

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.17/2014

Manju

.. Appellant/Complainant

Vs

1. Nagarajan @ Nesakumar @ Nesa

2. Bhavani

3. The Inspector of Police,

Thiruvallur Taluk Police Station,

Thiruvallur.

.. Respondents

Appeal filed u/s.374 Cr.P.C., against the Judgment of acquittal passed by the learned I Additional Sessions Judge, Thiruvallur, Thiruvallur District, made in S.C.No.233 of 2011, dated 05.10.2013.

For Appellant	:	Mr.K.Kannan
For 1st Respondent	:	Mr.S.Suresh
For 2nd Respondent:		Dr.G.Krishnamurthy
For 3rd Respondent:		Mr.E.Raja, Additional Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by **S.NAGAMUTHU, J.**]

This is an appeal against acquittal of the respondents 1 and 2, who were accused 1 and 2, in S.C.No.233 of 2011 on the file of the learned I Additional Sessions Judge, Thiruvallur, Thiruvallur District. The 1st respondent/1st accused stood charged for offences under Sections 324 (3 Counts) IPC and 302 of IPC. The 2nd respondent/2nd accused stood charged for offence under Section 302 read with 109 of IPC. The trial court, by judgment, dated 05.10.2013 acquitted both the respondents 1 and 2. Challenging the same, the appellant, who is one of the victims in this case, has come up with this Criminal Appeal.

2. The case of the prosecution in brief is as follows:

(a) The appellant/P.W.1 is the sister of the deceased "Sanju". Sanju was the wife of the 1st accused. They were residing at Ramapuram, Tiruvallur District. They have got two children born out of the said wedlock. In due course of time, it is alleged that the 1st accused developed illicit intimacy with the 2nd accused. The deceased questioned the same. This resulted in frequent quarrels between them. Four days prior to the occurrence, on account of the above said quarrel, the deceased came to the house of P.W.1 and stayed there.

(b) On 27.01.2011, she returned to her matrimonial home. At the house of the first accused, one Mr.Dass, the sister's son of the 1st accused was there. He questioned the deceased as to why the deceased had returned to the matrimonial home. The deceased informed the same to P.W.1. Thereafter, P.W.1 with her step father, step mother and sister went to the house of the deceased to persuade the 1st accused. It was around 05.30 p.m. At that time, the 1st accused was not available. P.Ws.1 to 3 were talking to the deceased. Around 07.30 p.m., the 1st accused returned home. On seeing them, the 1st accused got wild. He shouted at them as to why they had come to his house. He abused the deceased and kicked her. The deceased tried to run away. He further kicked her. As a result, she fell down near the Vinayagar Temple situated by the side of the house of the 1st accused. When she tried to get up, the 1st accused took out a knife and stabbed her repeatedly on her left flank. The deceased raised a distress call. P.Ws.1 to 4 rushed to the rescue of the deceased. The 1st accused, not stopping with that, attacked P.Ws.2 to 4 with the same knife repeatedly and caused extensive injuries. The 1st accused, then, fled away from the scene of occurrence. On seeing the alarm raised by PWs.1 to 4, the neighbours gathered at the place of occurrence. They took all the injured to the Government Hospital at Tiruvallur. The Doctor in Thiruvallur Government Hospital examined the deceased and declared her dead. The other

injured were admitted as inpatients. Thereafter, P.W.1 went to Thiruvallur Taluk Police Station and at 11.30 p.m., she made a complaint.

(c) P.W.18, the then Inspector of Police, on receipt of the said complaint, registered a case in Crime No.39/2011 under Sections 294-b, 323, 324 and 302 of IPC. Ex.P.1 is the complaint and Ex.P.18 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 06.00 a.m. on 28.01.2011. P.W.18 took up the case for investigation. He went to the hospital, examined P.Ws.1 and 4 and recorded their statements. He conducted inquest on the body of the deceased between 08.00 and 10.00 a.m. on 18.01.2011 in the presence of the Panchayatdars. Then, he forwarded the body for postmortem. At 11.00 a.m., he visited the place of occurrence in the presence of P.W.8 and P.W.9 and he recovered the blood stained earth and sample earth from the place of occurrence under a Mahazar. He examined few more witnesses at the place of occurrence.

