



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.A. (MD) .No.321 of 2018

Krishnados @ Nagarajan

... Appellant/Accused/Petitioner

-vs-

State through
the Inspector of Police,
Iraniyal Police Station,
Kanyakumari District
in Crime No.561 of 2012. ... Respondent/Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the entire records connected to the judgment in S.C.No.45 of 2013, on the file of the Sessions Court, Nagercoil, Kanyakumari, dated 07.04.2018 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani
For Respondent : Mr.S.Ravi
Standing counsel for the State

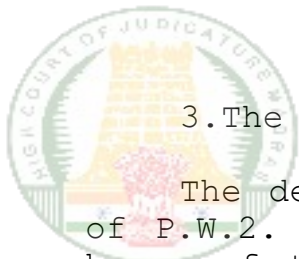
J U D G M E N T

(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)

The appellant is the sole accused in S.C.No.45 of 2013, on the file of the Sessions Court, Kanyakumari District @ Nagercoil and he stood charged and tried for the commission of the offences under Sections 294(b) and 302 of I.P.C.

2.The trial Court, vide impugned judgment dated 07.04.2018, has convicted the appellant herein for the above said offences and imposed the sentences, thus:

Accused	Conviction	Sentence
Sole Accused	U/s. 294(b) of I.P.C.	To pay a fine of Rs.500/-, in default to undergo 15 days simple imprisonment.
	U/s. 302 of I.P.C.	To undergo life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo three months simple imprisonment.



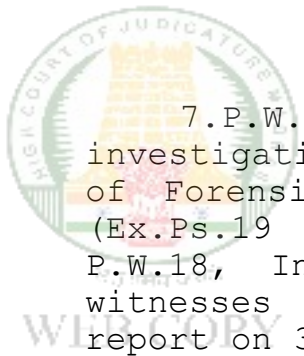
3.The case of the prosecution in brief as follows:

The deceased V.S.Mahadevan, was the husband of P.W.1 and son of P.W.2. The appellant/accused was living alone in the opposite house of the deceased as his wife and children deserted him. The appellant/accused always used to watch the T.V. with high volume, which will cause grave disturbance to the deceased family and other neighbours. Two days prior to the occurrence ie., on 29.07.2012, at about 7.00 p.m., there was a quarrel between the deceased and the accused with regard to watching of T.V. with high volume and the appellant/accused threatened the deceased with dire consequences. On 31.07.2012, at about 7.30 p.m., the deceased came to the house after attending a function, then there was a quarrel between the deceased and accused, in which, the appellant/accused abused the deceased with filthy language and attacked the deceased with billhook on his shoulder and the back of the neck. Immediately, he was taken to C.S.I. Hospital, Neyyur, where he was declared brought dead. After that, P.W.1, the wife of the deceased lodged a complaint before the respondent police at about 11.00 p.m.

4.Based on the complaint, P.W.12, Sub Inspector of Police in the respondent police station, registered a case in Crime No.561 of 2012, for the offences under Sections 294(b) and 302 of I.P.C. and sent F.I.R. to the concerned Judicial Magistrate and copies to the higher officials and also sent a copy to P.W.16, the Inspector of Police, for investigation.

5.On receipt of the F.I.R., P.W.16, Inspector of Police, has commenced the investigation on 31.07.2012, proceeded to C.S.I. Hospital, Neyyur, and conducted inquest between 12.30 a.m. to 2.30 a.m. in the presence of the Panchayathar and prepared the inquest report (Ex.P15). Thereafter, on the next day morning at 6.30 a.m., he proceeded to the scene of occurrence and prepared observation mahazar (Ex.P.5) and rough sketch (Ex.P16), in the presence of the witnesses and recovered a bloodstained towel, collected bloodstained soil, ordinary soil (M.Os.3, 4 and 5). On 01.08.2012, at about 11.00 a.m., P.W.16, he arrested the accused near Melakarupakodu Sudalaimadan Swami Kovil, in the presence of the witnesses, on such arrest, the accused voluntarily come forward to give a confession statement, based on the same, he recovered M.O.1, Aruval, then he remanded the accused to judicial custody.

