

(2016) 3 MLJCriminal 379 : (2016) 5 RCRCriminal 875

MADRAS HIGH COURT

Case No: Crl. A. No. 30 of 2014

Chinnapillai

APPELLANT

Vs

State

RESPONDENT

Date of Decision: April 25, 2016

Acts Referred:

Evidence Act, 1872 - Section 114#Penal Code, 1860 (IPC) - Section 302

Citation: (2016) 3 MLJCriminal 379 : (2016) 5 RCRCriminal 875

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

Bench: Division Bench

Advocate: Mr. V. Paarthiban for Mr. E. Kannadasan, Advocates, for the Appellant; Mr. M. Maharaja, Additional Public Prosecutor, for the Respondent

Final Decision: Partly Allowed

Judgement

S. Nagamuthu, J.â€”The appellant is the sole accused in SC.No. 90/2012 on the file of the learned Principal District and Sessions Judge,

Krishnagiri District. He stood charged for the offence under section 302 IPC. By judgment dated 30.09.2013, the Trial Court convicted him for

the offence 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

simple imprisonment for 6 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:-

(A) The deceased in this case, was one Mr.Muniraj. The accused is a resident of Vinayagapuram Village in Krishnagiri District. His wife is one

Mrs. Mangammal. The deceased also hailed from the same village. For quite some time, the deceased and Mrs. Mangammal, had developed illicit

relationship. On coming to know the said fact, the accused took exception to the deceased and warned him to stop all his connections with his

wife. As a matter of fact, due to the frequent quarrels over the said issue, Mrs. Mangammal, stayed at her parental home. The accused alone was

staying in his house. Since the deceased continued to have illicit relationship with the wife of the accused, the accused nurtured enmity and this is

stated to be the motive for the occurrence.

(B) On 13.03.2012 at about 15.00 hrs., P.Ws.1 to 3 were laying pipe near the house of the accused. The deceased was also standing there. It is

alleged that the accused came to the spot with a crowbar, shouted at the deceased for having spoiled his family and attacked him with the crowbar

on the head of the deceased. Having received an injury on the head, the deceased fell down in a pool of blood. P.Ws.1 to 3 intervened. Soon the

accused ran away from the occurrence place with the weapon. P.Ws.1 to 3 found the deceased struggling for life. Therefore, they rushed him to

the Government Hospital, at Kaveripattinam.

(C) P.W.7, Dr. Hariraman, attached to the Government Hospital, at Kaveripattinam, examined the deceased at 15.00 hrs. on 13.03.2012. At that

time, the deceased was unconscious. P.W.2, who had brought the deceased to the hospital, told P.W.7 that the deceased was attacked by a

known person with a crowbar near his house. He found injuries on the body of the deceased, viz.,

(a) A lacerated injury measuring 11x4x3cm on the right side of the head ; and

(b) There was bleeding through the nose. Ex.P.5 is the Accident Register. He advised him to be taken to a higher medical Centre for treatment

since the condition of the deceased was serious.

(D) P.W.2 took the deceased to Narayana Hridayalaya Sparsh Hospital at Bengaluru. One Dr. Dimmappa Hegde, examined him at 23.00 hrs on

13.03.2012. He admitted the deceased as an In-patient. Since there were fractures on the skull and there were also corresponding injuries to the

brain, Dr. Dimmappa Hegde, assisted by P.W.9 [Dr. Nagaraj], proposed to conduct surgery. But, even before the surgery could be conducted,

the deceased died, succumbing to the injuries. Ex.P.13 is the Death Certificate.

(E) Admitting the deceased at Sparsh Hospital at Bengaluru, P.W.1 returned to Kaveripattinam and went to Kaveripattinam Police Station and

made a complaint to P.W.8 at 06.00 hrs on 14.03.2012. P.W.8, the then Special Sub-Inspector of Police attached to the said Police Station,

received the complaint from P.W.1 and registered a case in Cr. No. 137/2012 for the offences under section 294[b], 506[ii] and 324 IPC. Ex.P.1

is the complaint and Ex.P.19 is the FIR. He forwarded both the documents to the Court concerned and took up the case for investigation.

(F) P.W.8 proceeded to the scene of occurrence at about 07.00 hrs on 14.03.2012 and prepared the Observation Mahazar [Ex.P.4] in the

presence of P.Ws.5 and another witness and also prepared a Rough Sketch [Ex.P.10]. He examined P.Ws.1 to 3 and few more witnesses and

recorded their statements. On getting the information about the death of the deceased, he handed over the Case Diary to his successor, viz.,

P.W.10.

