

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED: 23.09.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.A.No.166 of 2014

Senthilkumar

... Appellant/Accused

Vs.

State, Rep. by the Inspector of Police
Erode South Police Station,
Erode District.

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment of the learned Sessions Judge, Magalir Neethi Mandram / Fast Track Court, Erode District in S.C.No.101 of 2013, dated 24.02.2014.

For Appellant : Mr.C.D.Johnson
For Respondents : Mr.V.M.R. Rajentren,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by S.TAMILVANAN,J)

The Criminal Appeal has been preferred under Section 374(2) of the Code of Criminal Procedure, by the appellant / accused against the Judgment of conviction and sentence, dated 24.02.2014 made in S.C.No.101 of 2013 on the file of the learned Sessions Judge, Magalir Neethi Mandram / Fast Tract Court, Erode District.

2. The case of the prosecution is that the deceased Chithra @ Sitheswari was wife of one Thangaraj. They have got two children, however, deserting her husband and children, the deceased was living with her mother, Mrs.Mariyammal, the defacto-complainant herein. While so, the deceased had illicit intimacy with one Senthilkumar and later, she allegedly married him against law. Annoyed with her conduct, the said Senthilkumar warned her, hence, she left him also and started to live with her mother. In order to get back her clothes and house hold articles,as per the undertaking given before the Salem Town

Women Police Station, on 05.05.2012 at 20.30 hrs, the deceased along with her mother Mariyammal came to the place of the accused at No.20, Kanimozhi Apartment, Dhanakodi Layout Street, Soorampatti. At that time, with an intention to kill her, the accused / appellant stabbed her all over her body with a knife, as a result of which, the deceased succumbed to the injuries. Thus, the appellant has committed an offence punishable under Section 302 IPC.

3. Based on the above materials, the trial Court framed charge under Section 302 IPC against the accused. Since the accused had denied the charges, he was put on trial.

4. During the course of trial, on the side of the prosecution, as many as 16 witnesses were examined, 27 documents and 11 Material Objects were marked.

5. It is seen that P.W.1 is the mother of the deceased. She has stated that after the second marriage of the deceased with the accused, they were living separately. Three months after their marriage, the deceased deserted the accused and came to her place. At that time, the accused asked the deceased to come to the place of living together on 04.05.2012 to collect her properties. Accordingly, they went there for taking the movable properties of the deceased and when she was taking certain properties from one room, P.W.1 heard the alarm of the deceased from another room. When she went there, she could see that the accused was attacking her daughter, the deceased with knife on her stomach, chest, breast and all over the body. Thereafter, the deceased was taken in an Auto by her along with two other persons and rushed to the Government Hospital, where she was declared as dead. Thereafter, P.W.1 went to the Police Station and gave a statement about the occurrence and the same was written as complaint, Ex.P.1 and she subscribed her signature on the same. Though, P.W.2, Manoharan and P.W.3, Karrupusamy were cited as eye-witnesses, they deposed that they have not seen the occurrence. Likewise, P.W.4, Parameswaran and P.W.7, Natarajan, who signed in the Observation Mahazar have also deposed that they did not know anything about the occurrence and they turned hostile. P.W.5, Doctor Krishnamoorthy, who examined the deceased after the occurrence has stated that when he examined, the deceased was found dead and he sent the communication, Ex.P.3 to the Police Station and sent the dead body for postmortem. P.W.6, Doctor Priya, during postmortem found multiple injuries on the chest, breast, abdomen, nipple, shoulder and all over the body of the deceased. Finally, she opined that the death would have taken place due to the injuries sustained by her on the vital parts of her body and also due to the heavy blood oozing and gave Postmortem Certificate, Ex.P.6 and Final Opinion, Ex.P.7. She handed over the dead body to P.W.12, through Special Report, Ex.P.20.

