

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.01.2017

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THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

CRL.A.No.385/2016

C.Boopathy .. Appellant/sole accused

Vs

State by
The Inspector of Police,
Pollachi Taluk Police Station,
Pollachi, Coimbatore. ... Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Special Sessions Judge, Bomb Blast Court, Coimbatore, made in S.C.No.286 of 2013, dated 18.12.2014.

For Appellant : Mr.M.H.Abdur Rahman,
for Legal Aid Counsel
For Respondent : Mr.P.Govindarajan,
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.286 of 2013 on the file of the learned Special Sessions Judge, Bomb Blast Court, Coimbatore. He stood charged for offences under Sections 302 and 309 of IPC. By judgment dated 18.12.2014, the trial court convicted him under both the 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 3 months for the offence under Section 302 of IPC and sentenced him to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for one month for the offence under Section 309 of IPC. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

(a) The deceased in this case was one Mrs.Devi @ Sulochana. She was already married, having children also. She was working in a Private Company known as "Apple Package Company" at Ayyampalayam Village in Coimbatore District. The accused used to stalk when she was proceeding to and returning from the company. The accused, made sexual overtures to her, requesting her to consent for having sex with him. The deceased warned not to behave in such manner and she also told him that she had her husband and children whose honour would also be spoiled by the conduct of the accused. But, the accused did not stop stalking the deceased.

(b) On 10.05.2011, the deceased made a complaint against the accused in respect of the abovesaid occurrence at the All Women Police Station, Pollachi. An enquiry was conducted during which the accused was warned by the police. Despite that, the accused did not stop stalking the deceased. This is stated to be the motive for the occurrence.

(c) On 28.09.2011 at 10.00 a.m., the deceased and P.Ws.1 and 2, who were co-workers, travelled in a bus and got down at the bus stop near the company where they were working. It was morning 07.30 a.m. At that time, the accused suddenly emerged at the said place from a nearby bush. He was armed with an Aruval. On reaching the deceased, he started cutting the deceased indiscriminately. He shouted at her that since she was not heeding to her request, she should die. The deceased having sustained a number of injuries, fell down. He cut himself on his head twice with the same Aruval and fell down. P.Ws.1 and 2 and others, who were in the bus stop, rescued both of them and sent them to a hospital by means of 108 Ambulance. In the hospital, the deceased after some time, succumbed to the injuries. The accused only survived.

(d) Based on the complaint made by P.W.1 at 10.30 a.m. on 28.09.2011, P.W.13, the then sub-Inspector of Police, registered a case in Cr.No.263 of 2011 under Section 302 of IPC against the accused. Ex.P.1 is the complaint and Ex.P.26 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 12.00 p.m. on 28.09.2011.

(e) The case was then taken up for investigation by P.W.15. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.9 and another. He also recovered the blood stained earth and sample earth under a mahazar. He examined P.Ws.1 to 4 and few more witnesses at the place of occurrence. On going over to the hospital, he conducted inquest on the body of the deceased around 03.00 p.m. and forwarded the same for postmortem.

(f) P.W.5 Doctor Jayasingh conducted autopsy on the body of the deceased on 29.09.2001 at 11.15 a.m. He found the following injuries:

'Moderately nourished body of a female aged about 35 years. Finger and toe nails were bluish in colour. Hospital bandage noted over head and top of left shoulder. On removal,

The following ante mortem injuries noted on the body;

1. Vertically oblique cut wound 7 x 3 c.m. X muscle deep noted over front of left shoulder. The upper lateral part of sharp end of the wound is 1 c.m. In depth and the lower medial part of blunt end is 6 c.m. In depth.
2. Transverse cut wound 5 x 1 c.m. X bone deep noted over right temporo occipital region. On dissection, the underlying bones found partially cut. The anterior end is 2 c.m. Right to mastoid and the posterior end is 10 c.m. anterior to posterior midline.
3. Transverse cut wound 6 x 1 c.m. X bone deep noted over right temporal region including the upper part of tragus. The medial blunt end is 6 c.m. Right to outer aspect of right canthus and the posterior sharp end is 15 c.m. anterior to posterior midline. On dissection, the wound cutting the underlying bone and enter into the cranial cavity. The depth of the wound is 1 c.m. in the posterior part and cavity deep in the anterior part.
4. Cut wound 7 x 3 c.m. X brain deep noted over right occipital region. The wound cutting the underlying muscles and cut lacerated over the underlying bone and enter into the meninges and the posterior blunt end is 6 c.m. Anterior to posterior midline.
5. Transversely cut wound 4 x 1 cm x brain deep noted over right upper temporal region. The wound cutting the underlying temporal bone, enter into brain tissue over an area of 3 x 1 x 2 c.m. The anterior sharp end is 7 cm right to right canthus and the posterior blunt end is 6 c.m. above to right mastoid.
6. Transverse cut wound 6 x 1 c.m. X scalp deep noted over right lateral parietal region. The anterior end is 4 c.m. Above to right ear and the posterior end is 12 c.m. anterior to posterior midline. Both ends are sharp.
7. Vertical oblique cut wound 4 x 1 c.m x scalp deep

noted over right mid parietal region. The anterior end is 7 c.m. From midline and the posterior end is 8 c.m. from midline. Both ends are sharp.

