

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.281 of 2011

Ammasi @ Chittu

... Appellant

Vs

State rep. By
Inspector of Police,
Jalakandapuram Police Station,
Salem District.
Crime No.327/2009

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed in S.C.No.235/2010 dated 11.03.2011 on the file of the learned Additional District Sessions Judge/Fast Track Court No.1, Salem.

For Appellant : Mrs.Jayasri Baskar,
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.235 of 2010 on the file of the learned Additional District & Sessions Judge (Fast Track Court No.1), Salem. He stood charged for offence under Section 302 I.P.C. By judgment dated 11.03.2011, the trial Court convicted the accused for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and no fine amount was imposed on him. Challenging the said conviction and sentence, the accused/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.Seerangammal @ Seerangammal. The accused is her husband. The accused had no

earnings of his own and therefore, he was demanding money from the deceased to meet out his expenses. The accused also had suspicion regarding her fidelity. This is stated to be the motive for the occurrence. On 08.12.2009, at about 9.30 am, it is alleged that since, the deceased did not part away with Rs.1,000/-, the accused took out the Soori knife and stabbed her repeatedly. As a result, she died instantaneously.

3. Based on the above materials, the trial Court framed a lone charge against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined; 17 documents were exhibited and 14 Material Objects were marked.

4. Out of the said witnesses, P.Ws.1 and 2 are the eye witnesses to the occurrence. P.W.1 is the daughter of the deceased and the accused. P.W.2 is the sister-in-law of P.W.1. P.W.3 is the brother of P.W.2 and son of the accused and the deceased. Both P.Ws.1 and 2 have stated that P.W.4, a Villager found the accused and the deceased quarreling in the field. On getting the said information, P.Ws.1 and 2 rushed to the place of occurrence and at that time, they found the quarrel is still in progress and at the end of the quarrel, the accused stabbed the deceased repeatedly.

5. On the complaint of P.W.1, a case in Crime No.327 of 2009 under Section 302 I.P.C., was registered at 11.00 am on 08.12.2009 by P.W.14, the then Sub Inspector of Police, Jalakandapuram Police Station. P.W.15-the then Inspector of Police, took up the case for investigation. During the course of investigation, he prepared an Observation Mahazar and a Rough Sketch at the place of occurrence. He also recovered M.Os.1 to 6 in the place of occurrence namely, blood stained earth and the sample earth, Plastic chappels, small bag and a light blue towel.

6. P.W.13 - Dr.Panneerselvam who conducted autopsy on the body of the deceased on 08.12.2009 at 5.35 pm found the following injuries:-

"1. An oblique lacerated injury over the outer aspect of middle 3rd of left arm and it is situated 14cms below acromial prominence and 9 cms above lt elbow 10x2.5x1cms.

2. A oblique lacerated injury over outer aspect of middle 3rd of left arm and it is situated 1cm below the previous injury and it is 15 cms below acromial prominence and 8cms above lt elbow 3x1x0.5cms.

3.A vertical stab injury over upper part of the rt side chest $4 \times 1.25 \times$ cavity deep, the edges of both sides end of the wound are, acute angle and borders are clean cut and it is situated 3 cms below acromial process and 113 cms above right foot.

4.A oblique stab injury over rt side, upper part of chest and it is situated 4 cms below previous injury and 108 cms above rt foot and 7cms long and it is passing inwards and down wards $3 \times 1 \times$ cavity deep.

5.A oblique stab injury over lateral wall of rt chest and it is situated 9 cms below previous injury and 97 cms above rt foot $2 \times 1 \times$ cavity deep.

6.A vertical stab injury measuring $3 \times 0.5 \times$ cavity deep and it is situated 100 cms above left foot and 29 cms below occipital proturdence.

7.A oblique stab injury over lt side gluteal region $M3 \times 5 \times$ cavity deep and 32 cms below previous injury and 69 cms above rt foot.

8.A oblique stab injury over upper and outer aspect of left thigh $M4 \times 1 \times$ cavity deep the intestinal loop is protruded through the stab injury and it is situated 74 cms above lt foot and 13cms below left iliac crest.

9.A oblique stab injury over left side lateral wall of chest $2.5 \times 0.5 \times$ cavity deep and it is situated 2.5 cms below acromial process and 104 cms above left foot.

