



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl. A. (MD)No.271 of 2018

Raguvaran

... Appellant/Sole Accused

Vs.

State through  
The Inspector of Police,  
Sivagangai Town Police Station,  
Sivagangai District.  
(Crime No.721 of 2013)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to call for the entire records connected to the judgment in S.C.No.152 of 2014 on the file of the learned Sessions Judge, Sivagangai dated 31.01.2017 and set aside the conviction and sentence imposed against the appellant.

For Petitioner : Mr.R.Alagumani  
For Respondent : Mr.K.K.Ramakrishnan  
Additional Public Prosecutor

**J U D G M E N T**

(Judgment of the Court was delivered by **T.RAJA, J.**)

The appellant is the sole accused in S.C.No.152 of 2014 on the file of the Sessions Judge, Sivagangai and he stood charged, tried and convicted for the commission of offence under Section 302 I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- with default sentence of 1 year Rigorous Imprisonment vide judgment dated 31.01.2017. The appellant/sole accused, aggrieved by the impugned judgment of conviction and sentence passed by the Trial Court, came forward with this Criminal Appeal.

2. Facts leading to the filing of this Criminal Appeal, relevant for the purpose of disposal of this case, briefly narrated, are as follows:

2.1. It is the case of the prosecution that the accused/appellant - Raguvaran, the deceased - Marimuthu, P.W.1 - Manikandan and P.W.3 - Senthil are construction workers. Surprisingly, the deceased used to pass urine in the vicinity of the public and in the place where women members of the village always pass through. Therefore, the villagers complained about the unwanted activities of deceased to the accused, who was the construction



supervisor/ Meistri and scolded him. Subsequently, the appellant enquired with the co-workers and found that the deceased was responsible for urinating the place where the construction workers used to sleep during the night hours. Hence, the accused scolded the deceased. On 25.08.2013 at about 9.30 a.m. there was a quarrel between the accused and the deceased. Suddenly, the accused assaulted the deceased with Jally stones and dashed his head against the stone pillar. When P.Ws.1 and 3 shouted, the accused fled away from the scene of occurrence and they found the deceased lying in a pool of blood. Thereafter, P.W.1 went to the Sivagangai Town Police Station and gave Ex.P.1 - complaint.

2.2.One P.Selvaraj, the Special Sub Inspector of Police, Sivagangai Town Police Station, on 26.08.2013 at 0.45 a.m. received the complaint from P.W.1 and registered a case in Crime No.721 of 2013 under Section 302 I.P.C. The printed F.I.R. is marked as Ex.P6. He despatched the original F.I.R. and original complaint to the Court of jurisdictional Magistrate and copy of the same to P.W.6 - Ramachandran, Inspector of Police, Sivagangai Town Police Station and higher officials.

2.3.P.W.6 took up the investigation and on 26.08.2013 at about 1.30 a.m. proceeded to the scene of crime and prepared the Observation Mahazar and the Rough Sketch marked as Exs.7 and 8 respectively in the presence of P.W.8 - Pandi and one Narayanan and at about 2.30 a.m. recovered M.O.1 - Blood stained three Jalli Stones, M.O.2 - Bloodstained Soil and M.O.3 - Sample Earth under Ex.P.9 - recovery mahazar in the presence of the same witnesses. Since the body of the deceased was already sent to the hospital to avoid any law and order problem, on the same day from 7.00 a.m., he conducted inquest on the body of the deceased in the presence of Panchayatars. The Inquest Report is marked as Ex.P.10. He enquired, P.W.1, P.W.3, Sivakumar, Chandiran, P.W.2 - Ramachandran and Annadurai and recorded their statements. At about 9.45 a.m. he arrested the accused in the presence of P.W.4 - Prabhu and one Muthuraj and recorded the confession statement given by the accused voluntarily. Ex.P.11 is the admissible portion of the confession statement. Pursuant to the same, he recovered M.O.4 - Shirt and M.O.5 - Lungi produced by the accused from the scene of occurrence under Ex.P.12 - Mahazar. Thereafter, he sent the accused for judicial custody and the material objects to Court through Form 95. At about 10.30 a.m. he sent a requisition to the Government Medical College Hospital, Sivagangai through one Selvi, Head Constable for conducting postmortem on the body of the deceased.

