

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Cr1.A.No.412 of 2013

Manikandan

... Appellant/Accused

Vs.

Staterep.by
Inspector of Police,
Polur Police Station,
Tiruvannamalai District
(Crime No.1347 of 2005)

... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 10.4.2013, passed by the Sessions
Judge, Thiruvannamalai, in S.C.No.202 of 2007.

For Appellant : Mr.G.Udhaya Shankar for
Mrs.S.Shanthakumari

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

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

The appellant is the sole accused, in Sessions Case.202 of 2007, on the file of the Sessions Judge, Thiruvannamalai. He stood charged for the offence under Section 302 (2 counts) of the Indian Penal Code, for having committed the murder of his wife and his child. By judgement dated 10.4.2013, the trial Court convicted him under Section 302(two counts) of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5000/-, for each count, in default, to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

The case of the prosecution in brief is as follows:

(a) There are two deceased in this case, by name, Mrs. Mahala and a male child, Yuvaraj, aged three months

(hereinafter referred to as D1 and D2 respectively). D1-Mrs.Mehala was already married to one Mr.Ravi. She lived with him for about six months and thereafter, she was deserted by her husband on account of misunderstanding between them. Thereafter, when D1 was with her parents, the accused himself took her to Polur Balamurugan temple and married her. After marriage, the accused and D1 were living together as husband and wife for about three years. Out of the said wedlock, D2 was born. After the birth of the child, there arose frequent quarrels between the accused and D1, even in respect of petty matters. In this regard, D1 made a complaint to the police. At the police station, there was enquiry held, in which, the issues were sorted out by means of compromise. It was agreed between the parties that the accused and D1 shall set up a separate family and continue the marital life peacefully. Accordingly, the house belonging to one Mrs.Parimala was taken on rent, where the accused and D1 along with D2, was living. It is further alleged that the accused, in due course of time, had developed a suspicion that D1 had developed illicit intimacy with one Mr.Karthik. This was also an issue before the police, when the enquiry was held, before the compromise. It was only one week before the occurrence, D1 and the accused had entered into the house of Mrs.Panjala, as tenants. It was a Wednesday. On the same night, the accused wanted D1 to have sex with him. But, citing the health of the child, D1 refused. The accused took it in lighter vain. On the same night, D1 wanted the accused to go and purchase banana. The accused accordingly went to the bazaar by about 10.30 p.m. When he returned to his house, the alleged paramour of D1, Mr.Karthik, was found going out of his house. On seeing him, the accused got provoked. He entered into the house and told D1 that when he wanted her to have sex with him, citing the health of the child, she refused; whereas, she had invited Karthik to his house and had sex with him. But, D1 said that Karthik did not come to her house as it was alleged by the accused. This further infuriated the accused and immediately, he took out a 'koduval' lying there and cut D1 repeatedly. Then, on the suspicion that the child would not have been born to him, he took the child and dashed the child against the wall, repeatedly. On hearing the alarm raised by the deceased, P.Ws.2 to 4 and the other neighbours rushed to the house of the deceased. The accused was found fleeing away from his house with 'koduwal' in his hand with blood stains and blood stains on his clothe. When P.W.2, the father and P.W.3, the mother of D1, entered into the house, they found both D1 and D2 lying in a pool of blood with injuries. They took both of them to the Government Hospital, at Polur. P.W.10, Dr.Jeyaprakash, examined D1, at 11.45 p.m. on 10.11.2015. D2 was declared dead. D1 was thereafter taken to the Government Medical College and Hospital at Vellore. On her way she breathed her last. Therefore, both the bodies were taken to the Government Medical College and Hospital at Vellore.

(b) The accused, from the place of occurrence, straight away went to the office of the Village Administrative Officer, where P.W.1, the then Village Administrative Officer was available. On appearing before him at 11.15 p.m. on 10.11.2007, the accused produced the blood stained Koduval (M.O.1) and wanted to confess. P.W.1 was satisfied that the accused was in a mood to voluntarily confess. Therefore, he allowed him to confess and reduced the said confession into writing. Ex.P1 is the said confession. Then, P.W.1, prepared a Special Report under Ex.P2. Thereafter, he took the accused along with Exs.P1 and P2 and M.O.1 to the Police Station and produced them before the Sub-Inspector of Police. P.W.15, the then Sub Inspector of Police, on receipt of the same, registered a case in Crime No.1347 of 2005, under Sections 302 and 307 of the Indian Penal Code.

