

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

and

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.477 of 2013

Periyasamy
Appellant/Accused

- Vs -

State rep by
The Inspector of Police,
Kottur Police Station,
Coimbatore District.
(Cr.No.277 of 2010)
Respondent/Complainant

Prayer:- Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Principal District and Sessions Judge, Coimbatore in S.C.No.247 of 2012 dated 12.06.2013.

For Appellants : Mr.P.Kalimuthu

For Respondent : Mr.M.Maharaja
Additional Public

Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.247 of 2012 on the file of the learned Principal District and Sessions Judge, Coimbatore division, Coimbatore. He stood charged for offence under Section 302 I.P.C. By judgment dated 12.06.2013, the trial Court convicted him under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and pay a fine of Rs.10,000/- and in default to undergo rigorous imprisonment for three months. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

2.1. The deceased in this case was one Mrs.Kuppammal.

The accused is her husband. The marriage between them was held

25 years prior to the occurrence. After the marriage, they were residing in the village known as Kottua Uaikamanthai. After sometime of the marriage, the accused found the deceased and one Chinnappan, the uncle of the deceased, lying together in a compromising position at his house. On seeking them together, the accused reprimanded them and warned them suitably. Thereafter, the deceased gave birth to a female child. For sometime, the accused believed that there was no illicit intimacy thereafter. But, he later came to know that they continued to have illicit intimacy. This made the accused to take liquor. Frequently, there arose quarrels between the accused and the deceased on account of the said illicit intimacy. But the deceased did not mend her ways.

2.2. On 07.07.2010, at about 08.00 p.m. the accused returned to his house. But the deceased was not there. The deceased came late by about 11.00 p.m. The accused enquired as to where the deceased had gone all along. The deceased, in a casual manner, replied that she had gone with Mr.Chinnappan and had sex with him. This infuriated the accused and this resulted in a quarrel. In the said quarrel, it is alleged that at 11.00 p.m. the accused repeatedly fisted the deceased with hands on her chest and other parts of the body. Then, he took out the metal spoon (dhosa stick) and attacked her on her chest and then he took out a stem (petiole) of a coconut leaf and hit against her vagina. The deceased died instantaneously. For the whole night, he remained in the house.

2.3. The next day morning, at 06.45 a.m. he went to the office of P.W.1 at Ramanamudali Puthur. P.W.1 was the Village Administrative Officer of the said village and P.W.2 was the Village Assistant. On appearing before them, the accused voluntarily gave a confession. P.W.1, reduced the same into writing. Then, he prepared a special report and along with the said extra judicial confession (Ex.P1) and the Special Report (Ex.P2), he took the accused to Kottur Police Station and produced him before P.W.22, the Sub Inspector of Police along with Exs.P1 and P2.

2.4. P.W.22, registered a case in Crime No.277 of 2010 for offence under Section 302 I.P.C. against the accused. Ex.P14 is the F.I.R. He forwarded all the above documents including Ex.P.14 to the Court which were received by the learned Magistrate at 11.50 a.m. on 08.07.2010.

2.5. The case was taken up for investigation by P.W.23 the Inspector of Police. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.6 and another witness. He recovered an empty match box, five beedi buds and five burnt match sticks from the place of occurrence. Between 02.15 p.m. to 06.00 p.m. he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.6. P.W.18 conducted autopsy on the body of the deceased on 08.07.2010 at 03.45 p.m. He found the following injuries on the body of the deceased:

"External injuries: (1) 4 x 6 cm contusion over centre of forehead (2) 8 x 2 cm laceration over right lower jaw (3) 2 x 2 cm contusion - right cheek (4) 2 x 2 cm laceration - right side of neck (5) 2 x 3 cm laceration over right side lower lip (6) 2 x 3 cm abrasion over left side cheek (7) 2 x 2 cm contusion over left side neck (8) Contusion all over seen over both breast (9) 2 x 2 cm contusion over left chest (10) Laceration 5 x 1 cm right chest (11) 4 x 2 cm contusion - right wrist (12) 2 x 1 cm abrasion over left wrist (13) 20 x 10 cm contusion - right thigh (14) bleeding from vagina with multiple laceration (15) Abrasion 3 x 2 cm right thigh (16) Abrasion 2 x 2 cm lower abdomen (17) Laceration 2 x 2 cm right elbow on internal examination; abdomen uniform, No free fluid pleural, peritoneum cavity. No broken ribs. Lungs - liver, spleen, kidney normal e/s congested. Heart normal chambers empty. Stomach contains 100 ml of brownish green watery fluid. Intestines distended with gas. Uterus atrophied. Hyoid bone intact. Contusion 6 x 8 cm over occipital region. No broken skull, membrane intact, Brain normal, white soft weighing 1 kg. Spinal cord intact."