2.4.P.W.5 - Dr.Sukriya, Senior Civil Surgeon, Government Medical College Hospital, Sivagangai conducted postmortem on the body of the deceased on 26.08.2013 at 12.30 a.m. and found the following antemortem injuries:

"External findings: Scalp hair - gems, moustache - 3 cms Beard - 15 cms - grey coloured  
Lacerations: (a) stellate shaped 4 x 3 x 1cm over the fore head (Rt) exposing frontal bone.



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- (b) 4 x 3 x 1cm above Rt. Eye.
- (c) 1 x 1 x 0.5cm - adjacent to wound b.
- (d) 2 x 1 x 1cm - above wound (a).
- (e) 7 x 1 x 1cm near wound d.
- (f) 4 x 1 x 1cm near 5 and above wound 2.
- (g) 5 x 1 x 1cm near wound f.
- (h) 8 x 1 x 1cm Rt. Parietal region.
- (i) 6 x 1 x 1cm - (Lt) eyebrow exposing orbital bones fracture.
- (j) 3 x 1 x 1cm below Lt eye with # (L) maxilla.
- (k) depressed nasal bone # punctured wound 1 x 1 x 1cm over root of nose.
- (l) Punctured wound 1 x 1 x 1cm below right eye (m) 4 x 2 x 1cm (Rt) Cheek with # Rt mandible (m) partial avulsion of Rt ear with loss of upper half of pinna (n) 6 x 2 x 1cm laceration behind Rt ear. Facial symmetry - distorted - multiple facial bone fractures."

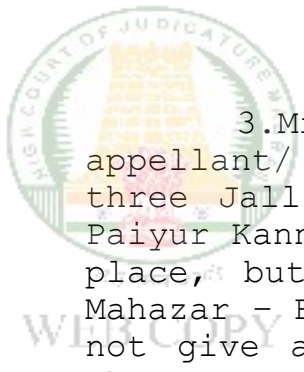
The postmortem report was marked as Ex.P.4. After receipt of Viscera Report - Ex.P.4, P.W.5 opined that the deceased would appear to have died of head injuries and its complications.

2.5. P.W.7 - Sivakumar took up the case for further investigation and he sent requisition - Ex.P.13 to the Court to send the material objects for chemical analysis. He examined P.W.5, Head Clerk Amutha, Head Constables Seemaisamy and Selvi, Selvi Raja Geetha and Special Sub-Inspector of Police Selvaraj and recorded their statements. After receiving Ex.P.14 - Biological report with Serological Report and completing the investigation, on 22.01.2014 he had filed the Charge Sheet before the Court of Judicial Magistrate No.I, Sivagangai, charging the appellant/accused for the aforesaid offence and the learned Judicial Magistrate No.I, Sivagangai took it on file in P.R.C.No.13 of 2014.

2.6. The Committal Court issued summons to the accused and on his appearance, furnished him copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Sessions Court, had committed the same to the Sessions Court. Sivagangai, which took it on file in S.C.No.152 of 2014. The appellant/accused was issued with summons and on his appearance, charge under Section 302 IPC have been framed.

2.7. The prosecution, in order to sustain its case, examined PWs.1 to 8, marked Exs.P1 to P14 and also marked M.Os.1 to 5. The appellant/accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances made out against him and he denied it as false. The appellant/accused did not examine any witness or marked any document on his side.

2.8. The Trial Court, on a consideration of oral and documentary evidence and other materials, had found the appellant/accused guilty of the offence and sentenced him as stated above, vide impugned judgment dated 31.01.2017 and challenging the same, the present Criminal Appeal is filed.

