

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.11.2016

(Judgment reserved on 18.09.2016)

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Cr1.A.No.590 of 2013

and

M.P.No.2 of 2013

Neelakandan

..Appellant

Vs.

State Rep by

Inspector of Police,

Mangalampettai Police Station,

Cuddalore District.

(Crime No.176 of 2011)

...Respondent

Prayer: Criminal Appeal filed under Section 374(3) of Cr.P.C. against the order of conviction and sentence passed by the District and Session Judge, Mahila Court, Cuddalore in S.C.No.115 of 2012, dated 30.05.2013

For Appellant : Mr.R.Ganesh

For Respondent : Mr.P.Govindarajan
(Additional Public Prosecutor)

J U D G M E N T

The present Criminal Appeal is filed against the Judgment dated 30.05.2013 in S.C.No.115 of 2012 passed by the learned District and Sessions Judge, Mahila Court, Cuddalore.

2. The appellant is the accused in S.C.No.115 of 2012 on the file of the District and Sessions Judge, Mahila Court, Cuddalore. The trial Court had framed the charges against the accused for the offences under Section 498 A and 302 of IPC. By judgment dated 30.05.2013, the trial Court convicted him under Section 304(ii) of IPC and sentenced him to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year Rigorous Imprisonment. Challenging the said conviction and sentence passed by the trial Court, the appellant is before this Court with the present Criminal Appeal.

3. The case of the prosecution, in brief are as follows:

The marriage between the accused and the deceased was solemnized before nine years and after marriage, they were residing at South Street, Pallipattu, Cuddalore. After few months of their marriage, the appellant/accused went to foreign country for his job. Out of their wedlock, they have a son by name Alex Pandian, who is aged about seven years. Before ten months of the date of the alleged occurrence, the accused came to his native place. Suspecting the fidelity, there was frequent quarrel between the accused and the deceased. On 22.06.2011 in the morning, the deceased was lying in her house, as she was not well. When the accused came to the house at about 08.00 p.m., the deceased was sleeping without preparing the dinner and when the same was questioned by the accused, there arose a quarrel between them and in the said melee, the accused beat her and hit her head against the wall and on seeing this his son, left the house and informed the same to his grandmother/PW.1, relative/P.W.3 and the neighbours/PW.4. On hearing the same, they immediately rushed to the house of the deceased where they found the deceased lying unconsciously on the floor. The deceased was taken to the Government Hospital, Virudhachalam, where she was declared as dead. Thereafter, on 23.06.2011 at 01.30 p.m., the mother of the deceased went to the Police Station and gave a complaint. In the meanwhile, the accused went to the Village Administrative Officer and gave a confession statement, which was recorded by the Village Administrative Officer and thereafter, the said VAO informed the same to the Mangalampettai Police Station. Then the Inspector of Police, Mangalampettai Police Station came to his office, where he handed over the confession statement of the accused along with special report preferred by him. Thereafter, they took the accused to the Police Station. The Special Sub Inspector of Police, Mangalampettai Police Station (PW.8), on receiving the complaint, registered FIR (Ex.P1) in Crime No.176 of 2011 for the offences under Sections 498 A and 302 of IPC and the same was forwarded to the Inspector of the District Land Grabbing Cell. On receipt of the same, the case was taken for further investigation and in turn, forwarded the same to the Court. It was received by the learned Judicial Magistrate No.2, Virudhachalam at 07.15 a.m., on 23.06.2011. The investigation was taken by P.W.9-Inspector of Police and he proceeded to the place of occurrence and prepared the observation Mahazar and rough sketch in the presence of P.W.6 and another witnesses and went to the Virudhachalam Government Hospital and conducted inquest on the body of the deceased in the presence of the Panchayathars and examined the witnesses and recorded their statements. P.W.2 Dr.Rajasekaran, conducted autopsy on the

body of the deceased on 23.06.2011 between 11.30 a.m and 12.30 p.m and he found three abrasion over the right side of the face each 3x1 cm. Three abrasion over the left side of the face each 3x1 cm. Lacerated injury present over the occipital scalp about 7x5x2 cm. During the course of investigation on 23.06.2011 at about 02.00 p.m., PW.9, having received the special report with the confession statement recorded by the Village Administrative Officer, recovered Material objects under the Mahazar Ex.P10 and arrested the accused in the presence of PW.7-Village Administrative Officer. Then he produced him before the District Sessions Judge, Mahila Court, Cuddalore. and he was remanded to Judicial custody on 21.12.2011 and further the investigation was taken up by P.W.10. He acquired the material records, examined the witness/PW.2 and recorded the statement. Finally, he laid down the charge sheet against the accused for the offences under section 498A and 302 of IPC on 16.03.2012.

