



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2021

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CRL.A (MD) No.550 of 2019

and Crl.M.P. (MD) No.7075 of 2021

Rajesh @ Pon Rajesh Kannan

... Appellant/Sole Accused

-vs-

State through

The Inspector of Police,
Kanyakumari Police Station,
Kanyakumari District.

(Crime No.189 of 2010).

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment of the Sessions Court, Kanyakumari Division at Nagercoil, in S.C.No.95 of 2010, dated 07.04.2016 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.S.Ravi

Additional Public Prosecutor

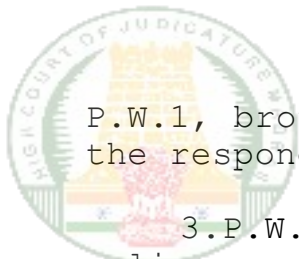
JUDGMENT

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

The appellant is the sole accused in S.C.No.95 of 2010, on the file of the Sessions Court, Kanyakumari Division at Nagercoil. He stood charged and convicted for the offence under Section 302 I.P.C. and sentenced to undergo Life Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo two years Simple Imprisonment. Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased Renganathan, is the brother of P.W.1. On 15.04.2010, at about 9.30 p.m., the deceased and P.Ws.1 to 3, have participated in a Chithirai Temple festival. At that time, the accused came there to answer his nature call, and the deceased asked him some tobacco, when refused, the deceased slapped the accused. Then, there was a quarrel between them and P.Ws.1 to 3 pacified and separated them. Again about 10.00 p.m., again there was a quarrel, at that time, the accused attacked deceased with a bill-hook indiscriminately and caused his death. Immediately,



P.W.1, brother of the deceased, lodged a complaint (Ex.P.1), before the respondent police at 1.00 p.m.

3.P.W.11, Sub-Inspector of Police attached to the respondent police, on receipt of the complaint, registered a F.I.R. (Ex.P.15) in Crime No.488 of 2014, for the offence under Section 302 I.P.C. and sent the original F.I.R. to the Judicial Magistrate No.1, Nagercoil, through P.W.8, Head Constable, and copies to the Inspector of Police and higher officials.

4.P.W.12, Inspector of Police, on receipt of the F.I.R., rushed to the scene of occurrence, prepared Observation Mahazar (Ex.P.4) and Rough Sketch (Ex.P.16) with the help of torch light and collected blood stained soil (M.O.4) and sample soil (M.O.5) in the presence of witnesses. Then, he conducted inquest over the dead body between 3.30 p.m. to 5.30 p.m. in the presence of witnesses and panchayatars and prepared the inquest report (Ex.P.17). Thereafter, he sent the body to Government Medical College Hospital, Asaripallam, for postmortem autopsy through P.W.9, Head Constable with the requisition letter (Ex.P.6).

5.P.W.6, a Tutor in Forensic Medicine, Kanyakumari Medical College, Nagercoil, conducted postmortem autopsy on the dead body on 16.04.2010, at 12.15 p.m., and issued the postmortem report (Ex.P.7) and found the following injuries:

"The following ante-mortem injuries noted:-

- 1) 5 x 2cm x scalp thick horizontal cut injury seen over the centre of back of head.
- 2) 13 x 3cm x bone deep horizontal cut injury seen over the left side of nose to left cheek. On examination the underlying muscles, left nasal and cheek bones found out at that site.
- 3) 10 x 2cm x bone deep oblique cut injury seen over the left side of chin and left side of lower jaw. On examination the underlying left side lower jaw bone found out at that site.
- 4) 7 x 2cm x muscle deep oblique cut injury seen over the right side of chin.
- 5) 2 x 1cm x muscle deep oblique cut injury seen over the left side of front of middle of neck.
- 6) 6 x 1cm contusion seen over the middle of left collar bone.



7) 4 x 1cm contusion seen over the front of left shoulder.

8) 3 x 1cm x muscle deep oblique cut injury seen over the outer aspect of right hand.

9) 3 x 2cm abrasion seen over the front of left knee.

O/D Scalp skull dura:-

Sub scalpal bruising seen over the back of head measuring 15 x 10cm. Diffused Sub dural and Sub Arachnoid Haemorrhage noted over both cerebral hemispheres more on left side noted."

