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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.80/2012

Suresh

... Appellant/Sole Accused

Versus

The State represented by
The Inspector of Police
Avinashi Police Station
Avinashi, Coimbatore District.

..Respondent/Complainant

Appeal filed under section 374[2] Cr.P.C., against the judgment passed in SC.No.181/2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court, No.V, Coimbatore at Tirupur dated 28.02.2011.

For Appellant : Mr.Philip Ravindran Jesudoss
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.181/2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.5, Coimbatore at Tirupur. He stood charged for the offence u/s.302 IPC and vide judgment dated 28.02.2011, the Trial Court convicted him for the said offence and sentenced him to undergo imprisonment for life and no fine amount was imposed. 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 Selvi. She was hardly aged about 21 years at the time of her death. P.W.7 is the father of the deceased. P.W.7 and his family members



including the deceased were residing in a house owned by P.W.3, as tenants. For quite some time, the deceased was working in a private printing press. The accused, hailing from Trichy District, was also, for some time, working in the same press. In the course of time, the accused expressed his love for her and he has desired to marry her. This came to the knowledge of P.W.7 and other family members and they warned the deceased not to have any such love affair with the accused and to stop talking to him. Accordingly, the deceased stopped talking to the accused and she also stopped going for the work to the said printing press. Thereafter, the deceased joined a private concern known as "Avinashi Indane Gas Company". Everyday, she used to go for work from her house to the said place by walk.

[b] On 13.05.2008, at about 08.00 hours, the deceased went out of her house and she was proceeding on walk to her work spot. At that time, the accused intercepted her and wanted her to respond to his love and to give consent for marriage. The deceased did not agree for the same. The accused was already having an aruval in his possession. Suddenly, he took out the aruval from the hide out and started cutting the deceased indiscriminately. P.Ws.1 to 5, who are the neighbours and who were also present at the scene of crime, witnessed the entire occurrence. Even before they could prevent the accused from further cutting the deceased, the accused finished the task and ran away from the scene of occurrence.

[c] P.W.2 and others immediately arranged for an Ambulance and took the deceased to the Government Hospital, at Avinashi. P.W.8 - Dr.Srividhya, attached to the said hospital at the relevant point of time, examined the deceased at 08.55 hours on 13.05.2008. On examination, she found the deceased already dead. P.W.8 made entries in the Accident Register [Ex.P.4], stating that the deceased was alleged to have been stabbed by her lover by an aruval. She further stated that the deceased was brought dead at 08.55 a.m. on 13.05.2008. P.W.8 also gave intimation to the police and kept the dead body in the Mortuary.

[d] Thereafter, P.W.1 went to Avinashi Police Station, which is at a distance of about half a kilometre and made a complaint under Ex.P.1. P.W.11, the then Sub-Inspector of Police received the said complaint and registered a case in Cr.No.296/2008 at 09.30 hours on 13.05.2008 for the offence u/s.302 IPC. Ex.P.8 is the printed FIR. He forwarded the complaint and FIR to the jurisdictional Magistrate Court, which was received by the learned Judicial Magistrate concerned at 11.00 hours on the same day.

[e] P.W.17, the then Inspector of Police attached to Avinashi Police Station, 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.13] showing the place of occurrence, in the presence of P.W.6 [Saravanan] and another witness. He also recovered aruval [M.O.1], a Quartz wrist watch [M.O.2], a pair of chappals [M.O.3], blood stained earth [M.O.4], sample earth [M.O.4] under the cover of Mahazar, in the presence of the same witnesses. Thereafter, he went to the hospital and conducted inquest on the body of the deceased from 11.30 hours and 14.30 hours on 13.05.2008 in the presence of the Panchayatdars and P.Ws.1 to 4 and 7 and prepared Ex.P.14-Inquest Report. Then he sent the body of the deceased for postmortem.

[f] P.W.9, Dr.Jayasingh, the then Head of Forensic Science Department attached to the Government Hospital, Avinashi, conducted the autopsy on the body of the deceased on 14.05.2008 at 11.20 hours. He found the following injuries:-

"Antemortem injuries:-

[1] A transversely oblique cut injury 5x3 cms cavity deep noted on the upper part of the left side chest 2 cm lateral to mid line and 7 cm above the left nipple. On dissection, the wound passes downwards and medially cutting the underlying tissues, nerves, greater vessels, [subclavian artery] and fully cutting the underlying clavicle and entered into left pleural cavity. Left pleural cavity contains about 200 ml fluid blood with clot. The inner end of the wound is blunt and margin clean cut.

