

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.72/2016

Kutti @ Vijayakumar .. Appellant/Sole Accused
Vs

State by
The Inspector of Police,
Madurantakam Police Station,
Kancheepuram District. ... Respondent/Complainant

Appeal filed u/s.374(2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge at Chengalpattu in S.C.No.223 of 2011, dated 27.01.2016.

For Appellant : Mr.K.Satish,
Legal Aid Counsel

For Respondent : Mr.E.Raja,
Addl. Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in S.C.No.223 of 2011 on the file of the learned Additional District and Sessions Judge, Chengalput. He stood charged for offence under Section 302 of IPC. By judgment dated 27.01.2016, 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/sole accused is before this Court with this Criminal Appeal.

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

(a) The accused is a resident of Old Mambakkam Village, Madurantakam Taluk, Kancheepuram District. The deceased

Amirthammal also was a resident of the same village. On account of the boundary dispute regarding house sites belonging to the accused and the deceased, there had been long standing enmity between the two families. The accused had an impression that the deceased had done some sorcery, because of which, the accused and his family members had to face some troubles. On 31.03.2011, the 1st son of the accused, who went out of his house, did not return. On 01.04.2011 in the morning, it was found that the eldest son of the accused hanged himself in a tree belonging to one Vedagiri Naicker in the same village and died. The accused and the others rushed to the said place and removed the dead body from the tree. Then, they were carrying the dead body to the house of the accused. When they were passing through Mariamman Koil Street, the deceased was taking water in a public water tap situated by the side of the road. On seeing the deceased, the accused was provoked. He shouted at her that because of the sorcery done by the deceased, his son had ended his life. Then he rushed towards the deceased and cut her with 'Koduval Knife' twice. Then, he went away from the scene of occurrence.

(b) P.W.1 is the son of the deceased and P.W.2 is the daughter-in-law of the deceased. They witnessed the entire occurrence. Then, P.W.1 rushed the deceased in an Auto along with his wife to the Government Hospital at Madurantakam. P.W.1 followed the auto in his motor cycle. The Doctor, after examining her, declared her dead. On reaching the hospital, P.W.1 came to know about the same. Thereafter, P.W.1 went to Madurantakam Police Station at 09.30 a.m. on 01.04.2011 and made a complaint.

(c) P.W.12, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.371/2011 under Sections 294-b and 302 of IPC. Ex.P.8 is the First Information Report. He forwarded Ex.P.1 Complaint and Ex.P.8 First Information Report to court which were received by the learned Judicial Magistrate at 11.20 a.m. on the same day.

(d) P.W.14, the then Inspector of Police, took up the case for investigation. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.4 and another witness. He recovered blood stained earth and sample earth from the place of occurrence under a Mahazar. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(e) P.W.11 conducted autopsy on the body of the deceased on 01.04.2011 at 02.00 p.m. He found the following injuries:
''External Injury:

Head : Normal intact. Scalp : Intact. Clot seen inbetween hair.

Neck : Three lacerations seen around neck and shoulder:

1. Over left side of neck running oblique direction from medial border of left sternomastoid running downwards and medially size of 3 x 2 c.m. with depth of 3 c.m. Margin sharp and clean. Smooth edges. On dissecting the wound, muscle cut seen over medial half of left sternomastoid at the height of 9 c.m. from the origin of the muscle at left medial border of clavicle. Based on the anatomical location, the following structures found out :

i. Left common carotid ii) Left internal jugular vein (iii) vagus nerve. The vessel ends retracted on both directions.

2. A laceration over left side of neck at posterior aspect 1 c.m. above neutral line, size of 4 x 3 c.m. with depth of 1 c.m. with clean edges with sharp and smooth margins. On dissection, no tissue injury seen.

3. A small cut over left shoulder 1 x 1 c.m. with depth of 0.5 c.m. with sharp smooth margin with clear edges.

Chest, Abdomen and Limbs intact with no injuries found. Genetale normal.

Internal Findings : Skull, meninges and brain cortex and paten chyme normal appeared pale. Base of the skull normal.

Neck : External injury findings confirmed, trachea normal.

Chest : No rib injuries seen. Lung appeared pale. Heart Normal. No clot seen.

Abdomen : Visceral organs liver, spleen, kidney, intestine intact. Cut Section pale.

Genitals & Limbs : intact and normal''

Ex.P.7 is the Postmortem Certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body of the deceased. He further opined that the said injuries would have been caused by a knife.

(f) P.W.14 arrested the accused on 02.04.2011 at 10.00 a.m. in the presence of P.W.12 and another witness. On such arrest, he made a voluntary confession in which he disclosed the place where he had hidden a knife. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.1 weapon. P.W.14 recovered the same under a Mahazar. On returning to the police station, he forwarded the

accused to court for judicial remand and also handed over the material objects to court. At his request, the material objects were sent for chemical analysis. The report revealed that there were blood stains found on all the material objects including the weapon. On completing the investigation, he laid charge sheet 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 14 witnesses were examined and 13 documents and 4 material objects were also marked.

