

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.359 of 2011

Azhagiri
accused

.. Appellant/sole

Vs

State by
The Inspector of Police,
Avinasipalayam Police Station,
Coimbatore.
(Crime No.42 of 2009)

.. Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court No.5, Coimbatore at Tiruppur in S.C.No.118 of 2010 dated 29.10.2010.

For Appellant : M/s.Philip Ravindran Jesudoss

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

JUDGMENT

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

The appellant is the sole accused in S.C.No.118 of 2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.5, Coimbatore @ Tiruppur. He stood charged for offences under Sections 341 and 302 of IPC. By judgment dated 29.10.2010, the trial court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for 6 months for the offence under Section 302 of IPC and sentenced to undergo one month simple imprisonment for the offence under Section 341 of IPC. Challenging the said conviction and sentence, the appellant/sole accused is before this Court with this appeal.

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

(a) The deceased in this case was one Eswari. Eswari was given in marriage to one Subramaniam 20 years before the occurrence and she had 3 children born through him. While she was living with her husband, the deceased had developed illicit intimacy with the accused. After the birth of the 3rd child, she deserted her husband and came along with the accused. From that time onwards, the deceased was living with the accused. The husband of the deceased died two years before the occurrence. It is further alleged that few months before the occurrence, the deceased, on account of her displeasure over the activities of the accused, left the accused and came to the parental home and she was living with her parents. The children were also not with the accused. The deceased was doing coolie work and maintaining the family.

(b) On 18.03.2009, at about 09.30 a.m., the deceased was leaving for her work site along with P.Ws.2 and 3. P.W.1, her son was also proceeding along with them as he was proceeding towards the private company where he was working. When they were walking near Pulianthope, the accused came there in a Cycle. On seeing the deceased, he parked the cycle, came near the deceased and wanted her to return to the family fold so as to live with him as she was doing previously. The deceased told him that since her children had grown up, it would be not appropriate for her to live with the accused as it would bring shame and disrespect to her children. This resulted in a wordy quarrel between the accused and the deceased for quite some time. In the course of the said quarrel, it is alleged that the accused took a Saw from the cycle and on seeing the same, when the deceased started running, the accused intercepted her, caught hold her tuft and attacked her with hands and legs on her right ear and neck. Then, with the Saw, he attacked her on the head and other parts of the body. The deceased sustained bleeding injuries and fell down. P.Ws.1 to 3 raised alarm. The accused ran away from the scene of occurrence taking the Saw. P.Ws.1 and 2 ran near the deceased and found her dead.

(c) On hearing their alarm, a huge crowd of people gathered there. One of the persons in the crowd spoke to the police over phone and informed about the occurrence. On receiving the said information, within 5 minutes thereafter, P.W.13, the then Sub-Inspector of Police, attached to Avinasipalayam Police Station, rushed to the place of occurrence and recorded the statement of P.W.1. On returning to the police station, he registered a case in Cr.No.42 of 2009 under Sections 341, 506(ii) and 302 of IPC against the accused. Ex.P.1 is the complaint and Ex.P.11 is the First Information Report. He forwarded both the documents to court which were received by the learned Judicial Magistrate at 01.00 p.m. on 18.03.2009.

(d) The case was taken up for investigation by P.W.16 the then Inspector of Police attached to Avinasipalayam Police Station. He proceeded to the place of occurrence at 12.15 p.m. He prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.7 and P.W.8. Then, he recovered blood stained earth (M.O.5) and sample earth (M.O.6) from the place of occurrence. He conducted inquest on the body of the deceased and forwarded the same for postmortem.

(e) P.W.10 conducted postmortem on the body of the deceased at Palladam Government Hospital at 4.10 p.m. on 18.03.2009. He found the following injuries on the body of the deceased :

''External injuries:

1)A deep cut injury (linear laceration) length 5cm x width 1 cm x skull bone depth is present on fronto parietal region (mid line) ;

2)A deep cut injury (linear laceration) length 2 cm x width 1 cm x skull bone depth is present adjacent (Rt) to the injury number 1;

3)A cut injury (linear laceration) over Right external ear, split into two halves horizontally in mid line;

4)Multiple linear abrasions present in front of neck in horizontal direction, also present in sides of neck which one reddish brown in colour;

5)A reddish brown linear abrasion present over Right shoulder.

