

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17-11-2016

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM
AND
THE HONOURABLE MR. JUSTICE P. KALAIYARASAN

Criminal Appeal No.497 of 2016
and CrI.M.P.No.7244 of 2016

K. Babu Appellant/Accused

Vs.

State by
Inspector of Police
Poonamallee Police Station
Chennai
Crime No.1079 of 2013 Respondent/Complainant

Criminal Appeal under Section 374(2) of the Code of Criminal Procedure, 1973 against the conviction and sentence dated 30-09-2015 in Sessions Case No.47 of 2014 on the file of the II Additional District and Sessions Judge, Thiruvallur /Poonamallee and to set aside the same.

For appellant :: Mr. Ganesh Rajan
For respondent :: Mr. E. Raja,
Additional Public Prosecutor

JUDGMENT

Challenge in this Criminal Appeal is to the conviction and sentence dated 30-09-2015 passed in Sessions Case No.47 of 2014 on the file of the II Additional District and Sessions Judge, Poonamallee.

2. The case of the prosecution is that the accused by name Babu is the husband of the deceased viz., Suseela. The accused has very often in sozzle mood used to make wranglings with the deceased. On 13-05-2013, at about 10:30p.m., while the deceased has been in the house, the accused after taking liquor has quarrelled with the deceased. The accused has attacked the deceased by using a cudgel and due to his overt acts, she has passed away. After occurrence, the daughter of both the accused and deceased viz., Vijaya on 15-03-2013 has given a complaint

and the same has been registered in Crime No.1079 of 2013. The complaint given by the said Vijaya has been marked as Ex-P1.

3. On receipt of Ex-P1, the Investigating Officer viz., P.W.16 has taken up the investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, Doctor Bravo, P.W.13 has conducted the post-mortem and he found the following internal and external injuries:

"Injuries:

1. Laceration of size 3 x 2 cm x bone deep seen over the right cheek. On Dissection comminuted fracture seen in the right and left maxilla.

2. Laceration measuring 12 x 5 cm x bone deep seen over right forehead above the right eyebrow extending into right temporal region of scalp whose edges were irregular with contusion of underlying muscles and the underlying skull bone found fractured.

3. Laceration measuring 6 x 2 cm x bone deep seen in the right frontal region of scalp.

4. Laceration measuring 8 x 2 cm x bone deep seen over the right fronto temporal region of scalp below the previous injury. On further dissection of the head, multiple comminuted fracture of right temporal and right fronto parietal region of skull seen. The base of skull shows fracture in the right anterior cranial fossa across the basi-sphenoid extending into the left middle cranial fossa.

SCALP: Extravasation of blood beneath the right temporoparietal occipital scalp seen.

SKULL BONES: Refer injuries column. MEMBRANES: Intact.

BRAIN : Brain tissues softened with sub dural haemorrhage present on the right side of brain and Sub arachnoid haemorrhage all over brain surface. HYOID BONE: In tact. LARYNX and TRACHEA: Normal

HEART: Flabby. C/s.Empty. Valves: Present Great vessels and coronaries : NAD

LUNGS: Early decomposition changes C/s.: pale

On Dissection of Abdomen : Foul smelling gas present.

STOMACH: 150 gm partly digested food with dark colour fluid.

No definite smell Mucosa: Early decomposition changes. INTESTINE : empty. ALL INTERNAL ORGANS: Normal in size. C/s.early decomposition changes. BLADDER: Empty. GENITALIA: NAD. UTERUS: Normal in size C/s.Empty. PELVIS AND SPINAL COLUMN: Intact. There were no other external or internal injuries anywhere in the body."

4. The post-mortem Certificate has been marked as Ex-P6. The Investigating Officer has continued investigation and after completing the same, laid a final report on the file of the Judicial Magistrate-II, Poonamallee and the same has been taken on file in P.R.C. No.28 of 2013.

5. The Judicial Magistrate-II, Poonamallee after considering the fact that the offence alleged to have been committed by the accused is triable by Sessions Court committed the case to the Court of Sessions, Tiruvallur Division and the same has been taken on file in Sessions Case No.47 of 2014 and subsequently, made over to the Trial Court.

6. The Trial Court after hearing arguments of both sides and upon perusing the relevant records has framed a charge against the accused under Section 302, IPC and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

7. On the side of the prosecution, P.Ws.1 to 16 have been examined and Exs-P1 to P13 and M.Os.1 to 8 have been marked.

8. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

9. The Trial Court after hearing arguments of both sides and after perpending both the oral and documentary evidence available on record has found the accused guilty under Section 302, IPC and sentenced to undergo imprisonment for life with a fine of Rs.1000/- (Rupees One thousand only) with usual default clause. Against the conviction and sentences passed by the Trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

10. The sum and substance of the case of the prosecution is that the accused is the husband of the deceased. The accused has very often in sozzle mood used to attack the deceased. On 13-05-2013, at about 10:30 p.m., while the deceased has been in the house, the accused after taking liquor attacked her by using a cudgel and due to his overtacts, the deceased has passed away.