[2] A transversely oblique cut injury 4x2cmxbone deep noted on top of left shoulder 2 cm above and lateral to the wound No.1 and 6cm medial to acromian process. On dissection, the wound passes downwards and laterally cutting the underlying tissues, nerves, vessels and the underlying shoulder joint. The inner end of the wound is blunt, and margins clean cut.

[3] A vertically oblique cut injury 5x2 cm x bone deep noted on the right parietal region 1 cm lateral to mid line. On dissection, the wound passes downwards and cutting the underlying scalp and partially cutting the underlying skull.

[4] A vertically oblique cut injury 4x1cmxbrain deep noted on the left parietal region 0.5 cm lateral to mid line. On dissection, the wound passes downwards and cutting the underlying scalp, fully cutting the underlying skull and piercing the underlying



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dura and brain tissue measuring 2x1x2cm in depth. Sub-dural and sub arachnoid hemorrhage noted on both cerebral hemispheres. The posterior end of the wound is blunt, and margins clean cut.

[5] A vertically oblique cut injury 4x2cmxskin deep noted on mid chin.

[6] A vertically oblique cut injury 3x1cmxskin deep noted on left temporal region.

[7] A transversely oblique cut injury 3x0.5cmxskin deep noted on the lateral aspect of left side chest 4 cm below to left side nipple. The tailing of the wound is towards midline.

[8] A transversely oblique stab injury 5x3 cm x cavity deep noted on the left abdomen, 4cm lateral to umbilicus. On dissection, the wound passes downwards and medially and entered into the peritoneal cavity. Peritoneal cavity contains 300 ml of fluid blood with clot. The inner end of the wound is blunt and margins clean cut.

[9] A transverse cut injury 5x2xmuscle deep noted on the back of right forearm, 6 cm above to wrist.

[10] A transverse cut injury 4x1xmuscle deep noted on the lateral aspect of right forearm, 3cm above to wrist.

[11] A transverse cut injury 4x1.5 x muscle deep noted on the inner aspect of left forearm 8 cm above to wrist.

[12] A transversely oblique cut injury 2x1 x muscle deep noted on the inner aspect of base of left little finger.

Other findings:-

- Right pleural cavity -empty
- Lungs-cut section-pale
- Heart-all chambers contain few cc of fluid blood. Coronaries patent.
- Hyoid bone-intact
- Stomach contains 200 ml of partially digested food particles, no specific smell and mucosa - pale.



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- Small intestine:- contains 20 ml of bile stained fluid, no specific smell mucosa pale.
- Liver, Spleen, Kidney and brain cut section- pale.
- Urinary Bladder-empty
- Uterus normal size cut section empty."

Ex.P.6 is the Postmortem Certificate. He opined that the injuries found on the deceased would have been caused by a weapon like aruval. He further opined that the death was due to shock and hemorrhage due to multiple injuries sustained by her.

[g] Continuing the investigation, P.W.17 arrested the accused on 14.05.2008 at 17.00 hours near the Stanley Hospital at the New Bus Stand, Avinashi, in the presence of P.W.12 and another witness. On such arrest, the accused came forward to give a voluntary statement, in which, he disclosed the place where he had hidden the blood stained shirt [M.O.13] and in pursuance of the same, the accused took the police and the witnesses to the Old Bus Stand, at Avinashi and from a bridge and produced M.O.13, which was recovered under the Mahazar. On returning to the police station, P.W.17 forwarded the accused to Court for judicial remand and the material objects under Form 95 for chemical examination. The Chemical Analysis Report [Ex.P.15] revealed that human blood stains of "A" group was found in the material objects, including the bill hook and the shirt recovered from the accused. The further investigation was taken up by Mr.Mohanraj, [P.W.18], the then Inspector of Police of the Avinashi Police Station. He examined the witnesses, viz., P.Ws.1 to 5 and others and recorded their statements. He also made a request to the learned Principal Sessions Judge, Coimbatore to record the statements of the witnesses P.Ws.1 to 5 u/s.164 Cr.P.C and on receipt of permission from the said Court, the statements of P.Ws.1 to 5 were recorded u/s.164 Cr.P.C., before the learned Judicial Magistrate, Mettupalayam. On receipt of the chemical analysis report and on completion of 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 18 witnesses were examined, 16 documents and 14 material objects were also marked.

