

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU  
AND  
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.288 of 2016

Mehaboob Ali

.. Appellant / accused

vs

State, Rep. By Inspector of Police,  
B-8 Variety Hall Road Police Station,  
Coimbatore  
(Cr. No.726 of 2014)

.. Respondent / Complainant

Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code, against the judgment of the learned Sessions Judge, Magalir Neethimandram (Mahila Court) at Coimbatore, in S.C.No.89 of 2015, dated 24.03.2016.

For Appellant : Mr. R.Sankarasubbu, for,  
Mr. P.Pugalenthi

For Respondent : Mr. E.Raja, A.P.P.,

J U D G M E N T

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

The appellant, aged hardly 19 years an Engineering College drop-out, stands convicted for offence under Section 302 IPC and sentenced to undergo Imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for three months. 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:-

The accused hails from the State of West Bengal. The deceased, in this case, was one Miss.Nima Lama Bhutia. She was also hardly aged about 19. She also hailed from the State of West Bengal. The accused had fallen in love with the deceased, while they were studying. Then, they eloped in the State of West Bengal and married. Finally, they settled down in

Coimbatore. The accused was working in a business establishment, under the name and style, M/s.Baba Suit, at Variety Hall Road, Coimbatore. The accused was working in the said shop along with few others. The accused and the deceased were residing in a rented house.

3. On 30.12.2014, the accused came to the shop very late. P.W.1, the owner of the shop, questioned him. The accused told him that there was a quarrel between him and his wife and therefore, on 29.12.2014, he did not turn-up for duty. He further told P.W.1 that he had asked his wife to come to the shop on 30.12.2014. Accordingly, within a short while, the deceased, accompanied by her cousin (uncle's son), Mr.Toptin Bhutia, came to the shop. Mr.Topin Bhutia told P.W.1 that the accused was harassing his wife, namely, the deceased. Then the accused, deceased and her cousin wanted to discuss the issue and to sort it out. To have talk among themselves, they need a secluded place, therefore, the accused wanted to go to the office run by the brother of P.W.1.

4. P.W.1 gave the key of his brother's office to the accused. When the cousin of the deceased wanted to accompany the deceased, the accused declined. He said that he and his wife would talk one-to-one and sort out the issue between them. Accordingly, around 12.30 pm, the accused took the deceased to the office of the brother of P.W.1.

5. It is further alleged that at the office of the brother of P.W.1, when the accused and the deceased were discussing about the issue, they found no meeting point. The accused wanted the deceased to give consent for divorce. This resulted again in a quarrel. It is alleged that, provoked in the said quarrel, the accused took-out a knife and stabbed the deceased. The deceased died on the spot. Then, the accused called P.W.1 over phone and confessed to him that he had killed his wife. Immediately, P.W.1 and the cousin of the deceased rushed to the office of the P.W.1's brother. They found the accused standing inside the office of the brother of P.W.1 with the blood stained knife. The deceased was lying in a pool of blood with a wire around her neck. They found the deceased dead. Thereafter, P.W.1 went to V.H.Road Police Station at Coimbatore and made a complaint at 02.30 pm on 30.12.2014. Ex.P-1 is the complaint and Ex.P-12 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Magistrate at 09.35 pm on 30.12.2014.

6. The case was taken-up for investigation, by P.W.13, by the then Inspector of Police. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.12 and another witness. Then, he recovered blood stained earth and sample earth from the place of occurrence. He arranged for a photographer, to take photographs at the place of occurrence, from many angles. Then, he conducted inquest on the body of the deceased and forwarded the same for post-mortem.

7. P.W.8, Dr.Jaya Singh, conducted autopsy on the body of the deceased on 31.12.2014 at 11.45 am. He found the following injuries:-

"1. Nail mark 1 x 0.5 cm noted over lower part of right shoulder joint, 1 x 0.5 cm noted over left clavicle bone.

2. A Transverse complete ligature pressure abrasion mark encircling the middle of neck measuring 28x0.5 cm at the level of thyroid cartilage.

3. An incomplete transverse ligature mark 10x2 to 5 cm noted over front of neck just above to upper border of thyroid cartilage.

On dissection of Neck: A Linear contusion 4x2 noted over front of neck at the level of cricoids cartilage. Left side cricoids cartilage found fractured with surrounding tissue reddish contusion. Hyoid bone - intact.

4. Horizontal oblique stab wound 4x1 cm x cavity deep noted over left side abdomen, 4 cm below the umbilicus. The lateral end is sharp and medical blunt end is 4 cm below to the umbilicus and starting from the middle. The wound passes inward, down wards, entering into the peritoneal cavity piercing the corresponding mesentery.

