



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A[MD].No.263 of 2015

Chairman : Appellant/sole accused

Vs.

The State rep by
The Inspector of Police,
Pappakudi Police Station,
Tirunelveli District,
Crime No.101 of 2012.

: Respondent

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 28.07.2015 made in S.C.No.327 of 2012 on the file of the learned Fourth Additional District Sessions Judge, Tirunelveli.

For Appellant : Mr.S.Durairaj
For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

[JUDGMENT of the Court was delivered by S.NAGAMUTHU, J]

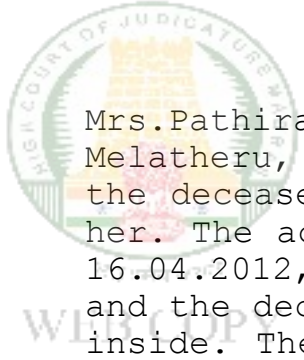
The appellant is the sole accused in S.C.No.327 of 2012, on the file of the learned Fourth Additional District Sessions Judge, Tirunelveli. He stood charged for the offences punishable under Sections 294(b) and 302 of the Indian Penal Code. By Judgment dated 28.07.2015, the Trial Court convicted the accused and sentenced him, as detailed below:-

Section of Law	Sentence	Fine amount
302 IPC	To undergo imprisonment for life.	Rs.5,000/- in default to undergo simple imprisonment for six months.

The Trial Court, however, acquitted the accused from the charge under Section 294(b) of the Indian Penal Code. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

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

The accused, in this case, is the husband of the deceased -



Mrs.Pathirakali. They were residing at Kasinathapuram Village Melatheru, Tirunelveli District. On 15.04.2012, PW-1, the mother of the deceased, had come to the house of the deceased and stayed with her. The accused had gone out and did not return in the evening. On 16.04.2012, around 02.00 AM, the accused returned to his house. PW-1 and the deceased were sleeping in the house by bolting the door from inside. The accused knocked at the door. Awakened by the same, the deceased went near the main door and opened the same. PW-1 was also awakened. On the accused entering into the house, the deceased questioned him as to why he was unnecessarily roaming around late in the night. This resulted in a quarrel. It is stated that suddenly, the accused took out an aruval and cut the deceased indiscriminately. The occurrence was witnessed by PW-1, who raised alarm. On hearing the alarm, the neighbours, namely, PW-3 and one Mr.Sakthivel came to the house of the deceased and they also witnessed the occurrence. The deceased fell down in a pool of blood. The accused went away from the scene of occurrence, taking the aruval in his hands.

2.2. PW-4 is the son of PW-1. On being informed, PW-4 rushed to the house of the deceased. Then, PW-1 and PW-4, with the help of others, took the deceased in an 108 Ambulance to the Government Hospital, Tirunelveli.

2.3. On receiving intimation from the hospital, PW-11, the then Sub-Inspector of Police, went to the Government Hospital at Tirunelveli. Since the deceased was in unconscious state, she recorded the statement of PW-1 and on returning to the Police Station, at 11.30 AM, on 16.04.2012, she registered a case in Crime No.101 of 2012, under Sections 294(b) and 307 of the Indian Penal Code. EX-P1 is the complaint and EX-P8 is the First Information Report. Then, she forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

2.4. Taking up the case for investigation, at 01.00 PM, on 16.04.2012, PW-12 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of the witnesses. He recovered bloodstained earth and sample earth from the place of occurrence. On the same day, at 04.00 PM, he arrested the accused in the presence of the witnesses. On such arrest, he gave a voluntary confession, in which he disclosed the place, where he had hidden the aruval. In pursuance of the same, the accused took the police and the witnesses to the hide out and produced MO-1 - aruval. PW-12 recovered the same under a mahazer. On returning to the Police Station, PW-12 forwarded the accused to the Court for judicial remand. He also handed over the material objects to the Court. While so, on 18.04.2012, the deceased succumbed to the injuries in the hospital. On receiving death intimation from the hospital authorities, PW-12 altered the case into one under Sections 294(b) and 302 of the Indian Penal Code, on 19.04.2012. EX-P13 is the alteration report. Then, he conducted inquest on the body of the deceased. EX-P14 is the inquest

report. Then, he forwarded the dead body for postmortem.

