

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12..04..2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.367 of 2013

Murali

... Appellant/Accused

-Versus-

State Rep. by its
Inspector of Police,
D-5, Palur Police Station,
Chengalpattu Taluk,
Kancheepuram District.
[Crime No.37 of 2011]

... Respondent/Complainant

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned Additional Sessions Judge, Kancheepuram District at Chengalpattu in S.C.No.78 of 2011 dated 09.04.2013.

For Appellant : Mr.R.Vijayaraghavan

For Respondent : Mr.M.Maharaja, APP

JUDGEMENT

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

The appellant is the sole accused in S.C.No.78 of 2011 on the file of the learned Additional Sessions Judge, Chengalpattu. He stood charged for offence under Section 302 of IPC. The trial court, by judgement dated 09.04.2013, convicted the appellant under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a further period of six months. Challenging the above said conviction and sentence, the sole accused has come up with the present criminal appeal.

2. The case of the prosecution in brief is as follows:-
The deceased in this case was one Mrs.Suganya. The accused is her husband. The marriage between them was solemnized two years

before the occurrence. Though initially the marital life was smooth, in due course of time, the accused developed suspicion over the fidelity of the deceased. On account of the same, it is alleged that on 13.03.2011, when the deceased was cooking just in front of the house of her mother [P.W.6], the accused came there and cut her indiscriminately on her neck, head, hands and other parts of the body. The deceased fell down in a pool of blood. The accused ran away from the scene of occurrence. The occurrence was witnessed by P.W.1, the father and P.W.6, the mother of the deceased, P.Ws.2 to 5 and 7 to 9 who are neighbours. P.Ws.1 and 6 immediately took the deceased in ambulance to the Government Medical College Hospital at Chengalpattu where P.W.14 -Dr.Ravi, examined her at 09.10 a.m. He was informed by one Sri.Kotteeswaran that the deceased was attacked by a known person with a knife. When he examined the deceased, he found that the deceased was already dead. He made entry of the same in the accident register [Ex.P.10] and kept the body of the deceased in the mortuary. He gave intimation to the police in this regard.

3. In the mean time, P.W.1, from the hospital went to Palur Police Station and made a complaint [Ex.P1] at 10.30 a.m. on 13.02.2011. P.W.17, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in crime No.37 of 2011 under Section 302 of IPC. Ex.P.1 is the complaint and Ex.P.15 is the FIR. He forwarded both the complaint-Ex.P1 and the FIR-Ex.P.15 to the court which were received by the learned Judicial Magistrate at 01.00 p.m. on 13.02.2011. In the mean time, P.W.17, handed over the case diary to the Inspector of Police for investigation.

4. P.W.18, the then Inspector of Police, took up the case for investigation. He rushed to the place of occurrence at 11.00 a.m. on 13.02.2011 where in the presence of P.W.10 and P.W.11, he prepared an observation mahazar (Ex.P16) and a rough sketch (Ex.P17). He arranged for a photographer to take photographs of the place of occurrence. On going over to the hospital, he conducted inquest on the body of the deceased and prepared an inquest report (Ex.P18). Then, he forwarded the body for postmortem.

5. P.W.16-Dr.P.Parasakthi conducted autopsy on the body of the deceased at 04.15 p.m. on 13.02.2011. She found the following injuries on the body of the deceased:-

"Antemortem injuries:-

- (1) An oblique cut injury with clear cut margins and acute ends seen over right eyebrow measuring 2x.0.5 x bone deep.
- (2) Transverse cut injury with clear

cut margins and acute ends seen over right angle of mouth extending to the mandibular region of right cheek measuring 8 cm x 3 cm x bone deep with loss of right lower premolar, canine and lateral incisor.

(3) An oblique cut injury with clear cut margins and acute ends seen over right side of neck 5 cm below right mastoid measuring 7 cm x 3 cm x cervical spine deep with cut injuries of blood vessels and nerves.

(4) 2 cms below injury No.3 an oblique cut injury with clear cut margins and acute ends seen measuring 5 cm x 3 cm x muscle deep.

(5) An oblique cut injury with clear cut margins and over hanging of upper flap seen over back of right side of neck measuring 10 cms x 5 cm bone deep with involvement of vessels and nerves.

(6) Transverse cut injury with clear cut margins and acute ends seen on the back of middle of neck measuring 5 cm x 3 cm x bone deep.

(7) An oblique cut injury with clear cut margins and acute ends seen on the dorsum of left hand measuring 8 cm x 3 cm x bone deep.

