

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 20.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.272 of 2007

Murugesan

... Appellant

vs.

State,by
The Inspector of Police,
Vennandhoor Police Station,
Namakkal District.

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 31.08.2006 passed by the learned
Principal District and Sessions Judge, Namakkal, in S.C.No.51 of
2006.

For Appellant : Mr.R.Nalliyappan

For Respondent : Mrs.M.F.Shabana
Government Advocate(Crl. Side)

JUDGMENT

The sole accused in Sessions Case No.51 of 2006, on the
file of the learned Principal District and Sessions Judge, Namakkal is
the appellant herein. He stood charged for an offence under Section
302 IPC. The Trial Court, after trial, by judgement dated

31.08.2006, convicted the appellant/accused under Section 304(ii) IPC, and sentenced him to undergo rigorous imprisonment for seven years and also imposed a fine of Rs.5,000/- in default, to undergo rigorous imprisonment for one year. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) The deceased, in this case, one Sumathi is the wife of the appellant/accused and both of them were residing at O. Southapuram village. P.W.1 is the father of the deceased, P.W.2 is the mother of the deceased. On 04.11.2005, the father-in-law of the deceased one Thangavel informed P.W.1, that his daughter is seriously ill and she was admitted in the Government Medical College Hospital, Salem. Immediately, both P.Ws.1 and 2, went to the Government Medical College Hospital, Salem at about 4.00 p.m., and they found the deceased unconscious. The Doctor examined the deceased found so many injuries on the body of the deceased, and when he questioned the deceased, the deceased told him that she was beaten by the accused with a spade.

(ii) On receipt of the information from the Hospital, P.W.22, the Sub Inspector of Police, working in the respondent police station, reached the Government Mohan Kumaramangalam

Medical College Hospital, Salem and found the deceased unconscious. Hence, he obtained statement from P.W.1/the father of the deceased, and based on the statement, he registered a case in Crime No.432 of 2005, for an offence under Section 307 IPC, prepared first information report[Ex.P16] and sent the same to the Judicial Magistrate Court and copies of the same to the Higher Officials.

(iii) P.W.23, the Inspector of Police, working in the respondent police station, on receipt of the First Information Report, commenced investigation, proceeded to the scene of occurrence and prepared an Observation Mahazar, [Ex.P17], drew a Rough Sketch, [Ex.P18] in the presence of witnesses. Subsequently, on 05.11.2005, at about 7.00 p.m., he arrested the accused and on such arrest, the accused voluntarily gave a confession statement, and based on the disclosure statement[Ex.P5], P.W.23 recovered M.O.1, Spade, under Ex.P6, Seizure Mahazar, in the presence of witnesses and then he sent the accused for judicial custody. Subsequently, on 09.11.2005 at about 9.30 a.m., the deceased succumbed injuries. Hence, P.W.23 altered the crime into one under Section 302 IPC and prepared alteration report Ex.P19. Then, he went to the Hospital, and conducted inquest over the dead body of the deceased in the presence of panchayatars and prepared Inquest Report, [Ex.P.20] and sent the dead body for postmortem.

(iv) P.W.20, the Doctor, working in the Government Mohan Kumaramangalam Medical College Hospital, Salem, conducted postmortem autopsy on the dead body of the deceased, and he found the following injuries:-

Internal Examination:

(1) Abrasion over the left scapular region 7 x 3 cm. (2) Contusion over right chest 3 x 3 cms. dark red. (3) Contusion over left chest wall 4 x 2 cms dark red. (4) Contusion over left arm 3 x 0.5 cms dark red. (5) Contusion over right arm 1 x 1.5 cms dark red. (6) Contusion over right lung 7 x 4 cms and left lung 3 x 2 cms upper lobe dark red. (7) Contusion over left tempera parietal region of scalp 10 x 6 x 0.5 cms dark red. (8) Sub-dural SAH haemorrhage over left cerebral hemispheres of brain (Antemortem)

He opined that the deceased would appear to have died due to effects of head injuries and he issued Postmortem Certificate Ex.P14.

(v) Thereafter, P.W.23 examined the Doctor conducted the portmortem autopsy and other witnesses and recorded their statements, after completion of investigation, he laid charge sheet before the jurisdictional Judicial Magistrate Court.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 25 witnesses were examined and 25 documents were exhibited, and 5 material objects were marked.