He was of the opinion that, the deceased would appear to have died of shock and haemorrhage due to multiple cut injuries.

6. In the mean time, P.W.12 examined the witnesses and recorded their statements. On 16.04.2010. at 1.30 p.m., he arrested the accused and on enquiry, he voluntarily gave a confession. Based on the disclosure statement, P.W.12 recovered the bill-hook (M.O.1) and sent the accused to remand for judicial custody. After completing the investigation, he filed the final report for the offence under Section 302 I.P.C.

7. Considering the above materials, the trial Court framed charges as stated above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 14 witnesses, marked 22 documents and also produced 5 material objects.

8. Out of the witnesses examined, P.W.1, is the brother of the deceased. According to him, P.Ws.1 to 3 went to a temple festival near a tea stall there was a quarrel between the accused and the deceased and the accused attacked the deceased with bill-hook. P.Ws.2 and 3, friends of the accused, are also eyewitnesses to the occurrence. They have also reiterated the evidence of P.W.1. P.W.4 is witness to the arrest and recovery of material objects. P.W.5 is the witness to observation mahazar and rough sketch and also recovery of M.Os.4 and 6.

9. P.W.6 is the postmortem doctor, who conducted postmortem autopsy on the dead body of the deceased. P.W.7, Head Clerk, who received the material objects and sent it for chemical analysis. P.W.8, Head Constable, handed over the original F.I.R. to the Court. P.W.9, Head Constable, identified the dead body for postmortem. P.W.10, Head Constable, handed over the materials objects to Forensic Science Laboratory for chemical examination.

10. P.W.11, Sub-Inspector of Police, registered the First Information Report. P.W.12, Inspector of Police, conducted investigation and filed a final report. P.W.13, Assistant Director,
<https://hcmvcs.courts.gov.in/hcmvcs/>



Forensic Science Laboratory, Tirunelveli, examined the material objects and issued biological report (Ex.P.20). P.W.14, Deputy Director, Forensic Science Laboratory, Madurai, examined the material objects and issued serology reports (Exs.P.21 and 22).

11.The above incriminating materials were put to the accused under Section 313 Cr.P.C.. The accused denied the same as false and he examined the Executive Officer, Kottaram Town Panchayat, as D.W.1 to show that at the time of occurrence, there was no light at the scene of occurrence. The R.T.I. Application given to D.W.1 was marked as Ex.X.1 and the reply given by D.W.1 was marked as Ex.R.1.

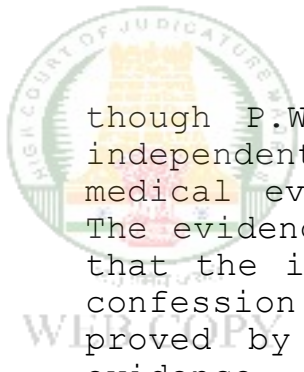
12.Having considered the above materials, the trial Court convicted the appellant/accused and sentenced him as state above in first para of the judgment. Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.

13.Mr.R.Alagumani, learned counsel appearing for the appellant would submit that the occurrence has taken place on 15.04.2010 and it was only due a wordy quarrel between the accused and the deceased. Even as per the prosecution case, the deceased attacked the accused first. The prosecution has not examined any independent witnesses. The prosecution has not established the motive for the occurrence. There was no light in the scene of occurrence, hence, P.Ws.1 to 3 could not have seen the occurrence. The trial Court without considering the above circumstances, convicted the accused. Hence, he prayed for acquittal of the appellant/accused.

14.Opposing the same, Mr.S.Ravi learned Additional Public Prosecutor appearing for the State would submit that, P.Ws.1 to 3, who are eyewitnesses to the occurrence, have clearly deposed that the accused attacked the deceased indiscriminately with bill-hook and caused his death. There is no reason to disbelieve the evidence of P.Ws.1 to 3. The medical evidence corroborated the evidence of P.Ws.1 to 3. Hence, the trial Court has rightly convicted the appellant under Section 302 I.P.C. and the same requires no interference by this Court.

15.We have considered the rival submissions and also perused the records carefully.

