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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17 .11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRIMINAL APPEAL (MD).No. 235 of 2015

Rathakrishnan

: Appellant/Sole Accused

Vs.

State represented by

The Inspector of Police

Veliyanai Police Station

Pasupathipalayam Police Station Circle,

Karur District.

in Crime No.110 / 2005

: Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the Sessions Judge, Karur, in S.C.No.58 of 2006 dated 18.07.2012.

For Appellant : Mr.E.Somasundaram

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

Appeal Reserved on 26.10.2016

Judgment Pronounced on 17.11.2016

Judgment

S.NAGAMUTHU, J.

The appellant is the sole accused in S.C.No.58 of 2006 on the file of the learned Sessions Judge, Karur. He stood charged for offence under Section 302 IPC. By judgment dated 18.07.2012, the trial Court convicted him under section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for six months for the offence under Section 302 IPC. 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:

The deceased in this case was one Mrs.Parvathi. It is alleged that the accused was already married, suppressing the fact that the said marriage was in subsistence, he married the deceased Parvathi. On account of the said marriage, a child was born to them. But, in due course of time, there arose frequent quarrel between the accused and the deceased. Thus, the marital life become strain, however, they manage to live together.



2.1. P.W.5 is the father of the deceased. Though he hails from Sathymangalam Village, he was staying in Hosur on account of his job. The accused had left the deceased in the custody of the mother of P.W.5 and left for Andhra for doing Mosaic work. Since it was not profitable, he returned to Hosur, from where, he took the deceased and the child with him. It is further alleged that the deceased came to the house of P.W.3 at Navaladiyan Nagar in Vellianai. P.W.4 was already known to the accused, as he also used to go for work with him. On 20.07.2005, the accused came to her house with the deceased and their five months old male child. Overnight, they stayed there. P.W.3 and other family members left their house for a Temple festival. Thus, the accused, the deceased and the child alone were left in the house. On 21.07.2005, around 7 p.m., P.W.3 and other family members returned to their house. At that time, they found the deceased lying on a cot. There were bloodstains beneath the cot on the floor. She was found dead. The accused and the child were not available in the house. She informed the Village Administrative Officer about the same.

2.2. P.W.1 - the then Village Administrative Officer, immediately visited the place of occurrence and found the dead body with injuries. Thereafter, he went to the police station and made a complaint at 7.00 p.m. on 21.07.2005. The then Sub Inspector of Police registered a case in Crime No.110/2005 under Section 302 IPC against the accused. Ex.P19 is the FIR.

2.3. P.W.11 - the then Inspector of Police, took up the case for investigation. On 21.07.2005 at 8.15 p.m., he went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of witnesses. He examined many witnesses on the same day. He conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.4. P.W.7 - Dr.Vijayakumar conducted autopsy on the body of the deceased on 23.07.2005 at 11 a.m. He found the following injuries:

1.A lacerated injury over right temporal region 8 cm x 3 cm x bone deep exposing brain, meninges and skull bones.

2.A lacerated injury over occipital region vertically placed 5 cm x 2 cm x bone deep. O/D Extravasation of blood below scalp 50 gm. Fracture right temporal parietal occipital bones. Meninges lacerated over (NC) of the brain. Brain lacerated over temporal and parietal region of right side.

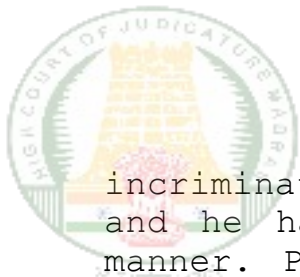
Ex.P6 is the postmortem certificate and Ex.P7 is the Chemical Analysis report. He gave opinion that the death of the deceased was due to shock and hemorrhage due to multiple injuries found on the body of the deceased. He further opined that the death of the deceased could have been caused by a weapon like M.O.6.



2.5. P.W.11 recovered the bloodstained cloth and forwarded the same to the Court. Thereafter, P.W.14 - the Inspector of Police took up the case for investigation. On 26.11.2005, P.W.14 arrested the accused at 11.30 a.m. in the presence of witnesses. On such arrest, he made a voluntary confession, in which, he disclosed the place, where he had hidden an axe. In pursuance of the same, he took the police to the place of hide out and produced M.O.6 - Axe. P.W.14 forwarded the accused for judicial remand and handed over the material objects also to the Court. On completing the investigation, P.W.14 laid chargesheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge under Section 302 IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined, 19 documents and 9 material objects were marked.

4. Out of the said witnesses, P.W.1 is the Village Administrative Officer. He has stated that on the date of occurrence, he was informed by his Assistant that the deceased was found dead at the house of P.W.3 with injuries. He has further stated that he visited the place of occurrence immediately and then made a complaint to the police. He has also prepared an observation mahazar and recovered all material objects in the place of occurrence. P.W.2 has stated that on the previous day of occurrence, the accused and the deceased came and stayed in their house along with the child. P.W.3 is the son of P.W.2. P.Ws.2 and 3 had left the house for a temple festival. On the next day, when they returned, they found the dead body of the deceased inside the house. P.Ws.3 and 4 have not fully supported the case of the prosecution and therefore, they were treated hostile. P.W.5 is the father of the deceased. He has stated only about the relationship between the accused and the deceased and the child. P.W.6 has stated that on 21.07.2005, the accused came to her house and handed over the child and thereafter, he did not return at all. For six months, she was keeping the child waiting for the accused. But, later, she handed over the child to P.Ws.2 and 3. P.W.7 has spoken about the postmortem conducted and final opinion regarding the cause of death. P.W.8 - the Forensic Expert has stated that he examined the material objects and found bloodstains on all the material objects including the Axe recovered. P.W.9 - the Head Clerk of the Judicial Magistrate has stated that he forwarded the material objects to the Forensic Lab for examination as directed by the Magistrate. P.W.10 - a Constable has stated that he took the dead body for postmortem as directed by the Investigating Officer. P.W.11 has spoken about the initial investigation done by him. P.W.12 has not stated anything



