

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07..12..2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.665 of 2016

Suresh

... Appellant

-Versus-

State Rep. by  
The Inspector of Police,  
Harur Police Station,  
Harur, Dharmapuri District.  
[Crime No.156 of 2011]

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgement of conviction and sentence passed by the learned Additional Sessions Judge, Dharmapuri, Dharmapuri District, in S.C.No.227 of 2014 dated 23.09.2015.

For Appellant

: Mr.O.A.Dineshkumar

For Respondent

: Mr.P.Govindarajan, APP

JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C.No.227 of 2014 on the file of the learned Additional Sessions Judge, Dharmapuri, Dharmapuri District. He stood charged for offences under Section 302 of IPC [4 Counts]. The trial court, by judgement dated 23.09.2015, convicted the appellant/accused under Section 302 of IPC [4 counts] and sentenced him to undergo imprisonment for life for each count and to pay a fine of Rs.200/- each for each count in default to suffer rigorous imprisonment for three months. Challenging the said conviction and sentence, the accused is before this court with the present criminal appeal.

2. The case of the prosecution in brief is as follows:- The appellant is the husband of one Mrs.Hemalatha [hereinafter referred to as "the D1"]. They had three children by name, (1) Sujitha [hereinafter referred to as "the D2"]; (2) Jagan [hereinafter referred to as "the D3"]; and Anbalagan [hereinafter referred to as "the D4"]. They were all residing at T-Pudur in Pappireddipatti, Salem District. The accused had suspicion over the fidelity of D1. He suspected that the deceased had illicit intimacy with her cousin brother. This resulted in frequent quarrels between the accused and D1. It is further alleged that on 02.03.2011 around 04.30 a.m. at his house, the accused attacked all the deceased [D1 to D4] with a big grinding stone and killed them inside the house. Then, he ran away from the house shouting that he had killed his wife and all his three children. On reaching the main road, he fell in front of a running lorry and sustained injuries. To the people, who rushed to the place of occurrence where the accused had sustained injuries by falling in front of the running lorry, the accused told that he had killed his wife and his three children and that is why he attempted to commit suicide. Thereafter, they rushed to the house of the accused and found all the four namely D1 to D4 with extensive injuries. A big stone was also lying by their side. D1 was still alive. She was immediately taken to hospital where despite treatment she also died. The accused, who was taken to the hospital, underwent treatment for a long time and was thereafter discharged from the hospital. Thus, according to the case of the prosecution, the accused had committed the murder of D1 to D3.

3. P.W.1, the cousin brother of D1, on hearing that the accused had sustained injuries by falling in front of a running lorry, rushed to the said place where, from the utterances made by the accused, he came to know that D1 to D4 were killed by him. Immediately, he rushed to the house of the accused where, he found D1 to D4 with extensive injuries. Since D1 was alive, he took her to hospital. He took the accused also to the hospital. Then, he made a complaint [Ex.P.1] to the police at 07.00 a.m. on 02.03.2011. On the said complaint, the present case was registered in Crime No.156 of 2011 under Sections 302 and 307 of IPC by P.W.10, the then Sub Inspector of Police. Ex.P.8 is the FIR. He forwarded the complaint and the FIR to the court and handed over the case diary to P.W.19 for investigation.

4. P.W.19 investigated the case. During the course of investigation, he examined many witnesses and recorded their statements. He conducted inquest on the bodies of the deceased and forwarded the same to the hospital for postmortem. The postmortem report revealed that there were extensive injuries on the bodies of D1 to D4. According to the doctor, who conducted

autopsies, those injuries could have been caused by hitting with a big stone like M.O.1. The further opinion of the doctor is that the deaths of D1 to D4 were due to cumulative effect of injuries found on the respective dead body.

5. P.W.19, during the course of investigation, arrested the accused after he was discharged from the hospital on 07.07.2011. On completing the investigation, P.W.19 laid charge sheet against the accused.

6. Based on the above materials, the trial court framed a lone charge as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 19 witnesses were examined, 34 documents and 14 material objects were marked.

