
(2017) 04 MAD CK 0238

In the Madras High Court

Case No : 138 of 2017

Perumal @ Nagaraj Vs The State Rep. By?Inspector of Police,

Date of Decision : 07-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 428](#) - Period of detention undergone by the accused to be set off against the sentence of imprisonment

[Indian Penal Code, 1860](#), [Section 302](#)

Citation : (2017) 04 MAD CK 0238

Hon'ble Judges : S.Nagamuthu, Dr. Anita Sumanth

Bench : DIVISION BENCH

Advocate : S.Nagamuthu, Dr. Anita Sumanth

Judgement

1. The appellant is the sole accuse in S.C.No.37 of 2014 on the file of the learned Principal Sessions Judge, Erode. He stood charged for offence under Section 302 of I.P.C. By judgment dated 16.02.2015, the trial Court convicted the accused for offence under Section 302 and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for two months. Challenging the said conviction and sentence, the appellant is before this Court, with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:- The accused in this case and the deceased - Mr.Arumugam, were residing at Kanakkampalayam Village in Erode District, during the relevant time. For drinking water purposes, they had to depend upon the public water tap situated on the road side, operated by the Local Authority. On 10.05.2013, the accused had gone to the said tap with two empty vessels; took water in one vessel and kept the other vessel under the tap, to fill up water. He returned home with one vessel full of water. Again, he returned to the public water tap for taking the other vessel. He found that the deceased had

removed the vessel from the tap and filled water in the vessel which he had brought. The accused questioned him as to how dare he was to remove the

vessel put up by him for filling water. This resulted in a quarrel between the accused and the deceased. P.W.1 and others who were standing there persuaded them and separated them. The deceased took the vessel full of water and went to his house.

3. Again he returned to the water tap. This time, again quarrel arose between the accused and the deceased. The accused told that he would destroy the water tap. This further aggravated the quarrel. There was also fight between them. In that process, it is alleged that the accused took a small stone lying there and pelted the same against the head of the deceased. The deceased fell down. He was immediately taken to the hospital and admitted at 5.30 pm on the same day. But, the deceased succumbed to the injury in the hospital.

4. Thereafter, P.W.1 went to the Bungalowpurdur Police Station and made complaint at 6.20 pm on 11.05.2013. On the said complaint, the present case was registered in Crime No.124 of 2013 for offence under Section 302 of I.P.C., against the accused. Ex.P.1 is the complaint, Ex.P.15 is the F.I.R. He forwarded both the documents to Court and which were received by the learned Judicial

Magistrate at 12.30 pm On 11.05.2013.

5. The case was taken up for investigation by P.W.12, the then Inspector of Police. He went to the place of occurrence; prepared an observation mahazar; rough sketch and recovered the material objects from the place of occurrence. On going over to the hospital, he conducted inquest on the body of the deceased and forwarded the same to Doctor for postmortem.

6. P.W.8 - Dr.Gokularamanan, conducted autopsy on the body of the deceased on 11.05.2013 at 3.45 p.m. He found the following injuries:-

"External Examination

Injuries

1. Right Eye Black Eye

2.A sutured wound seen over right side of fore head M 4 cms with 3 sutures

3. Another sutured wound seen on the upper and outer aspect of right cheek M, 1 cm with 1 suture, on removal of sutures edges irregular.

Internal Examination

O/D Head :- Scalp contusion seen over the right fronto parietal region M.8 cm SX 6cm SO 5 cm, cranial vault communited fracture of right frontal region over an area M.6 cm SX 5 cms. duramatar torn corresponding to the fracture site brain laceration seen over 5 right frontal region M.4 cm SX 3cm SX 1 cm. Diffuse sub dural and sub arachniod halmorrhage seen all over the brain surface. Base of skull communited fracture of right side of posterior cranial fossa.

O/D neck:- Neck structures normal. Hyoid bone - intact.

O/D Thorax - Riib Cage in tact lungs both lungs normal in size on C/S Congested.

Heart - Normal in size on C/S chambers contain fluid blood valves - in tact. Coronaries pateni.

O/D Abdomen:- Stomach contain 180 ml of greenish yellow fluid with no specific smell mucosa - congested. Liver, spleen and kidneys - normal in size on C/S congested. Bladder - empty".

Ex.P.10 is the postmortem certificate. He opined that the injuries found on the body of the deceased would have been caused by a weapon like a stone (M.O.1).

7. On the same day at 7.30 pm, P.W.12 arrested the accused in the presence of witnesses and on such arrest, the accused made a voluntary confession, in which, he disclosed the place where he had hidden a cloth. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the blood stained cloth (M.O.4).