[i] Out of the said witnesses, P.Ws.1 to 5, who are the eyewitnesses to the occurrence, have vividly spoken about the entire occurrence. P.W.6 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. He has stated that he arrived at the scene of occurrence on hearing about the same and during that time, the Inspector of Police [P.W.17] prepared the Observation Mahazar,



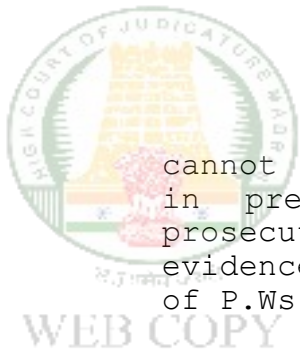
the Rough Sketch and also recovered the material objects from the scene of crime. P.W.7, the father of the deceased, has spoken about the love expressed by the accused to the deceased and the connected facts. He had also stated that on the day of occurrence, he heard about the occurrence and rushed to the place of occurrence. P.W.8 [Dr.Srividhya] has stated that on 13.05.2008 at about 08.55 hours, she examined the deceased on being produced by P.W.2 and she had further stated that the deceased was brought dead. She also made entries in the Accident Register to that effect and kept the body in the mortuary. P.W.9 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.10 is the Police Constable who took the dead body for postmortem. P.W.11 has spoken about the registration of the case on the complaint of P.W.1. P.W.12 has spoken about the arrest of the accused on 14.05.2008 at 17.00 hours by P.W.17 and the recovery of the blood stained shirt at his instance. P.W.13 has spoken about the photographs taken by him at the place of occurrence on the request made by P.W.17. P.W.14 has spoken about certain hearsay informations and thus, his evidence is of no use to the prosecution. P.W.15, the then learned Judicial Magistrate, has spoken about the statements of the witnesses, P.Ws.1 to 5, recorded u/s.164 Cr.P.C. P.W.16 is the employer of the accused and he had stated that the deceased and the accused were found together on few occasions, indicating that they were lovers. P.Ws.17 and 18 have spoken about the investigation done by them and 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 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 presence of P.Ws.1 to 5 is highly doubtful and they should not be believed. In order to substantiate the said argument, the learned counsel submitted that none of these witnesses had made any effort to save the deceased and that they did not even gave a chase to the accused. This, according to him, would show that their conduct is highly unnatural and therefore, they



cannot be believed. He further submitted that there is a delay in preferring the FIR which also creates doubt in the prosecution case. Learned counsel has taken us through the evidence of all the witnesses, more particularly, the evidences of P.Ws.1 to 5, to substantiate his argument.

7 Per contra, the learned Additional Public Prosecutor would oppose to this appeal stoutly. He would submit that the presence of P.Ws.1 to 5 was quite natural and there was not even any animosity attributed to them so as to doubt their veracity. Further, it is submitted that the evidence of P.Ws.1 to 5 is so cogent, which cannot be doubted at all. Learned Additional Public Prosecutor would submit that the medical evidence duly corroborates the eyewitness account. He further submits that the recovery of the blood stained shirt from the accused, which contains "A" group blood stains, would further add to the strength of the case of the prosecution. Thus, according to him, insofar as the motive is concerned, P.W.7-father of the deceased has spoken about the same and having considered all the above, the Trial Court has convicted and sentenced the accused rightly and he would submit that the said well considered Judgment of the Trial Court needs no interference at the hands of this Court.

8 We have considered the rival submissions.

9 As we have already pointed out, the deceased was hardly 21 years of age at the time of occurrence and there is no dispute that for quite some time, the deceased and the accused were working in a private printing press and during such time, the accused has expressed his love for the deceased and his desire to marry her. This has been spoken to by P.W.7, the father of the deceased. The evidence of P.W.16 would also go to corroborate the same. It is in the evidence of P.W.7 that the so-called love expressed by the accused was not to the liking of the family members of the deceased and therefore, they stopped her from going for the job in the printing press. Thereafter, the deceased was working in yet another concern. These facts cannot be disputed at all.

