

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Cr1.A.No.572 of 2015

Giladan @ Tennies Sagaya Jervees

... Appellant/Accused

Vs.

State of Tamil Nadu,
Represented by Inspector of Police,
Moongilduraipattu Police Station,
Crime No.8 of 2012,
Villupuram District.

... Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C., against the judgment dated 13.08.2015 in S.C.No.76 of 2014 on the file of the Sessions Court, Magalir Neethimandran (Fast Track Mahila Court), Villupuram.

For appellant : Mr.M.Devaraj

For respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

The appellant is the sole accused in S.C.No.76 of 2014 on the file of the Sessions Court, Magalir Neethimandran, Fast Track Mahila Court, Villupuram. He was convicted for the offence under Section 304 (Part-2) IPC (by altering the offence from Section 302 IPC) and sentenced to undergo ten years rigorous imprisonment and ordered to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months. Challenging the said conviction, the appellant has filed this appeal.

2. The sum and substance of the case of the prosecution is as follows:

(a) The deceased Angalin Anitha was the daughter of P.W.1 Anthoniammal. The deceased, after completing her XII Standard, came to Chennai and worked in a private company as Computer Operator and stayed in Chennai. The appellant/accused belongs to

the same place where the deceased hails from. The appellant/accused and the deceased were intimate with each other for a period of two years before the alleged occurrence.

(b) On 10.02.2012, the appellant/accused accompanied the deceased from Chennai and left her in her parents' house. On the next day, i.e. on 11.02.2012, the deceased informed her mother that the appellant/accused is pressurising to marry her and was threatening her that if she refused to marry him, he will kill her and asked the deceased to think over the issue. On the same day, in the noon hours, the appellant/accused approached the deceased 2 or 3 times and persuaded her to marry him. But the deceased refused to marry him. On the same day at about 7.15 p.m., when the deceased was cooking in the backyard of her grandfather's house, the accused came in his motor-cycle bearing Registration No.PY-01-AQ-7824 and went straightaway to the deceased and shouted at her. While shouting, he attacked the deceased with "Koduval" (M.O.7) brought by him and inflicted injuries on her head. When the deceased resisted the attack, she sustained injuries on her hand and her right wrist got severed from her body. The appellant/accused also inflicted injuries on her neck and the right side of her head with "Koduval". Thereafter, the accused left "Koduval" in the place of occurrence and escaped from the scene of occurrence in the two-wheeler. The deceased succumbed to the injuries on the spot.

(c) The mother of the deceased, i.e. P.W.1, lodged Ex.P-1 complaint with the Police at about 11 p.m. P.W.10 Sub-Inspector of Police received the said complaint and registered a case in Crime No.8 of 2012 for the offence under Section 302 IPC. He prepared Ex.P-9 FIR. Thereafter, P.W.10 sent 'express report' to Court. P.W.11 Inspector of Police took up the case for investigation and proceeded to the place of occurrence on 12.02.2012 at about 1.00 p.m. and prepared Ex.P-2 observation mahazar and drew Ex.P-10 rough sketch in the presence of the witnesses P.W.6 Sakkaravarthi (V.A.O) and Village Assistant Nagarajan and recovered the blood stained earth (mud) (M.O.1), ordinary earth (M.O.2) and motor-cycle (M.O.3) used by the accused, under the cover of mahazar Ex.P-3.

(d) Thereafter, P.W.11 investigating officer proceeded to Villupuram Government Hospital and conducted inquest over the body of the deceased in the presence of witnesses and Panchayatdars from 8.30 a.m. to 10.30 a.m. and prepared Ex.P-11 inquest report and recorded the statement of the witnesses. Subsequently, a requisition was sent to Doctor through P.W.9 Police Constable for conducting autopsy on the body of the deceased. On receipt of the said requisition, autopsy was conducted on the body of the deceased. Then, he secured the

apparels M.Os.4 to 6 worn by the deceased at the time of occurrence and sent the same to the Court under Ex.P-12 Form 95. Then, he arranged for sending M.Os.1 to 3 which were recovered from the scene of occurrence, for chemical analysis and sent a requisition for the same to the Court under Ex.P-13 Form 91.

