

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.258 of 2015

Palani @ Palanisamy

..
Appellant/Accused

Vs

The State of Tamil Nadu,
Rep. By Inspector of Police,
Annadhanapatti Police Station,
Salem District

...Respondent/complaintant

Prayer:- Criminal Appeal filed under Section 374(1) Cr.P.C.,
against the judgment in S.C.No.49/2010 dated 13.12.2010, on
the file of the learned I Additional Sessions Judge, Salem,
Salem District.

For Appellant : Mr.G.Senthamil Selvan

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.49/2010 on the file of the learned I Additional Sessions Judge, Salem. He stood charged for offence under Section 302 I.P.C. The trial Court by judgment dated 13.12.2010, convicted the accused for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for three 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 deceased in this case was one Mrs.Jaya. The

appellant/accused is her husband. P.Ws.1 & 3 are their sons. P.W.3, who was already married was living separately with his wife in a house behind the house where the accused and the deceased were living along with P.W.1. The accused had suspicion over the fidelity of the deceased. On account of the same, there were quarrels between them. On 19.04.2009, the accused returned home in the evening. At that time, the accused was fully drunk. The deceased questioned the same. This resulted in a quarrel. Both were hurling obscene language against each other. P.Ws.1 & 3 intervened and persuaded them. Thereafter, it is stated that the deceased, P.W.1 and the accused were sleeping in a room. P.W.3 was sleeping with his wife in the house, on the back side of the house of the accused. By about 2.00 am, it is alleged that on hearing some murmur P.W.1 woke up. He found the accused standing near the deceased with the grinding stone in his hands. Even before P.W.1 could intervene, he dropped the grinding stone on the head of the deceased and ran away. The deceased sustained injuries on her head and there was profuse bleeding. P.W.1 cried for help. He went to the house of P.W.3 and informed him about the occurrence. P.W.3 came to the house of the deceased and found the deceased lying with injuries. Thereafter, P.Ws.1 & 3 took the deceased to the Government Hospital at Salem at 5.00 am. P.W.9 examined her and found the head injuries and he informed that her condition was critical. Ex.P.9 is the Accident Register. He admitted her as inpatient. P.Ws.1 & 3, in an attempt to save the deceased, took her to a private hospital known as "Gokulam Hospital" at Salem. On her way, the deceased breathed her last. Therefore, they brought the dead body to the house of the deceased. Then, P.W.1 went to the Police station and made a complaint at 6.30 am on 20.04.2009. P.W.8, the then Special Sub Inspector of Police on receipt of the complaint, registered a case in Crime No.710/2009 for offence under Section 302 I.P.C., against the accused. Ex.P.8 is the F.I.R. He forwarded both the documents to Court.

3.P.W.10, took up the case for investigation. He proceeded to the place of occurrence; prepared an observation mahazar and a rough sketch in the presence of P.W.4 and another witness and then conducted inquest on the body of the deceased. He forwarded the body for post mortem.

4.P.W.2 - Dr.S.S.Meera, conducted autopsy on the body of the deceased on 20.04.2009 at 12.40 pm. She found the following injuries:-

"1.An irregular laceration seen over right parietal eminence - 6cms above right mastoid process - measuring 5 x 2 cm x bone deep edges appeared irregular.

2.Dark reddish brown contusion seen over right parieto - temporal region of scalp - 7x5x0.5 cms with right temporals muscle contused. Right ear bleeding

present.

3. Extra-dural sub-dural and sub-arachnoid hemorrhage seen over both cerebral hemispheres.

4. Linear Fissured fracture right temporal region extending upto right middle cranial fossa - 12 cms in length."

Ex.P.3 is the post mortem certificate. P.W.2 opined that the injuries found on the deceased would have been caused by dropping a stone like M.O.1 on the head of the deceased. She has further opined that the death was due to shock and hemorrhage due to the head injuries.

5. When the investigation was in progress, on 21.04.2009, at 11.00 am, the accused voluntarily appeared before P.W.5, the then Village Administrative Officer and made a confession. After having ascertained that the accused was voluntarily making confession, P.W.5 recorded the voluntary confession made by the accused. Ex.P.6 is the said confession. Then he along with a special report under Ex.P.7, took the accused to the Police Station and handed over him to P.W.10.

6. P.W.10 arrested the accused at 1.15 pm on 21.04.2009 and forwarded him to Court for judicial remand. He forwarded the material objects recovered from the place of occurrence and also recovered from the body of the deceased for chemical examination through Court. The report revealed that there was human blood on all the material objects including the grinding stone which was found near the dead body. On completing investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed a lone charge for offence under Section 302 I.P.C., against the appellant. The appellant denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 10 witnesses were examined and 15 documents were exhibited, besides 8 Material Objects.

