

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2016

CORAM:

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

Criminal Appeal No.337 of 2015

K.Thangavel .. Appellant/Accused

Vs

State rep. By
Inspector of Police,
Rural Police Station,
Tiruppur
(Crime No.594/2013) ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(1) Cr.P.C.,
against the judgment in S.C.No.168/2014 dated 09.04.2015, on
the file of the learned Sessions Judge, Mahila Court (Fast
Track Mahila Court), Tiruppur.

For Appellant : Mr.C.Sivakumar

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.168/2014, on
the file of the learned Sessions Judge (Mahila Fast Track
Court), Tiruppur. He stood charged for offence under Section
302 I.P.C. The trial Court, by judgment dated 09.04.2015,
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.500/- in default to undergo simple imprisonment
for one year. 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.Kannimalar. Both
the accused and the deceased were residing at J.J.Nagar,
Veerapandi, Tiruppur. As a matter of fact, the deceased was
not married to the accused. When the accused was working and

staying in Tiruppur, he developed intimacy with the deceased. Thus, for about three years, they were living together as husband and wife at Tiruppur. The accused was married to one Ms.Nalini. But, his wife has deserted him and that is how he developed intimacy with the deceased. When they were so residing in Tiruppur, the accused believed that the deceased was true to him morally, as his wife. But, the deceased proved herself to be untrustworthy. She had illicit intimacy with someone else. This came to the knowledge of the accused. Thus, he had suspicion over the fidelity of the deceased. On 14.09.2013, on account of the above suspicion, there arose a quarrel between the accused and the deceased. The quarrel went on for some time. At the end of the quarrel, the accused dropped a huge grinding stone, which was lying there, on the head of the deceased. The deceased died instantaneously. This took place around 12.00 in the mid night. Early morning by 6.00 am, pretending as though he was going for his job, in usual course, he left the house in his bicycle. Thereafter, he did not return to his house. In the mean while, the fact that the deceased was lying dead came to the knowledge of the neighbours on 15.09.2013 at 7.00 am. P.W.1 who is the Councilor of the said area, preferred a complaint in this regard to the Veerapandi Police Station.

3.P.W.12, the then Special Sub Inspector of Police, received the said complaint and registered a case in Crime No.594/2013 for offence under Section 302 I.P.C. P.W.15, the then Inspector of Police took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch, in the presence of witnesses. He also recovered the blood stained earth and the sample earth from the place of occurrence. Then he examined P.Ws.1 to 6 and also recorded their statements. On 16.09.2013, between 8.00 am and 9.00 am he conducted autopsy on the body of the deceased and forwarded the same for post mortem.

4.P.W.8 - Dr.Muthusamy, conducted autopsy on the body of the deceased on 16.09.2013 at 11.15 am and he found the following injuries:-

"Laceration present in the left frontal region of 2x4x4cm crush injury in the left parietal region. Ear and nose bleeding was present. Eye lids are closed. Tongue was inside the mouth. Ribs was intact. Heart was pale and 360 gms in weight. Chambers are empty. Lungs right - 520 gm pale Left 400 gm pale. Hyoid bone intact. The stomach contain about 50 ml of liquid material present. The liver is 1700 gm pale. Spleen 200 gm pale. Kidney 170 gm pale. Appendix & intestines are

distended and Bladder is empty. Left occipital bone fracture. Fracture on the right parietal oxy bone. Base of skull fracture in the right side. SDB EDH, SAH, ICH, present brain matter is crushed."

Ex.P.4 is the post mortem certificate. P.W.8 opined that the injury found on the deceased would have been caused by a stone like M.O.1 and he has further opined that the death was due to shock and hemorrhage due to the head injury.

5.P.W.15 recovered the blood stained clothes from the body of the deceased and forwarded the same to Court. After P.W.15, P.W.16, the then Inspector of Police continued the investigation from 22.11.2013 onwards. On 27.12.2013, the accused surrendered before the local Village Administrative Officer (P.W.9) at 3.30 pm. On such appearance, he gave a voluntary confession, in which, he confessed to the guilt. P.W.9 recorded the said confession under Ex.P.6. Along with a special report under Ex.P.7, he produced the accused before P.W.16. P.W.16 arrested the accused in the presence of the same witnesses. On such arrest, the accused gave a confession but, no discovery of any fact has been made out of the same. Then, P.W.16 forwarded the accused to Court for judicial remand. On completing investigation, he laid charge sheet against the accused.

6. 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 16 witnesses were examined and 16 documents were exhibited, besides 7 Material Objects.

