

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2009

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM
AND
THE HONOURABLE MR.JUSTICE M.VENUGOPAL

CRIMINAL APPEAL NO.707 of 2008

Arivazhagan .. Appellant/Accused

Vs.

State by
the Inspector of Police,
Gudalore Police Station,
Nilgiris District,
Crime No.427/2004

.. Respondent/Complainant

This criminal appeal has been preferred under Section 374(2) Cr.P.C. against the judgment of the learned District Sessions Judge, Nilgris at Udhagamandalam made in S.C.No.72 of 2006, dated 22.02.2007.

For Appellant : Mr.S.N.Arunkumar

For Respondent : Mr.P.Kumaresan, APP.

JUDGMENT

(The judgment of the Court was made by M.VENUGOPAL, J.)

This appeal challenges the Judgment of the Sessions Division, Udhagamandalam made in S.C.No.72 of 2006 whereby the appellant/accused stood charged under Section 302 I.P.C. for causing the death of his younger brother Rajagopal by stabbing him with chisel on his stomach, left side of the chest and on the right forearm on 29.08.2004 at 09.30 p.m. at the family house of the appellant/accused at Vedan Vayal village and later resulting in his death in the hospital on 30.8.2004 at 01.05 hours and further in the course of the same transaction, the appellant/accused voluntarily caused hurt to Sangupillai, Ramachandran and Vanitha and thereby committed an offence under Section 324 (3 counts) of I.P.C.

2. On trial, the appellant/accused was found guilty under Section 302 and 324 (3 counts) of I.P.C. and was sentenced to undergo imprisonment for life for the offence under Section 302 I.P.C. and for an offence under Section 324(3 counts) I.P.C., was sentenced to undergo Rigorous Imprisonment for 6 months each and it was merged with the sentence of imprisonment for life.

3. The short facts of the prosecution case are as follows:-

The appellant's younger brother is P.W.2 Shanthanakumar. The appellant's elder brother is P.W.3 Ramachandran. The deceased Rajagopal is the brother of the appellant/accused. P.W.4 Vanitha is the sister of the appellant. P.W.1 Chinnaiah is the younger brother of the appellant's father. The appellant's father-in-law is P.W.13 Sangupillai. The appellant, P.W.2, the deceased Rajagopal and their mother have been residing at Vedan Vayal on 29.08.2004. In connection with the first death anniversary of the appellant's father, P.Ws.1 to 4, P.W.13 and their relatives have gathered in the house of the deceased Rajagopal. While family members including the deceased and the appellant have engaged themselves in trivial conversation around 08.00 p.m. after their supper, the appellant claimed a share of land in his father's land but the appellant has been informed by the deceased brother Rajagopal that their father has secured a loan of Rs.40,000/- by mortgaging the land. Further, he has suggested that all the brothers shall contribute Rs.5,000/- and redeem the property and to divide the same. For that, the appellant/accused has stabbed his deceased younger brother Rajagopal with M.O.1 Chisel by uttering 'who are you to say' and the deceased brother by screaming has fallen down. At this juncture, P.W.13, P.Ws.3 and 4 have intervened and when they made an endeavour to snatch the chisel from the appellant, they have sustained injuries. The injured have been taken to the Government Hospital, Gudalore in P.W.6 Hakim's auto. P.W.8 the doctor attached to the Government Hospital, Gudalore (who has been on duty on 29.08.2004) at 10.10 p.m.) has examined Rajagopal the younger brother of the appellant and after noting down the injuries in Ex.P7 the Accident Register has referred in to the Government Head Quarters Hospital, Ooty for further management.