2.5. PW-7 - Dr.A.Selvamurugan, conducted autopsy on the body of the deceased, at 11.20 AM, on 19.04.2012. EX-P3 is the postmortem certificate. He noticed the following injuries:-

"1) Stapled cut injuries: 5 x 1cm x bone deep over right side of frontal region. 3 x 1 cm x bone deep over right side of forehead, 5 x 1cm x bone deep over left side of frontal region, 3 x 1cm x bone deep over left parietal region, 3 x 1cm x bone deep over left temporal region, 3 x 1cm x bone deep near left eyebrow and 1 x 1 x 1cm over right 3rd finger.

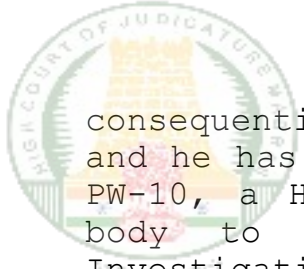
2) On dissection of head: Scalpel contusion seen over frontal both parietal and temporal regions. Crack fracture of length 30cm seen in right temporal, right parietal, left parietal and left temporal bones. Subdural haematoma of about 20gms seen in right temporal region. Subdural and subarachnoid haemorrhages seen in both temporo parietal regions and cerebellum of brain. Right temporal lobe of brain found necrosed of size 5 x 4 x 2 cm".

According to PW-7, the death of the deceased could have been caused by a weapon, like aruval. He gave opinion that the deceased would appear to have died of shock and hemorrhage due to multiple injuries. PW-12 recovered the cloth found from the dead body of the deceased and forwarded the same to the Court. On completing the investigation, he laid charge sheet against the accused, 12.06.2012.

2.6. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the prosecution, 12 witnesses were examined, 14 documents and one material object were marked.

2.7. Out of the said 12 witnesses, PW-1, the mother of the deceased, has spoken about the entire occurrence as an eye-witness. She has also spoken about the complaint made by her to the police. PW-2 and PW-3 have turned hostile and they have not supported the case of the prosecution in any manner. PW-4, the brother of the deceased, has stated that on being informed by PW-1, he went to the house of the deceased. He has further stated that he along with PW-1 took the deceased to the Government Hospital, Tirunelveli, in 108 Ambulance, for treatment.

2.8. PW-5, a neighbour of the deceased, has stated that he found the accused fleeing away from the scene of occurrence. PW-6 has spoken about the preparation of Observation Mahazer and the Rough Sketch and the recovery of material objects from the place of occurrence. PW-7 has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. PW-8 has spoken about the arrest of the accused, the confession made by him and the



consequential recovery of material object. PW-9 has turned hostile and he has not supported the case of the prosecution in any manner. PW-10, a Head Constable, has stated that he handed over the dead body to the hospital for postmortem, as directed by the Investigating Officer. PW-11 has spoken about the registration of the case, on the complaint made by PW-1. PW-12 has spoken about the investigation conducted by him and the filing of final report.

2.9. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. On his side, he examined two witnesses, namely DW-1 and DW-2. DW-1, Dr.S.Juvagridam Victor, has stated that the accused underwent treatment in the Government Medical College Hospital, Tirunelveli between 05.08.2002 and 18.10.2013 as out-patient for schizophrenia. EX-D1 is the prescription issued in the said hospital. DW-2, Dr.M.B.Abdul Rahman, has stated that on 14.06.2013, as per the order of the Court, he forwarded the accused to the Government Mental Hospital, Kilpauk, Chennai. EX-D2 to EX-D5 are the medical records. The defence of the accused was a total denial. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

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

4. As we have already pointed out, in this case, the prosecution mainly relies on the eye-witness account of PW-1. PW-2 and PW-3, who have been examined as eye-witnesses to speak about the occurrence, have turned hostile and they have not supported the case of the prosecution in any manner. Thus, the prosecution has been left only with the evidence of PW-1, the mother of the deceased.

