

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.207 of 2016

Pichaipillai ... Appellant/Accused

Vs

State, rep. By
Inspector of Police,
Sendurai Police Station,
(Cr.No.27 of 2012) ... Respondent/Complaint

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C.,
to set aside the conviction and sentence imposed on the
appellant in the judgment, dated 28.05.2015, passed in
S.C.No.25 of 2013 by the Fast Track Mahila Court,
Ariyalur.

For Appellant : Mr.M.Kother Adam

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.25 of 2013 on the file of the Sessions Judge, Fast Track Mahila Court, Ariyalur. He stood charged for an offence under Section 302 IPC. By judgment dated 28.05.2015, 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.25,000/-, in default to undergo Rigorous Imprisonment for two years. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

Deceased, in this case, is the wife of the accused. Marriage between the accused and the deceased was held on 10.07.2011 and the accused was working as a compounder in the Government Hospital, Sendurai. Both of them were residing in a rented house at Anna Nagar, Sendurai. The accused is a drunkard and used to harass the deceased and there were frequent quarrel between the accused and the deceased. Hence, on 14.09.2011, deceased gave a complaint against the accused before All Women Police Station, Ariyalur and after counseling, deceased went to her matrimonial home to live with the accused.

3. On 03.02.2012, at about 7.00 p.m., there was a quarrel between the accused and the deceased and during the quarrel, suddenly, the accused attacked the deceased on her head with an iron vegetable cutter and caused her death. Thereafter, the accused locked the house, went to the hospital where he was working and stayed there. On 04.02.2011, at about 11.00 p.m., he appeared before P.W.1, Village Administrative Officer, Nathambadi village and voluntarily gave a confession admitting his guilt. P.W.1 took the accused before Special Sub-Inspector of Police (P.W.12) of the respondent police station and lodged a complaint, Ex.P.1.

4. P.W.12, on receipt of the complaint, registered a case in Crime No.27 of 2013 for an offence under Section 302 IPC and prepared an express First Information Report, Ex.P.10 and sent the same to the Judicial Magistrate Court, Ariyalur and its copy to P.W.14, Inspector of Police, who is incharge of the respondent Police Station.

5. P.W.14, Inspector of Police, on receipt of First Information Report, proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.2 and a Rough Sketch, Ex.P.11 in the presence of P.W.1 and another witness. Then, P.W.14 conducted an inquest on the dead body of the deceased in the presence of panchayathars and prepared an Inquest Report, Ex.P.12. Thereafter, he sent the dead body of the deceased for autopsy to Government Hospital, Ariyalur, through P.W.13.

6. P.W.11, Assistant Civil Surgeon in the Government Hospital, Ariyalur, conducted autopsy on the dead body of the deceased on 05.02.2012, at 3.15 p.m and found the following injuries:

" Rigor mortis present in all four limbs. Eyes closed, mouth closed, no ear, nose, mouth bleeding. No anal soiling.

Greyish black staining seen over face, chest, back abdomen, head and both hands.
L/E : (i) 3 x 2 x 1 cm oval shaped wound at right side of vertex area- bone depth, inverted edge, ragged and linear lacerations, intact skull bone.

(ii) There is contusion of 3 x 2 x 1 cm on vertex area around 5-6 cm left lateral to 1st wound."

Ex.P.9 is the Postmortem certificate. P.W.11 gave opinion that the death occurred due to brain injury.

7. P.W.14 arrested the accused and on such arrest, the accused voluntarily gave a confession and based on the disclosure statement of the accused, P.W.14 recovered a bloodstained iron vegetable cutter (M.O.1) and a saree (M.O.2), under a cover of Mahazar, Ex.P.4 and also recovered Dettol bottle (M.O.3) and a box with washing power (M.O.4) under another cover of Mahazar, Ex.P.5 in the presence of the witnesses from the scene of occurrence. P.W.14 recorded the statements of some witnesses and handed over the case diary to P.W.15, Inspector of Police, Sendurai, on his return from leave.

8. P.W.15, took up the case for further investigation and recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased and also recorded the statements of the Scientific Officers in the Forensic Science Lab and other witnesses. On completing the investigation, P.W.15 laid charge sheet against the accused.

9. Based on the above materials, the trial Court framed a lone charge against the accused for an offence under Section 302 IPC. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 15 witnesses were examined and 14 documents were exhibited, besides 6 Material Objects were marked.

10. Out of the said witnesses, P.W.1 is the Village Administrative Officer, Nathambadi Village, before whom, accused appeared on 04.02.2012 at about 11.00 p.m. and gave a voluntary confession. P.W.2 is the father of the deceased. He has spoken about the quarrel between the accused and the deceased and the earlier complaint given by the deceased against the accused. P.W.3 is the cousin of the deceased. He has also spoken about the earlier quarrel between the deceased and the accused. P.W.4 is the brother-in-law of P.W.2 and the uncle of the deceased. He has also spoken about the quarrel between the accused and the

deceased. He has also stated that he interfered and settled the issue between the accused and the deceased. P.W.5 is the brother of the deceased. His evidence also relates to the harassment meted out by the deceased at the hands of the accused. P.W.6 is a resident in the upstairs, where the deceased and the accused were living in the ground floor. P.W.7 is the sister of the deceased. She has also spoken about the quarrel between the accused and the deceased. P.W.8 is closely related to the accused. His evidence has no substance.

