

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CRL.A.No.304/2016

Abraham @ Rajasekar .. Appellant/Sole Accused
Vs

State by
The Inspector of Police,
Thiruvannainallur Police Station,
Villupuram District. ... Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahalir Neethimandram, Fast Track Mahila Court, Villupuram, made in S.C.No.371 of 2012 dated 24.02.2016.

For Appellant : Mr.T.Sathyamoorthy,
Legal Aid Counsel
For Respondent : Mr.E.Raja,
Addl. Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.371 of 2012 on the file of the learned Sessions Judge, Mahalir Neethimandram, Fast Track Mahalir Court, Villupuram. He stood charged for offences under Sections 302 of IPC and Section 4 of the Tamil Nadu Prevention of Women Harassment Act. By judgment dated 24.02.2016, the trial court convicted him for offence under Section 302 of IPC alone and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one year. The trial court acquitted the accused from the charge under Section 4 of the Tamil Nadu Prevention of Women Harassment Act. Challenging the said conviction and sentence, the appellant/sole accused is

before this Court with this Criminal Appeal.

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

(a) The appellant, aged about 65 years, is an Engineering Graduate. His wife and children are settled down in Chennai. His brother-in-law Dr.Radhakrishnan was owning a private hospital at Thiruvennainallur under the name and style of ''Vinodhini Hospital''. The accused was helping Doctor Radhakrishnan in running the said hospital. The deceased was one Saranya, hardly aged about 20 years. She was working in the said hospital in the Dispensary.

(b) On 19.09.2011, in usual course, the deceased would have turned up for duty in the Dispensary at 09.00 a.m. But, she came late and reached the Dispensary by 10.30 a.m. It is alleged that the accused questioned the same. It is further alleged that when the deceased was working there, the accused, out of sexual desire, used to extend sexual overtures towards the deceased. The deceased was resisting the same and she scolded the accused on many occasions. The accused had, thus, a grudge against the deceased. Therefore, on 19.09.2011, when the deceased came late to the hospital, the accused, under the guise of questioning her, put his hands on her shoulder with sexual intention. The deceased removed the same and scolded the accused. The accused got wild. He took out a knife and stabbed on the back of the chest of the deceased. It happened at 01.30 p.m.

(c) Actually, the occurrence was not noticed by anyone. On hearing the alarm raised by the deceased, the other workers rushed to the place of occurrence. At that time, they found the accused standing near the place where the deceased was lying in a pool of blood. He was holding a blood stained knife on his hand. P.W.1 is the mother of the deceased. From someone from the hospital, she was informed of the occurrence. Immediately, she rushed to the said place of occurrence. The deceased died on the spot.

(d) P.W.1 immediately rushed to Thiruvennainallur Police Station and made a complaint at 02.00 p.m. on 19.09.2011. P.W.14, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.621 of 2011 under Section 302 of IPC. Ex.P.1 is the complaint and Ex.P.8 is the First Information Report. He forwarded both the documents to Court which were received by the learned Magistrate at 03.00 p.m. on 19.09.2011.

(e) P.W.15 took up the case for investigation. He rushed to the place of occurrence on the same day and prepared an

Observation Mahazar and a Rough Sketch in the presence of P.W.8, the then Village Administrative Officer and another. He recovered the blood stained earth and sample earth from the place of occurrence. Then, he forwarded the same to court. He examined many witnesses in the hospital and also the family members of the deceased. He conducted inquest on the dead body of the deceased and forwarded the same for postmortem.

(f) P.W.12 Dr.Aravindh conducted autopsy on the dead body of the deceased on 20.09.2011. He found the following injuries:

'Body of a female lying in supine position with hands by the side of the body, legs extended. Eyes open. Mouth open with tongue inside the mouth. Bleeding from mouth and both nostrils present. No external injuries seen in up's and cheek. No injuries or marks seen in the neck. Abrasion 0.3cm diameter in left supramammary region. Abrasion 0.2cm diameter over manubrium of sternum.

On prone position, stab wound 2x0.8cm with depth 2cm in the left 6th intercostal space 20cm from left midaxillary line. Bleeding from the wound present. 2 linear abrasions 5cm and 2.5cm length at the level of T12 on right side of back. No other external injuries.

Pervaginal examination, no external injuries seen. In the external genitalia white discharge present. No bleeding pv.vaginal opening admits 2 fingers freely. Hymen is not intact. Vaginal swab taken, vaginal smear for chemical analysis.

O/D of neck:Hyoid bone taken and sent for bone analysis.

O/D of head: Skull bone intact. Brain is normal. No hemorrhages seen.