6.P.W.14, a Assistant Professor, working in the Government Medical College Hospital, Asaripallam, has conducted autopsy on the body of the deceased and given postmortem report (Ex.P12), wherein he has stated that the death was occurred due to shock and haemorrhage, due to cut injury in the neck. Since there was a mistake in the postmortem report (Ex.P12), he has sent another report, correcting the mistake under Ex.P13.



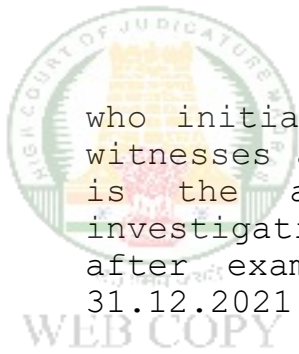
7.P.W.17, the Inspector of Police has conducted further investigation and recorded the statement of P.W.13, Deputy Director of Forensic Science Department and obtained Serological Reports (Ex.Ps.19 and 20) and handed over the investigation to P.W.18. P.W.18, Inspector of Police, recorded the statements of other witnesses and after completing the investigation, filed a final report on 31.12.2012.

8. Based on the above materials, the trial Court framed the charges against the accused as mentioned above. However, the appellant/accused has denied the same. The prosecution in order to sustain their case, examined 18 witnesses, marked 20 documents and also produced 5 material objects.

9. Out of the said witnesses, P.W.1, is the wife of the deceased, an eyewitness to the occurrence. According to her, there was a dispute between the deceased and the accused with regard to watching of T.V. with high volume and with that motive, on 31.07.2012, at about 7.30 p.m., the appellant/accused attacked the deceased with billhook and caused his death. P.W.2, father of the deceased, he is also an eyewitness to the occurrence. He has also stated that the accused attacked the deceased with billhook, and he along with P.W.6, went to the police station and given a complaint. P.Ws.3 and 4 are neighbours of the deceased and accused and they have turned hostile. P.W.5 is the witness to the confession given by the accused and also recovery of M.O.1. P.W.6 a neighbour of the accused and another eyewitness to the occurrence, speaks about the earlier quarrel. He further stated that on the date of occurrence, the accused cut the deceased with billhook and he had written the statement of P.W.1 and gave the complaint before the respondent police. P.W.7 is the witness to the observation mahazar (Ex.P.5) and also recovery of M.O.1. P.W.8 is the auto driver, who has taken the deceased to the hospital.

10. P.W.9 is the lineman, working in Tamil Nadu Electricity Board and he says that there was no power cut at the time of occurrence. P.W.10 is the Head Clerk in the Judicial Magistrate Court, Eranial, received the case materials. P.W.11, Head Constable, handed over the F.I.R. to the concerned Judicial Magistrate Court. P.W.12, Sub Inspector of Police, registered the F.I.R., based on the complaint given by P.W.1. P.W.13, Deputy Director of Forensic Science Department, examined the bloodstained material objects and issued Serology Reports (Ex.P.9 and Ex.P.10).

11. P.W.14, Doctor, working in the Government Medical College Hospital, Asaripallam, Nagercoil and he conducted the postmortem and issued the Postmortem Certificate Ex.P13 and corrected report Ex.P14. He has given an opinion that the deceased died due to shock and haemorrhage, due to cut injuries in the neck. P.W.15 is the Doctor working in C.S.I. Hospital, Neyuur, he examined the deceased, ~~deceased brought dead~~ brought dead. P.W.16 is the Inspector of Police,



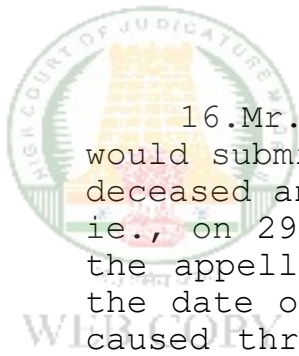
who initially conducted the inquest and also examined some of the witnesses and also arrested the accused and recovered M.O.1. P.W.17 is the another Inspector of Police, who conducted further investigation and handed over the investigation to P.W.18. P.W.18, after examining some other witnesses, filed a final report on 31.12.2021.

12.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same as false. However, the accused did not chose to examine any witness nor did they mark any documents on their side.

