

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.325/2015

Mohan @ Appu .. Appellant/sole accused

Vs

State by
The Inspector of Police,
J.3 Guindy Police Station,
Chennai. .. Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court, Chennai, made in S.C.No.454 of 2015 dated 29.01.2015.

For Appellant : Mr.V.S.Mannarsamy
For Respondent : Mr.M.Maharaja,
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.454 of 2012 on the file of the learned Sessions Judge, Mahila Court, Chennai. He stood charged for offence under Section 302 of IPC. By judgment dated 29.01.2015, the trial court convicted him under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for 6 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:

(a) The deceased in this case was one Jayanthi. P.W.1 is her paternal uncle. The deceased was doing B.Sc. Computer Science III year course. The father of the deceased died 10

years before. P.W.1 was, therefore, taking care of the deceased as her step father. The accused is a close relative of P.W.1 as well as the deceased. He used to visit the house of P.W.1 frequently. After some time, the accused told the deceased that he had developed love for her and he wanted to marry her. When this came to the knowledge of P.W.1, he warned the accused not to have any such love affair because the deceased and the accused were in sibling relationship. The accused was aggrieved over the same. This is stated to be the motive for the occurrence.

(b) On 23.06.2012 at about 03.30 p.m., the deceased had gone to the open terrace of the house of P.W.1. The accused had also gone to the open terrace. It appears that he asked consent from the deceased for marriage. The deceased declined. Enraged over the same, it is alleged that the accused attacked the deceased with a Spray Metal Tin and then strangled her with her ''Thuppatta''. The deceased cried out of pain.

(c) P.W.2, the mother of P.W.1 and P.W.3, the sister of P.W.1, on hearing the alarm raised, ran to the terrace of the house. On seeing them, the accused ran away from the scene of occurrence by climbing down the stairs. P.W.1 also rushed to the place of occurrence i.e. to the terrace of the house. By that time, he reached the terrace, the accused was not there. The deceased was lying unconscious. Immediately, P.Ws.1 to 3 took the deceased to Balaji Nursing Home which is a private hospital at Guindy, Chennai. The Doctor after examining, declared her dead.

(d) Then, the hospital authorities forwarded the dead body of the deceased to Royapettah Government Hospital. P.W.1, thereafter rushed to J.3 Guindy Police Station and made a complaint at 08.30 p.m. P.W.15, the then Inspector of Police, Guindy Police Station, on receipt of the said complaint, registered a case in Crime No.3231 of 2012 under Section 174 of Cr.P.C. (suspicious death). Ex.P.16 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 05.00 p.m. on 25.06.2012.

(e) Taking up the case for investigation, P.W.15 the Inspector of Police, went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of witnesses. Then, he recovered the blood stained floor and sample floor from the place of occurrence. He recovered the blood stained tape from a cot. He arranged to take photographs. Then, he examined P.Ws.1 to 3 and few more witnesses and recorded their statements. On going over to Royapettah Government Hospital, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(f) P.W.11 Doctor Soundappan conducted autopsy on the dead body of the deceased on 25.06.2012 at 11.15 a.m. He found the following injuries:

'Moderately nourished body of a female. Finger nails were bluish in colour. Reddish.

1. Abrasions 1 x .5 cms. over right side of forehead.

4 x 2 cms. over right side of forehead 1 c.m. below the previous injury.

2 x 1 c.m. over right cheek.

1 x 1 c.m. over left side of nose (middle)

.5 x .5 cms. over left side of forehead and 1 x .5cms. over middle of upper lip.

2. Transverse well defined complete ligature (Brownish) abrasion encircling the neck measuring 34 x 5 cms. seen above the thyroid cartilage situated 5 c.m. below the right mastoid process, 5 c.m. below the left mastoid process and 7.5 cms. above the supra sternal notch.

On dissection, the subcutaneous soft tissue underneath the ligature mark found contused. Peripheral hemorrhages seen on the sides of the neck. Hyoid Bone intact.

On dissection of Head : Bruising of scalp 3 x 1 .5 cms. x .5 c.m. over left frontal region. Cranial vault and meninges intact. Brain surface vessels congested. Thoracic Cavity intact. Heart N/S chambers contained fluid blood. Lungs cross section congested. Stomach contained 300 grams of semi-digested semi solid food material. Mucosa normal. Liver, Spleen and Kidneys c/s congested. Intestines distended with gas. Bladder empty. Uterus empty. '

P.W.11 is the Postmortem Certificate. He gave opinion that the death of the deceased was due to strangulation.

(g) P.W.15, then, altered the case into one under Section 302 of IPC. He recovered the blood stained clothes from the body of the deceased and forwarded the same to court. He

arrested the accused on 25.06.2012 near Choolaimedu Perumal Temple in the presence of P.W.8 and another witness. On such arrest, he gave a voluntary confession in which he disclosed the place where he had hidden the Spray Metal Tin. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the same. P.W.15 recovered the same under a Mahazar. Then, as requested by him, the material objects were sent for chemical examination. The report revealed that there were blood stains on the material objects including 'Thuppatta'. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed a lone charge as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined and 21 documents and 11 material objects were also marked.

