

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03..03..2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Criminal Appeal No.55 of 2017

Kalidass [A1 ... Appellant /Accused-1

-Versus-

State Rep. by
The Inspector of Police,
B-3, Kattur Police Station,
Coimbatore District.
[Crime No. 358 of 2013] ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C against the judgement of conviction and sentence passed by the learned I Additional District Sessions Judge, Bomb Blast Cases, Coimbatore, in S.C.No.238 of 2015 dated 24.10.2016

For Appellant : Mr.D.Saravanan
For Respondent : Mr.P.Govindarajan, APP

JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is Accused No.1 in S.C.No.238 of 2015 on the file of the Court of Session for Trial of Bomb Blast Cases (I Additional Sessions Judge], Coimbatore. Accused No.2 was one Kaliyappan. A1 stood charged for offence under Section 302 of IPC and A2 was charged for offence under Section 302 r/w 34 of IPC. The trial court, by judgement dated 24.10.2016, convicted A1 under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for three months and convicted A2 for offence under Section 302 r/w 34 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to suffer simple imprisonment for three months. Challenging the above said conviction and sentence, A1 is before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was the husband of P.W.1. He was a Mason by profession. P.W.1 was a construction worker (Masonry Helper). They were working at Sivanandhapuram in a building under construction. Though they hail from Dharmapuri District, they temporarily stayed in Coimbatore on account of their avocation. The deceased had a brother by name Chinnasamy. The deceased had received a phone call from Chinnasamy that he had undergone a bypass surgery. In order to see him, the deceased and P.W.1 decided to go over to Dharmapuri on 15.02.2013 at 09.30 p.m. They were proceeding towards Gandhipuram bus stand to board a bus to go to Dharmapuri. When they were near Anandha Mill, leaving P.W.1 near the said Mill by the side of the road, the deceased alone went into a nearby hotel to have his dinner. Since P.W.1 had already taken food, she did not go into the hotel. Thus, she was alone sitting by the side of the road in front of the mill.

3. At that time, the appellant/A1 came to the said place. Neither he was previously known to P.W.1, nor P.W.1 was known to him. By standing near P.W.1, he inquired as to where she was proceeding. P.W.1 did not reply. Mean while, the deceased after finishing his dinner in the hotel, returned to the said place.

4. Then, P.W.1 and the deceased went to Gandhipuram bus stop and proceeded to Central Bus Stand at Coimbatore. At Central Bus Stand, they boarded a bus bound for Salem. The bus was yet to start its journey. Leaving P.W.1 to seat in the bus, the deceased went out to purchase cool drinks and drinking water.

5. At that time, A1 and A2 got into the bus. On nearing P.W.1, A1 extended sexual overtures and invited her for sex with him for money. When A1 was repeatedly telling so, out of fear, P.W.1 kept mum and she did not respond. At that time, the deceased after purchasing water bottles and other items, reached the bus. On seeing him, A2 told A1 that her husband had come. Therefore, both A1 and A2 got down from the bus. The deceased came near the entrance of the bus. On seeing him A1 inquired him as to whether he had abducted the wife of some one else. Thus, A1 meant that P.W.1 was not the wife of the deceased and the deceased had illicitly taken her with him. This infuriated the deceased. He shouted at A1. P.W.1 got down from the bus. P.W.1 also shouted at both A1 and A2. P.W.1 made an attempt to remove her chappal and shown a gesture to beat A1 with chappal. P.W.1 told her husband about the happenings near Anandha Mill when the deceased was in the hotel. She also told that these two accused extended sexual overtures to her and wanted her to have sex with them. Getting angry, the deceased slapped A1 on his cheek. Immediately, A1 shouted at the deceased, took out a knife which was already kept in his waist cord. A2 pushed the deceased down. A1 stabbed him on his stomach. The deceased sustained bleeding

injury. Then, both A1 and A2 ran away from the scene of occurrence. There was profuse bleeding of blood which stained the dresses of P.W.1 and the others who were standing nearby. The intestine was protruded through the stab injury. P.W.1 raised alarm. Then, the people from nearby came to the place of occurrence, arranged for an auto rickshaw and in that auto rickshaw P.W.1 took the deceased to the Government Hospital at Coimbatore and admitted him.

6. P.W.1 thereafter informed Mr.Chinnasamy, the brother of the deceased about the same. On receiving the intimation from the hospital, the Sub Inspector of Police, B-3 Kattur Police Station, went to the hospital at 03.45 a.m. on 16.02.2013, recorded the statement of P.W.1 and on returning to the police station, registered a case in Crime No.358 of 2013 under Section 307 of IPC. In the complaint, P.W.1 had stated that the assailants were two in numbers, but, their names were not known to her. She further stated that she could identify the assailants. Ex.P.1 is the complaint and Ex.P.15 is the FIR. Both the complaint and the FIR were sent to the court which were received by the learned Magistrate at 05.00 p.m. on 16.02.2013. Then, he handed over the case diary to the Inspector of Police for investigation.