7. Out of the said witnesses, P.W.1, the cousin brother of D1, has stated that he, on hearing about the occurrence in which the accused had sustained injuries by falling in front of a running lorry, rushed to the place where, from the utterances made by the accused, he came to know that D1 to D4 had also been attacked and killed by him. He has further spoken about the fact that on going over to the house of the accused, he found D1 alone alive then. He has further stated that he took D1 and the accused to the hospital for treatment. He has further spoken about the complaint made by him to the police.

8. P.W.3 is the mother of the accused. She has stated that on the date of occurrence, she was not at home. She came to know about the same belatedly. Thus, she has not stated anything incriminating against the accused. P.W.4 is a resident of the same village. He has stated that on the date of occurrence, when he was at his house, one Tmt.Salammal [P.W.2] came and informed him that the accused had sustained injuries by falling in front of a running lorry and he had also told that he had killed his wife and three children. Immediately, according to him, he rushed to the place of occurrence where he found the accused with injuries. He has stated that thereafter, the accused was taken to the hospital.

9. P.W.2 has stated that around 05.00 a.m. on the date of occurrence on hearing about the occurrence, she rushed to the place where the accused had fallen in front of a running lorry. When she came to know that the accused had uttered that he had killed his wife and children, she went to the house of the accused. P.W.5 is the father of D1. He has not stated anything incriminating against the accused. P.W.6 is the brother of D1. He has spoken about the strong motive between the accused and the deceased. He has stated that the accused had suspicion over the fidelity of D1 and there were frequent quarrels between

them. P.W.7, the then Village Administrative Officer, has spoken about the preparation of observation mahazar and the rough sketch at the house of the deceased. He has further spoken about the arrest of the accused after he was discharged from the hospital. P.W.8 has turned hostile and he has not supported the case of the prosecution in any manner.

10. P.W.9 is an important witness for the prosecution. He is a resident of T-Pudur Village in Pappireddipatti Taluk. He knew the accused and the deceased. According to him, around 05.30 a.m. and 06.00 a.m. on the day of occurrence, he heard a commotion from the place where the accused had fallen in front of a running lorry and he immediately rushed there. At that time, the accused was conscious and he blurted out that he had already killed his wife and three children. Therefore, he went to the house of the accused along with others where he found D1 to D4 lying with injuries. P.W.10 has spoken about the registration of the case on the complaint of P.W.1. He has also spoken about the inquest held on D4. P.W.11 has stated that he handed over the dead body of D4 to the doctor for postmortem. P.W.12 has spoken about the inquest held on the dead body of D3. P.W.13 has stated that he handed over the dead body of D2 to the doctor for postmortem. P.W.14 has spoken about the fact that he has handed over the dead body of D1 to the doctor for postmortem. P.W.15, the doctor, has spoken about the autopsy conducted on the body of D1 and his opinion regarding the cause of death of D1.

11. P.W.16 is the driver of the lorry in front of which the accused had fallen. He has stated that when he was driving the vehicle around 05.30 a.m. in a very slow manner, unexpectedly, the accused suddenly came across the road and fell in front of the running lorry; He, however, managed to avert the accident by stopping the lorry; The accused, however, came into contact with the lorry and sustained injuries; Immediately, he rushed to the rescue of the accused; The accused told him to kill him because he had already killed his wife and three children; Then, he informed 108 Ambulance; The people thereafter gathered and they arranged to take the accused to the hospital.

12. P.W.17, the doctor has spoken about the autopsy conducted on the bodies of D2, D3 and D4. P.W.18, the then Judicial Magistrate-II, Dharmapuri, has stated that on 03.03.2011 at 10.00 a.m. he visited the hospital where the accused was undergoing treatment for the purpose of recording dying declaration. He made a statement which is Ex.P.22. P.W.19 has spoken about the investigation done and the filing of charge sheet against the accused.

13. When the above incriminating materials were put to the

accused under Section 313 of Cr.P.C. he denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

14. Having considered all the above, the trial court convicted the appellant/accused under the charge and sentenced him accordingly as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the sole accused is now before this Court with the present criminal appeal.

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

16. In this case, there is no denial of the fact that the accused and his wife (D1) and children (D2 to D4) were all living together. It is in evidence of the cousin of D1 [P.W.1] that the accused had suspicion over the fidelity of D1 and as a matter of fact few days before the occurrence D1 had come to her parental home and she was sent back. Thus, from this evidence, in our considered view, it has been established by the prosecution that the accused had suspicion over the fidelity of D1 and that is the motive for the present occurrence.