Ex.P9 is the postmortem certificate and Ex.P10 is his final opinion regarding the cause of death. According to him, the injuries on the dead body of the deceased could have been caused by a weapon life M.O.3 (Stainless steel thosa stick) and M.O.4 (Coconut mattai) and his final opinion is that the deceased had died due to shock and hemorrhage due to the injuries between 12 to 18 hours prior to autopsy.

2.7. P.W.23 arrested the accused at 02.45 p.m. in the presence of P.W.9 and another witness. On such arrest, he made a voluntary confession. Out of which, M.Os.3 and 4 were recovered. Then, he forwarded the accused to the Court for judicial remand and he recovered the clothes from the body of the deceased and forwarded all the material objects to Court. On his request, the material objects were sent for chemical examination. The report revealed that there were human bloodstains found on the stick and skirt. The investigation was thereafter taken over by P.W.24. He collected all the materials and on completing the investigation, he laid the chargesheet against the accused.

2.8. Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 24 witnesses were examined, 30 documents and 8 material objects were marked.

2.9. Out of the said witnesses, P.Ws.1 and 2 were the Village Administrative Officer and the Village Assistant respectively. They have spoken about the extra judicial confession made by the accused. P.W.3, the daughter of the deceased has also stated about the frequent quarrels between the accused and the deceased. She has stated that she was married already and she was residing with her husband and she came to the place of occurrence on hearing about the same. P.W.4 is the brother of the deceased. He has also spoken about the frequent quarrels on account of the suspicion over the fidelity of the deceased. P.W.5 has stated that on the day of occurrence, in the night, the deceased came and told him that the accused was quarreling with her. He told her that he would come and resolve the dispute on the next day morning. Then, he came to know on the next day that the deceased had already been killed. P.W.6 has spoken about the preparation of the observation mahazar and the rough sketch and recovery of the material objects from the place of occurrence by P.W.23. P.Ws.7 and 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9 has spoken about the arrest of the accused and consequential recovery of M.Os.3 and 4 from near the place of occurrence. P.W.10 is the uncle of the accused with whom it is alleged that the deceased had illicit intimacy. He has stated that he was treating the deceased as his daughter and he never had any illicit intimacy with her at all. He has further stated that however the accused had suspicion that he was having illicit intimacy with the deceased. P.Ws.11 to 17 are the neighbours and they have stated that at 11.00 p.m. there was a quarrel going on between the accused and the deceased in their house and they believed that it was a routine quarrel. But on the next day they heard that the deceased was done to death. P.W.18 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.19 is an official from the Electricity Board and he has stated that there was no electricity failure on the day of occurrence at the place of occurrence. P.W.20 is the police photographer and he has spoken about the photographs taken by him at the place of occurrence of the dead body from various angles. P.W.21 is the constable who carried the dead body of the deceased to the hospital for postmortem. P.W.22 has stated that he registered a case on the accused being produced along with Exs.P1 and P2. P.Ws.23 and 24 have spoken about the investigation done by them.

2.10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor mark any document on his side. Having considered all the above, the trial Court convicted him under Section 302 I.P.C. and that is how, he is before this Court with this appeal.

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

4. This is a case based on circumstantial evidence. P.W.3 the daughter of the deceased has stated that the accused had suspicion over the fidelity of the deceased. She has further stated that the accused used to quarrel with the deceased frequently on account of the same. The suspicion is that the deceased has illicit intimacy with the uncle of the accused viz., P.W.10. P.W.10 has also stated that though he was treating the deceased as his daughter, the accused had suspicion that he had illicit intimacy with the deceased. P.Ws.11 to 17, the neighbours have also stated that there used to be frequent quarrels between the accused and the deceased on account of the same. Thus, the prosecution has clearly established that the accused had suspicion over the fidelity of the deceased and on account of the same there were frequent quarrels between them.

5. On 07.07.2010 at around 11.00 a.m., according to P.Ws.11 to 17, the neighbours have stated that they have heard a quarrel going on in the house of the deceased between the deceased and the accused. They thought that it was a routine quarrel and therefore they did not go to the house of the deceased. These neighbours, who are independent witnesses have got no axe to grind against the accused. From these evidence, it has been clearly established that the accused and the deceased alone were in their house and quarrel was going on between them.

