

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.12.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR. JUSTICE N. AUTHINATHAN

CRL.A.No.496/2016

Kanagaraj

... Appellant/Accused

Vs

State rep by
Inspector of Police,
Anaimalai Police Station,
Coimbatore District
Crime No.345/2013

... Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., seeking to set aside the judgment passed by the Sessions Judge, Mahalir Neethimandram, Coimbatore dated 07.01.2016 in S.C.No.152 of 2014.

For Appellant : Mr.S.N. Arun Kumar
For Respondent : Mr.P. Govindarajan
Addl. Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in S.C.No.152 of 2014 on the file of Sessions Court, Mahalir Neethimandram, Coimbatore. He stood charged for the offences under Sections 302 and 324 IPC. By Judgment dated 07.01.2016, the trial Court convicted the accused in both the charges and sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment for the offence punishable under Sec.302 IPC and also sentenced him to undergo 3 years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo three months simple imprisonment under Sec.324 IPC. Both the sentences were ordered to run concurrently. Challenging the conviction and sentence, the accused has come up with this appeal.

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

(a) The accused is a resident of Kaliapuram village in Pollachi Taluk. The deceased in this case was one Mrs.Thangamani. She was the wife of the accused. P.W.2 is her son, aged about 36 years. According to the further case of the prosecution, the accused had purchased a landed property at Kaliapuram village in the name of the deceased and P.W.2. The deceased and P.W.2, claiming absolute right, started enjoying the property. This was not to the liking of the accused. He opposed the same. It is stated to be the motive for the occurrence.

(b) On 07.09.2013, around 2.45 p.m, P.W.2 and the deceased were working in their field. P.W.1 is the sister's son of the deceased. He was also present in his field, which is adjoining to the field of the deceased. The field, where the deceased and P.W.2 were working, was in the vicinity of the place, where P.W.1 was working. At that time, the accused, in a drunken state, came in a motorcycle and questioned the authority of the deceased and P.W.2 as how dare they were to enjoy the property. So saying, suddenly, he took out a knife hidden in his banian. He opened the knife and started attacking the deceased. Raising alarm, P.W.2 rushed to the rescue of the deceased. He caught hold of the accused and by that time P.W.1 also reached the place and attempted to rescue the deceased. However, the accused managed to get relieved himself from the clutches of P.W.2 and also stabbed P.W.2 repeatedly. P.W.2 fell down with injuries. The accused then ran away from the place of occurrence with the weapon.

© P.W.1 made arrangement for sending the deceased and P.W.2 to the hospital. P.W.5 Dr.Vikram Muralidharan admitted the deceased in T.T. Nair Hospital at Anaimalai on 07.09.2013 at 3.00 a.m. P.W.5 was told that the deceased was stabbed by her husband. He found lacerated injuries measuring 5.6 cm at length on the right side of the neck and correspondingly there was an injury to the trachea. The vital nerves of the neck were also found cut. P.W.5 admitted the deceased as inpatient in the hospital and started treating her, but within fifteen minutes, the deceased died in the hospital.

(d) P.W.2 was admitted in the hospital at Ambarampalayam and he was treated by P.W.4 Dr.Vivekanandan on 07.09.2013 at 5.10 p.m. P.W.2 was then conscious. He told that he was stabbed by knife by his father. Ex.P.3 is the Accident Register and Ex.P.4 is the Wound Certificate. According to P.W.4, the injury found on P.W.2 would have been caused by a knife and that the said injury was simple in nature.

(e) Mr.Muthukumar, P.W.1 went to Anaimalai police station and made a complaint at 5.00 p.m on 07.09.2013. P.W.11 registered a case in Cr.No.345/2013 for the offence punishable under Secs.324 and 302 IPC against the accused. Ex.P.1 is the complaint and Ex.P.18 is the First Information Report. He forwarded the other documents to Court.

(f) The case was taken up for investigation by P.W.12, Inspector of Police, who proceeded to the place of occurrence, prepared observation mahazar and a rough sketch and also recovered blood stained clothes, blood stained earth and sample earth. He conducted inquest on the dead body of the deceased between 10.00 p.m and 12.00 midnight and forwarded the same for post mortem.