4. Out of the said witnesses, P.W.1 and P.W.2 are the eye-witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.3 is a Forensic Expert. She has spoken that she examined the material objects and gave Ex.P.2 Opinion. P.W.4 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and the recovery of blood stained earth and sample earth from the place of occurrence. He has also spoken about the arrest of the accused and the recovery of M.O.1 in the disclosure statement made by him. P.Ws.5 to 9 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.10 Police Constable has stated that he handed over the dead body to Doctor for postmortem. P.W.11 has spoken about the postmortem conducted by him and his final opinion regarding cause of death. P.W.12 has spoken about the registration of the case on the complaint of P.W.1. P.W.13 has spoken about the chemical examination conducted by her on the material objects. P.W.14 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. When this appeal came up for hearing on 26.07.2016 and 28.07.2016, there was no representation for the appellant. Therefore, this Court appointed Mr.K.Sathish as Legal Aid Counsel to defend the case on behalf of the appellant.

7. We have heard the learned Legal Aid Counsel for the appellant and the learned Additional Public Prosecutor

appearing for the State and we have also perused the records carefully.

8. As we have already pointed out, in this case, the prosecution mainly relies on the eye-witness account of P.Ws.1 and 3. The learned Counsel for the appellant would submit that the evidences of P.Ws.1 and 2 cannot be believed because there was enormous delay in preferring the First Information Report and also in forwarding the same to the court. Though it appears to be attractive, we do not find any force at all in this argument. The alleged occurrence was at 05.00 a.m. on 01.04.2011, then, the deceased was taken to the hospital where only she was declared dead. Thereafter, P.W.1 reached the hospital and then, went to the police station. Thus, he made the complaint at 09.30 a.m. This delay cannot be considered to be enormous so as to create any doubt in the case of the prosecution. Similarly, the FIR has reached the hands of the learned Magistrate at 11.20 a.m. In this regard, we have to state that there was no delay at all in forwarding the FIR to court. Thus, the argument of the learned Counsel for the appellant that there was delay in preferring the First Information Report and also in forwarding the same to the court cannot be countenanced.

9. The learned Counsel for the appellant would further submit that there are inconsistencies between the evidences of P.Ws.1 and 2. But, we do not find any such inconsistency between these two witnesses. The evidences of P.Ws.1 and 2 cannot be doubted because the occurrence had taken place just in front of their house. When the deceased was taking water in the public tap, the occurrence had taken place. P.Ws.1 and 2 had witnessed the occurrence and thereafter, P.W.1 had rushed the deceased to the hospital. Thus, the presence of P.Ws.1 and 2 at the place of occurrence cannot be doubted and their veracity also cannot be doubted. From their evidences, we hold that it was this accused who attacked the deceased with knife which resulted in her death.

10. Having come to the said conclusion, now, we have to examine as to what was the offence that was committed by the accused. It is in evidence that there was long standing enmity between the accused and the deceased. The accused had the impression that the deceased had done some sorcery which was the cause for many evil things that happened to his family. On the day of occurrence, the eldest son of the accused had committed suicide. When the accused and his relatives were bringing back the body from the place where the body was hanging, the accused noticed the deceased taking water in the public tap. On seeing her, he got provoked. It is not necessary that a provocation in

terms of exception I to Section 300 of IPC should be only by words. Even by deeds, one can provoke the other. Here in this case, since the accused had already lost his mental balance because of the suicide committed by his eldest son, he would have been further provoked by the very appearance of the deceased at that crucial moment. Thus, we find that the accused had lost the control of his mind completely because of the said provocation and he had caused injury on the deceased and killed her. This act of the accused would squarely fall within the 1st exception to Section 300 of IPC. Since the act of the accused would fall within the 3rd limb to Section 300 of IPC and also to the first exception to Section 300 of IPC, he is liable to be punished under Section 304-I of IPC.

11. Now turning to the quantum of punishment, the accused even at the time of occurrence aged more than 45 years. He has got a family to take care of. Now, he has grown further old. The occurrence was not a premeditated one. It was out of frustration and also due to grave and sudden provocation. The accused had got no bad antecedents. After the occurrence, the accused did not commit any other crime. Having regard to all the above mitigating and aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/- would meet the ends of justice.

12. In the result, the appeal is partly allowed. The conviction and sentence imposed on the appellant for the offence under Section 302 of IPC are set aside and instead, he is convicted under Section 304-I of IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks. It is directed that the period of sentence already undergone by the appellant/accused shall be set off under Section 428 of Cr.P.C.

13. While parting with the case, we appreciate the services rendered by Mr.K.Satish, the learned Counsel, who appeared on behalf of the appellant/sole accused as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Madurantakam Police Station,
Kancheepuram District.
 2. The Additional District and Sessions Judge,
Chengleput.
 3. The Judicial Magistrate, Madurantakam.
 - 3(a).Do Thro The Chief Judicial Magistrate, Chengalpattu.
 4. The Principal District Sessions Judge,
Chengalpet.
 5. The District Collector,
Chengalpattu.
 6. The Director General of Police,
Mylapore, Chennai 4.
 7. The Superintendent, Central Prison,
Puzhal, Chennai.
 - 8.The Public Prosecutor,
High Court, Chennai.
 9. The Section Officer, Criminal Section,
High Court, Madras.
 - 10.The Secretary, Legal Services Authority,
High Court, Madras.
- 1 cc to Mr.K.Sathish, Advocate, sr.43926
1 cc to Mr.K.Thilagaraj, Advocate, sr.43901.

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kra 23.08.2016

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