O/D of chest: No boney injuries. Stab wound in the posterior aspect of inferior lobe of left lung measuring 1.7x0.5x108cm. Left side haemothorax present. Heart and right lung pushed to right side

O/D of Abdomen: Stomach is filled with food particles. Intestines filled with gas and focal matters. Liver and kidneys are normal.

Uterus size and shape normal. Uterine cavity is empty.

Viscera size and shape normal. Uterine cavity is empty.'

Ex.P.6 is the Postmortem Certificate and Ex.P.7 is his final opinion regarding the cause of death. According to him, the deceased had died due to shock and hemorrhage due to the stab injuries. He further opined that the said injuries would have

been caused by a weapon like Knife.

(g) It is alleged that after the occurrence was over, the accused who left the place of occurrence, had consumed pesticide in an attempt to commit suicide. He was admitted at Mundiambakkam Government Hospital. P.W.14, the then Sub-Inspector of Police went to the said hospital and recorded the statement of the accused. On returning to the police station, on the said statement, he registered a case against the accused in Crime No.623 of 2011 under Section 309 of IPC.

(h) In the said statement, the accused had disclosed the place where he had hidden a knife. Later, the accused produced the same from the place of hide out in the presence of the witnesses and that was recovered by P.W.15. P.W.15 also recovered the blood stained clothes from the dead body of the deceased and forwarded all the material objects to court. He forwarded the accused to court for judicial remand and at his request, the material objects were sent for chemical analysis. The report revealed that there were human blood stains found on all the material objects including the knife. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 22 documents and 7 material objects were also marked.

4. Out of the said witnesses, P.W.1, the mother of the victim has stated that the deceased was working in the Dispensary in Dr.Radhakrishnan Hospital. He has further stated that on 19.09.2011 around 08.00 a.m., the deceased went to the hospital for duty. Later, at 09.30 a.m., she was informed about the occurrence. She went to the place of occurrence and found the deceased dead and made a complaint. P.W.2 is the father of the deceased. He has also spoken about the same facts as spoken by P.W.1. P.W.3 has stated that around 01.30 p.m. on 19.09.2011, he heard about the occurrence. P.W.4 has stated that when he went to the hospital, he found the accused in the hospital with a knife. P.W.5 has stated that after the occurrence, he only informed P.W.1 about the occurrence. P.W.6 has stated that he was running an Ironing Shop just in front of the hospital. On the day of occurrence, according to him, he came to know about the occurrence. P.W.7 has also stated that he went to the place of occurrence after hearing about the same. P.W.8 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.9 has spoken about the arrest of the accused and the consequential

recovery of the knife from out of the disclosure statement of the accused.

5. P.W.10 is an important witness for the prosecution. She was working as a Sanitary Worker in Vinodhini Hospital. She has stated that the deceased was working in the same hospital in the Dispensary. She has further stated that the accused was also working in the same hospital. The accused is a relative of Dr.Radhakrishnan. She has further stated that on the day of occurrence, the deceased came for duty a bit late. At that time, the Woman Doctor in the hospital was making rounds of the patients. The deceased was giving drugs to the patients. Around 02.00 p.m., the Woman Doctor had gone to the first floor of the hospital. She gave lunch for the accused and wanted P.W.10 to give the same to the accused. Accordingly, she went in search of the accused and gave the lunch. He kept it in his bed room. Then, without taking the food, he came to the Dispensary. There were 5 patients in the hospital then. For one of the patients 'I V Saline' was given. When the bottle got emptied, she was engaged in changing the same. At that time, she heard the distress call of a girl. Within a short while, again, she heard the similar distress call. She rushed to the Dispensary where to her shock, she found the deceased lying in a pool of blood and the accused was standing with knife. There was profuse bleeding from the body of the deceased.

6. P.W.11, yet another employee of the hospital, has stated that on the day of occurrence, when she was on duty, P.W.10 rushed to the first floor to inform the Woman Doctor that the deceased was being attacked. The Woman Doctor immediately rushed and enquired the accused. When she enquired as to why he was behaving so, the accused told that he had also stabbed the deceased to death. P.W.12 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.13 a Police Constable has stated that he handed over the material objects to Forensic Lab for examination as directed by the court. P.W.14 has spoken about the registration of the case on the complaint of P.W.1. P.W.15 has spoken about the investigation done and the final report filed by him. P.W.16 has spoken about the pesticide consumed by the deceased. According to him, he was a Doctor at the Government Medical College Hospital at Villupuram. At 03.25 p.m. on 19.09.2011, the accused was brought in a 108 Ambulance. The accused told him that at 02.00 p.m. he consumed pesticide.

