

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

Criminal Appeal No.192 of 2013

Nagaiyan

.. Appellant/Accused

Vs.

State by Inspector of Police,
Keelaiyur Police Station,
Tirukuvalai.
Crime No.70 of 2006

Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 10.06.2011 made in S.C.No.160/2008 passed by the learned District and Sessions Judge, Nagapattinam.

For Appellant : Mr.K.Shanmugam
Legal Aid Counsel

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by
M.SATHYANARAYANAN, J.)

The appellant is the sole accused in S.C.No.160/2008 on the file of the learned District and Sessions Judge, Nagapattinam and he stood charged and tried for the commission of offence under Section 302 IPC. The trial Court, vide impugned judgment dated 10.06.2011, convicted him for the commission of offence under Section 302 IPC and sentenced him to undergo rigorous imprisonment for life with a fine of Rs.5,000/- in default to undergo 3 years simple imprisonment. The trial Court also granted set off under Section 428 CrPC. The sole accused, aggrieved by the conviction and sentence, has filed this appeal.

2. The case of the prosecution is as follows:

2.1. The deceased, namely Selvi @ Senthamilselvi is the wife of the appellant/accused and they got married at about 18 years back and out of wedlock, they do not have any issue. The wife of the appellant/accused developed illicit intimacy with one Sankar and it was objected by the appellant/accused. PWs.1 and 2 are the parents of the deceased and the house of PW3 is located nearby. On 28.05.2006 at about 11.00 a.m., PWs.1 and 2 heard a strange cry/alarm of their daughter and immediately, they rushed to the house of the appellant/accused and when they entered the house, they saw the appellant/accused cutting his wife on the rear side of the head with aruval/M.O.1. Appellant/accused, on seeing PWs.1 and 2, pushed them and ran away and in the process, left M.O.1 in the spot itself. PW3 also saw the appellant/accused running away from his house and when he went inside, he found the daughter of PWs.1 and 2 lying with cut injuries. PW5, who is also a resident of the village, saw the appellant/accused and his wife were quarreling with each other at 10.30 a.m. on 28.05.2006 and when he returned after finishing his works, he saw the appellant/accused running towards western side. PW5 went inside the house of the appellant/accused and he saw the body of his wife.

2.2. PW1, namely father of the deceased and father-in-law of the appellant/accused, proceeded to Thirukuvalai Police Station, Nagapattinam District and lodged a complaint/Ex.P1. PW9 was the Head Constable attached to the said police station and on receipt of the complaint/Ex.P1 given by PW1 at about 12.30 p.m. on 28.05.2006, he registered an FIR in Crime No.70/2006 under Section 302 IPC against the appellant/accused. The printed F.I.R was marked as Ex.P8. PW9 dispatched the original copy of the complaint as well as the FIR to the jurisdictional Magistrate Court and also sent copies of the same to higher officials.

2.3. PW8 was the Head Constable attached to the said police station and he took Ex.P1/complaint as well as Ex.P8/FIR to the jurisdictional Magistrate Court and on account of heavy rain in Nagapattinam District, roads got damaged and therefore, he has submitted the same to the Court at about 8.00 p.m. on the same day.

2.4. PW10 was the Inspector of Police at that point of time and on receipt of copy of the FIR, immediately commenced the investigation and went to the scene of occurrence and prepared Observation Mahazar, marked as Ex.P3 and Rough Sketch, marked as Ex.P9 in the presence of PW4/Village Administrative Officer and one Mariyappan and also seized blood stained earth/M.O.2, sample earth/M.O.3 and Aruval/M.O.1 from the spot under mahazar/Ex.P2 and blood stains. PW10 conducted inquest on the body of the deceased in the presence of panchayatdars and the Inquest Report

was marked as Ex.P10 and thereafter, sent the body through PW7/Head Constable for postmortem.

2.5. PW6, Civil Assistant Surgeon attached to Nagapattinam Government Hospital, on receipt of the body, commenced the postmortem at 11.30 a.m. on 29.05.2006 and noted the following features:

"External Injuries:

1. Spindle shaped cut laceration 7 x 4 x 1 cms. exposing bone in occipital portion of skull.
2. Cut laceration 10 x 4 x 1 cms. exposing bone just below the number 1 injury. Fractured bone pieces exposed.
3. A cut laceration 5 x 1 x 1 cms. below the number 2 injury.
4. 5 x ½ x ½ cms. cut laceration just above the nape of neck.
5. Cut laceration 4 x 2 x 3 cms. exposing bone seen above the number 4 injury.
6. 4 x 2 x 1 cms. cut laceration just behind the right ear.
7. 3 x ½ x ½ cm cut laceration behind the number 6 injury.