(e) On 13.02.2012 at about 9.30 a.m., he arrested the accused who surrendered before P.W.6 V.A.O. before whom, the confession statement of the accused was recorded. Based on the confession statement Ex.P-14, P.W.11 investigating officer seized M.O.7 Koduval under a cover of seizure mahazar Ex.P-15 in the presence of witnesses. Thereafter, the accused was remanded to judicial custody. M.O.7 Koduval was produced before Court under Form 95 Ex.P-16 for chemical test.

(f) Subsequently, P.W.11 investigating officer recorded the statement of the Police Constable who subjected the body of the deceased for autopsy before the Doctor and also the statement of the Special Sub-Inspector of Police who registered the case. Thereafter, he recorded the statement of the Doctor who conducted autopsy and the statement of the scientific expert who conducted chemical test on the material objects sent for chemical analysis. After completing the investigation, he filed the charge-sheet/final report before the Court against the accused for the offence under Section 302 IPC, which was taken on file by the trial Court and the trial was conducted in Sessions Case No.76 of 2014 (Crime No.8 of 2012).

3. In order to prove their case, during the course of trial, the prosecution has examined 11 witnesses, exhibited 16 documents and produced seven material objects.

4. When the appellant/accused was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. He neither examined any witness, nor marked any document.

5. Upon hearing the submissions of either side and considering the oral and documentary evidence available on record, the trial Court convicted the appellant/accused and modified the offence from Section 302 IPC to Section 304 (Part-2) IPC and convicted and sentenced him as stated supra.

6. Learned counsel appearing for the appellant/accused contended that there are contradictions in the evidence of P.Ws.1 to 4 who are close relatives of the deceased. According to P.Ws.1 to 4, they were in the front side of the house at the time of occurrence. But, as per the case of the prosecution, the deceased was cooking in the backyard of the house. As the occurrence is said to have taken place in the backyard of the

house, there is no possibility for P.Ws.1 to 4 to have witnessed the occurrence. P.Ws.1 to 4 might have been pressed into service as witnesses by the prosecution only for the purpose of lending support to the case of the prosecution.

7. On the above aspect, learned counsel for the appellant/accused drew the attention of this Court to the inconsistencies found in the evidence of P.Ws.1 to 4. He further submitted that P.W.1 stated in her evidence that immediately after the occurrence, the accused ran and escaped from the spot with weapon, whereas, in her complaint Ex.P-1, she had stated that the accused left "Koduval" M.O.7 at the place of occurrence and escaped from the spot. Though P.Ws.1 to 4 are close relatives of the deceased, it is highly doubtful whether they would have witnessed the occurrence.

8. Learned counsel for the appellant/accused contended further that the trial Court having disbelieved the prosecution case in respect of the motive and intention and the recovery of M.O.7, ought to have acquitted the accused, instead, he was convicted for the offence under Section 304 (Part-2) IPC for culpable homicide not amounting to murder. He further contended that there is no material to show that M.O.7 was used to cause injuries on the deceased, nor was P.W.8 Doctor examined in that regard, as P.W.8 Doctor clearly admitted that the investigation officer has not shown the weapon when he was asked about the possibility of causing of the injury. Therefore, the learned counsel submitted that the medical evidence having not been supported by ocular evidence, it will render the conviction imposed on the accused as not sustainable in law.

9. Learned counsel further contended that as per the medical evidence, the deceased would have died after 1 to 2 hours of consuming the food, whereas, the alleged occurrence is said to have taken place at 7.15 p.m. when the deceased was cooking food for dinner, and the stomach ought to have been empty.

10. Learned counsel further submitted that there was delay of nearly four hours from the time of occurrence to the time of lodging the complaint, even as per the prosecution case, the occurrence is said to have taken place at about 7.15 p.m., whereas, the FIR/complaint was lodged only by 11 p.m. Moreover, the FIR reached the Court only by 5 a.m. on the next day. The evidence of P.W.11 investigating officer proves the above delay and the said delay is fatal to the case of the prosecution. Hence, learned counsel stated that the conviction is not legally sustainable and prayed that the conviction imposed on the appellant/accused may be set aside and he be acquitted of the charge framed against him.

11. Per contra, learned Additional Public Prosecutor appearing for the respondent/Police submitted that the evidence of P.Ws.1 to 4 clearly shows that the occurrence is said to have taken place in the house of the grandfather of the deceased i.e. P.W.2's house. At that time, P.Ws.1 to 4 were in front of the house and the appellant/accused and the deceased were alone inside the house, i.e. in the backyard. Except the appellant/accused and the deceased, no other person was in the backyard of the house. He submitted that there is no reason for discarding the evidence of P.Ws.1 to 4, who were present near the place of occurrence.

