

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.229 of 2015
and M.P.No.1 of 2015

Ramaiah

... Appellant / accused

vs

State,
Represented by
Inspector of Police,
Kottur Police Station,
Thiruvarur District
(Crime No.42/2011)

.. Respondent / Complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of the learned District and Sessions Court, Tiruvarur, in S.C.No.98 of 2012, dated 05.09.2013.

For Appellant : Mr. R.Sankarasubbu
For Respondent : Mr. M.Maharaja, A.P.P.,

J U D G M E N T

(Judgement of the Court was delivered by S.Nagamuthu. J.,)

The appellant is the sole accused in S.C.No.98 of 2012 on the file of the learned District and Sessions Judge, Tiruvarur. He was charged for the offence under Section 302 IPC. By judgment, dated 05.09.2013, the trial court convicted and sentenced him to undergo Imprisonment for Life and to pay a fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for six months. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The accused hails from Thiruvasal Village in Thiruvarur District. He was living in the said village with his wife, Mrs.Bommi. He has got his son, by name, Arul (P.W.1). Arul married one Mrs.Kousalya of Sooleswarapatti Village out of love for her. Out of the said wedlock, Mr.Arul and Mrs.Kousalya had a male child, by name, Santhosh and a female child, by name, Sandhiya. After the birth of Sandhiya, there arose a matrimonial dispute between Mrs.Kousalya and P.W.1 and Mrs.Kousalya (P.W.4) deserted P.W.1. Thereafter, the accused arranged for marriage between P.W.1 and one Mrs.Kannagi. After his second marriage, P.W.1 was living

with his second wife, Mrs.Kannagi and two children born to the first wife. The accused and his wife Mrs.Bommi were also living with them under a common roof. After sometime, there arose a misunderstanding between P.W.1 and his second wife, Mrs.Kannagi and she went and stayed at her parental home. It came to light that she was not liking the children (Santhosh and Sandhiya). According to her, they were the hindrance for her smooth marital life with P.W.1.

3. On 25.01.2011, P.W.1 and the deceased had gone to the parental home of Kannagi and persuaded her parents to send her back to the house of P.W.1. Her father assured to send her on the next day. P.W.1 thus stayed back with his second wife at the house of her father. The accused alone returned to his house at Thiruvasal Village. His first wife, Bommi, had gone to hospital taking the male child, Santhosh. Thus, at the house, the deceased and the accused alone were there.

4. It is alleged that, around 10.00 pm, the accused decided to do away with the deceased, because it was on account of her, Mrs.Kannagi was not readily coming forward to return to matrimonial home and to lead a peaceful life with P.W.1. It is alleged that, he cut the deceased repeatedly. The occurrence was not witnessed by anyone. Mrs.Bommi, the first wife of the accused, had returned from hospital. She took the deceased immediately to the hospital. At 02.00 am on 26.01.2011, P.W.5 (Dr.Vanathi) examined the deceased at Thanjavur Medical College and Hospital, who was referred from Mannargudi Government Hospital. She found that the deceased was no-more. She declared the deceased dead and sent the body to mortuary. Ex.P-2 is the accident register. P.W.1, on hearing about the occurrence, went to Thanjavur Medical College and Hospital and found that the deceased was dead. Thus, he immediately returned to Kottur and made a complaint at Kottur Police Station, at 11.00 am on 26.01.2011. P.W.13, the then Inspector of Police, Kottur Police Station, on receipt of the said complaint, registered a case in Crime No.42 of 2011 under Section 302 IPC. Ex.P-1 is the complaint and Ex.P-10 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Magistrate at 03.30 pm on 26.01.2011.

5. P.W.13 has taken over the case for further investigation. He proceeded to the place of occurrence and prepared an Observation Mahazar and a rough sketch in the presence of P.W.10. He recovered blood stained earth and sample earth at the place of occurrence. He examined Mrs.Bommi and few more witnesses. He went to the hospital and examined Dr.Vanathi and few more witnesses. On the same day, at 04.30 pm, near Kottur Panchayat Board Office, he arrested the accused, in the presence of P.W.11 and another witness. On such arrest, the accused gave a voluntary confession, in which, he discloses a place where he had hidden the Aruval. In pursuance of the same, he took the Police and witnesses to the place of hide-out and produced M.O.1-Aruval. P.W.13 recovered the

same under a Mahazar. Then, he conducted inquest on the dead body of the deceased and forwarded the body for post-mortem.