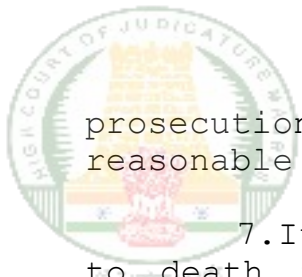


3.Mr.R.Alagumani, learned counsel appearing for the appellant/ accused would submit that P.W.1 did not identify M.O.1 - three Jalli Stones. P.W.1 deposed that he stayed in the house of Paiyur Kannusamy, which situates within 150 feet from the occurrence place, but the said house was not mentioned in the Observation Mahazar - Ex.P.7 and Rough Sketch - Ex.P.8. P.W.1 stated that he did not give any written complaint and P.W.3 informed the police and they came and recorded his statement. But according to P.W.6 - Investigation Officer, P.W.1 came to police station and lodged the complaint. Ex.P.1 - complaint, which was attested by two persons viz., P.W.3 and one Sivakumar. But P.W.3 turned hostile and the said Sivakumar was not examined. As per Ex.P.1 - complaint the occurrence took place in the Veranda of the school building, but according to P.W.1 the occurrence took place inside the school. According to P.W.5, 16 injuries were found in the body of the deceased and injury Nos.12 and 13 are stab injuries and these injuries could occur due to sharpened weapon other than stones. In the complaint - Ex.P.1 several names are mentioned, but those persons are not examined. Even according to the prosecution, prior to the occurrence there was a scuffle between the accused and the deceased and the occurrence took place in a spur of the moment and there was no pre-meditation to the accused before the occurrence. Therefore, it is not a case of conviction for offence under Section 302 I.P.C. and if the Court finds him guilty, it has to be modified to one under Section 300 exception 4 of I.P.C. In support of his submission, learned counsel appearing for the appellant relied on the decision of the Hon'ble Apex Court in **Dilip Kumar Mandal & Anr. v. State of West Bengal [2015-2-L.W. (Cr1) 629]**.

4.On the other hand, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent/State would submit that the prosecution has established their case through the evidence of P.W.1 and his evidence was corroborated by the evidence of P.W.5, the postmortem doctor. P.W.14. Serological report proves that the same 'A' group blood was detected in the shirt and Lungi of the accused as well as the bloodstained soil and the weapon of crime M.O.1. The accused caused 16 injuries on the head of the deceased using stones and dragged him and dashed his head against the stone pillar. Hence, it is not open to the accused to claim that his act would come within the purview of Section 300 Exception 4 I.P.C. and the trial Court has rightly come to the conclusion that the prosecution has proved the case beyond all reasonable doubts. Therefore, such a finding cannot be set aside.

5.This Court paid its anxious consideration to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record, including the impugned Judgment as well as the original records.

6.The question arises for consideration is whether the



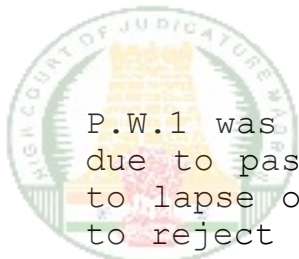
prosecution has proved the guilt of the accused beyond any reasonable doubt in the light of the evidence let in?

7.It is not in controversy that deceased Marimuthu was done to death in an incident that took place at about 9.30 p.m. on 25.08.2013. Following the registration of the case by one Selvaraj, the Special Sub-Inspector of Police, the investigation was taken up by P.W.6, the investigating officer and he also made an inquest on the dead body and after inquest, the dead body was sent for postmortem and the same was conducted by P.W.5, the Doctor. The prosecution was able to establish the fact that the deceased died of head injuries sustained by him by examining P.W.5, postmortem doctor before the Court and through the contents of Ex.P.4, postmortem certificate. Further, the fact that the deceased Marimuthu died out of homicidal violence was never disputed by the appellant/accused before the trial Court. Hence, there is no impediment for the trial Court in recording so.

8.In order to substantiate that it was the accused/appellant who caused the death of the deceased, the prosecution rested its case on the direct evidence of P.W.1, who is the eyewitness, apart from the other circumstances attendant. The other eyewitness - P.W.3 has turned hostile. P.W.1 is a co-worker of the accused and the deceased and he is not an interested witness. P.W.1 has clearly spoken that on the date of occurrence, the deceased and accused were staying together along with P.W.1 and the accused assaulted the deceased using stones. Despite the cross-examination in full, the evidence of P.W.1 - eyewitnesses remained unshaken. Hence, the trial Judge is perfectly correct in accepting the evidence of P.W.1 and this ocular testimony projected through P.W.1 stood fully corroborated by the medical evidence. According to the postmortem doctor, all those injuries actually found in the postmortem certificate could have been caused by the weapon of crime.

9.In so far as the other piece of evidence, regarding recovery of weapon, it is stated that pursuant to the confessional statement, M.O.4 - shirt and M.O.5 - Lungi were recovered in the presence of P.W.4. However, P.W.4 turned hostile and the said material objects were marked through P.W.6 - Investigation Officer. Ex.P.14 - Serological Report shows that the blood detected from M.Os.1 and 2 recovered from the place of occurrence and M.Os.4 and 5 recovered pursuant to the confession of the accused belong to the same 'A' group.

