

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.182 of 2015

Arumugam

... Appellant/Accused

- Vs -

State rep by Inspector of Police,
Katpadi Police Station,
Vellore District.
(Cr.No.543 of 2012)

... Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Principal Sessions Judge, Vellore in S.C.No.56 of 2013 dated 16.03.2015.

For Appellant : Mr.A.Praveen Kumar
Legal Aid Counsel.

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.56 of 2013 on the file of the learned Principal Sessions Judge, Vellore. He stood charged for offence under Section 302 I.P.C. By judgment dated 16.03.2015, the trial Court convicted him under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months. 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:

2.1. The deceased in this case was one Mr.Balaji. He was a

resident of Kelvadukan Kuttai village at Katpadi. P.W.1 Mrs.Usha is the sister of the deceased. She was given in marriage to one Mr.Kannan of Jabrapet village in Katpadi. She lived with her husband Mr.Kannan at Jabrapet village. Out of the said wedlock, P.W.1 has got three children. Unfortunately, her husband died. The accused is also a resident of Jabrapet village. He was running a shop. After the demise of the husband of P.W.1, the accused had an eye on P.W.1. On few occasions, he made sexual overtures towards her. She bluntly negated the same. But the accused did not change his attitude.

2.2. On 06.05.2012, P.W.1 was at her house at Jabrapet with her three children. At that time, the accused came to her house and made sexual advances towards her. When she refused, he tried to hug her by force her to consent for sexual intercourse. P.W.1 was unable to bear this torture. Therefore, she informed the deceased and the other family members about the same and wanted them to help her to come out of this torture.

2.3. At around 01.00 p.m. on 06.05.2012, the deceased Balaji came to Jabrapet village to the house of P.W.1 along with his mother P.W.2, one Venkatesan (P.W.3) and Mr.Sekar (P.W.10). The deceased called the accused and tried to persuade him not to hereafter disturb P.W.1. The accused got wild. He was already hiding a button knife in his waist behind the lungi. He took out the button knife and stabbed the deceased thrice repeatedly on his stomach. The deceased fell down in a pool of blood. The occurrence was witnessed by P.Ws.1 to 3 and 10. Even before they could intervene, the accused had completed stabbing the deceased three times and ran away from the scene of occurrence with the knife.

2.4. P.Ws.1 to 3 and 10 immediately arranged for an ambulance and took the deceased to the CMC hospital at Vellore. One Dr.Goutham Kumar was on casualty duty. At 02.00 p.m. he examined the deceased and declared him dead.

2.5. Right from the hospital, P.W.10 went to Katpadi Police Station at 04.00 p.m. and made a complaint. P.W.12 the then Special Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.543 of 2012 under Section 302 I.P.C. He forwarded both the documents to Court forthwith.

2.6. P.W.15 the then Inspector of Police took up the case for investigation. He proceeded to the place of occurrence at 05.00 p.m. prepared an observation mahazar and a rough sketch in the presence of P.W.4 and another witness. He recovered bloodstained earth, sample earth, a pair of chappal and yet

another chappal from the place of occurrence. On 07.05.2012, between 07.00 a.m. and 09.00 a.m. he conducted inquest on the body of the deceased and then forwarded the dead body for postmortem.

2.7. P.W.13 Dr.Selvaraj, conducted autopsy on the body of the deceased on 07.05.2012 at 01.50 p.m. He found the following injuries:

"Injuries noted: (1) Contused abrasions on the right shoulder, arm and elbow (2) Stab injury 2 x 1 cm x lung depth 3 cm away from the left nipple. (3) Stab injury 2 x 1 cm x lung depth 2 cm below the left nipple. (4) Stab injury 2 x 1 cm x intestine depth 4 cm away from the umbilicus to the left. The intestine loops have prolapsed out. (5) Stab injury 2x1 cm x liver depth 6 cm below the right nipple.

On dissection of chest and abdomen: Abdominal cavity contains one liter of blood. Left thoracic cavity contains 500 ml of blood. The left lung is pierced in two places corresponding to the external injury. The liver is pierced in one place corresponding to external injury No.5. Heart: normal. Chambers - empty. Coronaries: Patent, Lung pale. Hyoid bone: intact. Stomach contains 100 ml of chime like digested food with nil specific smell. Mucosa: pale. Small intestine: Nil specific. Liver, Spleen and Kidneys: pale, bladder: empty, Brain: pale."

Ex.P16 is the postmortem certificate. He gave opinion that the injuries found on the deceased could have been caused by weapon like M.O.1-knife. He further opined that the death of the deceased was due to shock and hemorrhage due to the said injuries.

2.8. In connection with this case, the accused had surrendered before the learned Judicial Magistrate Court. P.W.15 took police custody of the accused as per the orders of the learned jurisdictional Magistrate on 17.05.2012 at 03.00 p.m. While in police custody, in the presence of P.W.6 and another witness, he gave a voluntary confession, in which, he disclosed the place where he had hidden the knife. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.1 knife. P.W.15 has recovered the same. He collected the bloodstained clothes from the body of the deceased, examined few more witnesses including the doctor and collected the medical records. Since he was transferred, the

investigation was taken over by his successor P.W.16. On the request made by the investigating officer, the material objects were sent for chemical examination. The report revealed that there were human blood stains found on all the material objects including the knife. On completing the investigation, P.W.16 laid chargesheet against the accused.

2.9. Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C., which the accused denied. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined, 18 documents and 9 material objects were marked.