16.There are three eyewitnesses in this case. P.W.1, brother of deceased and P.Ws.2 and 3, friends of the deceased. On the date of occurrence, the deceased and P.Ws.1 to 3 participated in the local temple festival. At about 9.30 p.m., the accused came to answer the nature call and the deceased asked for tobacco, when the accused said no, the deceased slapped the accused, then, there was a quarrel between the parties. Again at 10.00 p.m., there was quarrel between the accused and the deceased, in which, the accused attacked the deceased with the bill-hook and caused his death. Even

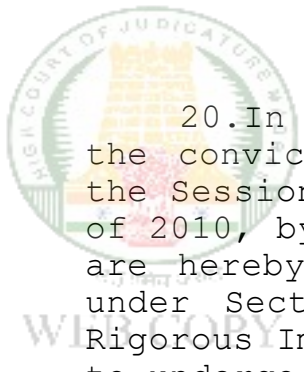


though P.W.1 is the brother of the deceased, P.Ws.2 and 3 are independent eyewitnesses and their testimony are consistent. The medical evidence also corroborated the evidence of eyewitnesses. The evidence of P.W.6, Doctor, and Postmortem report (Ex.P.7) show that the injuries were caused with the weapon recovered under the confession of the accused. That apart, the arrest and recovery were proved by the prosecution and there is no discrepancy in the evidence.

17. Even though the accused examined D.W.1 to show that the occurrence took place in the night and electricity was not available in the scene of occurrence, from the evidence of P.Ws.1 to 3, it could be seen that in a temple festival, near a tea shop occurrence had taken place, and the eyewitnesses had the benefit of seeing the occurrence with the lights erected for the temple festival. Considering those circumstances, we are of the view that the prosecution has clearly established that it is only the accused attacked the deceased and caused his death. The trial Court has rightly come to the conclusion that the accused only caused the death of the deceased.

18. The next question arises for consideration is that, what was the offence said to have committed by the accused by that act. From the evidence of P.Ws.1 to 3, it could be seen that before the occurrence, the accused came there to answer the nature call, where the deceased provoked him and developed quarrel and during the wordy quarrel, out of sudden provocation, the accused attacked the deceased with a weapon available in the scene of occurrence and caused injury. Even though the accused has no intention to cause his death, he has intention to cause injury, which is likely to cause the death of the deceased, which is sufficient in the ordinary course of nature to cause his death. Hence, the act of the accused will fall under the third limb of Section 300 I.P.C. Further, from the evidence of eyewitnesses, it could be seen that the occurrence has taken place in a wordy quarrel, without any premeditation and in a heat of passion, the accused lost his mental balance and attacked the deceased with weapon available in the place of occurrence, which caused the death of the deceased. Hence, the act of the accused till fall under the fourth exception of Section 300 I.P.C., hence, he is liable to be convicted only under Section 304(i) I.P.C. not under 302 I.P.C.

19. So far as the sentence is concerned, the accused is a young man, has no bad antecedents and he has a chance to reform. Considering the mitigating circumstances as well as the aggravating circumstances, we are of the view that imposing a sentence of ten years Rigorous Imprisonment with a fine of Rs.10,000/-, in default, to undergo two years Simple Imprisonment would meet the ends of justice.



20. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/accused, by the Sessions Court, Kanyakumari Division at Nagercoil, in S.C.No.95 of 2010, by the judgment dated 07.04.2016, 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 ten years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for two years. The sentences already undergone shall be given set off under Section 428 Cr.P.C. After the period of Appeal, M.Os.1 to 5 shall be destroyed. The respondent is directed to take steps to procure the accused for undergoing the remaining period of sentence. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sj

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 Judge,
Kanyakumari Division,
@ Nagercoil.
- 2.The Judicial Magistrate No.1,
Nagercoil,
Kanyakumari District.
- 3.The Inspector of Police,
Kanyakumari Police Station,
Kanyakumari District.
- 4.The Superintendent,
Central Prison,
Palayamkottai.



5.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)

Criminal Appeal No.(MD) No.550 of 2019
29.10.2021

DJ(CO)

RS/JGB (17.11.2021) 7P 8C