10.It is contended that according to P.W.1 he did not give any written complaint, however, according to P.W.6 - Investigation Officer, P.W.1 came to police station and lodged the complaint and as per Ex.P.1 - complaint the occurrence took place in the Veranda of the school building, but according to P.W.1 the occurrence took place inside the school. The occurrence took place on 25.08.2015 and

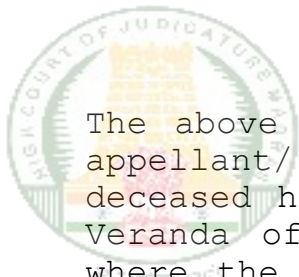


P.W.1 was examined on 25.08.2015 i.e., after two years. Therefore, due to passage of time, there may be some minor discrepancies, due to lapse of memory. So, this slight discrepancy cannot be a ground to reject the evidence of P.W.1 altogether. The other discrepancies pointed out by the learned counsel for the appellant/accused are also trivial in nature, which cannot be a ground to disbelieve the case of the prosecution. Further, the prosecution need not conduct parade by producing all the witnesses. The prosecution has examined P.Ws.1 and 3, who were residing along with the accused and the deceased to prove the occurrence. Hence, the non-examining of the persons mentioned in the complaint is also not fatal to the case of the prosecution. Under such circumstances, this Court is of the considered view that the prosecution has proved its case beyond reasonable doubt that the accused has caused the death of the deceased.

11.Insofar as the second line of argument is concerned, the Court is able to find force in the contentions put forth by the learned counsel for the appellant. Admittedly, the accused and the deceased are co-workers and the accused is his mestri/supervisor. Even according to the prosecution, the deceased was frequently passing urine in the Veranda of the School, in which they were staying. More over, women members of the village also passing through that area. Hence, the villagers have anger towards the accused and they have scolded the accused. This was also admitted by P.W.1 in his cross-examination. When the accused questioned the deceased regarding the same, there was a quarrel between them and only thereafter, the accused aggrieved over the same took the jalli stones from the work place and has caused the death of the deceased and thus the act of the accused is neither intentional nor premeditated. But, it was due to sudden wordy altercation and due to the scolding of the accused by the deceased, he was provoked and thereby he has acted so. All the above would indicate, the act of the accused was neither intentional nor premeditated, but, due to sudden quarrel and provocation and the act of the accused cannot be brought under the penal provision of 302 I.P.C., but it would attract the penal provision of Section 304 (Part I) I.P.C.

12.Our view is also supported by the ratio laid down by the Hon'ble Apex Court in **Dilip Kumar Mondal** (supra), wherein the Hon'ble Apex Court held that in order to invoke the applicability of Exception 4 to Section 300 I.P.C. the following conditions are to be satisfied:

- "(i) that the incident happened without premeditation;
- (ii) in a sudden fight;
- (iii) in the heat of passion;
- (iv) upon a sudden quarrel and
- (v) without the offender having taken undue advantage or acted in a cruel or unusual manner."



The above ratio would clearly and squarely covers the case of the appellant/ accused, the reason being as already stated above, the deceased has brought discomfort to the accused by urinating in the Veranda of the School, where the construction workers stayed and where the women also pass through and since the villagers scolded the accused, he questioned about the act of the deceased and there arose a quarrel between the accused and the deceased, consequently, the appellant/accused attacked the deceased without premeditation, in a sudden fight, in the heat passion upon a sudden quarrel without taking undue advantage or acting in a cruel or unusual manner. Hence, awarding a punishment of seven years rigorous imprisonment for the offence under Section 304 (Part I) would meet the ends of justice.

13. Accordingly, the Criminal Appeal is partly allowed and the conviction and the sentence of life imprisonment imposed by the trial Court on the accused/appellant under Section 302 I.P.C. in S.C.No.152 of 2014 are set aside, and instead, he is convicted under Section 304 (Part I) I.P.C. and sentenced to undergo seven years Rigorous Imprisonment. The imprisonment already undergone by the accused/appellant shall be given set off. The fine amount imposed by the Trial Court under Section 302 I.P.C. is ordered to be treated as one imposed under Section 304 (Part I) I.P.C.

Sd/-

Assistant Registrar (Crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj

To

- 1.The Sessions Judge,Sivagangai.
- 2.The Judicial Magistrate No.I,Sivagangai.
3. The Superintendent of Central Prison, Madurai.
- 4.The Inspector of Police,  
Sivagangai Town Police Station,  
Sivagangai District.
- 5.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,Madurai.

Copy to

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

**Crl. A. (MD)No.271 of 2018**

**21.02.2020**

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