4. Out of the said witnesses examined, P.W.1 is the father of the deceased. According to him, after receiving the information that his daughter was admitted in the Government Medical College Hospital, Salem, on 05.11.2005 at about 4.00 p.m., he went to the Hospital and found the deceased unconscious. Then, the Doctor informed him that the accused has beaten the deceased with spade, then he enquired the accused and he admitted that he has beaten the deceased. After four days, the deceased succumbed injuries. Hence, he has given a complaint Ex.P1 before the respondent police. P.W.2, the mother of the deceased also deposed similarly. P.Ws.3 and 4 turned hostile. P.W.5 is a van driver, according to him, on 04.11.2005, the accused approached him to take the deceased to Hospital. At that time, she was unconscious and he has taken the deceased to the hospital in his van. P.W.7 is as witness to the confession statement of the accused and also recovery of M.O.1 Spade. P.W.8 is the witness to the Observation Mahazar. P.Ws.9,10,11,12,13,14 and 15, turned hostile. P.W.16 is a Doctor,

by name Jayalakshmi, she is having a private hospital at Rasipuram. According to her, on 04.11.2005, the deceased was brought to her hospital and on examination, she suspect a haemorrhage on the head, and she advised them to take her to the Government Hospital. P.W.17 is the Photographer. According to him, he has taken the photograph of the dead body. P.W.18 is Doctor working in the Government Mohan Kumaramangalam Medical College Hospital, Salem. According to him, on 04.11.2005, he admitted the deceased in the Hospital and at that time, the deceased was unconscious and on examination he found injury on the right chest, right hand and he enquired the accused and the accused admitted that he has beaten the deceased. Based on his statement, he prepared Accident Register[Ex.P10] and also sent the memo [Ex.P9] to the respondent Police Station. P.W.19, a Doctor, working in the Government Mohan Kumaramangalam Medical College Hospital, Salem, he has given treatment to the deceased and after her death he issued a death certificate [Ex.P11]. P.W.20, a Doctor, working in the Government Mohan Kumaramangalam Medical College Hospital, Salem, conducted postmortem autopsy on the dead body and issued postmortem certificate [Ex.P14]. He is of the opinion that the deceased would appear to have died due to effects of head injuries. P.W.21, a Head Constable working in the respondent police station, he identified the dead body for postmortem and after postmortem

he recovered M.O.5 saree from the dead body. P.W.22, a Sub Inspector of Police working in the respondent police Station, according to him, on receipt of the complaint, he registered the case in Crime No.432 of 2005, for the offence under Section 307 IPC and sent the First Information Report to the Judicial Magistrate Court and copies of the same to the Higher Officials. P.W.23, the Inspector of Police, working in the respondent police station. According to him, on receipt of the First Information Report, he commenced the investigation, prepared Observation Mahazar and Rough Sketch. He further states that he recovered the material objects, examined the witnesses and recorded their statements, arrested the accused remanded him to judicial custody, and after completion of investigation, he filed charge sheet. P.W.24 is the Head Constable working in the respondent police station, he submitted the First Information report before the Judicial Magistrate Court. P.W.25, another Head Constable, working in the respondent police. He submitted the altered first information report to the Judicial Magistrate Court.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witness and no document was marked on his side.

6. Having considered all the above, the Trial Court convicted the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court.

7. I have heard Mr.R.Nalliyappan, learned counsel for the appellant and Mrs.M.F.Shabana, learned Government Advocate(Crl Side) appearing for the State and perused the records available on record.

8. The learned counsel appearing for the appellant would submit that there is no eye witness to the occurrence and the case is based on the circumstantial evidence. Even though P.W.1, the father of the deceased has given complaint stating that at the time of occurrence, he was present in the house of the deceased, and saw the accused had beaten the deceased with a spade. But, in his evidence he stated that he received a information from the father-in-law of the deceased, thereafter he went to the Hospital and he is not an eye witness to the occurrence. Apart from that, there is no evidence available on record to show that only the accused attacked the deceased. The learned counsel appearing for the appellant further submitted that even P.W.18, the Doctor, who examined the deceased initially suspecting haemorrhage and referred the

deceased to the Government Hospital. He further submitted that the prosecution did not establish any circumstances to prove the guilt of the accused beyond any reasonable doubt and sought for acquittal.

