

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :22-1-2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUDHAKAR
and
THE HON'BLE MR. JUSTICE P.N.PRAKASH

Crl.Appeal.No.709 of 2011

Chinnasamy .. Appellant/Accused

Vs.

State, rep.by
The Inspector of Police,
H-1 Washermenpet Police Station,
Chennai. .. Respondent

Prayer: Criminal Appeal preferred under Section 374(2) of Code of Criminal Procedure against the conviction and sentence imposed on the appellant by the learned Sessions Judge, Mahila Court, Chennai, in S.C.No.556 of 2006 dated 9.3.2011 committed by XV Metropolitan Magistrate George Town, Chennai-1

For Appellant : Mr.S.Saravanakumar

For Respondent : Mr.V.M.R.Rajendran,
Additional Public Prosecutor

Reserved on	Pronounced on
7-1-2016	22-1-2016

J U D G M E N T

P.N. PRAKASH, J.

The sole accused, who has been convicted and sentenced by the learned Sessions Judge, Mahila Court, Chennai in S.C.No.556 of 2006 by judgment dated 9.3.2011 as follows,

Conviction u/s	Sentence
302 IPC	Life Imprisonment and Fine of Rs.25,000/- i/d Six months R.I.
506(ii) IPC	One year R.I. and Fine of Rs.5,000/- i/d One month R.I.

is before this Court.

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

(a) Pushpa @ Kamatchi, aged 38 years, is the widow of one Ramalakshmanan, through whom, she has two children Usha (PW-6) and Dhanalakshmi (PW-7). After her husband's death, Pushpa developed a live-in relationship with the appellant/accused, who was aged about 57 years. Their relationship soured and they got estranged.

(b) On 16.8.2006 at around 10.45 a.m., when Pushpa @ Kamatchi was returning from the ration shop, she was accosted by the appellant/accused, who took out a knife and indiscriminately attacked her, resulting in her death. The incident was witnessed by Janakiraman (PW-1), Rajan (PW-2), Kathirvel (PW-3), and Zakir Hussain (PW-4).

(c) On the oral complaint given by Janakiraman (PW-1), Charles Samrajadurai (PW-17), Inspector of Police, H-1 Washermenpet Police Station recorded the same (Ex-P1) and prepared the First Information Report (Ex.P-13) in Crime No.708 of 2006 under Section 302 IPC and took up the investigation of the case. The complaint (Ex.P-1) and printed FIR (Ex.P-13) were sent to the jurisdictional Magistrate on 16.9.2006 itself at 1.00 p.m., as could be seen from the endorsement therein.

(d) PW-17 went to the place of occurrence and in the presence of Raja (not examined) and Shankar (PW-9), prepared Observation Mahazar (Ex.P-2) and Rough Sketch (Ex.P-14). He requisitioned the services of Bharathan (PW-16), Scientific Officer, attached to the Mobile Forensic Science Laboratory, who came to the place of occurrence and helped to collect the clue materials. In the presence of Raja (not examined) and Shankar (PW-9), PW-17 collected soil with and without blood stains (MOs.2 and 3 respectively), Tar pieces with and without blood stains extracted from the road (MOs.4 and 5 respectively), Lady's false hair (MO-6), Plastic Basket (MO-7) in which railway season ticket (Ex.P-5) and Ration Card (Ex.P-4) were found. The aforesaid items were recovered under the cover of mahazar (Ex.P-3).

(e) PW-17 examined Janakiraman (PW-1), Rajan (PW-2), Kathirvel (PW-3) and Zahir Hussain (PW-4) and conducted inquest over the body of the deceased from 13.15 hours to 15.30 hours on 16.9.2006 and the Inquest Report was marked as Ex.P-15. Thereafter he sent the body of the deceased through Annadurai, Police Constable to the Stanley Medical College Hospital for conducting postmortem.

