

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2016

CORAM:

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

Criminal Appeal No.706 of 2015

Thangarasu .. Appellant /Accused

- Vs -

State rep by Inspector of Police,
Tirunavalur Police Station.
(Cr.No.233 of 2013) ..
Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge, Fast Track Mahila Court, Villupuram in S.C.No.594 of 2013 dated 28.11.2014.

For Appellant : Mr.N.A.Nissar Ahmed

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.594 of 2013 on the file of the learned Sessions Judge, Fast Track Mahila Court, Villupuram. He stood charged for offence under Section 302 I.P.C. By judgment dated 28.11.2014, the trial Court convicted him under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for one year. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

2.1. The deceased in this case was on Mrs.Sarasu. The accused is her husband. Out of the said wedlock, they had three children. After the birth of the third child, there arose misunderstanding between the accused and the deceased. The accused deserted the deceased and his children and refused to maintain them. The deceased therefore taking the children

returned to Gidilam village, where her mother, purchased a plot for her and constructed a small house. Thus, the deceased was living with her children in the said house at Gidilam separately. The accused was roaming around as a spendthrift and he never visited the house of the deceased.

2.2. During the year 2013, the deceased had arranged for the marriage of her daughter Ms.Deepa to a bridegroom from Chennai. As per the practice of the community, the bride should do pathapooja to the parents. In order to perform that ceremony, P.W.1 went in search of the accused, persuaded him and brought him to the house of the deceased.

2.3. Accordingly, the accused participated in the marriage of Ms.Deepa. After the function was over, the bride and the bridegroom were taken to Chennai. The deceased remained at her house along with the other two children.

2.4. On 27.05.2013, in the evening, the sister's husband of the deceased called her over phone and enquired as to whether the bride and the bridegroom had gone safely to Chennai. The deceased was thus talking with him. This was noticed by the accused. He questioned the deceased as to why she was talking to her sister's husband. He further accused that the deceased had developed illicit intimacy with her sister's husband during his absence. P.W.2, their son was present in the house witnessing the above quarrel made by the accused. P.W.2 intervened and wanted them to stop the quarrel. The accused in turn wanted him to sleep. Accordingly, P.W.2 went asleep.

2.5. At around 04.00 a.m. on 28.05.2013, he heard an unusual murmur. P.W.2 woke up. He found the accused holding a koduval knife in his hand and the deceased was lying by his side in a pool of blood. On noticing that P.W.2 had woken up, the accused ran away from the place of occurrence with the knife. P.W.2 shouted and cried for help. The neighbours rushed to the house of the deceased. Then, they took the deceased in 108 ambulance to the Mundiambakkam Government Hospital. After first aid, she was taken to the JIPMER Hospital. Despite treatment, on 01.06.2013, at 04.30 p.m. she died in the hospital succumbing to the injuries.

2.6. On 28.05.2013, P.W.1 heard about the occurrence and she went to the hospital and found the deceased undergoing treatment. She heard about the occurrence from P.W.2 and others. Then she went to Tirunavalur Police Station at 01.30 p.m. on 28.05.2013 and made a complaint. Ex.P.1 is the complaint and Ex.P.8 is the F.I.R. P.W.10 the then Sub Inspector of Police registered a case in Crime No.233 of 2013. He forwarded both the documents to Court and the same was received by the learned Magistrate at 10.00 p.m. on

28.05.2013.

2.7. P.W.17 took up the case for investigation. He went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.12 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. He arrested the accused on the same day at 06.00 p.m. in the presence of P.W.6 and another witness. On such arrest, he made a voluntary confession, in which, he disclosed the place where he had hidden the knife and his clothes. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.Os.1 to 3. P.W.17 recovered the same under a mahazar. He forwarded the accused to Court for judicial remand and handed over the material objects also to the Court. He collected the bloodstained cloths from the body of the deceased and forwarded the same also to the Court.

2.8. The investigation was thereafter taken over by P.W.18 from 28.05.2013 onwards. He made a request to the Court to sent the material objects for chemical examination. The report revealed that there were human blood on all the material objects except the knife. On completing the investigation, he laid the chargesheet against the accused.

2.9. Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C., which the accused denied. In order to prove the case, on the side of the prosecution, as many as 18 witnesses were examined, 17 documents and 7 material objects were marked.

2.10. Out of the said witnesses, P.W.1, the mother of the deceased has spoken about the ill-feeling between the accused and the deceased. She has further stated that she heard about the occurrence and went to the hospital and enquired P.W.2 and then went to the police station to make a complaint. P.W.2, the son of the deceased has spoken about the entire occurrence. He has stated that while he was sleeping, he heard the murmur and when he woke up, he found the deceased with a knife in his hand standing by the side of the deceased, who was lying in a pool of blood. On seeing him, he ran away from the scene of occurrence. He cried for help and the neighbours came and took the deceased to the hospital.

2.11. P.W.3 is the father of the deceased. He has also spoken about the strained relationship between the accused and the deceased. P.W.4 is the sister's son of the deceased. He has also spoken only about the strained relationship between the accused and the deceased. P.W.5 is the brother of the deceased. He has also stated only about the strained relationship between the accused and the deceased. P.W.6 is the Village Administrative Officer. He has stated about the arrest of the accused and the recovery of the material objects

on his disclosure statement. P.W.7 is yet another Village Administrative Officer who has also stated about the arrest of the accused and the recovery of the material objects.

