

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CrI.A.No.42 of 2016

R.Ramasamy ... Appellant

Vs

The State of Tamil Nadu
represented by
The Inspector of Police
Siruvalur Police Station
Gobichettipalayam
Erode District.

... Respondent

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahalir Fast Track Court, Erode, in S.C.No.58 of 2015 on 01.10.2015.

For Appellant : Mr.K.M.Suberamaniam

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

The sole accused in S.C.No.58 of 2015 on the file of the learned Sessions Judge, Mahalir Fast Track Court, Erode, is the appellant herein. He stood charged for an offence under Section 302 and 506 (ii) IPC. The trial Court convicted him under Section 302 IPC and sentenced him to undergo life imprisonment and also to pay a fine of Rs.5,000/-, in default to undergo two years simple imprisonment and also found him guilty of offence under Section 506(ii) IPC, convicted him thereunder and sentenced him to undergo seven years rigorous imprisonment. The trial Court, however, ordered both the sentences to run concurrently. Aggrieved over the same, the appellant has filed this appeal before this Court.

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

(a) The deceased in this case, one Arukkani, is the mother-in-law of the accused. The accused married the daughter of deceased, viz., one Samiyathal / PW.4. The accused is a drunkard and used to quarrel with PW.4, frequently. Unable to bear the harassment, PW.4, along with her children, use to visit the deceased's house, frequently. Six months prior to the occurrence, PW.4, along with her children, came to the deceased's house and residing there, permanently and doing some coolie work. One week prior to the occurrence, the accused came to the deceased's house and asked her to send his wife, with children. Then on 08.12.2014, the accused once again came to the deceased's house, threatened the deceased and asked her to send PW.4 and the children with him. On the next day, viz., 09.12.2014, while the deceased, P.Ws.2 and 3 were watching TV inside the house, the accused came in an intoxicated mood and quarrelled with the deceased, threatened and pushed P.Ws.2 and 3 out of the house and locked the door from inside. Thereafter, P.Ws.2 and 3 heard noise from inside. After some time, the accused opened the door, came out of the house with a knife and ran away. When P.Ws.2 and 3 went inside the house, they saw the deceased found dead, with multiple injuries. Immediately, they informed PW.1, son of the deceased.

(b) PW.1 rushed back to the house. He saw the accused on his way with a bloodstained knife and the accused told him that he had murdered his mother. Immediately, PW.1 lodged a complaint (Ex.P1) with the respondent police.

(c) PW.13 - special Sub-Inspector of Police in the respondent police, on receipt of the complaint, registered a case in Crime No.246 of 2014 and sent the First Information Report to the Judicial Magistrate No.I, Gobichettipalayam, and copies of the same to the higher officials. First Information Report is Ex.P13.

(d) PW.15 - Inspector of Police, on receipt of the complaint, proceeded to the scene of occurrence and prepared Observation Mahazar (Ex.P16) and a rough sketch (Ex.P17). He also recovered bloodstained blanket (M.O.2) and a black colour cloth (M.O.4), in the presence of witnesses. Then, he conducted inquest on the dead body, at about 3.30 a.m., and prepared an inquest report (Ex.P8). Thereafter, he sent the dead body for postmortem to the Government Hospital, Gobi, through PW.11 - Head Constable. On 10.12.2014, at about 12.00 p.m, PW.15 arrested the accused and on such arrest, the accused voluntarily gave a confession and based on the disclosure statement, PW.15 recovered a bloodstained knife (M.O.1), bloodstained T- shirt (M.O.6) and bloodstained lungi (M.O.7) in the presence of witnesses, under a cover of Mahazar.

(e) PW.8, Assistant Surgeon, working in Gobichettipalayam Government Hospital conducted autopsy on the dead body and found the following injuries:-

"External injuries: Incised wound about 7 cm extending from right ear and breadth 5 cm, depth 6 cm, at right mandibular region. Internal carotid artery was torn. Laceration 3 x 5 x 2 cm right upper Accident Register. Laceration 7 x 3 x 2 cm at right fore arm below elbow joint.