2.10. Out of the said witnesses, P.Ws.1 to 3 and 10 are the eyewitnesses to the occurrence. They have vividly spoken about the entire occurrence. They have stated that the accused who had hidden the knife in his waist behind his lungi, suddenly took up the same and stabbed the deceased thrice. P.W.4 has spoken about the preparation of the observation mahazar and a rough sketch and the recovery of the material objects from the place of occurrence. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner.

2.11. P.W.6 has stated about the disclosure statement made by the accused while in police custody and the consequential recovery of M.O.1 - knife. P.W.7 has spoken about the chemical examination conducted on the material objects. According to him, bloodstains were found on all the material objects including the knife. P.W.8 has stated that he took the dead body of the deceased and handed over the same to P.W.13 for postmortem as directed by P.W.15. P.W.9 Dr.Suresh David has stated that during the relevant time, he was working as a Doctor in C.M.C. Hospital in Vellore. On 06.05.2012, one Dr.Goutham Kumar was on duty as the casualty medical officer. Since Dr.Goutham Kumar was not available before the Court for examination, P.W.9 has spoken about Ex.P10 the accident register, wherein, Dr.Goutham Kumar had recorded that the deceased was brought to the hospital at 02.00 p.m. on 06.05.2012 and on examining him, Dr.Goutham Kumar declared him dead.

2.12. P.W.11 the Head Clerk of the learned Magistrate Court has stated that she forwarded the material objects to the forensic lab for chemical examination as directed by the learned Magistrate. P.W.12 has spoken about the registration of the case on the complaint of P.W.10. P.W.13 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.14 has stated that he handed over the F.I.R. to the learned Magistrate on 06.05.2012 at 04.45 p.m. P.Ws.15 and 16 have spoken about the investigation done and the final report

filed.

3. 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 nor mark any document on his side. His defence was a total denial. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

4. When this appeal came up for final hearing, consistently there had been no representation for the appellant. Therefore, we appointed Mr.A.Praveen Kumar as the Legal Aid Counsel to conduct the appeal on behalf of the appellant. Accordingly, he argued on behalf of the appellant. We heard the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. In this case, as we have already stated, there are four eyewitnesses to the occurrence. P.W.1 the sister of the deceased has spoken about the misbehaviour of the accused towards her on few earlier occasions and also on the day of occurrence. She has stated that she informed the same to the deceased and wanted him to intervene and to rescue her from the said problem. It was only because of that request, he came all over from his village to Jabrapet village along with P.Ws.2, 3 and 10. As the deceased was trying to persuade the accused not to disturb P.W.1, the accused suddenly took out a knife from his waist and stabbed the deceased thrice. These four eyewitnesses have vividly spoken about the same. Though they have been cross examined at length, we do not find any thing on record to reject their evidences. Thus, we find that by mean of the evidences of these eyewitnesses the prosecution has clearly established that it was this accused who stabbed the deceased thrice with knife.

6. P.W.13 Dr.Selvaraj, who conducted autopsy has opined that there were three stab injuries found on the body of the deceased. He has further opined that the said injuries could have been caused by a weapon like M.O.1. He has further opined that the death was due to shock and hemorrhage due to these injuries. We find no reason to reject the opinion of P.W.13. From his evidence, we hold that the death of the deceased was as a result of the injuries caused by the accused.

7. While in police custody, the accused had given a voluntary confession, in which, he disclosed the place where he had hidden the knife. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.1 - knife. During chemical examination, it was found that

M.O.1 - knife contained human blood of 'A' group. The said disclosure statement made by the accused and the recovery of M.O.1 also further strengthen the case of the prosecution.

8. There is no delay in preferring the F.I.R. Thus, in our considered view, there are overwhelming evidences let in by the prosecution to prove that it was this accused who stabbed the deceased and killed him.

9. The learned counsel for the appellant would submit that the act of the accused would fall within the first exception to Section 300 I.P.C. We find no force at all in this argument. The fact that the accused had stabbed the deceased thrice on the vital parts would give adequate inference that the intention of the accused was only to cause the death of the deceased. Thus, his act would clearly fall within the ambit of the first limb of Section 300 I.P.C. At the same time, we do not find any material on record to bring his act within the ambit of the first exception to Section 300 I.P.C. as it is projected by the learned counsel for the appellant. From the evidences of all these eyewitnesses, it is crystal clear that the deceased had come along with other eyewitnesses all the way from his village only to persuade the accused not to disturb P.W.1. At that time, the deceased was not armed with any weapon. He did not make any advance towards the accused menacingly. There is nothing on record even to remotely infer that the accused would have been provoked either by the act or words of the deceased. Thus, absolutely there is no material to bring the act of the accused within the first exception to Section 300 I.P.C. Therefore, we hold that the offence committed by the accused is clearly a murder punishable under Section 302 I.P.C.

10. 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.

11. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant by the learned Principal Sessions Judge, Vellore in S.C.No.56 of 2013 dated 16.03.2015, stands confirmed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

dixit/kk

To

1. The Principal Sessions Judge,
Vellore.

2 The Judicial Magistrate, Katpadi

3 -do- Thro The Chief Judicial Magistrate, Vellore

4. The Inspector of Police,
Katpadi Police Station,
Vellore District.

5 The Superintendent, Central Prison, Vellore

6 The District Collector, Vellore

7 The District General of Police
Mylapore, Chennai 4

8. The Public Prosecutor,
Madras High Court.

+1 CC to Mr. A. Praveen Kumar, Advocate Sr.No.42851

Cr1.A.No.182 of 2015

NM (CO)

MD : 17/10/2016

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