5. Horizontal oblique stab wound 4x1cm noted over left side abdomen just below to wound No.4, 0.25 cm above the wound No.4. The lateral end is sharp and medical blunt end is 4 cm below to the umbilicus and starting from the middle. The wound passes inward, down wards, entering into the peritoneal cavity piercing the corresponding mesentery.

6. Horizontal oblique stab wound 5x1 cm x cavity deep noted over front of lower abdomen through which a part of small intestine protruding out. The right blunt end is 2 cm right to mid line and the left sharp end is 2 cm left to mid line. The wound passes inward, downwards, entering into the peritoneal cavity piercing the corresponding mesentery and small intestine.

7. Horizontal oblique stab wound 5x1 cm x cavity deep noted over front of lower abdomen just below to Wound No.6, through which a part of small intestine protruding out. The right blunt end is merged with the above wound No.6 and left sharp end is 2 cm left to mid line. The wound passes inward, downwards, entering into the peritoneal cavity piercing the corresponding mesentery and small intestine. Peritoneal cavity contains about 500 ml of fluid blood mixed with faecal materials.

8. Punctured wound 1x0.5 cm two in numbers noted over left side abdomen.

OTHER FINDINGS:

- Pleural cavities - empty.
- Heart - all chambers contains about few cc of fluid blood.
- Stomach contains about 100 grams of cooked rice particles, no specific smell, mucosa congested.
- Small Intestine contains about 10 ml of bile stained fluid, no specific smell, mucosa congested.
- Liver, spleen, kidneys, brain and lungs - cut section congested.
- Urinary bladder - empty.
- Uterus : enlarged measuring about 8x7 cm. Cut section shows a bit of conception product.
- Viscera preserved and sent for chemical analysis.
- Blood preserved for analysis."

8. Ex.P-9 is the post-mortem certificate and Ex.P-10 is the final opinion of the Doctor-P.W.8. She gave opinion that the death was due to shock and haemorrhage caused on account of multiple stab injuries found on the body of the deceased. He further opined that the said injuries would have been caused by a weapon like knife (M.O.1).

9. On 31.12.2014 at about 01.15 pm, at Velandipalayam Bus stand, P.W.13 arrested the accused in the presence of one Narayanan and P.W.4 (John Prince). On such arrest, the accused gave a voluntary confession, in which, he had disclosed a place,

where he had hidden the blood stained knife, a cell phone, a pant and a T-shirt. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the said material objects. P.W.13 recovered the same under a mahazar. On returning to the Police Station, he forwarded the accused to judicial remand and handed over the material objects also to the Court. The investigation was thereafter continued by P.W.14, his successor. He examined many more witnesses and collected the medical records. At his request, material objects were sent for chemical examination. The report revealed that there were human blood stains on all the material objects. On completing the investigation, P.W.14 laid a charge sheet against the accused.

10. Based on the above materials, the trial court framed a charge under Section 302 IPC against the accused. The accused denied the same. In order to prove the case of the prosecution, as many as 14 witnesses were examined and 20 documents were exhibited, besides marking 13 Material Objects.

11. Out of the said witnesses, P.W.1 is the employer of the accused. He has stated about the entire occurrence, as we have already narrated. P.W.2 is the cousin of the deceased. He has stated about the marriage between the accused and the deceased. He has further stated that already he was residing in Poosaripalayam, with his family members. It was only, at his instance, the accused came to Coimbatore with the deceased and started living there. He has further stated that, on 30.12.2014, he went to the shop of P.W.1 along with the deceased. He has further stated that the deceased and the accused went to the office of P.W.1's brother, for one-to-one talk. He has further stated about the other facts as spoken by P.W.1.

12. P.W.3 is the wife of P.W.2. She has stated about the strained relationship between the accused and the deceased. She has further stated that, on 30.12.2014, around 11.00 pm, he accompanied P.W.2 to the shop of the deceased. She has further stated that she found the accused fleeing away from the scene of occurrence with a blood stained knife. P.W.4 has stated that he heard about the occurrence on 30.12.2014. Then, he assisted P.W.1 in lodging the complaint, Ex.P-1. P.W.5 is the owner of the shop, where the occurrence had taken place. He has stated that the key of the shop was with P.W.1, his brother. He has further stated that he heard about the occurrence later. P.W.6 has spoken about the statements recorded by him under Section 164 of the Cr.P.C., from some of the witnesses. P.W.7, the Forensic Expert, has stated that on examining the material objects, he found human blood stains on all the material objects. P.W.8 has spoken about the post-mortem conducted and her final opinion regarding the cause of death. P.W.9 has

spoken about the photographs taken at the place of occurrence. P.W.10, the Forensic Expert, has stated that he visited the place of occurrence, as requested by the Investigation Officer and he helped the Investigating Officer to lift the blood stained earth from the place of occurrence for the purpose of examination. P.W.11 has spoken about the preparation of the observation mahazar, the rough sketch at the place of occurrence and also the recovery of material objects. P.Ws.13 and 14 have spoken about the investigation done and the final report filed.

