



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 15.10.2019

JUDGMENT DELIVERED ON : 17.10.2019

CORAM:

**THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH**

Crl.A(MD)No.488 of 2017

Kali .. Appellant / Sole Accused

Vs.

The State represented by,
The Inspector of Police,
Puliyarai Police Station,
Shenkottai Circle,
Tirunelveli District.
(Crime No.96 of 2013)

.. Respondent / Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment, dated 06.10.2017 passed in S.C.No.134 of 2015 by the learned Principal Sessions Judge, Tirunelveli, and to acquit the appellant herein.

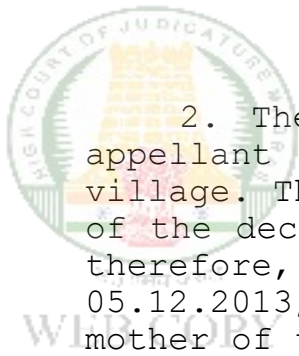
For Appellant : Mr.C.Selvaraj

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal has been filed by the sole appellant against the Judgment of the learned Principal Sessions Judge, Tirunelveli, made in S.C.No.134 of 2015, dated 06.10.2017, convicting him for an offence under Section 294(b) and sentencing him to undergo three months Simple Imprisonment and for the offence under Section 302 IPC and sentencing him to undergo Life Imprisonment and to pay a fine of Rs.2000/-, in default, to undergo

<https://hservices.tn.gov.in/hservices/>



2. The case of the prosecution is that the deceased and the appellant herein are relatives and they were residing in the same village. The brother of the accused person was married to the sister of the deceased. He stopped visiting the accused and his mother and therefore, there was a misunderstanding between the parties. On 05.12.2013, at about 9.00 p.m., the accused person had abused the mother of the deceased (P.W.3) in filthy language. This was informed to the deceased and he went to the house of the accused person at about 10.15 p.m., and questioned the accused. The accused person is said to have attacked the deceased with a bill hook (M.O.1) by stating that he was responsible for his brother not visiting him and if he is alive, his brother will only listen to his words. The deceased sustained a grievous injury in the middle of his head and he was rushed to Senkottai Government Hospital by his wife (P.W.1). He was examined by P.W.19 and he was referred to the Government Medical College Hospital, Tirunelveli, after recording in the Accident Register (Ex.P.21) and informing the same to the concerned police station (Ex.P.22). The deceased was rushed to the Government Medical College Hospital, Tirunelveli and was brought to the hospital at about 1.00 a.m., on 06.12.2013 and he was treated by P.W.20. The deceased, ultimately died on 06.12.2013 at about 8.45 a.m. This was informed by P.W.20 to the concerned police through P.W.23.

3. The Special Sub Inspector of Police (P.W.17) went to the Government Medical College Hospital, Tirunelveli and recorded the statement of P.W.1 and reduced the same into a complaint (Ex.P.1). He thereafter registered FIR in Crime No.93 of 2013 at about 11.15 a.m., and prepared an express FIR, which was sent through the Head Constable (P.W.12) to the Judicial Magistrate, Senkottai. The express FIR reached the Court at about 1.00 p.m.

4. The investigation was taken up by the Inspector of Police (P.W.18) and he reached the scene of crime at about 12 noon and prepared an observation mahazer (Ex.P.18) and a rough Sketch (Ex.P.19) in the presence of witnesses (P.Ws. 8 & 9). He also collected the material objects in the scene of crime (M.O.3 to M.O.5). He thereafter proceeded to the Government Medical College Hospital at Tirunelveli and conducted the inquest over the body of the deceased in the presence of witnesses and completed the said process at 5.30 p.m., and prepared the inquest report (Ex.P.20).

5. The investigating officer handed over the body of the deceased along with the requisition for postmortem to P.W.13 and further directed him to hand over the body after the postmortem. The investigating officer arrested the accused person on 06.12.2013 at about 7.00 p.m., and based on the confession made in the presence of the Village Administrative Officer (P.W.9) recovered the bill hook (M.O.1) and thereafter, the accused was produced before the Judicial Magistrate and was remanded to judicial custody.



6. The material objects were handed over to the Court under Form 95 with a requisition to send the same for chemical analysis. The investigating officer recorded the statement of the witnesses under Section 161(3) of Cr.P.C., and collected the postmortem certificate (Ex.P.8), chemical analysis report (Ex.P.10) and serological report (Ex.P.11).

7. On completion of the investigation, the investigating officer filed the final report before the Judicial Magistrate Court, Senkottai on 16.06.2014.

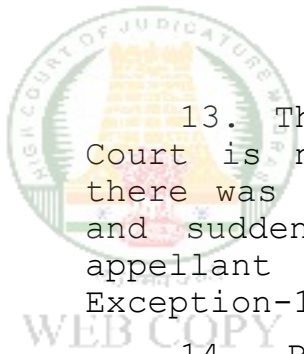
8. The case was committed to the file of the learned Principal Sessions Judge, Tirunelveli, and the trial Court framed charges against the accused person for an offence under Section 294 (b) and 302 IPC. The prosecution examined P.W.1 to P.W.20 and marked Ex.P.1 to Ex.P.23 and M.O.1 to M.O.6. The defence examined D.W.1 (wife of the accused person) and marked Ex.D1.