(d) P.W.15 Doctor Jagadeeshkumar conducted autopsy on the dead body of the deceased on 25.01.2011 at 02.00 a.m. He found the following injuries:

"Internal Injuries :

1. Stab injury 10 c.m. below shoulder out the axillary region.

Depth 2 inch and 1 inch length with one inch width seen extending up to pleura cavity;

2. Cut injury - Laceration of 4 x 1.5 c.m. depth with multiple injuries abrasion seen over the body.

Stomach : 200 ml. of undigested food.

Trachea, Hyoid Bone : Normal.

Lungs, Heart, Kidney, Intestines, Liver, Spleen soft and pallor.

Hyoid Bone : Normal.

Uterus on cross section is normal."

Ex.P.15 is the Postmortem Certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the multiple injuries found on the body of the deceased. He further opined that the said injuries would have been caused by a weapon like M.O.1 Knife.

(e) During the course of investigation, P.W.18 recovered Blood stained clothes from the body of the deceased and forwarded the same to the court. On 28.01.2011 at 04.45 p.m., P.W.18 arrested the 2nd accused and then, he

forwarded her to court for judicial remand. The investigation was, thereafter, continued by his Successor P.W.19.

(f) During the course of investigation, on 24.03.2011 at 01.00 p.m., near Ramapuram Bus Stop, P.W.19 arrested the 1st accused in the presence of P.W.13 and another witness. On such arrest, he made a voluntary confession in which he disclosed the place where he had hidden the knife. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.1 Knife. P.W.19 recovered the same under a Mahazar in the presence of the same witnesses. On returning to the police station, he forwarded the 1st accused to court for judicial remand and also handed over the material objects to court. He collected the medical records, examined few more witnesses. At his request, the material objects were sent for chemical examination which revealed that there were human blood stains found on all the material objects except the knife. On completing the investigation, he laid charge sheet against both the accused.

3. Based on the above materials, the Trial Court framed charges 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 19 witnesses were examined and 29 documents and 7 material objects were also

marked.

4. Out of the said witnesses, P.Ws.1 to 4 are the eye-witnesses out of whom P.Ws.2 to 4 are injured eye-witnesses. They have vividly spoken about the entire occurrence including the overt acts of the 1st accused. P.W.1 has spoken about the complaint made by her to the Police Officer. They have also spoken about the motive. P.W.5 has not stated anything incriminating against the accused. P.Ws.6, 7 and 9 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.8 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.Ws.10 and 11 have spoken about the arrest of the 2nd accused. P.W.12 has spoken about the photographs taken by him at the place of occurrence. P.W.13 has spoken about the arrest of the 1st accused, the disclosure statement made and the consequential recovery of M.O.1 Knife from his possession.

5. P.W.14 has spoken about the treatment given to P.Ws.2 to 4. According to him, at 08.20 p.m. on 27.01.2011, he examined P.W.4 at the Government Hospital at Thiruvallur. At that time, P.W.4 was conscious. He told that at 07.30 p.m., he was stabbed with a knife by a known person. He found a superficial lacerated injury measuring 2 x 1 c.m. on his right armpit. Ex.P.11 is the Accident Register. According to the Doctor, the said injury is simple in