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

considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

8. In this case, originally, one Mr.P.Pazhamalai, was a Counsel on record. When this appeal came up for hearing on 04.08.2016 and 08.08.2016, there was no representation for the appellant. On 08.08.2016, it was made clear that in the event, the Counsel failed to appear and to argue the case on the next hearing date i.e. on 11.08.2016, this Court would be forced to appoint a Legal Aid Counsel. Again, when this appeal came up for hearing on 11.08.2016, the Counsel on record did not appear. Therefore, this Court appointed Mr.T.Sathyamoorthy as Legal Aid Counsel to defend the case on behalf of the appellant.

9. Today, on 19.08.2016, the learned Legal Aid Counsel for the appellant argued the matter at length very meticulously. We heard him. We have also heard the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

10. This is a case based on circumstantial evidence. There is no denial of the fact that the deceased was working in the Vinodhini Hospital. There is no dispute that on the date of occurrence, the deceased was on duty in the Dispensary. The actual occurrence of stabbing was not seen by anyone. But there is evidence of P.W.10, a co-employee of the deceased, which is incriminating. She has stated that she heard the distress call of the deceased. When she rushed to the place of occurrence, she found the accused standing with a blood stained knife. Two persons standing there enquired as to who that accused was. They told that he had stabbed the deceased.

11. The learned Counsel for the appellant would submit that this part of the evidence of P.W.10 is hit by hearsay rule. But, we find no force in the said argument of the learned Counsel as the same falls within the ambit of Section 6 of the Evidence Act. Apart from that, this witness had seen the accused standing with a knife on his hand with blood stains. The deceased was lying in a pool of blood by his side. There is no explanation from this accused in this regard.

12. The learned Counsel for the appellant would further submit that neither Dr.Radhakrishnan nor any other Doctor has been examined in this case by the prosecution which, according to the learned Counsel, would create doubt in the case of the prosecution.

13. Admittedly, the accused is the brother-in-law of Dr.Radhakrishnan. Therefore, it is quite natural, neither Radhakrishnan nor any other Doctor would have come forward to tell the truth even during investigation. That is the reason why no doctor has been examined by the prosecution. But the employees in the hospital, who are the co-workers of the deceased, namely, P.Ws.10 and 11 have stated that the accused was found in the hospital at the time of occurrence and more particularly, P.W.10 has stated that the accused was found with blood stained knife on his hand. There is no reason to reject this evidence of P.W.10, who is an independent witness. Since the accused has got no explanation for the same, we are of the view that this circumstance by itself would go to clinchingly prove that it was this accused who stabbed the deceased.

14. The Doctor P.W.12, who conducted autopsy, had found stab injuries on the body of the deceased, which according to him, would have been caused by a knife, which was later on recovered from the possession of the accused on his disclosure statement. This would provide adequate corroboration to the evidence of P.W.10. From these evidences, in our considered view, the prosecution has clearly proved that it was this accused, who stabbed the deceased with knife repeatedly which resulted in her death.

15. The learned Counsel for the appellant would further submit that the act of the accused would not amount to murder. In this argument, we do not find any force because the very fact that the accused had caused more than one stab injury on the vital parts of the deceased would go to prove his intention. Absolutely, there is no evidence to prove that the act of the accused would fall within anyone of the exceptions. The accused at the age of 65 years had killed a young poor girl who had come to the hospital for eking out her livelihood. Thus, the offence committed by the accused would squarely fall within the 3rd limb of Section 300 of IPC and the same would not fall under anyone of the exceptions to Section 300 of IPC. Therefore, he is liable to be punished under Section 302 of IPC.

16. Now, turning to the quantum of sentence imposed, the trial court has imposed only a minimum punishment which does not warrant any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

17. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant are hereby confirmed.

18. While parting with the case, we appreciate the services rendered by Mr.T.Sathyamoorthy, the learned Counsel, who appeared on behalf of the appellant/sole accused as Legal Aid Counsel. The Legal Services Authority is requested to pay his remuneration.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Judicial Magistrate, No.II, Ulundurpet
2. -do- Thro'The Chief Judicial Magistrate, Villupuram
3. The Sessions Judge,
Mahalir Neethimandram,
Fast Track Mahila Court, Villupuram.
- 4 The Principal Sessions Judge, Villupuram
- 5 The District Collector, Villupuram District
- 6 The Director General of Police, Mylapore, Chennai 4
- 7 The Superintendent, Central Prison, Cuddalore
- 8 The Inspector of Police,
Thiruvannainallur Police Station,
Villupuram District.
- 9 The Public Prosecutor,
High Court, Chennai. सत्यमेव जयते
- 10 The Section Officer, Criminal Section, High Court, Madras
- 11 The Secretary legal aid Services,
High Court, Chennai
- +1 CC to Mr. T. Sathiyamoorthy, Advocate Sr.NO.47431

Cr1.A.No.304/2016

SKV (CO)
MD : 20/09/2016