

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24..03..2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.152 of 2013

Nagaraj

... Appellant

-Versus-

State Rep. by
The Inspector of Police,
Hosur Town Police Station,
Hosur, Krishnagiri District.
[Crime No.40 of 2011]

... Respondent

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Principal Sessions Judge, Krishnangiri, in S.C.No.42 of 2011 dated 12.02.2013.

For Appellant : *Mr.K.Thiruvengadam*
For Respondent : *Mr.M.Maharaja, APP*

JUDGEMENT

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

The appellant is the sole accused in S.C.No.42 of 2011 on the file of the learned Principal Sessions Judge, Krishnagiri. He stood charged for offence under Sections 302 and 506(i) of IPC. The trial court, by judgement dated 12.02.2013, convicted the appellant under both the charges and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for three months for offence under Section 506(i) of IPC and to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for one year for offence under Section 302 of IPC. Challenging the above said conviction and sentence the sole accused is now before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mrs.Gowramma. She was residing alone at her house situated at the Hosur Taluk Office road. The accused was her son. He was residing

separately at Mookandapalli village. P.W.1 is the daughter of the deceased. She was living with her husband and other family members at ASTC New HUDCO, Hosur. P.W.2 is the another daughter of the deceased, who was residing at SIPCOT housing colony. The accused was demanding from his mother certain properties. On account of the same, there were frequent quarrels between the deceased and the accused. It is alleged that on 12.07.2010, the accused had intimidated the deceased. The deceased therefore made a complaint to the police. The police inquired the accused, P.W.1, and her mother and warned the accused not to indulge in such threatening activities.

3. It is further alleged that on 15.01.2011, when the deceased was alone at her house at 07.30 p.m., the accused had gone to her house, developed quarrel, and pushed her down. She fainted. Then, the accused came to the house of P.W.1 and intimidated her that he had already attacked his mother and the same would occur to P.W.1 also, if she insisted for any property from her mother.

4. Immediately, P.W.1 contacted P.W.2 over phone

and informed the same. P.Ws.1 and 2 immediately rushed to the house of the deceased. They found the deceased lying in the kitchen. When they inquired her, she told that the accused had beaten her. She also complained of vomiting sensation. Immediately, P.Ws.1 and 2 took the deceased to the Government Hospital at Hosur. At 08.10 p.m. on 15.01.2011, when P.W.7-Dr.Karthick Pandiyanar examined the deceased, she told that she was attacked by a known person at 07.00 a.m. at her house. Since P.W.7-Doctor felt that CT scan examination was necessary and since the said facility was not available in the hospital at Hosur, he advised the deceased to be taken to a higher hospital. Ex.P.10 is the accident register.

5. Thereafter, the deceased was taken by P.Ws.1 and 2 to Narayana Hrudalaya at Bangalore. P.W.9-Doctor at the said hospital examined the deceased at 01.30 a.m. on 16.01.2011. The deceased complained of chest pain. The deceased further told the Doctor that from 08.00 p.m. on 15.01.2011 she was suffering from chest pain. P.W.9 gave some drugs for the same. On electrocardiograph examination, the Doctor found that the deceased was suffering from heart disease and was suffering to breathe. P.W.10, yet another

Doctor in the same Hospital also examined the deceased and on taking X-ray and CT Scan of the brain, he diagnosed that the deceased was suffering only from heart disease. Therefore, the deceased was shifted to cardiac ward. Ex.P.14 is the medical certificate issued by him. Despite treatment, she breathed her last at 04.00 a.m. on 16.01.2011.

6. On 16.01.2011 at 11.00 a.m. P.W.1 had gone to Hosur Town Police Station and made a complaint. P.W.6, the then Sub Inspector of Police, on receipt of the said complaint under Ex.P.1, registered a case in Crime No.40 of 2011 under Section 302 under Section 302 of IPC. Ex.P.9 is the FIR. Then, he forwarded both the complaint and the FIR to the court which were received by the jurisdictional Magistrate at 03.00 p.m. on 16.01.2011. Thereafter, P.W.6 handed over the case diary to the Inspector of Police for investigation.

