

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 2.6.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.325 of 2013

Nagappan ... Appellant/Sole Accused

vs.

State,by
The Inspector of Police,
Umarabath Police Station,
Crime No.379/2008,
Vellore District. Respondent/Respondent/
Complainant

Criminal appeal preferred under Section 374(2)
Cr.P.C., against the judgement dated 16.8.2010 passed by the
Additional District and Sessions Judge (Fast Track Court),
Thirupathur, in S.C.No.77 of 2009.

For Appellant : Mrs.S.Shanthakumari

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The appellant in this appeal is the sole accused in Sessions Case No.77 of 2009, on the file of the Additional Sessions Judge(Fast Track Court) Thirupathur, Vellore District. He stood charged for the offences under Sections 294-B and 302 of the Indian Penal Code, the Trial Court convicted the appellant for offence under Section 302 of the Indian Penal Code alone, and sentenced him to undergo life imprisonment and also imposed a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for six months and acquitted the appellant for the offence under section 294-B. Challenging that conviction and sentence, the appellant 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 Rajeswari, wife of Swaminathan and mother of PW1. The husband of the deceased

is employed in Kerala and PW1 is working in a Private Shoe company, the deceased is residing alone at Periarivarigam Colony.

(b) On 5.8.2008, since the Company was on strike, PW1 came to the house of the deceased, and on the next day viz., on 6.8.2008 about 9.00 am, both of them took their cattle for grazing. After letting the cattle for grazing, both the deceased and PW1 were sitting near a thatched shed that belongs to PW2. At that time, the accused, who was maintaining illicit intimacy with the deceased, came to the scene of occurrence and called the deceased to go alongwith him but, the deceased refused, getting angry over the same, he severed the head of the deceased and took the head alongwith him, leaving the body at the scene of occurrence. Immediately, PW1 reported the same to her sister, PW3 and lodged a complaint to the respondent police under Ex.P1.

(c) PW15, the Inspector of Police, who received the complaint at about 10.45 am, registered a case in Crime No.379/2008 under section 294-B, 302 and 506(ii) IPC and sent the FIR, Ex.P14 to the learned Judicial Magistrate, Ambur, which was received by the Judicial Magistrate at about 12.00 noon. After registering the complaint, PW15 took the case for investigation and proceeded to the scene of occurrence at about 12.00 noon and seen the body of the deceased, prepared an observation mahazar in the presence of PW7 under Ex.P5, and examined the witnesses and conducted inquest between 1.00 pm and 3.00 pm, prepared inquest report, Ex.P16. In the meantime, at about 3.15 pm, he received information that the deceased had proceeded to the police station with the severed head of the deceased, hence, he immediately rushed to the police station at about 3.30 pm, and at about 3.45 pm, the deceased came to the police station alongwith the head of the deceased, and the knife M.O.5 and gave voluntary confession. PW15 arrested the accused at about 3.45 pm, the head of the deceased was identified by PW1, and PW14 conducted inquest with the head of the deceased in the Police Station itself and prepared an inquest report, Ex.P17. Thereafter, he seized a blue colour polythene bag, M.O.4 and knife M.O.5 from the accused in the presence of PW14 Mani, Chinnavarigam Village. Thereafter, he proceeded to the scene of occurrence with the head of the deceased alongwith the Village Administrative Officer, PW14 and he fixed the head alongwith the body of the deceased and conducted one more inquest between 4.45 pm and 6.45 pm and prepared inquest report, Ex.P18. Thereafter, he recovered blood stained soil and also sample soil under mahazar, and then he sent the body to Government Hospital, Ambur for post mortem autopsy with PW10 Head Constable. Then, he proceeded to the Police Station alongwith PW14 and recovered the blood stained lungi M.O.8 and shirt M.O.9 from the accused on 7.9.2008. He recorded the statement of witnesses and sent the seized articles to the Judicial Magistrate Court concerned on 9.9.2008 for chemical analysis.

(d) P.W.6, Doctor conducted autopsy on the body of the deceased and found the following injuries:

Body of a female middle aged moderately built was present.. Head is separate from the trunk at the base of neck. Spinal cord is severed at the cervical spine at the level between C5 and C6. Trachea is severed just below thyroid cartilage. Hyoid bone intact and is seen with the head. Skin and soft tissue of the neck clearly incised. Insets are seen coming out of the gap in the trunk.

Head - Skull bone intact. Meninges intact. Brain matter intact. No haemorrhages.

Thorax - Ribs intact. Both lungs intact and no haemorrhages noted.

Heart normal size, pale.

Abdomen - distended, stomach & intestine bloated.

Stomach contained partially digested food particles.

Liver/Spleen/Kidney intact & pale.

Extremities intact and no injury noted.

Uterus empty. Bladder empty.

He opined that the death was due to sudden decapitation of head from trunk and consequent damage to nervous system and blood vessel and issued post mortem certificate Ex.P4. On completion of investigation, PW15 the investigating officer filed charge sheet against the accused.

(e) Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 15 witnesses were examined and 18 documents and 9 material objects were marked. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false.