12. Learned Additional Public Prosecutor invited the attention of this Court to the evidence of P.W.5, who is a villager of the same village where P.Ws.1 to 4 reside, and submitted that P.W.5 is an independent witness who stated in his evidence that he heard noise from the house of P.W.2 Amaldoss, i.e. the grandfather of the deceased and when P.W.5 rushed to the spot, he saw the appellant/accused running away from the spot after committing the offence on the deceased with M.O.7 Koduval.

13. Learned Additional Public Prosecutor further stated that the extra-judicial confession given by the accused to P.W.6 V.A.O. also shows that he has committed the offence. Hence, for the above reasons, learned Additional Public Prosecutor prayed for dismissal of the appeal and to confirm the conviction imposed on him by the trial Court.

14. Heard both sides. Keeping the above submissions made by learned counsel on either side in mind and perusing the materials available on record, I am of the view that the contradictions pointed out by the learned counsel for the appellant/accused are very minor in nature, and the same would not vitiate the case of the prosecution, as P.Ws.1 to 5 have cogently deposed the fact that on the date of occurrence, the appellant/accused came to the house of the grandfather of the deceased, i.e. P.W.2 and straightaway went to the backyard of the house and indulged in quarrel with the deceased by shouting angrily and thereby, committed the offence by inflicting injuries on her with M.O.7 Koduval. Under such circumstances, the variations found in their evidence are only minor contradictions, which do not attach any importance to a great extent. In my considered opinion, the minor contradictions found in the evidence of the prosecution witnesses can be considered only as an insignificant error, unless the contradictions or infirmities found in the evidence raise great suspicion in the mind of the Court with regard to the presence of the witnesses. Hence, no importance can be attached to the minor contradictions

pointed out by the learned counsel for the appellant/accused. Further, I find that though the extra-judicial confession statement given by the appellant/accused to P.W.6 V.A.O is not a substantive piece of evidence, P.W.6's evidence is strongly corroborated by the version of P.Ws.1 to 5 indicating that the offence was only committed by the appellant/accused.

15. Moreover, the delay in lodging the FIR and the FIR reaching the Court belatedly, cannot be said to be inordinate. Further, there would be panic in the case of murder of a person, that too of P.W.1's own daughter and out of sudden shock and hue and cry, P.W.1 could have lodged the FIR with delay, which is quite natural for any person to approach the Police Station with such anxiety and depression. Further, the distance between the Police Station and the Magistrate's place is nearly nine kilometers. Therefore, considering the above aspects, the said delay cannot be said to be inordinate, either in sending the FIR to the Court or in lodging the complaint/FIR.

16. Further, I find that as contended by the learned Additional Public Prosecutor, the evidence of P.Ws.1 to 5 is cogent and convincing and corroborates with each other. Hence, I do not find any infirmity in their evidence to take a contra-view. Since the occurrence took place inside the house of the grandfather of the deceased, the presence of P.Ws.1 to 4 who are close relatives of the deceased in the house, is quite natural; merely because P.Ws.1 to 4 are close relatives, it does not mean that their evidence can be simply brushed aside. Further, P.W.5 who is an independent witness residing in the same village where P.Ws.1 to 4 reside, has also strongly supported the case of the prosecution through his evidence by stating that he saw the accused running away after committing the offence on the deceased with M.O.7 Koduval. In fact, no favourable reply to the case of the defence was brought out from the evidence of P.W.5.

17. Though learned counsel appearing for the appellant/accused submitted that there is no motive and intention for the accused to commit the offence, and the alleged motive and intention have not been proved by the prosecution through the evidence of P.Ws.1 to 4, it could be inferred from the evidence of the deceased herself before her death while she stated the said fact to P.W.1 that the appellant/accused was very much pressurising the deceased to marry him.

18. Since the prosecution evidence from P.Ws.1 to 5 inspires the confidence of this Court, the submission made by the learned counsel for the appellant/accused with regard to P.W.8 Doctor's evidence regarding M.O.7 Koduval not being enquired with Doctor, does not attach any significance in this case.

19. Though it is alleged by the learned counsel for the appellant/accused that the case of the prosecution is brimming with contradictions, the variations in the evidence of P.Ws.1 to 4 are only minor and not affecting the case of the prosecution, and hence, much credence could not be shown on the same, thereby, it has to be concluded that the accused is liable to be convicted for the offence.