13.The trial Court, on consideration of the oral and documentary evidence, has found the appellant/accused guilty of the charges framed against him and imposed the sentence as stated above and challenging the conviction and sentence, the appellant/accused has filed this appeal.

14.Mr.R.Alagumani, learned counsel appearing for the appellant/accused would submit that P.Ws.1 and 2 are wife and father of the deceased and they are interested witnesses. Apart from that, P.W.6, who is the neighbour and related to the deceased, was having previous enmity with the accused and his presence is highly doubtful. He would further submit that the occurrence took place in front of the appellant's house and the deceased was the aggressor, he has gone to the house of the accused and quarreled with him, only during the quarrel, out of sudden provocation, the appellant/accused was said to have attacked the deceased with the weapon available at the scene of occurrence. Admittedly, the appellant/accused working as coconut cutter and bill-hook is available in the scene of occurrence which was used for his professional purpose and he has no intention to cause the death of the deceased.

15.That apart, the learned counsel appearing for the appellant submitted that there is three hours delay in filing the F.I.R., which creates some suspicion. He further submitted that there are lot of material contradictions in the evidence of eyewitnesses. The medical witness is not corroborating the version of the eyewitnesses. According to P.W.1, the accused cut the deceased on the back, but there is no corresponding injury found in the postmortem report. The material contradictions in the evidence of eyewitnesses and the medical report creates serious doubt regarding the presence of eye witnesses and the scene of occurrence. Finally, the learned counsel for the appellant submitted that, the appellant has no intention to cause the death of the deceased and in a wordy quarrel, out of sudden provocation, he attacked the deceased with the available weapon in the scene of occurrence. Further, the appellant is a poor collie worker and he has no bad antecedent and he is in custody for more than three years.

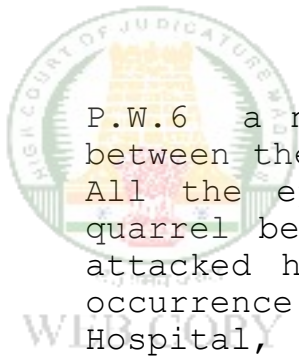


16.Mr.S.Ravi, learned Standing counsel appearing for the State would submit that admittedly, there is a previous enmity between the deceased and the appellant/accused. Two days prior to the occurrence ie., on 29.07.2012, there was a quarrel between them, at that time, the appellant/accused warned the deceased and with that motive, on the date of occurrence, he attacked the deceased with bill-hook and caused three injuries on the vital parts and the deceased died on the spot. The occurrence has taken place in front of the house of the deceased. It is natural that the wife and the father of the deceased were present in the scene of occurrence and there cannot be any doubt regarding their presence. That apart, P.W.6 is a neighbour and he has also seen the occurrence. He went to police station along with P.W.1 and lodged a complaint within a short time and there is no delay in registering the F.I.R. and the medical evidence also corroborated the evidence of eyewitnesses and there is no contradiction regarding the injuries sustained by the deceased. The evidence of eye witnesses clearly shows that the appellant/accused has an intention to cause the death of the deceased and attacked the deceased with bill-hook and caused serious injuries and the size of the first injury 22 x 3cm., in the head, the second injury 15 x 3cm. on left side of back, the third injury was 20 x 4 c.m. in the right scapular region. The accused has attacked the deceased with an intention to cause him death and the act of the accused fall under the first limb of Section 300 I.P.C. and he is liable to be punished under 302 I.P.C. and the trial Court has rightly convicted the appellant/appellant under Section 302 of I.P.C., and there is no reason to interfere with the same.

17.We have considered the rival submissions and perused the materials available on record.

18.There are three witnesses to the occurrence. P.W.1 is the wife of the deceased. P.W.2 is the father of the deceased and P.W.6 is the neighbour. Both the accused and the deceased were living in the houses opposite to each other, and there were frequent quarrel between them. Three days prior to the occurrence also there was a quarrel between them. P.W.2, the father of the deceased stated that on the date of occurrence, there was a wordy quarrel between the deceased and the accused. At that time, the accused attacked the deceased with bill-hook. P.W.6 another eye witness and he says that, the deceased went to the house of the accused and asked him to reduce the T.V. volume, at that time, there was a quarrel between them, in which the accused attacked the deceased with bill-hook thrice. According to P.W.1, after the deceased left the house, she heard hue and cry and when she came out, she saw the accused attacking the deceased with bill-hook on his head, shoulder and neck.