(c) P.W.18 took up the case for investigation at 2.00 a.m., on 11.11.2005. At 3.00 a.m., P.W.2 appeared before him and presented a report that D1 also died on her way to Vellore Government Medical College and Hospital. Based on the said statement, he altered the case into one under Section 302 of the Indian Penal Code (two counts) and submitted an alteration report under Ex.P19. At 3.30 a.m., P.W.18, recorded the confession of the accused, in the presence of P.W.8 and another witness. But, no discovery of any fact was made out of the said confession. Taking the accused to the place of occurrence, P.W.18 prepared an observation mahazar and a rough sketch at 6.00 a.m., in the presence of P.W.6 and another witness. Then, he recovered blood stained pillows numbering two, a nylon rose colour mosquito net, a white colour towel, a blanket, broken bangles numbering four, a blood stained mat and a few more material objects (M.Os.4 to 7 and 13 to 15).

(d) On the same day between 8.00 a.m. and 11.00 a.m., he conducted inquest on the body of D1 and between 11.00 a.m. and 12.30 p.m., he conducted inquest on the body of D2. Then the forwarded both the dead bodies for post-mortem. P.W.11, Dr.Paramanandhan, conducted autopsy on the body of D2 at 1.00 p.m. on 11.11.2005. He found the following injuries.

"Ante-mortem External injuries: A contusion at the middle of the occipital head. 3 cms x 3 cms red. 2) A contusion left cheek, 3 cm x 3 cm red. 3) Blood clots at the external and internal ear - both sides. Internal Exam: Thorax opened: All internal organs were pale. Lungs - No injuries. Right lung - wt 50 mg Left lung 50 gms. Heart-chambers - empty wt.25 gms. Abdomen opened: All internal organs were pale. Stomach - empty. Intestine contains

gas and faecal matter. Liver wt 90 gms. c/s.pale. Spleen wt 15 gms c/s.pale. Kidneys wt each 15 gms. c/s.pale. U/b empty. spine and spinal column - Normal and intact. Hyoid bone intact. Skull opened: No fractures of skull bones and base of skull. A contusion present at the occipital lobe of the brain. Middle 3 cm x 3 cm. pale red - brain - pale - wt 80 gms.

P.W.12 is the post-mortem certificate. He opined that the death was due to shock and haemorrhage due to the head injuries. Then, he conducted autopsy on the body of D1 at 2.45 p.m. on 11.11.2005. He found the following injuries on the body of D1.

"Ante-mortem injuries: (1) An oblique incised wound in front of left ear. 7cms x 3 cms x muscle deep. Pale red (2) An incised wound at the left neck starting from symphysis mentum upto lateral side of the neck size 10 cms x 10 cms exposing multiple fracture left mandible, muscles and all soft tissues and trachea - pale red with blood clots. (3) Connecting the injury number (2) there was another deep incised wound encircling the left lateral neck extending upto right side of the back of the neck exposing all the muscles, blood vessels, connective tissues and cervical vertebra fractured at the level of c2. size 10 cms x 10 cms with pale and blood clots. (4) 3 cms above the injury number 3, there was an incised wound left occipital region, horizontally 7 cms x 3 cms x bone deep - pale red with blood clots. (5) 3 cms above the injury number (4) there was an incised wound at occipital region - horizontally 5 cms x 2 cms x 2 cms - pale red with clots. (6) An incised wound at palm present at 18 web space extending upto lateral aspect of right palm. 10 cms x 2 cms x 3 cms (7) Incised wound right middle finger horizontally - palmer side at propinal phalanx region 3 cms x 1 cms x 1 cms (8) An incised wound at right index finger palmer side at P1P joint 3 cms x 1 cms x 1 cms (9) An incised wound left hand. 1st web space 4 cms x 2 cms x 2 cms (10) Three incised wounds left shoulder each 4 cms x 1 cms x 1 cms (11) An incised wound left shoulder 4 cms x 3 cms exposing the bone. Internal examination : Abdomen and Thorax."

Ex.P13 is the post-mortem certificate. He gave opinion that the death was due to shock and haemorrhage due to the injuries found on the body of the deceased. He opined that the said injuries could have been caused by a weapon like M.O.1-Koduval. Then, P.W.18 forwarded the accused to the Court for judicial remand. He collected the clothes found on the bodies of both the deceased and forwarded all the material objects to the Court. At that stage since he was transferred, the investigation was taken over by his successor. Then, P.W.19, took up the case for investigation. He collected all the medical records, including the chemical analysis report and finally he laid charge-sheet, on 5.11.2006, against the accused under Section 302 (2 counts) of the Indian Penal Code.

