

Bail Slip:- The accused viz. J. Dharman who was released on bail as per order of this Court dated 18.6.2012 and made in M.P.No.1 of 2012 in CrI.A.No.275/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21-1-2016

Coram

The Honourable Mr.Justice S. NAGAMUTHU
and
The Honourable Mr.Justice P.N.PRAKASH

Criminal Appeal No.275 of 2012

J. Dharman ... Appellant/Accused

Vs.

State, rep. by The Inspector of Police,
B1 Siva Kanchi Police Station,
Kanchipuram,
(Cr.No.743 of 2009) ... Respondent/ complainant

This Criminal Appeal has been preferred under Section 374 (2) of Code of Criminal Procedure, challenging the conviction and sentence imposed by the learned Sessions Judge II, Kanchipuram, by judgment made in S.C.No.66 of 2010 on 26.3.2012.

For Appellant/Accused : Mr.D.Ravichander

For Respondent/State : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

P.N.PRAKASH, J.

The sole accused, who was tried in S.C.No.66 of 2010 by the Sessions Judge II, Kanchipuram for the offence under Section 302 IPC and convicted, and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default to undergo further six months rigorous imprisonment, is the appellant in this Criminal Appeal.

2. The case of the Prosecution in short is as follows:

(a) The accused Dharman is a deaf and dumb and he was a drunkard. He was very frequently quarrelling with his mother Sankari (deceased) demanding money for his drinking habits.

(b) On 4.12.2009 around 7.15 in the evening, the accused demanded money from his mother Sankari and when she refused to give money, he picked up a quarrel with her and indiscriminately cut her with a button knife, which was witnessed by Muthu (PW-1), brother of the accused; Kothandam (PW-2) a neighbour; and Renganathan (PW-3), another neighbour.

(c) Muthu (PW-1) took Sankari (deceased) to the Government General Hospital, Kanchipuram, where she was examined by Dr.Abirami (PW-10), who noted the injuries in the accident register and issued a copy of the Accident Register (Ex.P-8). Since the injuries were grievous she referred Sankari for further treatment to the Government Medical College Hospital, Chennai,

(d) Muthu (PW-1) gave a statement to the Police, which was recorded by Kalaivani, Sub-Inspector of Police, who registered a case under Section 324 IPC in B-1 Siva Kanchi Police Station Cr.No.743 of 2009 on 4.12.2009 at 21.00 hours and prepared printed FIR (Ex.P-12). The complaint (Ex.P-1) and printed FIR (Ex.P-12) were sent to the jurisdictional Magistrate.

(e) Investigation was taken over by Pattabiraman, Inspector of Police (PW-13), who went to the place of occurrence and in the presence of witnesses Mani (PW-5) and Vivekanandan (not examined), prepared observation Mahazar (Ex.P-13) and rough sketch (Ex.P-14). He examined Muthu (PW-1), Renganathan (PW-3), Mani (PW-5), Vivekanandan (not examined in Court), Kothandam (PW-2) and recorded their statements.

(f) On 8.12.2009 Sankari succumbed to the injuries and on coming to know about that, the Investigating Officer (PW-13) submitted an alteration report (Ex.P-16) to the jurisdictional Magistrate for altering the case from one under Section 324 IPC to 302 IPC.

(g) The Investigating Officer (PW-13) conducted inquest over the body of the deceased Sankari in the presence of Panchayatdars between 13.00 hours and 14.30 hours on 8.12.2009 and the inquest report was marked as Ex.P-17.

(h) Autopsy over the body was conducted by Dr.Gokula Ramanan (PW-11). In his evidence as well as in the postmortem certificate (Ex.P-9) PW-11 opined that the deceased Sankari would appear to have died of the effects of head injuries. Visceral report (Ex.P-10) states that poison was not detected in any of the internal organs.

(i) On transfer of Investigating Officer (PW-13), investigation was continued by Sivaveliappan (PW-14), Inspector of Police, who arrested the accused at 11.00 a.m. on 29.6.2010. Since the accused is deaf and dumb, he requisitioned the assistance of Alwar (PW-9), Headmaster of the School for Deaf and Dumb, to assist him in the interrogation of the accused. The statement of the accused as interpreted by Alwar (PW-9) was recorded in the presence of Perinban (PW-8) and Poongavanam (PW-4).

(j) After examining various witnesses including Dr.Abirami (PW-10) and Dr.Gokula Ramanan (PW-11), the Investigating Officer (PW-14) completed investigation and filed final report under Section 302 IPC against the accused.

3. On appearance of the accused before the trial Court, he was furnished with copies of the documents in compliance with Section 207 Cr.P.C. Before the Sessions Court, a charge under Section 302 IPC was framed against the accused and when he was questioned he pleaded 'not guilty'.

4. To prove the prosecution case, 14 witnesses were examined and 17 exhibits were marked. The accused was questioned under Section 313 Cr.P.C. on the incriminating circumstances against him and he denied them. After hearing the arguments on either side and considering the evidence on record, the trial Court convicted and sentenced the appellant/accused as aforesaid, aggrieved by which this appeal has been preferred.

5. On an analysis of the evidence in this case, we are of the opinion that the prosecution has proved beyond any doubt that the death of Sankari was homicide, and that is also not very seriously disputed by the learned Counsel appearing for the appellant.

6. The prosecution predicated its case on the version of the eye witnesses viz., Muthu (PW-1), Kothandam (PW-2) and Renganathan (PW-3). Out of the 14 witnesses examined by the prosecution, 7 witnesses, including Jayapal (PW-6), husband of the deceased and Muthu (PW-1), son of the deceased, have turned hostile. Only the official witnesses did not turn hostile. Muthu (PW-1), who lodged the complaint completely turned turtle and submitted that he did not see the occurrence at all. Similarly Kothandam (PW-2) and Renganathan (PW-3), the neighbours, who were cited as eye witnesses, also turned hostile and stated that they did not see the incident at all.

7. We are conscious of the legal position that the evidence of hostile witnesses cannot be eschewed completely and those portions which tend to incriminate the accused can be relied upon to fasten criminal liability. However, in this case, even if one makes a microscopic examination of the evidence of the prosecution witnesses, there is no iota of material to implicate the accused with the offence. The accused may be morally guilty of matricide, but moral conviction is alien to our jurisprudence. All the family members and neighbours must have ganged up to protect the accused.

8. In such circumstances, the conviction of the appellant/accused under Section 302 IPC and the sentence imposed upon him by the trial Court cannot be sustained and the same are set aside. This criminal appeal is allowed. The

appellant/accused is directed to be set at liberty forthwith, if his presence is not required in any other case.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Sessions Judge II, Kanchipuram
2. The Judicial Magistrate No.II
Kanchipuram
3. The Inspector of Police, B1 Siva Kanchi Police Station,
Kanchipuram
4. The Superintendent of Police, Kanchipuram District.
5. The Public Prosecutor, High Court, Madras.
6. The Superintendent of Police
Central Prison
Vellore

Cr1.A.No.275 of 2012

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