8. Out of the said witnesses, P.W.1 is the sole eye witness to the occurrence. P.W.3 is the brother of P.W.1 who has stated that on the information given by P.W.1, he went to the house of the deceased and found the deceased lying with head injuries in a pool of blood. P.W.2 has spoken about the Post Mortem conducted on the body of the deceased and her final opinion regarding the cause of death. P.W.4 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence. P.W.5, the then Village Administrative Officer has spoken about the extra judicial confession made by the accused on 21.04.2009 at 11.00 am. P.W.6, the brother of the deceased has spoken about the motive. He has stated that the accused had suspicion over the fidelity of the deceased. P.W.7, the Constable has stated he

handed over the dead body to the Doctor for post mortem. P.W.8 has spoken about the registration of the F.I.R. P.W.9 has spoken about the admission of the deceased at the Government Hospital, Salem at 5.00 am on 20.04.2009. P.W.10 has spoken about the investigation done and the final report filed in this case.

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 chose to examine any witness nor did he mark any documents on his side.

10. Having considered all the above, the trial Court found the accused/appellant guilty under the said charge and accordingly, sentenced him as detailed in the first paragraph of this judgment. That is how the appellant is before this Court with this Criminal Appeal.

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

12. In this case, as we have already pointed out, the prosecution relies mainly on the eye witness account of P.W.1. The occurrence had taken place inside the house that too during night hours. P.W.1 has stated that in the house, lastly, the deceased, accused and he alone were there. P.W.3, who is the yet another son of the deceased has also stated so. Thus, P.W.1 alone was the eye witness to the occurrence. The learned counsel for the appellant would submit that P.W.1 would not have seen the occurrence at all as he would have slept. But, a perusal of the evidence of P.W.1 would go to show that he has stated that on hearing an unusual murmur, he woke up and at that time, he found the accused standing near the deceased and dropping the stone on the head of the deceased. The conduct of P.W.1 in immediately rushing to the house of P.W.3 and informing him would duly corroborate his evidence. He has further stated that he informed P.W.3 that the accused had dropped the stone on the head of the deceased and ran away. P.W.3 has also stated so. Thus, the evidence of P.W.3 is not hearsay as the evidence of P.W.3 also corroborated by the evidence of P.W.1. P.Ws.1 & 3 had taken the deceased immediately to the hospital and P.W.9 - Dr.R.Swaminathan, had examined the deceased at 5.00 am itself. From these evidences, in our considered view, the prosecution has clearly proved without any doubt that, it was this accused who dropped the stone on the head of the deceased.

13. P.W.9 - Dr.Swaminathan, has stated about the head injury found on the deceased on 20.04.2009. He has opined that the said injuries would have been caused by dropping a stone like M.O.1 on the head of the deceased. P.W.2 - Dr. S. S. Meera, who conducted autopsy on the body of the

deceased has also stated so. According to her, the death was due to shock and hemorrhage due to the head injuries. Thus, from these medical evidences, the prosecution has clearly established that the death of the deceased was caused by dropping the stone like M.O.1 on the head of the deceased. The prosecution has further proved that the said injuries would have been caused only by this accused.

14. Apart from the above eye witness account of P.W.1, the evidence of P.W.5 also is important. P.W.5, is the then Village Administrative Officer. According to him, on 21.04.2009, at 11.00 am, the accused appeared before him and made an extra judicial confession. He reduced the same into writing. Ex.P.6 is the said confession. The learned counsel for the appellant would submit that the accused had no reason to go over to P.W.5 to make such an extra judicial confession. Though, there is some force in the said argument of the learned counsel, on that score, the evidence of P.W.5 cannot be completely ignored. In a given situation, every man would behave in his own way for which, reasons cannot be unearthed easily. Here, in this case, in the extra judicial confession, the accused has stated that fearing for the Police, he went to P.W.5 and made his confession. This explanation appears to be plausible. Thus, the accused had every reason to go to P.W.5 to make extra judicial confession.

15. It is the settled law that an extra judicial confession, if shrouded with suspicion, as a rule of prudence, the Court has to look for corroboration from independent sources on material particulars, as it would be safe to base conviction on the said extra judicial confession which, by itself, is a very weak piece of evidence. Here, in this case, in our considered view, there is no doubt regarding Ex.P.6. Assuming that there are certain circumstances which would create some traces of doubt, this confession can be used atleast to corroborate the evidence of P.W.1 though, not as a substantive piece of evidence, there is no embargo to use same as a corroborative piece of evidence. Thus, Ex.P.6, atleast, duly corroborates the eye witness account of P.W.1. From these evidences, we hold that it was this accused who killed the deceased by dropping a grinding stone (M.O.1) on her head.