10.Laceration over middle 3rd of forearm $3.5 \times 0.5 \times 0.25$ cm and it is situated 7cms above wrist and 15cms below lt elbow

11.A punched out wound over back of rt elbow $1.5 \times 0.5 \times 0.5$ cms"

7.Ex.P.11 is the post mortem certificate. He gave opinion that the death was due to shock and hemorrhage due to stab

injuries found on the body of the deceased. He has further opined that the said injuries would have been caused by a weapon like M.O.9 knife.

8. During the course of investigation, P.W.15, arrested the accused on 09.12.2009 at 9.00 am near the Panchayat Union School at Soorapalli Village in the presence of P.W.7 and another witness. On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden the Soori Knife (M.O.9) blood stained shirt (M.O.7) and a blood stained Dhothi (M.O.8). He recovered these Material Objects under a mahazar and forwarded the same to Court. The above Material Objects were sent for chemical examination. The results revealed that there were human bloods on the Material Objects including the knife.

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 choose to examine any of the witnesses nor did he mark any documents on his side.

10. Having considered all the above, the trial Court found the accused guilty under the said charge and accordingly, sentenced him to undergo life imprisonment. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

11. In this appeal, on an earlier occasion, since there was no representation for the appellant, this Court appointed Mrs. Jayasri Baskar legal aid counsel on panel, as learned counsel for the appellant. We have heard the learned legal-aid counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. The trial Court had relied on the evidence of P.Ws.1 and 2 coupled with the medical evidence and also the recovery of the Material Objects at the instance of the accused to come to the conclusion that it was this accused who committed murder of the deceased.

13. The learned counsel for the appellant would submit that P.Ws.1 and 2 would not have seen the occurrence at all since the field and the house of P.W.1 are at a distance walkable in 15 minutes. Only after receiving the information from P.W.4, P.Ws.1 and 2 had reached the field. Further, there are some contradictions between the evidence of P.Ws.1 and 2. It is her specific contention that P.W.1 has stated that P.W.4 was present at the time of occurrence, whereas, according to P.W.4, he was not present at all at the time of occurrence. In our considered view, we are not persuaded by the said

14. Here is the case where P.W.1 is the daughter of the deceased and the accused. She herself has come forward to tell the truth that it was this accused, who stabbed her mother. P.W.2, the sister-in-law of P.W.1 has also stated that when she was proceeded to the field along with P.W.1, she witnessed the occurrence.

15. P.W.4, a Villager has stated that on the day of occurrence, there was a quarrel between the deceased and the accused in the field and therefore he informed P.Ws.1 and 2 about the same. From the evidence of P.W.4, it is crystal clear that P.Ws.1 and 2 had gone to the place of occurrence on his information. From the evidence of P.Ws.1 and 2, it has been clearly established that it was this accused who caused the death of the deceased.

16. The learned counsel for the appellant is not able to point out any material on record so as to doubt the credibility of the evidence of P.Ws.1 and 2. In our considered view, the evidences of P.Ws.1 and 2 inspire the fullest confidence of this Court and the same has been fully corroborated by the medical evidence.

17. From all these evidence, we have no doubt that the prosecution has clearly established that it was this accused who stabbed the deceased and caused her death.

18. The next question is "what is the offence that the accused had committed by his act?". It is the evidence of P.W.3 that one day prior to the occurrence, a goat belonging to the family was sold by the deceased for Rs.4,500/- and on the day of occurrence, the accused had gone to the field and wanted the deceased to pay him a sum of Rs.1,000/- out of the said amount for his expenses. The deceased refused to pay the same. This resulted in a quarrel. On seeing this quarrel, P.W.4 had gone to the house of P.W.1 and informed her. After that, P.Ws.1 and 2 had rushed to the field and even then, the quarrel was still going on. It was only at the end of the quarrel, the accused took out a Soori knife and stabbed the deceased. The death was also not instantaneous.

19. From these facts, we are of the view that the accused would not have intended to cause the death of the deceased at all. At the same time, it is crystal clear that the accused had intended to cause injury found on the deceased, which were sufficient in the ordinary course of nature, to cause her death. Thus, the act of the accused would fall within the third limb of Section 300 I.P.C.