4. Further, P.W.8 the doctor on the same day at 10.55 p.m. has examined P.W.3 Ramachandran (the injured) and has noted down two injuries in Ex.P8 the Wound Certificate and has opined that the injuries are simple in nature. Added further, P.W.8 the doctor has examined the injured P.W.13 Sangupillai on 29.08.2004 at 10.45 p.m. and after noting down two injuries in Ex.P9 the Wound Certificate is of the opinion that the injuries are simple in nature. Also P.W.8 the doctor has examined the injured P.W.4 Vanitha at 10.25 p.m. On 29.08.2004 and after noting down one injury in Ex.P10 the Wound Certificate has referred the patient to the Government Head Quarters Hospital, Ooty to rule out any intra cranial damage and for further management and later on, he is of the opinion (based on the opinion of doctor who treated the injured at the Government Head Quarters Hospital, Ooty) that the injury is simple one. P.W.8 the doctor has sent Ex.P11 intimation to the Sub Inspector of Police, Gudalore informing about the assault and injury of the history of the case relating to Rajagopal, Ramachandran, Vanitha and Sangupillai.

5. P.W.15 the Sub Inspector of Police, Gudalore Police Station after receiving information over phone at about 01.15 a.m. on 30.08.2004 has gone to the Government hospital on the same day at 02.00 a.m. and has gone to the Government hospital, Udthagamandalam at

about 04.00 a.m. since the deceased Rajagopal and P.W.4 Vanitha have been referred to the Government hospital, Udhagamandalam and he has been informed that Rajagopal has expired on 01.05 hours and Ex.P20 is the death intimation and that he has recorded the statement of P.W.1 Chinnaiah and registered the case in Cr.No.427 of 2004 of Gudalore Police Station under Section 302, 324 I.P.C. on 30.08.2004 at 08.00 hrs and Ex.P21 is the First Information Report and that the copies of the First Information Report have been sent to the learned Judicial Magistrate and other higher authorities concerned.

6. P.W.16 the Inspector of Police after taking up the investigation of the case on 30.08.2004 has conducted an inquest over the body of the deceased Rajagopal and prepared Ex.P22 Inquest Report. He has also given a requisition Ex.P12 addressed to the Chief Medical Officer, Government Head Quarters of Udhagamandalam through P.W.14 the Head Constable attached to Gudalore Police Station praying for the conduct of the post mortem examination over the body of the deceased. P.W.14 the Head Constable has recovered M.O.7 Jatti, M.O.8 Lungi and later has handed over the body of the deceased Rajagopal to his relatives. He has handed over M.O.7 and M.O.8 to the Sub Inspector of police along with the Special Report Ex.P19. P.W.9 the doctor attached to the Government hospital, Udhagamandalam has conducted the Post Mortem on the body of the deceased Rajagopal and after noting down four injuries has sent the viscera for chemical examination and Ex.P14 is the Viscera Report and that P.W.9 the doctor has given an opinion that the deceased Rajagopal would appear to have died due to injury No.3 causing shock due to excessive blood loss and hypovolemia and the Post Mortem Certificate issued by him is Ex.P13.

7. P.W.16 the Investigating Officer has visited the scene of occurrence and prepared the observation mahazar Ex.P2 and rough sketch Ex.P23 in the presence of witnesses P.W.5 Ramesh and Palaniyandi. Further, with the assistance of Photographer P.W.7, he has taken 10 photographs viz., Ex.P5 and the negatives Ex.P6. Continuing further, the Investigating Officer P.W.16 has seized M.O.2 blood stained earth and M.O.3 earth with blood stained as per Ex.P3 mahazar in front of the witnesses P.W.5 Ramesh and Palaniyandi and also seized M.O.4 black striped green full hand shirt, M.O.5 light blue stained full hand shirt and M.O.6 blood stained white dothi with green border as per Ex.P4 in the presence of witnesses referred to earlier. He has also examined the statement of witnesses Chinnaiah, Paramasivam, Sandhanakumar, etc., and duly recorded their statements. He has arrested the appellant in the presence of P.W.12 the Village Administrative Officer at Vedan Vayal SeliKadi road and that the appellant has given a confessional statement and the admissible portion is marked as Ex.P17 and the appellant has produced M.O.1 Chisel from a bush and the same has been recovered under Ex.P18 in the presence of witnesses. The appellant has been sent for remand by P.W.16 the Investigating Officer and further the seized articles have been sent for remand. Apart from this, P.W.16 the Investigating Officer has given a requisition Ex.P24 and Ex.P26 to the Judicial Magistrate Court, Gudalore requesting for causing the seized articles for the purpose of chemical examination and a requisition Ex.P25 and

Ex.p27 have been duly signed for chemical examination and the reports of the chemical examiner and Serologist are Exs.P28 and P29.