7. The investigation was taken up by P.W.16. He visited the place of occurrence at 06.15 a.m. on 16.02.2013 and prepared an observation mahazar and a rough sketch at the place of occurrence in the presence of witnesses. Then, he recovered some blood stained earth and sample earth from the place of occurrence under a mahazar in the presence of the same witnesses. He examined P.Ws.1 and 2 and few more witnesses. While so, on the same day at 08.45 a.m. the deceased died in the hospital. Thereafter, P.W.4, Dr.K.Kulandaivelu, conducted autopsy on the body of the deceased on 16.02.2013 at 05.00 p.m. and found the following injuries:-

"Ante mortem injuries:

- Stapled wound 30 cm in length noted over front of abdomen extending from xiphi sternum to lower abdomen.

- Vertically oblique sutured wound 3 cm in length noted over right side abdomen, on removal of sutures, the upper blunt end is 0.5 cms lateral to umbilicus and the lower sharp end is 4 cm below the lateral to the umbilicus. The wound passes inwards, backwards piercing the underlying muscles, vessels, nerves and entire in the abdominal cavity then piercing the underlying jejunum measuring 3 cm in length which was found sutured, on removal the suture the wound is lumen deep and sutured wound 2 cm in length noted

over mesentery. Peritoneal cavity contains about 500 ml of fluid blood. Perinephric hematoma noted over right side kidney.

Other findings:

- Pleural cavities: empty
- Hyoid bone - intact
- Heart: All chambers contain about few cc of cubic fluid blood.
- Stomach contains about 200 grams of early digested food particles with unpleasant smell, mucosa pale.
- Small intestine contains about 10 ml of bile stained fluid, with unpleasant smell, mucosa pale.
- Liver, Lungs, Spleen, Kidneys and Brain: Cut Section pale.
- Urinary bladder - empty."

Ex.P.4 is the Postmortem Certificate and Ex.P.6 is the final opinion. According to him, the injuries found on the body of the deceased could have been caused by a weapon like knife and that the death of the deceased was due to shock and hemorrhage as a result of injuries found on the body.

8. When the investigation was in progress, A2 surrendered before the learned Judicial Magistrate-II, Tirupur, on 18.02.2013. P.W.16 took place police custody of A2 on 26.02.2013 as per the order of the learned Magistrate. While in custody, on 27.02.2013 at 08.00 a.m. he made a voluntary confession in which he disclosed the place where he had hidden the blood stained cloth. In pursuance of the same, he took the police and the witnesses to the place of hide out he produced a blood stained shirt (M.O.5). P.W.16 recovered the same under a mahazar. A1 surrendered before the Judicial Magistrate-II, Madurai, on 04.03.2013. Thereafter, P.W.16 made a request for conducting test identification parade for A2. P.W.15, the then Judicial Magistrate-I, Pollachi, conducted test identification parade on 08.03.2013 in which, A2 was put up for test identification. In the said test identification parade, P.W.1 could not identify A2. However, the other witnesses namely, P.W.2 and one Mr.Rajenran identified A2 correctly. On 08.03.2013, at 05.00 p.m., he took police custody of A1 as per the orders of the learned Magistrate. On 09.03.2013, during custody, A1 made a voluntary confession in which he disclosed the place where he had hidden a blood stained shirt and a knife. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the blood stained shirt (M.O.2) and the knife (M.O.1). P.W.16 recovered the same under a mahazar. He, thereafter, forwarded all the material objects to the court and then, at his request, they were sent for chemical examination. The report revealed that there were human blood stains on the same. On completing the same, he laid charge sheet against the

accused.

9. Based on the above materials, the trial court framed two charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined, 27 documents and 5 material objects were marked.

10. Out of the said witnesses, P.W.1, the wife of the deceased has spoken about the entire events including the one which had taken place just in front of the hotel and also inside the bus. She has identified both A1 and A2, in court, during trial. P.W.2, yet another witness who was present at the time of occurrence has also spoken about the entire occurrence. He has stated that on hearing the alarm raised by P.W.1 he rushed to the place of occurrence and at that time, he found A2 fleeing away from the said place with a knife in his hand and the other one namely, A2 followed him.