6. P.W.6, Dr.Rajkumar, conducted autopsy on the dead body of the deceased on 26.01.2011 at 01.30 pm. He found the following injuries:-

"External Injuries:-

1. Incised wound 5 x 2 x 2 bone depth over left parietal region exposed bone.
2. Lacerated incised wound 3x1x2 cm bone depth left frontal region.
3. Incised wound 3x1x2 cm bone depth over left temporal area.
4. 2 x 1 x 1 cm incised wound over left forehead.
5. Incised wound 6x2x1 cm bone depth extending from lateral aspect of the left eyebrow extending laterally to middle of the left cheek, exposing floor of the orbital bone involving the eyeball.
6. Incised wound 6x2x1 cm bone depth extending from right lateral aspect of the maxilla upto the left cheek, exposing orbital floor.
7. Incised wound 10x3x2 cm bone depth extending from lower right lip to the middle of the right cheek upto middle of left cheek involving nasal bone, abdominal mobility of nose.
8. Incised wound 10x3x2 cm bone depth extending from lower right lip to the middle of median nasolabial fold.
9. Incised wound 11x2x1 cm bone depth from right mastoid process to just lateral of the upper mentum, exposing mandible.
10. Incised wound 2x1x1 cm over the mentum.
11. Incised wound 6x3x2 cm bone depth over dorsum of left hand.
12. Incised wound 3x2x2 cm over left wrist.
13. Multiple abrasions over middle of arm, front and back of chest.
14. Abnormal mobility over right arm.
15. Contusion present of lower forearm.
16. Abnormal mobility present over left hand.

Internal Injuries:

Subscalpal contusion present over frontal parietal and occipital region.

Extremities	:	As noted above.
Level of diaphragm	:	Intact
Peritoneal cavity	:	Free from haemorrhages.
Pericardium	:	Intact
Heart	:	Normal in size. All chambers contained fluid blood.
Valves	:	NAD

Coronary vessels	:	Patent
Great Vessels	:	NAD
Lungs	:	C/s congested.
Hyoid Bone	:	Intact
Stomach	:	50 ml of undigested food, non irritant, non odour.
Liver, spleen	:	C/s congested.
Kidneys	:	C/s congested
Head & Membranes	:	As noted above.
Brain	:	Surface vessels congested.
Spinal column	:	Intact
Vagina and Vulva	:	Intact."

7. P.W.6 gave opinion that the death of the deceased was due to shock and haemorrhage caused on account of multiple cut injuries found on the body of the deceased. He further opined that the said injury could have been caused by a weapon like M.O.1-Aruval.

8. P.W.13 recovered blood stained cloth from the accused, which was worn by him and forwarded the same for analysis. At his request, Material Objects were sent for chemical examination, which revealed that there were blood stains on all the Material Objects, including the Aruval. On completing investigation, he laid charge sheet against the accused.

9. Based on the above materials, the trial court framed charges under Section 302 IPC, against the accused, as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 13 witnesses were examined and 14 documents were exhibited, besides marking 6 Material Objects.

10. Out of the said witnesses, P.W.1, the father of the deceased and the son of the accused, has stated that on the crucial night, he stayed with his second wife, Mrs.Kannagi at Mahadevapatti Village. Around 04.00 am, he heard about the occurrence, came to the village and went to the hospital. He has spoken about the complaint made by him to the police. P.W.2 has turned hostile and she has not supported the case of the prosecution in any manner. P.W.3 is the brother's daughter of the accused and she has stated that she heard about the occurrence and she went to the hospital. P.W.4, the mother of the deceased, has not stated anything about the occurrence and she has stated that she heard about the occurrence. P.W.5, Dr.Vanathi, has stated that on 26.01.2011, at 02.00 am, she examined the deceased and found her dead. P.W.6 has spoken about the post mortem conducted on the body of the deceased and the final opinion regarding the cause of death. P.W.7 is the neighbour of the deceased and she has stated that, on 25.01.2011, at 10.00 pm, the deceased died. She has further stated that when she was sleeping at her house, she heard the alarm raised and then she came to know that the accused had killed the deceased. She has further stated that when she went to the house, she found the