20. Since this Court has come to the conclusion that the appellant/accused is liable to be convicted for the above stated reasons, learned counsel for the appellant/accused pleaded to show leniency in the period of sentence imposed on him by the trial Court, on the ground that the appellant/accused is in the middle of his life he being only about 30 years now and has to come up in life and he is the only son to his parents. Learned counsel further brought to the notice of this Court that the appellant/accused has no bad antecedent. It is seen that the appellant/accused is in jail even during the pendency of the criminal appeal. Therefore, taking into consideration the totality of the attitude of the appellant in committing the crime though heinous, this Court is of the view that a humane approach shall be shown on him due to the reasons pleaded by the learned counsel for the appellant for his reduction in sentence. Accordingly, while confirming the conviction imposed on the appellant/accused for the offence under Section 304 (Part-2) IPC, this Court deems it fit that in the interest of justice, the period of sentence imposed on him shall be reduced from ten years to seven years.

21. Accordingly, while partly allowing the Criminal Appeal and confirming the conviction imposed on the appellant/accused, the period of sentence of imprisonment is reduced to seven years. The sentence imposed on the appellant/accused shall be set-off under Section 428 Cr.P.C.

Sd/-
सत्यमेव जयते

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Magalir Neethimandram,
Fast Track Mahila Court,
Villupuram.

2. The Inspector of Police,
Moongilduraipattu Police Station,
Crime No.8 of 2012,
Villupuram District.
3. The Judicial Magistrate,
Sankarapuram.
4. -Do- Through The Chief Judicial Magistrate,
Villupuram.
5. The Superintendent,
Central Prison,
Cuddalore.
6. The Public Prosecutor,
High Court, Madras.

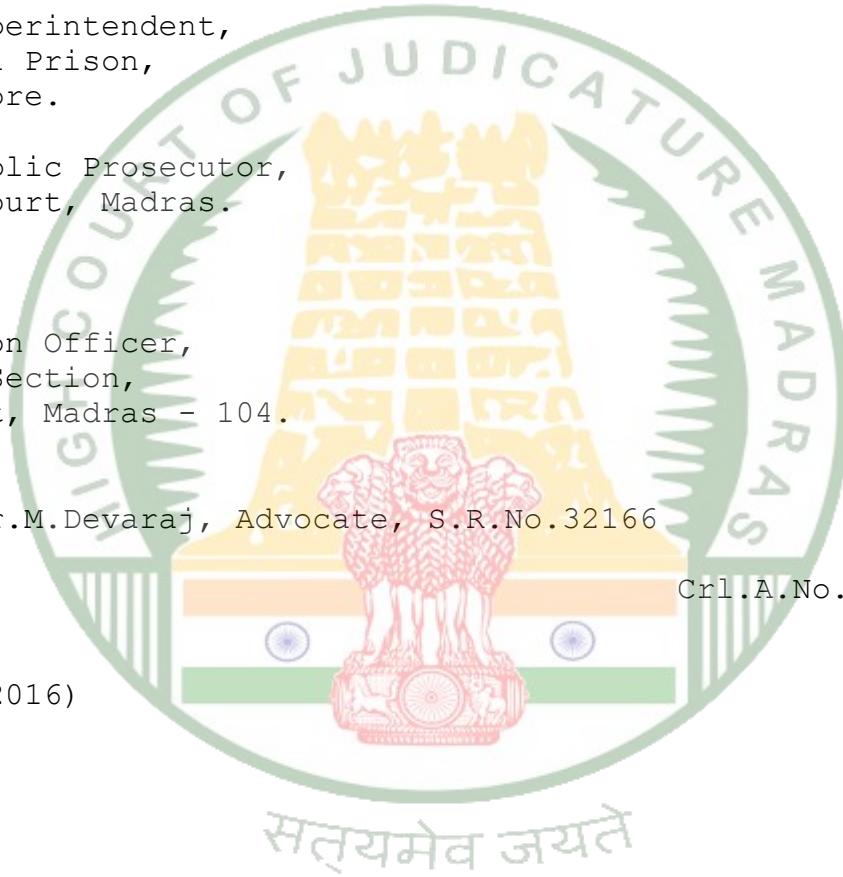
Copy To

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

+1cc to Mr.M.Devaraj, Advocate, S.R.No.32166

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