P.C. It all depends upon the



weapon used, the part at which the attack was made and the force with which it is carried out by the accused. Therefore, it is not the number of blows that necessarily decides whether an offence falls under Section 300 I.P.C.

22. In the present case, the weapon used is இரும்பு வாச்சாத்து (மரம் செதுக்கும் ஆயுதம்). The attack was not made on any vital part and it was made on the forearm of left hand of the deceased. The attack stopped with that single blow and did not continue. Therefore, it is clear that the appellant did not have any intention to murder the deceased.

23. If the appellant did not have any intention to murder the deceased, this case will not fall under Section 307 I.P.C., since the essence of the offence under Section 307 I.P.C., is the intention to murder a person, which stops with an attempt. In view of our finding that the appellant did not have the intention to murder the deceased, we cannot bring this case within the requirements of Section 307 I.P.C.

24. It will be relevant to extract hereunder the injuries as recorded in the post-mortem certificate (Ex.P.9):

"External Examinations:

1) A 15 x 5 x 7 cm incised like wound over the left elbow lying obliquely lower end lying medially with the upper end lying over the lateral end of left arm. The wound exposes the (NC) end of skin, musculus tendons, cut ends of major vessels and the fractured (NC) of left radius with collection of blood over the wound. No other external injuries made out.

Internal Examination:

Head & Neck: No Haemorrhage or haematoma inside the skull. No SDH/EDH. Brain matter/and its covering are looking pale. All neck structure are pale. Hyoid bone intact.

Chest: Both lungs are pale. Heart chamber are empty. Major vessels contain clotted blood material of small amounts.

Abdomen: Stomach contains partially digested food material. All abdominal viscera like liver, spleen, kidneys intestines are pale. No intra (NC) haemorrhage found External genitalia found normally. No other injuries found in other limbs except left elbow.

P.M. concluded by 12.30 P.M.

Opinion as to cause of death:

The deceased would appear to have died of massive haemorrhage and shock due to vascular injury over the left elbow."



[extracted as such]

25. A careful reading of the evidence of post-mortem Doctor, who was examined as P.W.11, shows that he had only mentioned that there was a "incised like wound". There was actually no incised wound, which could be caused only with a weapon which has a sharp edge. Therefore, it is clear that M.O.1 did not have such sharp edge. The appellant had attacked the deceased with whatever was available in his hand. The further analysis of the evidence of the post-mortem Doctor (P.W.11) and the post-mortem certificate (Ex.P.9) shows that the left elbow had virtually been cut off and was hanging and it has resulted in massive musculus tendons and major vessels being cut. It has also resulted in a fracture of left radius. There was no other external injury that was found in the body of the deceased. The cause of death was the loss of blood and haemorrhage and shock due to vascular injury over the left elbow.

26. It must now be seen as to what offence will be attracted for an injury of this nature that was sustained by the deceased. We find that this case can be brought within the offence punishable under Section 326 I.P.C. The essential ingredients to attract Section 326 I.P.C., are (a) voluntarily causing hurt; (b) hurt caused must be a grievous hurt; and (c) the grievous hurt must have been caused by a dangerous weapon. Section 326 I.P.C. postulates an offence under Section 325 I.P.C. in an aggravated form. What hurts may be classified as a grievous hurt, have been catalogued exhaustively in the various clauses under Section 320 I.P.C.

27. Section 320 I.P.C., is extracted hereunder:

"First.- Emasculation.

Secondly.- Permanent privation of the sight of either eye.

Thirdly.- Permanent privation of the hearing of either ear.

Fourthly.- Privation of any member or joint.

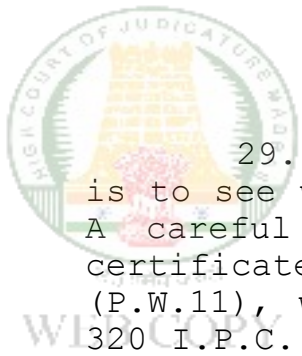
Fifthly.- Destruction or permanent impairing of the powers of any member or joint.

Sixthly.- Permanent disfiguration of the head or face.

Seventhly.- Fracture or dislocation of a bone or tooth.

Eighthly.- Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

28. It is clear from the above definition of 'grievous hurt' that only eight clauses that have been designated as a grievous hurt can be brought under Section 320 I.P.C., and the same is exhaustive. In other words, no other hurt outside the list given in Section 320 I.P.C., can be termed as a grievous hurt.