2.12. P.W.8 has spoken about the postmortem conducted and his final opinion regarding the cause of death. According to him, he conducted autopsy on the body of the deceased on 02.06.2013 at 10.35 a.m. He found the following injuries:

"External Examination: (1) Multiple horizontal superficial chop wounds varying in size from 5 cms x 0.25 cm x skin deep to 3 cms x 0.25 cm x skin deep (edges are contused, tailing towards the left side) present over the nape (back) of the neck extending from 3 cms below the external occipital protuberance up to the top of the right shoulder. On dissection of the back of the neck underlying paravertebral muscles over all the cervical vertebrae are contused with fracture of the cervical vertebrae C5 and C6.

(2) Horizontal sutured wound 3 cms x 0.25 cms x skin deep (on removal of the sutures) over the lateral aspect of the neck on the left side 5 cms below the angle of the mandible.

(3) Contusion 8 cms x 7 cms over the back of the left shoulder joint.

Internal examination: Scalp - intact; Skull - intact; Brain - Subarachnoid haemorrhage over the cerebellum; Larynx - Intact; Hyoid bone - Intact; Heart - Intact; Lungs - Congested. Cut section exudes blood stained frothy fluid; Liver - congested; Spleen - congested; Stomach - contains about 10 ml of yellowish mucoid fluid. Mucosa is normal. No unusual smell; Intestine - contains gas and faecolith; Uterus - intact; Bladder - empty."

Ex.P7 is the postmortem certificate. Ex.P6 is his final opinion. According to him, the death was due to shock and hemorrhage due to the injuries found on the body of the deceased.

2.13. P.W.9 has stated that he examined the visceral organs and found neither alcohol nor poison. P.W.10 has spoken about the registration of the case on the complaint of P.W.1. P.W.11 is yet another son of the deceased. According to him, on the day of occurrence, he was not at the house of the deceased and thus, he has not stated anything incriminating against the accused. P.W.12 has spoken about the preparation of the observation mahazar and the rough sketch and also the recovery of the material objects from the place of occurrence. P.W.13 has spoken about the chemical analysis conducted on the material objects. P.Ws.14 and 15 have not stated anything

incriminating against the accused. P.W.16 has stated that he handed over the dead body of the doctor for postmortem as directed by P.W.17. P.Ws.17 and 18 have spoken about the investigation done and the final report filed.

3. 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 as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. The learned counsel for the appellant would submit that the evidence of P.W.2, who is inimical to the accused, cannot be believed. He would further submit that though the alleged occurrence had taken place on 28.05.2013 and the deceased died only on 01.06.2013, the medical records pertaining to the deceased have not been produced in evidence. He has further stated that the prosecution has suppressed the statement of the deceased, which would give a clean chit to the accused.

6. But the learned Additional Public Prosecutor would submit that it is true that the investigating officer had failed to collect the medical records pertaining to the treatment given to the deceased and also had failed to cite the doctor who treated her as a witness. But on that score, according to the learned Additional Public Prosecutor, the evidence of P.W.2 cannot be discarded. He would submit that from the evidence of P.W.2 coupled with the evidence of the doctor who conducted autopsy, the prosecution has clearly established that the death of the deceased was caused only by this accused.

7. We have considered the above submissions.

8. P.W.1, the mother of the deceased has spoken about the strained relationship between the accused and the deceased. It is in evidence that the accused had deserted the deceased and her children and he was roaming around as a spendthrift. It is not in dispute that the deceased was residing in her own house at Gidilam along with P.W.2. It is also not in dispute that for the marriage of Ms.Deepa, the daughter of the deceased, the accused was persuaded to come and participate in the marriage ceremony and that is how the accused had come to the house of the deceased. We do not find any reason to

reject this part of the case of the prosecution.

9. On the date of occurrence in the house, P.W.2, the deceased and the accused alone were there. P.W.2 has narrated as to what had happened on the day of occurrence at his house. He has stated that the sister's husband of the deceased spoke to the deceased and enquired as to whether the bride and bridegroom had safely gone to Chennai. This was noticed by the accused. He developed suspicion that the deceased was having illicit relationship with her sister's husband in his absence and that is how he accused her of the same. This resulted in a quarrel. P.W.2 intervened, but the accused wanted him to sleep. Again, when he was awakened by the quarrel, he found the accused standing by the side of the deceased with a knife. Immediately his conduct is quite natural. He shouted and cried for help and the deceased was taken to the hospital by 108 ambulance by P.W.2 and neighbours. We do not find any reason to reject the evidence of P.W.2 in this regard.

10. Though it is stated by the learned counsel for the appellant that P.W.2 had animosity against the accused, we find no force in the said argument at all. The conduct of the accused in standing with bloodstained knife by the side of the deceased and on noticing P.W.2 waking up, fleeing away from the scene of crime would conclusively go to prove that it was this accused who caused injuries on the body of the deceased.