6. P.W.14, Sub-Inspector of Police, registered a case in Cr.No.400 of 2013 under Section 302 IPC and prepared First Information Report, Ex.P.22 and forwarded the same to the Judicial Magistrate concerned through P.W.11, Murugesan, Head Constable. P.W.15, Sivakumar, Inspector of Police took the case for investigation and rushed to the place of occurrence and prepared Observation Mahazar, Ex.P.23 and Rough Sketch, Ex.P.24 and conducted inquest on the dead body of the deceased in the presence of panchayatdars and prepared Inquest Report, Ex.P.25. Thereafter, he enquired, P.W.1, Mariyammal, P.W.2, Manoharan, P.W.3, Karuppusamy, P.W.4, Parameswaran, P.W.7, Natarajan and other witnesses and sent the dead body for postmortem through P.W.12, Woman Constable Indirani. He made arrangement for taking photographs of the dead body, then, he arrested the accused at Palayapalayam, near Suthanandhan Nagar Arch in the presence of P.W.8, Village Administrative Officer Azhaguraj and his Assistant Balu @ Balasubramaniam and recorded the confession statement given by the accused. Then P.W.15, Inspector recovered the knife under Mahazar, Ex.P.10 and sent the material objects under Form 91 to the Court under Ex.P.26 and Ex.P.27. P.W.16, Inspector Vijayan continued further investigation in this case and he enquired some of the witnesses and recorded their statements and sent the Viscera and the body of the deceased for Chemical Examination, under Ex.P.11 to Ex.P.13. After receiving Serology and Chemical Report and after completing the investigation, he laid charge sheet under Section 302 IPC against the accused.

7. When the incriminating evidence available on record were put to the accused under Section 313 Cr.P.C, he denied the same. However, he did not neither choose to examine any witness on his side nor to mark any document. Having considered the evidence and materials, the trial Court found the sole accused guilty under Section 302 IPC and imposed a life sentence and a fine of Rs.10,000/-, in default to undergo simple imprisonment for one year. That is how, the appellant is before this Court with this appeal.

8. Heard, Mr.C.D.Johnson, learned counsel for the appellant and Mr.V.M.Rajentren, learned Additional Public Prosecutor for the respondent and also perused the records carefully, in order to decide the appeal.

9. Learned counsel for the appellant would submit that in the instant case, absolutely, there is no direct eye witness to connect the accused with the crime. He would further submit that though it was deposed by P.W.1, mother of the deceased that she along with two other persons had taken her daughter to the Hospital in an Auto, neither any auto driver was examined nor any blood stained clothes of deceased was recovered and marked. He would also submit that though it is stated that the

occurrence had taken place in an apartment, no inmates from the apartment has been examined. Further, there is a delay in sending the FIR to the Court concerned. The learned counsel for the appellant would further submit that conviction cannot be imposed only based on the recovery of material object in the presence of P.W.8, Village Administrative Officer. The learned counsel for the appellant would also submit that there is a delay in lodging the FIR. For all the above, the learned counsel seeks for allowing the appeal.

10. Per contra, learned Additional Public Prosecutor would submit that there is specific overt act against the accused, roping him with the alleged crime. He would further submit that on 05.05.2012, the deceased along with her mother came to take back her articles, as per the undertaking given by the accused before P.W.13, Sub-Inspector of Police, however, at that time of taking back her properties, the accused assaulted her on her chest, stomach and all over the body with M.O.7, knife, which was used by the accused in the meat shop run by him and caused multiple injuries on the deceased and she was brought dead to the Hospital. Learned Additional Public Prosecutor would further submit that the evidence of P.W.1 has been corroborated by the medical evidence of P.W.6, Doctor, who conducted postmortem. The learned Additional Public Prosecutor would further submit that the appellant has himself given a voluntary confession statement before P.W.8, Village Administrative Officer at the time of arrest. So, the motive is also established and he is the sole accused and the guilt against the appellant / accused has been proved beyond reasonable doubt. Hence, he would pray to dismiss the present appeal.