7. Out of the said witnesses, P.Ws.1, 2 & 3 are the neighbours of the deceased and they have stated that they found the dead body of the deceased at 7.00 am on 15.09.2013, inside the house of the deceased and at that time, the accused was not available. P.W.1 has spoken about the complaint made by him to the Police. P.W.4 has stated that on hearing the information, he went to the place of occurrence at 10.15 am on 15.09.2013 and found the dead body of the deceased with the head injury. P.W.5 is an important witness. He is also a neighbour of the deceased. According to him, on 15.09.2013 at 6.00 am, the accused found fleeing away from his house in his bicycle. When P.W.5 enquired him, the accused told that the job was over. P.W.6 is the daughter of the deceased. She has stated about the illicit relationship between the accused and the deceased. P.W.7 is the brother of the deceased. He has spoken about the relationship between the accused and the deceased. P.W.8 has spoken about the post mortem conducted by him and his final opinion regarding the cause of death. P.W.9

has spoken about the extra judicial confession given by the accused. P.Ws.10 & 11 have stated that they were present when the accused gave extra judicial confession to P.W.9. P.W.12 has spoken about the registration of the case on the complaint of P.W.1. P.W.13 has stated that he handed over the dead body to the Doctor for post mortem. P.W.14 is the scientific Officer who has stated that, he examined the material objects and the report revealed that there were blood stains on all the material objects. P.Ws.15 & 16 have spoken about the investigation done and the final report filed in this case.

8. 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.

9. 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.

10. 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.

11. This is a case based on circumstantial evidence. The foremost circumstance projected by the prosecution is that the accused and the deceased were living together in the house where the dead body was found. There was nobody else residing with them. It is also in evidence that on 14.09.2013, in the evening, the accused and the deceased were there in the house. P.W.1 has stated that at 9.00 pm on 14.09.2013, there was a wordy quarrel between the accused and the deceased in their house. Similarly, P.W.3 has also stated that he went to the house of the deceased and tried to intervene to persuade them. At that time, the deceased told her that it was after all between the husband and wife and therefore, the intervention of P.W.3 is not required. Thus, from these evidences, the prosecution has clearly proved that the accused was lastly seen in the company of the deceased at 9.00 pm on 14.09.2013 at the house of the deceased. On 15.09.2013 at 6.00 am, the accused was found fleeing away from the scene of occurrence in his bicycle. This has been spoken by P.W.5. The dead body of the deceased was found at 7.00 am on 15.09.2013. Thus, the prosecution has clearly established that the death of the deceased had occurred some time between 9.00 pm on 14.09.2013 and 7.00 am on 15.09.2013. Through the medical evidence, the prosecution has further proved that the death of the deceased was due to head injury and the said head injury would have been caused by dropping of stone like M.O.1 on the head of the

deceased. Thus, the prosecution has further proved that the death of the deceased is a homicide.

12.Now, the question is "Who is the perpetrator of the crime ?" In order to prove that it was this accused who is the perpetrator of the crime, the prosecution relies on three circumstances. The first and foremost circumstance is that, the accused who was in the house on the night 14.09.2013 was fleeing away from the scene of occurrence on 15.09.2013 at 6.00 am. The accused has got no explanation for the same. The dead body of the deceased was lying in the house of the deceased with injuries. The conduct of the accused in fleeing away from the scene of occurrence, is adverse to him and it is inconsistent with the innocence pleaded by him.

13.The accused appeared before the Village Administrative Officer (P.W.9) only on 27.12.2013 at 3.30 pm., i.e., after three months of the occurrence. During this period, the accused was absconding. He has got no explanation for his absence even after the fact that the dead body of the deceased was found in his house was noticed. The very fact that the accused was absconding for more than three months would further go to strengthen the case of the prosecution that it was this accused who caused the death of the deceased. This unnatural conduct of the accused is again inconsistent with the innocence pleaded by him.

14.Then comes the extra judicial confession made by the accused to P.W.9. On 27.12.2013, at 3.30 pm, when the extra judicial confession was made by the accused, P.Ws.10 & 11 were also present. The learned counsel for the appellant would submit that it is too difficult to believe that the accused would have gone to P.W.9 after three months of the occurrence to make a voluntary confession. Though, attractive, we do not find any force in the said argument. The reason for his going over to P.W.9 to make voluntary confession has been stated in the extra judicial confession itself. For about three months, the accused was absconding and since, the Police was on the look out for him, he had chosen to go to P.W.9 and to make voluntary confession. Thus, in our considered view, the extra judicial confession made by the accused to P.W.9 is voluntary, upon which, reliance can be safely made by this Court. In that extra judicial confession, the accused has clearly stated that he dropped the grinding stone on the head of the deceased and killed her. From these evidences, we hold that it was this accused who dropped the grinding stone on the head of the deceased and caused her death.

