

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2016

CORAM

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

Cr1.A.No.521 of 2015

Shiva Shankaran

... Appellant

Vs

State represented by
The Inspector of Police
Vellodu Police Station
Erode District.
(Crime No.125 of 2013)

... Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahila Court (Mahila Fast Track Court), Erode, in S.C.No.5 of 2014 on 11.11.2014.

For Appellant : Mr.T.Muruganantham

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

JUDGMENT

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

The sole accused in S.C.No.5 of 2014 on the file of the learned Sessions Judge, Mahila Court (Mahila Fast Track Court), Erode, is the appellant herein. He stood charged for an offence under Section 302 IPC. The trial Court convicted him under the above said charge and sentenced him to undergo life imprisonment with a fine of Rs.10,000/-, in default to undergo one year simple imprisonment. Challenging the above conviction and sentence, the present Appeal has been filed.

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

(i) The deceased in this case one Hema Priya is the wife of the accused. The marriage between them took place 8 years prior to the occurrence and they got two children. Later on suspecting the fidelity of the deceased, the accused quarrelled with her frequently. On 11.06.2013, PW.1 - mother of the

deceased went to her house to see her. At about 12.30 p.m, the deceased, PW.1, PW.2 and other neighbours are talking together in the house of the deceased. At that time, the accused came there and being agitated by the conduct of the deceased as she was discussing the family disputes with others, he attacked the deceased with knife in the stomach and hip and ran away. Immediately she was taken to Government Head Quarters Hospital, Erode.

(ii) PW.7 - Doctor working in the Government Head Quarters Hospital, Erode, found five injuries on the deceased and issued Accident Register- Ex.P8 and after giving first aid, she referred the deceased to Government Hospital, Salem. She also sent a memo - Ex.P10 to the respondent police.

(iii) PW.8 - Doctor working in Mohan Kumaramangalam Government Hospital, Salem, admitted the deceased in the Emergency Ward and had given Accident Register - Ex.P11.

(iv) PW.11 - Special Sub-Inspector working in the respondent police, on receipt of the memo, proceeded to the Government Hospital, Salem and since the deceased was not in a position to give any statement, he recorded the statement (Ex.P1) of PW.1, the mother of the deceased and based on the same, he registered a case in Crime No.125 of 2013 for an offence under Section 307 IPC. First Information Report is Ex.P18.

(v) PW.12 - Inspector of Police, on receipt of the First Information Report commenced investigation and proceeded to the scene of occurrence, prepared Observation Mahazar and also the rough sketch - Ex.P19 and seized the blood stained knife (M.O.1) and recorded the statement of witnesses. On 13.06.2013 at about 11.30 a.m, he arrested the accused and on such arrest, he had given a voluntary confession. Thereafter, PW.12 seized the blood stained soil (M.O.4) and sample soil (M.O.5) in the presence of witnesses and also recovered the blood stained pant of the accused. Since the accused also suffered with some minor injuries, he sent him for treatment to the Government Hospital with memo. On 14.06.2013, the deceased succumbed to injuries. Hence, he altered the charge under Section 302 IPC and the altered First Information Report is Ex.P25. On 15.06.2013, he conducted inquest on the dead body between 7.30 a.m to 9.30 a.m in the presence of panchayatdars. The inquest report is Ex.P26. He sent a memo to the hospital for conducting postmortem and autopsy on the dead body.

(vi) PW.9 - Assistant Professor working in the Salem Mohan Kumaramangalam Government Hospital conducted postmortem and autopsy on the dead body and found the following injuries:-

- 1) Laparotomy wound extends from epigastric region to below the umbilicus m-23 cms long with 18 sutures with wound gap seen at the level of umbilicus m - 6 x 4 cms, it is triangle in shape.
- 2) Sutured wound over right hypochondrial region 1 cm away from the midline with 3 sutures.
- 3) Sutured wound over palmar aspect of left index finger m - 5 cms long with 5 sutures.
- 4) Sutured wound over middle of left forearm m-2 cms long with 2 sutures.
- 5) Sutured wound over web between the thumb and index finger 1 cm long with 1 suture.
- 6) Sutured wound over upper 3rd of inner aspect of left leg m - 6 cms long with 3 sutures
- 7) Small lacerated injury over left frontal region m - 0.5 x 0.5 x 0.5 cms
- 8) drainage tube seen over lateral aspect of both sides of abdomen
- 9) inter costal drainage tube seen over left side 5th intercostal space
- 10) old burns scar seen over lower aspect of face, front, back of neck, both sides of chest, shoulder and breast.

OTHER FINDINGS:-

O/D Head:- Scalp - normal, cranial vault - intact, dura membrane - intact, brain - c/s pale. Base of skull - intact

o/d. Neck : neck structures - normal. Hyoid bone - intact.

O/d. Thorax : No ribs fracture. Heart - normal in size. Chambers - contained fluid blood. Valves and Coronaries - normal. Lungs - c/sd Pale.

O/d Abdomen :- Stomach contains 90 ml of brown colour fluid with no specific odour. Mucosa - C/s Pale. Surgical correction seen over mesentery. Liver - Stab injury over right lobe of liver m - 5 X 4 X 0.5 cms. Spleen C/s Pale. Kidneys - Peri Capsular Haemorrhage seen over right side of kidney. Laceration over right kidney m-4 x 1 x 1 cms and left kidney m-3 x 1 x 1 cms. Bladder-empty. Pelvis and Spinal Column - intact.

