

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.501 of 2014

Perumal @ Stephen

... Appellant/Accused

-Vs-

State Rep. by
The Inspector of Police
Nambiyur Police Station
Incharge of Kunnathur Police Station,
Erode District.

... Respondent/Complainant

This Criminal Appeal has been preferred to set aside the conviction and sentence imposed by judgment dated 13.10.2009 made in S.C.No.89 of 2009 on the file of the Principal Sessions Judge, Erode Division, Erode.

For Appellant : Mr.Arokiamaniraj

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.89 of 2009 on the file of the Principal Sessions Judge, Erode Division, Erode. He stood charged for offence under Section 302 IPC. By judgment dated 13.10.2009, the Trial Court, convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2000/- in default to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

The deceased in this case was one Mrs.Chinnammal. She was residing at Othapanaimedu Village, The accused also belongs to

the same village. His wife was one Mrs.Lakshmi. Due to misunderstanding between the accused and his wife, she deserted him and went to her parental home. When the accused wanted his wife to return to the matrimonial home, the deceased intervened and spoiled the chances of reunion. This is the motive for the occurrence.

3. On 03.08.2008, the deceased had taken her goats to a nearby field at Pandiankadu. P.Ws.2 and 3 had also gone there taking their cattle to graze. They were in the field known as Karungadu. In between these two fields, there was a thorn fence. Around 4.00 p.m., when the deceased alone was sitting in the field, the accused suddenly emerged there with Aruval and cut her indiscriminately. This was witnessed by P.Ws.2 and 3. They raised alarm and cried for help. On seeing them, the accused fled away from the scene of occurrence. P.Ws.2 and 3 went near the deceased, who was lying in a pool of blood with injuries. P.W.3 wanted P.W.2 to immediately go and inform P.W.1 and other family members about the occurrence. P.W.3 stayed back. P.W.2 went to her house and informed P.W.1- her father about the occurrence. P.W.1 immediately rushed to the Police Station. The deceased died in a short while succumbing to the injuries.

4. P.W.1 after seeing the dead body went to the Police Station and made a complaint at 6.30 p.m. on 03.08.2008. Ex.P1 is the complaint. P.W.14 - the then Sub-Inspector of Police at Kunnathur Police Station, on receipt of the complaint under Ex.P1, registered a case in Crime No.171 of 2008 under Section 302 IPC against the accused. Ex.P16 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Judicial Magistrate on 9.30 p.m. on 03.08.2008.

5. The case was taken up for investigation by P.W.15. He proceeded to the place of occurrence at 8.00 p.m on 03.08.2008 and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.7 and another witness. He recovered blood stained earth, sample earth and a pair of chappals, which were found near the place of occurrence in the presence of the same witnesses. He conducted inquest on the body of the deceased and forwarded the same for post-mortem.

6. P.W.8 - Dr.Vijayarani conducted autopsy on the body of the deceased on 04.08.2008 at 7.35 a.m. She found the following injuries:

"1a) 4 cm x 3 cm x Bone deep lacerated wound from back of right ear extending to the middle of parietal bone.

1b) Lacerated wound 3 cm x 2 cm x bone deep from frontal area to parietal area right side merging on the (1st a) wound. On dissection subdural haemotoma present. Brain pale 1000 gms.

2. Lacerated wound in the lower jaw right side 5 cm x 3 cm x bone deep. On dissection fracture of mandible right side.

3. Lacerated wound in the right side of neck from lower end of ear to collar bone. 7 cm x 3 cm x bone deep on dissection, fracture of right collar bone present

4. Lacerated wound 4 cm x 4 cm x bone deep on the right shoulder. On dissection fracture of right scapula.

5. Lacerated wound 4 cm x 2 cm x bone deep above right elbow. On dissection comminuted fracture lower end of humerus.

6. Lacerated wound 2 cm x 2 cm x bone deep below right elbow. On dissection comminuted fracture of upper of radius and ulna.

7. Lacerated wound 6 cm x 3 cm x bone deep in the right side of chest. On dissection fracture of 3-7th ribs at their angle. On dissection lacerated wound 3 cm x 2 cm."

Ex.P8 is the Post mortem certificate. She gave opinion that the deceased would have died due to shock and hemorrhage and due to cut injuries. She further opined that the said injuries could have been caused by a weapon like M.O.4 Aruval.

7. When the investigation was in progress, on 04.08.2008, the accused on his own voluntarily surrendered before P.W.7 at 8.00 a.m and wanted to confess. P.W.7 allowed him to confess, which was reduced to writing by him. Ex.P4 is the said Extra Judicial Confession given by the accused to P.W.7. Then along with the report under Ex.P5, P.W.7 took the accused and produced him before P.W.15 at 10.00 a.m. on the same day. P.W.15 - the Inspector of Police arrested him and on such arrest, he gave voluntary confession in the presence of the same witness, in which, he disclosed the place, where he had hidden the Aruval. In pursuance of the said disclosure statement at 11.30 a.m., on the same day, he took the Police and the witness to the place of hide out and produced M.O.4 Aruval. P.W.15 recovered the same under Ex.P6 Mahazar. Then he forwarded the accused to the Court for judicial remand and also handed over the material objects to Court. The Material Objects were sent for chemical examination and the report revealed that there was human blood on all the material objects including bill-hook recovered from the accused. On completing investigation, P.W.16 laid charge sheet against the accused on 02.02.2009.

8. Based on the above materials, the trial Court framed the lone against the accused under Section 302 IPC. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 15 witnesses were examined and 22 documents were exhibited, besides 10 Material Objects.