3. Out of the said witnesses, PW1, the daughter of the deceased is the sole eyewitness to the occurrence. She has spoken about the occurrence that she, alongwith her mother had taken their cattle for grazing and after letting the cattle

for grazing, they were sitting near a thatched shed that belongs to PW2 and taking and at that time, the accused came to that place and asked the deceased to go along with him which was refused by the deceased. Hence, out of anger, he cut the deceased on her neck and severed the head. PW2 was also present in the scene of occurrence, he did not see the occurrence, but only seen the accused running away from the scene. PW3 is another daughter of the deceased. After receipt of information from PW1, she went to the police station along with PW1 and filed the complaint. PW4 is a resident of the same village, but, she turned hostile. PW5 is the brother of the deceased. He has spoken about the illegal intimacy between the accused and the deceased. PW6 is the Doctor, who conducted autopsy. He has spoken about the post mortem conducted at about 12.30 pm on 7.9.2008 and opined that the death was due to sudden decapitation of the head. PW7 is the witness to the observation mahazar, Ex.P5. PW8 is the photographer, who took photographs. PW9 is the Head Constable who took the FIR to the Magistrate Court and the higher officials. PW10 is the Head Constable, recovered saree M.O.1, blouse M.O.2 and inner skirt M.O.3 from the accused under Ex.P6. PW11 is the Head Clerk working in the Judicial Magistrate Court, Ambur, who received the articles and sent the same to the Forensic Laboratory. PW12 is the Assistant working in the Vellore Forensic Laboratory, who submitted the chemical analysis report, Ex.P9. PW13 Assistant Chemical Analyst of Thanjavur Forensic Lab examined M.Os.1 to 3 and 5 to 9 and filed a report under Ex.P10 stating that the blood stain found in M.Os.5 to 9 belongs to 'B' group. PW14, the Village Administrative Officer of Periyavarigam Village, he was the witness to the arrest of the accused and seizure mahazar under Exs.P11 to P13, and also M.Os.8 and 9 under Exs.P11 to P13. PW15 investigating officer, after completion of investigation, filed a charge sheet for offence under section 294-B and 302 of the Indian Penal Code.

4. When the above incriminating materials were put to the accused under section 313 of the Code of Criminal Procedure, he denied the same as false. His defence was a total denial. The accused did not examine any witness and no document was marked on his side.

5. Having considered all the above, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

6. We have heard Mrs.S.Shanthakumari, learned counsel for the appellant and Mr.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. The learned counsel for the appellant would contend that PW1, who is the daughter of the deceased and sole eyewitness to the occurrence, is an interested witness and her evidence cannot be considered for convicting the appellant/accused. He would further contend that there is no evidence to show that whether the knife, M.O.4 was brought by the accused or taken from PW1, and there was delay in lodging the complaint and it was not properly explained by the prosecution. He further contended that the evidence of PW14, being a Village Administrative Officer is an interested witness cannot be relied upon, apart from that the blood group of the deceased does not match with M.O.1.

8. On the other hand, the learned Additional Public Prosecutor would contend that even though PW1 is a daughter of the deceased, she was present in the scene of occurrence and she cogently narrated the event and there is no reason to disbelieve the evidence of PW1 and there is no delay in filing the FIR as the occurrence took place at about 9.00 am, immediately PW1 informed her sister PW3 working in the nearby factory and both of them filed a complaint at about 10.45 am, on receipt of the complaint, a case was registered and the FIR was sent to the Judicial Magistrate concerned and it was received by the Judicial Magistrate at 1.00 pm, the Trial Court elaborately considered all the materials and rightly convicted the appellant and there is no valid ground available for setting aside the well considered judgment of the Trial Court.

9. We have carefully considered the rival submissions and perused the records. So far as the evidence of PW1, the sole eyewitness to the occurrence is concerned, her evidence is natural and she had categorically stated that she, alongwith her mother, the deceased, took their cattle for grazing and sitting near the shed belonging to PW2 and at that time, the accused came to the scene and compelled the deceased to go with him when she refused, out of anger, he severed the head of the deceased. The presence of PW1 at the scene of occurrence was corroborated by PW2, that near his shed, where both both PW1 and the deceased were sitting and the evidence of PW2 was not shattered during the cross-examination. Hence, there is no reason to disbelieve the presence of PW1 in the scene of occurrence. Apart from that PW2, even though not seen the occurrence he saw the accused running from the scene after the occurrence, is also reliable as the occurrence has taken place only near his thatched shed. The other witness PW3 spoken about the motive that the deceased was having illicit intimacy with the accused and when she had another affair with yet another person, the accused got irritated and murdered the deceased, the motive is also spoken by PW1, PW2 and PW5. Even though the sole eyewitness viz., PW1 is the daughter of the deceased, her evidence is natural, cogent and trustworthy. Hence, there is no reason to disbelieve her

evidence as her presence in the scene of occurrence is corroborated by PW2. Apart from that the complaint was filed immediately after the occurrence and PW1 alongwith PW3 another sister went to the Police Station and lodged the complaint, hence, her conduct also cannot be doubted. Hence, we believe the evidence of PW1.

10. In the above said circumstances, the prosecution has proved the guilt of the accused beyond any reasonable doubt. For the reasons aforesaid, we do not find any merit in the appeal. Hence, the appeal fails and is dismissed accordingly. The conviction and sentence passed in S.C.No.77 of 2009 on the file of the Additional District and Sessions Judge, Thirupattur, Vellore District are confirmed. The period of sentence already undergone by the accused shall be set off as per section 428 of the Code of Criminal Procedure.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Inspector of Police,
Umarabath Police Station,
Vellore District.
- 2.The Additional District and Sessions Judge
(Fast Track Court),
Thirupathur.
- 3.The Public Prosecutor,
High Court, Madras

WEB COPY

Cr1.A.No.325 of 2013

ctk co
kra 22.06.2016