20. As we have already pointed out, there was no pre-meditation and the occurrence itself was out of some wordy

quarrel. From the evidence available, it is presumed under Section 114 of the Indian Evidence Act, i.e., going by the natural human conduct that in the wordy quarrel, the deceased would have provoked the accused. There was no enmity between the accused and the deceased. After all, they were living under one roof. In our considered view, it is only out of the sudden provocation which was also grave, the accused stabbed the deceased with the knife and therefore, the act of the accused would not amount to murder and it would only amount to culpable homicide punishable under Section 304(i) I.P.C.

21.Now, turning to the quantum of punishment, at the time of occurrence, the accused was 60 years old. He is a senior citizen and he has been in jail continuously from the date of his arrest. He has no bad antecedents. After the occurrence also, it is not reported that he was involved in any other crime. Further, there are lot of chances for reformation. So far as the aggravating circumstances are concerned, there was no pre-mediation and there was no strong motive for the accused to commit murder of the deceased. Having regard to these aggravating as well as mitigating circumstances, we hold that the sentencing the accused to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.100/- shall be the appropriate punishment.

22.In the result, the criminal appeal is allowed in part and the conviction and sentence imposed on the appellant/accused under Section 302 I.P.C., is set aside and instead, the appellant is convicted for offence under Section 304(i) I.P.C., and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.100/-, in default to undergo rigorous imprisonment for five days. The period of sentence already undergone by the appellant is directed to be set off under Section 428 Cr.P.C.

Sd/-
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Assistant Registrar(CO)

//True Copy//

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Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge,
(Fast Track Court No.1),
Salem.

2.The Judicial Magistrate II,

Mettur

3.Through The Chief Judicial Magistrate,
Salem.

4.The Superintendent,
Central Prison, Salem.

5.The Public Prosecutor,
High Court, Madras.

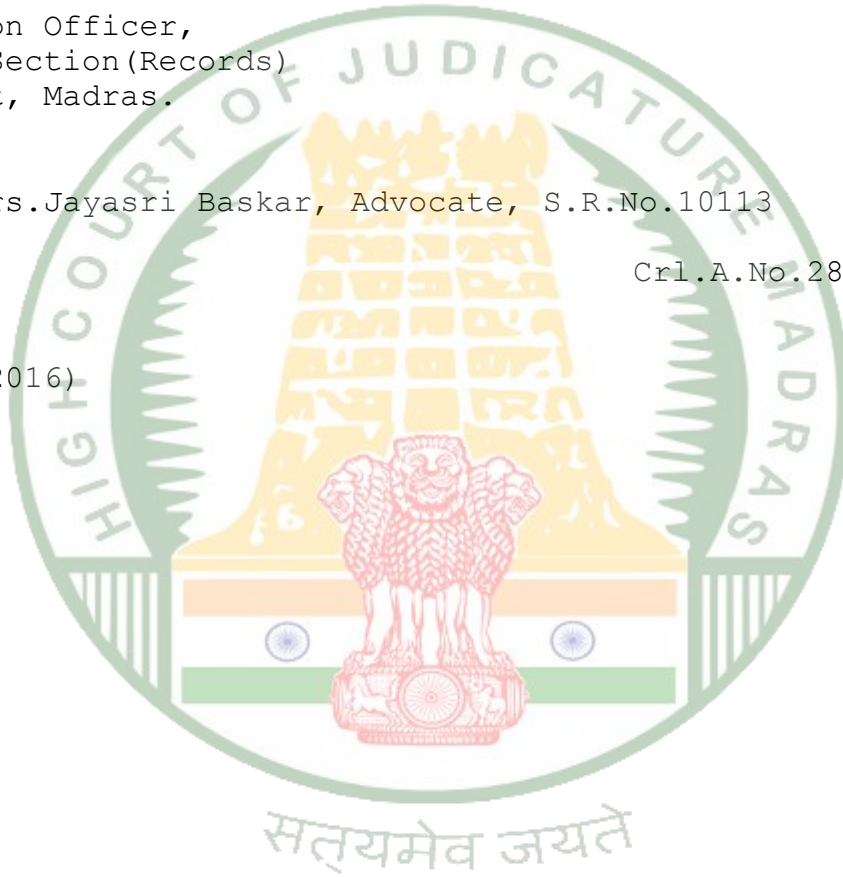
Copy To

The Section Officer,
Criminal Section(Records)
High Court, Madras.

+1cc to Mrs.Jayasri Baskar, Advocate, S.R.No.10113

Crl.A.No.281 of 2011

SNS (CO)
CA(22/03/2016)



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