

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30..03.2016

CORAM

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

Criminal Appeal No.447 of 2013

Thangavel

... Appellant/Single Accused

-Versus-

State Rep. by
The Inspector of Police,
Magudanchavadi Police Station,
Salem District.
[Crime No.652 of 2009]

... Respondent/Complainant

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned I Additional Sessions Judge, Salem, in S.C.No.62 of 2010 dated 26.04.2011.

For Appellant : Ms.A.Veeramarthini
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.62 of 2010 on the file of the learned I Additional Sessions Judge, Salem. He stood charged for offences under Sections 302, 307 of IPC [Two counts] and 309 of IPC. The trial court, by judgement dated 26.04.2011, convicted the appellant under all three charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months for offence under Section 302 of IPC; to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- for each count in default to undergo rigorous imprisonment for six months for offence under Section 307 of IPC [Two counts] ; and to undergo rigorous imprisonment for one year for offence under Section 309 of IPC. Challenging the said convictions and sentences, the sole accused is now before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The accused was a resident of Thadikaranoor Village in Sankari Taluk of Salem District. The deceased Mrs.Chinnaponnu was his wife. P.Ws.2 and 3 are his daughters aged 19 years and 14 years respectively and they were studying in a local high school. The deceased and P.Ws.2 & 3 were also residing with the accused under a common roof at Thadikaranoor. The accused used to demand money from the deceased for the purpose of drinking liquor. It was resisted by the deceased. This resulted in frequent quarrels between the accused and the deceased.

3. On 02.11.2009, P.Ws.2 and 3 had gone to their school. Thus, at 10.00 a.m. on the day of occurrence, the deceased and the accused alone were in the house. The accused demanded money from the deceased for drinking liquor. The deceased refused. This resulted in a quarrel. It is alleged that infuriated over the same the accused took out a wooden spatula [kali kattai] which is used as a kitchen material and attacked the deceased on her head. The deceased fell down. Then, he hit her head against the wall. The deceased sustained fracture on the skull and died instantaneously. It is further alleged that the accused concealed the dead body in a room in the house.

4. Thereafter, it is alleged that the accused prepared a non-vegetarian food. He purchased organophosphorus which is a pesticide from the shop of P.W.9. Then, he mixed the said poisonous substance in the non-vegetarian food prepared by him. By about 05.00 p.m. when P.Ws.2 and 3 returned from the school, the accused served the poison mixed non-vegetarian food to P.Ws.2 and 3 with a view to kill them. P.W.2 after taking a small quantity food felt an unusual taste. Therefore, she asked the accused as to why the food was in a different taste. The accused told her that since he had mistakenly added more salt, he added sugar to bring back the taste and that was the reason why, it was in a different taste. P.W.3 enquired as to where her mother was. The accused told that the deceased had gone to the house of One Mrs.Dhanalakshmi for getting money. P.Ws.2 and 3 told the accused that they would wait till the arrival of their mother for taking food. But, the accused insisted them to eat. P.W.2 managed to avoid taking the food. P.W.3 was insisted by the accused to eat the poison mixed food. When she refused, the accused started beating P.W.3. Therefore, P.Ws.2 and 3 rushed out of the house, walked a distance of few kilo meters and reached the house of P.W.8, who is their close relative. After P.Ws.2 and 3 had left, the accused ate the poison mixed food and he became unconscious.

5. P.W.8 informed P.W.1, the father of the deceased, about the above occurrence and that P.Ws.2 and 3 had come to his house. Since P.Ws.2 and 3 had told P.W.8 that their mother was

not seen, P.W.8 informed the same also to P.W.1. Then, P.W.1 and the other family members namely, P.Ws.2 to 4 also went to Thadikaranoor Village from Kalparapatti Village. When they reached the house of the deceased, the main door of the house was kept open. When they entered into the house, they found the deceased lying dead. There were injuries on her neck and other parts of the body. The accused was lying on the cot. He was unconscious. One Mr.Chinnapaiyan, the brother of the accused, who came to the house, immediately took the accused to the Government Mohan Kumaramangalam Medical College Hospital, Salem, where P.W.6 Dr.Arunachalam, examined the accused. At that time, the accused was unconscious. Mr.Chinnapaiyan told the Doctor that on 02.11.2009 at about 08.00 p.m., the accused was found lying unconscious after having consumed poison. P.W.6 admitted the accused as inpatient. During the course of treatment, it came to light that the accused had consumed organophosphorus which is a pesticide. Ex.P.7 is the accident register.

