

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/04/2004

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ  
AND  
THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.47 of 1997

Sankar ... Appellant /  
Accused No.1

-Vs-

State, by the  
Inspector of Police, ... Respondent /  
Nellikuppam Police Station. Complainant

The Criminal Appeal arises out of the judgment dated  
24.12.1996 made in S.C.Nos.87 of 1996 on the file of Principal Sessions Judge,  
Cuddalore.

!For appellant : Mr.B.Sriramulu, Senior Counsel  
for M/s.N.A.Ravindran and  
V.Murugesan.

^For respondent : Mr.E. Raja, Addl. Public  
Prosecutor.

:J U D G M E N T

R.BANUMATHI,J

Appellant is the first accused in S.C.No.87 of 1996 on the  
file of Principal Sessions Court, Cuddalore. By the Judgment dated 24.12.199  
6, the Principal Sessions Judge, Cuddalore convicted the Appellant / A.1 under  
Sec.302 I.P.C. and sentenced him to undergo Life Imprisonment. By the same  
Judgment, A.2 and A.3 were acquitted.

2. Originally there were four accused. During the committal  
proceedings, one accused Jayabal was dead (referred as accused Jayabal).  
Appellant / A.1 and A.2 and A.3 were charge sheeted under Sec.302 and 302 r/w  
34 I.P.C. for causing the murder of Iyyanar; A.3 under Sec.3 24 I.P.C. for  
causing injuries to P.W.1 - Koothabiran.

3. The incident which led to the prosecution case occurred on 05.04.1995 - 2.00 p.m. P.W.1 - Koothabiran belongs to Thotti Village. Deceased Iyyanar is the brother of P.W.1. Accused Jayabal and A.1 to A.3 belong to Sanniyasipettai Village. Accused Jayabal and A.1 - Sankar are related to each other. A.2 - Auto Murugan is the Pangali of A.1, while A.3 - Arivazhagan belongs to Kuyilapalayam.

4. On the date of occurrence, P.W.1 - Koothabiran and one Veerapathiran went to the field of one Mottaiyan of Palur Village and was cutting the Sugarcane. At about 1.30 p.m., P.W.3 - Dhanam, who is the mother of P.W.1 and deceased Iyyanar came there and told P.W.1 that when Iyyanar was going to Flour Mill, the accused Jayabal and A.1 and A.2 had beaten him up. To enquire about the same, immediately P.W.1 and his mother P.W.3 - Dhanam and deceased Iyyanar and Veerapathiran went to question about the same. On their way, P.W.3 was asked to go home and P.W.2 - Arjunan joined on the way.

5. P.Ws.1 and 2 and Veerapathiran and deceased Iyyanar went to the house of accused Jayabal at about 2.00 p.m. at Sanniyasipettai Village. P.W.1 questioned the accused Jayabal as to why they had beaten up their brother Iyyanar. Accused Jayabal told P.W.1 that since Iyyanar had beaten up his brother, they had in turn beaten up Iyyanar. At that time, Iyyanar used abusive words against Jayabal. Immediately, A.1 - Sankar assaulted Iyyanar with a stick on the left side of his neck. Accused Jayabal assaulted Iyyanar with a stick on his forehead. When P.W.1 - Koothabiran intervened questioning their act of beating Iyyanar, A.3 - Arivazhagan beat P.W.1 with a stick on his left shoulder and left side of his head. Iyyanar ran towards a Lane near the Rice Mill. Accused Jayabal and A.1 to A.3 chased Iyyanar with sticks and caught hold of him and beat Iyyanar on his head and all over the body with sticks. Appellant / A.1 - Sankar pressed the neck of Iyyanar with his leg. Accused Jayabal throttled the neck of Iyyanar. Accused Jayabal and A.1 to A.3 ran away from the scene of occurrence. P.W.1 and his mother P.W.3 had taken the injured Iyyanar to Cuddalore Government Hospital. P.W.6 - Dr. Jayabal examined Iyyanar and found him dead. Ex.P.6 - Death Intimation was sent to the Police.