3. Based on the above materials, the trial Court framed charge against the accused under Section 302(2 counts) of the Indian Penal Code, as detailed in the first paragraph of this judgement. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 19 witnesses were examined and 24 documents were marked, besides 15 material objects. Out of the said witnesses, P.W.1, the Village Administrative Officer, has spoken about the appearance of the accused before him at 11.15 p.m. on 10.11.2005 along with M.O.1, the blood stained Koduval. He has further spoken about the confession given by the accused under Ex.P1. He has further stated that he produced the accused along with M.O.1 and the confession and also Ex.P2 report to the Police. P.Ws.2 to 4 have stated about the marriage between the accused and D1 and the motive. They have stated that the accused had suspicion about the fidelity of D1. They have further stated about the complaint made to the police, the compromise reached and the setting up of separate family for the accused and D1. They have further stated that on the day of occurrence, they have heard the alarm raised by the deceased and immediately, when they went to the house of the accused, the accused was found fleeing away from the scene of occurrence with a 'Koduwal'. They have further stated that when they entered into the house, they found both D1 and D2 lying in a pool of blood with injuries. Both of them were taken to the hospital, where, the child was declared dead at Polur Government Hospital and D2, after first aid treatment at Polur Hospital, while she was taken to the Government Medical College and Hospital, Vellore, breathed her last. P.W.2 has further stated that thereafter, he went to the police station and informed about the death of D1 also. P.Ws.5 and 7 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.6 has stated that on 10.11.2005, at 10.30 p.m., when he was at his house, he heard the alarm from the house of the deceased. When he rushed to the house of the deceased, P.Ws.2 to 4 had already arrived to the house of the deceased. He also found both D1 and D2 lying

in a pool of blood with injuries. Then, he assisted P.Ws.2 to 4 to take both of them to the hospital. P.W.8 has spoken about the confession given by the accused, at the police station. But, no discovery of any fact was made out of the same. P.W.9 has not stated anything incriminating against the accused. P.W.10 has spoken about the fact that he examined D1, at the Government Hospital at Polur, at 11.45 p.m. on 10.11.2005. P.W.11 has spoken about the post-mortem conducted on the bodies of both the deceased and his final opinion regarding the cause of death. P.W.12 is a Photographer, who has spoken about the photographs taken by him, at the place of occurrence. P.Ws.13, 14 and 16 are Police Constables, who had carried either the death bodies to the post-mortem or the First Information Report to the Court. P.W.15 has spoken about the registration of the case on the complaint of P.W.1. P.W.17, the learned Judicial Magistrate has stated that the accused was produced before him for recording judicial confession, but the accused was not inclined to confess. P.Ws.18 and 19 have spoken about the investigation done and the final report filed against the accused.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness on his side. His defence was a total denial. Having considered all the above, the trial Court convicted the accused, as detailed in the first paragraph of this judgement. That is how he is before this Court with this criminal appeal.

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

6. This is a case based on circumstantial evidence. The first and foremost circumstance relied on by the prosecution is that the accused and D1 were living at the house of Mrs.Parimala, on rental basis. D2, the child was with them. On the day of occurrence, the accused was there in the house along with D1 and D2.

7. The prosecution, in our considered view, has established the motive. It is in evidence that the accused had developed suspicion that D1 was having illicit affair with one Mr.Karthik. This was the cause for the complaint made by D1 to the police. In the police station, a compromise was reached and one of the promises of the compromise was that the accused and D1 should live by setting up a separate family. That is how, one week prior to the occurrence, D1 and the deceased commenced their life at the house of Mrs.Parimala, i.e. the place of occurrence. There is no dispute about this fact. We hold that this fact has been clearly established by the prosecution. Similarly, the motive, in our considered

view, has also been established by the oral evidences of P.Ws.2 to 4. The same is also corroborated by the confession made by the accused to P.W.1.

8. On the day of occurrence, P.Ws.2 to 4, who were in their house, heard the commotion from the house of the deceased. Therefore, according to them, they rushed to the house of the deceased. At that time, they found the accused running out of the house with M.O.1, Koduval, which was stained with blood. There were also blood stains on the clothe of the accused. There is no reason to reject the evidences of P.Ws.2 to 4 in this regard. The conduct of the accused in fleeing away from the scene of occurrence, that too, with the Koduval (M.O.1) with blood stains and blood stained clothe, is certainly an incriminating circumstance against the accused. In our considered view this circumstance has been clearly established by the prosecution.