4. Out of the said witnesses, P.W.1 is the step father of the deceased. He has stated about the motive. He has further stated that on the day of occurrence, on hearing the alarm raised by the deceased, when he went to the terrace of his house, the deceased was lying with injuries. Immediately, he took her to Balaji Nursing Home where the doctor after examining declared her dead and thereafter, he went to the police station and preferred the complaint. P.Ws.2 and 3 are vital witnesses to the case of the prosecution. They have stated that when they went to the terrace of the house, they found the accused fleeing away from the scene of occurrence and the deceased lying with injuries. P.W.4 is the mother of the deceased. She has also stated about the motive. P.W.5 is a neighbour of the deceased. He has turned hostile. Similarly, P.W.6 has also turned hostile. P.W.7 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.8 has spoken about the arrest of the accused and the consequential recovery of M.O.4 Thuppatta and M.O.5 Metal Tin. P.W.9 has spoken about the photographs taken at the place of occurrence. P.W.10 Doctor has stated that the deceased was brought to Royapettah Hospital on 23.06.2012 and he kept the dead body in the mortuary. P.W.11 has spoken about the Postmortem conducted and the cause of death. P.W.12 has spoken about the chemical analysis conducted by him. P.W.13 the then XII Metropolitan Magistrate, Chennai has spoken about the statements recorded by him under Section 164 of Cr.P.C. Ex.P.14 has spoken about the chemical analysis conducted by him. P.W.15 has spoken about the registration of the case and his final report.

5. When the above incriminating materials were put to the

accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor to mark any document on his side. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

6. 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.

7. This is a case based on circumstantial evidence. The first and foremost circumstance relied on by the prosecution is the motive. P.Ws.1 to 3 have stated that the accused had fallen in love with the deceased. When this came to the knowledge of P.Ws.1 to 3, they warned him not to develop further love for her as the deceased was in sibling relationship. The mother of the deceased has also stated so. From these evidences, the prosecution has proved the motive for the occurrence.

8. On the day of occurrence, P.Ws.2 and 3 heard the distress call of the deceased. They rushed to the terrace of the house of P.W.1. At that time, they found the deceased fleeing away from the scene of occurrence by climbing down. P.W.1 followed them. They found the deceased lying with injuries. Immediately, they took the deceased to Balaji Hospital. From the evidence of P.Ws.2 and 3, it is clear that it was the accused, who alone caused the death of the deceased and fled away from the scene of occurrence. The conduct of the accused in fleeing away from the scene of occurrence is inconsistent with the plea of innocence made by the accused. Had he been innocent, he would not have fled away from the scene of occurrence. The very fact that when all others are rushing to the terrace of the house of P.W.1 on hearing the distress call of the deceased, the accused alone fled away from the scene of occurrence would be consistent only with his guilt. The medical witness also corroborates the eye-witness account.

9. The learned Counsel for the appellant would submit that there is enormous delay in preferring the complaint.

10. We do not find any force at all in this argument. It is in evidence that as soon as the deceased was declared dead, P.W.1 had gone to the police station and made the complaint at 10.30 p.m. on the same day itself. The case was registered only under Section 174 of Cr.P.C. and therefore, it had taken sometime for the altered FIR being produced before the court. But, on that score, we cannot reject the case of the

prosecution. The recovery of the ''Thuppatta'' and Spray Metal Tin from the possession of the accused would also go to further strengthen the case of the prosecution. Thus, from these circumstances, in our considered view, the prosecution has established that it was this accused who caused the death of the deceased.

11. The learned Counsel for the appellant would submit that the act of the accused would not fall under Section 302 of IPC.

12. We find no force at all in this argument. The very fact that the accused attacked the deceased on her head with the Spray Metal Tin and then strangled her to death would go to prove the intention of the accused. The motive also lends assurance to the case of the prosecution. Thus, the act of the accused would squarely fall within the first limb of Section 300 of IPC and the same does not fall under anyone of the exceptions to Section 300 of IPC. Hence, the accused is liable to be punished under Section 302 of IPC.

13. Now turning to the quantum of Punishment, the trial court has imposed only a minimum punishment which also does not require any interference at the hands of this Court.

14. In the result, the Criminal Appeal fails and the same is accordingly dismissed. The conviction and the sentence imposed on the appellant by the trial court are confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. The Inspector of Police,
J.3 Guindy Police Station,
Chennai.
2. The Sessions Judge,
Mahila Court, Chennai.
- 3.The Public Prosecutor,
High Court, Chennai.

4.The Judicial Magistrate No.9.
Saidapet, Chennai.

5.The Superintendent, Central Prison,
Puzhal.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras.

1 cc to M/s.V.S.Mannarsamy, Advocate, sr.36030

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rsi co
kra 26.07.2016



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