

BAIL SLIP

The Appellant/Accused was directed to be released on bail in and by the order of this Court dated 16.04.2013 made in M.P.No.1 of 2013 in Crl.A.No.270 of 2013 on the file of the High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.270 of 2013

Marimuthu

... Appellant/Accused

Versus

The State represented by
The Inspector of Police
R10 MGR Nagar Police Station
Chennai.

... Respondent/Complainant

Appeal filed under section 374[2] Cr.P.C., against the judgment made in SC.No.395/2007 on the file of the learned Mahalir Sessions Judge, Chennai dated 01.04.2013.

For Appellant : Mr.K.Ethirajulu

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in SC.No.395/2007 on the file of the learned Sessions Judge, Mahalir Needhimandram. He stood charged for the offence u/s.302 IPC and vide judgment dated 01.04.2013, the Trial Court convicted him for the said offence and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- and in default, to undergo simple imprisonment for six months. Challenging the said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

[a] The deceased in this case was one Thavamani. The accused is her husband. They got two children, who were studying at Melmaruvathur by staying in a Hostel. Thus, the accused and the deceased were alone residing in their house. In due course of time, the accused had developed the habit of drinking. This was not to the liking of the deceased and she questioned the conduct of the accused frequently. This resulted in frequent quarrel.

[b] On 10.07.2007, the deceased had high temperature. When she wanted money from the accused to go to the hospital, the accused declined to give money to her. This resulted in a quarrel between the spouses and in the said quarrel, the deceased scolded the accused by referring to his mother and sister as women of bad reputation and unchastity. On hearing about the said quarrel between the accused and the deceased, P.Ws.1 and 2, had gone to the house of the deceased and they persuaded the accused and the deceased, not to fight and then, they returned home. The accused and the deceased went for sleep. On the same day, between 22.30 hours and 23.00 hours, it seems the deceased continued to scold the accused by referring to his mother and sister as women of bad character and unchastity. The accused got provoked and strangulated her with his hands and then, bite her on her neck. The deceased died.

[c] By about 04.00 hours on 11.07.2007, the accused came to the house of P.W.1, who is the brother of the deceased Thavamani. P.W.2 was also there. P.W.3 is the neighbour of P.W.1 and P.W.4 is his wife. The accused told P.Ws.1 to 4 that since the deceased had scolded him in filthy language, referring to his mother and sister as unchastity women, provoked by the same, he killed his wife/the deceased. P.Ws.1 to 4, immediately rushed to the house of the deceased and they found the dead body of the deceased. There was also bite mark on the neck. When P.W.1 shouted as to why the accused had killed the deceased, the accused ran away from the scene of occurrence.

[d] Thereafter, P.W.1 went to MGR Nagar Police Station at 09.30 a.m. on 11.07.2007 and made a complaint under Ex.P.1. P.W.11, the then Inspector of Police received the said complaint and registered a case in Cr.No.1715/2007 for the offence u/s.302 IPC. Ex.P.4 is the printed FIR. He forwarded the complaint and FIR to the jurisdictional Magistrate Court at 3.45 p.m. on 11.07.2007.

[e] P.W.11, took up the case for investigation, proceeded to the place of occurrence, prepared the Observation Mahazar [Ex.P.2] and a Rough Sketch [Ex.P.5] showing the place of

occurrence, in the presence of P.W.7 and another witness. He examined P.Ws.1 to 6, Ranganayaki and Balaraman and recorded their statements. Thereafter, he conducted inquest on the body of the deceased from 12.15 hours and 13.30 hours in the presence of the Panchayatdars and prepared Ex.P.6-Inquest Report. Then he sent the body of the deceased for postmortem.

[f] P.W.10, Dr.Baskar, the then Professor of Forensic Science attached to the Government Hospital, Royapettah, conducted the autopsy on the body of the deceased on 12.07.2007 at 10.00 hours. He found the following injuries:-

"[1] Well circumscribed intermittent patterned retrovested 'C' shaped pressure abrasion occur front of middle 1/3 or neck at the level of Thyroid cartilage measuring 13 cms in length and 1 cm in breadth.

The upper limb of the pressure abrasion show four patterned pressure abrasion each measure 1cm in length and breadth.

The lower limb show three irregular linear/confluent pressure abrasions each measuring 1.5 to 2 cms in length and .5 to .8 cms in breadth.

[2] Irregular pressure abrasion 1.2x.5 cm seen over front of lower 1/3 of neck seen 3 cms below the lower limb of injury No.1. The injuries are antemortem in nature.