15.Now, the question is, "What was the offence that was committed by the accused, by the said act ?". What actually transpired at the time of occurrence could be known through the extra judicial confession made by the accused to P.W.9, as

there was no other evidence available. In the said extra judicial confession, the accused has stated that he enquired the deceased as to where she had gone on few occasions. This was out of suspicion over the fidelity of the deceased. This resulted in a quarrel. The quarrel went on for some time. It was only in that quarrel, the accused had dropped the grinding stone, which was lying there, on the head of the deceased. The narration of the events made in the extra judicial confession, would make it very clear that there were exchange of abusive words. The accused was provoked by the utterances of the deceased and only out of the provocation, which in our considered view was also grave and sudden, the accused had dropped the grinding stone, which was lying there, on the head of the deceased. Thus, in our considered view, the act of the accused would squarely fall within the ambit of fourth limb of Section 300 I.P.C., and first exception to Section 300 I.P.C. Therefore, the accused/appellant is liable to be punished for offence under Section 304(ii) I.P.C.

16. Now, turning to the quantum of punishment, the accused is a poor man and he had no bad antecedents. There was no strong motive. The occurrence was not a premeditated one and it was out of sudden provocation. At the time of occurrence, the accused was aged 42 years. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- would meet the ends of justice.

17. In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for offence under Section 302 IPC is set aside and instead, he is convicted for offence under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for seven 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 by the accused/appellant shall be set off as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

jbm

1.The Sessions Judge
(Mahalir Fast Track Court),
Tiruppur.

2.The Public Prosecutor,
High Court, Madras.

3. The Judicial Magistrate No.II,
Thiruppur.

4. The Chief Judicial Magistrate,
Thiruppur.

5. The Superintendent,
Central Prison, Coimbatore.

6. The District Collector,
Thiruppur District.

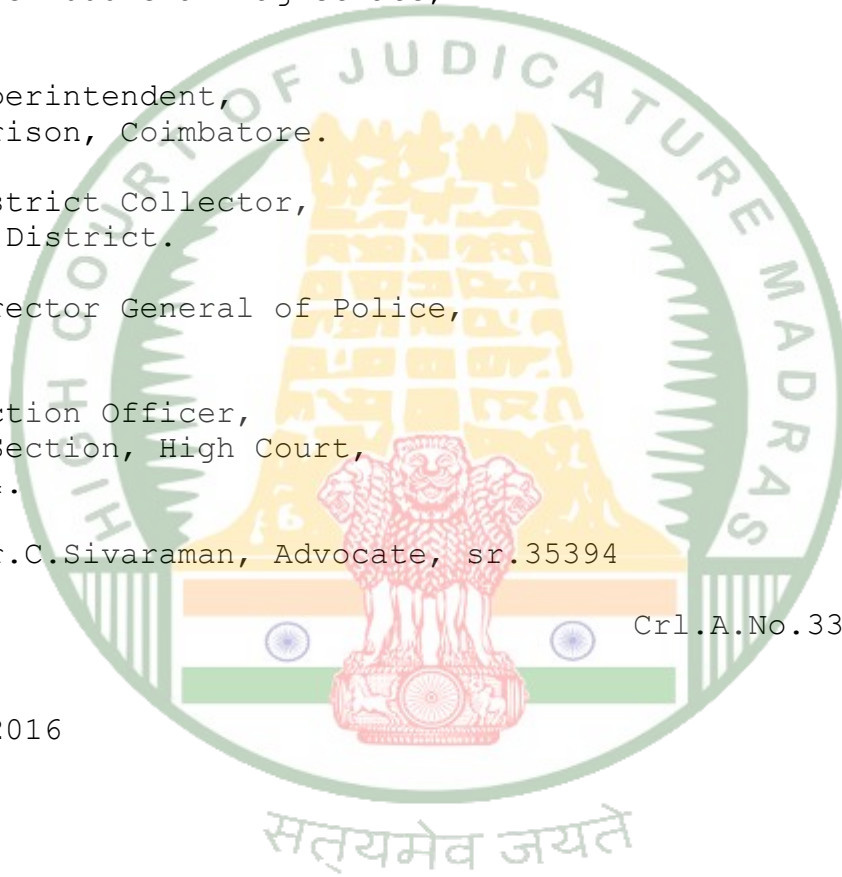
7. The Director General of Police,
Mylapore.

8. The Section Officer,
Criminal Section, High Court,
Madras 104.

1 cc to Mr.C.Sivaraman, Advocate, sr.35394

Crl.A.No.337 of 2015

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kra 27.7.2016



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