9. The trial Court had put all the incriminating materials that were collected against the accused person in the course of trial and questioned him under Section 313(1)(b) of Cr.P.C., and he denied the same as false.

10. The trial Court on considering the facts and circumstances of the case and after analysing the oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and therefore proceeded to convict and sentence the accused person in the manner stated supra.

11. The learned counsel for the appellant submitted that P.W.1 to P.W.6 are the main witnesses, who were examined on the side of the prosecution in order to prove the incident. He submitted that P.W.1 is the wife of the deceased, P.W.2 is the brother-in-law and P.W.3 is the mother of the deceased. All these witnesses had parroted the same version and there is contradiction in their evidence. The learned counsel further submitted that P.W.4, who was the neighbour, did not see the incident and he only speaks about what happened after the incident.

12. The learned counsel submitted that there was admittedly a previous enmity between the parties and on the date of incident, it was the deceased, who was the aggressor and who entered into the house of the appellant and picked up a fight with the appellant. By pointing out to the evidence of the wife of the appellant (D.W.1), the learned counsel submitted that the deceased had attempted to attack the appellant with Aruval and in the said melee, the appellant had to react in order to save his own life and by way of private defence, the deceased sustained a cut injury in his head which ultimately resulted in his death. The learned counsel submitted that even if the case of the prosecution is taken as it is, the defence of the appellant clearly falls under the right of private defence and the fact that there was only one injury found in the head of the deceased, shows that the appellant did not have the intention to commit the murder of the deceased.



13. The learned counsel further submitted that even if this Court is not convinced with the defence taken by the appellant, there was admittedly a wordy quarrel and a melee and due to grave and sudden provocation, the deceased was attacked once by the appellant and therefore, the present case can be brought under Exception-1 to Section 300 of I.P.C.

14. Per contra, the learned Additional Public Prosecutor appearing on behalf of the State submitted that the prosecution has cogently proved the entire incident and there is absolutely nothing to discredit the evidence of P.W.1 to P.W.3, who are the eyewitnesses. The learned counsel further submitted that the wife of the deceased had taken him to the Senkottai hospital immediately after the incident and the deceased was further referred to the Government Medical College Hospital, Tirunelveli, where he died on 06.12.2013 at about 8.45 a.m. This has been clearly spoken to by P.W.19 and P.W.20. The learned counsel submitted that there was no delay in registering the FIR, the express FIR reaching the Magistrate Court, the investigating officer reaching the scene of crime and the statements recorded from the witnesses under Section 161(3) of Cr.P.C., reaching the Court. The learned counsel submitted that eventhough it is a case of single blow, the weapon used and the part of the body where the deceased was attacked, clearly brings this case under Section 300 IPC and there is absolutely no ground to interfere with the judgment of the trial Court and consequently this Criminal Appeal must be dismissed.

15. This Court has carefully considered the submissions made by either side and also assessed the oral and documentary evidence, The wife of the deceased-P.W.1, is a teacher in a Government Higher Secondary School. She has spoken about the previous misunderstanding between the parties and the incident that took place on 05.12.2013. She has cogently spoken about the incident and there is nothing to discredit her evidence. The same is the case of the evidence of P.W.2, who is the brother-in-law of the deceased and P.W.3, the mother of the deceased.

16. After the incident, the deceased was taken in an ambulance to the Government Hospital, Senkottai and after first aid, he was referred to the Tirunelveli Government Medical College Hospital for further treatment. The evidence of P.W.19 and P.W.20 (read along with Ex.P.21 to Ex.P.23) makes it very clear.

17. This Court also does not find any unnecessary delay in the complaint recorded by P.W.17, who registered the FIR and the express FIR reaching the concerned Magistrate Court. The arrest, confession and recovery has been clearly corroborated by the evidence of P.W.9. P.W.10, who is the postmortem Doctor has clearly spoken about the injuries found in the body of the deceased and the postmortem certificate, which was marked as Ex.P.8 shows that the deceased died due to the cut injury in the head. The injuries recorded in the postmortem certificate is extracted hereunder:

**"The following ante mortem injuries were noted:**

1. Abrasion of size 3x2 cm seen in left knee.
2. An oblique stapled cut injury of length 6 cm seen in left side of frontal region. Lower part of the injury lies, 8 cm above left eyebrow. On removal of stapler pins injury measures 6x1cmxbrain deep.

On dissection of Head:

Scalp contusion of size 20x10cm seen in frontal region. Cut injury of length 6 cm seen in left side of frontal bone and radiating crack fracture of length 6 cms extending from anterior end of the cut injury towards right side of frontal bone and 2cms extending from posterior end of the cut injury to fronto parietal suture. Sutural separation of length 6 cm seen in right side of fronto parietal suture. Diffuse subdural and subarachnoid haemorrhages seen in both temporal parietal and occipital regions. Cut injury of size 6x2x2cm seen in left frontal lobe of brain. Panline haemorrhage noted. Base of right anterior cranial fossa broken and found in multiple pieces.

