

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2016

CORAM:

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

Criminal Appeal No.772 of 2015

S.Pugazhendi
Appellant

..

Vs

State rep. By
Inspector of Police,
Senbanarkoil Police Station,
Mayiladuthurai Taluk,
Nagapattinam District,
Crime No.535 of 2009.
Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
to set aside the order of conviction and sentence imposed on
the appellant by the learned Sessions Judge, Nagapattinam,
in S.C.No.141 of 2010 on 14.02.2011.

For Appellant : Mrs.S.S.Jhothi Vani

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

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

The appellant is the sole accused in S.C.No.141 of 2010 on the file of the learned Sessions Judge, Nagapattinam. He stood charged for an offence under Section 302 I.P.C. After trial, by judgment dated 14.02.2011, the trial Court convicted the appellant/accused for offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for three years. Challenging the said conviction and sentence, appellant/accused is before this Court with this Criminal Appeal.

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

The deceased, in this case, one Jeeva, is the wife of P.W.1. The accused is the brother of P.Ws.1 and 2 and all

of them were living in the same house, as a joint family. Earlier, there were frequent quarrel between the accused and his wife. P.W.1, being the brother of the accused, used to intervene and scold the accused. Hence, the accused had grievance against P.W.1 and his wife. At the time of occurrence, father of the accused and P.Ws.1 and 2, who was aged about 90 years, was seriously ill. Hence, on 05.09.2009, entire family of P.W.1 was with him and the deceased was also sleeping there. At about 5.00 p.m., the accused, suddenly attacked the deceased with an axe on her head. P.W.1 and others raised alarm and the accused ran away, throwing the axe away. P.W.2, another brother of the accused was also present inside the house at the time of occurrence and he also saw the accused attacking the deceased. P.W.3, another brother of the accused, who is residing in their next house, on hearing the noise, rushed to the house and saw the accused running with an axe. P.W.1 gave a complaint, Ex.P.1, before the respondent police.

3. P.W.10, Inspector of Police, on receipt of the complaint, registered a case in Crime No.535 of 2009 under Section 302 IPC and forwarded the First Information Report, Ex.P.8 to the Court. Then, he proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.9 and a Rough Sketch, Ex.P.10 in the presence of witnesses. He also recovered bloodstained earth(M.O.2) and sample earth(M.O.3) under a cover of Mahazar, Ex.P.5. He conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared an Inquest Report, Ex.P.11. Thereafter, he sent the dead body for postmortem to Government Hospital, Myiladuthurai.

4. P.W.4, Doctor, conducted autopsy on the body of the deceased on 06.09.2009, at 1.15 p.m. and he found the following injuries:-

" External Injury :

1. Incised wound in left temporal region horizontally above left ear 8 cm x 2.5 cm x 7cm & brain depth.
2. Abrasion present in lateral aspect of left eye.

Internal Injury:

Head : Lura is cut along injury no.1 extra dual hemorrhage, sub dual hemorrhage present over left temporal region. Crack fracture present in left temporal part of skull of size left 9 cm crack fracture 8cm x 2.5 cm extending to opposite parietal region and occipital region perpendicular to left 9cm right back of skull occipital region. Brain matter in left temporal lobe incised, 6cm x 1.5 cm x 4 cm. Major blood vessel supplying left

temporal lobe of brain was cut causing hemorrhage in brain."

P.W.4 gave Ex.P.3, Postmortem certificate and Ex.P4 Final Opinion opining that the deceased died due to the injuries to vital organ, brain and due to shock.

5. P.W.10, arrested the accused at Melmathur, at 4.00 p.m., on... and on such arrest, the accused voluntarily gave a confession and based on the disclosure statement, P.W.10, seized a bloodstained Axe(M.O.1) from the backside of the house of one Chinnadurai. P.W.10 sent the material objects for chemical examination. He recorded the statements of the doctor, who conducted postmortem on the dead body of the deceased and other witnesses. On completing investigation, P.W.10 laid charge sheet against the accused.

6. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the appellant. The appellant denied the same. In order to prove its case, prosecution examined, as many as 10 witnesses, exhibited 16 documents, besides 7 Material Objects were marked.

7. Out of the witnesses examined, P.W.1 is the husband of the deceased and a brother of the accused. According to P.W.1, his family, the accused and P.W.2 were all living under the same roof as a joint family and P.W.3, another brother of the accused, was residing near their house and since there were frequent quarrel between the accused and his wife, as a brother, he used to condemn the accused, and hence, the accused had grievance against him. He has further stated that on the date of occurrence, their father, aged about 90 years, was seriously ill and therefore all the brothers and family members were along with him and at about 5.00 p.m., the accused attacked the deceased with an axe on her head and ran away.

8. P.W.2, another brother of the accused has stated that he was also present in the house at the time of occurrence and he saw the accused attacking the deceased with an axe and thereafter, he ran away. P.W.3, another brother of the accused, residing in the nearby house of the accused, has stated that on hearing the news, he rushed to the scene of occurrence, where he saw the accused running with a bloodstained axe.