(f) On requisition, Dr.V.Sathiyamurthy (PW-15) conducted autopsy on the body of the deceased and noted the following injuries:

- "1) An oblique cut injury 11cm x 2 cm x Bone deep seen over back of right side neck. It is situated 1 cm below right ear lobe and 6 cm below occipital protuberence. It is running downwards and backwards crossing midline towards left side neck. On dissection: the underlying skin, facie, muscles, blood vessels and nerves found cut with extravasation of blood.
- 2) An oblique cut injury 6 cm x 2 cm x Bone deep seen on the back of left side neck. It is situated 0.5 cm below the previous injury. It runs downward and sideways from the midline. On dissection: the underlying skin, facia, muscles, Blood vessels, and nerves found cut with extravasation of blood.
- 3) An oblique incised wound 4 cm x 1 cm x muscle deep seen below the injury No.2.
- 4) An oblique cut injury 5 cm x 2 cm x muscle deep seen on the back of right side chest. It is situated 3 cm below right shoulder joint and 6 cm away from midline.
- 5) An oblique incised wound 2.5 cm x 0.5 cm x 0.5 cm seen, 2.5 cm below the injury No.4.
- 6) An oblique incised wound 3 cm x 2 cm x 2 cm seen over back of right side chest. It is situated 4 cm below injury No.4 and 2 cm away from midline.
- 7) A vertical incised wound 2.5 cm x 0.5 cm x bone deep seen on left side forehead, which is situated 2 cm above the inner third of left eye brow.
- 8) A punctured wound 3 cm x 2.5 cm x muscle deep seen over right side inguinal region
- 9) An oblique cut injury 5 cm x 1.5 cm x bone deep seen in right hand palmar aspect between right thumb and index finger.
- 10) An oblique cut injury 3 cm x 1.5 cm x bone deep seen over bas of left thumb on the dorsal aspect with dislocation of metacarpo phalangeal joint of left thumb

Heart : Normal in size, Cut Section:
Chambers empty. Great vessels, coronary vessels
patent.
Lungs: Normal in size, cut section pale
Hyoid bone & Spinal column intact.
Stomach: contains 100 gms partly digested food
particles with no specific odour, mucosa pale.
Liver, Kidneys, Spleen : Normal in size, cut
section pale
Brain: Normal in size, cut section pale
Uterus: Cut section empty."

PW-15 issued Postmortem certificate (Ex.P-11), wherein he has opined that the deceased would appear to have died of shock and haemorrhage due to multiple injuries. Dr.V.Sathiyamurthy (PW-15) sent the viscera to the Forensic Sciences Department for chemical analysis and the Viscera Report dated 28.9.2006 (Ex.P-12) states that no poison was detected in the articles that were examined.

(g) The apparel worn by the deceased viz, Blood stained Saree (MO-11), Blood stained Jacket (MO-12), Blood stained Inskirt (MO-13), and Blood stained Bra (MO-14) were handed over to the Police after postmortem. The body was handed over to the relatives of the deceased for disposal.

(h) On 16.9.2006 around 17.00 hours, the Investigating Officer (PW-17) arrested the appellant and recorded his confession statement in the presence of witnesses Iqbal (PW-10) and Hussain (PW-11). Based on the admissible portion of the confession statement (Ex.P-6), the Investigating Officer seized the Blood stained wooden handled knife (MO-1) from the appellant/accused under the cover of Mahazar (Ex.P-7). The clothes that were worn by the appellant/accused at the time of occurrence viz., Blood stained colour shirt (MO-9) and striped Lungi (MO-10) were collected under Form-95 and the appellant was produced before the jurisdictional Magistrate for remand.

(i) The weapon and articles that were recovered from the scene of occurrence, clothes worn by the appellant and the deceased were sent to the Tamil Nadu Forensic Sciences Department through Court for examination. The serology report (Ex.P-9) received therefrom disclosed the presence of blood in all the items, except soil (MO-3) and Tar piece (MO-5).

(j) The Investigating Officer (PW-17) examined several witnesses and on his transfer, further investigation was taken up by Subbarayan (PW-18), who completed the investigation and submitted the Final Report against the appellant for the offence under Section 302 IPC read with 506(ii) IPC, before the

Jurisdictional Magistrate.

3. On appearance of the accused, copies of the documents were furnished to him under Section 207 Cr.P.C. and the case was committed to the Court of Principal Sessions Judge, Chennai, who made over the case to the Mahila Court, Chennai in S.C.No.556 of 2006, since the deceased is a lady.

4. The trial Court framed the following charges against the appellant/accused.

(i) Under Section 302 IPC for causing the death of Pushpa @ Kamatchi.

(ii) Under Section 506(ii) IPC for criminally intimidating witness Janakiraman (PW-1), when he sought to intervene.

For the above charges, the accused pleaded 'Not Guilty'.

