

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30..08..2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.252 of 2016

Mansur Ali

... Appellant/Accused

-Versus-

State Rep. by
The Inspector of Police,
Thiruvengadu Police Station,
Sirkali

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellant by the learned Sessions Judge, Fast Track Mahila Court, Nagapattinam, in S.C.No.128 of 2014 dated 31.08.2015.

For Appellant : Mr.N.A.Nissar Ahmed

For Respondent : Mr.V.M.R.Rajendran

JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C.No.128 of 2014 on the file of the learned Sessions Judge, Mahila [Fast Track] Court, Nagapattinam. He stood charged for offence under Section 302 of IPC (Two Counts). The trial court, by judgement dated 31.08.2015, convicted the appellant for offence under Section 302 of IPC (Two counts) and sentenced him to imprisonment for life and to pay a fine Rs.1,000/- for each count in default to suffer simple imprisonment for a further period of one year. Challenging the above said conviction and sentence, the accused has come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The appellant/accused is the husband of the deceased- Mrs.Rajalakshmi @ Bairejibanu. She was residing with her father at Middle Street, Nenmeli Village, Sirkali Taluk, because the accused had gone abroad on account of his employment. Just before one year to the occurrence, he returned to Nenmeli village. When he was in abroad, he had sent all his earnings to his wife, the deceased. But, the deceased spent it lavishly and after the return of the accused, she did not render proper account for the money received and spent. This resulted in frequent quarrels between the accused and the deceased. The accused had a suspicion that the deceased had developed illicit intimacy with some one and had spent the money on behalf of her paramour. This is stated to be the motive for the occurrence.

3. On 12.02.2013, around 05.00 a.m. when the deceased was at the house of her father, the accused developed quarrel questioning the conduct of the deceased, took out an Axe and attacked her on her head. The head of the deceased was broken and she fell down. Her father Mr.Kaliyaperumal on seeing the same tried to rescue the deceased, but the accused attacked him also with the same Axe on his head. His head was also broken. He fell in a pool of blood. Both the father and daughter died instantaneously. P.Ws.1 to 3 witnessed the occurrence. P.W.1 is the brother in law of the deceased Kaliyaperumal. P.Ws.2 and 3 are neighbors. According to P.Ws.1 to 3, they witnessed the entire occurrence in which the accused attacked both the deceased with axe and killed them. The accused fled away from the scene of occurrence. Believing that there was life, they took the deceased Rajalakshmi @ Bairejibanu [hereinafter referred to as "D1"] alone to the hospital and admitted her. But, unfortunately, she died at the hospital. P.W.1, thereafter, went to Thiruvengadu Police Station and made a complaint [Ex.P.1] at 11.00 a.m. on 12.01.2013. P.W.13, the then Sub Inspector of Police, registered a case in Crime No.6 of 2013 under Section 302 of IPC. Ex.P.11 is the FIR. P.W.13 forwarded both the complaint (Ex.P.1) and the FIR (Ex.P.11) to the jurisdictional court which were received by the learned Magistrate at 01.30 p.m. on the same day. In the mean time, P.W.13 handed over the case diary to the Inspector of Police for investigation.

4. P.W.14, taking up the case for investigation, visited the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. He also recovered blood stained earth and sample earth from the place of occurrence under a mahazar in the presence of the same witnesses. Then, he conducted inquest on the dead bodies of both D1 and D2 and forwarded the dead bodies to the hospital for postmortem.

5. P.W.6, Dr.Marudhavanan, conducted autopsy on the body of D2 at 03.00 p.m. on 12.01.2013. He found the following:-

"Moderately built male body was kept on Sirkali GH PM Shed-Table, with the arms on the side of the body, eyes opened, Tongue inside the mouth.

Injuries: Lacerated wound on the left post auricular region 7 x 5 x 3 cm with exposed brain matter and corresponding brain matter contusion present. No rib fracture. Internal Organs. Stomach empty and pale. Intestine pale and empty and liver pale. Kidney congested. No other cut injuries."

Ex.P.5 is the postmortem certificate. He gave opinion that D2 had died due to shock and hemorrhage as a result of head injuries.