nature. On the same day, at 08.50 p.m., he examined P.W.3-Poongavanam. She was also conscious. She told that at 07.30 p.m. on the same day, she was stabbed with a knife by a known person. The Doctor found a cut injury measuring 1 x .8 c.ms. on her left forearm. Ex.P.12 is the Accident Register. According to the Doctor, the said injury is simple in nature. On the same day, at 08.10 p.m., he examined P.W.2 Dhanasekaran. He was conscious. He told the Doctor that on the same day at 07.30 p.m., he was stabbed with a knife by a known person. He found that his right thumb was amputated. According to the Doctor, the said injury is simple in nature. Ex.P.13 is the Accident Register. On the same day at 08.00 p.m., he examined the deceased and declared her dead. He found a cut injury measuring 3.5 x 1 c.m. between 3rd and 4th ribs and another cut injury measuring 4 x 1 c.m. was found on her left forearm and yet another cut injury was found near the injury No.2 measuring 2 x .5 cms. Ex.P.14 is the Certificate issued by him.

6. P.W.15 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.16, who was expected to speak about the arrest of the 1st accused, has turned hostile and he has not supported the case of the prosecution in any manner. P.W.17 the Police Constable has spoken that he took the dead body of the deceased and handed over the same for postmortem as directed by P.W.18. P.W.18 has spoken about the registration of

the case on the complaint of P.W.1 and the investigation done by him. P.W.19 has spoken about the further investigation done by him and the final report filed by him.

7. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor to mark any document on their side. Having considered all the above, the trial court acquitted the accused. That is how, P.W.1 in the case, who is one of the victims, has come up before this Court with this appeal.

8. We have heard Mr.K.Kannan, the learned Counsel for the appellant, Mr.S.Suresh, the learned Legal Aid Counsel for the 1st respondent/1st accused and Dr.G.Krishnamurthy, the learned Counsel for the 2nd accused/2nd appellant and Mr.E.Raja, the learned Additional Public Prosecutor appearing for the 3rd Respondent State and we have also perused the records carefully.

9. The learned Counsel for the appellant would submit that the judgment of the trial court is inconsistent inasmuch as the trial court has simply overlooked the eye-witnesses account of P.Ws.1 to 4 out of whom P.Ws.2 to 4 are the injured witnesses and acquitted the accused based on irrelevant

considerations.

10. The learned Counsel for the 2nd accused would submit that even if the evidences of P.Ws.1 to 4 are taken into account, absolutely, there is no evidence to prove that the 2nd accused had induced the 1st accused to commit the crime. Therefore, according to the learned Counsel for the 2nd accused, the acquittal of the 2nd accused cannot be stated to be perverse.

11. The learned Counsel for the 1st accused would submit that the trial court, for sound reasons, has acquitted the 1st accused. He would further submit that once the trial court has recorded acquittal, the presumption of innocence gets doubled. He would also submit that unless the judgment of the trial court is shown to be perverse and the above said presumption is rebutted, it is not possible for this Court to reverse the judgment of the trial court.

12. The learned Additional Public Prosecutor appearing for the 3rd respondent would support the argument advanced by the learned Counsel for the appellant. When this Court made a specific query to him as to why the State has not come forward with any appeal, he has got no answer in store.

13. We have considered all the above submissions.

14. There is no denial of the fact that the deceased was the wife of the 1st accused and they had two children born out of the said wedlock. There is enormous evidence to prove that the 1st accused had developed illicit intimacy with the 2nd accused and that was the cause for frequent quarrels between the 1st accused and the deceased. It is also in evidence that just four days before the occurrence, the deceased had gone to P.W.1's home and stayed there for four days. On the day of occurrence, the deceased returned to her matrimonial home. It is also in evidence that thereafter, she informed P.W.1 and her family members that the sister's son of the 1st accused had objected, to her return, to the matrimonial home. Therefore, P.Ws.1 to 4, in order to appease the situation, had come to the house of the 1st accused. As spoken by these witnesses, it was 05.30 p.m. on 27.01.2011, when they reached the house of the 1st accused. The 1st accused was not available. Around 07.30 p.m., according to the evidences available, the 1st accused returned home. On seeing these witnesses-P.Ws.1 to 4, the 1st accused shouted at them and then, he started kicking the deceased and then, he stabbed the deceased with knife indiscriminately. When P.Ws.2 to 4 intervened to rescue the deceased, he stabbed them also with the same knife. P.Ws.1 to 4 immediately rushed to the hospital taking the deceased also. At the earliest point of time, to P.W.14 Doctor, P.Ws.2 to 4 have categorically stated that they were attacked by a known person with a knife.

