

(2016) 02 MAD CK 0181
In the Madras High Court
Case No : Crl. A. No. 342 of 2011

Govindaraj

APPELLANT

Vs

State by Deputy Superintendent of Police

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Evidence Act, 1872 — Section 114
Penal Code, 1860 (IPC) — Section 300, Section 302, Section 304
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x), Section 3(2)(V)

Citation : (2016) 3 MadWNCri 137 : (2016) 1 MLJCriminal 513

Hon'ble Judges : M. Jaichandren and S. Nagamuthu, JJ.

Bench : Division Bench

Advocate : K.V. Sridharan, for the Appellant; M. Maharaja, Addl. Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

S. Nagamuthu, J.—1. The appellant is the first accused in S.C. No. 49/2009 on the file of the learned Principal Sessions Judge, Namakkal. The second accused was one Raja. The appellant/A1 stood charged for the offences under section 302 IPC and 3(2)(V) of the SC/ST Act, 1989. By the judgment dated 19.04.2011, the Trial Court convicted the appellant/A1 under both charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 10,000/-, in default, to undergo rigorous imprisonment for one year for the offence u/s. 302 IPC. No separate sentence was imposed for the offence u/s. 3(2)(V) of the SC/ST Act. A2 was acquitted from both the charges. Challenging the said conviction and sentence, the appellant/A1 is before this Court with this appeal. The case of the prosecution in brief, is as follows:

"(a) The deceased in this case was one Vijayakumar. He was a resident of Athanur village in Rasipuram Taluk. P.W. 1 is the grandmother of the deceased. A1 was running a Tea Stall on the Highways road Poramboke land in the said village. The deceased and the other family members of the deceased used to

visit the said shop for drinking tea. After some time, the shop was removed by the authorities as an encroachment. A1, therefore, left the village and stayed in a different village. But the deceased did not stop visiting the house of A1. Later on, it came to light that the deceased had developed illicit intimacy with the wife of A1. Because of the same, A1 developed grudges against the deceased. P.W. 1 reprimanded the deceased and wanted him to disconnect his relationship with the wife of A1. But the deceased did not stop. This is stated to be the motive for A1 to commit the murder of the deceased.

(b) On 10.03.2008 at about 6.30 p.m., the deceased had gone to Kondalampatti. In that village, there was some quarrel. In connection with the said incident, a complaint was made against the deceased by A1. The police had also summoned the deceased. After some preliminary talks, the police wanted both of them to come on the next day. Therefore, the deceased and P.W.1 along with others, by means of a bus from Pennathur, came to Attayampatti Branch Road and got down. When they were standing by the side of the bus stop at Attayampatti Branch Road, to catch another bus to go to their village, the accused persons came in a motor cycle. A1 stopped the motor cycle, came near the deceased and pulled his shirt. There was some quarrel between them. Suddenly, he took out an aruval from the motor cycle and cut the deceased on the left side of his neck. P.Ws. 1, 3 and 5 rushed to the place of occurrence to save the deceased. P.W.1 also cried for help. Both the accused fled away from the scene of occurrence. Immediately, thereafter, with the help of an Ambulance, P.W. 1 took the deceased to the Government Hospital, Rasipuram. On examination, the doctor declared him dead. Thereafter, P.W.1 drafted a complaint with the help of another unknown person and proceeded to the police station and presented the complaint to the Sub Inspector of Police.

(c) P.W.21, the then Sub Inspector of Police received the said complaint at 9.00 p.m., on 10.03.2008 and registered a case in Cr. No. 133/2008 for the offences u/s. 302 IPC read with 3(2)(v) of the SC/ST Act, 1989. He forwarded the complaint and FIR and handed over the Case Diary to the Deputy Superintendent of Police for further investigation.