4. Based on the above materials, the Trial Court framed the charges against the accused for the offences under Section 498A and 302 of IPC. The accused denied the same. In order to prove the case of the prosecution, witnesses P.W.1 to P.W.10 were examined and Exs.P1 to P13 were exhibited and material objects MO.1 to M.O.10 were marked on the side of the prosecution.

5. Out of the said witnesses, PW.3 and PW.5 are eye witnesses to the occurrence and they have spoken about the occurrence. PW.1 is the mother of the deceased and she has spoken about the motive of the occurrence. PW.4 who is a neighbour has spoken about the presence of the accused at the time of occurrence. PW.6 has spoken about the preparation of the observation Mahazar. PW.2 is the Doctor who conducted autopsy on the body of the deceased, has spoken about the postmortem conducted by him and his final opinion recording the cause of death of the deceased. According to him, the death of the deceased occurred due to over bleedings and head injury sustained by her and due to shock. PW.7-Village Administrative Officer has spoken about the extra judicial confession and arrest of the accused. PW.8-the Special Sub Inspector of Police has spoken about receipt of complaint and registration of FIR. PW.9 and PW.10-Investigation Officers have spoken about the investigation done and final report filed.

6. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C, he denied the same as false. However, neither he chose to examine any witnesses nor to mark any documents in his favour. His defends was a total denial.

7. Having regard to the above facts, the Trial Court acquitted the accused for the offence under Section 498A of IPC and also found him not guilty under Section 302 of IPC. However, the Trial Court had convicted the accused for the offence under Section 304 (ii) of IPC. Aggrieved over the same, the appellant/accused is before this Court.

8. I 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.

9. The learned counsel for the appellant would submit that there are certain contradictions between the witnesses which would make their evidence untenable. Further, he would submit that the allegations made in the complaint was unbelievable. Hence, the accused is entitled to acquittal.

10. The learned Additional Public Prosecutor would oppose the appeal vehemently as PW.1, PW.3 and PW.5 have categorically spoken about the entire occurrence which is duly corroborated by the medical evidence also. According to the learned Additional Public Prosecutor, the conviction of the appellant does not require any interference at the hands of this Court.

11. I have considered the above submissions made by both the counsel and materials available on records. PW.1, is the mother as well as neighbour of the deceased who had stated that there was frequent quarrel between the accused and the deceased. PW.5, the son of the accused and the deceased, has spoken about the entire occurrence and stated that the accused had beaten the deceased on the date of occurrence. PW.3 has spoken that the accused by holding the hair of the head of the deceased, dashed on the wall due to which, the deceased sustained head injury and fell unconsciously near the TV stand. According to PW.2 -Doctor, who conducted postmortem on the body of the deceased, the death had occurred due to head injury which had resulted to over bleedings and shock which was proved by the medical evidence and also duly corroborated by the eye witnesses/PW.3 and P.W.5. The son of the accused had stated that his father bet his mother and after inform the same to PW.1, 3 and 4 and all of them rushed to the place of occurrence. When they entered into the house, the accused was leaving from the house and the deceased was lying on the floor with bleeding due to blood injury. At the time of occurrence, except the accused and the deceased, no one was there in the house.

12. PW.7-Village Administrative Officer has spoken about the extra judicial confession, which also corroborates the evidence of eye witness and medical evidence. From the evidence of PW.3 to PW.5, it is proved that the accused one who had committed the offence. The prosecution had proved its case beyond the reasonable doubt.

13. The learned counsel for the appellant would submit that there was no pre-meditation or intention for the accused to murder his wife but on the sudden provocation due to domestic quarrel, the alleged occurrence had taken place. He would further submit that considering the period of incarceration of the appellant, the appellant may be released and therefore, pleaded before this Court to allow the present appeal.

14. Now, the question is as to what was the offence that the accused had committed by the said act. In this regard, it is relevant to refer the evidence of PW.1 and PW.5. PW.1, who is the mother of the victim has stated that the accused suspecting the fidelity of the deceased. There was frequent quarrel between the accused and the deceased in that way on 22.06.2011 also at about 03.30 p.m., there was a quarrel between accused and the deceased. PW.5, the son of the accused and the deceased has stated that the accused had beaten the deceased on her chest. Immediately, the deceased fell down on the floor. After that the accused further pushed the deceased on the wall. He has stated about the entire occurrence. There is no reason to reject the evidence of PW.5.

15. It shows that there would have been some provocative act on the part of the deceased to lose his mental balance, so as to cause the death of the deceased. Certainly, the accused would not have intended to cause the death of the deceased. Similarly, the occurrence was not out of any pre-meditation. It is out of domestic quarrel, the accused had committed the crime. Thus, in my considered view that the act of the accused would fall within the first exception to section 300 of IPC. Since the act of the accused would fall under the fourth limb of section 300 of IPC and also first exception to section 300 of IPC, I hold that the appellant is liable to be punished under section 304(ii) of IPC and not under section 302 of IPC. The Trial Court has also correctly come to the conclusion and punished the accused only under section 304(ii) of IPC not under section 302 of IPC. However, the prosecution has also not filed any appeal for enhancement of the sentences.

