

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Cr1.A.No.324 of 2015

1. Thirumoorthy @ Moorthy
2. Jothimani @ Indirani .. Appellants

Vs

State represented by
The Inspector of Police
Puliyampatti Police Station
Erode District. .. 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, Erode, at Gopichettipalayam, in S.C.No.48 of 2012 on 17.07.2012.

For Appellants : Mr.T.Muruganantham

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

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

A1 and A2 in S.C.No.48 of 2012 on the file of the learned Additional District and Sessions Judge, Erode, at Gopichettipalayam, are the appellants herein. A1 stood charged for an offence under Section 302 IPC and A2 stood charged for an offence under Section 302 r/w. 34 IPC. The trial Court convicted A1 under Section 302 IPC and sentenced him to undergo life imprisonment and also to pay a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment. A2 was convicted under Section 302 r/w.34 IPC and sentenced to undergo life imprisonment and also to pay a fine of Rs.1,000/- in default to undergo three months rigorous imprisonment. Challenging the above said conviction and sentence, A1 and A2

are before this Court with this appeal.

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

(a) The deceased in this case one Perumal was the husband of A2. A2 was having illicit intimacy with A1. Feeling that the deceased was a hindrance to their illicit intimacy, both A1 and A2 decided to finish him off. On 06.08.2011 at about 11.00 p.m, while the deceased and A2 were in the house, A2 opened the door, A1 went inside the house and attacked the deceased with Aruval on the left side of neck and throat.

(b) PW.1 is the father of deceased. He along with PW.2, PW.1's brother's son, went to a nearby cattle shed to feed the animals. At that time, they heard the noise inside the house of deceased. When they went there, they saw A1 attacking the deceased with Aruval and after seeing them, A1 ran away. At that time, A2 was sitting inside the house. When P.Ws.1 and 2 questioned her, but she refused to say anything. When the relatives and villagers questioned A2, she told that only A1 attacked the deceased and when she tried to prevent him, she also suffered injury in her hand. Then P.Ws.1 and 2 informed others, went to the police station and lodged the complaint (Ex.P1).

(c) PW.19, Special Sub-Inspector of Police, on receipt of the complaint, registered the case in Crime No.255 of 2011 for the offence under Section 302 IPC and sent the First Information Report (Ex.P15) to the Judicial Magistrate Court and copies of the same to the higher officials.

(d) On 07.08.2011 at about 4.00 a.m, PW.20 - Inspector of Police, on receipt of First Information Report, proceeded to the scene of occurrence and prepared Observation Mahazar and rough sketch in the presence of witnesses and made arrangement to take photographs of the dead body and recovered bloodstained mat, bloodstained pillow, bloodstained soil and sample soil. At about 5.30 a.m, PW.20 conducted inquest on the dead body in the presence of panchayatdars and then sent the body for postmortem with a requisition to Government Hospital, Sathiamangalam, through PW.17 - Senior Police Constable. PW.20 arrested the accused at about 1.00 p.m in the presence of PW.13 - Village Administrative Officer and on such arrest, the accused voluntarily gave confession and based on the disclosure statement, PW.20 seized Aruval (M.O.1) and recovered bloodstained lungi (M.O.9) and a cellphone (M.O.10).

(e) PW.7 - Doctor, then working at the Government Hospital, Sathyamangalam, conducted postmortem on the dead body and found the following injuries:-

"External injuries:

1. Cut injury extending from Adams apple of

neck to anterior border of left sternocleido mastoid muscle clavicular end of 10 cm x 3 cm x 2 cm, red, horizontal injury, well defined margins, sharp edges exposing the thyroid cartilage.

2. Cut injury extending from posterior of border of left sternocleido mastoid muscle sternal end to anterior border of left trapezius muscle of 8 cm x 2 cm x 2 cm, red, horizontal injury, well defined margins, sharp edges exposing left common carotid artery, left internal jugular vein and left brachia plexus nerves, on examination ther is cut injury of 1 cm x 1 cm in left common carotid artery, 1 cm x 0.5 cm in left internal jugular vein at the level of 10 cm from Adams apple of neck.

3. Cut injury behind left ear over left mastoid process of 3 cm x 2 cm x 1 cm, red, horizontal injury, well defined margins, sharp edges.

I. Opening of head: No fracture skull bone. No fracture base of the skull. Brain 1000 gms Nomal, solid, meninges normal.

II. Opening of thorax: No fracture ribs. No blood in the thoracic cavity. Heart - 250 gms, empty. Right lung 425 gms, pale. Left lung - 375 gms, pale. Hyoid bone preserved in Formalin for Histopathological examination.