(G) P.W.10, the then Inspector of Police, altered the case into one under section 302 IPC and forwarded the altered report [Ex.P.14] to the

Court. Then, he went to the Government Hospital, Kaveripattinam, where the dead body had been brought back. He held inquest on the dead

body of the deceased between 19.00 hrs and 21.30 hrs. on 14.03.2012 in the presence of Panchayatdars and witnesses and prepared Ex.P.15

[Inquest Report]. He sent the dead body of the deceased for postmortem.

(H) P.W.9, Dr. Hariraman, attached to the Government Hospital, Kaveripattinam, conducted autopsy on the body of the deceased on

14.03.2012 at 10.00 hrs. He found the following injuries:-

External Injuries:-

- (1) Sutural wound at right side of scalp 8 cm.
- (2) Depressed fracture of right parietal bone.
- (3) Contusion and swelling dark bluish in colour on left eye.

Internal Examination:-

Skull-right parietal bone fractured.

Brain-Cynoid. Blood clot found on the right lobe. Contusion at right parietal lobe.

Neck-Hyoid bone intact.

Thorax-Ribs intact. Both lungs congested.

Heart-Enlarged. Blood clots seen.

Abdomen-Stomach-empty. Liver, Spleen, Kidney, Bladders-Empty.

Ex.P.7 is the Postmortem Certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the injuries found

on the body. He further gave opinion that the said injuries could have been caused by a weapon like M.O.1-crowbar.

(I) P.W.10, during the course of investigation, recovered the blood stained cloth from the body of the deceased. Then, on 15.03.2012, at 06.30

hrs. at Nadesa Marriage Hall, Kaveripattinam, he arrested the accused in the presence of P.W.4 and another witness. On such arrest, the accused

gave a voluntary confession, in which, he disclosed the place where he had hidden the crowbar [M.O.1]. In pursuance of the same, he took the

police and the witnesses to Vinayagapuram and from the place of hide out, he produced M.O.1 [crowbar]. P.W.10 recovered the same under a

Mahazar in the presence of the same witnesses. Thereafter, he returned to the Police Station and forwarded the accused for judicial remand and

also handed over the material objects to the Court. On completion of the investigation, he laid the charge-sheet against the accused.

(J) Based on the above materials, the Trial Court framed a lone charge against the accused 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 10 witnesses were examined, 15 documents and 2

material objects were also marked.

(K) Out of the said witnesses, P.W.1, who was examined to speak about the occurrence, has turned hostile and he has not supported the case of

the prosecution in any manner. P.Ws.2 and 3 have vividly spoken about the entire occurrence and they have also stated that they took the

deceased to the Government Hospital, Kaveripattinam, from where, the deceased was taken to Sparsh Hospital at Bengaluru. They have further

spoken about the motive. P.W.4 has spoken about the arrest of the accused on 15.03.2012 at 06.15 a.m. and the consequential recovery of

M.O.1 on the disclosure statement made by the accused. P.W.5 has spoken about the preparation of the Observation Mahazar and the Rough

Sketch at the place of crime P.W.6 has stated that soon after the occurrence, the accused was found fleeing away from the scene of occurrence.

P.W.7 has spoken about the initial treatment given to the deceased at Kaveripattinam Government Hospital and he has also spoken about the

postmortem conducted and his final opinion regarding the cause of death. P.W.8 has spoken about the registration of the case on the complaint of

P.W.1 and the initial investigation done by him. P.W.9 has spoken about the treatment given to the deceased at Sparsh Hospital, Bengaluru. He

has also spoken about the death of the deceased. P.W.10 has spoken about the further investigation done by him and the filing of the final report.

3. 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

chose to examine any witness but marked Ex.D1 on his side.

4. Having considered all the above, the Trial Court convicted and sentenced the appellant/sole accused as detailed in the first paragraph of this

judgment. That is how the appellant/accused is before this Court with this appeal.

5. We have heard Mr. V. Paarthiban, learned counsel representing Mr. E. Kannadasan, learned counsel appearing for the appellant, on record

and Mr. M. Maharaja, learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6. In this case, out of three witnesses who have been examined as the eyewitnesses to the occurrence, as we have already pointed out, P.W.1 has

turned hostile and he has not supported the case of the prosecution in any manner.

P.W.2 is the son of the deceased and P.W.3 is a neighbour of

the deceased and they have vividly spoken about the entire occurrence. Learned counsel for the appellant would submit that P.Ws.2 and 3 would

not have been present at the time of occurrence at all. But, we do not find any force in the said argument. According to P.Ws.2 and 3, they were

engaged in digging a pit and laying a pipe near the house of the brother of the accused.