Internal Examination:

Thorax: No fracture lungs right 400 grams left 350 grams c/s pale.
Hyoid Bone: Intact. Stomach contained with 50 ml of fluid. Live 1500 grams c/s. Pale. Spleen c/s Pale. Both kidneys 150 grams c/s pale. Uterus- empty. Pelvis no fracture skull in occipital and temporal base. Extra dural probable cause 500 ml seen. Injury to major vessels of brain."

PW6, after completion of postmortem, had issued the Postmortem Certificate, marked as Ex.P6, opining that the deceased would appear to have died due to brain injury, injury to major vessels of brain with hypovolumic and neurogenic shock 22-26 hours prior to postmortem.

2.6. PW10 continued with the investigation and examined the witnesses and also effected the arrest of the accused in the presence of PW4 at about 8.00 p.m. near Nagapattinam Bus Stand and he voluntarily came forward to give confession statement, which was recorded in the presence of PW4 and in pursuant to the admissible portion of the confession statement of the accused, blood stained dhoti was recovered and it was also sent for chemical analysis and serological examination. Thereafter, the accused was sent to judicial custody and taken steps to send the material objects for forensic lab and on receipt of Biology Report and Serology Report, marked as Exs.P13 and P14 respectively and on completion of investigation, PW10 filed the

charge sheet against the appellant/accused for the offence under Section 302 IPC before the Judicial Magistrate No.II, Nagattinam, who took it on file in P.R.C.No.27/2006. The committal Court issued summons to the accused and on their appearance, furnished to them copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Sessions Court, committed the same to the Sessions Judge, Nagapattinam, who took it on file in S.C.No.160/2008. The trial Court, on appearance of the accused, had framed charges for the offences as stated above and questioned him and he pleaded not guilty to the charges framed against him.

2.7. The prosecution, in order to sustain their case, examined PWs.1 to 10, marked Exs.P1 to P15 and also marked M.Os.1 to 11. The appellant/accused was questioned under Section 313(1)(b) CrPC with regard to incriminating circumstances made out against him in the evidence rendered by the prosecution and he denied it as false. No witness was examined and no document was marked on behalf of the accused. The trial Court, on consideration and appreciation of oral and documentary evidence and other materials, convicted and sentenced the accused as stated above and hence this appeal.

3. Mr.T.Shanmugam, learned counsel appearing for the appellant/accused would contend that PWs.1 and 2 are interested witnesses and so also PW3, neighbor, who would not have been present at the time of commission of offence. The learned counsel appearing for the appellant/accused would further contend that the evidence of PW5 is also artificial and cannot be believed and the arrest and recovery were also stage managed and hence, the trial Court had committed grave error in convicting and sentencing the accused. Alternatively, it is the submission of the learned counsel appearing for the appellant/accused that even according to PW5, there was a quarrel between the appellant/accused and his wife/deceased at about 10.30 a.m. on 28.05.2006 and account of strained provocation, he would have committed the offence in heat of passion and prays for modification of the conviction and sentence.

4. Per contra, Mr.M.Maharaja, learned Additional Public Prosecutor would contend that the murder was committed inside the house of the appellant/accused and witnessed by the parents of the deceased, namely PWs.1 and 2 and immediately the appellant/accused ran away from the scene of occurrence and he was seen by PWs.3 and 5. It is the further submission of the learned Additional Public Prosecutor that scientific evidence had also proved that it was a homicidal violence and the dhoti worn by the appellant and the billhook used by him were stained

with human blood and since the trial Court recorded the conviction and sentence based on correct and proper appreciation of relevant materials, interference may not be warranted at the hands of this Court in exercise of its appellate jurisdiction and prays for dismissal of this appeal.

5. This Court paid its best attention to the rival submissions and also perused the materials placed before it as well as the original documents.