incriminating against the accused. P.W.13 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.14 has spoken about the further investigation done and the final report filed.

5. When the above incriminating materials were put to the accused, he denied the same as false. His defence was a total denial. According to him, he was in Andhra Pradesh from where, he was arrested by the police and later on he was falsely implicated in the case. Having considered all the above, the trial Court has convicted him under Section 302 IPC and accordingly, punished him. That is how, he is now before this Court with this appeal.

6. We have heard the learned counsel for the appellant, the learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

7. In this case, the accused was not assisted by any counsel during the trial. He himself cross examined the witnesses and made oral arguments. The learned counsel for the appellant would submit that the accused was not provided legal aid and thus, he was deprived of his valuable right of effective defence as guaranteed under Article 21 of the Constitution of India. But we are not persuaded by the said argument. A perusal of the judgment of the lower Court would go to show that the trial Court offered to provide legal aid by engaging a legal aid counsel to assist the accused to defend him. But the accused bluntly refused. As a matter of fact, a memo filed before the lower Court informing the Court that he would defend himself and he was not in need of any legal assistance by any legal aid counsel. Thus, it is obvious that the accused, though offered for legal aid, refused to take it and did the cross examination on his own. Thus, there is no denial of fair trial to the accused. The accused, during cross examination, has asked only one question to each witness. His tenor of cross examination was to the effect that there was no eye witness to the occurrence. It is true. But, it is not necessary that a crime should be proved only by means of an eye witness account.

8. In this case, the prosecution relies on circumstantial evidence to prove the guilt of the accused. P.W.2 - Mrs.Vellaiyammal has stated that on 20.07.2005, the accused along with the deceased came to her house and stayed. The 5 months old male child was also in their custody. P.Ws.2 and 3 left their house for a temple festival. Next day, ie., on 21.07.2005, in the evening, when they returned, they found the dead body of the deceased. Neither the accused nor the child was available. This, in our considered view, is a very strong



circumstance against the accused. P.W.6 - Mrs.Revathi is a resident of Lalapettai. She has stated that on 21.07.2005, at 6.00 p.m., the accused came to her house and handed over a male child aged 5 months. He requested P.W.6 to keep the child, on the assurance that he would come and take the child back. But for 6 months, the accused did not return as assured. It is not explained to the Court by the accused as to why, he took the child from the house of P.W.2 and handed over the child to P.W.6. This is yet another strong circumstance against the accused. The medical evidence clearly goes to show that the deceased died due to shock and hemorrhage due to multiple injuries found on the body of the deceased. The deceased lastly seen alive by P.Ws.2 and 3 on 20.07.2005 in the evening and she was found dead on 21.07.2005 around 4.00 p.m. Thus, the prosecution has clearly proved that the death of the deceased was caused sometime between the night intervening 20.07.2005 and before 4 p.m. on 21.07.2005.

9. It has been proved that the death of the deceased was homicide. The question is, who caused the death of the deceased. As we have already pointed out, from the evidences of P.Ws.2 and 3 and that of P.W.6, it has been clearly established that it was this accused, who caused the death of the deceased and taken away the child. It is a reliable inference, because, the accused has got no explanation to offer as to why he left the house of P.W.2 and why he took the child from the house of P.W.2 and handed over the child to P.W.6. These strong circumstances, in our considered view, would clinchingly go to prove that it was this accused, who caused the death of the deceased and took away the child.

10. The act of the accused using an Axe and causing the death of the deceased would squarely fall within the first limb of Section 300 IPC. There is no evidence to show that the act of the accused would fall under any one of the exceptions to Section 300 IPC. Therefore, the appellant is liable to be punished only under Section 302 IPC. The trial Court has rightly convicted him under Section 302 IPC and has imposed minimum punishment. Thus, we do not find any reason to interfere with the judgment of the trial Court.

11. In the result, the criminal appeal fails and the same is accordingly, dismissed. The conviction and sentence imposed by the trial Court is hereby confirmed. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

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To

1. The Sessions Judge,
Karur

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2. The Inspector of Police
Veliyanai Police Station
Pasupathipalayam Police Station Circle,
Karur District.

3. The Judicial Magistrate No.II, Karur.

4. The Superintendent, Central Prison, Coimbatore,

5. The Commissioner of Police, Coimbatore.

6. The Director General of Police, Chennai.

7. The District Collector, Coimbatore.

8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
Cr1.A.(MD).No.235 of 2015
17.11.2016

RR

ANR/CK/05.12.2016/6P/9C