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BAIL SLIP

The sole accused Viz., M.Balu was released on bail as per order of this Court dated 22.02.2013 and made in M.P.No.1 of 2013 in CrI.A.No.34 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2016

CORAM:

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

Criminal Appeal No.34 of 2013

M.Babu

... Appellant/Sole
Accused

-Vs-

State rep by
The Inspector of Police
Puduchatram Police Station
Namakkal District.
(Cr.No.212 of 2011)

... Respondent/Complainant

This Criminal Appeal has been preferred against the judgment passed by the Additional Sessions Judge, Namakkal in S.C.No.47 of 2012 by judgment dated 19.12.2012.

For Appellant : Mr.B.Vasudevan

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.47 of 2012 on the file of the learned Additional District and Sessions Judge, Namakkal. He stood charged for offences under Sections 302 and 506(ii) IPC. By judgment dated 19.12.2012, the trial Court convicted him under both 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 years for the offence under Section 302 IPC and to undergo rigorous imprisonment for three years for the offence under Section 506 (ii) IPC. Challenging the said conviction and sentence, the accused/appellant 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 Kavitha. The accused and the deceased had fallen in love and married 11 years before the occurrence. Out of the said wedlock, they got two children aged 9 and 4 years respectively. The accused was working in a private cotton mill known as Jaihind Spinning Mill at Puduchathiram Village. The deceased was going for coolie work. They were living at Devender Colony, Navanee. P.W.1 is the mother of the deceased. She was living along with her husband and others in the opposite house. The accused had, in due course, developed suspicion over the fidelity of the deceased. When the accused questioned the same, there arose frequent quarrel between the accused and the deceased. On many occasions, P.W.1 and her husband had come to the house of the deceased and mediated between them.

[b] 13.04.2011, was election day. The accused, therefore, did not go for work and he remained at his house. The deceased had gone out to cast her vote and then she returned home by about 4.15 p.m. The accused asked her as to why she was behaving in such a manner to bring disrepute to him, by her adulterous life. The deceased retorted calling the accused as impotent. She further scolded him that he was not capable of leading a marital life. She also ridiculed him using abusive language. Provoked by these words of the deceased, the accused took out an koduval which was kept in the house for cutting wood and cut the deceased on her neck. The occurrence was witnessed by P.W.4, who is the sister of the deceased, who stayed along with the deceased. The accused ran away from the scene of occurrence.

[c] P.W.4 raised hue and cry. P.W.1 rushed to the house of the deceased. P.W.6 also came to the house of the deceased. When they entered into the house, they found the deceased lying with cut injuries on her neck and hands. The deceased was dead. Then, P.W.1 went to the police station and made a complaint at 5.00 p.m. on 13.04.2011. P.W.11, the then Special Sub Inspector of Police, on receipt of the said complaint under Ex.P1, registered a case in Cr.No.212 of 2011 under Section 302 IPC. Ex.P19 is the FIR. Then, he forwarded Exs.P1 and P19 to the Court, which were received by the learned Judicial Magistrate at 7.00 a.m. on 14.04.2011.



[d] P.W.13 took up the case for investigation. She proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.5 and another witness. She recovered the blood stained earth and sample earth from the place of occurrence. Then, she conducted inquest on the body of the deceased and prepared Ex.P23, the Inquest Report. She made arrangements to take photographs of the dead body and the place of occurrence. Then, she forwarded the body for post-mortem. P.W.2 conducted autopsy on the body of the deceased on 14.04.2011 at 11.00 a.m. He found the following injuries:

"1. An incised wound 7 x 1 x 1.5 cm on right temporal region at head across the open part of external ear.

2. An incised wound 15 x 1 .5 x 3 cm extending from right zygomatic region running below the right deeper muscles, small blood vessels and nerves.