Internal examination: No # ribs, Heart - 250 gm clotted blood. Left empty. All internal organs are pale. Brain normal."

Ex.P6 is the postmortem report and the Doctor was of the opinion that that the death of the deceased was due to shock and hemorrhage due to injuries to internal carotid artery.

(f) PW.15 - Inspector of Police recorded the statement of postmortem Doctor and also recorded the statements of other witnesses and after receipt of report from Forensic Lab, he completed investigation and filed charge sheet, on 22.12.2014.

3. Considering the above materials, the trial Court framed charges for the offence under Sections 302 and 506(ii) IPC against the appellant/accused, as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the charges, the prosecution examined 15 witnesses and marked 18 documents and 12 material objects.

4. Out of the witnesses examined, PW.1 is the son of deceased and also brother-in-law of the accused. He has spoken about the frequent quarrel between the accused and his sister, who is the wife of the accused (PW.4). According to him, the mother/deceased informed PW.1 about the previous quarrel between the accused and the deceased and on the date of occurrence, on hearing the news, he rushed back to the house and on his way, he saw the accused with a bloodstained knife and the accused informed him that he has murdered the deceased. PW.2 is the wife of PW.1 and daughter-in-law of deceased and according to her, she was in the house when the occurrence took place and she saw PW.3, her niece and the deceased watching TV inside the house and at that time, the accused came inside the house and quarrelled with the deceased and threatened them and sent her and PW.3 out of the house and locked the door from inside and after ten minutes, the accused came out with a bloodstained knife and threatened them and ran away and when she went inside the house, she saw the deceased found dead with injury. PW.3 - grand-daughter of the deceased, is a child witness and also an eye witness to the occurrence. According to her, at the time of

occurrence, she, along with PW.2 and the deceased, was watching TV and the accused quarrelled with PW.2, and sent them out and after some time, the accused came out of the deceased's house and told them that he had murdered the deceased and threatened them, saying if they come near him, he would finish them of also and thereafter, he ran away and then they saw the deceased dead. PW.4 is the wife of the accused and also the daughter of deceased. She has spoken about previous day's quarrel between the accused and the deceased. She has further stated that on the day of occurrence, she came to the house at about 10.00 p.m, after the work and at that time, she was told that the accused murdered the deceased. PW.5 is a witness to Observation Mahazar and also recovery of bloodstained blanket, pillow and bed sheet (M.O.2, M.O.3 and M.O.5). PW.6 is a witness to the arrest of the accused and recording of his confession statement and also seizure of Aruval (M.O.1) and T-shirt (M.O.6) and lungi (M.O.7). PW.7 is the photographer, who took photographs of the dead body. PW.8 is the Doctor who conducted postmortem on the dead body. PW.9 - Junior Scientific Officer in Regional Forensic Lab, Coimbatore, has stated that he examined the bloodstained material objects and gave a report (Ex.P8) and sent the visceral parts of the body to the Forensic Lab, Chennai. PW.10 - Special Sub-Inspector of Police has spoken about handing over of the express First Information Report to the Judicial Magistrate Court. PW.11 is the Head Constable, who accompanied the dead body to Government Hospital, Gobichettipalayam, identified the body for postmortem and recovered bloodstained clothes of the deceased. PW.12 - Head Clerk in Judicial Magistrate Court, Gobichettipalayam, has stated that he sent the bloodstained material objects for chemical examination. PW.13 - Special Sub-Inspector of Police has stated that he registered the complaint and sent the First Information Report to Judicial Magistrate Court. PW.14 - Scientific Officer in Forensic Department, Chennai, has deposed that he examined the blood group found in bloodstained material objects and gave report Ex.P14. PW.15 - Investigating Officer has deposed that he conducted investigation, arrested the accused, recovered material objects and recorded the statements of witnesses and after completion of investigation, filed the charge sheet against the accused.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. The accused neither examined any witnesses nor marked any documents.