5. In order to prove the charges, the prosecution examined 18 witnesses, marked 19 exhibits, and produced 14 Material Objects.

6. When the accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances against him, he denied everything. Neither any witness was examined on behalf of the accused, nor any document was produced to rebut the prosecution evidence.

7. After going through the evidence on record and after hearing both sides, the trial Court convicted and sentenced the accused as stated in paragraph (1) above.

8. Heard Mr.S.Saravanakumar, learned Counsel appearing for the appellant/accused and Mr.V.M.R.Rajendran, Additional Public Prosecutor appearing for the State.

9. This case is based on the direct testimony of Janakiraman (PW-1), Rajan (PW-2), Kathirvel (PW-3) and Zahir Hussain (PW-4). Janakiraman (PW-1) in his evidence has stated that he is a Milk Vendor and that he knows the appellant/accused and the deceased Pushpa @ Kamatchi since the accused is a Fruit Vendor in the same area. Janakiraman (PW-1) has further stated that on 16.9.2006 around 10.45 a.m. when he was vending milk, he saw the appellant/accused and the deceased Pushpa quarelling in the road and the appellant/accused took out a knife and started indiscriminately attacking her. At that time when he tried to intervene, the appellant/accused threatened him saying that he (PW-1) will also meet the same fate. After Pushpa fell down, Janakiraman (PW-1) went to the Police Station and lodged the complaint (Ex.P-1), based on which investigation was taken up by the Police as stated above.

10. Mr.S.Saravanakumar, learned Counsel submitted that Janakiraman (PW-1) in his cross-examination has admitted at one place that he had signed the complaint at the place of occurrence and in another place he has stated that he signed the complaint in the Police Station at 11 O'clock. He also contended that the complaint was not written by Janakiraman (PW-1) as he has admitted in the cross-examination that he does not know to read and write.

11. We have carefully scrutinized the evidence of Janakiraman (PW-1). We find no infirmity in his evidence. Like the appellant/accused, he is also a road side vendor and knew the appellant/accused and Pushpa. This aspect has not been challenged in the cross examination. He has candidly admitted that he does not know to read and write, and that he made a oral complaint, which was recorded by the Investigating Officer (PW-17) and his (PW-1's) signature was obtained. The Investigating Officer (PW-17) has stated in his evidence that the narration of the Janakiraman (PW-1) was scribed by him, read over to him and then he obtained his signature in Ex.P-1. There is nothing illegal in this, for us to doubt the ocular testimony of Janakiraman (PW-1).

12. Similarly, Rajan (PW-2) and Zahir Hussain (PW-4) are also road side vendors, who had seen the occurrence. Kathirvel (PW-3) is a School Teacher, who is also an eye witness. PW-3 has stated that he knows the appellant/accused as he is a local fruit vendor. No animus has been attributed to any of these witnesses for giving false evidence against the appellant/accused.

13. The fact that Pushpa's death was homicidal violence has been proved beyond any pale of doubt, through the evidence of Dr.V.Sathiyamurthy (PW-15), who conducted autopsy on the body of the deceased, whose evidence has not been seriously disputed by the appellant/accused, either before the trial Court or before this Court.

14. Mr.S.Saravanakumar, learned Counsel submitted that the arrest of the appellant/accused and recovery of the knife (MO-1) appears very suspicious. In support of this contention he submitted that the offence had taken place near Kareem Beedi factory in the morning hours at 10.35 a.m., but according to the Police, they arrested him near Mint bus stand on the same day in the evening, which is very improbable as no one will be hanging around in the same area after having committed the offence. In our considered view, even if there is any suspicion with regard to the time of arrest of the appellant/accused, that can in no way shake the substratum of the evidence of the ocular witnesses PWs.1 to 4.

15. Mr.S.Saravanakumar, learned Counsel contended that even if this Court believes the testimonies of PWs.1 to 4, yet the appellant/accused could not be convicted under Section 302 IPC, but should have been convicted under Section 304(ii) IPC. In support of his contention he read out certain portions from the cross-examination of Rajan (PW-2), wherein he has stated that the appellant/accused and the deceased were quarelling aloud on the road, in the course of which he heard the appellant telling the deceased that she has betrayed him by living with another person. He further built up his argument on the basis of the evidence of Kasturi (PW-8), the landlord of the house in which the appellant/accused and the deceased lived till about two months prior to the incident.