III. Opening of Abdomen: Stomach contains 200 gms of partially digested food particles, yellow particles, no specific odour. Liver 1000 gms, pale. Spleen 90 gms, pale. Kidneys each 110 gms, pale. Intestine pale. Bladder empty."

Ex.P4 is the postmortem report. PW.7 Doctor was of the opinion that the death was due to acute hemorrhagic shock due to injury to major blood vessels.

(f) A2, wife of the deceased in this case was also suffered with injuries and she was also admitted in the same hospital. PW.8 - Doctor admitted A2 and found a cut injury in the wrist of A2. PW.8 also issued wound certificate (Ex.P6) and he was of the opinion that the said injury was simple in nature. A2 told before PW.8 Doctor that she was attacked by a known person in her house. A2 was discharged from the hospital on

08.08.2011.

(g) On 08.08.2011, PW.20 - Inspector of Police, arrested A2 in the hospital and on such arrest, she voluntarily gave confession and based on the disclosure statement, PW.20 seized a cellphone, bloodstained saree and a jacket. Then PW.20 handed over the investigation to PW.21.

(h) PW.21, Inspector of Police, continued the investigation and recorded the statements of postmortem Doctor and also the Doctor who treated A2 and other witnesses. After completion of investigation, PW.21, filed the charge sheet against the appellants.

3. Based on the above materials, the trial Court has framed charges against the appellants/accused as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the charges, the prosecution examined 21 witnesses, exhibited 18 documents and 13 material objects.

4. Out of the witnesses examined, PW.1 is the father of deceased and also an eyewitness to the occurrence. According to PW.1, on the date of occurrence at about 11.00 p.m, he along with PW.2 went to the cattle shed to feed the cattle and at that time, he heard the noise inside the house of deceased and P.Ws.1 and 2 went there and they saw A1 attacking the deceased with Aruval and A2 sitting inside the house and after seeing P.Ws.1 and 2, A1 fled away. PW.2 is brother's son of PW.1. He is also an eyewitness to the occurrence. According to him, he saw A1 attacking the deceased with Aruval and after seeing them, A1 ran away. When he went inside the house, he saw the deceased in the pool of blood. When he asked A2, she told that only A1 attacked the deceased and when she tried to prevent him, she also suffered injury in her hand. PW.3 - mother of deceased, after receipt of information from PW.1, came to the house of deceased and found him dead. A2 told PW.3 that while she prevented A1, he attacked with Aruval in her hand. PW.4 - sister of deceased, is only a hearsay witness. PW.5 is the husband of PW.4. He also came to the scene of occurrence after hearing the news. PW.6 is a witness to the Observation Mahazar and also recovery of M.Os.2 to 6. PW.7 - Doctor conducted postmortem on the dead body and gave postmortem certificate (Ex.P4). PW.8 - Doctor admitted A2 and treated her and issued Accident Register (Ex.P6). According to PW.8, there was a cut injury in the wrist of A2 and it was simple in nature. PW.9 - Junior Assistant in the Regional Forensic Science Department, Coimbatore, examined the material objects. PW.10 - then Head Clerk in the Court, Sathi, sent hyoid bone and bloodstained dress for chemical examination. PW.11 is the photographer, who has taken photographs of the dead body. PW.12 was a neighbour of the deceased. PW.13 - Village Administrative Officer, is a witness

to the arrest of A1 and also the confession statement given by A2 and recovery of M.O.1 - Aruval, M.O.8 - Cell phone and M.O.9 - lungi. P.Ws.14 and 15 have turned hostile. PW.16 - Head Constable submitted the express First Information Report to the Judicial Magistrate Court. PW.17 - Head Constable, identified the body for postmortem and also handed over the body to the relatives after completion of postmortem. PW.18 - Constable in All Women Police Station, Sathi, was present at the time of arrest of A2 and also accompanied the Investigating Officer at the time of investigation. PW.19, Special Sub-Inspector of Police, registered the First Information Report (Ex.P15). PW.20 - Investigating Officer investigated the case, arrested the accused and recovered material objects and handed over the investigation to PW.21. PW.21 - Inspector of Police continued the investigation, recorded the statements of postmortem Doctor and other witnesses and filed charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. The accused neither examined any witnesses nor marked any documents.