9. Out of the said witnesses, P.W.1 - the son-in-law of the deceased has stated that P.W.2, his daughter came and informed about the occurrence. P.Ws.2 and 3 are the eye witness to the occurrence. They have vividly spoken about the entire occurrence. P.W.1 has further spoken about the motive also. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.5 - the daughter of the deceased has spoken about the motive. P.W.6 has also spoken about the motive. P.W.7 has spoken about the preparation of Observation Mahazar and rough sketch and also about the Extra Judicial Confession given to him on 04.08.2008 at 8.00 a.m. He has further spoken about the recovery of M.O.4 Aruval and the disclosure statement made by the accused to P.W.15. P.W.8 has spoken about the post-mortem conducted and her final opinion regarding the cause of death. P.W.9 - the Head Clerk of the District Munsif-cum-Judicial Magistrate Court has stated that he had forwarded the material objects for chemical examination. P.W.10 - the Forensic expert has examined both the blood stained earth and the sample earth and gave a report that both tallied together. P.W.11 stated that he took the FIR and complaint to the Court and handed over the same at 8.30 on 03.08.2008. P.W.12 has spoken about the fact that he took the dead body from the place of occurrence and handed over the same to Doctor for post-mortem. P.W.13 has stated that he handed over the express copy of FIR to the higher officials. P.W.14 has spoken about the registration of the case and complaint. P.W.15 has spoken about the investigation done and final report filed by him.

10. 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 witness on his side. His defence was a total denial.

11. Having considered all the above materials, the trial Court convicted the appellant under Section 302 IPC and that is how the appellant is before this Court with this Criminal Appeal.

12. In this case, the prosecution relies on the eye witness account of P.Ws.2 and 3. The learned counsel for the appellant would submit that P.Ws.2 and 3 would not have been present at the place of occurrence. He would further submit that though they

claim to have been present in the place of occurrence by chance, their evidences are not trustworthy. P.W.2 is the grand daughter of the deceased and thus, she is an interested child witness. These arguments, in our considered view deserve only to be rejected. The reasons are many.

13. First of all, the presence of P.Ws.2 and 3 at the place of occurrence cannot be doubted at all. They have stated that they were very near the place of occurrence grazing their cattle. They are poor villagers. A perusal of the entire evidence of these two witnesses would go to show that they are reliable. Nothing has been elicited during cross examination to create any doubt about their veracity. Simply because P.W.2 is an interested witness and she was aged only 14 years, her evidence cannot be outright rejected. Her evidence as well as the evidence of P.W.3 requires only close scrutiny. In our considered view, on such close scrutiny, we find that the evidence of P.Ws.2 and 3 are trust worthy. The evidence of P.Ws.2 and 3 draw adequate corroboration from the Extra Judicial Confession given by the accused to P.W.7. on 04.08.2008 at 8.00 a.m.

14. The learned counsel for the appellant would submit that P.W.7 was a stranger and therefore, the accused would not have chosen such a stranger to confess. Though attractive, this argument does not persuade us because Extra Judicial Confession itself contains the reason as to why he had chosen P.W.7. The said retracted Extra Judicial Confession is the only piece of evidence available against the accused. This argument of the learned counsel may carry some weightage, because retracted Extra Judicial Confession which is shrouded with doubts cannot be the sole foundation for conviction, unless it draws corroboration from independent sources. Here in this case, Extra Judicial Confession draws corroboration from the eye witness account of P.Ws.2 and 3 and vice versa. Thus, from the evidences of P.Ws.2 and 3, and the extra judicial confession, the prosecution has clearly established that it was this accused, who cut the deceased and caused her death. The recovery of M.O.4 Aruval with blood stain also further strengthens the case of the prosecution. The medical evidence spoken by the doctor, who conducted autopsy also clearly corroborates the eye witness account.

15. Having come to the said conclusion, that it was this accused who caused the death of the deceased, now we have to examine as to what was the offence committed by the accused. The learned counsel for the appellant would submit that the offence committed by the accused would be punishable only under Section 304 IPC. We find no force at all in this argument.

16. P.Ws.1 to 3, 5 and 6 have spoken about the motive of the accused. The accused had gone all the way to the field, where the deceased was grazing cattle. When the accused went there, he was armed with knife. The time chosen by him; the secluded place chosen by him to finish the task; the injuries caused by him in the vital parts, which caused the death of the deceased on the spot would all go to clearly establish that the intention of the accused was only to cause the death of the deceased.

17. The learned counsel for the appellant would submit that out of provocation, the accused would have caused the death of the deceased and thus, his act would fall within the first exception to Section 300 I.P.C. Absolutely, we find no evidence, either direct or indirect, making out any circumstance to infer that the appellant would have been provoked either by words or by deeds of the deceased. As we have already pointed out, with determination to do away the deceased, the accused had gone all the way with knife without any provocation. Therefore, there is no scope to hold that the accused had acted out of grave and sudden provocation. Thus, in our considered view, the prosecution has clearly established that it was this accused who committed the murder of the deceased and hence, he is liable to be punished for offence under Section 302 I.P.C.

18. Now, turning to the quantum of punishment, the trial Court has imposed only a minimum punishment which does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

19. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. It is reported that the appellant is in jail. The appellant is directed to undergo the remaining period of sentence as imposed by the trial Court.

Sd/-
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Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1.The Inspector of Police
Nambiyur Police Station
Incharge of Kunnathur Police Station,
Erode District.

2.The Principal Sessions Judge,
Erode Division, Erode.

3.The Superintendent,
Central Prison,
Coimbatore.

4.The Public Prosecutor
High Court, Chennai.

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CA(04/07/2016)



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