8. Besides the above, P.W.16 the Investigating Officer has examined P.W.11 the A.E. Of Tamilnadu Electricity Board, Sandynalla and has received a Certificate Ex.P16 from him to the effect that there has been no power failure on 29.08.2004 and 30.08.2004 in the place of occurrence (viz., the house). He has also examined P.W.10, the Tahsildar and has received Ex.P15 Adangal extract to say that the land survey No.26/1 stands in the name of Chellamma(the mother of the deceased Rajagopal). P.W.16 the Investigating Officer after completing the investigation of the case has laid a charge sheet against the appellant/accused.

9. The appellant/accused on examination under Section 313 of the Criminal Procedure Code has denied the incriminating circumstances appearing against him and informed that a false case has been foisted. On the side of the appellant/accused, no witness has been examined.

10. After contest, the trial Court heard the arguments advanced on both sides and after appreciation of the oral and documentary evidence has come to the conclusion that the prosecution has proved the guilty of the appellant/accused beyond all reasonable doubt and found him guilty under Section 302 and 324 (3 counts) of I.P.C. and awarded the life imprisonment under section 302 I.P.C. and awarded the Rigorous imprisonment for six months each under Section 324 (3 counts) I.P.C. and the said sentence of imprisonment ordered under Section 324 (3 counts) of I.P.C. is to run concurrently and the same has been merged with the sentence of life imprisonment. Thus, the appellant has projected this appeal.

11. Admittedly, the appellant/accused and the deceased Rajagopal are the sons of Chellammal. P.W.2, P.W.3 and P.W.4 are the appellant's brothers and sister. One year before the occurrence, the appellant's father has expired. The complainant Chinnaiah viz., P.W.1 has given Ex.P1 the complaint. He is the paternal uncle of the appellant (appellant's father's brother). The appellant's father-in-law is P.W.13 Sangupillai.

12. It is not in dispute that the deceased Rajagopal died on 30.08.2004 at 01.05 hrs due to homicidal violence in an incident that has taken place on 29.08.2004 at 09.30 p.m. P.W.9 the doctor who has conducted the post mortem on the body of the deceased Rajagopal has issued Ex.P13 the post mortem Certificate and has received Ex.P14 Chemical Examiner report in regard to the parts of the body sent for examination. It is significant to point out that P.W.9 the doctor in Ex.P13 Post Mortem Certificate has noted down the four injuries on the body of the deceased which runs as follows:-

'(a) A cut injury of 8 cm X 1.5 cm about 5 cm above umbilicus on left side of abdomen placed superiorlaterally with 8 loops of small intestine protruding out.

b) A cut injury of 4.5 cm X 0.5 cm over right forearm medially placed 8 cm below the medial epicondyle.

c) A penetrating injury of 4.5 cm in length, 2.5 cm width, 5 cm depth, extending under the skin exposing muscles placed in the medial aspect of right elbow just above the elbow just probing of wound revealed cut injury of Basalic vein, median nerve and Brachial Artery.

d) Cut injury of 1.5cmX0.5 cm dimension over left chest 5 cm above nipple. EG normal.'

He has opined that the deceased would appear to have died due to injury No.3 (three) causing shock due to excessive blood loss and hypovolemia and added further, P.W.9 is of the opinion that with M.O.1 Chisel the injury would have been caused on the deceased and because of that injury, there is a possibility that the deceased would have died. P.W.8 the doctor has given Ex.P7 the Accident Register (in respect of the deceased) and he has noted down the injuries. The injuries/wounds as seen in Ex.P7 are as follows:-

'a) A stab wound about the size of the 8 cm X 1.5 cm on the abdomen above the umbilicus through which the loops of intestine are protruding out.

b) An incised wound about the size of 1.5 cm X 1/2 cm on the left side of the chest just above left nipple.

c) An incised wound about the size of 4 cm X 1cm X 0.5cm on the front of the right forearm below the elbow on the medial aspect.

d) An irregular lacerated wound about the size of 5 cm X 2 cm X 3/4 on the front of the medial aspect of right exposing the vessels and nerves.'