9. P.Ws.2 to 4 immediately rushed into the house and found both D1 and D2 lying in a pool of blood with injuries. They rushed them to the Government Hospital at Polur, where, D2 was declared dead. P.W.10, had treated D1 for injuries. Thereafter, she was taken to the Government Medical College and Hospital, Vellore and on her way, D1 also breathed her last. The Doctor, who conducted autopsy, has stated that both the deceased had died due to shock and haemorrhage, due to the injuries found on their respective bodies. Thus, the prosecution has clearly established that both the deaths were due to homicidal violence.

10. When P.Ws.2 to 4 had rushed D1 and D2 to the hospital, the accused, who fled away from the place of occurrence, had gone to the office of P.W.1, at 11.15 p.m. P.W.1, the Village Administrative Officer, has stated that the accused appeared before him with M.O.1, Koduval, which was stained with blood. He has also stated that there were blood stains on his clothe. The accused gave a voluntary confession and it was reduced into writing under Ex.P.1. In that confession, the accused has clearly confessed to his guilt that it was he who cut D1 with Koduval and it was he who dashed D2 against the wall and caused their deaths.

11. The learned counsel for the appellant would submit that at 11.15 p.m., in normal course, the office of the Village Administrative Officer would not have been kept open and therefore, the story that the accused had gone to the office of P.W.1 at that odd hours to make a confession, is unbelievable. But, we are not persuaded by the said argument, because, there was no question raised to P.W.1, when he was examined, as to what was the need or necessity for his visit to his office at 11.15 p.m., on that day. It cannot be presumed, under all circumstances, that the Village

Administrative Officer would not have been in office at 11.00 p.m. Might be, to attend some of his official works, P.W.1 would have been stayed in the office. Therefore, this argument, without there being any appropriate question raised to P.W.1, calling upon his explanation, deserves only to be rejected. Thus, we do not find any reason to doubt the veracity of the evidence of P.W.1. The learned counsel submitted that this extra judicial confession cannot be sufficient to convict the accused. In this case, as we have already pointed out, the said extra judicial confession is duly corroborated by the other circumstances, namely, the accused was found fleeing away from the scene of occurrence with M.O.1-Koduval with blood stains and blood stained clothe. The chemical analysis report revealed that there were human blood stains on the koduval and the clothes of the accused. P.W.6, is an independent witness. He has stated that when he rushed to the house of the deceased, on hearing the alarm raised, he found P.Ws.2 to 4 had already arrived there. Then, he helped P.Ws.2 to 4 to take D1 and D2 to the hospital. He is an independent witness. His evidence duly corroborates the evidences of P.Ws.2 to 4, which in turn duly corroborates the extra judicial confession given by the accused to P.W.1.

12. It is too well settled that an extra judicial confession, when it inspires the confidence of the Court, by itself would be sufficient to convict the accused, even in the absence of corroboration from any other independent source. But in this case, as we have already pointed out, there is sufficient corroboration, from other sources like the evidences of P.Ws.2 to 4 and P.W.6. The medical evidence also duly corroborates the extra judicial confession as well as the evidences of P.Ws.2 to 4. Thus, the prosecution has clearly established that it was this accused, who cut D1 and caused her death and it was this accused, who dashed D2, against the wall and caused his death.

13. The learned counsel for the appellant would submit that even assuming that the accused had caused the death of D1 and D2, the act of the accused would not amount to murder and it would amount only to culpable homicide not amounting to murder. In this regard, the learned counsel would rely on the contents of Ex.P1, the extra judicial confession. In that confession, the accused has stated that on the day of occurrence, he wanted his wife, namely, D1, to have sex with him. But, she refused to have sex with him, citing that it would affect the health of the child. He has further stated that he took it a genuine refusal by D1. Then, D1 wanted him to go and purchase banana. Accordingly, he went out to the bazaar. It is his further confession that at 10.30 p.m. when he returned to his house, he found the paramour of D1, Mr.Karthik, going out from his house. According to the confession, this provoked him. He rushed into the house and

questioned D1 as to why Karthik had entered into the house. He further told her that she had already refused to have sex with him citing the health of the child; whereas, she had sex with Karthik, by conveniently sending him out to the bazaar. The deceased told that Karthik did not come to her house at all. Since the accused had seen physically Karthik leaving the house, he got wild and he was provoked by the above circumstance and out of the same only, he took out M.O.1, which was in the house and attacked D1. Relying on this part of the confession, the learned counsel would submit that the act of the accused would squarely fall within the first exception to Section 300 of the Indian Penal Code.