(d) The FIR was received by the learned Magistrate at 6.15 a.m., on 11.03.2008. P.W.22 took up the case for investigation, proceeded to the place of occurrence, prepared the Observation Mahazar (Ex. P.16) in the presence of P.W.20 and another witness. He also prepared a Rough Sketch (Ex. P.19) showing the place of occurrence. He recovered blood-stained earth (M.O.4) and sample earth (M.O.5) from the scene of occurrence under a Mahazar (Ex. P.15) in the presence of the same witnesses. Then, at the Government Hospital, Rasipuram, he conducted inquest on the body of the deceased at 11.00 a.m., on 11.03.2008 and prepared Ex. P.20-Inquest Report. During inquest, he examined P.Ws.1 to 5 and view more witnesses. Then, he sent the body of the deceased for postmortem.

(e) P.W.1 5, Dr. Saravanan, conducted the autopsy on the body of the deceased

on 11.03.2008 at 1.15 p.m. He found the following injuries:

"External Injuries:

(1) A lacerated wound of 15x20x10 cm is seen over left side of the neck and back of the neck, exposing the cut muscles and cervical vertebral bones which are broken.

(2) A lacerated wound about 10x10x2 cm is seen over the lateral aspect of the left middle thigh.

Internal Injuries:

Head: Skull; bones intact. Membranes intact. Brain 1300 Grms. C/S pale, Neck: Hyoid bone intact. Larynx & Trachea: normal. Thorax: No fracture in ribs. Heart: 300 grms. Chamber empty. Lungs: C/S pale. Abdomen: Live 1300 g, soft C/S pale. Spleen: C/s pale. Both kidneys on C/S Pale, stomach empty, small intestine; distended with air. Large intestine empty. Urinary bladder: empty. Penis & testis: Normal. Blood sample preserved."

Ex. P.11 is the Postmortem Certificate. According to him, all the above injuries would have been caused with a weapon like M.O.1 -Aruval. He gave final opinion that the deceased would appear to have died of shock and hemorrhage due to the injuries.

(f) Continuing the investigation, on 12.03.2008 at 7.00 a.m., near TSTC Bus depot at Namakkal, P.W.22 arrested A2 in the presence of P.W.6 and another witness. On such arrest, A2 gave a voluntary confession, on which he disclosed the place where he had hidden the blood-stained half-sleeve shirt and also the motor-cycle bearing registration No. TN-28-Q-2245. In pursuance of the said disclosure statement, he took the police and the witnesses to the said place and produced both the material objects. Taking A2 and the material objects to the Police Station, P.W.22 produced A2 before the Court concerned for judicial remand and handed over material objects to the Court.

(g) A1 surrendered before the Court concerned and therefore, P.W.22 took police custody of A1 on 18.03.2008 on the orders of the learned Judicial Magistrate. While in custody, in the presence P.W.13 and another witness, he gave voluntary confession (Ex. P.9), in which he had disclosed the place where he had hidden the aruval (M.O.1). In pursuance of the said disclosure statement, he took the police and witnesses to Andagalurgate, Srinagar bus stop and produced the aruval (M.O.1).

(h) On returning to the police station along with A1 and the material object, he sent A1 to the Court for judicial remand and produced the material object to the Court. Then, he obtained the Community Certificates of the accused and the deceased from the Tahsildar concerned. He made a request to the Court for forwarding the material objects for chemical examination. The report revealed that blood-stains were detected on all items except the aruval. On completing

the investigation, he laid the charge-sheet against the accused.

(i) Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 22 witnesses were examined, 25 documents and 9 material objects were also marked.