Skull- Intact. Brain - NAD.

Stomach - Empty. Nil specific smell. Mucosa - NAD. All other internal organs - NAD. C/S pale. Bladder - Empty. Genitalia - Intact. Uterus - Empty. Hyoid bone - Intact."

She preserved the visceral organs for chemical analysis. Ex.P.14 is the postmortem certificate. She opined that the deceased would appear to have died of shock due to multiple cut injuries. According to her, the injuries found on the body of the deceased would have been caused by a weapon like knife (M.O.1).

6. During the course of investigation, on the same day, at 04.00 p.m. , P.W.18 arrested the accused at Melacherry bus stop in the presence of P.W.14 and another witnesses. On such arrest,

he gave a voluntary confession in which he had disclosed the place where he had hidden the knife and clothes. In pursuance of the same, he took P.W.18 and the witnesses to the place of hide out and produced a knife, a banian and a lungi. P.W.18 recovered the knife (M.O.1), blood stained banian (M.O.4) and blood stained lungi (M.O.5) under a mahazar (Ex.P) in the presence of the same witnesses. On returning to the police station, he forwarded the accused to the court for judicial remand. After the postmortem, he recovered the clothes from the body of the deceased and forwarded all the material objects including the weapons and the earth recovered from the place of occurrence to the court with a request to forward the same to the Forensic Science Laboratory for chemical analysis. The chemical analysis report revealed that there were human blood stains on all the material objects except on the sample earth (M.O.3). Ex.P.7 is the chemical analysis report and Exs.P.8 and P.9 are the serology reports. On completing the investigation, P.W.18 filed the charge sheet against the accused.

7. Based on the above materials, the trial court framed a lone charge under Section 302 of IPC. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 18 witnesses were examined, 18 documents and 5 materials objects were marked.

8. Out of the said witnesses, P.Ws.1 to 9 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.Ws.10 and 11 have spoken about the preparation of the observation mahazar and the rough sketch and the recovery of blood stained earth and the ordinary earth from the place of occurrence. P.W.12, the Village Administrative Officer and P.W.15, the Village Assistant, have spoken about the arrest of the accused and the consequential recovery of M.O.1-knife, M.O.4-Banian and M.O.5-Lungi at the instance of the accused. P.W.13, the Scientific Officer, has spoken about the chemical analysis conducted on the material objects. He has stated that there were human blood stains found on all the material objects except M.O.2. P.W.14-the Doctor has spoken about the fact that he examined the deceased at the Government Hospital at Chengalpattu at 09.10 a.m. on 13.02.2011 and declared that the deceased dead. P.W.16 has spoken about the autopsy conducted on the dead body of the deceased and her final opinion regarding the cause for the death. P.W.17, the Sub Inspector of Police has spoken about the registration of the case and handing over of the case diary to the Inspector of Police. P.W.18 has spoken about the entire investigation done by him and the filing of final report against the accused.

9. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, he

denied the same. However, he did not choose to examine any witness on his side nor did he mark any document. His defence was a total denial.

10. Having considered all the above, the trial court convicted the accused under section 302 of IPC and accordingly punished him as detailed in the first paragraph of this judgement. That is how, the sole accused is now before this court with this criminal appeal.

11. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

12. In this case, there are as many as nine eye witnesses to the occurrence. As spoken by P.W.1, the marriage between the accused and the deceased was solemnized just two years prior to the occurrence. It is in the evidence of P.W.1 that the accused had developed suspicion over the fidelity of the deceased and quarreled with her frequently. Therefore, the deceased had come to the house of P.W.1. On the date of occurrence, when the deceased was cooking just in front of the house, the accused came there and attacked her indiscriminately with M.O.1. All other eye witnesses have also stated so. The independent witnesses, namely, P.W.2 to 4 and 7 to 9, who are neighbours of P.W.1, had no axe to grind against the accused. Though they have been subjected to cross examination at length, nothing has been elicited to doubt the credibility of these witnesses. The fact that the deceased was taken to the hospital at 09.10 a.m. on 13.02.2011 and the fact that the complaint was lodged at 10.30 a.m. and the FIR had reached the hands of the learned Judicial Magistrate at 01.00 p.m. would all go to further strengthen the case of the prosecution. The recovery of M.O.1, which contained human blood, from the possession the accused is also yet another vital fact which goes to support the case of the prosecution. Thus, the eye witnesses account of P.W.1 to P.W.9 and the other circumstances like, recovery of material objects M.O.1, M.O.4 and M.O.5 and the fact that the accused was absconding until he was arrested for which he has got no explanation, would go to cumulatively prove that it was this accused who had caused the injuries on the deceased which resulted in the death of the deceased.

