

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.66 of 2016

Mooku @ Venkatesan

.. Appellant/sole accused

Vs

State by

The Inspector of Police,

Chengleput Taluk Police Station,

Kancheepuram District.

.. Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Chengleput, made in S.C.No.124 of 2012 dated 18.11.2015.

For Appellant	:	Mr.S.N.Arun Kumar
For Respondent	:	Mr.M.Maharaja, Addl. Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in S.C.No.124 of 2012 on the file of the learned Additional District and Sessions Judge, Chengleput. He stood charged for offence under Section 302 of IPC. By judgment dated 18.11.2015, the trial court convicted him under Section 302 of IPC and sentenced him to undergo imprisonment for life. No fine was imposed. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

(a) The deceased in this case was one Mrs.Rani. She was a Sanitary Worker. Her son-in-law was one Mr.Ammavasai. Ammavasai had developed illicit intimacy with one Parvathi. Paravathi is the sister of the accused. Ammavasai had eloped with Parvathi. On account of the same, the accused used to quarrel with the deceased often. This is stated to be the motive for the accused against the deceased. On few occasions, the accused also challenged that he would do away with the deceased.

(b) On 28.04.2011, around 09.30 p.m., the deceased was shouting at the accused by standing in front of his house. The accused who was inside his house rushed out of the house with a knife and stabbed the deceased on her

neck, head, right shoulder and other parts of the body. The accused ran away from the scene of occurrence. The deceased fell down in a pool of blood. In a 108 Ambulance, she was immediately taken to Chengleput Medical College Hospital where she was declared dead.

(c) P.W.1, the daughter of the deceased, thereafter, went to the Chengleput Taluk Police Station and made a complaint on 29.04.2011 at 01.30 a.m. P.W.18 the then Sub-Inspector of Police, registered a case in Crime No.360 of 2011 under Section 302 of IPC against the accused. Ex.P.16 is the First Information Report. She forwarded Ex.P.1 and Ex.P.16 to court which were received by the learned Magistrate at 11.50 a.m. on 29.04.2011.

(d) Then, the case was taken up for investigation by P.W.19. He went to the place of occurrence at 06.30 a.m. on 29.04.2011 and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.6 and P.W.7. Then, he recovered blood stained earth and sample earth from the place of occurrence. On going over to the hospital, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(e) P.W.11 Doctor Parasakthi conducted autopsy on the dead body of

the deceased on 29.04.2011 at 12.10 a.m. She found the following injuries on the body of the deceased:

"Well built body of a female with extremities - pale - neck structures – Intact.

Following internal injuries seen:

1)An oblique cut injury with four sutures in sites seen over back of right shoulder 5cm X 1cm X muscle deep with regular margins and ante ends;

2) An irregular multiple cut lacerated injury seen over right parieto temporo occipital region measuring 35cm X 5cm X bone deep with 32 sutures in situs. O/D - Diffuse sub scalp seen. Communicated fracture seen over right parieto occipital bone. Diffuse subdural and sub-arachnoid hemorrhages seen. C.S.F - Blood stained multiple petechial hemorrhages seen over both cerebral hemispheres. Both lungs - NAD - C/S - Pale. Heart - Intact chambers contained few cc of fluid blood - Great vessels - Intact - Coronaries patent - Stomach - Empty. Nil specific smell - Mucosa - NAD - All other inter organs - NAD. C/s pale - Bladder empty - Genitalia - Intact."

Ex.P.9 is the Postmortem Certificate. She gave opinion that the death of the

deceased was due to shock and hemorrhage due to the injuries found on the body.

(f) During the course of investigation, at 02.00 p.m. on 29.04.2011 at Thiruporur Koot Road, P.W.19, arrested the accused in the presence of P.W.8 and P.W.9. On such arrest, he made a voluntary confession in which he disclosed the place where he had hidden a blood stained lungi and a blood stained shirt and a knife. In pursuance of the same, he took P.W.19 and the witnesses to the place of hide out and produced the same. P.W.19 recovered the same under a Mahazar. On returning to the police station, he forwarded the accused to court for judicial remand and handed over the material objects also to court. At his request, the material objects were sent for chemical analysis. The Chemical Analysis Report revealed that there were human blood stains found on all the material objects including the knife, lungi and Banian recovered. On completing the investigation, P.W.19 laid final report against the accused.