Internal examination:

Head:-Scalp injury as per no.1 and 2. Skull bone intact, no fracture. Membranes are intact. Brain intact c/s congested and edematous, base of skull intact no fracture;

Thorax:-Ribs are intact no fracture. Heart intact c/s chambers are empty. Both lungs are intact c/s congested. Neck:-on dissection of the neck, there was extensive contusion of soft tissue and muscles seen. On further dissection hyoid bone was found intact, no fracture. Thyroid cartilage fracture of both greater horns with surrounding soft tissue contusion was seen, on further dissection oesophagi was seen contused;

Abdomen:- opening of abdomen showed no free fluid, stomach contains 200gm of partially digested good particles. Liver is intact c/s congested, both the kidneys are intact c/s congested, spleen intact c/s congested, Intestines intact and distended with gas. Bladder intact c/s empty. Uterus normal in size c/s cavity empty."

Ex.P.6 is the Postmortem Certificate and Ex.P.7 is the final opinion. He opined that the external injuries found on the body of the deceased would have been caused by a weapon like M.O.1. It is his final opinion that the deceased would appear to have died of asphyxia due to strangulation.

(f) During the course of the investigation, P.W.16 arrested the accused at 5.15 p.m. on the same day at Devanampalayam, in the presence of P.W.11 and another witness. On such arrest, he gave a voluntary confession statement in which he had disclosed the place where he had hidden the Saw. In pursuance of the same, he took P.W.16 and the witnesses to the said place and produced M.O.1 Saw. P.W.16 recovered the same under a Mahazar in the presence of the same witnesses. On returning to the police station, he forwarded the accused to court for judicial remand and also handed over the material objects to the court. At his request, M.O.1 and the other material objects recovered from the body of the deceased and the blood stained earth and sample earth were sent for chemical examination. The Chemical Report reveals that there were blood stains on all the material objects including the Saw. On completing the investigation, he laid charge sheet against 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 16 witnesses were examined and 16 documents and 6 material objects were also marked.

4. Out of the said witnesses, P.W.1 to P.W.4 were examined as eye-witnesses to the occurrence. But, P.Ws.2 and 4 turned hostile as they have not supported the case of the prosecution in any manner. P.W.1 and P.W.3 have narrated the entire occurrence. P.W.1 has vividly stated about the occurrence in the complaint given by him to the police. P.W.5, the eldest son of the deceased has spoken only about the relationship between the accused and the deceased. P.W.6, the daughter of the deceased has also stated about the same fact. P.Ws.7 and 8 have spoken about the preparation of Observation Mahazar and Rough Sketch at the place of occurrence and the recovery of blood stained earth and sample earth from the place of occurrence. P.W.9, the sister-in-law of the deceased has also spoken only about the relationship between the accused and the deceased. P.W.10 Doctor has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.11 has spoken about the arrest of the accused, the disclosure statement and the consequential recovery of M.O.1 from the place of hide out, at the instance of the accused. P.W.12 has spoken about the handing over of the dead body of the deceased to Palladam Government Hospital for postmortem. P.W.13

is the Head Constable, who on receipt of information over phone, rushed to the place of occurrence and recorded the statement of P.W.1, registered a case on the basis of the said statement and prepared the F.I.R. P.W.14 is the Grade I Police Constable through whom the complaint and F.I.R. were sent to the learned Magistrate at 01.00 p.m. on 18.03.2009. P.W.15 is the father-in-law of the deceased who has also spoken about only the relationship between the accused and the deceased. P.W.16 has spoken about the investigation done and the final report filed.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor mark any document on his side.

6. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

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

8. The learned Counsel for the appellant would submit that P.W.1 and P.W.3, who are chance and interested witnesses, should not be believed. It is true that a witness, who is interested in the case of the deceased and also a chance witness, requires to face the test of close scrutiny. P.W.1 is the son of the deceased. He has stated that he went along with the deceased and he was present at the place of occurrence. The complaint was obtained from him only at the place of occurrence. Though P.W.1 was cross-examined at length, nothing has been elicited from him so as to disbelieve him. In our considered view, P.W.1, though interested in the case of the prosecution, we do not find any reason to reject his evidence. His presence has been explained by him and therefore, we hold that he was present during the entire occurrence.

9. So far as P.W.3 is concerned, she cannot be stated to be an interested witness. She is a disinterested witness. She had accompanied the deceased. She has also stated vividly about the entire occurrence. There is no reason to reject the evidence of P.W.3.

10. The learned Counsel for the appellant would submit that the medical opinion regarding the cause of death does not corroborate the eye-witnesses account. This argument does not

persuade us at all. The Doctor has found a number of external bleeding injuries on the body of the deceased which according to him, would have been caused by M.O.1-Saw. These two witnesses have stated that the deceased would have been attacked by the said weapon. The Doctor had found some contusions in the tissues in the neck and there were also congestion in the brain and the lungs. From these, the doctor has given the final opinion that the death was due to asphyxia due to strangulation. Such opinion of the doctor is not binding on the court. We are of the view that asphyxia need not always be necessarily due to strangulation either by ligature or by means of hands. Even by forceful attacks made on the neck, asphyxiation is possible. In this case, P.Ws.1 and 3 have stated that by one hand, the accused was holding the tuft of the deceased and by the other hand, he was repeatedly attacking on the neck of the deceased and then, he started attacking her with saw. Therefore, there was huge blood loss to the deceased. The Doctor's opinion, in our considered opinion that the death was due to strangulation, is not appealing. The death in this case is due to shock and hemorrhage due to the extensive external injuries. The doctor has not opined that these external injuries were postmortem injuries. Thus, in this case, the death of the deceased, due to shock and hemorrhage due to the external injuries, was more probable though the death due to asphyxia is also possible. At any rate, this accused had pressed her neck and caused external injuries. Thus, whether the death was due to asphyxia or due to shock and hemorrhage, it is only this accused, who was responsible for the same. Thus, the prosecution has proved that the death of the deceased was caused only by this accused. The contrary argument of the learned Counsel for the appellant is rejected.

11. Apart from this, there is no delay in preferring the complaint. The complaint was preferred at the site i.e. at the place of occurrence. The prompt launching of the First Information Report is also a matter, which, to some extent, vouches for the truth of the allegation contained therein. In this case, absolutely, there is no delay either in preferring the complaint or forwarding the same to the court. Apart from that, the learned Counsel for the appellant has not urged any other point to assail the conviction. We are fully satisfied that the prosecution has proved that it was this accused, who has wrongfully restrained the deceased and caused her death.

12. Now, the question is as to what was the offence that the accused had committed by the said act. It is in the evidence of P.Ws.1 to 3 that the accused came and on seeing the deceased, he parked his cycle and came near her. Thus, it is crystal clear that the meeting of the accused and the deceased itself was only by chance. Therefore, premeditation cannot be inferred. On seeing the deceased, the accused only wanted her to return to his house so as to live with him. The deceased

told him that since her children had grown up, it would not be possible for her to return home as it would bring shame and disregard to her children. Therefore, there was a quarrel between the accused and the deceased with regard to the living of the deceased with the accused or not. It was only in the said quarrel, the accused had taken the Saw which was there in the Cycle. The accused was also proceeding for some work for which the Saw was in the cycle. Thus, the accused had taken the Saw and attacked the deceased. In our considered view, the accused had been provoked by the words of the deceased. Thus, the act of the accused would fall under Exception 4 to Section 300 of IPC. Since the act of the accused would fall under the third limb of Section 300 of IPC and also under Exception 4 to Section 300 of IPC, he is liable to be punished under Section 304(I) of IPC besides Section 341 of IPC.

