

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.579 of 2015

N.Soundarrajan

.. Appellant / accused

vs

State, Rep. By Inspector of Police,
Vikkavandi Police Station,
Vikkavandi Taluk,
Villupuram District

.. Respondent / Complainant

Criminal Appeal filed under Section 374 of the Criminal Procedure Code against the judgment of the learned Principal Sessions Judge, Villupuram, in S.C.No.226 of 2010, dated 18.02.2013.

For Appellant : Mr. Adhi Narayana Rao
For Respondent : Mr. M.Maharaja, A.P.P.,

J U D G M E N T

(Judgement of the Court was delivered by S.Nagamuthu. J.,)

The appellant is the sole accused in S.C.No.226 of 2010 on the file of the learned Principal Sessions Judge, Villupuram. He stood charge for the offence under Section 302 IPC. By judgment, dated 18.02.2013, the trial court convicted him under Section 302 IPC and sentenced him to undergo Imprisonment for life and to pay a fine of Rs.2,000/-, in default, to undergo Rigorous Imprisonment for six 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:-

The deceased, in this case, was one Mrs.Kumudham. The accused is her husband. The marriage between them was celebrated in the year 2002. Out of the said wedlock, they got three children. The accused, later on, became a drunkard. He used to return home in a fully drunken state. He also used to beat the deceased. Unable to bear the said torture, the deceased came to the parental home and settled with her parents.

3. P.Ws. 1 to 3 are the brother, father and mother, respectively, of the deceased. They were all residing at V.Sathaur Village. After returning from the house of the accused, the deceased was staying with P.Ws.1 to 3 at the said Village. On

21.01.2010, around 04.30 pm, the deceased was in a shed, near the house of P.W.1, which was used as a kitchen. The accused came with a view to take her back. He went to the kitchen shed and spoke to the deceased. They were speaking for quite sometime. The accused requested her to come back to the matrimonial home. The deceased adamantly refused. This resulted in a quarrel. It is alleged that, in the said quarrel, the accused took a spade, with a handle lying on it, and mounted attack on the deceased indiscriminately. P.Ws.1 to 3 witnessed the occurrence. But they could not prevent the accused from cutting the deceased. The accused ran away from the scene of occurrence. The deceased fell down with profuse bleeding from the injuries.

4. P.W.1, immediately with the help of one Ambulance, took the deceased to the Government Medical College and Hospital at Villupuram. P.W.7, Dr.Manimekalai, examined the deceased on 21.01.2010 at 05.30 pm. At that time, the deceased was unconscious. She was brought by P.W.1. P.W.1 told that the deceased was attacked by a known person with a spade. She found the following injuries on the body of the deceased:-

1. A lacerated wound 4x1x1/2 cm on the right eye-brow.
2. A lacerated injury measuring 6x1x1 cm on the right cheek.
3. Right ear was found depressed and there was blood oozing out from the right ear.
4. Right eye was contused.
5. A contusion measuring 4x1x1/2 cm on the right hand.

5. P.W.7, the Doctor, admitted the deceased as an inpatient. Ex.P-10 is the Accident Register. Then, for a better treatment, she was shifted to the Government Hospital at Pondicherry, where she died around 08.30 pm.

6. P.W.1 went to Vikravandi Police Station and made a complaint at 09.00 am on 22.01.2010. P.W.8, on receipt of the said complaint, registered a case in Crime No.47 of 2010 under Section 302 IPC against the accused. Ex.P-11 is the First Information Report. Then he forwarded Ex.P-1 complaint and Ex.P-11 First Information Report to the Court.

7. P.W.8 taking-up the case for investigation, proceeded to the Government Hospital, Pondicherry, conducted inquest on the body of the deceased and forwarded the same for post-mortem. P.W.6, Dr.Balaraman, conducted autopsy on the body of the deceased on 22.01.2010 at 12.00 noon. He found the following injuries:-

"External Injuries (Ante-mortem):

1. Incised wound 4 cm x 1/2 x 1/2 cm over right eyebrow and 3 cms x 1/2 x 1/2 cm over right upper eyelid and 5 cms x 1 cm x 1/2 cm below right eye.
2. Incised wound 2 cms x 1/2 x 1/2 over chin right side.
3. Incised wounds 3 cms x 1 x 1 cm over front of right ear and 6 cms x 1/2 x 1/2 cm, 1/5 cms x 1/2 x 1/2 cm over

helix of right ear.

4. Incised wounds 7 cm x 3 cms x 1 cm over outer aspect of right elbow and 2 cms x 1 x 1 cm over back of right elbow.
5. Incised wound 4 cms x 1 x 1 cm over back of right forearm.
6. Vertically placed abrasion 26 cms x ½ cm over right upper and forearm.
7. Abrasion 1 cm x ½ cm over lower part of neck right side.

Internal Examination:

Head (scalp, skull, brain meninges and blood vessels) : Scalp : contusion right temporal region.

Skull: Fracture 5 cms over right temporal bone.

Brain : sub-dural and sub Arachnoid Haemorrhage over both occipital region.

Hyoid : Intact.

Neck structures (skin, muscles, hyoid, thyroid cartilage, larynx, trachea, bronchi, etc.) : Neck, Muscle - NAD.