8. Cut wound 2 x 1 c.m. X scalp deep noted over right mid parietal region, 3 c.m. Medial to wound No.7. Both ends are sharp.
 9. Vertical oblique cut wound 16 x 1 cm x cavity deep noted over right fronto parietal and crossing obliquely into the left parietal region. On dissection, the underlying anterior sharp end of the wound found lacerated and enter into the brain tissue.
 10. Vertical cut wound 7 x 1 c.m. X bone deep noted over mid fronto parietal region, the wound cutting the underlying bone. Both ends are sharp.
 11. Cut wound 13 x 1 c.m. X scalp deep noted over mid fronto parietal region and crossing the wound No.9 and enter into the right parietal region. Both ends are sharp.
 12. Cut wound 4 x 1 c.m. X bone deep noted over left posterior parietal region, the wound cutting the underlying scalp and bone. Both ends are sharp.
 13. Incised wound 4 x 0.5 c.m. X skin deep noted over inner aspect of left wrist.
 14. Cut wound 4 x 1 c.m. X bone deep noted over back of right middle finger. On dissection, the underlying bone found partially cut.
- On dissection of scalp, Skull and Dura : Sub scalpal contusion noted over both parieto frontal and right temporal region. Multiple cut laceration noted on both fronto parietal bones and right temporo occipital bones with the corresponding external wounds. The lambdoid suture found separated. Diffuse sub dural and sub arachnoid hemorrhage noted over both cerebral hemisphere. Multiple lacerations of varying sizes noted over right temporo occipital lobes of brain with the corresponding external wounds.

Other Findings:

- Pleural and Peritoneal cavities empty.
- Heart : Right side chambers contain about few cc of fluid blood, left side chamber empty.
- Coronaries patent.
- Hyoid bone: Intact
- Stomach contains about 10 ml of mucous fluid, no specific smell, mucosa congested.
- Small intestine contains about 10 ml of bile stained fluid, no specific smell, mucosa congested.

-Liver, Spleen, Brain, Lungs and Kidneys cut section congested.
-Urinary Bladder : Empty
-Uterus : Normal in size, cut section empty.''

Ex.P.8 is the Postmortem Certificate. P.W.5 gave opinion that the death of the deceased was due to shock and hemorrhage due to the multiple injuries sustained by her. He further opined that the said injuries would have been caused by a weapon like Aruval.

(g) P.W.15 continued the investigation, arrested the accused. He collected the medical records and finally, at his request, the material objects were sent for chemical examination which revealed that there were blood stains found on all the material objects. The investigation was, thereafter, continued by his successor P.W.16. On completing the investigation, P.W.16 laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 30 documents and 14 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 and 2 are the eye-witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.1 has also stated about the complaint made by her to the police. P.W.3 has stated that he heard a commotion from the place of occurrence. Immediately he rushed to the place of occurrence where he found P.Ws.1 and 2. He also found the deceased and the accused with injuries. Then, he made arrangements to take them to the hospital. P.W.4 Doctor Kalaiselvi has spoken about the treatment given to the accused as well as the deceased. According to her, at the time when she was brought, the deceased was unconscious. The accused was conscious. He told her that the deceased Devi cut him with Aruval. She found the following injuries on the person of the accused :

1. A lacerated injury measuring 10 x 3 x bone deep on the fore head; and
2. Another cut injury measuring 10 x 2 c.m. X bone deep near the injury No.1.

According to her, these two injuries would have been self-inflicted by the accused by a weapon like M.O.1 Aruval. The said injuries were simple in nature.