7. P.W.11, the then Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence, prepared an observation mahazar (Ex.P7) and a rough sketch (Ex.P.15) at the place of occurrence in the presence of P.W.4 and another witness. Then, he conducted

inquest on the body of the deceased and prepared an inquest report [Ex.P.16]. Then, he forwarded the body of the deceased to the Government Hospital, Hosur, for post-mortem.

8. P.W.8 Dr.B.Lakshmisree, conducted autopsy on the body of the deceased at 03.30 p.m. on 16.01.2011. She found the following:-

"External Injuries:

(1) Contusion over left occipital area 5 x 8 cm with laceration 1 1/2 x 1/2 x 1 1/2 cm (bone depth). No other injuries.

Internal Examination:

(1) Hyoid Intact.

(2) Ribs right and left - Intact.

(3) Heart 280 gms, both chambers have clotted blood. Infarct over infarction wall 4 x 3 cm x necrosis. Papillary muscle rupture and no blood in thoracic cavity. [150 ml pericardial cavity with blood. Coronary artery C/S thrombosis aorta C/S Nil.

(4) Lungs right 400 gm. Left 380 gm. C/S Fluid oozes out. Edema - no laceration.

(5) Liver 1400 gm. Intact.
C/S congested.

(6) Stomach empty

(7) Kidneys 100 grams each
C/S congested. Heart - Ventricles
hypertrophied.

(8) Spleen 105 grams C/S
congested.

(9) Bladder-Empty.

(10) Uterus - Small and
atrophied, Cavity empty. C/S.
congested.

(11) Skull - sub aponeurotic
haematoma 50 gram size (L)
occipital area. Skull Intact.

(12) Membranes Intact.

(13) Brain 1100 gram
weight - Intact. C/S. Normal. No
petechial haemorrhage.

(14) Base of Skull - Intact."

Ex.P.12 is the post-mortem certificate. She gave opinion that the possibility of death due to shock causing myocardial or myocardial infraction.

9. During the course of investigation, P.W.11 arrested the accused in the presence of P.W.3 and another witness at

03.30 p.m. on 16.01.2011. On such arrest, the accused gave a voluntary confession. In pursuance of the same, he took the police and the witnesses to the house of his mother and produced a cellphone. P.W.11 recovered the cellphone (M.O.1) in the presence of the same witnesses under a mahazar (Ex.P.6). On returning to the police station, P.W.11 forwarded the accused to the court for judicial remand and forwarded the material object to the court. On completing the investigation, P.W.11, laid the final report against the accused.

10. Based on the above materials, the trial court framed two charges one under Section 302 of IPC and the other under Section 506(i) of IPC. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 11 witnesses were examined, 16 documents and 1 material object were marked.

11. Out of the said witnesses, P.Ws.1 and 2 have stated about the motive. They have also stated that when they went to the house of the deceased, the deceased told them that the accused had beaten her. P.W.3 has spoken about the

arrest of the accused and the recovery of the material object namely, M.O.1-Cellphone at the instance of the accused. P.W.4 has spoken about the observation mahazar and the rough sketch prepared at the place of occurrence by the investigating officer. P.W.5 has spoken about the complaint earlier made in which the accused was warned by P.W.5. P.W.6 has spoken about the registration of the case on the complaint of P.W.1. P.W.7 has stated that at 08.10 p.m. when he was in Government Hospital at Hosur, the deceased was brought before him by P.W.1 and since he felt that CT Scan examination was required, he advised the deceased to be taken to a higher hospital. P.W.8 has spoken about the post-mortem conducted on the body of the deceased and his/her final opinion regarding the case of death. P.Ws.9 and 10 Doctors have spoken about the treatment given to the deceased at Narayana Hrudayalaya Hospital, Baglore. P.W.11 has spoken about the entire investigation done by him and the filing of final report against the accused.

12. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, he denied the same. However, he did not choose to

examine any witness on his side nor did he mark any document. His defence was a total denial.

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

14. This is a case based on circumstantial evidence. The first and the foremost circumstance is the motive between the accused and the deceased. This has been spoken by P.Ws.1 and 2. We do not find any reason to reject the evidences of P.Ws.1 and 2. The complaint earlier made by the deceased against the accused as spoken by P.W.5 would also further strengthen the evidences of P.Ws.1 and 2 in respect of motive. Thus, we hold that the prosecution has proved that the there was no love lost between the accused and the deceased on account of a property dispute.

15. P.Ws.1 and 2 have further stated that when they went to the house of the deceased, the deceased was found lying on the floor and when they inquired the deceased, she

told them that the accused had beaten up her. It is the further evidence of P.W.1 that the accused came to her house and scolded and warned her that, as he had beaten up his mother, he would do the same to P.W.1 also if she demanded for property. That statement of the deceased to P.Ws.1 and 2 that the accused had beaten up the deceased, which falls under Section 6 of the Evidence Act and the statement of the accused to P.W.1 that he had already attacked the deceased which falls under Section 24 of the Evidence Act, would go to clinchingly prove that it was this accused who had beaten the deceased. When the deceased was taken to the Government Hospital, at Hosur, P.W.7 was told the same. Thus, in our considered view, the prosecution has proved that the accused had beaten up the deceased with hands.

16. Since P.W.8 felt that CT scan examination was required, he advised the deceased to be taken to a higher hospital. P.W.10 Dr.Dhimmappa Hegde examined the deceased and found that the deceased was suffering from heart ailment. Therefore, he/she transferred her to the cardiac ward of the hospital. P.W.9 treated her for heart disease and later on, the deceased died. Thus, it has been clearly

established that the deceased was suffering from cardiac disease. P.W.8 Doctor, who conducted autopsy, has stated that the possibility of the deceased having died due to myocardial infarction cannot be ruled out. In other words, the evidence of P.Ws.9 and 10 Doctors coupled with the evidence of P.W.8-Doctor would clearly go to show that the deceased died only on account of myocardial infarction, that is, the death was due to natural cause. Thus, the cause of death was not on account of manhandling of the deceased by the accused. We find that the death was due to the natural cause. Therefore, the conviction of the accused for offence under Section 302 of IPC cannot be sustained and at the maximum for having voluntarily caused simple hurt on the deceased, the accused can be convicted only for offence under Section 323 of IPC.

17. So far as the conviction and sentence for offence under Section 506(i) of IPC is concerned, we find no evidence at all. Therefore, the conviction and sentence imposed on him by the trial court for the offence under Section 506(i) of IPC is liable to set aside.

18. **In the result**, (i) the criminal appeal is partly allowed.

(ii) The conviction and sentence imposed on the appellant/accused by the trial court for offence under Section 302 of IPC is set aside and instead, he is convicted under Section 323 of IPC and the sentence is reduced to the period of imprisonment already undergone by him in this case. No fine is imposed. Fine amount paid, if any, shall be refunded to the appellant/accused.

(iii) The conviction and sentence imposed on the appellant/accused by the trial court for offence under Section 506(i) of IPC is set aside and he is acquitted of the said charge. Fine amount paid, if any, shall be refunded to the appellant/accused.

(iv) The Bail Bond executed by the appellant/accused shall stand terminated.

Index : yes.
Internet : yes.

[M.J.,J.] **[S.N.,J.]**
24..03..2016

kmk

To

- 1.The Principal Sessions Judge, Krishnangiri, Krishnagiri District.
- 2.The Inspector of Police, Hosur Town Police Station, Hosur, Krishnagiri District.
- 3.The Public Prosecutor, High Court, Madras.

M.JAICHANDREN.,J.
AND
S.NAGAMUTHU.J.

jbm / kmk

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