10 Now, turning to the occurrence, at about 08.00 hours on 13.05.2008, the deceased was just proceeding towards the work spot from her house. At that time, the accused emerged there and he wanted her to respond to his love and also agree for the marriage. The deceased was resisting and she did not express anything positive. The accused shouted at her that he would not allow her to live if she was not willing to marry him. So shouting, he took out the aruval which was already kept hidden in his dress and cut her indiscriminately. This has been witnessed by P.Ws.1 to 5. Though it is the argument of the learned Counsel for the appellant that these witnesses would



not have been present at all at the time of occurrence, we do not find any force in the said argument at all. Their presence is quite natural because their houses are situated just by the side of the occurrence spot and the occurrence has taken place in the middle of the road. Further, as rightly pointed out by the learned Additional Public Prosecutor, these witnesses had no axe to grind against the accused at all. They are independent witnesses. The conduct of these witnesses is also quite natural.

11 Learned counsel for the appellant would submit that P.Ws.1 to 5 did not make any attempt to prevent the deceased from the cuts being made or to chase the accused. This, according to the learned counsel, is quite an unnatural conduct. But, we do not feel so. When a murderous attack was being made on an harmless girl on the road with so much of anger and force, nobody would have dared to go near because in the event they had gone near the deceased, there was a likelihood of them being cut by the accused. Therefore, the conduct of these witnesses, viz., P.Ws.1 to 5, in not making an attempt to prevent the accused from being cutting the deceased, is quite natural, casting no doubt about their presence in the scene of occurrence. Similarly, their failure to chase the accused, also cannot be a ground to reject their veracity. Thus, we hold that from out of the evidence of P.Ws.1 to 5, it has been clearly established that it was this accused who has inflicted cut injuries on the deceased indiscriminately on the main road. P.W.2 had also taken the deceased immediately to the hospital and at 08.55 hours, the deceased was declared "brought dead" by P.W.8. P.W.9, the doctor who conducted autopsy, has opined that the death was due to multiple injuries found on the body of the deceased. It was further opined by him, that the said injuries would have been caused by a weapon by M.O.1-aruvai. All these evidences would clearly establish that it was this accused who caused the death of the deceased. This is again fortified by the recovery of the blood stained shirt from him.

12 Having come to the said conclusion, now, we have to see as to what was the offence that the accused had committed. Learned Counsel for the appellant would submit that the offence committed by the appellant/accused would not fall u/s.302 IPC and would fall u/s.304 IPC. According to him, the deceased provoked him at the time of occurrence and he had caused the death of the deceased and thus, his act would fall within Exception I to section 300 IPC. But, we are not persuaded by the said argument. It is not as though the accused was not armed with any weapon. It is the positive case of the prosecution and the same has also been proved that the accused was keeping the aruvai within his dress by hiding the same. The very fact that the accused has gone to the spot with such a weapon, would clearly indicate and prove his intention.



Absolutely, there is no evidence that the deceased provoked him. Because, the deceased had not agreed to marry him and because she did not respond to his love, the accused had preplanned to cause the death of the deceased and that is how, he had gone to the place of occurrence with aruval and cut the deceased indiscriminately. The number of injuries, the weapon used, all would go to prove the intention of the accused. Thus, we hold that the act of the accused would squarely fall within the first limb of section 300 IPC and the same would not fall under any of the exceptions to section 300 IPC. Further, there is absolutely no evidence that the deceased provoked the accused ; instead, it is in the evidence that the accused came to the place of occurrence with the weapon and attacked the deceased. Thus, we hold that the act of the accused is punishable u/s.302 IPC. Therefore, we find no merit in this appeal.

13 In the result, the criminal appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant for the offence u/s.302 IPC by the Trial Court in SC.No.181/2010 dated 28.02.2011 are hereby confirmed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

- 1.The Additional District and Sessions Judge,
Fast Track Court, No.V, Coimbatore at Tirupur.
- 2.The Inspector of Police
Avinashi Police Station
Avinashi, Coimbatore District.
- 3.The Judicial Magistrate
Avinashi.
- 4.The Public Prosecutor
High Court, Chennai.
- 5.The Superintendent Central Prison
Tiruchirapalli

Cr1.A.No.80/2012

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