6. Considering the above materials, the trial Court convicted the appellant/accused and sentenced him as stated in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the accused before this Court.

7. PW.1 is the son of deceased and also brother-in-law of accused. According to him, after hearing the news, he rushed to the house and on his way, he saw the accused, with a bloodstained knife and the accused informed him that he had murdered his mother. PW.2 is the wife of PW.1 and daughter-in-law of deceased and according to her, she was in the house when the occurrence took place and she saw the accused quarrelling with the deceased and the accused threatened them and sent them out and locked the door from inside and after ten minutes, the accused came out of the house with bloodstained knife and threatened them and ran away. PW.3 is a child witness. She has deposed that he also saw the accused coming from inside the house with bloodstained knife and threatening them. PW.4 is the wife of the accused. She has spoken about the earlier quarrel between the accused and the deceased, one day prior to the occurrence. PW.5 is a relative and a witness to the Observation Mahazar and also recovery of M.Os.2, 3 and 5. PW.6 is a witness to the arrest of the accused and also recovery of M.O.1 - Aruval. PW.7 is the photographer, who took photographs of the dead body. PW.8 - Doctor has conducted autopsy on the dead body and gave postmortem report. PW.9 - Junior Scientific Officer in the Regional Forensic Lab, Coimbatore, has examined bloodstained material objects. PW.10 - Special Sub-Inspector of Police, has submitted First Information Report to the Judicial Magistrate Court. PW.11 - Head Constable has accompanied the dead body for postmortem and identified the body for postmortem. PW.12 - Head Clerk in the Judicial Magistrate Court, has sent the material objects to Forensic Lab. PW.13 - Special Sub-Inspector of Police has registered the First Information Report. PW.14 - Scientific Officer in the Forensic Department, Chennai, has examined the bloodstained material objects to find out the blood group. PW.15 - Investigating Officer has conducted investigation, arrested the accused, recorded statements of witnesses and after completion of investigation, filed charge sheet.

8. The learned counsel for the appellant would submit that there is no eyewitness to the occurrence. The learned counsel for the appellant would further submit that P.Ws.2 and 3 have only seen the accused coming out of the house of the deceased and there is no evidence that they saw the occurrence and apart from that, they are closely related to the deceased and interested witnesses and therefore, their testimony cannot be relied upon to convict the accused. The learned counsel for the appellant would further contend that there are lot of contradictions in the evidences of P.Ws.2 and 3 and the recovery was also not proved by the prosecution and the prosecution has failed to prove the guilt of the accused and therefore, he sought for acquittal of the accused.

9. Per contra, the learned Additional Public Prosecutor

would contend that the prosecution has clearly established the guilt of the accused through the evidence of P.Ws.1 to 3 and apart from that only based on the confession of accused, bloodstained knife (M.O.1) was recovered. The learned Additional Public Prosecutor would further submit that there is no delay in filing the First Information Report and the prosecution has proved all the circumstances beyond any reasonable doubt and hence, he prayed for dismissal of the Appeal.

10. We have considered the submissions of the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the records, carefully.

11. According to the Prosecution, the occurrence was inside the house of the deceased. The accused is the son-in-law of the deceased. The consistent evidence of all the material witnesses is that there was frequent quarrel between the accused and his wife PW.4, who is none-other than the daughter of deceased and six months prior to the occurrence, PW.4, along with her children, came to the house of the deceased and reside there permanently. It is their further evidence that one month prior to the occurrence, the accused came to the house of the deceased and asked her to send his wife and children, along with him and on the date of occurrence, while the deceased, PW.2 and others were watching T.V., the accused came and quarrelled with the deceased and threatened PW.2 and others and sent them out and thereafter, went inside the house and locked the door inside and after some time, he opened the house, came out with a bloodstained knife and threatened P.Ws.2 and 3 and ran away. It is the evidence of P.Ws.2 and 3 that the accused quarrelled with the deceased and went inside the house and attacked the deceased and threatened them and ran away. The presence of P.Ws.2 and 3 in the house is natural and their evidence is also consistent. The motive for the occurrence has also been clearly established by the prosecution, through P.Ws.1, 2, 3 and 4. It is because the deceased refused to send PW.4 to his house, the accused had grievance against the deceased and in order to wreck vengeance, he had attacked the deceased with a knife and caused her death. The medical evidence has also supported the case of prosecution. In such circumstances, We find no reason to disbelieve the evidence of P.Ws.2 and 3. Hence, We are of the considered view that the prosecution has clearly established that the accused had attacked the deceased with a knife, on her neck, and caused her death.