13. 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 nor mark any document, on his side. Having considered all the above, the trial Court convicted the accused under Section 302 IPC. Challenging the same, the appellant is before this Court with this Criminal Appeal.

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

15. In this case, there is no denial of the fact that the accused and the deceased were husband and wife and they were living together in Coimbatore. It is also in evidence of P.Ws.1 to 3 that there were frequent quarrels between the accused and the deceased. It is in evidence that on 29.12.2014, the accused did not come for duty at the shop of P.W.1. On 30.12.2014, when P.W.1 enquired, he told that, because there was a frequent quarrels between the accused and his wife, on 29.12.2014, he could not turn-up for duty. On 30.12.2014, when he came late to the shop, he told that he has asked his wife to come to the shop to have a talk. Accordingly, within a short while, P.W.2 and the deceased had come to the shop of P.W.1. Then, it is in the evidence of P.Ws.1 to 3 that the deceased and the accused alone had gone to the office of the brother of P.W.1. Within a short while, the accused informed P.W.1 that he had killed the deceased. P.W.1 went to the scene of occurrence and saw the accused with blood stained knife. On seeing P.W.1, the accused flew away from the place of occurrence. P.W.1 found the dead body of the deceased in a pool of blood.

16. The learned counsel for the appellant / accused would submit that the evidence of P.Ws.1 to 3, in this regard, cannot be believed.

17. We find no force at all in the said argument. A perusal of the evidences of P.Ws.1 to 3 would go to show that their evidence is very cogent and convincing. They have no axe to grind against the accused. Above all, the conduct of the accused

also assures much importance. Had it been true that he was innocent, who had nothing to do with the death of the deceased, he would not have been absconding until he was arrested by the Police. Thus, the conduct of the accused is inconsistent with the innocence that he has pleaded before the Court. Above all, in the statements recorded under Section 164 Cr.P.C., he has stated that the deceased was not even his wife. This false plea of the accused would also further strengthens the case of the prosecution. It is in the evidence of P.Ws.1 to 3 that they had seen the accused with knife and fleeing away from the scene of occurrence. From these evidences and other circumstances, we are fully convinced that it was this accused, who caused the death of the deceased.

18. The medical evidence fully corroborates the eye witnesses account. The recovery of the weapon from the possession of the deceased, on his disclosure statement, further strengthens the case of the prosecution. Thus, we hold that it was this accused, who caused the death of the deceased by strangulating her and by stabbing her with knife (M.O.1).

19. Having come to the said conclusion, now we have to examine, "what was the offence that was committed by the accused by the said act"?

20. It is in evidence that the accused took his wife to the shop of the brother of P.W.1 only to have discussion with her to sort out the issues and to bring peace in their life. It is in evidence of P.W.1 that (the accused told him) when the talks were going on between the accused and his wife, they found no meeting point. The accused wanted the deceased to give her consent for divorce. This resulted again in the quarrel. It was only in that quarrel, the accused had taken the knife and stabbed the deceased.

21. In our considered view, going by the circumstances in which the occurrence had taken place, there is every reason for us to infer that in the quarrel the accused would have lost his mental balance due to the grave and sudden provocation caused by the deceased and that is how, he had killed the deceased. This act of the accused, in our considered view, would squarely fall within the fourth exception to Section 300 IPC and also the third limb of Section 300 IPC and so, he is liable to be punished for the offence under Section 304 (1) IPC.

22. Now turning to the quantum of punishment to be imposed on the appellant, the learned counsel for the appellant would submit that at the time of occurrence, the accused was aged 19 years. The learned counsel has produced the mark-sheets and other testimonials issued by the West Bengal University of Technology, his Birth Certificate and other documents, which

show that his date of birth is "15.05.1995". Thus, as on the date of conviction, that was on 24.03.2016, he was an adolescent offender, as defined in Section 2 (1) of The Tamil Nadu Borstal Schools Act (V of 1926). The learned counsel would submit that, as per Section 8 of the said Act, the accused may be sentenced for detention in a Borstal School, until he completes 23 years. In this regard, the learned counsel has relied upon a judgment of the Hon'ble Supreme Court, in the case of State of Andhra Pradesh v. Vallabhapuram Ravi, reported in AIR 1985 SC 870 (1) and a Full Bench decision of this Court in the case of A.Thangammal v. State, Rep. By The Home Secretary and another, reported in 2008 (2) CTC 625.