(g) P.W.6 Dr.Azhagappasami conducted autopsy on the dead body of the deceased on 08.09.2013 and he found the following injuries:

"(1) On the right side of the neck. A cut wound measuring 1.5 x 1.5 inch (length, width and depth respectively) injuring the underlying muscles and blood vessels (2) on the center of the neck 5-6 inches below chin - a cut wound measuring 1x0.5x.15 inch (length, width x depth respectively) Injuring trachea seen. Hyoid bone no injury. No skull fracture or brain injury. No rib fracture. Heart and lung congested and normal. On opening of the abdomen liver, spleen, pancreas and kidneys normal and congested. 100-150ml of undigested rice seen in the stomach. Uterus not found (A scar running down from Umbilicus to public area seen). Death probably due to injury to major vessels of the neck and trachea injury resulting in heavy bleeding and shock. 16-20 hours prior to postmortem. Chemical analysis pending.

He opined that the injuries could have been caused by a weapon like knife. He further opined that the deceased would have appeared to have died of shock and hemorrhage and the injuries found on the body. Ex.P.7 is the Post mortem and Ex.P.8 is the final opinion.

(h) During the course of investigation, P.W.12 recovered blood stained clothes from the accused at 7.00 a.m on 08.09.2013. He arrested the accused. On such arrest, the accused made voluntary confession, in which he disclosed the place where

he had hidden the knife. At the time of occurrence he was wearing dhoti, shirt and banian. P.W.12 recovered these three clothes. In pursuance of the confession made by the accused, the accused took the police and the witnesses to the place of occurrence and produced M.O.1 knife. P.W.12 recovered the same under mahazar. On returning to the Police Station, he forwarded the accused to Court for judicial remand and handed over the material objects to the Court.

(i) Investigation was thereafter continued by P.W.13 Inspector of Police. He collected medical records, examined other witnesses and at his request, the material objects were sent for chemical examination. The report revealed that there were human blood stains on all the material objects, including the clothes, recovered from the accused.

3. Based on the above materials, the Trial Court framed charges under Secs.302 and 324 IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined and 20 documents and 6 material objects were also marked.

4. Out of the said witnesses, P.W.1, is the eyewitness to the occurrence. He has spoken about the entire occurrence. P.W.2 is the injured witness and the son of the accused and the deceased. He has spoken about the entire occurrence. P.W.3 has spoken about the preparation of observation mahazar and the rough sketch on the place of occurrence. P.W.4 has spoken about the treatment given to P.W.2. P.W.5 has spoken about the treatment given to the deceased. P.W.5 has further stated that within fifteen minutes, the deceased died. P.W.6 has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.W.7, an Expert from Forensic Science Lab has spoken about the examination of Material Objects and found that there were blood stains on the Material Objects including knife. P.W.8 has spoken about the arrest of the accused and the confession made and also the recoveries of the material objects from his possession.

5. P.W.9 has spoken about the preparation of observation mahazar and a rough sketch. P.W.10 the learned Magistrate has spoken about the recording of statement of witnesses under Sec.164 of Criminal Procedure Code. P.W.11 has spoken about the registration of the case. P.W.12 and P.W.13 have spoken about the investigation done and the final report filed.

6. 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 mark any document on his side. Having considered all the above, the Trial Court convicted the accused. Aggrieved over the same, the appellant, has come up with this appeal.

7. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. In this case, as we have narrated already, the prosecution mainly relies on the eyewitness account of P.Ws.1 and 2. So far as P.W.2 is concerned, he is none other than the son of the accused as well as the deceased. He is an injured eyewitness. Therefore his presence at the place of occurrence cannot be doubted. The presence of P.W.1 cannot also be doubted because, according to him, he was in the neighbouring field and he is none other than the sister's son of the deceased. The presence of P.W.1 at the place of occurrence has been duly explained to the satisfaction of the Court by P.W.1 and therefore, his presence cannot be doubted. Neither P.W.2 nor P.W.1 are shown as having any grudge against the accused. At the earliest point of time, when P.W.2 was admitted in the hospital, he told the doctor that he was stabbed with a knife by his father. Likewise when the deceased was admitted in the hospital, the doctor was told that she was stabbed by her husband. These former statements and the post mortem opinion duly corroborates the evidence of P.W.1 and P.W.2. Though P.Ws.1 and 2 have been cross examined at length, nothing could be elicited to create even a slightest doubt on the veracity of their evidence. From the evidences of these two, coupled with medical evidence, we are of the view that the prosecution has clearly established that it was this accused who caused injuries on the deceased by stabbing her with knife, which resulted in her death. The prosecution has also proved that it was this accused who stabbed P.W.2 with knife and caused simple hurt. Undoubtedly knife is a dangerous weapon.

9. Having come to the conclusion that the death of the deceased was caused by the accused, we have to examine as to what is the offence that was committed by the accused by such act.