6. Considering the above materials, the trial Court convicted the accused and sentenced them as mentioned in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the accused before this Court.

7. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

8. There are two eyewitnesses to the occurrence. PW.1 is the father of deceased and PW.2 is cousin brother of the deceased. According to them, on the date of occurrence at about 11.00 p.m, both of them went to the cattle shed to feed the cattle and at that time, they heard the noise from inside the house of deceased and when they went inside the house, they saw A1 attacking the deceased with Aruval, A2 sitting there. When PW.2 asked A2, she told that while she prevented A1 from attacking the deceased, she also suffered injuries in her hand.

9. The learned counsel for the appellants would contend that P.Ws.1 and 2 are closely related to the deceased and hence, they are interested witnesses and in the absence of any other corroborated evidence, their testimony cannot be believed.

10. The above argument of the learned counsel for the appellants cannot be countenanced. The occurrence took place inside the house of deceased. PW.1 is the father of deceased and PW.2 is the cousin of deceased. According to them, when

they went to the cattle shed to feed the cattle, the occurrence took place. Since the occurrence took place inside the house, the presence of P.Ws.1 and 2 is natural. Apart from that, both P.Ws.1 and 2 consistently stated that only A1 attacked the deceased with Aruval and A2 was sitting inside the house with injury and after seeing them, A1 fled away. Both P.Ws.1 and 2 immediately informed others and went to the police station and lodged a complaint at about 1.00 a.m on 07/08.08.2011 within two hours of occurrence, where they named both the accused. In the above circumstances, we find no reasons to disbelieve the consistent testimony of P.Ws.1 and 2. The medical evidence also supports the case of eyewitnesses. Hence, we are of the considered view that only A1 attacked the deceased with Aruval in the head and caused his death.

11. The next question arises is what was the role played by A2 in the said occurrence.

12. A2 was charged for an offence under Section 302 r/w. 34 IPC. It is true that the occurrence took place inside the house of deceased. According to P.Ws.1 and 2, both of them saw A2 inside the house at the time of occurrence and she has also have a cut injury in her wrist. When PW.2 questioned A2, she told that while she prevented A1 from attacking the deceased, she suffered cut injury in her wrist. She was also admitted in the Government Hospital, Sathi. PW.8 Doctor admitted her and gave Wound Certificate (Ex.P6). But, there is no evidence available on record to prove that A2 has common intention with A1 to commit murder of the deceased. Even though it is the evidence of PW.1 that A2 had illicit intimacy with A1, in the absence of any evidence, we cannot draw inference that A2 was having common intention to murder the deceased, especially when she was also suffered with injury in the same occurrence. Hence, we are of the opinion that the prosecution failed to prove the charge against A2. Therefore, A2 is entitled for acquittal.

13. So far as A1 is concerned, We have already hold that the prosecution has proved beyond all reasonable doubts that it is only A1 attacked the deceased with Aruval and caused death of the deceased. Hence, the Appeal fails insofar as A1 is concerned and it is liable to be dismissed against A1.

14. In the result,

(i) The Criminal Appeal in respect of A1 is dismissed. The conviction and sentence imposed on A1 in S.C.No.48 of 2012 on the file of the learned Additional District and Sessions Judge, Erode, at Gopichettipalayam, on 17.07.2012, are confirmed. The period of sentence already undergone by A1 shall be set off under Section 428 Cr.P.C.

(ii) The Criminal Appeal in respect of A2 is allowed. The conviction and sentence imposed on A2 in S.C.No.48 of 2012 on the file of the learned Additional District and Sessions Judge, Erode at Gopichettipalayam, on 17.07.2012, are set aside. Second Appellant/A2 is acquitted and she is directed to be set at liberty, forthwith, unless her presence is required in connection with any other case. Fine amount already paid by A2, if any, shall be refunded to her and her bail bonds shall stand terminated.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

1. The Additional District and Sessions Judge,
Erode at Gopichettipalayam.
2. Do Thro the Principal Sessions Judge,
Erode District.
3. The Judicial Magistrate,
Sathyamangalam.
4. Do thro the Chief Judicial Magistrate,
Erode.
5. The Superintendent,
Central Prison for women, Vellore.
6. The Inspector of Police
Puliyampatti Police Station,
Erode District.
7. The District Collector, Erode Dist.
8. The Director General of Police,
Mylapore, Chennai 4.
9. The Public Prosecutor,
High Court, Chennai.

Judgment in
Crl.A.No.324 of 2015

MMP 29.12.2016