8. On returning to the Police Station, he forwarded the accused to Court for judicial remand and he also forwarded the material objects to court, which in turn, forwarded the same for chemical examination. The report revealed that there were human blood strains on all the material objects. On completing investigation, he laid charge sheet against the accused.

9. Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C., against the accused. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined; 18 documents and 7 material objects were marked.

10. Out of the said witnesses, P.Ws.1 and 2 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.3 is the son-in-law of the deceased. He has stated that, he heard about the occurrence and went to the Police Station. P.W.4 has spoken about the preparation of observation mahazar, rough sketch and the recovery of material objects from the place of occurrence. P.W.5 has spoken about the arrest of the accused and the disclosure statement made by him and the consequential recovery of shirt from his possession. P.W.6 - a Constable has stated that, he handed over the dead body of the

deceased to the Doctor for postmortem. P.W.7 - Dr.Rajendran, has stated that on 10.05.2013 at 9.30 pm, the deceased was brought to him for treatment at the Government Hospital, Cobichettipalayam. He examined him and found three injuries on the body. Since, his condition was bad, he referred him to the Government General Hospital, Erode. P.W.8 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death of the deceased. P.W.9 - a Constable has stated that he handed over the F.I.R., to the learned Magistrate at 12.30 pm on 11.05.2013. P.W.10 - Scientific Assistant from the Regional Forensic Research Centre, Coimbatore, has stated that he examined the material objects and found human blood strains on the same. P.W.11 has

spoken about the Registration of the case on the complaint of P.W.1. P.W.12 has spoken about the investigation done and the final report filed.

11. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not chose to examine any witness nor did he mark any document on his side.

12. Having considered all the above, the trial Court convicted the accused for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life. That is how the accused is before this Court with this Criminal Appeal.

13. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and we have also perused the records carefully.

14. In this case, as we have already narrated, there are two eye witnesses viz., P.Ws.1 & 2 to the occurrence. They have vividly spoken about the entire occurrence. Though, these two witnesses have been cross examined at length, nothing could be elicited from their evidences so as to disbelieve them. Further, it was P.W.1 who took the deceased to hospital and admitted him without any delay. There was no delay in preferring the complaint also to the Police. Thus, from the evidences of P.Ws.1 & 2, the prosecution, in our considered view, has clearly established that it was this accused who pelted the stone on the head of the deceased in the quarrel and which resulted in his death. The Doctor who conducted autopsy has also opined that the death of the deceased was due to shock and hemorrhage due to the head injury found on the body of the deceased. We find no reason to reject the said medical opinion. From these evidences, in our considered view, the prosecution has clearly established that it was this accused who caused the death of the deceased by pelting the stone on the head of the deceased.

15. Having come to the said conclusion, now, we have to examine as to "What was the offence committed by the accused, by the said act ? Admittedly, the accused and the deceased were neighbours. There was no enmity or ill-feeling between them. The occurrence was not a premeditated one but, arose out of a sudden quarrel over taking water from the public tap. P.Ws.1 & 2 have stated that the quarrel was on account of the fact that the deceased had removed the vessel put up by the accused under the public water tap. It is also in evidence that in the said quarrel, there was a fight between them. It was only at the end of the fight, the accused had taken a small stone lying there and threw the same on the head of the deceased and killed him. Thus, it is inferable that the accused would not have intended to cause a bodily injury which would be sufficient in the ordinary course of nature to cause the death of the deceased. Thus, the act of the accused would not fall within the third limb of Section 300 I.P.C. But, at the same time, in our considered view, it would squarely fall within the fourth limb of Section 300 I.P.C. It cannot be said that the accused would not have had the knowledge that pelting a small stone which was lying there on the head of the

deceased would be imminent dangerous to the life of the deceased.

16. As we have already pointed out, the occurrence was not a premeditated one. The occurrence took place out of sudden quarrel. There was also fight between the accused and the deceased. The accused had not taken any undue advantage. He had taken the small stone lying there and pelted the same on the head of the deceased. Thus, the act of the accused would squarely fall under Exception 4 to Section 300 I.P.C. Therefore, the accused is liable to be punished for offence under Section 304(ii) I.P.C.

17. Now, turning to the quantum of punishment, the accused as well as the deceased were poor people and they belong to Tribes community. The accused has got a big family to take care off. He has got no bad antecedents. There are lot of chances for reformation. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/- would meet the ends of justice.

18. In the result, the Criminal Appeal is allowed in part and the conviction and sentence imposed on the appellant for offence under Section 302 I.P.C., is set aside and instead, he is convicted for offence under Section 304(ii) I.P.C., and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/- in

default to undergo rigorous imprisonment for one week. It is further directed that the period of sentence already undergone by the accused shall be given set off as provided under Section 428 Cr.P.C.