16. The learned counsel for the appellant would further submit that the accused is a poor man and he is the only breadwinner of the family and there is no one to look after his son. Due to sudden provocation without any intention, he committed the offences and sought for lesser punishment. In this regard, it is relevant to refer the evidence of PW.3 and he had stated that immediately after the information of PW.5, he rushed to the place of occurrence. When he entered into the house of the accused, the accused was holding the head of the deceased and dashed against the wall. Since the deceased sustained blood injury, the deceased was taken to the hospital.

17. PW.2, the Doctor who conducted the autopsy on the body of the deceased has opined that cause of the death was due to the head injury and shock. Though there was no intention or pre-meditation but holding the head of the deceased and dashed on the wall, it would be reasonable to infer that he had knowledge that any injury on the vital part of the body of the deceased would cause death. So, he can be convicted under section 304(ii) of IPC. From the evidence of PW.5, the accused had beaten the deceased on her chest even after fell down again he pushed the deceased on wall he had not stopped with that again he held the head of the deceased and dashed against the wall. Therefore, there is no reason to interfere with the conviction and sentence passed by the Trial Court and evidence of PW.5 shows that he is residing with his grandmother PW.1 no mitigating circumstances warranted to reduce the sentence passed by the Trial Court.

18. On considering the entire matter and on perusal of the Trial Court records, I am of the view that the appellant has not made out any grounds for setting aside the conviction and sentence passed by the District and Sessions Judge, Mahila Court, Cuddalore, dated 30.05.2013 in S.C.No.115 of 2012, under Section 304 (ii) of IPC. Accordingly, the present appeal is dismissed. Consequently, connected miscellaneous Petition is closed.

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-Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Mahila Court, District Session Judge,
Cuddalore.

2.The Inspector of Police
Mangalampettai Police station
Cuddalore

3.The Superintendent of Central Prison
Cuddalore

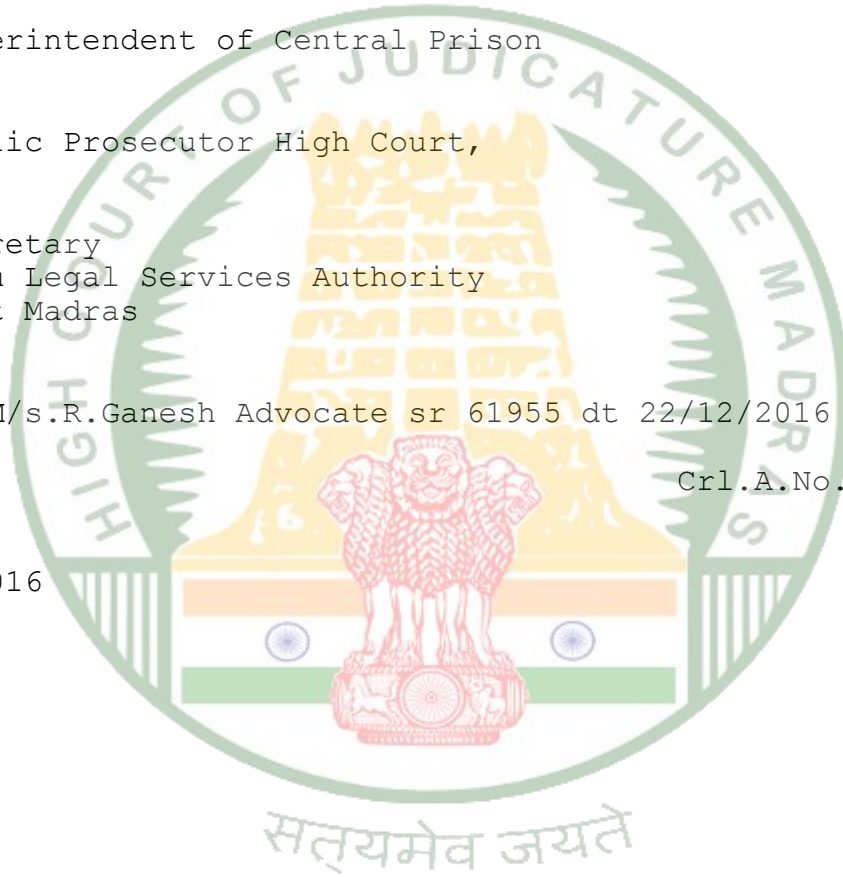
4.The Public Prosecutor High Court,
Madras

5.The Secretary
Tamil Nadu Legal Services Authority
High Court Madras

+1 cc to M/s.R.Ganesh Advocate sr 61955 dt 22/12/2016

Cr1.A.No.590 of 2013

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