There was no delay in preferring the complaint also. Though these eye-witnesses have been cross-examined at length, we do not find anything on record to doubt their credibility.

15. But the trial court has acquitted the 1st accused on few grounds which are not at all tenable. The first and foremost ground upon which the trial court has recorded the acquittal is that the medical evidence does not corroborate the eye-witness account. This conclusion of the trial court, in our considered view, is certainly perverse. The Doctor has opined that the injuries would have been caused by a knife. Apart from that, a simple perusal of the Accident Registers mentioning the nature of the injuries sustained by P.Ws.2 to 4 would also convince our judicial conscience that these injuries would have been caused by a knife as it is spoken by P.Ws.1 to 4 and as it is fortified by the evidences of P.Ws.14 and 15. Therefore, this ground upon which the trial court has placed much reliance to acquit the 1st accused, in our considered view, is perverse.

16. The next ground of acquittal is that the blood stained clothes of P.Ws.2 to 4 were not recovered. It is true that the blood stained clothes of P.Ws.2 to 4 were not recovered. But the non-recovery of the blood stained clothes from P.Ws.2 to 4 would not make their presence at the place of

occurrence doubtful and their evidence unbelievable. There is no denial of the fact that P.Ws.2 to 4 sustained injuries in the said occurrence in which the deceased also sustained injuries and died. Therefore, the presence of P.Ws.2 to 4 at the place of occurrence cannot be doubted at all. Similarly, in our considered view, the evidences of P.Ws.2 to 4 that it was the 1st accused, who caused injuries on the deceased and on P.Ws.2 to 4 also cannot be doubted. Had it been true that someone else had caused these injuries on P.Ws.2 to 4 and the deceased, there was no reason for these witnesses to omit them and to falsely implicate the 1st accused. Therefore, the non-recovery of the blood stained clothes from them would not in any manner make the evidence of these witnesses as unbelievable.

17. The trial court has further lamented that no independent witness has supported the case of the prosecution. It is a settled law that it is not the quantity of evidence, but the quality that matters. Here in this case, when there are three injured eye-witnesses and one natural eye-witness who were present at the place of occurrence, expecting the evidence of independent witnesses, in our considered view, is not correct. For any reason, if the evidences of these witnesses are slightly doubtful or shaky, then, as a rule of prudence, the court may expect corroboration from independent sources. When the evidences of these eye-witnesses is so strong, which are not shrouded with any doubt,

expecting corroboration from independent sources is not at all prudent. Thus, the trial court was not right in doubting the case of the prosecution on this score.

18. The trial court has further doubted the recovery of M.O.1 Knife on the disclosure statement made by the 1st accused. Assuming that the recovery of the M.O.1 Knife on the disclosure statement made by him stands not proved, that would not in any manner go to cause any dent in the case of the prosecution so as to doubt the credibility of P.Ws.1 to 4.

19. Lastly, the trial court has given much weightage for the delay in making the complaint and the First Information Report reaching the court. A perusal of the records would go to show that the alleged occurrence was at 07.30 p.m. on 27.01.2011 and the F.I.R. was registered at 11.30 p.m. on the same day and the same has reached the court at 06.00 a.m. on 28.01.2011. According to P.W.14, these injured eye-witnesses including the deceased were rushed to the hospital at 08.00 p.m. P.Ws.2 to 4 were admitted in the hospital. The deceased had been declared dead by the Doctor. In such a situation, one cannot expect the injured witnesses or P.W.1 to rush to the police station to make a complaint without any delay. Therefore, the so called delay upon which much reliance was made by the trial court is not correct as the delay has been duly explained away by the prosecution.