29. The next process that has to be undertaken by this Court is to see which clause will apply to the facts of the present case. A careful reading of the observation made in the post-mortem certificate (Ex.P.9) and the evidence of the post-mortem Doctor (P.W.11), will squarely bring the injury under Clause 7 of Section 320 I.P.C. This clause provides that the fracture or dislocation of a bone or tooth shall be designated as a grievous hurt. The fracture has not been defined under the Code and it is understood to be a break by cutting or splintering of bones or there is a rupture or fissure in it and such characteristics will satisfy the requirements of a fracture.

30. In the present case, the forearm of left hand of the deceased has been cut and it was found hanging and there was a fracture of left radius. Therefore, there is no doubt in our mind that the injury sustained by the deceased will squarely fall in Clause 7 of Section 320 I.P.C.

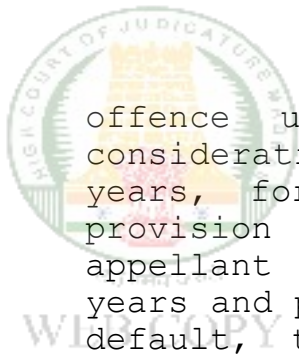
31. The injury sustained by the deceased can also be brought within Clause 8 of Section 320 I.P.C. This clause provides for any hurt which endangers life. Whether a hurt endangers a life, is something to be deciphered only from the opinion of a medical expert. In the present case, the medical expert, namely, the post-mortem Doctor (P.W.11) has clearly opined that the death was caused due to massive haemorrhage and shock due to vascular injury over the left elbow. Danger to life primarily depends upon the haemorrhage, shock or damage to a vital organ and secondly, on the chance of complications, such as, infection leading to septicaemia, gangrene, etc. As a general principle, the Court is likely to consider as dangerous to life in a legal sense only those wounds in which the danger is imminent.

32. In the present case, the cut has resulted in the serious damage caused to the major vessels and the vascular injury over the left elbow. The injury was so serious that the deceased died almost immediately after the incident. Therefore, the injury sustained by the deceased will also come under the parameters of Clause 8 of Section 320 I.P.C.

33. In view of the above discussion, this Court is of the considered view that the appellant has committed an offence under Section 326 I.P.C and he is liable to be punished for the said offence.

Conclusion:

34. The above discussion makes this Court to come to the clear conclusion that the judgment of the trial Court requires modification. The conviction and sentence passed by the trial Court for an offence under Section 302 I.P.C., stands modified to an



offence under Section 326 I.P.C., and we have taken into consideration the age of the appellant who is said to be now 80 years, for fixing the period of imprisonment even though the provision provides for a longer imprisonment and accordingly, the appellant is directed to undergo rigorous imprisonment for three years and pay a fine of Rs.1,000/- (Rupees One Thousand only) and in default, to undergo simple imprisonment for three months. The conviction and sentence passed by the Court below is modified accordingly. The period already undergone by the appellant shall be entitled to be set off under Section 428 Cr.P.C. The bail bonds executed by the appellant shall stand cancelled.

35. The appellant is directed to immediately surrender before the Judicial Magistrate, Paramakudi and the Judicial Magistrate, Paramakudi, shall direct the appellant to be confined in jail to undergo the remaining sentence, if any. If the appellant fails to surrender before the concerned Court, the respondent police shall secure the appellant and produce him before the Judicial Magistrate, Paramakudi, and the appellant shall thereafter be confined to the prison.

36. In the result, this Criminal Appeal is partly allowed to the extent indicated hereinabove.

Sd/-
Assistant Registrar(AD-I)

/TRUE COPY/

Sub Assistant Registrar

rsb

To

- 1.The Additional District Judge,
(Fast Track Court),
Paramakudi.
- 2.The Inspector of Police,
Nayinar Kovil Police Station,
Paramakudi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Superintendent,
Central Prison, Madurai.



5.The Judicial Magistrate,
Paramakudi.

6.The Chief Judicial Magistrate,
Ramanathapuram.

7.The Principal District Judge,
Ramanathapuram.

8.The District Collector,
Ramanathapuram District.

9.The District General of Police,
Mylapore,
Chennai-4.

+1 CC to M/s.M.SIDDHARTHAN, Advocate (SR-92637[F] dated
17/10/2019)

Criminal Appeal (MD)No.382 of 2017
16.10.2019

JM/24.10.2019/10P/11C