3. Based on the above materials, the Trial Court framed a lone charge as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 19 witnesses were examined and 20 documents and 8 material objects were also marked.

4. Out of the said witnesses, P.W.1 is the daughter of the deceased. She has stated about the previous frequent quarrels between the accused and the deceased on account of the fact that the sister of the accused had eloped with the son-in-law of P.W.1. She has further stated that she witnessed the occurrence in which the accused stabbed the deceased with knife repeatedly. P.Ws.3 to 7 have turned hostile and they have not stated anything about the occurrence. P.Ws.8 and 9 have spoken about the arrest of the accused, the disclosure statement made by him and the consequential recovery of the material objects. P.W.10 Head Constable has stated that he took the dead body of the deceased from the place of occurrence and handed over the same to hospital as directed by P.W.19. P.W.11 has spoken about the postmortem conducted and her final opinion regarding cause of death. P.Ws.12, 16 and 17 are the Forensic Experts who have stated about the chemical examination conducted on the material objects. P.W.13 Judicial Magistrate has spoken about the statements recorded from the witnesses under Section 164 of Cr.P.C. P.W.14 has stated that he examined the deceased at 11.00 p.m. on 28.04.2011 at Government Medical College Hospital, Chengleput and at that time, the deceased was conscious. He found two stab injuries on the body of the deceased. He admitted her as inpatient in the Government Medical College Hospital at Chengalpet. P.W.15 claims to have witnessed the entire occurrence.

He has stated that it was this accused, who stabbed the deceased. P.W.18 has spoken about the registration of the case on the complaint of P.W.1 and P.W.19 has spoken about the investigation done and the final report filed by him.

5. 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 to mark any document on his side. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

6. 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.

7. In this case, P.W.1 the daughter of the deceased claims to have witnessed the entire occurrence. She has stated that it was this accused who stabbed the deceased. But, when she was examined under Section 164 of Cr.P.C. by the learned Magistrate, she had told that on the day of occurrence, when she was at her home, watching a television programme, a neighbour came and informed her that the deceased was lying with injuries and then, she went

there and took the deceased to the hospital. Thus, at the earliest point of time, she told that she did not witness the occurrence at all. The present evidence is only an improvement. Therefore, in our considered view, she cannot be believed.

8. The next evidence is that of P.W.15, the son-in-law of the deceased. Presently, he is a resident of Chengalpet. At the time of occurrence, he was residing at Karumarapakkam Village. The occurrence had taken place at Chengleput. He was a driver by profession. He has stated that on the day of occurrence, when he came to the house of the deceased, he witnessed the entire occurrence. We find it difficult to believe the said evidence for more than one reason. The occurrence had taken place just by the side of the house of the accused. There was no need or occasion for this witness to go to the house of the accused, who has stated that there was a wordy quarrel going on between the accused and the deceased. But, it is not the case of the prosecution at all. The case of the prosecution is that the deceased went to the house of the accused and shouted at the accused and the accused was all along inside the house. Suddenly, he came out from the house and stabbed the deceased. Nowhere, it is stated that at the time of occurrence, P.W.15 was present at the place of occurrence. His presence has not been spoken by P.W.1 in her evidence and the same has been mentioned in Ex.P.1 complaint. Going by the close

relationship between the deceased and P.W.15 and going by the fact that his presence at the place of occurrence is highly doubtful, we find it difficult to place reliance on the evidence of P.W.15. Further, his evidence does not draw any corroboration from any other independent sources. Thus, in our considered view, it is not safe to sustain the conviction, solely based on the evidence of P.W.1. We hold that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubts and therefore, he is entitled for acquittal.

9. In the result, the appeal is allowed and the appellant is acquitted. The conviction and sentence imposed on the accused by the trial court are set aside. The bail bond, if any executed by the accused, shall stand discharged. The fine amount, if any, paid by the accused, shall be refunded to the accused.

[S.N., J.] [V.B.D.J.,]

26.07.2016

Index : Yes

Internet : Yes

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To

1. The Inspector of Police,
Chengleput Taluk Police Station,
Kancheepuram District.
2. The Additional District and Sessions Judge,
Chengalpet.
3. The Public Prosecutor,
High Court, Chennai.

S.NAGAMUTHU,J.
and
V.BHARATHIDASAN, J.
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