13. The learned counsel for the appellant/accused would submit that at any rate the act of the accused would fall only within the ambit of Section 304 of IPC. We do not find any force at all in the said argument. Absolutely, there is nothing on record to show that the accused was provoked. The fact that the accused had come all the way to the house of P.W.1 that too armed with knife would itself show his premeditation. Then, the number of injuries caused on the body of the deceased and the

nature of injuries would also clearly indicate the intention of the accused to cause the death of the deceased. There is no material on record to prove that the act of the accused would fall under any one of the exceptions to Section 300 of IPC. Therefore, the appellant is liable to be punished under Section 302 of IPC. Thus, the trial court was right in convicting the appellant under Section 302 of IPC.

14. Now, coming to the quantum of sentence, the trial court itself has imposed only a minimum punishment which does not warrant any interference at all at the hands of this court.

15. In view of the above said conclusions, we do not find any illegality in the judgment of the trial court and the criminal appeal deserves only to be dismissed.

16. In the result, the criminal appeal is dismissed and the conviction and sentence imposed on the appellant/accused is confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Addl. Sessions Judge,
Chengalpattu,
Kancheepuram District.

1.a.-Do-Through The Principal Sessions Judge,
Chengalpattu.

2.The Inspector of Police,
D-5,Palur P.S.,
Chengalpattu Taluk,
Kancheepuram District.

3.The Public Prosecutor,
High Court,
Madras.

4.The Judicial Magistrate No.1,
Chengalpattu.

5.The Superintendent,
Central Prison, Puzhal,
Chennai.

6.The Collector,
Kanchipuram.

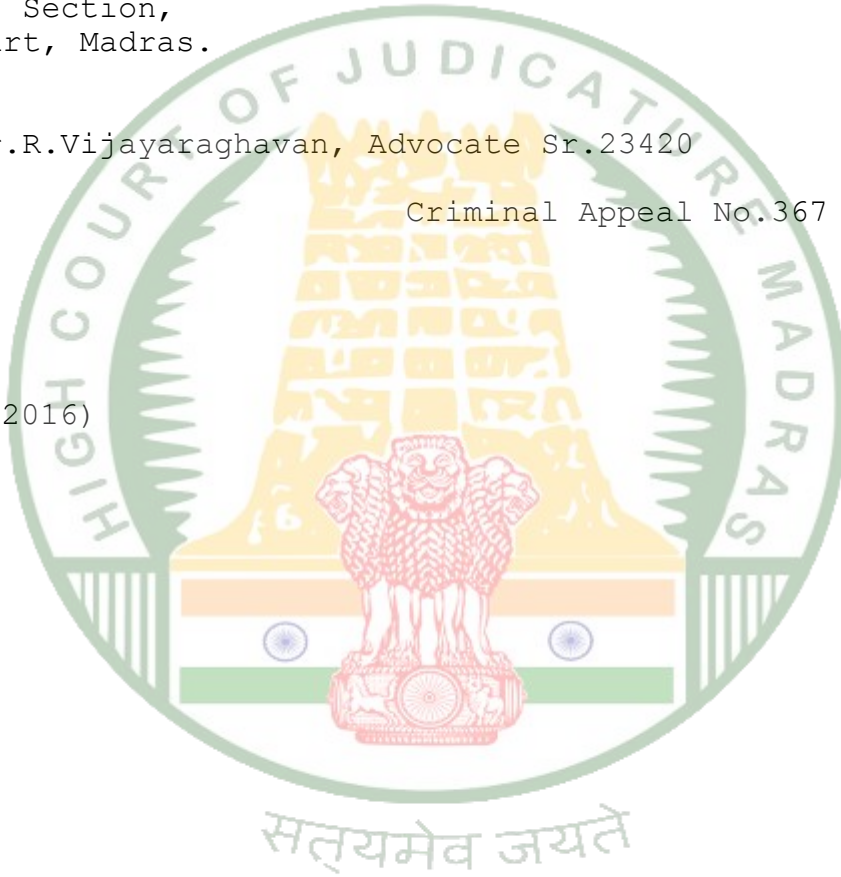
7.The Director General of Police,
Chennai.

8.The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.R.Vijayaraghavan, Advocate Sr.23420

Criminal Appeal No.367 of 2013

pur (CO)
srg (11/05/2016)



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