

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2016

CORAM:

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

Criminal Appeal No.590 of 2015

Gajan @ Gajendran

... Appellant

Vs

State rep. By
Inspector of Police,
Malayampalayam Police Station,
Erode District
(Crime No.103/2013)

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the judgment passed by the learned Principal Sessions
Judge, Erode in S.c.No.55 of 2014 dated 21.07.2013.

For Appellant : Mr.E.Kannadasan

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.55/2014 on the file of the learned Principal Sessions Judge, Erode. He stood charged for the offences under Sections 302 & 201 I.P.C. By judgment dated 21.07.2015, the trial Court convicted the accused under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months for the offence under Section 302 I.P.C., and to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months for the offence under Section 201 I.P.C. The trial Court ordered to run the above sentences concurrently. Challenging the said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

P.W.1 is the father of P.W.4. P.Ws.1 & 4 are Srilankan refugees and they were residing in the Srilankan Refugees Camp at Eachampalli, P.K.Valasu in Erode District. The accused also is a Srilankan Refugee. He was staying in the house situated opposite to the house of P.W.1. In such a way, P.Ws.1,4 and other family members were closely known to the accused. On few occasions, the accused stalked the deceased and expressed his love for her. P.W.4 did not respond positively. She rejected the said offer made by the accused to marry her. In the mean while, P.W.1 and other family members had arranged for the marriage of P.W.4 with the deceased. The deceased was staying in a room at Ganapathipalayam Four Road Junction. He was studying III year B.E., Course in a local college. In a way, he was very closely related to P.W.1. P.W.4 also willing to marry him. Thus, by consent of the deceased and P.W.4, the family members had proposed to celebrate the marriage shortly.

3. Since, the marriage has been fixed, the deceased used to visit the house of P.W.1 frequently. On several occasions, he took P.W.4 with him to various places including the place of amusement. The accused got enraged over the same because, he was aiming to marry P.W.4. Since, the deceased came as an hindrance for the said aim of the accused, he decided to do away with the deceased. This is stated to be the motive for the occurrence.

4. On 03.07.2013, P.W.1's son Mr. Dayarooban, had gone to the room at Ganapathipalayam, Four Road Junction, where the deceased was staying and took him to the house of P.W.1. They reached the house of P.W.1 around 9.30 pm. P.W.1, his son Mr. Dayarooban, P.W.4 and the deceased were all engaged in a chatting for some time. Around 9.00 pm, the deceased wanted to go back to his room. Accordingly, he left for his room alone.

5. Around 9.15 pm on 03.07.2013, the deceased was nearing the farm belonging to one Mrs. Maragadham. There is a well in the said farm. At that time, the accused came to the place of occurrence with an iron rod, intercepted the deceased and attacked him on his head. P.Ws.2 & 3 were, by chance, present at the place of occurrence. The deceased ran towards them and seeking their help. He embraced P.W.2. But the accused did not stop with that. He gave a chase to the deceased. Then the accused attacked him, caused his death and threw the dead body into the well in the farm of Mrs. Maragadham and fled away from the scene of occurrence. Thus, the occurrence was witnessed by P.Ws.2 & 3 alone.

6. P.W.2 went to the house of P.W.1 and informed him that there was a fight between the deceased and the accused. P.W.1 along with P.W.2 and few others went to the said place. But,

neither the accused nor the deceased was seen there. At one place, there was a blood stains. Believing that the deceased would have gone, they returned home. Thereafter, they did not search for the deceased. On the next day morning around 6.00 am, when P.W.1 and others went to the farm of Mrs.Maragadham, they found the deceased lying dead in the well. T here was only a meager volume of water in the well.

7.P.W.1 immediately, went to Malayampalayam Police Station and made a complaint at 9.30 am on 04.07.2013. P.W.10, the then Inspector of Police on receipt of the said complaint, registered a case in Crime No.103/2013 for offence under Section 302 I.P.C. Ex.P.1 is the complaint and Ex.P.4 is the F.I.R. He forwarded both the documents to Court which were received by the learned Judicial Magistrate at 12.30 pm on 12.07.2013.

8.P.W.10 taking up the case for investigation, proceeded to the place of occurrence at 10.00 pm on 04.07.2013 and prepared an observation mahazar and a rough sketch in the presence of P.W.7 and another witness. Then, with the help of general public, he lifted the dead body from out of the Well. He prepared yet another observation mahazar regarding the Well. Then, he conducted inquest on the body of the deceased and forwarded the same for post mortem.