6. P.W.1 after having seen the deceased dead, went to Magudanchavadi Police Station and at 06.30 a.m. on 03.11.2009, he preferred a complaint under Ex.P.1. P.W.12, the then Sub Inspector of Police, on receipt of the same, registered a case in crime No.452 of 2009 under Section 174 of Cr.P.C. "suspicious death" and under Section 307 of IPC against the accused. Ex.P.13 is the FIR. Then, he forwarded both the complaint and the FIR to the court which were received by the learned jurisdictional Magistrate at 09.10 a.m. on 03.11.2009. PW.12, thereafter, handed over the case diary to the Inspector of Police for investigation.

7. P.W.13, the Inspector of Police, took up the case for investigation. At 08.30 a.m. he visited the place of occurrence and prepared an observation mahazar (Ex.P3) and a rough sketch (Ex.P14) in the presence of P.W.5 and another witness. He recovered a pesticide bottle with the label "Xylo-5" [M.O.7], some cooked chicken pieces [M.O.3], a part of cooked rice with chicken gravy [M.O.8] and an aluminum plate [M.O.6] from the place of occurrence for the purpose of chemical examination under a mahazar (Ex.P4). Then, he conducted inquest on the body of the deceased between 10.00 a.m. and 01.00 p.m. on 03.11.2009 in the presence of panchayatars. Ex.P.15 is the inquest report. Thereafter, P.W.13 forwarded the body of the deceased for postmortem to the Government MKMC Hospital at Salem for postmortem through P.W.11, a Head Constable.

8. P.W.7 Dr.N.Sangeetha, conducted autopsy on the body of the deceased at 03.45 p.m. on 03.11.2009. She noticed the following antemortem injuries on the body of the deceased:-

"Ante mortem findings:-

(1) A dark reddish brown abrasion over left side of neck measuring 3 x 2 cm

(2) Contusion over the scalp over left fronto temporal region with swelling measuring 4 x 2 cm.

Other Findings:

Face swollen. Abdomen slightly distended.

Greenish discolour over the right iliac fossa.

O/D: Scalp - Contusion above mentioned as subscapular contusion over the left fronto temporal region measuring 4 x 2 x 0.5 cm with left temporalis muscle contusion 2 x 2 x 0.5 cm.

Cranial vault - A linear fracture over left temporal bone measuring 6.5 cm length.

Brain - sub arachnoid haemorrhage and sub dural haemorrhage seen over both cerebral hemisphere. C/S soft tissues. Bone of the skull intact.

O/D Neck: contusion over the soft tissue of the left side of neck measuring 3 x 2 x 0.5 cm and contusion over lateral wall of upper part of trachea measuring 2 x 1 x 0.5 cm. Hyoid bone - Intact.

O/D Thorax: No rib fractures. Heart - Normal in size.

Flabby, Valves are normal. Chambers contain fluid blood. Coronaries patent.

Lungs- Greasy to touch. C/S Decomposing

O/D Abdomen: Stomach contain 250 grams of partially digested cooked rice particles with no specific odour.

Muscles C/S Decomposing. Liver, spleen and Kidneys greasy to touch. C/S Decomposing. Bladder - Empty. Uterus normal

in size. Cavity - Empty. Pelvis and spinal column - Intact."

Ex.P.9 is the postmortem certificate. She gave opinion that the deceased died due to shock and haemorrhage due to head injury.

9. In the course of investigation, P.W.13, the investigating officer, recovered blood stained clothes from the body of the deceased and forwarded the same also to the court with a request to send them for chemical examination. The accused, on his own, went out of the hospital. Then, he appeared before P.W.5 at his office at 10.00 a.m. on 10.11.2009. On such appearance, the accused expressed his desire to give a voluntary confession. P.W.5 recorded verbatim the confession of the accused. Ex.P.5 is the extra judicial confession of the accused recorded at 10.00 a.m. He prepared a special report under Ex.P.6 and then took up the accused and produced him before P.W.13 at the police station along with the extra judicial confession (Ex.P.5) and the special report (Ex.P.6). Then, P.W.13 had summoned P.W.10 and another witness to the police station. He effected the arrest of the accused and on such arrest, the accused gave a voluntary confession in the presence of the said witnesses. In the said confession, he disclosed the place where he had hidden the wooden spatula and a letter left behind by him. In pursuance of the said disclosure statement, he took the police and the witnesses to the said place of hide out at 03.30 p.m. and produced the wooden spatula and the letter. He recovered the same under a mahazar. Then, he forwarded the accused to the court for judicial remand and handed over the material objects also to the court. He made a request to the court to forward the same for chemical examination. The chemical analysis report revealed that the material objects recovered from the the place of occurrence including the food and cooked chicken pieces contain insecticide known as Lambdacyhalothrin. On completing the investigation, P.W.13 laid charge sheet against the accused.

