

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.391/2015

Murthi .. Appellant/sole accused

Vs

State by

The Inspector of Police,

Kothagiri Police Station,

Nilgiris District.

.. Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahalir Sessions (Fast Track) Court, Udhagamandalam, made in S.C.No.33 of 2012 dated 08.06.2015.

For Appellant : Mr.K.V.Sridharan

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.33 of 2012 on the file of the learned Sessions Judge, Mahalir Sessions (Fast Track) Court, Udhagamandalam. He stood charged for offence under Section 302 of IPC. By judgment dated 08.06.2015, 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.10,000/-, 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:

(a) The deceased in this case was one Mrs.Renuka. P.W.1 is the father of the deceased. The marriage between the deceased and the accused was celebrated 8 years before the occurrence. In due course of time, in the matrimonial life, there arose a problem between the appellant and the deceased on account of the fact that the accused had developed suspicion over the fidelity of the deceased. It is stated that on many occasions, the accused harassed her both physically and mentally on account of the above suspicion. They have got two children also. Two years before the occurrence, unable to bear the torture, the deceased along with her children came to the house of P.W.1 and stayed there. Three months before the occurrence, one Mrs.Janaki Ammal (P.W.4)

who was the leader of a Women Self Help Group, intervened in the matter, compromised the issue between the accused and the deceased and sent the deceased along with the children to live with the accused. Within a short span of time, again, the accused started harassing her, both physically and mentally, on account of the above suspicion over her fidelity. Thereafter, once for all, the deceased deserted the accused along with the children and came to the house of P.W.1. Then, she joined a Cloths Store at Kothagiri. She was residing at Sakkatha Village in Kothagiri Taluk. Every day from the house of P.W.1, she used to go to Kothagiri Town for work. On few occasions, when the deceased was travelling in the bus to Kothagiri, the accused attempted to attack her. Therefore, out of fear for any harm being caused by the accused, P.W.1 used to accompany the deceased every day in the morning, up to the bus stop and also go to pick up her in the evening from the bus stop to the house. The deceased used to go for work everyday at 08.15 a.m. and to return by 08.15 p.m.

(b) On 29.01.2011, P.W.1 had gone to the bus stop around 08.15 p.m to take the deceased from the bus stop to his house. He was waiting in the bus stop. At 08.15 p.m., as per the schedule, the bus came and stopped. The deceased got down from the bus. The accused also suddenly got down following her. As soon as the deceased got down from the bus, the accused took out a knife and stabbed her on her back, right shoulder, the hip and other

parts of the body. The deceased cried out of pain and fell down. The accused ran away from the scene of occurrence. The occurrence was witnessed by P.Ws.1 to 3.

(c) P.W.1, thereafter took the deceased in a vehicle to Kothagiri Government Hospital at 08.30 p.m. P.W.11 Doctor Sivakumar examined the deceased. At that time, the deceased was conscious. She told him that at 08.15 p.m. at her house, her husband stabbed her. He found as many as 3 injuries on the body of the deceased. He admitted her as inpatient. Ex.P.9 is the Accident Register. P.W.1, thereafter, with the help of another person, drafted a complaint and went to Kothagiri Police Station and presented the complaint at 09.30 p.m. on 29.01.2011.

(d) P.W.16, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.52 of 2011 under Section 307 of IPC against the accused. Ex.P.20 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 09.00 a.m. on 30.01.2011. He recovered the blood stained clothes from the deceased and forwarded the same to court.

(e) Then, P.W.17 took up the case for investigation. He proceeded to

the place of occurrence on the same day and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.13 and another witness. He examined few more witnesses at the place of occurrence and also recovered blood stained stones and sample stones from the place of occurrence. On the same day, the deceased died in the hospital. On receiving the death intimation under Ex.P.22, he altered the case into one under Section 302 of IPC and Ex.P.23 is the Alternative Report. Then, he went to the hospital, conducted inquest on the body of the deceased and forwarded the same for postmortem.

(f) P.W.12 Doctor Kulanthaivelu conducted autopsy on the dead body of the deceased on 30.01.2011. He found the following injuries:

"The following ante mortem injuries are seen in the body:

1. Vertical oblique stab injury 3 x 1 x 1 c.m. (muscle deep) noted over right upper chest close to axilla, medial end is sharp and lateral end is blunt. The medial end is 5 cm below and lateral to outer end of right clavicle. The outer end is 1 c.m. medial to anterior axillary fold. Both margins of wound were regular;
2. Horizontal stab injury 3.5 x 1 c.m. x pleural cavity deep (9 c.m.) noted over back of right side chest at the level of 10th inter costal space. The medial end is sharp and lateral end is blunt. The medial end is 5 c.m lateral to midline, lateral end is 8.5 c.m. lateral

to midline at the level of T.11 Vertebra, the wound piercing 10th inter costal muscle and passes inwards, downwards puncturing the lower lobe of right lung, piercing the diaphragm and enters into the liver. Both margins of wound were regular;

