

IN THE HIGH COURT OF JUDICATURE AT MADRAS

BAIL SLIP: The Appellant herein namely murugan, S/o.Kaliyaperumal, accused in sc317/06 on the file of I additional District and sessions Judge, Cuddalore was directed to be released on bail as per order of this Court dated 30/10/2014 as made in MP 1/14 in Cr1.A.No.471/14.

DATED: 15.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.471 of 2014

Murugan

.. Appellant/Accused

Vs

State rep. By
Inspector of Police,
Kurinjipadi Police Station,
Cuddalore District.
Cr.No.314 of 2005

.. Respondent

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., to set aside the order of conviction and sentence imposed on the appellant by the I Additional District and Sessions Judge, Cuddalore in S.C.No.317 of 2006 dated 05.03.2014.

For Appellant : Mr.A.Arasu Ganesan

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

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

The sole accused in S.C.No.314 of 2006 on the file of the I Additional Sessions Judge, Cuddalore, is the appellant herein. He stood charged for the offences under Sections 302 and 309 IPC. By judgment dated 05.03.2014, the trial Court convicted the appellant/accused for the offences under Sections 302 and 309 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in

default to undergo Rigorous Imprisonment for three years for the offence under Section 302 IPC and imposed a fine of Rs.1000/- in default to undergo rigorous imprisonment for 3 months. 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, one Pattu @ Jeya, is the wife of the appellant/accused. P.Ws.2 and 3 are their sons and they were all living together at Kurinchipadi. Earlier the accused married one Renuka as his second wife, hence, there were quarrel between the accused and the deceased. On the date of occurrence, the deceased wanted to go for work to Pondicherry, but, the accused refused to permit her to go for her work. Hence, there was a quarrel between the accused and the deceased. At that time, the accused attacked the deceased with aruval and he also inflicted injuries on his stomach using his pen knife. P.W.4, neighbour of the deceased, who is the eye-witness to the occurrence, saw the quarrel between the accused and the deceased and during the quarrel, the accused attacked the deceased with knife and he also got self inflicted injuries. P.W.5, another neighbour, a lorry driver, is also an eye-witness to the occurrence.

3. P.W.1, the daughter in law of the deceased came to the scene after the occurrence and immediately, informed her husband P.W.2, and P.W.2 took both the accused and the deceased in an Auto to Government Hospital, Kurinchipadi, where the deceased was declared dead and the accused was admitted in the hospital. Then, P.W.2 lodged a complaint, Ex.P.1, before the respondent police.

4. P.W.14, the Head constable, attached to the respondent police, on receipt of the complaint, registered a case in Crime No.314 of 2005, for the offences under Sections 302 and 309 IPC, and sent the First Information Report, Ex.P.9 to the Court and to the higher officials.

5. P.W.15, the Inspector of Police, on receipt of the First Information Report, commenced the investigation and proceeded to the scene of occurrence. He prepared Observation Mahazar, Ex.P.2 and Rough Sketch, Ex.P.10 in the presence of P.W.6 and another witness. He recovered blood stained pen knife(M.O.1), knife (M.O.2), blood stained cement slab(M.O.3) and sample cement slab(M.O.4) under a Mahazar. On 18.11.2005, in the hospital, he conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared Ex.P.11, Inquest Report. Then, he sent a memo through P.W.10, for conducting postmortem autopsy on the dead body.

6. P.W.11, the Doctor, conducted postmortem autopsy

on the dead body of the deceased on 17.11.2005, at 12.30 p.m., and found the following injuries:-

" External injuries:

1. A lacerated injury of size 3 x 1 x 1 cm above left eye.
2. A lacerated injury of size 1 x 1 x 0.5 cm over left side neck.
3. A lacerated wound of size 1 x 1 x 0.5 cm in right side neck-ante mortem.
4. All abrasion of size 3.2 cm left side back thoracic region.
5. A lacerated wound of size 1x0.5x0.5 below left side breast.
6. A lacerated wound of size 1x0.5x0.5 c.m. Over left hand below wrist.
7. A lacerated wound of size 5x3x2 cm. Over right thigh.
8. A lacerated wound of size 2x1x1 cm over right knee.
9. A lacerated wound of size 1 x1/2x1/2 cm over the left neck below the angle of the mandible. "

Ex.P.4 is the Post mortem certificate. He was of the opinion that the deceased appears to have died of shock and hemorrhage due to head injuries.