5. P.W.6, the then Inspector of Police, has spoken about the earlier complaint made by the deceased and the warning made

by her to the accused. P.W.7 has spoken only on hearsay information and he has not stated anything incriminating against the accused. P.W.8 has spoken about the arrest of the accused. P.W.9 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and the recovery of the material objects from the place of occurrence. P.W.10, the Head Clerk of the Judicial Magistrate Court has spoken that she forwarded the material objects to the Forensic Lab for examination. P.W.11, the husband of the deceased has not stated anything incriminating. P.W.12, the Special Sub-Inspector of Police has stated that he took the dead body of the deceased and handed over the same for postmortem. P.W.13 has also spoken about the registration of the case on the complaint of P.W.1. P.W.14 has spoken about the chemical examination conducted on the material objects and his report. P.Ws.15 and 16 have spoken about the investigation done and his final report.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor to mark any document on his side. According to him, when he was talking to the deceased at the place of occurrence in a friendly manner, suddenly, four persons emerged from a nearby bush and they were all armed with Aruval and cut both the deceased and him.

7. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

8. We have heard the learned Legal Aid Counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9. In this case, as we have already narrated, the prosecution relies mainly on the eye-witness account of P.Ws.1 and 2. P.Ws.1 and 2 have stated that they accompanied the deceased to go to the company where all of them were working and when they got down from the bus in the bus stop, standing for a short while, this accused suddenly emerged with Aruval and cut the deceased and also cut himself. Though these two witnesses have been cross-examined at length, nothing has been elicited to discredit their evidences. They have got no grudge against the accused. Thus, we find no reason to reject the evidences of P.Ws.1 and 2. Apart from this, it was P.W.1, who took the deceased and the accused to the hospital. Further, there is no delay in preferring the F.I.R. and the F.I.R. reaching the hands of the Magistrate. The medical evidence also duly corroborates the eye-witness account.

10. So far as the motive is concerned, it is stated that on an earlier occasion, the deceased made a complaint that the accused was stalking her. It is further stated that during enquiry, P.W.6, the then Inspector of Police, warned the accused. Thus, the evidence of P.W.6 would clearly establish the motive of the accused also. From these evidences, we hold that the prosecution has clearly proved that it was this accused, who cut the deceased with Aruval and caused her death.

11. So far as the injuries on the accused is concerned, at the earliest point of time, when he was examined by P.W.4 Doctor, he told that he was attacked by the deceased with Aruval. But, during his examination under Section 313 Cr.P.C., he has stated that four persons suddenly emerged with Aruval and attacked the deceased and himself. Thus, the accused himself is not sure as to how he sustained injury. Though the accused need not prove his defence beyond reasonable doubt, he has to explain his stand so as to probablise the defence taken by him. The accused must be knowing as to how he sustained injuries on his head. Therefore, it is for him to explain to the satisfaction of the court the manner in which he sustained the said injuries. But, he has not discharged his onus in this regard as expected in law. As we have already narrated, at the earliest point of time, before the Doctor-P.W.4, the accused has stated that the deceased cut him whereas during the trial, he has stated that four persons, who were all armed with Aruval, suddenly emerged from a nearby bush and cut the deceased and him. This would only go to show the hollowness of the defence taken by the accused.

12. Above all, P.W.4 Doctor, who treated the accused, has stated that these two injuries found on the head of the accused could have been self-inflicted by him. Both the injuries were found only on the forehead. The direction of the wounds also go to show that these injuries could have been caused by self-infliction. Thus, we find that the evidences of P.Ws.1 and 2 are cogent and convincing to go to prove not only that the deceased was cut by the accused which resulted in her death, but also to the fact that he made an attempt to commit suicide by cutting himself. The trial court was, thus, right in convicting the accused for offences under Sections 302 and 309 of IPC.

13. Now turning to the quantum of punishment, we are of the view that the trial court has imposed only a minimum punishment which does not warrant any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal and the same is accordingly dismissed. The conviction and sentence imposed by the trial court on the accused are hereby confirmed.

Note: While parting with the case, we appreciate the services rendered by Mr. M.H. Abdu Rahman, the learned Counsel, who appeared on behalf of the appellant/sole accused as Legal Aid Counsel. The Legal Services Authority is requested to pay his remuneration.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Special Sessions Judge,
Bomb Blast Court, Coimbatore
- 2 The Judicial Magistrate No.II, Pollachi
- 2a Thro The Chief Judicial Magistrate, Coimbatore
- 3 The Director General of Police, Mylapore Chennai
- 4 The Superintendent of Police, Coimbatore
- 5 The Superintendent, Central Prison, Coimbatore
- 6 The District Collector, Coimbatore
- 7 The Inspector of Police,
Pollachi Taluk Police Station,
Pollachi, Coimbatore.
- 8.The Public Prosecutor,
High Court, Chennai.
- 9 The Member Secretary, Tamil Nadu State
Legal Services Authority
High Court, Chennai

+1 cc to Mr. M.A. Abdur Rahmaan, Advocate Sr.No.715

ppa (CO)
md(02/02/2017)

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