14. So far as the act of the accused in causing the death of D1 is concerned, we have no doubt in our mind that the act of the accused would fall within the first exception to Section 300 of the Indian Penal Code. Since the accused had seen Karthik leaving the house and since the deceased had used certain words, disputing the claim of the accused, the accused would have been provoked. In our considered view that provocation, which emerged from D1, was so grave enough to make the accused to deprive him of the power of self-control. Therefore, so far as the act of the accused in causing the death of D1 is concerned, it would not amount to murder. The same would be only culpable homicide not amounting to murder, for which he is liable to be punished only for offence under Section 304(1) of the Indian Penal Code, as his act would also fall within the first limb of Section 300 of the Indian Penal Code.

15. Now, turning to the act of the accused in causing the death of D2, the learned counsel would submit that here again, the said act of the accused would squarely fall within the first exception to Section 300 of the Indian Penal Code. But, we are not persuaded by the said argument. As per first exception to Section 300 of the Indian Penal Code, culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The essential ingredient of this exception is that the grave and sudden provocation should have been caused by the deceased or the death of anybody else should have been caused by the accused either by mistake or accident. Here in this case, so far as D1 is concerned, since she caused grave and sudden provocation and since her death was caused by the accused whilst the accused was deprived of the power of self-control, we have already concluded that his act would squarely fall within the first exception to section 300 of the Indian Penal Code. But so far as D2 is concerned, D2, a child, aged hardly three months, would not have provoked the accused in any manner. Thus, there was no grave and sudden provocation

caused by D2. Further, the death of D2 was not caused by the accused either by mistake or by accident, as dealt with in exception one to Section 300 of the Indian Penal Code. Thus, in our considered view, the act of the accused in causing the death of D2 would certainly not fall within the first exception to Section 300 of the Indian Penal Code.

16. The learned counsel next contended that the act of the accused in causing the death of D2 would squarely fall within the fourth exception to Section 300 of the Indian Penal Code. Here again, we are not persuaded by the said argument. Under exception four, culpable homicide is not murder, if it is committed, without pre-meditation, in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a crucial or unusual manner. Here in this case, there was no sudden fight and there was no sudden quarrel. Therefore, the act of the accused would not fall within the ambit of Exception four to Section 300 of the Indian Penal Code also. Thus, the act of the accused in causing the death of D2 would fall squarely within the first limb of Section 300 of the Indian Penal Code and the same would not fall under any of the exceptions to Section 300 of the Indian Penal Code. Therefore, so far as the death of D2 is concerned, the appellant is liable to be punished only for offence under Section 302 of the Indian Penal Code.

17. Now turning to the quantum of punishment for the offence under Section 304 (1) of the Indian Penal Code, in causing the death of D1, in our considered view, sentencing the accused to undergo imprisonment for ten years and to pay a fine of Rs.5000/-, in default, to undergo rigorous imprisonment for six months, would meet the ends of justice. So far as the offence under Section 302 of the Indian Penal Code, in causing the death of D2 is concerned, the sentence of imprisonment for life and fine of Rs.5000/-, in default, rigorous imprisonment for six months, deserve to be confirmed.

18. In the result, the appeal is partly allowed in the following terms:

(i) The conviction and sentence imposed on the appellant, for the offence under Section 302 of the Indian Penal Code, for having caused the death of D1-Mrs.Mehala, is set aside and instead, he is convicted under Section 304(1) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5000/-, in default, to undergo rigorous imprisonment for six months.

(ii) The conviction and sentence imposed on the appellant, for the offence under Section 302 of the Indian Penal Code, for having committed the murder of D2, Yuvaraj, is

concerned, the appeal is dismissed and the conviction and sentence imposed by the trial Court are confirmed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The Sessions Judge,
Thiruvannamalai.
- 2.The Inspector of Police,
Polur Police Station,
Tiruvannamalai District.
(Crime No.1347 of 2005)
- 3.The Superintendent,
Central Prison,
Vellore.
- 4.The District Collector/
District Magistrate,
Thiruvannamalai District.
- 5.The Judicial Magistrate,
Thiruvannamalai.
- 6.Do- Through The Chief Judicial Magistrate,
Thiruvannamalai.
- 7.The Principal District Judge,
Thiruvannamalai.
- 8.The Director General of Police,
Mylapore, Chennai 04.
- 9.The Section Officer,
Criminal Section (Records),
High Court, Madras.
- 10.The Public Prosecutor,
High Court, Madras.

Cr1.A.No.412 of 2013

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