(j) Out of the said witnesses, P.Ws.1 to 5 are the eyewitnesses to the occurrence, who have vividly spoken about the entire occurrence. P.W.6, in whose presence the accused is stated to have been arrested, has not supported the prosecution case. But, he has not been treated as hostile. P.W.7, who was examined to speak about the arrest of A2, has also not supported the prosecution case. P.W.8, has not stated anything incriminating against the accused. He has stated that he has found the deceased lying at the place of occurrence. P.W.9 has also not stated anything incriminating against the accused. P.Ws.10 to 12 have stated that they saw the deceased lying with the injury and they have not stated anything about the accused. P.W.13 has stated about the disclosure statement made by A1 and the consequential recovery of the material object-arival (M.O.1). P.W.14 has also not stated anything useful for the prosecution. P.W.15-Dr.Sarava-nan, has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. P.W.16 has spoken about the community of the accused. According to him, the accused do not belong to Scheduled Caste. P.W.17 has spoken about the Community Certificate issued by him to A2. According to him, A2 does not belong to Scheduled Caste. P.W. 18 has stated that he carried the FIR to the Court from the Police Station on 11.03.2008 and handed over the same to the learned Magistrate. P.W. 19, the Tahsildar, has spoken about the community of the deceased and he has also stated that he gave the Community Certificate. P.W.20 who was examined to speak about the Observation Mahazar, has not supported the prosecution case. P.W.21, has spoken about the complaint made by P.W.1 and the registration of the case. P.W.22 has spoken about the investigation done by him."

2. When the above incriminating materials were put to the accused, they denied the same as false. Their defence was a total denial. On their side, they examined one Mr. Rajendran as D.W. 1. According to him, he found the deceased at the place of occurrence, dead and there was a cut injury on his left side of the neck. At that time, according to him, there was nobody near the dead body and on his information only, the family members of the deceased came to the place of occurrence.

3. Having considered all the above, the Trial Court convicted A1, the appellant herein and acquitted A2. Challenging the said conviction and sentence, the appellant/A1 is before this Court.

4. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

5. Learned counsel for the appellant would submit that the presence of P.Ws. 1 to 5 is highly doubtful and therefore, the conviction of the appellant based on the evidence of P.Ws. 1 to 5 is liable to be set aside. He would further submit that there is an inordinate delay in forwarding the FIR to the Court, which has not been properly explained at all. He would also submit that P.W.3 has stated that the Sub Inspector of Police was present at the hospital when the deceased was brought there and thus, the earliest information which made the Sub Inspector of Police to come to the hospital, has been suppressed. It is his further submission that P.Ws.4 and 5, though closely related to the deceased, had not accompanied the deceased to the hospital, which would go to show that they would not have seen the occurrence. He would submit that the evidence of D.W.1 deserves acceptance. Thus, according to him, the prosecution has failed to prove its case beyond reasonable doubt.

6. The learned Additional Public Prosecutor however opposed the appeal. According to him, though P.Ws.4 and 5 are closely related to the deceased, neither their presence could be doubted nor their veracity. According to him, their presence is quite natural. They have vividly spoken about the entire occurrence. He further submits that there was no delay at all in registering the case and the delay in forwarding the FIR to the Court, has been duly explained. He would submit that due to strong motive, A1/the appellant herein had committed the murder of the deceased and the medical evidence also duly corroborates the evidence of the prosecution witnesses. Thus, the learned Additional Public Prosecutor submitted that there are no reasons to interfere with the conviction and sentence recorded by the Trial Court.

7. We have considered the above submissions.

8. The alleged occurrence was at 6.30 p.m., whereas the complaint has been registered by the police at 9.00 p.m. and absolutely there is no delay in this regard. Though it is stated that the FIR reached the learned Magistrate at 6.15 a.m., on 11.03.2008, on that score, we cannot reject the entire case of the prosecution, because in our considered view, the evidence of P.Ws. 1 to 5 would clearly and profusely inspire the confidence of this Court. P.Ws. 1 and 2 are the grandmother and mother respectively of the deceased; P.Ws.3 to 5 are his relatives. P.Ws. 1 and 2 have stated that they accompanied the deceased from the police station, came down to Attayampatti Branch Road and when they were waiting for another bus to go to their village, the accused came there, where the occurrence had taken place. We do not find any reason to reject the evidence of P.Ws. 1 and 2 as their presence is quite natural. Similarly, P.Ws.3 to 5 have also explained the probabilities for their presence at the time of occurrence. Their evidence also is so cogent and convincing. Thus, from the evidence of P.Ws.1 to 5, the prosecution has clearly established that it was the appellant/A1 who has caused the cut injury on the neck of the deceased. Though it is stated that there was another injury on the thigh of the deceased, which has not been spoken to by P.Ws.1 to 5, on that score, we cannot reject their evidence because the injury

found on the thigh was a small scratch-like injury, which would have not been noticed even by P.Ws.1 to 5.