6. On receipt of Wireless Message from Cuddalore Hospital, P.W.9 - Sub Inspector of Police went to the hospital and received Ex.P.6 - Death Intimation. About the occurrence, he recorded Ex.P.1 - Statement from P.W.1 - Koothabiran in the hospital. On the basis of Ex.P.1, a case was registered in Crime No.286 of 1995 under Ss.323 and 302 I.P.C. under Ex.P.10 - First Information Report.

7. P.W.10 - Inspector of Police had taken up the investigation. Ex.P.2 - Observation Mahazar and Ex.P.11 - Rough Plan were prepared on the scene of occurrence including the Lane near the Rice Mill in the presence of P.W.4 - Kannan and one Sundar. Photographs (M.O.7 - series) were taken. Inquest was held on the body of deceased Iyyanar. Ex.P.12 is the Inquest Report. After inquest, body was sent to Autopsy with Ex.P.8 - Requisition.

8. Pursuant to the requisition from the Inspector of Police,

P.W.8 - Dr. Kamalakkannan had conducted Autopsy on the body of Iyyanar. He has noted twelve external injuries and the corresponding internal injuries as detailed in Ex.P.9. P.W.8 opined that the deceased died of Shock and Haemorrhage due to head injuries and issued Ex.P.9 - Post-mortem Certificate.

9. Injured P.W.1 - Koothabiran was also sent to the Government Headquarters Hospital, Cuddalore for treatment. P.W.7 - Dr. Desikan examined P.W.1 and noted Contusions over the left shoulder, left forearm and Tenderness over left side scalp. Opining that the injuries were simple in nature, P.W.7 issued Ex.P.7 - Accident Register.

10. On 07.04.1995, accused Jayabal was arrested and his Confession Statement was recorded. Pursuant to the Admissible Portion of his Confession Statement (Ex.P.3), M.Os.1 to 3 - Casuarina Sticks were seized from near a Temple at Gandhi Nagar at Sanniyasipettai. On the same day - 07.04.1995, A.1 - Sankar was also arrested. On 13.04.1995, A.2 and A.3 were arrested and were remanded to judicial custody. On completion of other formalities of investigation, Accused 1 to 3 were charge sheeted for various offences as stated above.

11. To substantiate the charges against the Accused, in the trial Court, P.Ws.1 to 10 were examined. Exs.P.1 to P.17 were marked. M. Os.1 to 8 were remanded to Court by the prosecution. The accused were questioned about the incriminating evidence and circumstances under Sec.313 CrI.P.C. The accused denied all of them and pleaded that a false case is foisted against them.

12. Upon consideration of the evidence, the trial Court found that regarding the occurrence and overt act of A.1 and accused Jayabal, evidence of P.Ws.1 and 2 is cogent and convincing. Pointing out that the overt act of A.2 and A.3 is not clearly proved, the learned Sessions Judge acquitted A.2 and A.3. On the charge that A.3 had beaten up P.W.1 - Koothabiran, the trial Court found that it is not specifically proved and on those reasonings, A.3 was acquitted of the charge under Sec.324 I.P.C. also. Appellant / A.1 alone was convicted for the offence under Sec.302 I.P.C.

13. Assailing the conviction of the Appellant / A.1 under Sec.302 I.P.C., the learned Senior Counsel Mr.Sriramulu submitted that having acquitted A.2 and A.3, on the same set of evidence, the trial Court ought to have acquitted Appellant / A.1 also. The conviction is assailed on the ground of non-examination of independent witnesses and that there is long delay in reporting the matter. The learned Senior Counsel further submitted that in any event, since the attack on deceased Iyyanar was only in a sudden quarrel, his act would not fall under Sec.302 I.P.C. but would fall only under Sec.304 (II) I.P.C., especially when the companion assailants have been acquitted.

14. Whether the overt act of Appellant / A.1 is proved beyond reasonable doubt and whether the conviction under Sec.302 I.P.C. is to be altered into Sec.304 (II) I.P.C. ? is the short point arising for our consideration in this appeal.

