

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Criminal Appeal No.441 of 2016

Sivanantham ... Appellant / Accused

vs.

State, rep.by
Inspector of Police,
Puduchatiram Police Station,
Cuddalore

.... Respondent /Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the conviction and sentence made in Sessions Case No.87 of 2014 dated 29.09.2014 on the file of the Sessions Judge, Mahila Court, Cuddalore.

For appellant : Mr.S.Pannerselvam
Legal aid counsel

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

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM.J.)

The conviction and sentence dated 29.09.2014, passed in Sessions Case No.87 of 2014, by the Mahalir Needhimandram, Cuddalore, are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the accused, viz., Sivanantham has married the deceased by name Devagi prior to twelve years and both of them have been blessed with two children. The accused has used to suspect the conduct of the deceased and due to

that very often miffs have occurred between them and prior to occurrence, the accused has driven the deceased to her parental home and after making compromise, she has been brought to marital home. On 23.06.2013, at about 11.00 p.m., in the house of both the accused and deceased, the accused has attacked her by using a knife and due to his overt acts, she has passed away. After occurrence, the father of the deceased by name Kaliamoorthy, as defacto complainant, has given a complaint and the same has been registered in Crime No.216 of 2013. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, the investigating officer (P.W.12) has taken up investigation, examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly, Dr. Nithiyapriyadarshini (P.W.11) has conducted postmortem and she found the following external and internal injuries:

"External injuries: (1) A deep laceration of size 4 x 2 x 3 cm, between the lower lip and chin with exposure of mandible. (2) A laceration of size 1 x 1 x 1 cm at the region of angle of mandible - left side. (3) A laceration below the left nipple of size 2 x 1 x 0.5 cm (4) A deep cut injury between the (R) thumb and (R) index finger of size 6 x 3 x 4 cm. (5) A laceration of size 2 x 3 x 1 cm at left middle finger with exposure of 1st inter phalangeal joint. (6) 3 deep cut injuries on the right side of the neck - (i) incised wound of size 8 x 3 x 6 cm; (ii) incised wound of size 6 x 3 x 5 cm (iii) incised wound of size 5 x 2 x 3 cm and exposure of the vital structures - (R) carotid artery partially severed (R) Internal Jugular vein partially severed, Right side neck muscles, cervical vertebrae. (7) An incised wound in the scalp behind the left ear and occipital region of size 5 x 4 x 1 cm with exposure of skull. (8) An incised wound in the (R) shoulder of size 6 x 4 x 2 cm. Rigor mortis present in all 4 limbs: Eye lids closed, Nose no bleeding; Ears - no bleeding; thorax - normal Abdomen - Normal Generative organs - normal, Extremities - Hands empty."

The postmortem certificate has been marked as Ex.P11. After completing investigation, P.W.12 has laid a final report on the file of the Judicial Magistrate Court, Parangipettai and the same has been taken on file in P.R.C.No.34 of 2013.

4. The Judicial Magistrate, Parangipettai, after considering the fact that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the Court of Sessions, Cuddalore Division and the same has been taken on file in Sessions Case No.87 of 2014 and subsequently made over to the trial Court.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant documents, has framed a charge against the accused under Section 302 of the Indian Penal Code and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 12 have been examined and Exs.P.1 to P.14 and M.Os.1 to 7 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, as respects the incriminating materials available in evidence against him, he candidly admitted the offence.

8. The trial Court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found the accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. Against the conviction and sentence passed by the trial Court, the present criminal appeal has been preferred, at the instance of the accused, as appellant.

9. The sum and substance of the case of the prosecution is that prior to twelve years from the date of occurrence, the accused has married the deceased and both of them have been blessed with two children. After some time from the date of marriage, the accused has used to suspect the conduct of the deceased and prior to occurrence, he has driven her to parental home and after making compromise, she has been brought to marital home and on 23.06.2013, at about 11.00 p.m. in the house of both the accused and deceased, the accused has indiscriminately attacked her by using a knife and due to his overt acts, she has passed away.

10. The learned counsel appearing for the appellant/accused has contended to the effect that with regard to alleged occurrence, absolutely there is no eyewitness and P.Ws.1 to 6 are residing somewhere else and they could not have heard queer noise alleged to have been emanated from the house of the accused and further P.Ws.1 to 6 are related witnesses and no neighbours have been examined. Further, on the basis of confession alleged to have been given by the accused, a knife has been recovered and the same has been subjected to chemical examination and ultimately found no blood stains and further, P.W.2 has candidly admitted to the effect

that the accused has suffered from mental disease and the trial Court, without considering the vital infirmities found on the side of the prosecution, has erroneously found the appellant/accused guilty under Section 302 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are liable to be set aside.

