

N.Rajendran Vs. The State

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Court : Chennai

Decided On : Aug-21-2015

Judge : S.Nagamuthu

Appellant : N.Rajendran

Respondent : The State

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

21. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU and THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL(MD)No.31 of 2014 N.Rajendran : Appellant/Accused Vs. The State Rep. By The Inspector of Police, Fort Police Station, Tiruchirappalli. In Crime No.1256 of 2011 : Respondent/Complainant PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure, against the Judgment of acquittal passed by the learned III Additional District Judge, Tiruchirappalli in S.C No.180 of 2011 dated 15.10.2012. !For Appellant : Mr.A.Haja Mohideen Legal Aid Counsel ^For Respondent : Mr.R.Ramachandran Additional Public Prosecutor :

JUDGMENT

(Judgment is delivered by Hon'ble Mr. Justice S.NAGAMUTHU) The appellant is the sole accused in Sessions Case No.180 of 2011, on the file of the learned III Additional District Judge, Tiruchirappalli. He stood charged for offence under

Section 302 IPC. By judgment, dated 15.10.2012, the trial Court convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo rigorous 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.Sakthivel. The accused and the deceased were all working together in a Shoe Mart. For the purpose of seeing blue film in the cell phone, the deceased had received the cell phone of the accused. After having seen the blue film in the cell phone, the deceased did not return the same. On 17.10.2011 at about 5.00 p.m near Mariamman Temple at Vanapattarai, the accused found the deceased. He asked the deceased as to why he did not return his cell phone after having seen the blue film in the same. The deceased told him that the cell phone was lost by him. Enraged over the same, the accused took the half brick found there and pelted the same against the back side of the head of the deceased. The deceased fell down and died on the spot. This is the charge against the accused. 3.In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined, 18 documents and 8 Material Objects were marked. 4.P.Ws. 1 and 2 are the eye witnesses. They have stated that they saw the accused and the deceased quarrelling with each other and due to the said quarrel, the accused pelted the stone on the back side of the head of the deceased. The deceased fell down at the place of occurrence. P.W.1 stated that he immediately went to the police station and made a complaint. 5.P.W.11 the Sub-Inspector of Police has stated that on the complaint of P.W.1 at 6.00 p.m on 17.10.2011, he registered the case in Crime No.1256 of 2011 under Section 302 IPC against the accused and forwarded the same to the Court. Thereafter, he handed over the case diary to the Inspector of Police for investigation. P.W.12 has stated that he prepared an Observation Mahazar and a rough sketch in the place of occurrence in the presence of P.W.4 and another witness. He recovered the stone from the place of occurrence under a mahazar. During the course of investigation, he arrested the accused on 18.10.2011 at 04.00 a.m in the presence of P.W.3. On such arrest, he gave a voluntary confession. In which he disclosed that he was in possession of a cell phone and he produced the same to the Inspector of Police. Similarly, the stone was recovered at his instance. He further

stated that he forwarded the body for post-mortem. 6.P.W.7 Dr.Nehru, conducted autopsy on the body of the deceased on 18.10.2011 at 12.10 p.m and he found the following injuries:

1. Dark brown colour abrasions of varying dimensions on the front of right forehead, front of right chest, front of right shoulder. 2.A lacerated wound on the occipital region of the scalp, 4 cm X2cm X bone deep. 3.Bruising of the occipital region of the scalp ?. Dark red. 4.Sub dural haemorrhage and sub arachnoid haemorrhage on both cerebral and cerebellar hemispheres. 5.Bony contusion of left side of anterior cranial fossa 6.Fracture separation of C2-C3 vertebral joint with laceration of underlying spinal cord bruising ?. Dark red. Ex.P.7 is the post-mortem certificate. The Doctor opined that the deceased appeared to have died of shock and haemorrhage due to the head injury.

7. P.W.8 is the Scientific Assistant. He has spoken about the fact that there was bloodstain on the material objects. P.W.9 has stated that at 12.00 noon on 17.10.2011, there was quarrel between the accused and the deceased. P.W.10 spoken about the photographs taken on the spot.

8. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he totally denied the same. However, the accused did not choose to examine any witness on his side nor mark any document.