3. Stab injury 3 x 1.5 x 9 c.m. noted over left shoulder. The medial end is sharp, 14 c.m. lateral into the midline and the lateral end is blunt, 3 c.m. above the left side hip. The wound passes upwards, inwards to piercing all three layers abdominal muscles. Both margins of wound were regular;

4. Horizontally oblique stab injury 1 x 0.5 x 2 c.m. noted over right side back of arm close to axilla, the medial end is sharp and the lateral end is blunt. The medial end is 18 c.m. above to olecronon process, outer end is 3 c.m below to acrominan process. Both margins of wound were regular; and

5. Vertical stab injury 11 x6 c.m. x abdominal cavity deep noted over right hip. The upper end is sharp its 11 c.m. lateral to the pubic symbiosis and the lower end is blunt its 35 cm above to the lateral epicotyl of right knee. The wound passes upwards, inwards and enter the anterior abdominal wall measuring about 7 c.m. through which bowels with omentum protruded out. Incised wound 1 x 2.5 x 2.5 c.m. with surrounding hematoma noted over mesentry

of jejunum, 10 c.m. from ilea cecal junction. Both margins of wound were regular.

On dissection of Thorax and Abdomen : Peritoneal cavity contains about 100 ml. of fluid blood. Right side pleural cavity contains about 200 ml. of fluid blood.

Other Findings :

- Left Pleural cavity empty.
- Heart : all chambers contain about few cc of fluid. Coronaries patent.
- Hyoid bone intact.
- Stomach contains about 100 grams of partially digested food particles with greenish materials. No specific smell. Mucosa pale.
- Liver, Lungs, Spleen, Kidneys and brain cut section pale.
- Urinary bladder empty.
- Uterus : Normal in size, cut section empty."

He opined that the death was due to shock and hemorrhage due to the injuries found on the body. He further opined that the said injuries would have been caused by a weapon like M.O.5 Knife.

(g) P.W.17 recovered the blood stained clothes from the dead body of

the deceased and forwarded the same to court. On the same day, he arrested the accused in the presence of P.W.15 and another witness. On such arrest, the accused gave a voluntary confession in which he disclosed the place where he had hidden the knife M.O.5. P.W.17 recovered the same under a Mahazar in the presence of two witnesses. On returning to the police station, he forwarded the accused to court for judicial remand and also handed over the material objects to court. At his request, the material objects were sent for chemical examination. The report revealed that there were human blood found on all the material objects including the knife recovered from the accused. 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 17 witnesses were examined and 30 documents and 10 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 to 3 are the eye-witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.4 has spoken about the motive. She has not stated anything incriminating against the accused. P.W.5 is the driver of the bus in which the deceased has lastly

travelled. According to him, the bus started journey at 07.30 p.m. on 29.02.2011 from Kothagiri Bus Stand and when it reached Adhupettu, the deceased got down from the bus followed by the accused. He has further stated that the accused is already known to him and he is also a driver in a Mini Bus. P.W.6 has not stated anything incriminating against the accused. P.W.7 the Chemical Analyst has stated about the chemical analysis done by her. She has stated that human blood stains were found on all the material objects including the Knife recovered from the accused. P.W.8 is the Cloths Merchant in whose shop the deceased was lastly working. According to him, on 29.01.2011, the deceased had come for work and thereafter, she did not turn up. P.W.9 is running a General Store at Kothagiri Market. According to him, two persons came to the shop and purchased M.O.5 Knife for Rs.50/-. He has been treated as hostile as he did not identify the accused as the person who purchased the knife. P.W.10 has spoken about the photograph taken at the place of occurrence on the requisition of the Investigation Officer. P.W.11 has spoken about the treatment given to the deceased at Kothagiri Government Hospital at 08.15 p.m. on 29.01.2011. P.W.12 has spoken about the postmortem conducted on the dead body of the deceased and his final opinion regarding the cause of death. P.W.13 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.14 has spoken about the arrest of the accused, the disclosure statement made by him and the

consequential recovery of M.O.5 Knife from his possession. P.W.15 has also spoken about the same facts. P.W.16 has spoken about the registration of the case on the complaint of P.W.1 and P.W.17 has spoken about the investigation done and filing of final report by him.

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. In this case, as we have already pointed out, there are three eye-witnesses to the occurrence. P.W.1 is the father of the deceased, P.W.2 is a neighbour of P.W.1 and P.W.3 is the brother of P.W.1. P.W.1 has stated that he went to the bus stop to take the deceased to his house and thus, he was waiting at the bus stop. P.W.2 has also stated that he was standing in the bus stop

waiting for bus. P.W.3 has stated that he along with P.W.2 had gone to the bus stop and they were waiting for bus. When P.Ws.1 to 3 were waiting for the bus in the bus stop, at that time, the bus came in which the deceased got down followed by the accused.