11. Per contra, the learned Additional Public Prosecutor has sparingly contended that in the instant case, on the side of the accused, absolutely there is no evidence with regard to the alleged fact that the accused has suffered from mental illness and even though P.Ws.1 to 6 are related witnesses and they have spoken about the previous conduct of the accused and also the queer noise emanated from his house on the date of occurrence and the trial Court, after considering the over all evidence, available on record, has rightly found the accused guilty under Section 302 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court do not warrant interference.

12. On the basis of the divergent submissions made on either side, the Court has to first analyse as to whether on the date of occurrence, the appellant/accused has suffered from mental illness.

13. It is true that P.W.2, to certain extent, has stated that the accused has suffered from mental illness. But at the same time, he candidly admitted to the effect that no treatment has been given to him. Under the said circumstances, without sufficient medical evidence, the Court cannot automatically come to a conclusion that at the time of occurrence, the appellant/accused has suffered from mental illness.

14. The specific case of the prosecution is that the occurrence has taken place on 23.06.2013 at about 11.00 p.m. in the house of both the accused and deceased. Since the entire occurrence has taken place inside the house of both the accused and deceased, as per Section 106 of the Indian Evidence Act, the entire burden lies upon the accused as to how death has occurred to the deceased. In the instant case, even after occurrence, the accused has not evinced any interest in lodging a complaint with regard to factum of death of the deceased. Under the said circumstances, the burden lies upon the accused under the said Section remains undischarged. On that score alone, the Court can very well come to a conclusion that the accused has committed the crime.

15. It is true that P.Ws.1 to 6 are inter-related to each other and especially P.Ws.3 to 6 have spoken about the queer noise emanated from the house of the deceased on the date of occurrence at about 11.00 p.m.

16. Even assuming without conceding that P.Ws.1 to 6 are inter related to each other and their evidence cannot be considered as mentioned supra, the accused has not discharged his burden as contemplated under Section 106 of the Indian Evidence Act.

17. The next contention put forth on the side of the appellant/accused is that no neighbours have been examined.

18. It is true that no neighbours have been examined on the side of the prosecution for the purpose of proving the alleged crime. Even though neighbours have not been examined, the Court cannot belittle the evidence given by P.Ws.3 to 6 and further, the Court cannot ignore the burden of proof as contemplated under the said Section.

19. The last contention put forth on the side of the appellant/accused is that no blood stains are found in the knife recovered from the accused.

20. The knife recovered from the accused has been marked as M.O.1 and the same has been subjected to chemical examination and in the serologist report (Ex.P8), it has been clearly stated that human blood stains are found on M.O.1. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/accused are of no use.

21. At this juncture, apart from the available evidence on record, the Court has to meticulously analyse the answers given by the appellant/accused to the questions posed to him under Section 313 of the Code of Criminal Procedure, 1973. In fact, this Court has perused the entire answers given by him and ultimately found that he candidly admitted to the effect that he attacked the deceased by using a knife and placed the dead body near garbage dump.

22. Even assuming without conceding that there is no evidence on the side of the prosecution so as to connect the appellant/accused with the crime, as per answers given by him to the questions posed under Section 313 of the Code of Criminal Procedure, 1973, coupled with the burden of proof contemplated under Section 106 of the Indian Evidence Act, 1872, this Court is of the view that the accused has committed the crime.

23. The trial Court, after considering the available evidence on record, has rightly found the appellant/accused guilty under Section 302 of the Indian Penal Code. In view of the foregoing elucidation of both the factual and legal aspects, this Court has not found any acceptable force in the contentions put forth on the side of the appellant/accused and altogether, the present criminal appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The conviction and sentence passed by the trial Court in Sessions Case No.87 of 2014, are confirmed.

msk

Sd/-
Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To :

1. The District Munsif cum Judicial Magistrate, Parangipet.
2. The Chief Judicial Magistrate, Cuddalore.
3. The Sessions Judge, Mahila Court, Cuddalore
4. The Principal Sessions Judge, Cuddalore
5. The Superintendent of Police, Cuddalore
6. The Superintendent, Central Prison, Cuddalore
7. The Director General of Police, Mylopore, Chennai
8. The Inspector of Police,
Puduchatiram Police Station, Cuddalore
9. The Public Prosecutor, High Court, Madras
10. The Secretary, Legal Services Authority, High Court, Madras

+1 CC Mr.S.Pannerselvam Advocate SR.No.71462

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