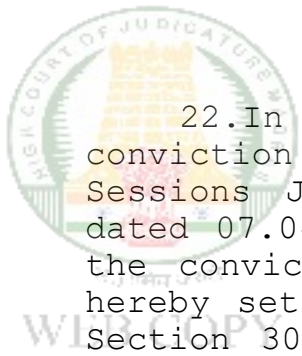
19.The accused and the deceased were living in opposite houses and the occurrence has taken place in front of their house. In that the presence of P.Ws.1 and 2 cannot be doubted, and



P.W.6 a neighbour to them, according to him, there was a quarrel between them, and the accused attacked the deceased with bill-hook. All the eyewitnesses consistently stated that there was a wordy quarrel between the accused and the deceased in which the accused attacked him with bill-hook, which was available at the scene of occurrence. After the occurrence, the deceased was taken to C.S.I. Hospital, Neyyur, where he was declared dead. Thereafter, immediately a complaint was given and there is no delay in filing the F.I.R. The medical evidence also corroborate the testimony of the eyewitnesses and there is no contradiction as stated by the learned counsel for the appellant/accused. Considering all these circumstances, we are of the considered view that it is only the accused, who has attacked the deceased with bill-hook and caused his death.

20.The next question arises for consideration is what was the offence, that was committed by the deceased by his act. From the evidence of P.Ws.1, 2 and 6, eyewitnesses it is clear at the time of occurrence there was a wordy quarrel between the deceased and the accused. The appellant/accused was working as a coconut cutter and during the said quarrel, due to heat of passion in the quarrel, the accused said to have attacked the deceased with bill-hook, which was available in the scene of occurrence and caused injuries. From the perusal of the materials, it could be seen that it is not a premeditated murder and the accused has no intention to cause the death of the deceased. However, it is clear that the accused has intention to cause injury on the deceased, which is sufficient in the ordinary course of nature to cause death, as the injury has been on the vital parts of the body. Considering those circumstances, we are of the opinion that the appellant will fall under third limb of Section 300 of I.P.C. Further, from the available evidence it could be seen that, the accused acted without any premeditation and in a sudden fight, in the heat of passion upon a sudden quarrel attacked the deceased with a weapon available in the place of occurrence, it is also seen the accused was not taken any undue advantage. Hence, the act of the accused fall under fourth exception to Section 300 IPC. In such circumstances, the appellant is only liable to be punished for the offence under Section 304 (i) of I.P.C not under Section 302 IPC.

21.So far as the quantum of punishment is concerned, the appellant/accused is a poor person and he was doing coolie work and he has no bad antecedent and he has a chance to reform. As already stated, it is not a premeditated murder and the occurrence has taken place in a wordy quarrel, the accused has attacked the deceased with the weapon available in the scene of occurrence, which resulted the death of the deceased. Considering the gravity of the offence, we are of the considered view that imposing a sentence of 7 years of Rigorous Imprisonment would meet the ends of justice.



22.In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant / accused, by the Sessions Judge, Nagercoil, Kanyakumari, in S.C.No.No.45 of 2013, dated 07.04.2018, under Section 294(b) of I.P.C., is confirmed and the conviction and sentence imposed under Section 302 I.P.C. are hereby set aside, instead the appellant/accused is convicted under Section 304(i) I.P.C. and sentenced to undergo 7 years rigorous imprisonment with a fine of Rs.1,000/-, in default to undergo four month rigorous imprisonment and the sentence already undergone shall be given set off under Section 428 of Cr.P.C.

Sd/-

Assistant Registrar (CS I)

// True Copy //

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Sub Assistant Registrar(CS)

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Sessions Court,
Kanyakumari District @ Nagercoil.
- 2.The Inspector of Police,
Iraniyal Police Station,
Kanyakumari District.
- 3.The Superintendent,
Central Prison,
Palayamkottai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

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

Crl.A. (MD) .No.321 of 2018

16.08.2021