10. Based on the above materials, the trial court framed charges under Sections 302, 307 [Two counts] and 309 of IPC against the accused. He denied the same. In order to prove the same, on the side of the prosecution, as many as 13 witnesses were examined, 19 documents and 8 materials objects were marked.

11. Out of the said witnesses, P.W.1 is the father-in-law of the accused. He has stated about the frequent quarrels between the accused and the deceased. He has further stated that on receiving the intimation from P.W.8, on the day of occurrence, when he went to the house of the deceased, he found the deceased lying dead and the accused lying unconscious. P.Ws.2 and 3 have stated that when they returned from the school their mother was not found in the house and when they enquired,

the accused told that the deceased had gone to the house of Mrs.Dhanalakshmi to get money. They have also stated about the fact that the accused had cooked non-vegetarian food and he forced them to eat the same. They have also narrated that they did not take the food as it gave a different taste. They have further stated that when the accused started attacking them, they went to the house of P.W.8 and informed him about the occurrence. P.W.4 is the relative of the deceased. He accompanied P.W.1 to the house of the deceased.

12. P.W.5 has spoken about the preparation of the observation mahazar and the rough sketch and the recovery of material objects from the place of occurrence and also about the extra judicial confession made by the accused to him. P.W.6-Doctor has spoken about the treatment given to the accused. P.W.7-Doctor has spoken about the autopsy conducted on the body of the deceased and her final opinion regarding the cause of death. According to her, the death was due to head injury. P.W.8, the relative of the deceased has spoken about the fact that P.Ws.2 and 3 had come to his house and informed about the occurrence. P.W.9 has turned hostile and he has not supported the case of the prosecution in any manner.

13. P.W.10 has spoken about the disclosure statement made by the accused and the consequential recovery of the wooden spatula and the letter from the possession of the accused. P.W.11, the Head Constable has spoken about the fact that he carried the dead body, as directed by the investigating officer, to the hospital for postmortem. P.W.12 has spoken about the registration of the case and handing over of the case diary to the Inspector of Police. P.W.13 has spoken about the entire investigation done by him and the filing of final report against the accused.

14. 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.

15. Having considered all the above, the trial court convicted the accused under all three charges 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.

16. We have heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent/State and also perused the records carefully.

17. This is a case based on circumstantial evidence. There is no controversy that in the house of the deceased, the accused, the deceased and P.Ws.2 and 3 alone were residing. From the evidence of P.Ws.1 to 3 it has been clearly established that the accused used to quarrel with the deceased frequently demanding money from her. It has also been established that on the date of occurrence, P.Ws.2 and 3 had left for school and thus, the accused and the deceased alone were available at the house. According to P.Ws.2 and 3, when they returned from the school at 05.00 p.m. their mother was not seen. When they enquired the accused, the accused told them that the deceased had gone to the house of Mrs.Dhanalakshmi to get money. Thus, the fact remains that before 05.00 p.m. on the day of occurrence, the deceased had been done to death and the body was concealed. According to the medical evidence, the death of the deceased was due to head injury.

18. The prosecution mainly relies on the extra judicial confession made by the accused to P.W.5 to prove the guilt of the accused. The learned counsel for the appellant/accused would submit that the said extra judicial confession cannot be true and there was no reason for the accused to repose confidence in P.W.5, who was a stranger to him.

19. We find some force in the said argument. But, on that score, we cannot reject the extra judicial confession in toto. For his own reason, the accused had gone to P.W.5 and had confessed. Such reason for choosing P.W.5 to confess is also found in the confession itself. Though the said extra judicial confession is a weak piece of evidence by its very nature, it is not as if the trial court has acted upon the said confession alone to convict the accused. It is only a piece of evidence available in favour of the prosecution. According to the said confession, the accused had confessed that he attacked the deceased with the wooden spatula. This has been duly corroborated by the medical evidence. Thus, the statement made by the accused to P.Ws.2 and 3 that the deceased had gone to the house of Mrs.Dhanalakshmi to get money was obviously false. Having concealed the dead body of the deceased, he had made such a false statement to P.Ws.2 and 3. This itself is a strong incriminating circumstance against the accused to prove his guilty mind.