9.P.W.5 - Dr.Pandiperumal, conducted autopsy on the body of the deceased on 04.07.2013 at 4.00 pm and he found the following injuries:-

"A curvilinear laceration left side of nose (10cm x 1 cmx $\frac{1}{2}$ cm). Laceration left forehead (4cm x 10 cm x $\frac{1}{2}$ cm). Laceration right eyebrow (3cm x $\frac{1}{2}$ cm x $\frac{1}{3}$ cm) blood stains left extent of auditory meatus. Laceration left parietal temporal region 12 cm x 4 cm x 1cm. Laceration chin 3 x $\frac{1}{2}$ x $\frac{1}{2}$ cm. Abrasion left R2 upper neck. Abrasions/contusion / deformity in upper left of rd. forearm. Abrasions/12cm x 10 cm contusion left elbow 5 cmx 2 cm. Abrasions lower abdomen/ right thigh. RM present."

Ex.P.3 is the post mortem certificate. P.W.5 gave opinion that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body.

10.On 05.07.2013, P.W.10 arrested the accused at Solangapalayam Bus Stop, in the presence of P.W.7 and another witness. On such arrest, he made a voluntary confession, in which he disclosed the place where he had hidden the "L" shape

iron rod (M.O.1). P.W.10 recovered the same under a mahazar in the presence of same witnesses.

11. On returning to the Police Station, he forwarded the accused and 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 in all the material objects including the "L" shape iron rod (M.O.1) recovered from the accused. On completing investigation, P.W.10 laid charge sheet against the accused.

12. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 10 witnesses were examined and 18 documents were exhibited, besides 10 Material Objects were marked.

13. Out of the said witnesses, P.W.1 is the father of P.W.4. He has stated about the proposed marriage between the deceased and P.W.4. He has further stated that the deceased came to his house along with his son on 03.07.2013 at 8.00 pm and left his house at 9.00 pm to go over to his room. He has further stated that later on P.Ws.2 & 3 informed him around 9.30 pm that there was a fight going on between the deceased and the accused. He has further stated that when he went to the place of occurrence, neither the accused nor the deceased was found. On the next day morning, the dead body of the deceased was found lying in the well belonging to one Mrs. Maragadham. Then, he made the complaint (Ex.P.1). P.W.2 has stated that on 03.07.2013, around 9.15 pm, along with P.W.3, in a Motorcycle, when he was nearing the farm of Mrs. Maragadham, they found the accused attacking the deceased. P.W.2 has further stated that in an attempt to escape, the deceased ran towards him and embraced. Since, the accused gave a chase, he has further stated that, he fled away from the scene of occurrence and informed the same to P.W.1. P.W.3 has also stated the same facts. P.W.4, the daughter of P.W.1 has stated about the proposed marriage between her and the deceased. She has further stated that the accused was stalked on many occasions, he followed her and expressed his desire to marry her. She has further stated that she refused the said offer. Thus, she has spoken about the motive. P.W.5 has spoken about the post mortem conducted by him on the body of the deceased and his final opinion regarding the cause of death. P.W.6 is the Scientific Assistant, who examined the material objects. He has opined that there were human blood stains in all the material objects including the "L" shape iron rod (M.O.1) recovered from the accused. P.W.7 has spoken about the preparation of observation mahazar, rough sketch at the place of occurrence, the arrest of the accused and the consequential

recovery of M.O.1 at the instance of the accused. P.W.8 has spoken about the fact that he handed over the F.I.R., to the learned Judicial Magistrate at 12.30 pm on 04.07.2013. P.W.9 has stated that he took the dead body from the place of occurrence and handed over the same to the Doctor for post mortem. P.W.10 has spoken about the registration of the case, on the complaint of P.W.1 and the investigation done by him in this case.

14. 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 did he mark any document, on his side. His defence was a total denial.

15. Having considered all the above materials, the trial Court convicted the appellant as stated in the first paragraph of this judgment. Challenging the same, the appellant is before this Court, with this Criminal Appeal.

16. 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.

17. In this case, as we have already narrated, the prosecution mainly relies on the eye witness account of P.Ws.2 & 3. According to them, when they were nearing, in their motorcycle, the farm of one Mrs. Maragadham, they found the accused attacking the deceased with iron rod (M.O.1). Immediately, they went to the house of P.W.1 and informed the same to him.