6. The question arises for consideration is whether the prosecution is able to prove its case against the appellant/accused beyond reasonable doubt? It is not in dispute that marriage between the appellant/accused and his wife took place about 18 years prior to the occurrence and according to the prosecution, wife of the appellant/accused had developed illicit intimacy with one Shankar and on account of the same, there were frequent quarrels between them. The parents of the deceased, namely PWs.1 and 2 were residing nearby and so also PW3. On 28.05.2006 at about 11.00 a.m. PWs.1 and 2 heard strange alarm/cry of their daughter and immediately, they rushed to the house of the appellant and both of them saw the appellant cutting his wife with Aruval/Billhook and on seeing them, he dropped the weapon and ran away and was seen by PW3/neighbor. PW5, on 28.05.2006 at 10.30 a.m., saw both the appellant/accused and his wife quarreling with each other and after finishing his job, he saw the appellant/accused running away from his house and he went to the house of the accused and saw the body of the deceased.

7. This Court has perused the testimonies of PWs.1, 2, 3 and 5 and their testimonies corroborate with each other on material particulars and nothing useful was elicited in favour of the appellant/accused. The complaint came to be lodged without any loss of time and with regard to belated dispatch of FIR, PW8 had also offered explanation that in view of heavy rain, roads got heavily damaged and he handed over the same to the jurisdictional Magistrate at about 8.00 p.m. No doubt, PWs.1 and 2 are related to the deceased and it cannot be cited as a ground to reject their testimony for the reason that interested witnesses would implicate the actual assailant who commit the murder and not any stranger. The conduct of the accused in fleeing away from the scene of occurrence was also spoken to by PWs.3 and 5. The Postmortem Report, marked as Ex.P6 coupled with the evidence of PW6, the Doctor who conducted autopsy, would reveal that the deceased died on account of homicidal violence and the Biology and Serology Report, marked as Exs.P13 and P14 respectively would also reveal that material

objects were tainted with human blood. Therefore, this Court is of the considered view that the prosecution has proved its case beyond reasonable doubt. Insofar as the alternative plea made by the learned counsel appearing for the appellant that there was strained provocation and hence the appellant/accused in a heat of passion has committed the murder and therefore, the conviction and sentence imposed on the appellant is to be modified, this Court is of the view that the said submission lacks merit and substance. According to PW5, he saw the appellant/accused and his wife were quarreling at about 10.30 a.m. on 28.05.2006 and the murder took place at about 11.00 a.m. on the same day. As per the Postmortem Report, repeated 6 injuries were marked and the appellant/accused in a fit of rage, attacked his wife with Aruval and there was no evidence as to any quarrel between them immediately just prior to the occurrence. Therefore, the plea made by the learned counsel appearing for the appellant cannot be considered.

8. The trial Court, on proper consideration and appreciation of oral and documentary evidence, has rightly convicted and sentenced the accused as stated above and this Court, on an independent application of mind to the entire materials placed before it, is of the view that there is no error apparent, infirmity or illegality in the reasons assigned by the trial Court in convicting and sentencing the accused.

9. In the result, this criminal appeal is dismissed confirming the judgment of conviction and sentence passed against the appellant/accused dated 10.06.2011 made in S.C.No.160 of 2008 by the learned District and Sessions Judge, Nagapattinam. The respondent/Investigating Officer as well as the trial Court are directed to take expeditious steps to secure the custody of the appellant/accused for the purpose of undergoing the remaining period of sentence.

10. The Tamil Nadu State Legal Services Authority, High Court, Madras is directed to pay remuneration to Mr.K.Shanmugam, Legal Aid Counsel, as per norms.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.District and Sessions Judge,
Nagapattinam District.

2.State by Inspector of Police,
Keelaiyur Police Station,
Thirukuvalai.

3. The Public Prosecutor,
Madras High Court, Chennai.

4.The Secretary,
Tamil Nadu State Legal Services Authority,
High Court, Madras

5.-do-Thro The Principal Sessions Judge,
Nagapattinam

6.The Judicial Magistrate NO.II
Nagapattinam

7.-do-Thro The Chief Judicial Magistrate
Nagapattinam

8.The Superintendent Central Prison Cuddalore

9.The District Collector Nagapattinam

10.The Director General of Police Mylapore
Chennai

11.The Superintendent of Police,
Nagapattinam District

+1 cc to Mr.K.Shanmugam Advocate sr.18165

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