9. Having considered all the above materials, the trial court convicted the accused and accordingly punished him. That is how, he is before this Court with this appeal. 10.We have heard Mr.Haja Mohideen, learned Legal Aid Counsel and Mr.R.Ramachandran, learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

11. The learned counsel for the appellant would submit that the prosecution has failed to prove the case beyond reasonable doubt. According to him, the medical evidence does not corroborate the eye witness account in respect of the injuries found on the deceased. He would further submit that the evidence of P.W.s 1 and 2 cannot be believed as their presence is not probable. He would further submit that even assuming that the stone was pelted by the accused on the deceased,

the said act would not attract the offence under Section 302 IPC, instead, it would attract only the offence under Section 326 IPC.

12. The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, the presence of P.Ws. 1 and 2 is probable and their evidence cannot be rejected. He would further submit that the medical evidence fully corroborates the eye witness account and the act of the accused would squarely fall under Section 302 IPC.

13. We have considered the above submissions.

14. P.W.s 1 and 2 are the eye witnesses, who have explained to the satisfaction of the court that why and how they were present at the crucial time of occurrence. Thus, in our considered view, the presence of P.Ws.1 and 2 at the time of occurrence cannot be doubted at all. They have categorically stated that there was quarrel between the accused and the deceased and in culmination of the same, the accused took the stone lying there and pelted the same on the back side of the head of the deceased. We have no reason to reject the evidence of P.Ws. 1 and 2.

15. The learned counsel for the appellant would submit that the medical evidence does not corroborate the eye witness account. It is true that the Doctor, who conducted autopsy, has found that there are number of injuries and fracture of cervical bones 2 and 3 on the neck. There is no explanation for these injuries on the side of the prosecution. But, this argument is rejected for the only reason that the injury, on the part of the head, viz., on the occipital region was caused by the stone thrown by the accused. All the other injuries on the back side of the head and neck are all corresponding injuries due to the force exerted on the C2 and C3 namely, Cervical Bones 2 and 3. When the deceased fall on the earth facing the earth, the injury on the forehead would have caused. In our considered view, there is no contradiction between the medical evidence and the eye witnesses account and therefore, we hold that the death of the deceased was caused only by the accused.

16. Now, the next question is, ?what is the offence committed by the accused by his act??. The post-mortem certificate reveals that the deceased was in full

drunken state at the time of occurrence. P.Ws.1 and 2 have stated that there was quarrel between the accused and deceased for a long time. The accused had only demanded his cell phone, but, the deceased had told a story that the cell phone was lost. Enraging over the same, the accused had taken a stone lying there and pelted the same on the head of the deceased. In our considered view, these facts would clearly bring the act of the accused within the exception 4 to Section 300 IPC. Similarly, the occurrence was not a pre-meditated one. The accused would not have, had the intention either to cause the death of the deceased or to cause any injury, which would be sufficient in the ordinary course of nature to cause death. His Act, consequently, would not amount to murder and instead it is only a culpable homicide not amounting to murder falling within the sweep of the third limb of Section 299 IPC. Therefore, the accused is liable to be punished only for the offence under Section 304(II) IPC.

17. Now turning to quantum of punishment, the accused is a young man. He does not have any bad antecedents. After the occurrence also, he has not committed any crime. He is a poor man and he was working in a private concern. The occurrence itself took place due to a sudden quarrel. He was not armed already. Going by aggravating and mitigating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.500/- in default to undergo rigorous imprisonment for 1 week will meet the ends of justice. 18. In the result, this Criminal Appeal is partly allowed, the conviction and sentence imposed on the appellant under Section 302 IPC is set aside and instead, he is convicted under Section 304(II) IPC and sentenced to undergo rigorous imprisonment for 5 years and pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for 1 week and the period of sentence already undergone shall be set off under Section 428 Cr.P.C.

19. We appreciate Mr.A.Haja Mohideen, who argued this appeal as a Legal Aid Counsel for the appellant. The Legal Services Authority is directed to pay his remuneration. To 1.The III Additional District Judge, Tiruchirappalli. 2.The Inspector of Police, Fort Police Station, Tiruchirappalli. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.