In fact, P.W.8 the doctor has stated that the fourth injury found on the body of the deceased Rajagopal is a grievous injury.

13. P.W.8 the doctor has furnished the Wound Certificate Ex.P8 to P.W.3 Ramachandran and has found the following injuries:-

'a) An incised wound about the size of 4 cm X 1.5 cm X 1 cm on the upper part of outer aspect of left thigh.

b) An abrasion on the left side of the face about the size of 1 cm X 1/2 cm just below the eye.'

14.P.W.8 the doctor has given the Wound Certificate Ex.P10 to P.W.4 Vanitha and has found the following injury:-

'a) An irregularly lacerated wound about the size of 2 cm X 3 /4 cm X bone depth on the left side of the upper part of the forehead.'

15.As far as the present case is concerned, P.Ws.1, 3, 4 and 13 are the eyewitnesses to the occurrence. The evidence of P.Ws.1 to 4 is to the effect that when the death anniversary of the appellant's father has fallen on 29.08.2004 at about 08.00 p.m., when the family members have engaged themselves in trivial conversation, the appellant has demanded a share in his father's property and the deceased younger brother of the appellant viz., Rajagopal has given a suggestion that each one can contribute Rs.5,000/- so as to redeem the property (which has an outstanding loan of Rs.40,000/-) and later the same can be partitioned at that time, the appellant/accused has

uttered 'who are you to say' and by taking the chisel rushed towards the deceased and stabbed him on the stomach, left side of the chest and in the right forearm and witnesses P.Ws.3, 4 and 13 intervened to snatch M.O.1 the chisel from the appellant, in the process they have received injuries.

16.The appellant's father-in-law P.W.13 has deposed that he has sustained an injury at the time of occurrence. Strangely, in his cross-examination, he has stated that he has received injury while climbing a tree.

17.It is not out of place to point out that in the Wound Certificate Ex.P9 in respect of P.W.13 it is mentioned by P.W.8 the doctor that the injured has suffered the injury, said to have been caused on 29.08.2004 at 09.30 p.m. due to assault made by a known male person at his son-in-law house at Vedan Vayal. In short, the evidence of P.W.1, P.W.3, P.W.4 and P.W.8 the doctor will clinchingly go to show that P.W.13 father-in-law of the appellant has sustained the injury found in Ex.P9, the Wound Certificate on the date of occurrence. One cannot ignore an important fact that P.Ws.3 and 4 are the brother and sister of the appellant. The evidence of eyewitnesses viz., P.Ws.1, 3 and 4 have been corroborated in material particulars in the present case on hand through medical evidence and also by the evidence on other witnesses. In the present case, the appellant has been arrested by P.W.6 in the presence of the Village Administrative Officer, P.W.12 and the appellant has given Ex.P17 confession (admitted portion) in pursuance of which M.O.1 chisel has been seized and as a matter of fact, P.W.5 the mahazar witness and P.W.12 the Village Administrative Officer have clearly rendered the cogent evidence supporting the deposition of P.W.16 the Investigating Officer really speaking observation mahazar Ex.P2, rough sketch Ex.P23, Photos Ex.P5, negatives Ex.P6 have been prepared and taken by P.W.16 the Investigating Officer and he has also seized blood stained earth, earth without blood stained M.Os.2 and 3 as per Ex.P3 mahazar in the presence of witnesses and also prepared Ex.P4 mahazar for seizing M.Os.4 to 6 viz., black stripped green full hand shirt, light blue blood stained full hand shirt and white dothi with blood stained. P.W.12 the Village Administrative Officer in his evidence has stated that P.W.16 the Investigating Officer has arrested the hiding appellant/accused on the road side of Vedan Vayal and that the appellant/accused has given a confession and admissible part is marked as Ex.P17 and that the appellant has produced the chisel M.O. from the bush of the back side of his house for which the mahazar has been prepared in which he and his assistant Velayutham has signed.