deceased dead. P.W.8 is yet another neighbour, who has stated that around 10.00 pm, she heard the alarm, went to the house of the deceased and found that the deceased was taken in 108 ambulance to the hospital. P.W.9 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence. P.W.10 is the star witness of the prosecution, who has stated that around 10.00 or 11.00 pm, two years before, there was a noise emanated from the street. When he went to the house of the deceased, he found the accused sitting with blood stains and a child was lying with cut injuries. P.W.11 has spoken about the arrest of the accused and the consequence recovery of M.O.1. P.W.12 has spoken about the chemical analysis conducted on the Material Objects. P.W.13 has spoken about the registration of the case, investigation done and the final report filed.

11. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witnesses nor marked any documents, on his side.

12. Having considered all the above, the trial Court convicted the accused under Section 302 IPC, as detailed in first paragraph of the judgment. Challenging the same, the appellant is before this Court with this Criminal Appeal.

13. 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.

14. The learned counsel for the appellant would submit that this is a case, where, absolutely, there is no evidence against the accused, but, still, the trial court has convicted him on mere surmise.

15. The learned Additional Public Prosecutor would submit that P.W.10 has seen the accused sitting with blood stains, on the side of the dead body and it is in evidence that the accused and the deceased (child) alone were there in the house. He would further submit that since there is no explanation coming forward from the accused as to how the child has sustained injuries, the trial court has convicted him, which, according to the learned Additional Public Prosecutor, requires no interference.

16. We have considered the aforesaid submissions made by the learned counsel for both sides.

17. Though it is alleged that in the house the deceased and the child alone were there, there is no evidence available on record that the accused was found anywhere in the house on the crucial date. P.W.10 has stated that on hearing the alarm raised, he went to the house of the deceased and found the accused sitting with blood stains and the child was lying by the side with cut injuries. But, no other neighbour had gone to the house before P.W.10 stating

that they saw the accused sitting there. Therefore, it is highly unbelievable that the accused has been sitting by the side of the dead body very patiently, without fleeing away from the scene of occurrence. Therefore, the evidence of P.W.10 cannot be believed. Apart from that, there is no evidence to even remotely show that the child was in the custody of the accused on the crucial night. There is no evidence that he was found in the house on the said date.

18. Above all, the motive alleged by the prosecution that the accused had decided to kill the child, because she was a hindrance for his son to live with Mrs.Kanaga appears to be artificial and the same is highly unbelievable. Even to prove this motive, there is no evidence. Thus, at the most, it can be held that the prosecution has established a suspicion against the accused in connection with the death of the deceased. Any amount of suspicion would not take place to prove the guilt of the accused. For the aforesaid reasons, we hold that the accused is entitled for acquittal, as the prosecution has failed to prove the guilt of the accused beyond all reasonable doubts.

19. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant / accused by the learned District and Sessions Judge, Thiruvarur, in S.C.No.98 of 2012, by the judgment, dated 05.09.2013, are hereby set-aside. The appellant / accused is acquitted of all the charges levelled against him and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amounts, if any, paid by the appellant, shall be refunded to him. Bail bonds, if any, shall stand discharged. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk

To

- 1.The District and Sessions Judge, Tiruvarur.
- 2.The Judicial Magistrate II, Mannargudi.
- 3.Do Thro the Chief Judicial Magistrate, Thiruvarur.
- 4.The Superintendent of Police, Thiruvarur.
- 5.The Superintendent, Central Prison, Trichy.
- 6.The Inspector of Police, Kottur Police Station, Thiruvarur.
- 7.The District Collector, Thiruvarur.
- 8.The Director General of Police, Mylapore, Chennai.
- 9.The Public Prosecutor, Madras.

Crl.A.No.229 of 2015
& M.P.No.1 of 2015

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