13. Now turning to the quantum of sentence, the learned Counsel for the appellant would submit that the accused has been imprisoned for 6 years. He had no bad antecedents and he has not shown any leniency from law. Having regard to the age, his antecedents and the fact that there was no premeditation and also the fact that without taking any undue advantage, the accused has attacked the deceased with Saw, we are of the view that sentencing him to undergo rigorous imprisonment for 10 years for the offence under Section 304(I) of IPC would meet the ends of justice besides the fine of Rs.1,000/-.

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

(a) The conviction and sentence imposed on the appellant for the offence under Section 341 of IPC is confirmed; and

(b) The conviction and sentence imposed on the appellant for the offence under Section 302 of IPC is set aside and instead, he is convicted under Section 304(I) of IPC and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for four weeks. It is further directed that the period already undergone by the appellant shall be set off under Section 428 of Cr.P.C.

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Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

1. The Additional District and Sessions Judge,
Fast Track Court No.5,
Coimbatore at Tiruppur.

2. do Principal Sessions Judge
Coimbatore

3. The Inspector of Police,
Avinasipalayam Police Station,
Coimbatore.

4. The Superintendent
Central Prison, Coimbatore

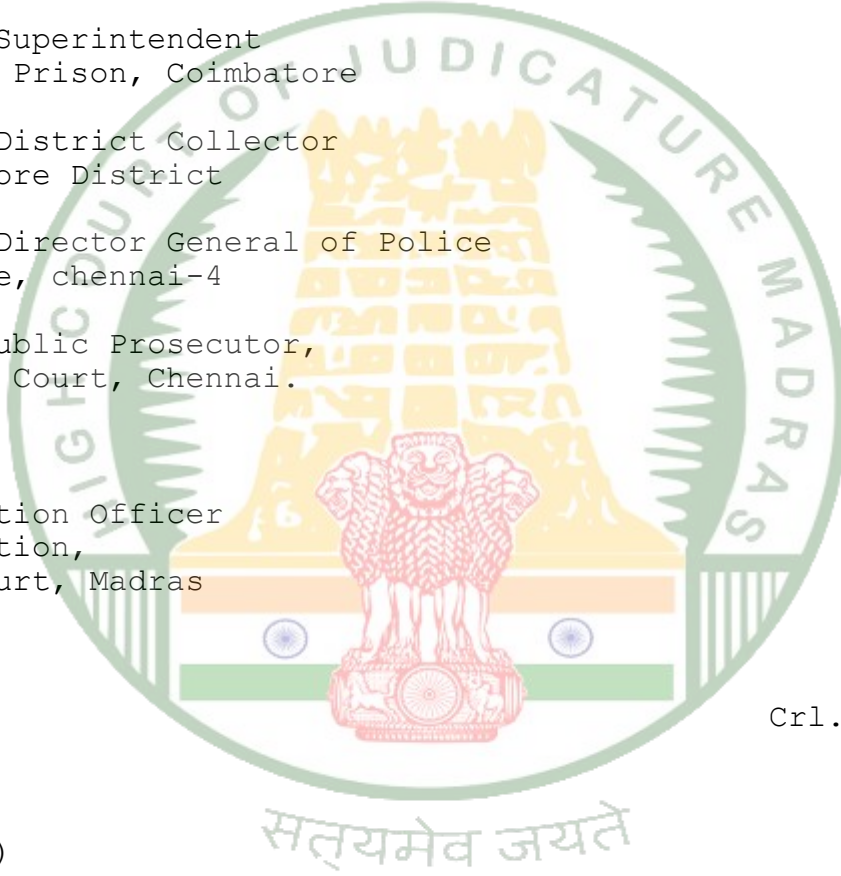
5. The District Collector
Coimbatore District

6. The Director General of Police
Mylapore, Chennai-4

7. The Public Prosecutor,
High Court, Chennai.

Copy to

The section Officer
Crl.Section,
High Court, Madras



Crl.A.No.359/2011

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