11. P.W.9 is the Doctor who examined the hyoid bone of the deceased and gave a Report-Ex.P.6. P.W.10 is a junior scientific officer in the forensic lab, Trichy, who examined visceral parts of the deceased and gave a Report, Ex.P.7. P.W.11, Doctor has stated that he conducted postmortem on the dead body of the deceased and gave opinion with regard to the cause of death. P.W.12, Special Sub-Inspector of Police, has spoken about the registration of the case. P.W.13, Head Constable, has stated that he accompanied the dead body of the deceased for postmortem to the Government Hospital, Ariyalur and after postmortem he handed over the body to the relatives of the deceased. P.W.14, Inspector of Police, in-charge of the respondent police, has stated that he commenced investigation, arrested the accused and recovered the material objects and thereafter handed over the case diary to P.W.15 for further investigation. P.W.15, Inspector of Police, has stated that he took up the case for further investigation and recorded the statements of the doctor, who conducted postmortem on the dead body of the deceased and other witnesses and on completing investigation, he laid charge sheet against the accused.

12. 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 witnesses or mark any documents on his side.

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

14. We have heard Mr. M.Kothier Adam, learned counsel for the appellant and Mr. E.Raja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

15. It is a case based on circumstantial evidence. The accused is the husband of the deceased. It is the consistent evidence of material witnesses that the accused was frequently quarreling with the deceased and at one

point of time, the deceased lodged a complaint against the accused and after counseling, she once again started living with the accused. Even, as per the evidence of P.W.7, sister of the deceased, 3 days prior to the occurrence, suspecting the fidelity of the deceased, accused severely beat the deceased and drove her out of the house, however the relatives compromised them and sent the deceased to her matrimonial house on 03.02.2012. Hence, from the above evidence, the prosecution has clearly established that the accused had some motive against the deceased.

16. The next circumstance is that the occurrence has taken place in the house of the accused. Except the accused and deceased, nobody lived in the house. In the said circumstance, the burden is on the accused to explain the cause of the death under Section 106 of the Evidence Act. But, the accused has not come forward with any explanation to the satisfaction of the court, discharging his burden.

17. Another circumstance is the extra judicial confession given by the accused before P.W.1. Eventhough, the trial Court did not believe the extra judicial confession said to have been given by the accused, yet it convicted the accused based on his conduct. After the occurrence, on 03.02.2012, accused was absconding and only on 04.02.2012 at about 11.00 p.m., he has appeared before P.W.1 and given an extra judicial confession. Then, he was arrested only at about 2.00 a.m., in the morning. Hence, the above conduct of the accused is also another strong circumstance against him. The abscondence of the accused itself is a positive circumstance consistent only with the hypothesis of the guilt of the accused. There is no plausible explanation from the accused. From the medical evidence, prosecution has established that it is a homicidal death and the death has occurred inside the house of the accused. But, there is no explanation for the cause of death of the deceased which occurred inside the house of the accused. Hence, in the above circumstances, we are of the considered view that the prosecution has clearly established that it is only this accused, who attacked the deceased with an iron vegetable cutter on her head and caused her death.

18. Now, the next question arises for consideration is "what is the offence that was committed by the accused by the said act ?". It is the consistent evidence of all the witnesses that there were frequent quarrel between the accused and the deceased and on the date of occurrence also there was a quarrel between them. Even from the extra judicial confession statement of the accused, it is clear that at the time of occurrence, there was a quarrel between the accused and the deceased. During

the quarrel, being provoked by the words of the deceased, accused lost his mental balance and attacked the deceased with the iron vegetable cutter, which was available in the house and caused head injury to the deceased. Eventhough the accused would not have had any intention to cause the death of the deceased, certainly, he had the intention to cause head injury, which was sufficient in the ordinary course of nature, to cause the death of the deceased. In our considered view, the said act of the accused would squarely fall within the fourth limb and first exception under Section 300 I.P.C. Therefore, he is liable to be convicted only under Section 304(ii) IPC.

19. Now, turning to the quantum of punishment, accused has no bad antecedent. It is not a premeditated murder and during the quarrel between the husband and the wife, accused has lost his self control on account of the provocative words spoken by the deceased. The said provocation was grave and also sudden. Driven by the said sudden and grave provocation, the accused had attacked the deceased with the iron vegetable cutter available in the house. Hence, considering the mitigating as well as aggravating circumstances, we are of the view that sentencing him to undergo Rigorous Imprisonment for 5 years with a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for four weeks, is sufficient to meet the ends of justice.

20. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant under Section 302 I.P.C., is set aside and instead, he is convicted under Section 304(ii) I.P.C., and sentenced to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for four weeks. The period of sentence already undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mrp

To

1. The Fast Track Mahila Court,
Ariyalur.

2.The Public Prosecutor,
High Court, Madras.

3. The Superintendent,
Central Prison, Trichy.

4. The Inspector of Police
Sendurai Police Station

5. The Director Central of Police
Mylapore, Chennai-4

6 The District Collector
Trichy

7 The Section Officer,
Criminal Section,
High Court, Madras-600104

8 The Judicial Magistrate
Ariyalur

9 Do-thro-Priincipal District Judge,
Ariyalur

+ one cc Mr.M.Kother Adam, Advocate SR.NO..46012/2016

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