3. An incised wound 10 x 1.5 x 2 cms below the left ear lobule extending from mastoid region to parietal region.

4. An incised wound involving whole of the right side neck and post aspect of the neck running across the mid line and extending on to the left side of the neck below the level of thyroid cartilage involving all major vessels (jugulars and carotids), nerves and muscles of the neck on right side and trachea, oesophagus and major blood vessels (carotids and jugulars), nerves and most of the neck muscles on left side, only a (connecting the) strip of skin (5 cms) and part of neck muscle (sternomastoid) connecting the neck with throacic region of art. lateral aspect on post shivering spinal cords into two parts cut ends of both ends of trachea, oesophagus, spiral cord are clear cut regular

5. An incised wound 20 x 1 x 1.5 cms on left shoulder and extending on the left scapular region.

6. An incised wound 1 inch about the right elbow joint live, involving whole thickness of the right arm involving muscles, blood vessels, nerves and right humus bone cut into two, only portion of skin and muscle connecting the upper portion with lower portion on the medial side.



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7. An incised wound about 7 x 1 .5 cms on the ulnar side of the right forearm about 4 cms above the left wrist joint, involving muscles of forearm, nerves and blood vessels on ulnar side and ulnar bone if fractured.

8. An incised would 8 x 2 cms exposing metacarpal bones and deeper muscles, tendons on the dorsum of the right hand on radial side.

9. An incised wound on the dorsum of the left hand extends from 3rd web space turns across the dorsum towards the writ and extending into the pulmar aspect and ends at the 3rd web space with loss of thumb, index finger, and middle finger-which was present separately nearby. All cut end margins are regular. Dark, black clotted blood present on the margins."

He opined that the death of the deceased was due to shock and haemorrhage due to the cut injuries found on the body and the said cut injuries could have been caused by a koduval [M.O.1]. Ex.P3 is the Post-mortem Certificate.

[e] During the course of investigation, on 14.04.2011, at 11.15 a.m., P.W.13 arrested the accused, on being produced by P.W.7, the Village Administrative Officer. According to P.W.7, when he was the then Village Administrative Officer of Navanee Village, on 14.04.2011 at 11.00 a.m., the accused appeared before him and wanted to confess. Having been satisfied that the accused had come to make voluntary confession, he recorded his confession verbatim as spoken by him. Ex.P24 is the said extra judicial confession. Then, P.W.7, along with his report, took the accused and produced him before P.W.13 at 11.15 a.m. P.W.13 arrested the accused in the presence of P.W.7 and another witness. On such arrest, he made a voluntary confession, in which he disclosed the place where he had hidden the koduval and a lungi. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the blood stained lungi [M.O.4] and also koduval [M.O.1]. P.W.13 recovered the same under a mahazar.

[f] Then, on returning to the police station, P.W.13 forwarded the accused to Court for judicial remand and handed over the material objects also to the Court. She recovered the blood stained cloth from the body of the deceased and forwarded the same also to the Court. On her request, the learned Judicial Magistrate recorded the statement of P.W.4. As requested by her, the material objects were sent for chemical examination, which revealed that there were human blood stains



on the material objects, including the koduval. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 26 documents were exhibited, besides 8 material objects.

4. Out of the said witnesses, P.W.1 - the mother of the deceased has stated that on hearing the hue and cry raised by P.W.4, when she went to the house of the deceased, she found the deceased lying with injuries in her neck and hands. When she reached the house of the deceased, according to her, the accused was found fleeing away from the scene of occurrence. P.W.4 is an eye witness who has stated about the entire occurrence. P.W.5 has spoken about the Observation Mahazar and Rough Sketch prepared at the place of occurrence and also recovery of blood stained earth and sample earth from the place of occurrence. P.W.6 has stated that on hearing about the occurrence, he rushed to the house of the deceased and found the dead body. P.W.2 has spoken about the post-mortem conducted on the body of the deceased. P.W.3, Assistant Director, Regional Forensic Science Laboratory has spoken about the blood stains found on the material objects. P.W.7 has spoken about the extra judicial confession made by the accused on 11.04.2011 at 10.00 a.m. at his house and also the disclosure statement made by him to P.W.13 and the consequential recovery of M.Os.1 and 4. P.W.8 has spoken about the photographs taken by him at the place of occurrence. P.Ws.9 and 10 - Police Constables have spoken about the FIR taken to the Court and the dead body taken to the hospital respectively. 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 statement of P.W.4 recorded under Section 164 Cr.P.C. P.W.13 has spoken about the investigation done and the Final Report filed by her.

