

**G.Murugan Vs. State Through**

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**Court :** Chennai

**Decided On :** Aug-20-2015

**Judge :** S.Nagamuthu

**Appellant :** G.Murugan

**Respondent :** State Through

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

20. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL (MD).No.387 of 2013 G.Murugan S/o.Gurusamy C.No.5347 Central Prison Madurai : Appellant Vs. State through Inspector of Police Pattiveeranpatti Police Station Dindigul District. in Crime No.115 of 2012 :Respondent PRAYER Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the Additional District & Sessions Judge, Dindigul, in S.C.No.1 of 2013 dated 05.08.2013. !For Appellant : Mr.K.Prabhu Legal Aid Counsel ^For Respondent : Mr.R.Ramachandran Additional Public Prosecutor :

**JUDGMENT**

(Judgment of the Court was delivered by S.NAGAMUTHU, J.) The appellant is the sole accused in S.C.No.1 of 2013 on the file of the Additional District & Sessions Judge, Dindigul. He stood charged for offences under Sections 302 and 506(ii)

IPC. By judgment dated 05.08.2013, the trial Court convicted him only under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life, and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for six months. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows: The deceased in this case was one Mr.Gurusamy, aged 85 years. The accused is his son. P.W.1 is the brother of the deceased and P.W.2 is the wife of the deceased. The accused was married. But the deceased had developed illicit intimacy with the wife of the accused. On 05.05.2012, at 7.00 p.m., there was a quarrel between the accused and the deceased over the above issue. The accused reprimanded and shouted at him, as to how, he could have illicit intimacy with his wife. In culmination of the said quarrel, it is alleged that the accused took out an aruval and cut the deceased on his neck and other parts of the body repeatedly. The deceased died instantaneously. 2.1. The occurrence was witnessed by P.W.2 ? the wife of the deceased. She raised alarm on seeing the occurrence. P.W.1 ? the brother of the deceased, who was elsewhere, rushed to the place of occurrence. He heard from P.W.2 about the occurrence. Then, P.W.1 proceeded to the police station and made a complaint at 7.00 p.m. 2.2. P.W.19 is the Sub Inspector of Police attached to Pattiveeranpatti Police Station registered a case in Crime No.115 of 2012 under sections 302 and 506(ii) IPC. Ex.P1 is the complaint and Ex.P11 is the FIR. He forwarded both Ex.P1 and Ex.P11 to the Court and handed over the investigation to P.W.20. 2.3. Taking up the case for investigation, P.W.20 proceeded to the place of occurrence and prepared observation mahazar and rough sketch in the presence of witnesses and he recovered bloodstained earth and sample earth from the place of occurrence. Then, he conducted inquest on the body of the deceased between 9.30 p.m. and 11.30 p.m. Ex.P13 is the inquest report. Then, he forwarded the body for postmortem. 2.4. P.W.12 ? Dr.Sujatha conducted autopsy on the body of the deceased on 06.05.2012 at 1.00 p.m. She found the following injuries:

1. Cut injury on the back of the neck measuring 11 cm x 6 cm x bone depth exposing fracture cervical vertebra, blood vessels, muscles and other soft tissues.

2. Cut injury measuring 5 cm x 3 cm x bone depth in the occipital region of the scalp.
3. Just below the above mentioned wound cut injury measuring 5 cm x 2.5 cm x bone depth in the occipital region of the scalp present.
4. Cut injury of size 11 cm x 3 cm x bone depth extending anterior to left ear lobe to the above mentioned second wound on dissection fracture of left side of the mandible present. Left ear is cut, extending from the tragus to outer helix of the ear.
5. Cut injury over the left side of the face measuring 6 cm x 2 cm x bone depth exposing muscles of face and fracture zygomatic bone.
6. Cut injury on the right shoulder measuring 16 cm x 4 cm x bone depth exposing soft tissue, proximal humerus, clavicular bone and scapular bone.
7. Right ear is cut at the upper third
8. Cut injury on the right scapular region measuring 6 cm x 2 cm x bone depth exposing muscles and soft tissue.
9. Cut injury on the right scapular region measuring 3 cm x 1 cm x bone depth above the previous mentioned wound (8)
10. Cut injury over the left scapular region one below the other measuring (a) 3 cm x 1 cm x soft tissue depth (b) 3 cm x 0.5 cm x soft tissue depth.
11. 2 cm below the above mentioned wound 10(b) cut injury measuring 4 cm x 2 cm x bone depth, exposing fracture scapular bone present. She opined that the deceased would appear to have died of shock and hemorrhage due to the cut injuries. She gave further opinion that the said injuries would have been caused by a weapon like M.O.1 ?. Aruval. Ex.P4 is the postmortem certificate. 2.5. Continuing the investigation, P.W.20 arrested the accused on 06.30 a.m. on 06.05.2012. On such arrest, he gave a voluntary confession, in which, he disclosed the place, where he had hidden the aruval. In pursuance of the said disclosure statement, he produced the aruval from the hide out. Then P.W.20 forwarded the accused to Court for judicial remand. He has also forwarded the material objects to Court. He made a request to the Court to send the material