5. It is contended by the learned counsel for the appellant that the presence of PW-1, at the time of occurrence, is doubtful. But, we are not persuaded by the said argument at all. PW-1 has explained that she had come to the house of her daughter and stayed with her. Thus, her presence cannot be doubted. It is her further evidence that the accused, who had gone out, did not return at all. The deceased and PW-1 were, therefore, sleeping inside the house. At 02.00 AM, the accused came, knocked at the door violently and entered into the house. The deceased shouted at him. The accused questioned her as to why she did not give money to him to purchase tablets. It was in the said quarrel, the accused took out an aruval and cut the deceased indiscriminately. According to the medical evidence, the death of the deceased was due to the multiple injuries found on the body of the deceased. Thus, from the evidence of PW-1 and the medical evidence, the prosecution has clearly established that it was this accused, who cut the deceased with aruval, which



resulted in her death.

6. The learned counsel for the appellant would submit that the accused was suffering from schizophrenia. But, from the evidence available on record it is not clear as to whether the appellant was actually suffering from schizophrenia at the time of occurrence and as to whether he was unable to understand the consequence of his act, as required under Section 84 of the Indian Penal Code. DW-1 has stated that the accused was suffering from schizophrenia, during the year 2002 to 2013. But, it is not known as to whether the accused was unable to understand the consequence of his act. As we have already pointed out, there is no clear evidence by DW-1.

7. DW-2 has stated that as directed by the Court, he forwarded the accused to the Government Mental Hospital, Kilpauk, Chennai. But, the doctor, who treated him at the said hospital, has not been examined. During cross-examination, he has stated that he was not sure as to whether the accused was really suffering from such mental disease and whether he was unable to understand the consequence of his act. Thus, though there is some evidence that the accused was suffering from some kind of mental illness, there is no clear evidence as to what was his mental condition at the time of occurrence. Thus, in our considered view, the Trial Court was right in rejecting the defence of the accused taken under Section 84 of the Indian Penal Code. Thus, we do not find any infirmity in the conclusion arrived at by the Trial Court. Therefore, we hold that the act of the accused would not fall under Section 84 of the Indian Penal Code. It squarely falls within the Third Limb of Section 300 of the Indian Penal Code.

8. The learned counsel for the appellant would further submit that the act of the accused would not amount to murder. We are fully convinced with the said argument. From the narration of the facts, it is clear that there was no enmity or ill-feeling between the accused and the deceased. The accused came very late in the night. The deceased questioned the same. This resulted in a quarrel. It was only in the quarrel, the deceased, provoked by the words and deeds of the deceased and having lost his self-control, had attacked the deceased. Thus, the act of the accused would squarely fall within the First Exception to Section 300 of the Indian Penal Code. Therefore, the accused is liable to be punished under Section 304(i) of the Indian Penal Code.

9. Now, turning to the quantum of punishment, as we have already pointed out, the occurrence was not a premeditated one. It was out of sudden quarrel. The accused has got no bad antecedents. He is hardly aged about 35 years. He was also suffering from some kind of mental illness. Having regard to all these mitigating and aggravating circumstances, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.



10. In the result, the Criminal Appeal is partly allowed in the following terms:-

- The conviction and sentence imposed by the Trial Court on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304(i) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- [Rupees One Thousand only], in default to undergo rigorous imprisonment for four weeks.
- It is directed that the period of sentence already undergone by the appellant/accused shall be set off under Section 428 of the Code of Criminal Procedure.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Cheranmahadevi.
2. The Chief Judicial Magistrate, Tirunelveli District.
3. The Fourth Additional District Sessions Judge, Tirunelveli.
4. The District Collector, Tirunelveli.
5. The Director General of Police, Mylapore, Chennai-4.
6. The Superintendent of Prison, Central Prison, Tirunelveli.
7. The Inspector of Police, Pappakudi Police Station, Tirunelveli District.
8. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

Copy To:-

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.S.DURAIRAJ, ADVOCATE IN SR No. 65626

NB

TE/KM/SAR-I : 15/12/2016 : 6P/11C

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CRL.A[MD].No.263 of 2015
02.11.2016