5. 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 he did mark any document in his favour. His defence was a total denial.

6. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused/appellant is before this Court with this appeal.



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

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8. The learned counsel for the appellant would submit that P.W.4 would not have witnessed the occurrence at all. According to him, P.W.4 was residing along with P.W.1 and therefore, her presence at the place of occurrence is highly unbelievable. Though attractive, this argument does not inspire the confidence of this Court. P.W.4 cannot be stated to be a chance witness. After all, she is the sister of the deceased. Her house is situated just opposite to the house of the deceased. She has explained that she has gone to the house of the deceased and from there, she called P.W.1. Thus, the presence of P.W.4 cannot be doubted at all. Further, P.W.4 had no axe to grind against the accused. She has very vividly spoken about the entire occurrence. We do not find any reason to reject the evidence of P.W.4.

9. Apart from that, the prosecution relies on the extra judicial confession given by the accused on 14.04.2011 at 10.00 a.m. to P.W.7, the Village Administrative Officer. The learned counsel would submit that the accused would not have chosen a stranger to make such an extra judicial confession. In our considered view, this argument cannot be accepted, because the accused, for his own reasons, had chosen the Village Administrative Officer to make the extra judicial confession. As a matter of fact, in the extra judicial confession itself, he has explained as to why he had chosen the Village Administrative Officer to confess. The said extra judicial confession contains lot of information about the occurrence. Though P.W.7 has been extensively cross examined by the defence, nothing has been elicited, so as to discredit the said witness.

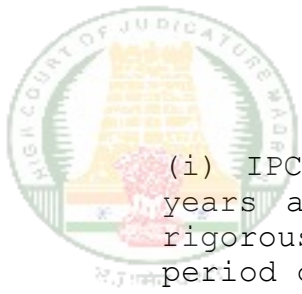
10. It is true that an extra judicial confession, by its very nature, is a weak piece of evidence. In this case, it is not as if the prosecution relies only on the extra judicial confession. The extra judicial confession given to P.W.7 draws corroboration from other sources also. According to P.W.7, along with extra judicial confession, he produced the accused to P.W.13 at 11.15 a.m. On such production, P.W.13 arrested the accused, who gave a voluntary disclosure statement, in which he disclosed the place where he had hidden M.Os.1 and 4. M.Os.1 and 4 were accordingly recovered on being produced by the accused. M.Os.1 and 4 contained human blood. Thus, the recovery of M.Os.1 and 4 also duly corroborates the extra judicial confession. The extra judicial confession in turn corroborates the eye witness account of P.W.4. From these



11. Now, the question is "what was the offence that was committed by the accused by his act?" From the medical evidence and from the fact that fatal injury was found on the neck of the deceased and the fact that the accused had used koduval, it is crystal clear that the act of the accused would fall within the third limb of Section 300 IPC. However, the learned counsel for the appellant would submit that the act of the accused would fall within the first exception to Section 300 IPC. We find force in the said argument.

13. In our considered view, out of the said sudden provocation which emanated from the deceased, the accused had lost control over his mental faculty and had taken the koduval, which was lying there, which was used for cutting firewood and cut the deceased twice. Thus, the act of the accused would squarely fall within the first exception to Section 300 IPC. Therefore, the appellant is liable to be punished only for the offence under Section 304(i) IPC.

15. In the result, the appeal is partly allowed and the conviction and sentence imposed on the appellant for the offence u/s 302 IPC are set aside and instead, he is convicted u/s 304



(i) IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. It is directed that the period of detention already undergone shall be set off.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

gms

To

- 1.The Inspector of Police
Puduchatram Police Station
Namakkal District.
- 2.The Additional Sessions Judge,
Namakkal.
- 3.The Public Prosecutor
High Court, Chennai.
- 4.The Judicial Magistrate No.2,
Namakkal.
- 5.The Superintendent,
Central Prison,
Coimbatore.

+1cc to Mr.B.Vasudevan, Advocate, S.R.No.22653

Cr1.A.No.34 of 2013

JSV(CO)
CA(25/04/2016)