20. Then, the trial court has stated that there was enormous delay in the FIR reaching the court. The FIR was registered at 11.30 p.m. on 27.01.2011 and the same had reached the Court only at 06.00 a.m. on 28.01.2011. Of course, there is some delay. On that ground, when the delay was caused by the police, we cannot discredit the eye-witnesses account. This is not a case where there are multiple accused, where on account of the delay, this Court should doubt the credibility of the case of the prosecution. It is a case of a single accused and he also happened to be the husband of the deceased. The prosecution witnesses have no axe to grind against the 1st accused so as to falsely implicate him in this case. Thus, in our considered view, the acquittal of the 1st accused is perverse and the same cannot be allowed to sustain.

21. Now turning to the argument of the learned Counsel for the 1st accused that while dealing with an appeal against acquittal, this Court should consider whether a very strong case has been made out by the prosecution to rebut the presumption of innocence of the accused, which has got doubled by the acquittal of the accused. As we have already pointed out, in this case, the grounds upon which the 1st accused was acquitted by the trial court are all perverse. In our considered view, on reappraisal of the entire evidence, we find that the prosecution has proved the case against the 1st accused beyond all reasonable doubts and the trial court ought not to have acquitted the accused.

So far as the 1st accused is concerned, the judgment of the trial court is perverse which needs interference at the hands of this Court. So far as the 2nd accused is concerned, absolutely, there is no evidence and therefore, the acquittal of the 2nd accused is sustainable. In view of the foregoing discussion, this appeal is allowed in part; the acquittal of the 1st accused alone is set aside.

22. The learned Counsel for the 1st accused would submit that the prosecution party had gone to the house of the accused and on seeing the accused, there arose a quarrel and the said quarrel went on for some time and only in that quarrel, having lost his mental balance, the accused had attacked the deceased and P.Ws.2 to 4. We find some force in the said argument. By considering the mitigating and the aggravating circumstances, more particularly, the evidence of the eye-witnesses that there was a quarrel between the 1st accused and the deceased and P.Ws.1 to 3, we presume that the accused would have been provoked by the deeds and acts of the deceased and the prosecution party and having lost his mental balance, the 1st accused had stabbed the deceased and P.Ws.2 to 4. Thus, in our considered view, the act of the 1st accused would fall within the first exception to Section 300 of IPC and therefore, he is liable to be punished under Section 304-I of IPC for having caused the death of the deceased. For having voluntarily caused injuries on P.Ws.2 to 4, he is liable to be punished for offence under Section 324 IPC (3 counts). Though

the thumb of P.W.2 was amputated, we are unable to understand as to how the Doctor could give such an opinion that the injury is simple in nature. Since the trial court has framed charge only under Section 324 IPC (3 counts) in respect of the injuries caused on P.W.2, we are unable to convict the 1st accused under Section 326 of IPC. Thus, we convict the 1st accused for offences under Sections 304-I of IPC and 324 IPC (3 counts). We confirm the acquittal of the 2nd accused.

23. For the purpose of questioning the 1st accused in respect of the quantum of punishment, we are inclined to grant time to him and for his Counsel to make submissions. Therefore, the appeal shall stand posted to 22.08.2016 for the 1st accused to make his submissions regarding quantum of sentence. Until then, the 1st accused shall be lodged in Central Prison, Puzhal, Chennai. The Registry shall issue necessary warrant for the same. The 3rd respondent, namely, the Inspector of Police, Thiruvallur Taluk Police Station, Thiruvallur, shall take the 1st accused into custody with a warrant to be issued by the Registry and hand over him to the Superintendent, Central Prison, Puzhal, Chennai. He shall be lodged in the Central Prison, Puzhal, Chennai, and again produced before this Court on 22.08.2016 at 02.15 p.m.

