

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.351 of 2014

Kumar @ Kilaparaiyan ... Appellant/Accused

Vs

The State rep. By its
The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
(Crime No.488 of 2010) ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(1) Cr.P.C.,
against the judgment in S.C.No.49/2011 dated 16.03.2012, on the
file of the learned Principal Sessions Judge, Namakkal.

For Appellant : Mr.M.H.Abdur Rahman,
Legal-aid-counsel

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.49/2011, on the
file of the learned Principal Sessions Judge, Namakkal. He
stood charged for offence under Section 302 I.P.C. The trial
Court, by judgment dated 16.03.2012, convicted the accused for
offence under Section 302 I.P.C., and sentenced him to undergo
imprisonment for life and to pay a fine of Rs.10,000/- in
default to undergo rigorous imprisonment for one year.
Challenging the said conviction and sentence, the appellant is
before this Court with this Criminal Appeal.

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

The deceased in this case was one Mrs.Baby. The accused belongs to Veppadai Village. He married one Ms.Jayalakshmi, through whom, he had two daughters. Due to some matrimonial dispute, Mrs.Jayalakshmi deserted the accused and started living separately with her children. The appellant/accused is a manual worker in a stone quarry. The deceased was already married to one Mr.Prakash. Through whom, she had two daughters and a son. She was aged about 35 years. The accused developed friendship with the deceased and later, he developed illegal intimacy with her. The accused started living with the deceased. Thus, the deceased was kept as an exclusive concubine of the accused. But, in due course of time, the accused had suspicion over the fidelity of the deceased. He believed that the deceased was going out of the home frequently with some other male for having sex. This is stated to be the motive for the occurrence.

3.On 02.05.2010, at about 5.00 pm, the accused openly asked the deceased about the above issue. The deceased denied the same which, resulted in a quarrel. Again in the night by about 11.00 pm, the similar quarrel occurred between them. In that quarrel, it is alleged that, provoked by the deceased, the accused slapped the deceased on her cheek. The deceased attempted to escape. The accused followed her. The deceased went to the nearby forest, in Veppadai Kadu Village. The accused reached the said place and found the deceased and also dropped a stone on her head. She fell down and died. The accused escaped from the scene of occurrence. On the next day morning i.e., on 03.05.2010 at 3.00 am, the accused went to P.W.1, the then Village Administrative Officer, Elandakuttai Vilalge and wanted to give confess to him. P.W.1 allowed him to confess orally and he reduced the same into writing (vide Ex.P.1). Then, along with Ex.P.1 (extra judicial confession) and Ex.P.2 (a Special Report), P.W.1 took the accused to Pallipalayam Police station and produced him at 5.00 am on 03.05.2010. P.W.11, the then Special Sub Inspector of Police of Pallipalayam Police station on receipt of the said report, registered a case in Crime No.488 of 2010 for offence under Section 302 I.P.C., against the accused. Then, he forwarded both the documents to Court which were received by the learned Judicial Magistrate at 6.00 am on 03.05.2010.

4.P.W.12, the then Inspector of Police, took up the case for investigation. He arrested the accused at 6.00 am on 03.05.2010 in the presence of P.W.1 and another witness. On such arrest, the accused gave a voluntary confession. P.W.12 recovered the shirt owned by the accused under a mahazar. Then he went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.6 and another witness. Then he

conducted inquest on the body of the deceased at 10.00 am and forwarded the same for post mortem.

5.P.W.7 - Dr.A.Manokaran, conducted autopsy on the body of the deceased on 03.05.2010 at 1.40 pm and he found the following injuries:-

"1.3cm x 1 ½ cm x bone deep lacerated wound at right side tore head

2.10x 10 cm depressed wound with contusion with 2 x 2 cm x bone deep LW at its center is seen on the left side cheek in front of the left side Ear.

3. 2 x 2 cm x bone deep LW at chin. Firmly coagulated blood clot with extensive infiltration into deeper layers is seen in all of the above wounds and they are AM in nature. O/D of the wound No.2 fracture left Maxilla and mandible are seen. Upper jaw bone shows fracture at centre jaw few teeth are missing on left side upper jaw."

Ex.P.8 is the post mortem certificate. P.W.7 gave opinion that the injuries found on the body of the deceased would have been caused by a stone like M.O.1. He further opined that the death of the deceased was due to shock and hemorrhage due to the head injuries.

6.P.W.12 recovered the blood stained clothes from the body of the deceased and forwarded the same to Court. At his request, the Material Objects were sent for chemical examination. The report revealed that there were human blood stains on all the material objects except the shirt which was recovered from the accused. On completing investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed a lone charge for offence under Section 302 I.P.C., against the appellant. The appellant denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 18 documents were exhibited, besides 7 Material Objects.