20. As we have already pointed out, after P.Ws.2 and 3 had gone to the school, the accused and the deceased alone were available in the house. Therefore, it is the burden of the accused to explain as to what had happened to the deceased who was lastly in his company. For a moment, we do not expect the accused to prove the said fact beyond reasonable doubt. It is enough that if the accused is able to explain his defence by preponderance of probabilities. But, in this case, the accused

has got no explanation at all as to how the deceased had sustained injury when she was very much in his company. This is yet another strong circumstance which duly corroborates the extra judicial confession made by the accused. The false statement made by the accused to P.Ws.2 and 3 that the deceased had gone to the house of Mrs.Dhanalakshmi to get money also is yet another very strong circumstance which lends assurance to the contents of the extra judicial confession. From these evidences, in our considered view, the prosecution has clearly established that it was this accused who attacked the deceased, caused injury on her head and eventually caused her death. Thus, he has committed an offence punishable under Section 302 of IPC.

21. After P.Ws.2 and 3 had come to the house from school, the accused had served the non vegetarian food which he had already prepared. Immediately after tasting a small quantity of food, P.W.2 asked him as to why it gave a different taste. The accused immediately told her that since by mistake he had added more salt and in order to restore back the original taste he added some sugar and that was the reason it turned in different taste. This was absolutely a false statement inasmuch as the chemical analysis report has not revealed the presence of sugar in the food. The chemical analysis report had clearly stated that the cooked chicken pieces and the food contained only pesticide which is a poisonous substance. The accused forced P.Ws.2 and 3 to eat. P.W.2 after having tasted small quantity, refused to take further. But, the accused insisted both P.Ws.2 and 3 to take the food. When they told him that they would wait for their mother to come, he did not have patient. He started beating P.W.3 so as to force her to take the poison mixed food. It was only to escape from the clutches of the accused, P.Ws.2 and 3 had gone to the house of P.W.8. The said act of the accused in forcing P.Ws.2 and 3 to take the poison mixed food was only an attempt to cause the deaths of P.Ws.2 and 3. We do not find any reason to reject the evidence of P.Ws.2 and 3, after all, they are the children of the accused and they had no axe to grind against the accused. Therefore, from the evidence of P.Ws.2 and 3 and from the chemical analysis report, the prosecution has clearly proved that the accused attempted to cause the deaths of P.Ws.2 and 3 by forcing them to eat the poison mixed food. Thus in our considered view the prosecution has clearly established that the accused had committed an offence punishable under Section 307 of IPC [Two counts].

22. Having managed to escape from the clutches of the accused, P.Ws.2 and 3 had reached the house of P.W.8 and informed him about the occurrence. P.W.8 is the close relative of the deceased. P.Ws.2 and 3 told P.W.8 that their mother was not seen in the house and the accused forced them to eat the food which gave some different taste and odour. P.W.8, in turn, informed P.W.1. Thereafter, P.Ws.1 to 3 rushed to the

house of the deceased where they found the deceased lying dead and the accused lying in unconscious state. The brother of the accused by name Mr.Chinnapaiyan took him to the hospital. The brother of the accused has not been examined by the prosecution. He had, at the earliest point of time, informed the Doctor that the deceased had consumed poison. P.W.6-Dr.Arunachalam has deposed that the accused was treated for having consumed organophosphorus which is an insecticide. The evidence of the doctor is duly corroborated by the poison in the container which was recovered from the place of occurrence and subjected to chemical examination. The chemical analysis report revealed that it contained insecticide. It is not as if the accused had taken poison without knowing that he was taking poison. It was he who cooked the food, purchased the poison from the shop of P.W.9 and mixed the same in the food prepared by him in an attempt to commit suicide after having made an attempt to give the same to his children P.Ws.2 and 3. Though P.W.9 has turned hostile, it is immaterial. Thus, we find that the prosecution has clearly proved that the accused had made an attempt to commit suicide thereby committed an offence punishable under Section 309 of IPC.