Thus, their presence cannot be doubted at all. They have

got no axe to grind against the accused, so as to doubt their credibility. They, in simple terms, have, in detail, spoken about the entire occurrence.

They have stated that it was this accused who attacked the deceased with the crowbar.

We do not find any reason to reject the evidences of

P.Ws.2 and 3.

7. Apart from that, it was only P.Ws.2 and 3, who took the deceased to the Hospital, where, at the earliest point of time, P.W.2 told the doctor

that the deceased was attacked by a known person with crowbar near his house. This statement of P.W.2 made to the doctor, duly corroborates

his evidence before the Court. P.W.2, of course, did not go to the Police Station and make a complaint. This, in our considered view, is not a

ground at all to reject his evidence for, he would have been under the pressure to save his father, who was so critical in the hospital at Bengaluru.

Therefore, he had sent P.W.1 to go to the Police Station to make the complaint. Thus, failure on the part of P.W.2, in not going over to the Police

Station in making the complaint, cannot be a ground to reject the evidence of P.W.2.

Thus, the prosecution has clearly established the fact that it

was this accused who caused injuries on the deceased.

8. The medical evidence also clearly goes to prove that the death of the deceased was due to shock and hemorrhage due to the injuries found on

the body of the deceased and the said injuries could have been caused by a weapon like M.O.1-Crowbar. The recovery of M.O.1 [crowbar] on

the disclosure statement made by the accused also strengthens the case of the prosecution. Thus, the prosecution has clearly proved that the death

of the deceased was caused only by this accused.

9. The conduct of the accused has been spoken by P.W.6, who has stated that at the time of occurrence, the accused was fleeing away from the

place of occurrence, which he witnessed at a reasonably distant place. This conduct of the accused would further strengthen the case of the

prosecution.

10. Now, having come to the conclusion that it was this accused who caused the death of the deceased, we have to examine as to what was the

offence, the accused had committed by his act. It is in evidence that the wife of the accused had developed illicit intimacy with the deceased and

despite the warning and perseverance made by the accused, the deceased did not stop having illicit relationship with the wife of the accused. On

the day of occurrence, P.Ws.1 to 3 were engaged in laying the pipe where the deceased was simply standing. According to P.Ws.2 and 3, the

accused was moving somewhere near the place of occurrence. From the narration of the entire facts, we are able to visualise that there would have

been some quarrel between the accused and the deceased over the relationship between the deceased and the wife of the accused. Though there

is no direct evidence to support this version of the accused, on that score, we cannot refuse to raise a presumption which is very reasonable as

provided under section 114 of the Evidence Act, 1872. Law prohibits only a surmise or suspicion, but law permits presumption based on

fundamental facts. Having analysed the oral evidence of P.Ws.2 and 3 and having regard to the relationship between the wife of the accused and

the deceased, we presume that there would have been a quarrel preceding the occurrence. The crowbar must have been lying there because

P.Ws.1 to 3 were digging a pit at the place of occurrence. Therefore, in that quarrel only, the accused would have taken the crowbar lying there

and attacked the deceased, which resulted in the death of the deceased. In our considered view, the act of the accused, would, therefore, squarely

fall within the first exception to section 300 IPC, though his act would fall within the third limb of section 300 IPC. Since it falls under the first

exception to section 300 IPC, he is liable to be punished under section 304 [Part I] IPC.

11. Now turning to the quantum of punishment, the accused is more than 65 years old. The occurrence was not premeditated. He is also a poor

man, having a family to take care of. Having regard to these mitigating and also the aggravating circumstances, we are of the view that sentencing

him to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 1000/- (Rupees One thousand only), in default, to undergo four

weeks rigorous imprisonment, would meet the ends of justice.

12. In the result, the criminal appeal is partly allowed. The conviction and sentence imposed on the appellant by the Trial Court for the offence

under section 302 IPC in SC. No. 90/2012, vide judgment dated 30.09.2013, are hereby set aside and instead, he is convicted for the offence

under section 304 [Part I] IPC and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs. 1000/- (Rupees One

thousand only), in default, to undergo four weeks rigorous imprisonment.

13. Since it is reported that the appellant is on bail, the bail bonds executed by him, shall stand cancelled and the Trial Court shall take steps to

secure the presence of the accused to undergo the modified sentence now imposed by this Court. The period already undergone, shall be given set

off under section 428 Cr.P.C.