11. We have carefully considered the above submissions and the evidence available on record.

12. Though it is contended by the learned counsel for the appellant that there is no eye-witness to state that the appellant only caused the multiple injuries on the body of the deceased and there was no such occurrence, as alleged in this case. It has been established that the occurrence has taken place in the place of the appellant and P.W.1 in her evidence has clearly stated that when she along with her daughter went to the appellant's place to collect her daughter's articles, as per the undertaking given by the appellant / accused before P.W.13, Inspector of Police and while she was taking the articles from one room, she heard the alarm of her daughter from another room and when she went there, she could see the accused was attacking all over the body of her daughter, the deceased with knife, which was used by the accused in the meat shop run by him. Thereafter, she took her daughter in an auto along with two other persons directly to the Government Hospital, Erode, where her injured daughter was declared as dead. Then, straightaway,

she went to the Police Station and gave the complaint, relating to this case. Therefore, though it is stated that P.W.1, being the mother of the deceased is an interested witness and apart from her, all the other eye-witnesses have turned hostile and neither any inmate from the apartment of the deceased nor the auto driver was examined and blood stained sample earth and unstained sample earth not recovered from the place of occurrence, the available evidence is sufficient to conclude that the accused only has committed the said offence and he had also got motive to kill her, which is supported by medical evidence. In the apartment blood stained earth normally could not be recovered, similarly, the prosecution need not recover and mark the blood stained saree of P.W.1, mother of the deceased, hence, which would not vitiate the prosecution case.

13. Though, it is contended by the learned counsel for the appellant that the accused has got no motive to kill her, it is seen that the deceased after deserting her first husband, had illicit intimacy with the accused and thereafter, leaving her husband and two children, was living with the accused, which is not in dispute. Since there were difference of opinion between the deceased and the accused, the deceased started living with her mother, P.W.1 and as per the undertaking given before P.W.13, Inspector of Police, based on her complaint to return back her articles, she along with her mother went to the place of the accused, to collect her articles. At that time, annoyed with the conduct of the deceased, the accused assaulted her with knife, who is running a meat shop, so the motive is also proved.

14. We are of the considered view that the evidence of P.W.1 has also been corroborated by the medical evidence of P.W.6, Postmortem Doctor. P.W.1 has clearly stated in her evidence that the accused is the assailant, who attacked her daughter with knife on her chest, breast, stomach and all over the body. In this regard, P.W.6, Postmortem Doctor, Priya in her Postmortem Certificate has found not less than 23 multiple injuries on the body of the deceased and further, she has given an opinion that the death would appear to have caused due to shock and hemorrhage, on account of 15 multiple injuries. It is not in dispute that the accused is running a meat shop and he used the knife, which was being used for cutting the meat to attack the deceased.

15. Though it is simply contended that there is a delay in sending the FIR to the Court concerned, there is no proper explanation to the same. Considering all the above aspects on proper perspective, the Trial Court has convicted the accused under Section 302 IPC and sentenced him accordingly.

16. In view of all the above, we find no infirmity in the well considered Judgment of the trial court, so as to warrant any interference.

In the result, the Criminal Appeal is dismissed and the conviction and sentence imposed by the learned Sessions Judge, Magalir Neethi Mandram / Fast Track Court, Erode District in S.C.No.101 of 2013, dated 24.02.2014 on the appellant stands confirmed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

tsi / tsvn

To

1. The Sessions Judge, Magalir Neethi Mandram
Fast Track Court, Erode District.
 2. -do- Through The Principal Sessions Judge,
Erode District.
 3. The Inspector of Police
Erode South Police Station,
Erode District.
 4. The Judicial Magistrate No.3, Erode.
 5. -do- Through The Chief Judicial Magistrate, Erode.
 6. The Superintendent Central Prison, Coimbatore.
 7. The Public Prosecutor
High Court of Madras, Chennai - 600 104.
- + 1 cc to MR.C.D. Johnsan, Advocate Sr.52108

UG(CO)
Eu 17.02.16

Cr1.A.No.166 of 2014