16. Now, the question is "What is the offence that has been committed by the accused by the above act? ". P.W.6, the brother of the deceased has stated that for quite some time, there were frequent quarrels between the accused and the deceased on account of the fact that the accused had suspicion over the fidelity of the deceased. P.W.1 also during cross examination has stated that as a matter of fact, there was a panchayat held in respect of the allegation that the deceased had developed intimacy with her employer. P.W.1 has further stated that on the day of occurrence also, the accused was fully drunk and at that time, there was a quarrel and in that quarrel, they freely hurled abusive and filthy language with each other. He has further stated that the said quarrel,

which was so obscene, went on for a long time. He has further stated that P.Ws.1 & 3 persuaded them. Though, it is stated that after the quarrel, when the deceased was sleeping, the accused dropped the stone on her head, in our considered view, dropping of stone must have happened at the end of the same quarrel and we do not find any time gap between the quarrel and the actual occurrence of dropping of stone on the head of the deceased. Thus, we hold that the accused, provoked by the abusive and obscene language hurled by the deceased, had taken the grinding stone which was lying there and dropped the same on the head of the deceased. Thus, the act of the accused would squarely fall with the third limb of Section 300 I.P.C., and the first exception to Section 300 I.P.C. Therefore, the accused is liable to be punished for offence under Section 304 (i) I.P.C.

17. Now, turning to the quantum of punishment, the accused is a middle aged man, he has got no bad antecedents. He has got a family to take care off. After the occurrence also, it is not reported that he is 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-meditation for the accused to cause the death of the deceased. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for eight years and to pay a fine of Rs.1,000/- would meet the ends of justice.

18. In the result, this appeal is partly allowed and the conviction and sentence imposed on the appellant for the offence u/s 302 IPC is set aside and instead, he is convicted for offence under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for eight years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. It is directed that the period of detention already undergone shall be set off as required under Section 428 Cr.P.C.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

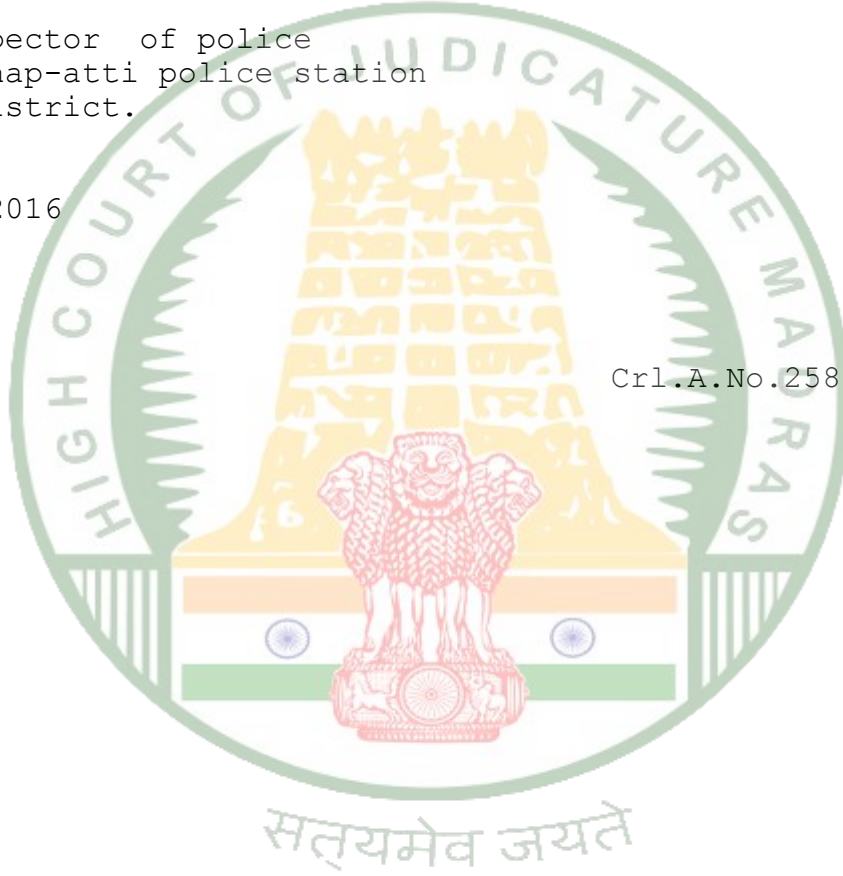
1.The I Additional Sessions Judge,
Salem.

2.The Public Prosecutor,
High Court, Madras.

3.The Superintendent Central prison
Coimbatore

4.The Inspector of police
Annadhanap-atti police station
Salem district.

CTK(CO)
CP 23/07/2016



Crl.A.No.258 of 2015

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