17. It is the case of the prosecution that between 05.30 and 06.00 a.m. on the date of occurrence, D1 to D4 were found lying with injuries on their bodies in the house of the accused. The accused was not there at that time. D1 was still alive and she was rushed to the hospital where she died as a result of injuries. Thus from the evidence of doctors, who conducted autopsies on the bodies of the deceased, it has been clearly established that D1 to D4 died due to shock and haemorrhage as a result of injuries found on their bodies. According to the doctors, such injuries could have been caused by hitting with a big stone like M.O.1. Thus, undoubtedly, the deaths of D1 to D4 were homicides.

18. Now, the question is whether it was this accused who committed homicides of D1 to D4. In order to prove the same, the prosecution mainly relies upon the evidences of P.W.9 and P.W.16. P.W.16 is the driver of the lorry in front of which the accused fell down suddenly. He has stated that he managed to avert the accident by stopping the lorry. Despite that, the accused came into contact with the body of the lorry and had sustained injuries. He was still alive and conscious. When he went to the rescue of the accused, he shouted and requested him to kill him because he had already killed his wife and three children. On hearing the commotion, P.W.9 and others also came

to the place of occurrence. Until then, it was not known to anybody that D1 to D4 had been attacked by the accused. The very fact that D1 to D4 had sustained injuries and they were lying inside his house came to the knowledge of P.W.9 and others, only from out of the utterances made by the accused. This is a very strong circumstance against the accused. The accused has got no explanation to offer for the same. In pursuance of the said disclosure statement made by the accused, P.W.9 and others rushed to the house of the accused where they found the horrible scene. They found D2 to D4 already dead, however, D1 was still alive and she was unconscious. She was taken to the hospital where she died despite treatment. In our considered view, the above statement of the accused made at the place of occurrence where he sustained injuries forms part of the same transaction falling under Section 6 of the Evidence Act as res gestae and also it is a contention falling under Section 24 of the Evidence Act. We are conscious of the legal position that an extra judicial confession, if it is shrouded with any doubt, prudence must require that the court should look for corroboration from any independent source. But, in the instant case, the spontaneity with which the above utterances were made by the accused to a third party which was later on confirmed to be correct by the witnesses by going over to the house of the accused is a clear extra judicial confession which is not shrouded with any doubt at all. Therefore, in our considered view, this itself would be sufficient to sustain the conviction of the accused.

19. The trial court has made reliance on Ex.P.22 which is the statement of the accused. As we have already pointed out, on 03.03.2011 around 08.10 a.m, the learned Judicial Magistrate had gone to the hospital to record the dying declaration of the accused as he had sustained injuries. Of course, in the said statement [Ex.P.22], he had confessed to his guilt that he killed his wife and three children. Since the accused survives, the said statement (Ex.P.22) would not fall under Section 32 of the Evidence Act. In our considered view, the same also cannot be treated as a judicial confession inasmuch as the said statement was not recorded by following the mandatory provision contained in Section 164 of Cr.P.C. It is too well-settled that a confession recorded by a Magistrate without following the procedure contemplated under Section 164 of Cr.P.C. cannot be treated even as extra judicial confession. Therefore, we are unable to appreciate Ex.P.22 and we simply reject the same. Even after rejecting Ex.P.22 and eschewing the same from consideration, since in our considered view, there is enough evidence to sustain the conviction, we are bound to dismiss the appeal.

20. The circumstances such as the motive, the conduct of the

accused falling in front of the running lorry, his extra judicial confession that he had already killed his wife and three children, on verification turned that it was true, would all go to clinchingly prove that it was this accused who caused the deaths of D1 to D4 and therefore, he is liable to be punished for offence under Section 302 of IPC (4 counts).