7. P.W.15, recovered the dress worn by the deceased, viz, M.O.5 to M.O.8 and sent the same for chemical examination. When the investigation was in progress, on 06.02.2005, the accused appeared before P.W.7, Village Administrative Officer, Kurinchipadi and gave an extra judicial confession, Ex.P.9. Then, he took the accused along with a Special Report and produced him before P.W.15. P.W.15 arrested the accused and on such arrest, he voluntarily gave a confession. Then, he remanded the accused to Court to judicial custody. He obtained Chemical Analysis Report, Ex.P.17, and since he was transferred, he handed over the investigation to his successor.

8. P.W.16, Inspector of Police, continued the investigation, recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased and after completing the investigation, he laid charge sheet against the accused.

9. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined and 17 documents were exhibited, besides 8 Material Objects were marked.

10. Out of the witnesses examined, P.W.1 is the daughter-in-law of the accused and wife of P.W.2. When she returned back to home, she saw both the accused and the deceased in a pool of blood. Immediately, he informed the same to her husband, P.W.2. P.W.2, came to the scene of occurrence and took the deceased and the accused to the Government Hospital, Kurinchipadi, where the deceased was declared dead, immediately, he gave a complaint, Ex.P.1 before the respondent police.

11. P.W.3 is the another son of the accused and the deceased. He along with P.W.2, took the deceased and the accused to the hospital. P.W.4, a neighbour of the accused, who is an eye witness to the occurrence, saw the quarrel between the accused and the deceased. At that time, the accused attacked the deceased with aruval and also inflicted injuries on him with pen knife. P.W.5, a lorry driver, is also an eye-witness to the occurrence. P.W.6, has spoken about the recovery of material objects from the place of occurrence and the preparation of the Observation Mahazar and also spoken about the recovery of M.Os.1 to M.O.4. P.W.7, the Village Assistant, has spoken about the extra judicial confession given by the accused to P.W.13. P.W.8, is an auto driver, in which, the accused and the deceased were taken to the Government Hospital, Kurinchipadi. P.W.9, Head Constable, who took the First Information Report from the police and handed over the same to the Court. P.W.10, Head Constable, submitted the request for postmortem and identified the dead body for postmortem. P.W.11 has spoken about the Postmortem conducted by him and given his final opinion regarding the cause of death. P.W.12, doctor, treated the accused and referred the accused to Government Hospital, Cuddalore. P.W.13 is the Village Administrative Officer, Kurinchipadi, before whom, the accused appeared and gave an extra judicial confession. P.W.14, the then Head Constable, attached to the respondent police, registered the complaint. P.W.15 conducted the investigation, arrested the accused, recovered the material objects and since he was transferred, he handed over the case records to P.W.16. P.W.16, after completing the investigation, laid charge sheet against the accused on 30.03.2006.

12. 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 choose to examine any witnesses nor did he mark any documents on his side. His defence was a total denial.

13. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

14. We have heard Mr. A. Arasu Ganesan, learned counsel appearing for the appellant and Mr. M. Maharaja, the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

15. The learned counsel for the appellant would submit that the presence of P.Ws. 4 and 5 in the scene of occurrence is highly doubtful. According to them, on hearing the noise of P.W. 1, she went to the scene of occurrence and saw the occurrence. But, according to P.W. 1, she did not see the occurrence. Hence, the evidences cannot be believed. The extra judicial confession has also been given long after the occurrence, hence, it cannot be a voluntary one. There is a delay in giving complaint and the appellant cannot be convicted as the prosecution did not prove the case beyond any reasonable doubt.

16. Per contra, the learned Additional Public Prosecutor submitted that P.Ws. 4 and 5 are neighbours and they are not interested witnesses. Both of them categorically stated that they saw the occurrence, when the accused attacked the deceased. The extra judicial confession given by the accused itself is voluntary because the village Administrative Officer of the same village is a known person to the accused. Hence, it could be believed and sought for dismissal of the appeal.