15. From the evidence of P.Ws.1 and 2, it is clearly brought

on record that when Iyyanar went to Flour Mill, he was intercepted and beaten up by deceased Jayabal and A.1 to A.3. The same was informed to P.W.1 - Koothabiran, who was cutting the Sugarcane in the field of one Veerabathiran. To question about the conduct of beating Iyyanar, P.W.1, P.W.3, Veerabathiran, Iyyanar along with P.W.2 - Arujunan and one Chinnathambi went to the house of accused Jayabal. On their way, P.W.1 and Iyyanar asked their mother P.W.3 to go to the house and she went back.

16. P.Ws.1 and 2 have clearly narrated about the occurrence.

P.W.1 - Koothabiran asked accused Jayabal as to why he had beaten up his brother Iyyanar. Accused Jayabal told him that Iyyanar had beaten up his brother and therefore, they had assaulted Iyyanar. At that time, Iyyanar hurled vulgar abuses against Jayabal. Enraged over the same, immediately, Appellant / A.1 beat Iyyanar on the left side of his neck with a stick, while accused Jayabal beat Iyyanar with stick on his forehead. When P.W.1 questioned about the same, A.3 - Arivazhagan beat P.W.1 with stick on his left shoulder and left side of his head. Iyyanar ran towards the Lane near the Rice Mill. The accused Jayabal along with A.1 to A.3 chased Iyyanar with sticks and assaulted him all over the body. Appellant / A.1 kicked on the head of Iyyanar, while accused Jayabal throttled Iyyanar by holding his neck. Thereafter, accused Jayabal and A.1 to A.3 had run away. Evidence of P.Ws.1 and 2 on the occurrence and overt act of A1 is cogent and was found to be convincing and inspiring the confidence of the Court. That Appellant / A.1 and accused Jayabal had attacked deceased Iyyanar with Casuarina Sticks is well brought on record by the evidence of P.Ws.1 and 2. The specific overt act of Appellant / A.1 is also clearly stated in Ex.P.1 - Complaint also, which strengthens the oral evidence of P.Ws.1 and 2.

17. Oral evidence of P.Ws.1 and 2 is amply corroborated by the medical evidence. P.W.8 - Dr.Kamalakkannan had found as many as twelve external injuries on the body of deceased Iyyanar and the corresponding internal injuries, viz. fracture of occipital bone and fracture of right temporal bone. From Ex.P.9 - Post-mortem Certificate, we find that the deceased Iyyanar sustained several external injuries and corresponding internal injuries.

External injuries:

1. Abrasion 3 x 0.5 x 0.5 cm left forehead.
2. Diffuse contusion right side of neck.
3. Diffuse contusion over right maxilla.
4. Contusion 4 x 2 cm left upper chest.
5. Contusion 4 x 2 cm left lower chest.
6. Contusion 5 x 2 cm left upper abdomen.
  
7. Contusion 3 x 2 cm left infra axillary region.
8. Bleeding through both ears present.
9. Laceration 2 x 1 x 0.5 cm left upper eye lid.
  
10. Laceration 4 x 1 x 1 cm over right foot in

between 4th and 5th toes.

11. Diffuse contusion over right occipital region

right contusion 4 x 2 cm right temporal.

On exploration, injury No.11 fracture right

occipital bone with extradural haematoma 200 gm

present in the right occipital region.

O/E injury, 12 fracture right temporal bone present. Membrane torn in the corresponding region. Subdural haematoma 150 gm present in the right temporal region. O/E other injuries extravasation of blood clots seen in the subcutaneous planes except injury No.6. All injuries are antemortem in nature.

Definite medical evidence is that the deceased Iyyanar died of haemorrhage and shock due to head injuries.

18. We do not propose to go in detail on other aspects of the evidence as the learned Senior Counsel for the Appellant / A.1 confined his submissions only to the nature of the offence, which can be said to have been committed. What is contended by the learned Senior Counsel is that the occurrence happened and Iyyanar was attacked only because P.W.1 - Koothabiran gathered men viz. P.W.2, Veerabathiran, Iyyanar and one Chinnathambi and went to the house of accused Jayabal questioning as to why they had beaten up Iyyanar. Before the attack, there was wordy altercation. In the wordy altercation, admittedly, Iyyanar used abusive language against accused Jayabal as seen from the evidence of P.W.1 - Koothabiran, which reads thus:-

(VERNACULAR DELETED)

The fact that there was hot exchange of words is thus made clear from the above. In the quarrel which had followed, the Appellant / A.1 and accused Jayabal had become very angry (perhaps due to the abusive language hurled by Iyyanar) and they had beaten up deceased Iyyanar. There was no premeditation or pre-plan for attacking Iyyanar.