8. Out of the said witnesses, P.W.1, the then Village Administrative Officer has spoken about the extra judicial confession given by the accused and his report to the Police. P.W.2 is the Aunt of the deceased and she has not stated anything incriminating against the accused. P.W.3 is the Uncle of the deceased and the resident of the Pallipalayam Village and

he has stated that earlier, the accused had taken the deceased and stayed elsewhere for about one month and then they returned to the Village. He has not stated anything more incriminating against the accused. P.W.4 is the father of the deceased and he has also stated about the relationship between the accused and the deceased. P.W.5 is the landlord of the deceased. He has stated that the deceased was residing at his house and the accused was also staying along with her. He has not stated anything incriminating against the accused. P.W.6 has spoken about the preparation of observation mahazar and the rough sketch. P.W.7 has spoken about the post mortem conducted by him and his final opinion regarding the cause of death. P.W.8 has spoken about the photographs taken by him taken at the place of occurrence. P.W.9, the then Constable has stated that he carried the F.I.R., and handed over the same to the learned Magistrate concerned. P.W.10 is the yet another Constable and he has also spoken about the fact that he recovered the blood stained clothes from the body of the deceased and handed over the same to the Inspector. P.W.11 has spoken about the registration of the case. P.Ws.12 & 13 have spoken about the investigation done and the final report filed.

9. 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 nor did he mark any documents on his side besides he marked one photograph as Defence Side Material Object.

10. Having considered all the above, the trial Court found the accused/appellant guilty under the said charge and accordingly, sentenced him as detailed in the first paragraph of this judgment. That is how the appellant is before this Court with this Criminal Appeal.

11. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. In this case, there is no eye witness account. The prosecution mainly relies on the circumstantial evidence, more particularly, on the extra judicial confession allegedly given by the accused to P.W.1. From the evidence of the family members of the deceased, it is crystal clear that the accused was living with the deceased and the deceased was kept as his exclusive concubine. Though, it is stated that the accused had suspicion over the fidelity of the deceased, there is no other evidence to prove the case except the extra judicial confession. Thus, in effect, to prove the charge, the prosecution relies solely on the extra judicial confession made by the accused to P.W.1.

13. The learned counsel for the appellant would submit that the said extra judicial confession made by the accused to P.W.1 cannot be believed. According to him, there was no reason for the accused to have gone to P.W.1 to make such an extra judicial confession. But, we are not persuaded by the said argument. The alleged occurrence in this case was at 11.30 pm on 02.05.2010. The fact that the deceased was no more was not known to anybody. The accused had gone to P.W.1, the then Village Administrative Officer at 3.00 am on 03.05.2010, that is within few hours of the occurrence. P.W.1 had recorded the extra judicial confession of the accused and produced the accused before the Police at 5.00 am on 03.05.2010 itself. It is seen that the F.I.R., had reached the hands of the learned Judicial Magistrate concerned at 6.00 am on 03.05.2010. From these facts, it is crystal clear that the accused had gone to P.W.1, the then Village Administrative Officer at 3.00 am on 03.05.2010 and made the extra judicial confession. But for the said confession made by the accused, the fact that the deceased was lying dead in the forest area would not have been come to light at all. Thus, the fact that the dead body of the deceased was lying in the forest area duly corroborates the extra judicial confession made by the accused to P.W.1. Thus, we do not find any reason to reject the said extra judicial confession. In the said confession, the accused has stated that it was he who dropped a huge stone on the head of the deceased which resulted in her death. The medical evidence also duly corroborates the extra judicial confession. Thus, from these evidences, in our considered view, the prosecution has clearly established that it was this accused who dropped a stone on the head of the deceased and caused her death.

14. Now, the question is, "What was the offence that was committed by the accused, by the said act?". A reading of the extra judicial confession which is the only piece of evidence which is available in this case, to know about the actual occurrence, would go to show that the accused had for quite some time, doubt about the fidelity of the deceased. On the day of occurrence, the accused asked the deceased about the above allegation. This resulted in a quarrel. The suspicion was because of the fact that the deceased had gone out of the home on few occasions with somebody else. This quarrel extended for a considerable time. At 11.00 pm on the day of occurrence, according to the extra judicial confession, again there arose quarrel out of the same. In that quarrel, the accused provoked by the utterances of the deceased, gave a slap. The deceased ran away. The accused followed her. When she reached the nearby forest, the accused tried to bring her back. Since, the deceased resisted, out of the above provocation, the accused dropped the stone which was lying there, on the head of the deceased and caused her death. Thus, there is enormous evidence to show that

the accused had lost his mental balance and driven by the provocation which was also sudden and grave, the accused had caused the death of the deceased. Thus, in our considered view, the act of the accused would squarely fall within the ambit of fourth limb of Section 300 I.P.C., and first exception to Section 300 I.P.C. Therefore, the accused/appellant is liable to be punished for offence under Section 304(ii) I.P.C.

15.Now, turning to the quantum of punishment, the accused is a poor man and he had no bad antecedents. There was no strong motive. The occurrence was not a premeditated one and it was out of sudden provocation. At the time of occurrence, the accused was aged 35 years. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- would meet the ends of justice.

16.In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for offence under Section 302 IPC is set aside and instead, he is convicted for offence under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. It is directed that the period of detention already undergone by the accused/appellant shall be set off as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge,
Namakkal.
- 2.The Public Prosecutor,
High Court, Madras.
- 3.The Judicial Magistrate,
Thiruchencode.
- 4.The Chief Judicial Magistrate,
Namakkal.

5.The Superintendent,
Central Prison,
Coimbatore.

6.The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.

7.The Section Officer,
Criminal Section, High Court.

8.The District Collector,
Namakkal District.

9.The Director General of Police,
Mylapore, Chennai-600 004.

+1cc to Mr.M.H.Abdur Rahman, Advocate Sr.35996

Crl.A.No.351 of 2014

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srg 22/07/2016



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