6. On the same day at 05.00 p.m., P.W.6, the doctor, conducted autopsy on the dead body of D1. He found the following injuries:-

"Moderately built female body was kept on Sirkali GH - PM Shed-Table, with the arms on the side of the body, eyes closed, Tongue inside the mouth. Injuries (1) Right side frontal area - Lacerated wound with depressed skull fracture 2 x 2 cm.

(2) Right side post auricular region lacerated wound with 5 x 3 cm exposed brain matter.

(3) Right parieto occipital region lacerated wound 3 x 2 cm. No rib fracture. Internal organs: Stomach contain 10 ml of brownish fluid, pale. Intestine: Empty and pale, Kidney congested. Liver: pale.

Ex.P.6 is the postmortem certificate. According to P.W.6, the death of D1 was due to shock and hemorrhage as a result of head injuries.

7. After the autopsies were over, P.W.14 recovered the dress materials from the dead bodies of both D1 and D2 and forwarded them to the court. When the investigation was in progress, the accused appeared before P.W.7, the Village Administrative Officer of Keelasattanathapuram at 03.30 p.m. on 12.01.2013. On such appearance, the accused made a voluntary confession. Having ascertained that the accused was voluntarily confessing, P.W.7 allowed him to confess orally which he reduced into writing. Thereafter, P.W.7 prepared a report and took the accused along extra judicial confession made by the accused and the special to the police station and handed over the him to P.W.14. P.W.14 on such production, arrested the accused. On such arrest, the accused made a voluntary confession in which, he disclosed the

place where he had hidden the axe. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the axe (M.O.1), T-shirt (M.O.11), lungi (M.O.10). P.W.14 recovered the same under a mahazar (Ex.P.8) in the presence of the same witnesses. On returning to the police station, he forwarded the accused to the court for judicial remand. He also forwarded the material objects to the court with a request to send them for chemical analysis. On the request made by P.W.14, the materials recovered from the place of occurrence and from the person of both the deceased and also at the instance of the accused were forwarded to the forensic science laboratory for chemical analysis. The chemical analysis report revealed that there were human blood of 'A' and 'B' group on all the material objects except sample cement plasters. On 02.02.2013, the investigation was taken over by his successor [P.W.15]. P.W.15 examined the witnesses, recorded their further statements and forwarded the material objects collected by P.W.14 to the court for chemical examination and obtained chemical analysis report. On completing the investigation, P.W.15 laid charge sheet against the accused.

8. Based on the above materials, the trial court framed a lone charge under Section 302 of IPC [Two counts]. The accused denied the same. In order to prove the charge, on the side of the prosecution, as many as 15 witnesses were examined, 20 documents and 17 material objects were marked.

9. Out of the said witnesses, P.Ws.1 to 3 are the eye witnesses. They have vividly spoken about the entire occurrence. P.W.4 has stated that he went to the place of occurrence on hearing about the occurrence. He has further stated about the motive. P.W.5 has spoken about the preparation of observation mahazar and the rough sketch by the police at the place of occurrence and also the recovery of material objects by the police from the place of occurrence. P.W.6 has spoken about the autopsies conducted on dead bodies of both D1 and D2. P.W.7, the Village Administrative Officer has spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence and also the recovery of material objects from the place of occurrence. He has further stated about the extra judicial confession made by the accused. He has also stated about the recovery of material objects (M.Os.1, 10 and 11) at the instance of the accused pursuant to his disclosure statement. P.W.8, the scientific officer in the Forensic Science Laboratory has stated that he examined the material objects and found human blood on all the material objects. P.W.9, a Head Constable has stated that he handed over the material objects at the Forensic Lab on the orders of the court for chemical analysis. P.W.10 has spoken about the fact that he took the dead bodies to the hospital and identified the same to the doctor for postmortem. P.W.11 has stated that he

handed over the complaint and the FIR to the learned Magistrate at 01.30 p.m. on 12.02.2013. P.W.12 has stated that he handed over the copy of the FIR to the higher police officer as directed by the Inspector of Police. P.W.13 has spoken about the registration of the case. P.W.14 has spoken about the investigation done by him in this case. P.W.15 has spoken about the further investigation done by him and the filing of charge sheet against the accused.

10. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

11. Having considered all the above, the trial court convicted the appellant/accused and sentenced him accordingly as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the accused is now before this Court with the present criminal appeal.