11. The learned counsel appearing for the appellant/accused has raised the following points so as to topsy-turvy the conviction and sentence passed by the Trial Court:

(i) The specific case of the prosecution is that the occurrence has taken place on 13-05-2013 and Ex-P1 complaint has been given on 15-05-2013 and in Ex-P1, no mention has been made with regard to the telephonic communication alleged to have been made between P.W.1, the defacto complainant and her mother. Further, in Ex-P1, no mention has been made with regard to the role alleged to have been played by the neighbours.

(ii) Even though the occurrence has taken place on 13-05-2013, Ex-P1 has been given only on 15-05-2013 and no explanation has been given on the side of the prosecution;

(iii) The specific case of the prosecution is that prior to occurrence both P.W.1 and deceased have had communication by using mobile phone. But the mobile phone of the deceased has not been seized;

(iv) The specific evidence given by P.W.13, post mortem Doctor is that the death has occurred prior to 24 hours from post mortem.

(v) The prosecution has examined P.Ws.5, 7 and 8. But, all of them have adduced contra-evidence.

(vi) Even in the evidence of recovery witness, some contradictions are available.

12. In order to rebut the contentions put forth on the side of the appellant/accused, the learned Additional Public Prosecutor has also equally argued to the effect that in the instant case, the daughter of both the accused and deceased has been examined as P.W.1 and she has spoken about the fact that on 13-05-2013, she has contacted her mother and her mother told her about the quarrel alleged to have been made by the accused and further, P.Ws.2 and 3 are neighbours and they have specifically stated about the occurrence alleged to have been taken place on 13-05-2013 and apart from their evidence, the prosecution has examined P.Ws.5,7 and 8 and all of them, have spoken about the fact that they have seen the accused with a cudgel and further, P.W.11 has given a specific evidence to the effect that the accused has confessed to him that he attacked his wife and the Trial Court after considering the overall evidence available on record has rightly invited the conviction and sentence against the accused and therefore, the conviction and sentence passed by the Trial Court do not warrant interference.

13. It is seen from the Rough Sketch, Ex-P9 that the entire occurrence has taken place inside the house where both the accused and deceased have resided together on the date of occurrence.

14. The specific case of the prosecution is that the occurrence has taken place on 13-05-2013 at about 10:30 p.m., in the house which situate in No.1/270, Kumaran Nagar, Sixth Street, Second Cross Street, Sennirkuppam, Chennai - 56. The prosecution has set the law in motion only on the basis of Ex-P1, complaint. The author of Ex-P1 has been examined as P.W.1 and her specific evidence is that on 13-05-2013, she contacted her mother/deceased and she stated about the quarrel alleged to have been made by the accused with her.

15. The neighbours viz., Malar, Selvam, and Santhi have been examined as P.Ws.2 to 4 and their specific evidence is that on 13-05-2013, in the house of both the accused and deceased, wrangling has had happened betwixt the accused and deceased and they questioned the accused. But the accused told them that it is nothing but his family problem and nobody is entitled to make interference. On the side of the prosecution, P.Ws.5, 7 and 8 have been examined for the purpose of proving that they have seen the accused on the date of occurrence. In fact, the specific evidence of P.Ws.5,7 and 8 is that after occurrence they have seen the accused from coming out of the house with a cudgel. The specific evidence given by P.W.11 is that the accused has voluntarily stated to him that he attacked his wife by using a cudgel. The post mortem Doctor P.W.13 has opined that the death has occurred prior to 24 hours from the time of post mortem. Further, in Ex-P6, it is clearly stated to the effect that some blisters are found place on the body of the deceased.

16. The Trial Court after considering the evidence given by the witnesses referred to supra has come to the conclusion that the accused has committed the offence punishable under Section 302, IPC.

17. As stated earlier, the entire occurrence has taken place inside the house where both the accused and deceased have resided together. Considering the fact that the entire occurrence has taken place inside the house where both the accused and deceased have resided together as per Section 106 of the Indian Evidence Act, 1872, the entire burden lies upon the accused. Apart from the fact mentioned supra, the prosecution has adduced plenitude of evidence to the effect that on the date of occurrence, a quarrel has had happened between the accused and deceased by way of examining P.Ws.2 to 4. Therefore, it is quite clear that as per Section 106 of the Indian Evidence Act, 1872, as mentioned supra, the accused has to explain as to how the death has occurred to the deceased.

18. Now, the Court has to look into the other limb of evidence adduced on the side of the prosecution. As mentioned supra, P.Ws.5, 7 and 8 are independent witnesses and they are not having motive against the accused and their specific evidence is that after occurrence they have seen the accused coming out from his house with a cudgel. Apart from their evidence, P.W.11 by name Anandan, has given a specific evidence wherein he has stated that the accused has voluntarily confessed that he attacked his wife by using a cudgel. Therefore, the evidence given by P.W.11 is nothing but an extrajudicial confession given by the accused. It has already been pointed out that as per Section 106 of the Indian Evidence Act, the entire

burden lies upon the accused to explain as to how the deceased has passed away. But the burden lies upon the accused remains undischarged. Under the said circumstances, this Court can easily come to a conclusion that the accused has committed the offence mentioned in the charge.