9. The learned Government Advocate(Crl. Side) appearing for the respondent would contend that the deceased is the wife of the accused and both of them living in the same house, and it is a homicidal death. In this regard, there is no explanation on the side of the accused how the deceased sustained injuries. In the said circumstances, the prosecution has proved the case beyond any reasonable doubt. Hence, she sought for dismissal of this appeal.

10. I have considered the rival submissions and perused the materials available on record.

11. The deceased is the wife of the accused. Both the deceased and accused were residing in the same house. There is no evidence to show that except them anybody else is residing in the house. The medical evidence shows that as many as 8 injuries were found on the body of the deceased and the deceased was found unconscious in the house and it is this accused took her to the hospital in a van. To that effect, P.W.10, the driver of the van deposed that the deceased was unconscious at the time of taking

her to the hospital. P.W.18, the Doctor working in the Government Mohan Kumaramangalam Medical College Hospital, Salem, admitted the deceased in the Government Hospital. According to him, at that time of admission, the accused himself admitted that he had attacked the deceased and based on his statement only, P.W.18 prepared Accident Register [Ex.P10], wherein it has been clearly stated that the accused has assaulted the deceased. P.W.20, the Doctor, who conducted the postmortem autopsy found as many as 8 injuries on the body of the deceased and there was sub-dural haemorrhage over the left cerebral hemispheres of brain, and he has given a opinion that the deceased would appear to have died due to the effects of head injuries.

12. Even though there is no direct evidence to the occurrence, it is the admitted fact the deceased and accused were living in the same house and excepted them nobody else was residing in the house. In the above circumstances, under Section 106 of the Evidence Act, the burden is on the accused to explain the circumstances relating to the injury caused to the deceased. In the instant case, absolutely there is no explanation on the side of the accused.

13. While he was questioned under Section 313 Cr.P.C., he has stated that since the deceased was suffering from pneumonia he had admitted her in the Hospital, and he did not say anything about the injuries found on the deceased, giving a false statement also one of the strong circumstances against the accused. In the above circumstances, in the absence of any explanation for the injuries found on the deceased, it could be presumed that only this accused caused injury on the deceased. Hence, this court is of the considered opinion that the prosecution has clearly proved that it was this appellant/accused, caused the death of the deceased. The Court below after considering the evidence available on record convicted the accused under Section 304(ii) IPC and I find no illegality or irregularity in the findings of the Court below.

14. So far as the quantum of sentence is concerned, the trial Court convicted the accused and sentenced him to undergo 7 years rigorous imprisonment and also imposed a fine of Rs.5,000/- in default to undergo one year rigorous imprisonment. The appellant does not have any bad antecedence, and only out of sudden provocation, he caused injuries to the deceased and it is not a premeditated murder. Apart from that, the deceased was in hospital for more than 5 days, subsequently she died. It is stated that the appellant have one son and he is residing with him, except the

appellant, there is no one take care of him. Considering all the above mitigating circumstances, the appellant is sentenced to undergo 3 years rigorous imprisonment and also to pay a fine of Rs.5,000/- in default, to undergo rigorous imprisonment for 4 weeks.

15. In the result, the Criminal Appeal is partly allowed, the conviction imposed on the appellant by the trial Court under Section 304(ii) IPC is confirmed, however the sentence is modified and the appellant is sentenced to undergo rigorous imprisonment for 3 (three) years and to pay a fine of Rs.5000/- in default, to undergo rigorous imprisonment for four weeks. The period of imprisonment already undergone shall be given set off under Section 428 Cr.P.C. If the appellant/accused is not in custody, the trial Court is directed to take appropriate steps to secured him to undergo the rest of the sentence.

20.12.2016

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To

- 1.The Principal District and Sessions Judge,
Namakkal.
- 2.The Inspector of Police,
Vennandhoor Police Station,
Namakkal District District.
- 3.The Public Prosecutor,
High Court,
Madras.

V.BHARATHIDASAN.J.,

rrg

CrI.A.No.272 of 2007

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