17. We have considered the rival submissions.

18. There are two eye-witnesses to the occurrence. They are neighbours of the accused and the deceased and they are not interested witnesses. According to them, after hearing the noise of P.W. 1, they came to the house and saw the quarrel between the deceased and the accused. During the quarrel, the accused attacked the deceased with a ruval and inflicted injuries on him with pen knife on his stomach. P.W. 5, a lorry driver, residing next to the house of the accused, also saw the quarrel and during quarrel, the accused attacked the deceased and he also inflicted injuries on him. P.Ws. 2 and 3, who are sons of the accused and the deceased, saw both the accused and the deceased were found lying in the house and took them to the hospital in an Auto, where the deceased was declared dead.

19. The occurrence took place in the house of the accused. The accused also got injuries. P.Ws. 2 and 3, sons, have taken both the accused and the deceased together to the hospital in an Auto. P.Ws. 4 and 5, the neighbours were eyewitness to the occurrence and their presence in the scene of occurrence cannot be doubted. According to them, they came to the scene after hearing the noise. The medical evidence also corroborates the evidence of the eyewitnesses. Hence, the testimony of P.Ws. 4 and 5 cannot be disbelieved. Their

presence at the time of occurrence is quite natural and hence, the same cannot be doubted. Above all, after the occurrence, the accused had gone to the local Village Administrative Office, P.W.13 and made a voluntary confession, confessing his guilt. This confession by itself is a substantive piece of evidence, and there is no reason to reject the same.

20. In the above circumstances, we are of the considered view that the prosecution has clearly established that it is this accused, who attacked the deceased with aruval and caused her death and thereafter, he self inflicted injuries with a pen knife.

21. Now, we have to consider "what was the offence that was committed by the accused by the said act?". As per the testimony of P.Ws.4 and 5, there was a long quarrel between the accused and the deceased. The deceased wanted to go to work at Pondicherry, but the accused refused to give her permission. Hence, the quarrel started and it was going on for some time, it was only at the end of the said quarrel, the accused attacked the deceased with aruval found in their house. From the evidences available, it is crystal clear that the accused has lost his self control on account of the provocative words spoken by the deceased. The said provocation was grave and also sudden. Thus the act of the accused would squarely fall within the first exception to Section 300 I.P.C. Even though the accused would not have any intention to cause the death of the deceased, certainly, he had the intention to cause the cut injury on her neck, which was sufficient in the ordinary course of nature, to cause the death of the deceased. The act of the accused would squarely fall within the third limb of Section 300 I.P.C., and therefore, he is liable to be punished under Section 304(i) IPC.

22. Turning to the quantum of punishment, the accused is an poor man and has no bad antecedent. The occurrence was not a premeditated one; it was out of a sudden quarrel, the accused was provoked by the words spoken by the deceased and thus, driven by sudden provocation and having lost his mental state of mind, the accused have attacked the deceased, which resulted in the death of the deceased with aruval. After realizing his mistake, he also inflicted injuries with a pen knife on his abdomen. So far as the aggravating circumstances are concerned, there was no pre-meditation and there was no strong motive for the accused to cause the death of the deceased. Hence, taking into consideration of the aggravating as well as the mitigating circumstances, we hold that sentencing the accused to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks for the offence under Section 304(i) IPC would meet the ends of justice.

23.In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for offence under Section 302 I.P.C., is set aside and instead, he is convicted for offence under Section 304(i) I.P.C., and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks and the conviction under Section 309 IPC is confirmed. The period of sentence already undergone by the appellant is directed to be set off under Section 428 Cr.P.C.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

mrp

To

1. The I Additional District and Sessions Judge, Cuddalore.
- 2.-do-through The Principal Sessions Judge, Cuddalore
- 3.The Judicial Magistrate, No.II Cuddalore.
- 4.The Judicial Magistrate No.II,Tiruchirappalli.
- 5.-do- through The Chief Judicial Magistrate, Cuddalore.
- 6.-do-through The Chief Judicial Magistrate, Tiruchirappalli.
- 7.The Superintendent, Central Prison, Cuddalore.
- 8.The District Collector, Cuddalore.
- 9.The Director General Officer, Mylapore, Chennai-4
- 10.The Inspector of Police, kurinjipadi Police Station, Cuddalore district.
- 11.The Public Prosecutor, High Court, Madras.

CrI.A.No.471 of 2014

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ss(30/01/2017)

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