[S.N., .J.] [V.B.D.J.,]

18.08.2016

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24. The 1st accused/1st respondent was produced from Central Prison, Puzhal, Chennai. He was questioned in respect of the quantum of punishment. He told that he did not commit any such crime. He further told that he is taking care of the two children born to him and the deceased. He also told that his daughter Varalakshmi is studying 9th standard and his son Dhanapriyan is studying 7th Standard. He further submitted that he is working in Southern Railways as Helper.

25. The appellant, who made appearance before this Court, submitted that the children were taken care of by her for about two years. Now, the children are in the custody of the 1st accused. During the pendency of this appeal, the appellant has married one Vanitha on 05.09.2015. She has got a female child by name N.Dhanisha.

26. The learned Counsel for the 1st accused/1st appellant would

submit that the 1st accused has to take care of his 2nd wife Vanitha, his children, namely, Varalakshmi, Dhanapriyan and a female child by name Dhanisha. The learned Counsel would further submit that the 1st accused/1st respondent is prepared to pay Rs.3,00,000/- as compensation. Pointing out these mitigating circumstances, the learned Counsel for the 1st accused would submit that minimum punishment may be imposed. The 1st accused would submit that he may be admonished as there is no one else to take care of the children.

27. Having regard to these mitigating circumstances and also the submission that the 1st accused is prepared to pay a fine of Rs.3,00,000/- as compensation, we deem it appropriate to sentence him to undergo rigorous imprisonment for 3 years and to pay Rs.3,00,000/- (Rupees Three Lakhs Only) as compensation. On realisation of the said amount of Rs.3,00,000/-, the same shall be deposited in the names of Varalakshmi, Dhanapriyan and Dhanisha, at the rate of Rs.1,00,000/- per head in a Nationalised Bank by the trial court. Mrs.Vanitha, the second wife of the petitioner shall be the guardian of all the three children for the said deposited amount. She will be at liberty to draw the interest every month from the bank and to maintain the children out of the same.

28. In the result, the appeal is partly allowed in the following terms:

1. The 1st accused is convicted for the offences under Sections 304-I and 324 of IPC (3 Counts) and sentenced to undergo rigorous imprisonment for 3 years and to pay Rs.3,00,000/- as compensation, in default, to undergo rigorous imprisonment for 6 months for the offence under Section 304-I of IPC and to undergo rigorous imprisonment for one year for each count for the offence under Section 324 of IPC; and

2. It is directed that the sentences shall run concurrently and the period of sentence already undergone shall be given set off under Section 428 of Cr.P.C.

29. Considering the plight of these 3 young children and to maintain them and also considering their future, we deem it appropriate to direct the Government to consider the case of the 1st accused/1st respondent for remitting the sentence as provided in the Code of Criminal Procedure.

30. The 1st accused/1st respondent seeks 8 weeks time to deposit the said amount. Accordingly, the time is granted. The learned Counsel for the 1st accused would submit that the 1st accused would report the deposit of the fine amount within the time stipulated, to this Court.

31. It is directed that the 1st accused shall be lodged in Central Prison,

Puzhal, Chennai, today itself and the 3rd respondent shall produce him before the trial court on 23.08.2016 and the trial court shall commit him to prison to undergo the sentence as directed in this judgment.

[S.N., .J.] [V.B.D.J.,]

22.08.2016

Index : Yes

Internet : Yes

Note :

1. Registry to issue copy of this judgment to the accused today itself.
2. Registry to forward the lower court records by means of Special Messenger today itself so that the same is handed over to the lower court tomorrow.
3. Registry to post this appeal for recording compliance after 8 weeks.

tsi

To

1. The Inspector of Police,
Thiruvallur Taluk Police Station,
Thiruvallur.
2. The I Additional Sessions Judge,
Tiruvallur, Tiruvallur District.
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Chennai.

S.NAGAMUTHU,J.
and
V.BHARATHIDASAN, J.
tsi

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