Thorax

- a) Chest wall : NAD
- b) Pleural cavity : NAD
- c) Oesophagus : NAD
- d) Bronchi
- e) Lungs-Right Left : Pale
- f) Heart and Pericardium : Normal size, Fcw CC of fluid blood present.
- g) Blood vessels
- h) Diaphragm

12. Abdomen and Pelvis

- a) Abdominal wall : Fluid blood present in Abdominal cavity.
 - b) Peritoneum
 - c) Stomach and contents: Dark red blood 200 ml, present.
 - d) small intestine :
 - e) Large intestine :
 - f) Liver and Gall Bladder : Laceration 7 cms x ½ x ½ cm over right lobe present.
 - g) spleen :
 - h) Pancreas :
 - i) Kidneys, Ureters and Adrenals : Pale
 - j) Urinary Bladder :
 - k) Genital organs : Uterus Normal size and empty.
- 13) Muscles and Bones : NAD."

8. Ex.P-7 is the post-mortem certificate. P.W.6, the Doctor, gave opinion that the death was deceased due to shock and haemorrhage caused on account of multiple injuries found on the body of the deceased. He further opined that the said injuries

would have been caused by a weapon like spade (M.O.3).

9. P.W.8 proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.4. He recovered blood stained earth and sample earth from the place of occurrence. Then, he arrested the accused on 22.01.2010 at 04.00 pm, in the presence of P.W.5. On such arrest, the accused gave a voluntary confession in which he disclosed the place where he had hidden the spade. In pursuance of the same, he took the police and the witnesses to the place of hideout at 05.30 pm and produced M.O.3-spade. On returning to the Police Station, he forwarded the accused to judicial remand and handed over the material objects also to the Court. At his request, material objects were sent for chemical examination. The report revealed that there were blood stains on all the material objects, except the spade. On completing the investigation, P.W.8 laid charge sheet against the accused.

10. Based on the above materials, the trial court framed charges as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 8 witnesses were examined and 16 documents were exhibited, besides marking 6 Material Objects.

11. 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. They have also spoken about the motive. P.W.1 has spoken about the complaint made by him to the Police. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch and the recovery of blood stained earth and sample earth from the place of occurrence. P.W.5 has spoken about the arrest of the accused, the voluntary confession given by the accused and the recovery of M.O.3-spade. P.W.6 has spoken about the post-mortem conducted and the final opinion regarding the cause of death. P.W.7 has spoken about the treatment given to the deceased at Government Hospital, Villupuram. P.W.8 has spoken about the registration of the case, the investigation done and the final report filed.

12. 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 choose to examine any witness nor mark any document, on his side. Having considered all the above, the trial Court convicted the accused under Section 302 IPC. Challenging the same, the appellant is before this Court with this Criminal Appeal.

13. 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.

14. As we have already pointed out, in this case, there are three eye-witnesses to the occurrence, who are brother, father and

mother respectively of the deceased. The presence of them, at the place of occurrence, cannot be disputed, because the occurrence had taken place at the house of P.Ws.1 to 3. They have vividly spoken that the accused came to their house to take back the deceased. The deceased was in the kitchen shed. The accused went straight there and he was talking to her. When he requested her to come back to the matrimonial home, she refused. This resulted in a quarrel. In that quarrel, it is stated that the accused took the spade, which was lying there and cut her indiscriminately.

15. Though P.Ws.1 to 3 are the interested witnesses, their evidence cannot be rejected on that score. As we have already pointed out, they have no grudge against the accused to falsely depose. Above all, their presence at the time of occurrence also cannot be doubted. Their evidence is further corroborated by the medical evidence also. Further, at the earliest point of time, P.W.1 had told P.W.7, at the Government Hospital, that the deceased was attacked by a known person with the spade. From these evidences, in our considered view, the prosecution has clearly established that it was this accused, who caused injury on the body of the deceased and caused her death. In such view of the matter, we find that the prosecution has proved the case against the accused beyond all reasonable doubts.

16. Now we have to consider, "what was the offence that was committed by the accused by the said act"? Admittedly, there was no enmity between the deceased and the accused. Because of some domestic quarrel, the deceased had returned to her parental home. The accused had come there with a good intention of taking her back. When he requested to come back to the matrimonial home, she refused. The deceased was very adamant and this resulted in a sudden quarrel with him. In that sudden quarrel and in the heat of passion, the accused had taken the spade, which was lying there, and attacked the deceased.

17. Having regard to the totality of the circumstances, we are of the view that the act of the accused would fall within the fourth exception to Section 300 IPC and also the third limb of Section 300 IPC and so, he is liable to be punished for the offence under Section 304 (i) IPC.

18. Now turning to the quantum of punishment, the accused has got three children to take care of. The occurrence was not premeditated and the same was out of a sudden quarrel. He had no bad antecedents. After the occurrence also, he has not committed any crime. Having regard to the aggravating and mitigating circumstances, we are of the view that sentencing the accused to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.1,000/-, for the offence under Section 304 (i) IPC would meet the ends of justice.

19. In the result, this Criminal Appeal is partly-allowed. The conviction and sentence imposed on the accused for the offence under Section 302 IPC is set-aside and instead, he is convicted under Section 304 (i) IPC and sentenced to undergo Rigorous Imprisonment for five 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 sentence already undergone by the accused shall be set-off, as provided under Section 428 of the Criminal Procedure Code.

Sd/-

Assistant Registrar (AR III)

True Copy

Sub Assistant Registrar

srk

To

1. Principal Sessions Judge, Villupuram
2. The Judicial Magistrate no.II, Villupuram.
- 3.-Do- Thro The Chief Judicial Magistrate, Villupuram
4. The Inspector of Police,
Vikkavandi Police Station,
Vikkavandi Taluk,
Villupuram District.
5. The Superintendent, Central Prison, Cuddalore
6. The District Collector, Cuddalore.
7. The Director General of Police, Mylapore, Chennai-4
8. The Public Prosecutor, Madras.

1 CC TO MR.ADINARAYANAN RAO, ADVOCATE SR.37067

Cr1.A.No.579 of 2015

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