On Dissection:- Bruising of scalp 6x4cm seen over back of head. Cranial vault and meninges intact. Brain grossly appear normal. Hyoid Bone intact. Fracture of thyroid cartilage seen involving the greater hon of left side of thyroid cartilage. With bruising oedema of the surrounding pharyngeal soft tissue. The inner surface of the skin corresponding to each injury No.1 exhibit well defined patterned injuries involving both the limbs, Thoracic cage intact. Heart:- Normal in size. Chambers contained fluid blood. Lungs:- Both lungs show evidence of chronic interstitial lung disease. C/S excides blood stained turbid fluid. Stomach:- empty. Mucosa atrophic and shows areas of congestion. Liver, spleen and kidneys:- C/S congested. Intestines:- Distended with gas.

Bladder:- Empty. Uterus:- normal in size.
C/s.Evidence of chronic cervicitis and
endometritis. Pelvis and spinal column intact."

Ex.P.3 is the Postmortem Certificate. He gave his final opinion that the death was due to the fracture of the thyroid cartilage and suffocation.

[g] Continuing the investigation, P.W.11 arrested the accused at 09.30 hours on 12.07.2007 near Ambattur O.T. Bus stop and he came forward to give a voluntary statement which was recorded in the presence of one Manivannan-Mambalam Village Administrative Officer. Then, he forwarded the accused to Court for judicial remand and the material objects for chemical examination. On completing the investigation, he laid the charge-sheet against the accused.

[h] 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 11 witnesses were examined, 9 documents and 5 material objects were also marked.

[i] Out of the said witnesses, P.Ws.1 to 4 have stated about the quarrel between the accused and the deceased on the day of occurrence till 23.00 hours. They have also further stated that P.Ws.1 and 2 persuaded the deceased and the accused not to fight and after that, the spouses had gone for sleep and P.Ws.1 and 2 went to their respective houses. Further, it is stated that at about 04.00 hours on 11.07.2007, the accused came and informed P.Ws.1 to 4 that he had killed his wife. P.W.5 had spoken about the frequent quarrel between the accused and the deceased. P.W.6 has not stated anything incriminating against the accused. Similarly, P.W.8 has also, not stated anything incriminating. P.W.7 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence by P.W.11. P.W.9 has spoken about the photographs taken at the scene of occurrence. P.W.10 has spoken about the postmortem conducted on the dead body of the deceased and his final opinion regarding the cause of death. P.W.11 has spoken about the investigation done by him and his filing of the final report.

3. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness on his side nor marked any document.

4. Having considered all the above, the Trial Court convicted the appellant herein for the charge u/s.302 IPC and sentenced him as stated in the first paragraph of this judgment. Challenging the said conviction and sentence, the appellant/accused is before this Court.

5. We have heard the learned Senior counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6. Learned counsel for the appellant would submit that the prosecution has not proved any circumstances which would point to the guilt of the accused. Learned counsel would submit that the evidence of P.Ws.1 to 4, that the accused came to them and informed that he killed the deceased, is too artificial and the same cannot be believed. He would further submit that the possibility of someone else having committed the murder, cannot be ruled out. Further, according to the learned counsel, there was enormous delay in preferring the complaint, which has also been not properly explained. For these reasons, according to him, the appellant is entitled to for acquittal.

7. Per contra, the learned Additional Public Prosecutor would vehemently oppose to the appeal. According to him, there are no reason to reject the evidences of P.Ws.1 to 4 and he would further submit that the conduct of the accused is also highly incriminating and that the well considered judgment of the Trial Court, does not require any interference at the hands of this Court.

8. We have considered the rival submissions.

9. It is in the evidences of P.Ws.1 and 2 as well as P.Ws.3, 4 and 5 that there were frequent quarrels between the accused and the deceased. The accused had drinking habit and on account of the same only, there were frequent quarrels. On the day of occurrence, the deceased was running high temperature and therefore, she wanted to go to the hospital and when she demanded money, the accused refused to give, which resulted in a quarrel. This has been spoken by P.Ws.1 and 2 and other witnesses. We are of the view that the prosecution has succeeded in establishing these facts.

10. In the said quarrel, the deceased not only scolded the accused ; but also referring to the mother and sister of the accused as unchaste women and women of bad repute and character. This has been spoken to by P.Ws.1 and 2. They persuaded her, not to fight with the accused and then, they went back. The

accused and the deceased had gone for sleep. To this extent, we are also of the view that the prosecution has succeeded in proving the case.