21. Now, turning to the quantum of sentence, we need to look into the circumstances under which the accused had committed the crime. It is the positive case of the prosecution that the accused had suspicion over the fidelity of his wife (D1). There was no cordial relationship between them. The deceased had gone back to her parental home and she was again sent back to the matrimonial home. As per the evidence of the mother of the accused, some time before the occurrence, the accused attempted to commit suicide by consuming kerosene and he was taken to Harur Government Hospital and was saved. After having attacked his wife and three children, the accused had fallen in front of a running lorry with an attempt to commit suicide. All these evidence would go to show that the accused was under a severe mental depression. That depression would not take his act within the ambit of Section 84 of IPC. Therefore, we are unable to give the benefit of Section 84 of IPC. But, at the same time, considering all these mitigating circumstances, the learned counsel prayed for leniency in the matter of sentence. As we have already pointed out, since the life sentence is the minimum punishment under Section 302 of IPC, we are unable to consider such request. However, it is for the Government to consider the case of the appellant/accused to give remission of sentence as provided under Section 432(2) of Cr.P.C., if so advised. Except making this observation, we are unable to grant any relief to the appellant/accused.

22. In the result, the criminal appeal fails and the same is accordingly dismissed, however, with the above observations. The conviction and sentence imposed by the trial court are hereby confirmed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

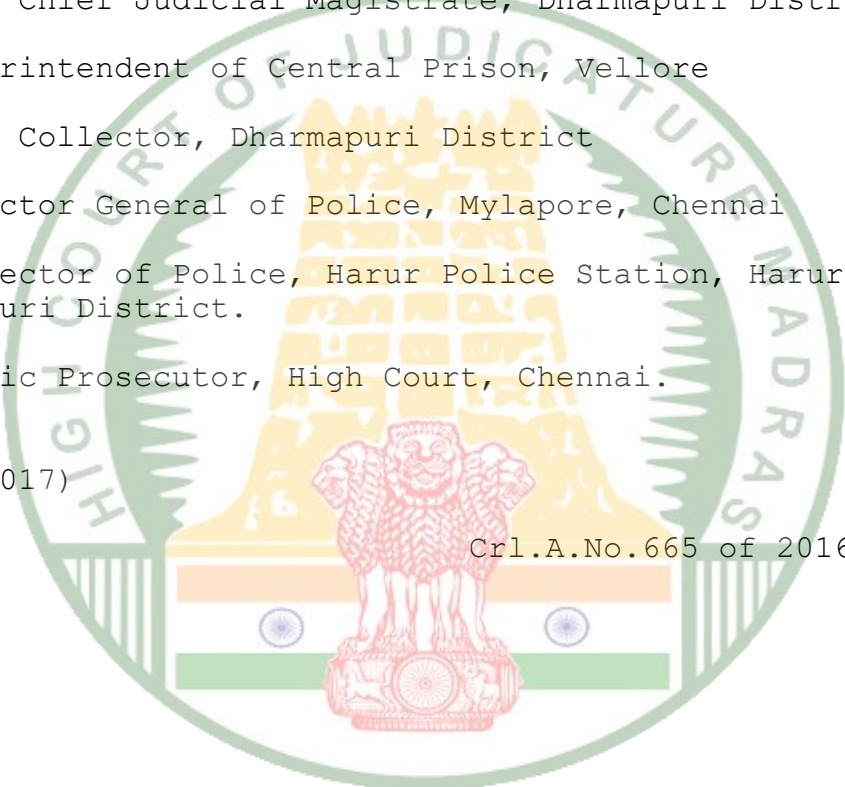
kmk

To

- 1.The Additional Sessions Judge, Dharmapuri, Dharmapuri District.
- 2 Thro the Principal District Judge, Dharmapuri
- 3 The Judicial Magistrate, Haruru
- 4 Thro The Chief Judicial Magistrate, Dharmapuri District
- 5 The Superintendent of Central Prison, Vellore
- 6 District Collector, Dharmapuri District
- 7 The Director General of Police, Mylapore, Chennai
- 8.The Inspector of Police, Harur Police Station, Harur, Dharmapuri District.
- 9.The Public Prosecutor, High Court, Chennai.

vsn (CO)  
md(27/01/2017)

Crl.A.No.665 of 2016

The seal of the High Court of Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the lion capital is a red wheel (Chakras) and a red lotus. The entire emblem is set against a green background with a white border. The words "HIGH COURT OF JUDICATURE MADRAS" are written in a circular path around the emblem. Below the emblem, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

WEB COPY