12. The next question arises is what was the offence committed by the accused by the said act.

13. According to P.Ws.2 and 3, before the occurrence, there was a quarrel between the accused and the deceased. Even a day prior to occurrence, the accused had come to the deceased's house and asked the deceased to send his wife and children along with him. When the deceased had refused to do so, on the next day he had come to her house and quarrelled with her. During the quarrel, being provoked by the words of the deceased, the accused had lost his mental balance and attacked the deceased with a knife in her neck, vital part of the body. Even though the accused did not have any intention to cause the death of the deceased, definitely, he had the intention to cause such bodily injury, which is sufficient in the ordinary course of nature to cause death. Hence, the act of the accused would fall under the third limb of Section 300 IPC. It is not a premeditated murder and out of sudden provocation, he lost the power to control and caused death to a person. Hence, it falls under the first exception to Section 300 IPC. Therefore, the accused is liable to be punished under Section 304 (1) IPC alone.

14. So far as the quantum of sentence is concerned, the accused is a poor man and he has no bad antecedents and the occurrence was not premeditated and it was only out of provocation. Since his wife and children were in the house of the deceased for the past six months, the accused requested the deceased to send them with him, but the deceased refused to send his wife and children with him. Hence, there was a quarrel between the accused and the deceased and during the quarrel, he lost his mental balance and attacked the deceased with a knife, giving a cut injury in the neck, which resulted in the death of the deceased. Hence considering the mitigating and aggravating circumstances, for the offence under Section 304 (1) IPC, sentencing the accused to undergo seven years rigorous imprisonment, and to pay a fine of Rs.1,000/-, in default to undergo four weeks rigorous imprisonment, would meet the ends of justice.

15. So far as the conviction and sentence under Section 506(ii) IPC are concerned, the trial Court has awarded the maximum sentence of seven years rigorous imprisonment (no fine amount imposed). Considering the circumstances, we are of the considered view that sentencing the accused to undergo one year rigorous imprisonment for the offence under Section 506(ii) IPC would meet the ends of justice.

16. In the result, the Criminal Appeal is partly allowed. The conviction and sentence imposed on the appellant/accused on 01.10.2015 in S.C.No.58 of 2015 on the file of the learned Sessions Judge, Mahalir Fast Track Court, Erode, under Section 302 IPC are set aside and instead, he is convicted under Section

304 (1) IPC and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo four weeks rigorous imprisonment. The conviction under Section 506(ii) IPC is confirmed and the sentence imposed thereon is modified to one year rigorous imprisonment (no fine amount imposed). It is ordered that both the sentences are to run concurrently. The period of sentence already undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C. The trial Court is directed to secure the accused to undergo the remaining period of the sentence, if he is on bail.

s/d-
Assistant Registrar (CCC)

//True Copy//

Sub-Assistant Registrar

To

1. The Sessions Judge,
Mahalir Fast Track Court,
Erode.
2. The Inspector of Police
Siruvalur Police Station
Gobichettipalayam
Erode District.
3. The judicial Magistrate No I, Gobichettipalayam
4. -Do- The Chief Judicial Magistrate, Gobichettipalayam
5. The Superintendent Central Prison, Coimbatore
6. The District Collector, Erode
7. The Director General of Police, Mylapore, Chennai-4
8. The Public Prosecutor,
High Court, Chennai.

Judgment in
Crl.A.No.42 of 2016

KS (CO)
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