11. Thereafter, it is the case of the prosecution that the accused came at 04.00 hours on 11.07.2007 to the house of P.Ws.1 and 2 and told them that since the deceased repeatedly scolded him referring to his mother and sister as unchaste women and women of bad character, he was provoked and out of the said provocation, he strangulated her and also bite her on her neck and as a result, she died. Learned counsel for the appellant would submit that it is too artificial on the part of the accused to have gone to P.Ws.1 to 4 to confess. But, we do not find any such artificiality. In a given situation, every man has got his own way of conduct. The conduct of some, may even appear to be abnormal. But, on that score, the credibility of the said man, cannot be undermined. Here, in the instant case, for his own reasons, probably, thinking that P.Ws.1 and 2 would not go to the police with any complaint and with a view to persuade them, the accused would have gone to them to disclose about the occurrence. When P.Ws.1 to 4 have deposed in a very cogent and convincing manner, we are of the view that there are no reasons to reject the evidences of these four witnesses, more particularly, the evidences of P.Ws.3 and 4, who are independent witnesses. The statement of the accused made to P.Ws.1 to 4, squarely falls within the ambit of section 24 of the Evidence Act as an "extra-judicial confession".

12. We are conscious of legal position that the extra-judicial confession, by its very nature, is a weak piece of evidence and unless it inspires the fullest confidence of the Court, it is not safe to sustain the conviction on the sole basis of the said extra-judicial confession. Here, in the instant case, the accused had gone in a very natural way and confessed to his guilt. As we have already pointed out, the said confession inspires our confidence. Assuming that it is weak, the same is not without any corroboration. Such corroboration, which is very vital in nature, comes from the conduct of the accused. Along with P.Ws.1 to 4, he returned to his house and on seeing the dead body of the deceased, when P.W.1 shouted at him, the accused ran away from the scene and thereafter, he was not seen until he was arrested by the police. He did not chose to go and inform the police about the occurrence. This conduct of the accused would give sufficient corroboration to the extra-judicial confession made by him to P.Ws.1 to 4. Thus, from these proved circumstances, we hold that the Trial Court was right in holding that it was this accused who caused the death of the deceased.

13. Having come to the said conclusion, it is the time for us to examine as to what was the offence that would have been committed by the accused by the said act. It is in the evidence of P.Ws.1 to 4 that the deceased scolded the accused in abusive language and also called his sister and mother as unchaste women and women of bad character and bad repute. P.Ws.1 to 4 also persuaded him not to fight with the deceased. But, even after returning of P.Ws.1 to 4 to their respective houses, the deceased continued to scold the accused calling his mother and sister as unchaste women. It is only out of the said provocation, the accused had strangulated her to death. He was not armed with any weapon. Thus, there was no premeditation on his part. From these evidences, it is crystal clear that the provocation caused by the deceased was so grave and also sudden which would have made the accused to lose his mental balance. It was in those circumstances, the accused had caused the death of the deceased by strangulating her. Thus, the act of the accused would though fall under limb 4 of the section 300 IPC, since the same would fall under Exception-I to section 300 IPC, the accused is liable to be punishable only for the offence u/s.304-II IPC.

14. Turning to the quantum of punishment, it is in the evidence that the accused was hardly 32 years of age at the time of occurrence and he has got two children to take care of. Also, he is a poor man having no income, which is evident from the fact that he has not even paid the fine amount till date. If he is imprisoned for a longer period, the children are likely to be orphaned. Further, he had no bad antecedent. There was no premeditation on his part to cause the death of the deceased and it was a quarrel and out of grave and sudden provocation, he has acted so. Having regard to all these mitigating as well as the aggravating circumstances, we are of the view that sentencing him to undergo four years rigorous imprisonment and to pay a fine of Rs.500/-, would meet the ends of justice.

15. In the result, the criminal appeal is partly allowed and the conviction and sentence imposed on the appellant u/s.302 IPC are set aside and instead, he is convicted u/s.304 [Part II] IPC and is sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for four weeks.

16. The period of detention already undergone by the appellant/accused shall be set off u/s.428 Cr.P.C. Fine amount, if any, has already been paid by the appellant/accused, the same shall be adjusted towards the fine now imposed by this Court and the balance shall be refunded to the appellant/accused. The

Trial Court shall take steps to secure the appellant and commit him to prison so as to undergo the sentence now imposed on him by this Court.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Sessions Judge
Mahalir Needhimandram
Chennai.
2. The Inspector of Police
R10 MGR Nagar Police Station
Chennai.
3. The Public Prosecutor
High Court, Chennai.
4. The Metropolitan Magistrate No.XXIII,
Saidapet, Chennai.
5. The Chief Metropolitan Magistrate,
Egmore, Chennai.
(For Information)
6. The Judge,
Mahalir Sessions Court,
Chennai.
7. The Superintendent,
Central Prison,
Puzhal, Chennai.

+1cc to Mr.K.Ethirajulu, Advocate, S.R.No.15662

Cr1.A.No.270 of 2013

CTK(CO)
CA(25/04/2016)