11. It is true that the accident register at the Government Hospital at Ondiambakkam, Villupuram and the medical records pertaining to the treatment given to the deceased at JIPMER hospital, Puducherry have not been produced in evidence. This, in our considered view, is certainly a serious flaw. It is also not known whether the deceased was conscious or unconscious during the entire period. But, one thing is clear that it is not the case of the accused that the deceased was conscious. He has not elicited anything from any of the witnesses that the deceased was conscious. Therefore, the contention of the learned counsel for the appellant that the deceased would have made a statement amounting to dying declaration and the same has been suppressed cannot be accepted.

12. As rightly pointed out by the learned Additional Public prosecutor, the doctor who conducted autopsy has categorically opined that the death of the deceased was due to the injuries found on the body of the deceased. As we have already concluded the said injuries were caused only by the accused. Thus, the prosecution has proved that it was this accused who caused the death of the deceased by stabbing her with knife.

13. Now, the question is as to what was the offence
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committed by the accused by the said act. As we have already narrated, there was a quarrel between the accused and the deceased. The accused, accused the deceased of having illicit intimacy with her sister's husband. It was because of that quarrel, P.W.2 was awakened and in that quarrel, the accused had stabbed the deceased. In our considered view, in the said quarrel, on account of the words and deeds of the deceased, the accused would have been provoked. The said provocation, in our considered view, was grave and sudden. Thus, act of the accused would fall within the first exception to Section 300 I.P.C. Since his act would fall within the third limb of Section 300 I.P.C. and also the first exception to Section 300 I.P.C., he is liable to be punished only for offence under Section 304(i) I.P.C.

14. Now turning to the quantum of punishment, the accused had got no bad antecedents; he is an old man; after the occurrence also he has not committed any other crime and having regard to the above mitigating and aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/- would meet the ends of justice.

15. In the result, the criminal appeal is partly allowed in the following terms:

(i) The conviction and sentence imposed on the appellant by the trial Court under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and he is sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for four weeks.

(ii) It is directed that the period of sentence already undergone by the accused shall be set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dixit/kk

To

1. The Sessions Judge,
Fast Track Mahila Court,

Vijilapuram.

2.The Judicial Magistrate No.II
Ulundurpet.

3.The Cheif Judicial Magistrate
Villupuram.

4.The Superintendent,
Central Prison, Cuddalore.

5. The Inspector of Police,
Tirunavalur Police Station.

6.The District Collector,
Villupuram.

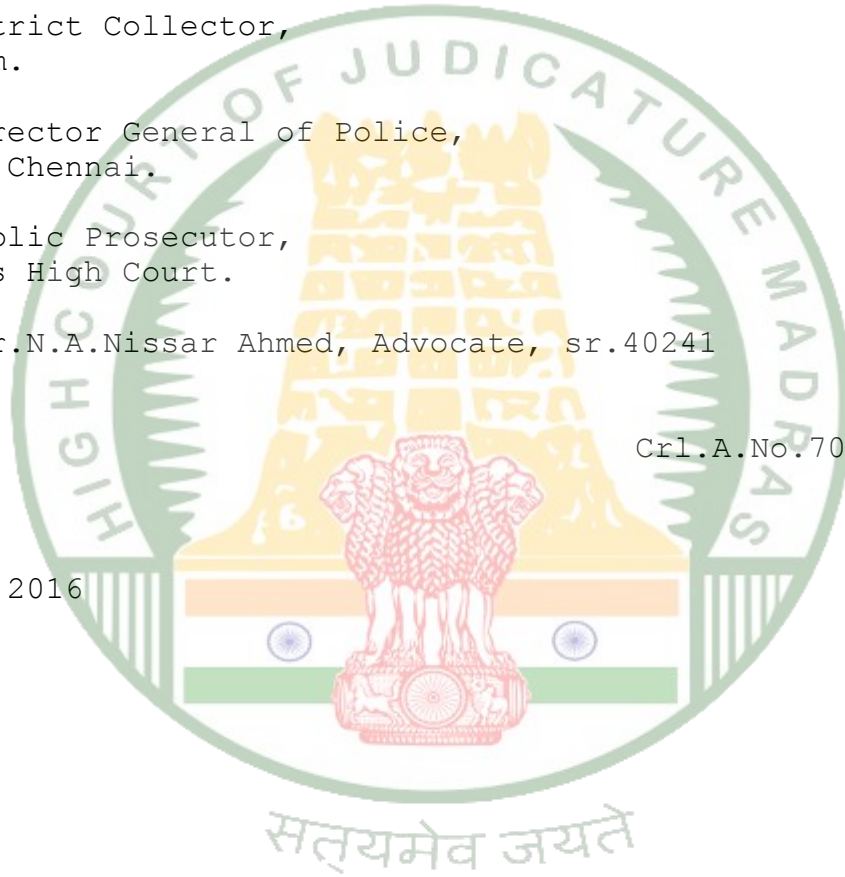
7. The Director General of Police,
Mylapore, Chennai.

8. The Public Prosecutor,
Madras High Court.

1 cc to Mr.N.A.Nissar Ahmed, Advocate, sr.40241

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