23. P.W.1 had gone to the police station after seeing the deceased dead and made the complaint upon which the present case was registered. There was no delay in preferring the complaint and also in forwarding the complaint and the FIR to the court. During the course of investigation, the accused had voluntarily gave confession to P.W.5, the Village Administrative Officer which contains the statement in respect of causing the death of the deceased, the attempt made by the accused to cause the death of P.Ws.2 and 3 and his attempt to commit suicide. On the disclosure statement made by him only the wooden spatula which was used to attack the deceased was recovered at the instance of the accused. This also lends assurance to the case of the prosecution.

24. The learned counsel for the appellant is not able to point out any infirmity in the case of the prosecution so as to doubt the same. We therefore conclude that the prosecution has clearly proved the charges against the accused beyond any pale of doubt and the trial court was right in convicting and sentencing the accused under Section 302 of IPC for having committed the murder of his wife; under Section 307 of IPC [Two counts] for having attempted to commit the murder of P.Ws.2 and 3; and under Section 309 of IPC for having attempted to commit suicide by taking poisonous food.

25. Now, turning to the quantum of punishments, the trial court itself has imposed only minimum punishments which do not

require any interference at the hands of this court. Thus, we do not find any merit at all in this appeal and the same is liable to be dismissed.

26. In the result, the criminal appeal is dismissed. The convictions and the sentences imposed on the appellant/accused by the trial court are confirmed.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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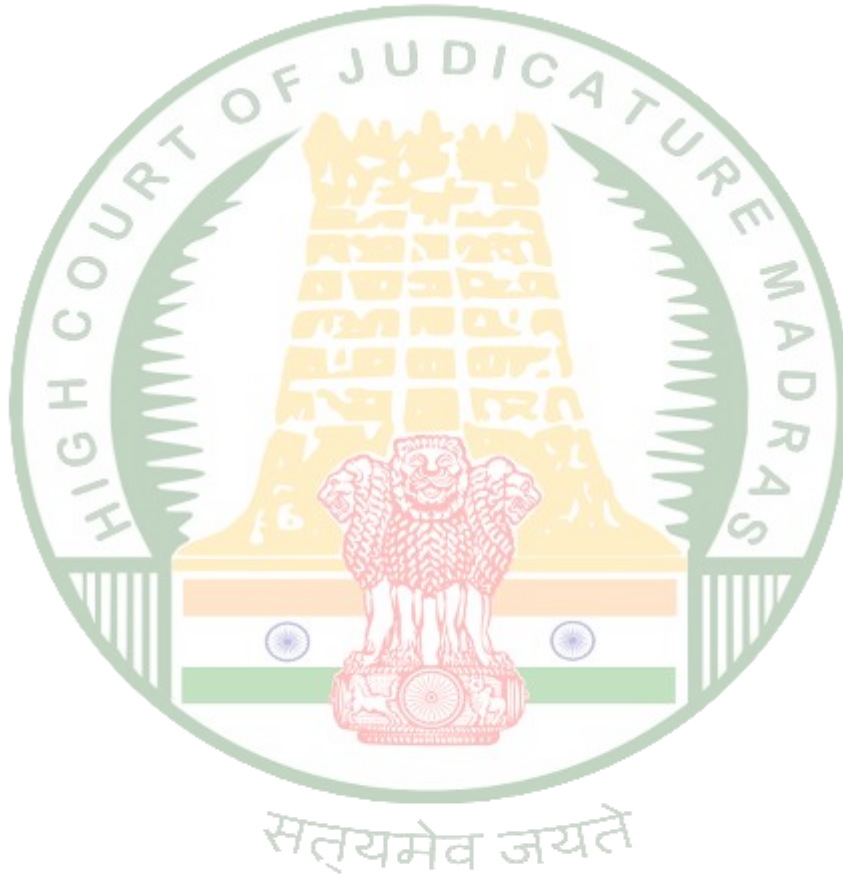
- 1.The I Additional Sessions Judge,
Salem,
Salem District.
- 2.The Superintendent,
Central Prison,
Salem.
- 3.The Judicial Magistrate No.2,
Sankari, Salem District.
- 4.Through The Chief Judicial Magistrate,
Salem.
- 5.The District Collector,
Salem.
- 6.The Director General of Police,
Mylapore.
- 7.The Inspector of Police,
Magudanchavadi P.S.,
Salem District.

8.The Public Prosecutor,
High Court,
Madras.

+lcc to Mr.A.Veeramarthini, Advocate Sr.19827

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