9. P.W.4, doctor, has stated that he conducted postmortem on the dead body of the deceased and gave final opinion regarding the cause of death. P.W.5, Scientific Assistant in the Forensic Science Lab, has stated in his evidence that he examined the visral parts of the deceased and gave report, Ex.P.2. P.W.6 is a witness to the Observation Mahazar and also recovery of material objects. P.W.7, Village

Administrative Officer, has stated that he witnessed the arrest and confession statement given by the accused and also recovery of M.O.1.Axe. P.W.8, Head Constable, has stated that he submitted the First Information Report to the Judicial Magistrate Court. P.W.9 is the Head Constable, who identified the dead body for postmortem and after postmortem, he had handed over the dead body to the relatives. P.W.10, Inspector of police, has stated in his evidence that he registered the complaint, conducted investigation, arrested the accused, recovered the material objects and recorded the statements of witnesses and after completing the investigation, he laid charge sheet.

10. 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 or mark any documents on his side.

11. We have heard Mrs.S.S.Jhothi Vani, the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. The learned counsel for the appellant would submit that there is a delay in filing the First Information Report. The occurrence is said to have taken place at about 5.00 a.m., but, P.W.1 has lodged the complaint at about 9.00 a.m. and therefore the delay is fatal to the prosecution, is her contention. She would further submit that motive for the occurrence is also not proved by the prosecution and all the witnesses are interested witnesses and hence, their testimony cannot be relied upon, in the absence of corroboration from any independent witness to the occurrence. She would also submit that except M.O.1 Axe, nothing has been recovered from the accused and the conviction has been recorded only based on surmises of evidence and the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and the accused is entitled for acquittal at the hands of this Court.

13. However, the learned Additional Public Prosecutor appearing for the state vehemently oppose this Criminal Appeal. He would submit that there are three eye-witnesses to the occurrence and the occurrence has taken place inside the house where the accused and other members of the joint family was living and all the witnesses are being brothers of the accused, there is no reason to disbelieve their evidence. He would further submit that apart from that, the delay in filing the First Information Report has been properly explained by the prosecution.

14. We have considered the rival submissions.

15. There are three eye-witnesses to the occurrence.

P.W.1 is the husband of the deceased and also a brother of the accused. According to him, in his family, there are 6 brothers and all of them were living as a joint family and the accused was also residing in the same house. His further evidence is that since there were frequent quarrel between the accused and his wife, being elder brother, he condemned the accused for his behaviour and hence, the accused had some grievance against him. It also emerges from his evidence that on the date of occurrence, their father, aged about 90 years, was seriously ill and hence, all the family members were in the house to look after him and at about 5.00 a.m., when, they were sleeping in the house, suddenly, the accused attacked the deceased with an axe on her head and caused serious injury and ran away.

16. P.W.2 is the another brother of the accused. His evidence is that he was also present in the house at the time of occurrence and he saw the accused attacking the deceased with an Axe. P.W.3, another brother of the accused, who was living in the nearby house, has deposed that on hearing noise, he rushed to the house and saw the accused running with a bloodstained Axe.

17. The occurrence has taken place inside the house where members of the joint family were living. It is the testimony of P.Ws.1 and 2 that their father was very seriously ill and all the members of their family were with him and the accused was also present at that time in the house. Since, the occurrence was inside the house, the presence of P.Ws.1 and 2 there is quite natural and it cannot be doubted. Apart from that P.W.3, another brother, has also seen the accused running from the house with a bloodstained Axe. There is no reason for the own brothers of the accused to implicate him, falsely, in the occurrence. Hence, there is no reason to disbelieve the evidence of P.Ws.1 to 3, as they are not only related to the deceased, but also blood brothers of the accused.

18. So far as the delay in filing the First Information Report is concerned, P.W.1 has explained the delay properly. He has stated in his evidence that at the time of occurrence, their father was very seriously ill and his two sons were mentally retarded and he was totally upset, since his wife was attacked. Hence, he has given a complaint at about 9.00 a.m. This Court is of the view that P.W.1 has explained the reason for the delay in lodging the complaint to the satisfaction of the Court. In such circumstances, the contention of the learned counsel for the appellant on the aspect of delay is liable to be rejected.

19. In our considered view, the delay has been properly explained by the prosecution. Hence, we are of the considered opinion that the prosecution has clearly proved the guilt of the accused beyond any reasonable doubt.

20. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. It is reported that the appellant is in jail. Appellant is directed to undergo the remaining period of sentence as imposed by the trial Court.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

- 1.The District and Sessions Judge,
Nagapattinam.
 - 2.The Judicial Magistrate II, Mayiladuthurai.
 - 3.do thro'The Chief Judicial magistrate,
Mayiladuthruai.
 - 4.The District Collector,
Nagapattinam.
 - 5.The Director General of Police, Mylapore,
Chennai.
 - 6.The Superintendent, Central Prison,
Cuddalore.
 - 7.The Public Prosecutor,
High Court, Madras.
- +1 cc to m/s.S.S.Jothirani, advocate, sr.42326.

mp(co)
krd 27/2

WEB COPY

CrI.A.No.772 of 2015