10. The learned counsel for the appellant would submit that the said act of the accused would squarely fall under Exception one to Section 300 IPC. But we are not at all persuaded by such argument. As spoken by P.Ws.1 and 2 the motive for the occurrence has been established. The accused came to the place of occurrence well prepared, which is evident from the fact that he had hidden the knife in his banian and he has not explained as to why he came armed with a knife to the place of occurrence.

Neither P.W.2 nor the deceased had developed any quarrel with the accused. It is the accused who came to the place of occurrence premeditated, took out the knife and stabbed the deceased. When P.W.2 intercepted and caught him hold, the accused managed to escape from the clutches of P.W.2 and stabbed P.W.2 also.

11. Thus the Act of the accused in causing the death of the deceased would squarely fall within the first limb of Section 300 of IPC and the same does not fall under Exception I to Section 300 IPC. Therefore, for causing the death of the deceased, the accused is liable to be punished for the offence punishable under Sec.302 IPC and for causing simple hurt on P.W.2 with knife, he is liable to be punished for the offence punishable under Sec/324 IPC.

12. Now turning to the quantum of punishment, the trial court imposed only minimum punishment, which does not require any interference.

13. In the result, We find no merit in the appeal and the appeal fails and the same is dismissed. The judgment of the Sessions Judge, Mahalir Neethimandram, Coimbatore dated 07.01.2016 in S.C.No.152 of 2014 is confirmed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

1.The Sessions Judge,
Mahalir Neethimandram, Coimbatore.

2.The Principal District Judge,
Coimbatore.

3.The Judicial Magistrate,
Pollachi.

4.-Do-Thro Chief Judicial Magistrate,
Coimbatore.

5.The Inspector of Police,
Anaimalai Police Station,
Coimbatore District.

6.The Superintendent,
Central Prison,
Coimbatore.

7.The Additional Superintendent,
Central Prison, Coimbatore.

8.The District Collector,
Coimbatore.

9.The Director General of Police,
Myalpore, Chennai.

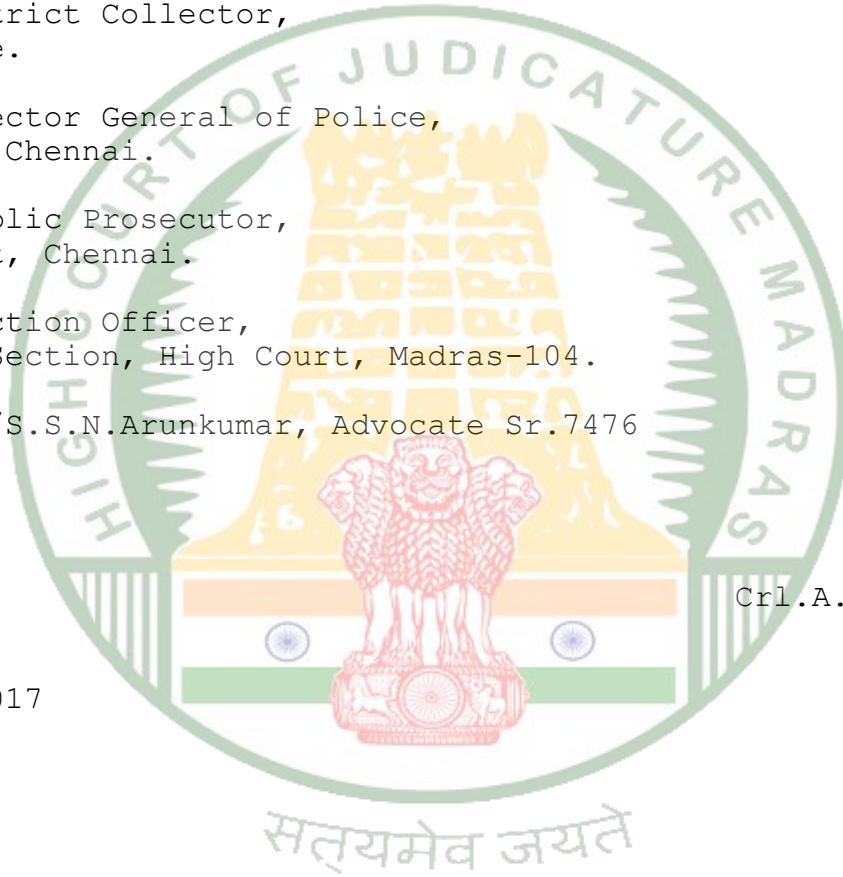
10.The Public Prosecutor,
High Court, Chennai.

11.The Section Officer,
Criminal Section, High Court, Madras-104.

+1cc to M/S.S.N.Arunkumar, Advocate Sr.7476

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srg 3/2/2017

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