18. The learned counsel for the appellant would submit that had it been true that P.Ws.2 & 3 had seen the occurrence and had it been true that they informed P.W.1 about the occurrence, P.W.1 would not have slept for the whole night without searching for the deceased. Thus, according to the learned counsel, the dead body of the deceased by all probabilities would have been found in the Well on the next morning thus, none would have witnessed the actual occurrence. Thus, according to the learned counsel, the evidences of P.Ws.2 & 3 are liable to be rejected. We find it difficult to accept the said contention of the learned counsel for the appellant. It is in evidence that there was a proposal of marriage between the deceased and P.W.4. P.W.4 has stated that the accused was a stalker and on many occasions, he expressed his desire to marry her. Since, she refused, the accused had decided to do away with the deceased because the deceased was a hindrance for him to marry P.W.4. It is also in evidence that P.W.4 used to go along with the deceased to various places including the places of amusement. This was not to the liking of the accused. Thus, the motive for the

accused have been duly established by the prosecution. Then on the day of occurrence at 8.00 pm, P.W.1's son Mr.Dayarooban had taken the deceased to the house of P.W.1. He was talking to P.Ws.1 & 4 and other family members for about 15 to 20 minutes. This has been spoken by P.Ws.1 & 4. Thereafter, the deceased left the house of P.W.1 to go to his room at Ganapathipalayam, Four Road Junction. Thus, the fact that the deceased proceeded to his room via the farm of Mrs.Maragadham, has been proved by means of the evidences of P.Ws.1 & 4.

19.P.Ws.2 & 3 had seen the accused attacking the deceased near the farm of Mrs.Maragadham. The deceased had embraced P.W.2. Since, the accused gave a chase, P.Ws.2 & 3 ran away from the scene of occurrence and then, had promptly went to the house of P.W.1 and informed about the same. P.Ws.1 to 3 had again gone to the place of occurrence but, neither the accused nor the deceased was found there. Therefore, P.W.1 would have been under the impression that the deceased would have gone elsewhere or atleast to his room. Therefore, they returned home and they did not search for the deceased further. On the next day morning, the dead body of the deceased was found floating in the Well situated at the farm belonging to Mrs.Maragadham. Thus, in our considered view, the presence of P.Ws.2 & 3 at the scene of occurrence witnessing that it was this accused who attacked the deceased cannot be disbelieved. Though, there is no evidence that this accused threw the dead body of the deceased into Well, the medical evidence states that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body of the deceased. It is therefore inferable that after killing the deceased, the accused had thrown the dead body into the Well. This presumption is so sound which remains un-rebutted. Thus, from out of the said witnesses, the prosecution has proved that it was this accused who attacked the deceased and caused his death and then threw the dead body into the Well belonging to Mrs.Maragadham.

20.Now, having come to the above conclusion, we have to examine the question as to "What was the offence that was committed by the accused by the said act ?". As we have already pointed out, it is in evidence that at the place of occurrence, there was a quarrel between the accused and the deceased. Though there is no direct evidence in respect of the nature of the quarrel between the accused and the deceased, it is inferable that the said quarrel would have been on account of the proposed marriage between the deceased and P.W.4. The accused would have requested the deceased not to proceed with the said marriage, as he had deep love and intimacy with P.W.4. It was only in that quarrel, it is seen that the accused had taken the iron rod (M.O.1) and attacked the deceased. In our considered view, the accused had been driven by sudden and grave provocation. Thus, the act of the

accused would fall under first exception to Section 300 I.P.C., and the third limb of Section 300 I.P.C. Hence, he is liable to be punished for offence under Section 304(i) I.P.C., and also for offence under Section 201 I.P.C.

21.Now, turning to the quantum of punishment, there are certain mitigating circumstances. The accused is an young man. There are lot of chances for reformation. The occurrence was not a premeditated one. It was only in a quarrel, when the accused/appellant wanted the deceased not to marry P.W.4 since, he had deep love for her, the occurrence had taken place. The quarrel itself was a sudden and unexpected one. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused/appellant to undergo Rigorous Imprisonment for 7 years with fine of Rs.5000/- for offence under Section 304(i) I.P.C., would meet the ends of justice. At the same time, the conviction and sentence imposed by the trial Court on the appellant/accused for offence under Section 201 I.P.C., do not require any interference at the hands of this Court.

22.In the result, the Criminal Appeal is allowed in part in the following terms:-

(i)The conviction and sentence imposed on the appellant/accused by the trial Court for offence under Section 201 I.P.C., is confirmed

(ii)The conviction and sentence imposed on the appellant/accused for offence under Section 302 I.P.C., is set aside and instead, he is convicted for offence under Section 304(i) I.P.C., and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for four weeks and

(iii)The above sentences shall run concurrently. The period of sentence already undergone by the appellant is directed to be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Principal Sessions Judge,

Feroze

- 2.The Chief Judicial Magistrate,
Erode.
- 3.The District Munsif Cum Judicial Magistrate,
Kudumudi.
- 4.The Inspector of Police,
Malayampalayam Police Station,
Erode District.
- 5.The Director General of Police,
Chennai.
- 6.The Superintendent of Police,
Erode.
- 7.The District Collector,
Erode.
- 8.The Superintendent,
Central Prison,
Coimbatore.
- 9.The Public Prosecutor,
High Court, Madras.
- 10.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.36133

Crl.A.No.590 of 2015

SVI (CO)
CA(29/07/2016)

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