Other findings:

Heart: Normal and coronary vessels pale. ((NC)).

Hyoid bone : Intact

Stomach : contains 50 gms of partially digested cooked rice particles, no specific smell and mucosa pale.

Lungs, Liver, Spleen & Kidneys : Normal, C/S pale.

Small intestine : Contains 150 gms of partially digested cooked rice particles, no specific smell and mucosa pale.

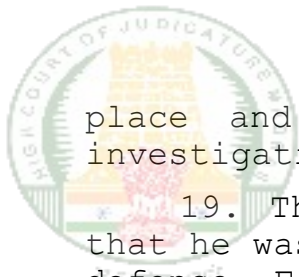
Bladder: Contains 20 ml of Urine.

Brain : Explained, C/S pale.

Death would have occurred occurred to 24 -36 hours prior to autopsy.

The postmortem Doctor opined that the deceased would appear to have died of complications of cut injury to the head."

18. The chemical examination report (Ex.P.10) and serological report (Ex.P.11) clearly shows that the material objects contained human blood. The evidence of the investigating officer P.W.18 also clearly explains the manner in which the investigation had taken



place and there is nothing to discredit the evidence of the investigating officer.

19. The only defence that has been taken by the appellant is that he was forced to attack the deceased in exercise of his private defense. For this purpose, the evidence of D.W.1 does not in any way help the appellant in substantiating his defence. The evidence of D.W.1 is not clear as to how ultimately the final attack against the deceased took place.

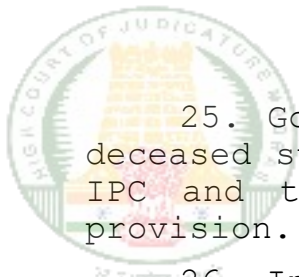
20. The plea of right of private defense cannot be based on surmises and speculation. Section 96 to 106 of IPC codifies the entire law relating to private defense of person and property including the extent of and limitation to exercise such right. An accused taking the plea of the right of the private defense can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The right commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit some offence. It is defensive and not a punitive or retributive right.

21. In the present case, the evidence of P.W.1 to P.W.3 makes it very clear that it was the appellant, who had attacked the deceased with the weapon on his head and this attack has been made without there being any reasonable apprehension of danger to the life of the appellant. The appellant has reacted and caused more harm to the deceased, than was necessary, even assuming that such a private defense was permissible, under the facts of the present case. This Court is of the considered view that the appellant is not entitled to take the plea of private defense and the evidence of D.W.1 does not in any way help in substantiating the said defense.

22. The only other issue that requires consideration is whether the present case can be brought under Exception-1 to Section 300 of I.P.C.

23. A cumulative reading of the evidence available on record, clearly shows that there was a misunderstanding between the parties and the deceased had gone to the house of the appellant and there was a wordy quarrel, which ultimately ended in the appellant giving a single blow with M.O.1 on the head of the deceased. The Hon'ble Supreme Court in **Mahesh vs. State of M.P.**, reported in **1996 (10) SCC 668** has held, on the facts of that case, that when the death took place by the accused giving a single blow with a pharsa, as a result of a sudden fight, when the deceased objected to the grazing of the cattle and the assault took place without any premeditation, Exception-4 of Section 300 of I.P.C., will be attracted.

24. In the present case, it is seen that there was a sudden fight between the parties which resulted in the appellant giving a single blow on the head of the deceased with M.O.1, due to grave and sudden provocation. The fight between the parties has been spoken to by P.W.1 to P.W.3 and also D.W.1. Therefore, the present case can be brought under Exception-4 of Section 300 of I.P.C.



25. Going by the weapon and the part of the body in which the deceased sustained injury, it clearly brings the case within 304(i) IPC and the appellant is liable to be punished under the said provision.

26. In the result, the Judgment of the trial Court is modified and the appellant is convicted and sentenced as follows:

Sl.No.	Offence under which convicted	Sentence of Imprisonment	Fine amount
1.	294(b) IPC	Three months Simple Imprisonment	
	304(i) IPC	Seven years Rigorous Imprisonment	Rs.2000/-, in default, to undergo three months Rigorous Imprisonment.

Both the sentences are ordered to run concurrently and the period of remand already undergone by the appellant is directed to be set off under Section 428 of Cr.P.C.

27. Accordingly, this Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

PJL

To

1. The Principal Sessions Judge,
Tirunelveli.
2. The Inspector of Police,
Puliyarai Police Station,
Shenkottai Circle,
Tirunelveli District.
3. The Judicial Magistrate Shenkottai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



5. The Superintendent of Central Prison, Playamkottai.

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

+1 CC to M/s.C.SELVARAJ, Advocate (SR-92441[F] dated 17/10/2019)

Judgment made in

Cr1.A(MD)No.488 of 2017

17.10.2019

VB(25.10.2019) 8P 9C