11. P.W.3 was an auto driver. He has stated about the fact that when he was inside the hotel, where the deceased was taking dinner, P.W.1 was sitting outside. He could notice both A1 and A2 speaking to P.W.1. P.W.4, a Doctor at Government Medical College Hospital, Coimbatore, has stated about the autopsy conducted on the body of the deceased. P.W.5 has spoken about the confession made by A1 and the consequential recovery of the material object. P.W.6 is the driver of the bus in which the occurrence had taken place. He has also spoken about the entire occurrence. He has identified both A1 and A2 in court. P.W.7 was then running a shop in Central Bus Stand at Gandhipuram, Coimbatore. He has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence. P.W.8 has stated that he heard the alarm raised by P.W.1 and when he rushed to the place of occurrence, he found these two accused fleeing away from the scene of occurrence. A1 was having a knife in his hand. P.W.9, the Police Constable, has stated that he handed over the dead body to the doctor for postmortem. P.W.10 has spoken about the confession made by A2 and the consequential recovery made. P.W.11, the then Sub Inspector of Police has stated about the registration of the case. P.W.12, the doctor at Government Medical College Hospital, Coimbatore, has stated that on 15.02.2013 at 11.05 p.m., the deceased was brought before him for treatment. He was told that the deceased was stabbed by a known person with knife at Gandhipuram bus stand. At that time, the deceased was conscious. He then found an stab injury measuring 3 x 3 cm on the abdomen region. He admitted him in the hospital. Ex.P.13 is the Accident Register. He gave intimation under Ex.P.14 to the police station. P.W.13, an Expert from the Regional Forensic Science Department, Coimbatore, has stated that he examined the material objects sent to him by the court for chemical examination. He

has stated that there were human blood stains detected on all the material objects. P.W.14, the then Judicial Magistrate, has stated about the statements recorded from the witnesses under Section 164 of Cr.P.C. P.W.15 has spoken about the test identification conducted for A2. P.W.16 has spoken about the investigation done by him in this case and the final report filed against the accused.

12. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

13. Having considered all the above, the trial court convicted the appellant/A1 as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, A1 is now before this Court with the present criminal appeal.

14. We have heard the learned counsel appearing for the appellant/A1 and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

15. As we have already narrated, in this case, P.W.1 alone has spoken about the actual occurrence. She further stated about the sexual advanced made by the accused in front of the hotel and then, in the bus. She has also stated that A1 inquired the deceased as to whether he had illicitly taken the wife of some one else thereby meaning that P.W.1 was not the wife of the deceased. P.W.1 has further stated that she also told about the happenings to the deceased. Getting angry over the behaviour of these accused, the deceased slapped A1 at his face. Immediately, A2 pushed the deceased down and stabbed him with a knife and ran away from the scene of occurrence. The contention of the learned counsel for the appellant is that in the absence of test identification parade, the identity of A1 made by P.W.1, for the first time in court, no weightage could be given to the same. Though attractive, we find no force in the said argument. The presence of P.W.1 at the place of occurrence cannot be doubted. It is fortified by the presence of human blood stains on her saree. It was she who admitted the deceased in the hospital. It is not as if P.W.1 had occasion to have the glimpse of the physical features of the accused for a fraction of second or a minute. A1 and A2, first saw P.W.1 in front of the hotel, then, they followed P.W.1 and the deceased up to Gandhipuram Bus Stand. In the bus stand also, they got into the bus where A1 called her to have sex with him. Thereafter only, the deceased came and then the occurrence took place. Thus, P.W.1 had enough time to notice the physical features of both A1 and A2.

Therefore, even in the absence of test identification parade, the identification made by her, for the first time in court, can be believed. M.O.1 knife was also recovered from the possession of A1 in pursuance of his disclosure statement made to the police. The presence of P.W.1 at the place of occurrence and fleeing away of both A1 and A2 from the place of occurrence has been spoken by P.W.6, the driver of the bus and P.W.8. From these evidences, in our considered view, the prosecution has clearly established that it was these two accused who stabbed the deceased which only resulted in the death of the deceased.

16. Having come to the said conclusion, now, we have to examine as to, What was the offence committed by the accused by their act? The learned counsel for the appellant/A1 would submit that the act of the accused would fall within the 4th exception to Section 300 of IPC. But, we are not persuaded by the said argument. According to the evidence of P.W.2 because of the continuous sexual tortures made to P.W.1, the deceased slapped A1. There was no other quarrel or fight. Suddenly, A2 had pushed him down and A1 stabbed him with a knife. This act of the accused in our considered view would fall within the first limb of Section 300 of IPC and at the same time, the same would not fall under exception (4) of Section 300 of IPC. Thus, in our considered view, A1 is liable to be punished under Section 302 of IPC.

17. So far as the sentence imposed on the appellant is concerned, the trial court itself has imposed only the minimum punishment prescribed for the offence of murder and so, the same also does not require any interference at the hands of this court.

18. In the result, the criminal appeal is dismissed. The conviction and the sentences imposed on the appellant/A1 by the trial court are hereby confirmed. The period of detention already undergone by the appellant/A1 shall be given set off as required under Section 428 of Cr.P.C.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1.The I Addl. District Sessions Judge, Bomb Blast Cases,
Coimbatore,
Coimbatore District.

2. The Judicial Magistrate No.II, Coimbatore.

3. The Chief Judicial Magistrate, Coimbatore.

4. The District Collector, Coimbatore.

5. The Director General of Police, Mylapore,
Chennai-4.

6. The Superintendent, Central Prison,
Coimbatore

7.The Inspector of Police, B-3, Kattur P.S.,Coimbatore District.

8.The Public Prosecutor, High Court, Chennai.

Crl.A.No.55 of 2017

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