9. So far as DW.1 is concerned, had it been true that he only found the deceased lying with injury on the first occasion and had it been true that on his information only, the relatives of the deceased had come to the place of occurrence, nothing would have prevented him from informing the same to the police and for the first time, only during his examination in the Court, he had come up with such a statement. Therefore, we find it difficult to believe the evidence of DW. 1. Above all, the deceased was taken to the hospital only by P.W.1 immediately. From this, we hold that it was the appellant herein, who caused the fatal injury on the neck with aruval. The recovery of the M.O.1 -aruval upon the disclosure statement made by A1 also further strengthens the case of the prosecution case.

10. According to the doctor-P.W.15, the death was caused due to the injury on the neck. There is no reason to reject the said medical evidence. Thus, from the ocular evidence which is duly corroborated by the medical evidence, it has been clearly established that it was this accused/appellant who caused the death of the deceased by cutting him with aruval on his neck.

11. Now, the question which arises for the consideration of this Court is as to what offence has been committed by A1 by his act.

12. Of course, there is motive for A1 which is evident from the fact that on the complaint made by the accused, the deceased was summoned to the police station. The meeting of the accused and the deceased was purely accidental. He was standing only to catch the next bus to go to his village. On seeing the deceased, the accused stopped the vehicle and had some talk with him. P.W.3 had categorically stated that they were talking for some time. But the details of the conversation between them has not been spoken to by any other witnesses. Going by the motive and other circumstances, it can be presumed that the deceased would have provoked the accused. But, for the said provocation, the occurrence would not have happened. Going by the natural human conduct and various other circumstances available, we are inclined to presume under section 114 of the Indian Evidence Act that the deceased had provoked the accused and the said provocation was so sudden and grave. It was only out of the said grave and sudden provocation, the accused had cut the deceased. The act of the appellant would squarely fall within the third limb of section 300 IPC and also within the Exception-I to section 300 IPC. Therefore, the appellant is liable to be convicted under section 304 (Part-I) IPC. So far as the offence u/s. 3(1)(x) of the SC/ST Act is concerned, it is crystal clear that the deceased was attacked not on account of the fact that the deceased belonged to the Scheduled caste. There is no evidence anywhere that A1/appellant has uttered any word stating that the deceased belonged to the Scheduled Caste. Going by these facts, we hold that the prosecution has failed to prove the offence u/s. 3(1)(x) of the SC/ST Act.

13. Now, turning to the quantum of punishment, there was no premeditation.

The occurrence was sudden and out of provocation which was so grave enough. The appellant had no bad antecedent. He has lot of chances for reformation. It is not reported that he has committed any other crime subsequent to this occurrence. Considering these mitigating circumstances as well as the aggregative circumstances, we are of the view that sentencing the appellant to undergo rigorous imprisonment for a period of 10 years and to impose a fine of Rs. 40,000/- would meet the ends of justice.

14. In the result, the criminal appeal is partly allowed and the conviction and sentence imposed on the appellant u/s. 302 IPC is set aside and instead, he is convicted u/s. 304(Part I) IPC and is sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs. 40,000/-, in default, to undergo one year rigorous imprisonment. On realisation of fine amount, the entire amount shall be paid to P.W.2 towards compensation by the Court. P.W.2 shall be at liberty to make an application to the Trial Court and get the compensation amount. So far as the offence u/s. 3(1)(x) of the SC/ST Act is concerned, the appellant is acquitted. The Trial Court is directed to secure the presence of the appellant/A1 to undergo the remaining period of sentence, as the appellant is on bail. It is also directed that the period of sentence already undergone, shall be set off and the fine amount, if any paid already, shall be duly adjusted.