19. In the instant case, apart from Section 106 of the Indian Evidence Act, 1872, the prosecution has adduced replete evidence for the purpose of proving the occurrence alleged to have been taken place on 13-05-2013 by way of examining relevant witnesses. Therefore, viewing from any angle, this Court can easily come to a conclusion that the accused has committed the offence mentioned in the charge.

20. The first and foremost attack made on the side of the appellant/accused is that in Ex-P1, no mention has been made about the telephonic communication alleged to have been made between P.W.1 and deceased and no mention has been made regarding the role alleged to have been played by the neighbours. It is true that in Ex-P1, nothing has been mentioned about the telephonic communication made between P.W.1 and deceased and no mention has been made about the role alleged to have been played by the neighbours. Simply because in Ex-P1, those things have not been mentioned, the Court cannot come to a conclusion that the evidence given by P.W.1 is false. Therefore, the first and foremost contention put forth on the side of the appellant/accused is sans merit.

21. The second contention put forth on the side of the appellant/accused is that eventhough the occurrence has taken place on 13-05-2013, the complaint has been given only on 15-05-2013, no explanation has been given on the side of the prosecution. The specific case of the prosecution is that the occurrence has taken place on 13-05-2013 and the specific evidence given by P.W.1 is that she has come to the house where the occurrence has taken place only on 15-05-2013 and after seeing the body of her mother, she has given a complaint. In fact, this Court has closely perused Ex-P6, Post Mortem Certificate, wherein it is stated that on the chest of the body of the deceased, some blisters are found place. Considering the materials found in Ex-P6 and also considering the evidence given by P.W.1, this Court is of the view that the entire occurrence has taken place only on 13-05-2013 and only due to the overt acts committed by the accused. Therefore, the second contention put forth on the side of the appellant/accused is of no use.

22. The third contention put forth on the side of the appellant/accused is that on the side of the prosecution, evidence is available that the deceased has possessed a mobile phone, but the same has not been seized. It is true that as per

evidence given by P.W.1, both P.W.1 and her mother have had telephonic communication by using mobile phones. But the mobile phone of the deceased, even though seized, has not been marked. It is nothing but a flimsy mistake committed on the side of the prosecution and the same would not militate the case of the prosecution. Therefore, the third contention put forth on the side of the appellant/accused cannot be accepted.

23. The fourth contention put forth on the side of the appellant/accused is that the Doctor, who conducted the post mortem has given a specific evidence to the effect that the death has occurred prior to 24 hours from the time of post mortem. It has already been pointed out that the specific opinion given by P.W.13 is that the death has occurred 24 hours prior to post mortem. The specific case of the prosecution is that the occurrence has taken place on 13-05-2013. Since the post mortem has taken place on 15-05-2013, P.W.13 has given such kind of opinion and the same would not affect the case of the prosecution. Therefore, the fourth contention raised on the side of the appellant/accused is also not maintainable.

24. The fifth ground urged on the side of the appellant/accused is that in between the evidence given by P.Ws.5, 7, and 8, some vital contradictions are available. As mentioned supra, P.Ws.5,7 and 8 have been examined only for the purpose of proving that they have seen the accused after occurrence. Of course, it is true that some flimsy contradictions are available in the evidence given by P.Ws.5,7 and 8 and the same is nothing but a nugae and much adherence cannot be given to such kind of evidence.

25. The last ground urged on the side of the appellant/accused is that even in the evidence given by the witnesses who have spoken about recovery, some contradictions are available. As rightly pointed out on the side of the appellant/accused, some contradictions are available with regard to recovery and that itself would not affect the case of the prosecution.

26. Even at the risk of jarring repetition, this Court would like to point out that the entire occurrence has taken place inside the place where both the accused and deceased have resided together on the date of occurrence and therefore, as per the provision of Section 106 of the Indian Evidence Act, 1872, the entire burden lies upon the accused to explain as to how death has occurred to the deceased. In the instant case, no explanation has been given on the side of the accused. If really, the accused has had no connection whatsoever with the

crime, definitely, he would not have remained silent without giving any complaint. Therefore, the conduct of the accused would clearly go to show that he committed the crime.

27. The Trial Court after considering the overwhelming evidence available on the side of the prosecution has rightly found the accused guilty under Section 302, IPC. In view of foregoing enunciation of both 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 sentences passed in S.C.No.47 of 2014 are confirmed. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The II Additional District and Sessions Judge,
Thiruvallur
- 2.The Public Prosecutor
High Court, Madras.
- 3.The Inspector of Police,
Poonamallee Police Station,
Chennai.
- 4.The Judicial Magistrate No.II,
Poonamallee.
- 5.The Superintendent,
Central Prison,
Puzhal, Chennai.

Criminal Appeal No.497 of 2016
and Crl.M.P.No.7244 of 2016

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