objects for chemical examination. Ex.P5 and Ex.P6 are the reports. According to the said reports, there was human blood of 'O' Group on the aruval as well as on the dress materials of the deceased. P.W.20 collected the medical records, examined the Doctor and finally laid charge sheet against the accused. 2.6. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the charges, on the side of the prosecution, as many as 20 witnesses were examined, 16 documents and 5 material objects were marked. Out of the said witnesses, P.W.2 alone is the eye witness to the occurrence. P.W.1 has spoken about the fact that he was attracted by the alarm raised by P.W.2 and then, he made a complaint. 2.7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witnesses on his side nor marked any documents. Having considered all the above, the trial Court found him guilty under Section 302 IPC and sentenced him accordingly. That is how, the appellant is before this Court with this appeal.

3. We have heard the learned legal aid counsel for the appellant, the learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

4. In this case, as rightly pointed out by the learned Additional Public Prosecutor, P.W.2 is the eye witness to the occurrence, who has vividly spoken about the occurrence. She has stated that the deceased had developed illicit intimacy with the wife of the accused. This was objected to by him. This resulted in a quarrel. This quarrel went on for some time. In culmination of the said quarrel, it is alleged that the accused cut the deceased. P.W.2 being the mother of the accused had no axe to grind against the accused. Her presence is quite natural. Her evidence is duly corroborated by the medical evidence. Therefore, we do not find any reason to reject the evidence of P.W.2. There is no delay in the FIR to create any doubt also. Thus, we hold that it was this accused, who caused the fatal injuries on the deceased, which resulted in his death.

5. The next immediate question is to what is the offence that the accused had committed?.. As we have already narrated the deceased, even, at the age of 85 years had developed illicit intimacy with the wife of the accused. The accused only questioned the same, which is resulted in a quarrel. In culmination of the said quarrel, the accused had caused the injuries on the deceased. The fact that the deceased had illicit intimacy with his wife, the fact that there was quarrel, the fact that there was exchange of abuse of words, the fact that the deceased had attempted to attack the accused as stated by P.W.2 would all go to show that the accused would have been provoked by the act of the deceased and only out of the said provocation, which in our considered view, is grave as well as sudden, the accused had caused the death of the deceased. Therefore, the act of the accused would fall within the first exception to Section 300 IPC. Since the act of the accused would fall under limb 2 of Section 299 IPC, he is liable for punishment under Section 304(i) IPC.

6. Turning to the quantum of sentence, the accused is an young man; he has got wife and children to take care of. He is a poor man and he has no sufficient wherewithal to maintain himself. He is all along in jail. The act of the accused is not a premeditated one. Having regard to all these facts and circumstances, to strike a balance between the mitigating and aggravating circumstances, we deem it appropriate to sentence him to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for one week.

7. In the result, the criminal appeal is partly allowed in the following terms: (1) The conviction and sentence imposed on the accused/appellant under Section 302 IPC are set aside, instead, he is convicted for the offence under Section 304(i) IPC. (2) He is sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/- (Rupees five hundred only), in default, to undergo rigorous imprisonment for one week for the offence under Section 304(i) IPC. (3) The period of sentence already undergone by the accused/appellant is ordered to be set off under Section 428 Cr.P.C. To 1.The Additional District & Sessions Judge, Dindigul, 2.The Inspector of Police Pattiveeranpatti Police Station Dindigul District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court,

Madurai. .

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