16. In a case based on ocular evidence, motive of the accused is insignificant. Nevertheless, we are constrained to address this point in view of the argument raised by the counsel to contend that the appellant/accused had no ill-motive towards the deceased, and that the incident had taken place in the heat of passion during the quarrel. At the first blush this argument did sound little convincing, but on a closure scrutiny of the evidence on record, we are unable to persuade ourselves to accept this contention for the following reasons.

17. Dhanalakshmi (PW-7) in her evidence has stated that she and her younger sister were born to Pushpa through Ramalakshmanan, who died few years back, after which her mother contracted a live-in relationship with the appellant/accused, and that her younger sister Usha (PW-6) was living with them as she (Dhanalakshmi - PW7) was married to Mani (PW-5) and was living in her matrimonial home. Dhanalakshmi (PW-7) in her evidence has further stated that the appellant/accused tried to misbehave with Usha (PW-6) and sexually abuse her, on account of which her mother decided to sever the relationship with the accused and even vacate from the house of Kasturi (PW-8), which they had taken on rent.

18. Mr.S.Saravanakumar submitted that from the evidence of Kasturi (PW-8) and Rajan (PW-2) it is clear that the deceased Pushpa had not parted company with the appellant/accused on the score that he was misbehaving with Usha (PW-6), but on account of the wayward life of the deceased, who had found greener pastures elsewhere.

19. It is true that Kasturi (PW-8) in her evidence has stated that the appellant/accused, deceased Pushpa and Usha (PW-6) had taken a portion of her house on rent and lived there for about two years, during which time the couple used to quarrel

frequently. In the chief examination Kasturi (PW-8) clearly stated that on coming to know that the appellant/accused had misbehaved with Usha (PW-6), she also questioned the appellant/accused and asked him to quit the house, following which the family left the premises two months prior to the incident. But in the cross-examination she has stated that the quarrel between the appellant/accused and the deceased was on account of the suspicious conduct of Pushpa.

20. At this juncture, it may be necessary to discuss the evidence of Usha (PW-6), who was about 14 years when she deposed before the trial Court. Usha (PW-6) in her evidence has stated that her mother developed friendship with the appellant/accused and she stayed along with them. During night times, the appellant/accused would insist that Usha should sleep in the middle, which was not initially resisted by the deceased Pushpa, because the deceased Pushpa believed that the appellant/accused was treating Usha as his daughter. Usha (PW-6) in her evidence further stated that while sleeping, the appellant/accused started fondling her breast and touching her private parts. When Usha (PW-6) informed this to her mother (deceased), she was enraged. This snowballed and culminated in the deceased leaving the company of the appellant/accused and going to her mother's house. The defence was not able to shake the testimony of Usha (PW-6), except suggesting to her that on account of her mother's death she is giving false evidence against the appellant/accused.

21. Assuming for a moment that the quarrel was on account of the wayward life of the deceased Pushpa, we are unable to fathom as to how that can be a justification for the appellant/accused to come armed with a knife, accost the deceased, pick up a quarrel with her, and indiscriminately cut her in the broad day light. From the evidence of Dr.V.Sathiamurthy (PW-15) the deceased had suffered ten injuries, most of which are deep seated, which have been catalogued above. Therefore, we are not convinced with the submission that the offence had taken place in the heat of passion, warranting invocation of section 304(ii) IPC. The deceased was working as a servant-maid in a house and she had come to the ration shop for purchases, where she met a gory end at the hands of the appellant/accused.

22. In the result, we find no merit in this criminal appeal and consequently the same stands dismissed. The conviction and sentence imposed by the learned Sessions Judge, Mahila Court, Chennai in S.C.No.556 of 2006 by judgment dated 9.3.2011 are hereby confirmed. The bail bonds are cancelled and the

respondent Police are directed to apprehend the appellant/accused for serving the sentence of imprisonment imposed upon him by the Trial Court.

-s/d-
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

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To

1. The Sessions Judge, Mahila Court, Chennai.
2. The XV Metropolitan Magistrate,
George Town, Chennai
4. The Inspector of Police,
H-1 Washermenpet Police Station, Chennai
5. The Superintendent Central Prison,
Puzhal, Chennai
6. The Public Prosecutor, High Court, Madras.
7. The Section Officer, Criminal Section,
High Court, Madras

+1 cc to Mr.S.Saravana Kumar Advocate sr.3903

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