18.It is pertinent to point out that the evidence of P.W.2 is to the effect that he has taken the deceased Rajagopal to the Government Hospital, Udagamandalam for further treatment. Suffice it to point out that in the present case, the evidence of P.Ws.1, 3 and 4 have been corroborated by other witnesses and medical witnesses and the presence of the witnesses at the place of occurrence has been most natural and real and cannot be rejected merely on the basis that they are closely related to the deceased. Moreover, the evidence of eyewitnesses in this case are natural, cogent, convincing and the

same are worthy of acceptance by this Court. On an overall assessment of the eyewitnesses evidence which have been corroborated by other witnesses and medical witnesses, etc., in material aspects, this Court unhesitatingly concludes that the appellant/accused has caused the death of the deceased Rajagopal by stabbing him with M.O.1 chisel on the day of occurrence on 29.08.2004 at about 09.30 p.m. in the family house of the appellant at Vedan Village and resulting in his death on 30.08.2004 at about 01.05 hrs and further that the appellant has also caused injuries to P.W.3, P.W.4 and P.W.13 and these have been proved beyond all reasonable doubt in the instant case by the prosecution to the satisfaction of this Court and rightly he has been awarded with a sentence of imprisonment for 6 months each under Section 324 (3 counts) I.P.C.

19. The learned counsel for the appellant contends that the appellant/accused has entered into an oral verbal sudden quarrel by means of provocation with his deceased younger brother Rajagopal on the date of occurrence on 29.08.2004 at about 09.30 p.m. in which he stabbed the victim with M.O.1 Chisel and the victim has expired on 30.08.2004 at about 01.05 hrs and that the act of the appellant/accused cannot be termed as murder and instead the act of the accused will come under Section 304 Part I of I.P.C. In this connection, this Court quite aptly points out that Section 304 Part I of I.P.C. applies to a case where the act by which death is caused is done with the intention to causing death or causing such bodily injury as is likely to cause death. For conviction of the offence of culpable homicide not amounting to murder as per Section 304 Part I of I.P.C. the following circumstances ought to be proved:

The act by which the death is caused is done. i) with the intention of causing death or ii) of causing such bodily injury as is likely to cause death. On a careful consideration of entire material on record, this Court finds the appellant/accused guilty under Section 304 I.P.C. (in regard to the offence of culpable homicide not amounting to murder) and not under Section 302 of I.P.C. and therefore this Court sets aside the conviction of the appellant/accused under Section 302 I.P.C. but convicts him under Section 304 Part I of I.P.C. and awards sentence of rigorous imprisonment of 7 years and to this extent, the Judgment of the trial Court passed in S.C.No.72 of 2006 on the file of the learned District Sessions Judge, Nilgris at Udthagamandalam is modified and in other aspects, the Judgment of the trial Court is confirmed. The sentence of 6 months Rigorous imprisonment each awarded for the offence under Section 324 (3 counts) I.P.C. shall run concurrently with the sentence of 7 years Rigorous imprisonment awarded by this Court for the offence under Section 304 Part I of I.P.C.

Sd/
Asst.Registrar

/true copy/

vri

To

1.The District and Sessions Judge,
Nilgris,
Udhagamandalam.

2.The District Collector,
Nilgiris District.

3.The Additional Superintendent
Central Prison, Coimbatore

4.The Director General of Police,
Mylapore, Chennai.

5.The Inspector of Police,
Gudalore Police Station,
Nilgiris District,
Crime No.427/2004

6.The Additional Public Prosecutor,
High Court, Madras.

NTK (CO)
SRA (06/02/2009)

CRL.A.NO.707 of 2008



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