Postmortem Report is Ex.P15 and the Doctor is of the opinion that the deceased appeared to have died on effect of abdominal injuries sustained.

PW.12 after recording the statement of witnesses, completed the investigation and filed the charge sheet.

3. Considering the above materials, the trial Court framed charge for the offence under Section 302 IPC and the accused denied the same. In order to prove its case, the prosecution examined as many as 12 witnesses and exhibited 30 documents and 5 material objects.

4. Out of the witnesses examined, PW.1 is the mother of the deceased and also an eye witness to the occurrence. According to PW.1, there were frequent quarrels between the accused and the deceased and on 11.06.2013, she went to the house of the deceased to see her and at about 12.30 p.m, the deceased, PWs.1 and 2 and other neighbours were talking in the house and at that time, the accused came there with a knife and attacked the deceased and she took the deceased to the Government Hospital, Erode, from there the deceased was referred to Salem Mohan Kumaramangalam Government Hospital and on 14.06.2016 the deceased died. PW.2 another eye witness to the occurrence is a neighbour of the accused and the deceased. According to PW.2, he along with PW.1 and others talking to the deceased. At that time, the accused attacked the deceased with the knife. PW.3 is a witness to the Observation Mahazar and also recovery of M.O.1 knife under Ex.P4. PW.4 is a witness to the recovery of blood stained soil (M.O.4) and sample soil (M.O.5) under Ex.P5. PW.5 - Village Administrative Officer, is a witness to arrest of the accused and also his confession. PW.6 is the Doctor working in the Government Hospital, Perundurai, who treated the accused for the injuries sustained by him and he has given Accident Register - Ex.P7 and according to him, he found some lacerated injuries, it is all minor in nature. PW.7 - Doctor had given first aid to the deceased at Government Head Quarters Hospital, Erode, and had given Accident Register - Ex.P10. PW.8 - Doctor admitted the deceased in the Government Hospital, Salem and issued Accident Register - Ex.P11. PW.9 - Doctor conducted postmortem and autopsy on the dead body. Postmortem Report is Ex.P15. PW.10 - Assistant in the First Additional Sub Court, Erode, sent the Material Objects for chemical examination. PW.11 - Special Sub-Inspector of Police registered the First Information Report - Ex.P18. PW.12 - Investigating Officer arrested the accused and altered the charge under Section 302 IPC and recorded the statement of witnesses and after completing the investigation, he filed the charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. The accused did not examine any witness nor marked any document.

6. Considering the above materials, the trial Court convicted the accused and sentenced him as stated 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 for the appellant and the learned Additional Public Prosecutor for respondent and perused the records carefully.

8. There are two eye witnesses to the occurrence. PW.1 is the mother of the deceased. According to her, suspecting the fidelity of the deceased, the accused used to quarrel with her frequently. The accused also sent the deceased along with the children to her parental house, and after some time the accused took them to his house. On 11.06.2013, PW.1 went to the house of the deceased to see her and she was discussing about the quarrel with the deceased and PW.2, a neighbour. At that time, the accused came there and being agitated by the conduct of the deceased as she was disclosing the family matters to others, he attacked the deceased with knife. PW.2 neighbour of the deceased is also an eye witness to the occurrence and an independent witness and according to him, he also saw the accused attacking the deceased with the knife. Thereafter, the deceased was taken to Government Hospital, Erode, from there, she was referred to Government Hospital, Salem, and that she was given treatment. However, on 14.06.2013 the deceased succumbed to injury. PW.9 Doctor conducted postmortem and autopsy on the dead body and found as many as seven injuries in the body and he was of the opinion that the deceased appeared to have died on the effect of abdominal injuries. The medical evidence also corroborates the evidence of eye witnesses. Hence, there is no reason to disbelieve the eye witnesses. Therefore, in our considered view, the prosecution has clearly proved that it was the accused who caused the death of the deceased stabbing the deceased in the abdomen and head.

9. Now the question is as to what was the offence that the accused had committed by the said act.

10. From the evidence of PWs.1 and 2, it is clear that there was a quarrel between the accused and the deceased; at the time of occurrence, the deceased, PW.1, PW.2 and other neighbours were discussing about the quarrel between the deceased and the accused; the accused agitated by the way in which the deceased disclosing the family matters with the outsiders; out of this provocation, he lost his mental balance and stabbed the deceased; hence the act of the accused would fall under third limb of Section 300 IPC and first exception to Section 300 IPC. Therefore, the appellant is liable to be punished under Section 304 (1) IPC alone.

11. So far as the quantum of punishment is concerned, the accused has no bad antecedents and the occurrence was not premeditated and it was only out of provocation, since the provocation was also sudden, he lost his mental balance and attacked the deceased. In the above circumstances, sentencing the accused to undergo seven years rigorous imprisonment with a fine of Rs.1,000/-, in default to undergo two months rigorous imprisonment will be sufficient to meet the ends of justice.

12. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/accused under Section 302 IPC are set aside and instead, he is convicted under Section 304 (1) IPC and sentenced to undergo seven years rigorous imprisonment with a fine of Rs.1,000/- in default to undergo two months rigorous imprisonment. The period of sentence already undergone by the appellant/accused shall be set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police
Vellodu Police Station
Erode District.
2. The Sessions Judge,
Mahila Court (Mahila Fast Track Court),
Erode.
3. The District Collector,
Erode.
4. The Superintendent,
Central Prison,
Coimbatore.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Muruganantham, Advocate, S.R.No.37781

CrI.A.No.521 of 2015

VS(CO)

CA(29/12/2016)