19. The learned Senior Counsel has relied upon the case of Camilo Vaz v. State of Goa (2000 Supreme Court Cases (Cri) 1128) in support of his contention that even if the injured received several cut injuries, the Supreme Court finding that the accused were not armed with any particular weapon and that the attack was in the course of rivalry between two groups, converted the conviction under Sec.302 I.P.C. into Sec.304 (II) I.P.C. In the above Judgment, though many injuries were caused to the deceased, pointing out the circumstances that the attack was in the group rivalry and that there was no evidence showing that the appellant was bent upon killing the deceased, the Supreme Court has altered the conviction from Sec.302 I.P.C. to Sec.304 (II) I.P.C. Drawing the attention of the Court to the above decision, the learned Senior Counsel submitted that the case in hand arises in an identical situation and that there are identical facts and circumstances that the accused had no intention to cause the death of Iyyanar and that the occurrence would not have taken place if P.W.1 had not gathered men and went to the house

of deceased Jayabal.

20. In view of the facts and circumstances of the case, we find that the conviction under Sec.302 I.P.C. is not proper. No doubt, the first attack was near the house of the accused Jayabal. Iyyanar ran towards the Lane near the Rice Mill. Accused Jayabal and others chased the deceased Iyyanar. Appellant / A.1 kicked Iyyanar on his neck. It is to be noted that there was only diffuse contusion on the right side of the neck. Hyoid bone was found intact. That the Appellant / A.1 throttled Iyyanar is not supported by medical evidence. Iyyanar only died of Haemorrhage and Shock due to head injuries. That accused Jayabal, Appellant / A.1 and other accused had no intention of causing the death of Iyyanar is clear from the fact that they were not armed with any deadly weapon.

21. The nature of the weapon used, the intention expressed by the accused at the time of the act, the motive for commission of the offence, the nature and the size of the injuries, the parts of the body of the victim selected for causing the injuries and the severity of the blow or blows are important factors that are to be taken into consideration in coming to a finding whether the accused had the necessary intention. The accused wielded only Casuarina Sticks on the head of the deceased. Though it has caused fracture of the skull bone, no intention of causing the death of Iyyanar could be attributed to Appellant / A.1. This is all the more so, when the companion assailants have been acquitted.

22. For the above reasons, in our considered view, the conviction under Sec.302 I.P.C. is to be altered into Sec.304 (II) I.P.C. However, considering the number of injuries and the manner of attack and that the Appellant / A.1 and others have chased Iyyanar, we find that the sentence of imprisonment is to commensurate with the nature of attack. On the facts and circumstances of the case, we are of the view that sentence of Rigorous Imprisonment of SEVEN Years would meet the ends of justice.

23. We, therefore, partly allow this appeal. The Judgment of the Principal Sessions Court in S.C.No.87 of 1996 (dated 24.12.1996) convicting the Appellant / A.1 under Sec.302 I.P.C. is altered to Sec.304 (II) I.P.C. For the conviction under Sec.304 (II) I.P.C., the Appellant / A.1 is sentenced to undergo Rigorous Imprisonment for a period of SEVEN Years. The period of detention already undergone by the Appellant / A.1 is ordered to be set off against the sentence imposed. The Trial Court is directed to take immediate steps for securing the Appellant / A.1 to commit him to prison for serving the remaining period of sentence.

Index:Yes

Internet: Yes

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To

1. The Principal Sessions Judge,  
Cuddalore.

2. The Collector,  
Cuddalore District,  
cuddalore.

3. The Superintendent,  
Central Prison, Cuddalore.

4. The Inspector of Police,  
Nellikuppam Police Station.

5. The Public Prosecutor,  
High Court, Madras.

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