6. On the next day morning, at 06.45 a.m. the accused alone had gone to the office of P.W.1, where P.Ws.1 and 2 were present and in their presence, the accused gave a voluntary confession. The learned counsel for the appellant would submit that the said extra judicial confession cannot be believed as the accused would not have chosen a total stranger to confess. Though attractive, this argument cannot be accepted. The alleged occurrence had taken place at 11.00 p.m. on 07.07.2010. The whole night, the accused was in the house and he would have thought of going to the Village Administrative Officer on the hope that he would save him from the possible harassment by the police. It is out of the said belief, he had gone to the Village Administrative Officer. This explanation is found in the confession itself. Therefore, though P.W.1 did not have acquaintance with the

accused, on that score, the extra judicial confession given by the accused to P.Ws.1 and 2 cannot be disbelieved as they are independent witnesses. Therefore, we hold that the said Ex.P1 extra judicial confession was made voluntarily by the accused to P.Ws.1 and 2. In the said confession, the accused has stated that at 08.00 p.m. on 07.07.2010, when he returned home, the deceased was not available. She came very late and when he questioned her, she told him that she had gone out with Mr.Chinnappan and had sex with him. This statement of the deceased infuriated him, which resulted in a quarrel and at the end of the quarrel, he attacked the deceased both with hands, with metal spoon (Dhosa stick) and with petiole of a coconut leaf. The medical evidence duly corroborate the same and the dead body was found in the house of the deceased on 08.07.2010 in the morning. We are conscious of the legal position that unless the extra judicial confession which is retracted, inspires, the fullest confidence of the Court, the Court cannot act upon the same solely and if there are doubts regarding the same, the Court will look for corroboration from independent sources. Here, in this case, we have no doubt about the extra judicial confession, which in our considered view, is true and apart from that, the same is duly corroborated by the other circumstances which we have dealt with already. Thus, from the extra judicial confession and from all other circumstance dealt with herein above, we hold that it was this accused who caused the death of the deceased.

7. Now, the question is what is the offence that the accused had committed by his act. As we have already pointed out, what actually transpired at the place of occurrence could be found only in the extra judicial confession as there is no other direct eye witness account. The neighbours have stated that the quarrel had taken place between the accused and the deceased. In the confession, the accused had explained the reason for the quarrel. When the deceased came very late in the night to his house, the accused questioned her as to where she had gone. She replied in a casual manner that she had gone with Mr.Chinnappan and had sex with him. This was the provocation for him to attack the deceased. This provocation is not only sudden but also grave, which, in our considered view would have made him to loss his mental balance. Driven by the said sudden and grave provocation, the accused had attacked the deceased with the metal spoon (Dhosa stick) and the petiole of a coconut leaf found lying there in the house. Thus, in our considered view, the act of the accused would squarely fall within the first exception to Section 300 I.P.C. Since the same would fall under the third limb of Section 300 I.P.C., he is liable to be punished for offence under Section 304(i) I.P.C. for having caused the death of the deceased.

8. Now, turning to the quantum of sentence, the appellant at the time of occurrence was aged about 54 years. He is a poor man and he has got no bad antecedents. The occurrence

was not pre-mediated and it was out of sudden and grave provocation. The death of the deceased was caused by the appellant by attacking her with hands and metal spoon (Dhosa stick) and the petiole of a coconut leaf. After the occurrence also, the appellant has not shown any deviance from the law. There are lot of chances for reformation. Having regard to the mitigating as well as the aggravating circumstances, we are of the view that sentencing the appellant to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- in default to under go rigorous imprisonment for four weeks would meet the ends of justice.

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

(i) The conviction and sentence imposed on the appellant by the trial Court under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and he is sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for four weeks.

(ii) It is directed that the period of detention already undergone by the accused shall be set off under Section 428 Cr.P.C.

(iii) The fine amount now imposed shall be adjusted from the fine amount already paid, if any, and the excess, if any, shall be refunded to the appellant.

Sd/-

Assistant Registrar(CS II)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

ap/kk

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To

1. The Principal District and Sessions Judge,
Coimbatore.
2. The Inspector of Police,
Kottur Police Station,
Coimbatore District.
3. The Public Prosecutor,
Madras High Court.
4. The District Collector, Coimbatore District.
5. The Director General Police, Mylapore, Chennai-4.
6. The Judicial Magistrate NO.II, Pollachi.
7. The Chief Judicial Magistrate, Coimbatore.
8. The Superintendent, Central Prison, Coimbatore.

NR(CO)
EU 23.7.16

CrI.A.No.477 of 2013



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