23. In the instant case, in our considered view, the appellant is entitled for the benefit of Section 8 of the said Act. Admittedly, the accused was a student, doing an Engineering Course in the Hooghly Engineering and Technology College in West Bengal, which was approved by the West Bengal University of Technology. He had no bad antecedents. It is also not the case of the prosecution that the accused had any other bad habit, which would be detrimental to the peace and harmony of the society. It is also not reported that the accused has shown any deviance from law after the occurrence.

24. Having regard to the above, we are of the view that as held by the Hon 'ble Supreme Court in the State of Andhra Pradesh's case, cited supra, and the Full Bench decision of this Court in A.Thangammal's case, cited supra, the appellant is liable to detained under the Tamil Nadu Borstal Schools Act (V of 1926).

25. In the result, the conviction of the appellant under Section 302 IPC is set-aside and instead, he is conviction under Section 304 (1) IPC and in lieu of the sentence of imprisonment for the offence under Section 304 (1) IPC, we sentence the appellant to be detained under the Tamil Nadu Borstal Schools Act, in a Borstal School, until 15.05.2018 and thereafter, he shall be set at liberty. This Criminal Appeal is thus partly-allowed.

Sd/-  
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

- 1.The Sessions Judge,  
Magalir Neethimandram (Mahila Court),  
Coimbatore.
- 2.-Do- Thro' The Chief Judicial Magistrate,  
Coimbatore.
- 3.The Public Prosecutor,  
Madras High Court, Chennai.
- 4.The Inspector of Police,  
B-8, Variety Hall Road Police station,  
Coimbatore.

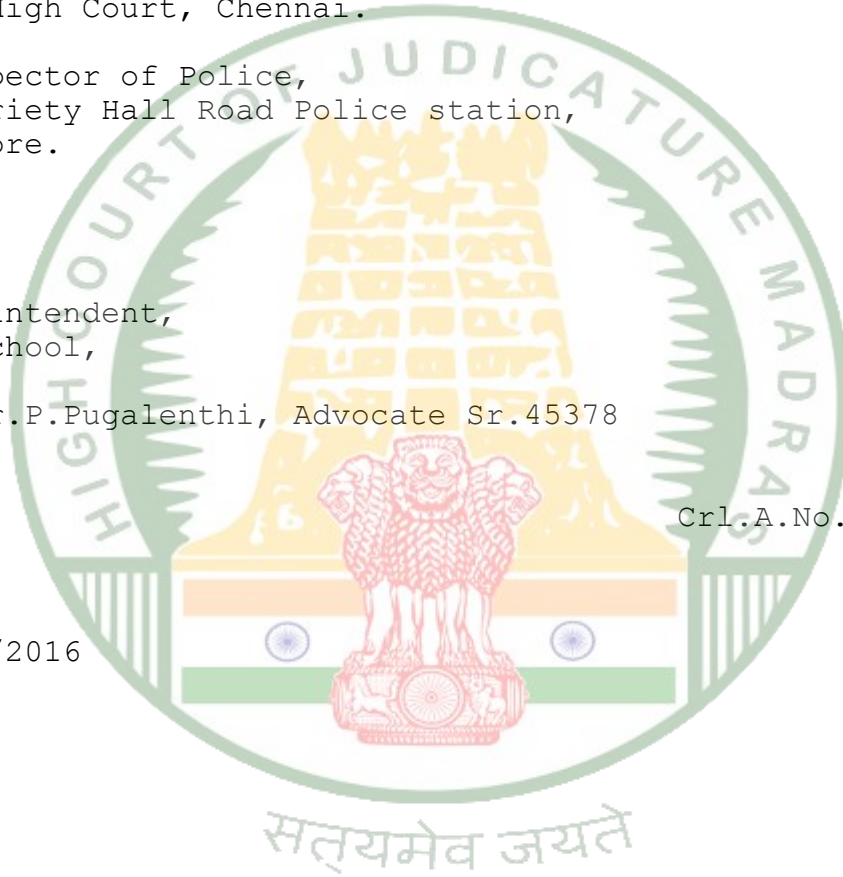
Copy to

The Superintendent,  
Borstal School,

+1cc to Mr.P.Pugalenth, Advocate Sr.45378

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