8. The learned Counsel for the appellant would submit that these three witnesses, namely, P.Ws.1 to 3, would not have been present at all at the time of occurrence. He would further submit that their presence is by chance. He would also submit that they are interested witnesses. For these reasons, according to him, their evidences should be rejected.

9. But, we are not persuaded by the said argument. Simply because a witness is interested and his presence at the place of occurrence was by chance, his evidence cannot be outright rejected. It requires only a close scrutiny. If the witness explains to the satisfaction of the court as to how and why he was present at the place of occurrence by chance, there can be no impediment to act upon the same. Here in this case, P.Ws.1 to 3 have clearly explained as to why, they were waiting at the bus stop at the crucial moment and as to how, they witnessed the occurrence.

10. We are fully convinced of their evidence. Nothing has been elicited

during cross-examination of these witnesses so as to doubt their credibility. From these evidences, we hold that it was this accused, who stabbed the deceased repeatedly at the bus stop.

11. The motive for the occurrence has also been spoken by P.Ws.1 to 3. P.W.1 has stated that on few occasions, the accused developed quarrel with the deceased in the bus and attempted to attack her. Therefore, out of fear, P.W.1 used to go and wait at the bus stop to took up the deceased from the bus stop to his house. Thus, in our considered opinion, the motive for the occurrence has also been clearly established by the prosecution.

12. The learned Counsel for the appellant would submit that though it is stated that the alleged occurrence was at 08.15 p.m. on 29.01.2011, the complaint was made on the same day at 09.30 p.m., whereas the First Information Report has reached the court only at 09.00 a.m. on 30.01.2011. The learned Counsel for the appellant would further submit that this delay creates doubt in the case of the prosecution.

13. In our considered view, it is not so. When the deceased was taken to the hospital, still, there was life. Therefore, P.Ws.1 to 3 would have had attention and anxiety only to save the deceased. They would not have even

thought of going to the police station immediately. After recovering from the said shock, P.W.1 had gone to the police station and gave the complaint at 09.30 p.m. on 29.01.2011. The F.I.R. had reached the court at 09.00 a.m. on 30.01.2011 in which there is a delay. But, on this score, i.e. because of the delay caused by the police in forwarding the F.I.R. to court, we cannot deny the entire case of the prosecution. As we have already narrated, the evidence of P.Ws.1 to 3 is quite convincing.

14. The learned Counsel for the appellant would further submit that at the time, when the deceased was taken to the hospital, P.W.11 Doctor Siva Kumar attended on her. At that time, at 08.30 p.m., the deceased was conscious. She told that she was attacked by her husband at her house. The learned Counsel would further submit that when the occurrence had taken place at the bus stop, this statement of the deceased is quite contrary to the evidence of P.Ws.1 to 3.

15. Though, there appears to be some point in this argument, a deep analysis of the evidences of P.Ws.1 to 3 would prove the hollowness of this argument. The blood stained stones were recovered only at the bus stop. The human blood found in the recovered blood stained stones tally with the blood stains found on the clothes recovered from the dead body of the deceased.

Therefore, simply because, the deceased had in a critical condition, said about the place of occurrence contrary to the fact, on that ground, we cannot reject the evidence of P.Ws.1 to 3. In view of the foregoing discussions, we have no doubt in our mind to hold that it was this accused who caused the death of the deceased.

16. Now the question is as to what was the offence that the accused had committed by the said act. As spoken by P.W.1, on previous occasions also, the accused had made attempts to attack the deceased. The motive is so strong. The accused was not provoked by any of the acts of the deceased. He had pre-meditated to kill her, travelled in the same bus in which she was travelling and as soon as she got down, he also got down and stabbed her repeatedly. The accused was also armed with a knife. The situs of the injury would also go to prove the intention of the accused to kill the deceased. Thus, we are of the opinion that from the evidence of P.Ws.1 to 3, the prosecution has clearly proved that the intention of the accused was only to cause the death of the deceased and therefore, he is liable to be punished under Section 302 of IPC. The act of the accused does not fall under any exception to Section 300 of IPC.

17. Now turning to the quantum of punishment, the trial court has

imposed only a minimum punishment which does not require any interference at all at the hands of this Court.

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

[S.N., .J.] [V.B.D.J.,]

20.06.2016

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Internet : Yes

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To

1. The Inspector of Police,
Kothagiri Police Station,
Nilgiris District.
2. The Sessions Judge,
Magalir Sessions (Fast Track) Court,
Udhagamandalam.
3. The Public Prosecutor,
High Court, Chennai.

S.NAGAMUTHU, J.
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