12. We have heard the learned counsel appearing for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

13. The learned counsel for the appellant/accused would submit that P.Ws.1 to 3 would not have witnessed the occurrence at all. According to him, the occurrence had taken place inside the house of the deceased and, therefore, P.Ws.1 to 3 would not have seen the occurrence at dawn on 12.02.2013. This argument does not persuade us at all. After all, P.Ws.1 to 3 are neighbours. They have stated that on hearing the commotion they rushed to the house of the deceased. The occurrence was around 05.00 a.m. In the village situation, normally, the villagers used to get up somewhere around 04.30 in the morning every day. Therefore, it cannot be presumed that P.Ws.1 to 3 would not have been awakened. They have explained that they heard the commotion and when they rushed to the house of the deceased, they saw the accused attacking D1 and then attacking D2. They only took D1 to the hospital. Though these three witnesses have been cross examined, at length, nothing has been elicited to doubt their credibility. The learned counsel for the appellant/accused would take us through the evidence of these three witnesses in an attempt to point out some contradictions among the evidences of P.Ws.1 to 3. But, we are unable to find any such material contradiction which would make their evidences unbelievable. Thus, in our considered view, the evidences of P.Ws.1 to 3 inspire the fullest confidence of this court.

14. So far as the FIR is concerned, absolutely there is no delay in lodging the complaint and also the FIR reaching the court. The medical evidences also duly corroborate the eye witness account. Thus, in our considered view, from out of the evidences of P.Ws.1 to 3, the prosecution has clearly established that it was this accused who caused the death of D1 and D2 .

15. The learned counsel for the appellant/accused would submit that though it is stated that one blow was given by the accused on D1, there were three injuries on her. This, according to him, is a material contradiction. But, this argument, in our considered view, is not tenable. P.Ws.1 to 3, who are neighbours, were attracted only by the commotion erupted at the place of occurrence, but before they could reach, two blows would have already been inflicted by the accused and they could have seen only the last blow given by the accused. That was the reason why, they have spoken about only one blow inflicted by the accused. Therefore, in our considered view, there is no contradiction in the evidences of P.Ws.1 to 3 at all.

16. The learned counsel for the appellant/accused would submit that M.O.1-Axe would not have been recovered on the confession of the accused. The learned counsel would point out that P.W.5 has stated during the cross examination that M.O.1-Axe was found at the place of occurrence when the police came to the place of occurrence. This witness in his chief examination has spoken about the recovery of M.Os.2 to 9. He has not specifically stated about the recovery of M.O.1. In an innocuous manner he has stated in his cross examination that one axe was also recovered from the place of occurrence and M.O.1 was the axe that was recovered. In view of the said fact, we are unable to give any weightage for the above innocuous answer elicited from P.W.5 during the course of cross examination.

17. From the foregoing discussion, it is crystal clear that the prosecution has proved the charge beyond any doubt that it was this accused who caused the death of D1 and D2.

18. Now, it is to be examined as to what was the offence that was committed by the accused by his act. The learned counsel for the appellant/accused would submit that since the accused had attacked D1 and D2 in a quarrel, his act would fall under exception (1) to Section 300 of IPC. But, in our considered view, it is not so. The weapon used, situs of injury, force with which weapon had been used, the motive, would all go to establish the intention of the accused only to cause the death of D1 and D2. Thus, the act of the accused would squarely fall within the first limb of Section 300 of IPC. There is no evidence at all even to remotely infer that the accused was provoked by any one of the deceased. Thus the act of the accused

would not fall under any of the exceptions to Section 300 of IPC. His act is nothing short of murder. Therefore, the trial court was right in convicting him under Section 302 of IPC [Two counts].

19. Now, turning to the quantum of sentence, the trial court imposed only a minimum punishment prescribed for the offence of murder and thus, the same also does not require any interference at the hands of this court.

20. In the result, the criminal appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant/accused by the trial court are hereby confirmed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Nagapattinam District.
- 2.The Principal Sessions Judge,
Nagapattinam.
- 3.The Inspector of Police,
Thiruvengadu Police Station,
Sirkali,
Nagapattinam District.
- 4.The Superintendent,
Central Prison,
Cuddalore.
- 5.The District Collector,
Nagapattinam.

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

7.The Public Prosecutor,
High Court, Chennai.

copy to

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.N.A.Nissar Ahmed, Advocate Sr.49046

Crl.A.No.252 of 2016

gj[col]
srg 17/11/2016



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