

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2017

CORAM

THE HONOURABLE Mr. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

Crl.A.No.530 of 2016

Shankar ... Appellant/Accused

Vs.

The State
Rep. By Inspector of Police,
Guduvancherry Police Station,
Guduvancherry ... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for records in S.C.No.160 of 2012 on the file of Additional Sessions Court, Chengalpattu and allow the appeal thereby setting aside the conviction and sentence dated 29.10.2015 imposed on the appellant.

For Appellant :Ms.S.Sridevi

For Respondent :Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court delivered by N.SESHASAYEE, J)

It is a case of uxoricide and appellant was convicted for killing his wife Vembarasi on 13-10-2011 at about 10.30 a.m. inside his house and was sentenced to life imprisonment under Section 302 IPC by the learned Additional District Sessions Judge, Chengalpattu in S.C.No.160 of 2012. Appellant has come forward with this appeal challenging both his conviction as well as the sentence imposed in this appeal.

2. A brief narration of the prosecution case is: P.W.1 is father of Vembarasi and father-in-law of the appellant. P.W.2 is her brother. Appellant was married to Vembarasi some five years prior to the occurrence. Their matrimony was chiefly defined by spousal differences and quarrels that had often

driven Vembarasi to her parents' house. They would pacify her and would advise the appellant accordingly. Couple of days prior to the occurrence P.W.1 had visited Vembarasi, taken her to live with her husband. While so, on 13.10.2011, P.W.1 along with P.W.2, his son, and P.W.3, his cousin, came to the appellant's house on a casual visit to see his daughter. Even as they were at the gate and were in the process of entering the compound, his elder grandson Tamizhselvan came out of the house screaming that his father had inflicted cut injury on his mother Vembarasi. P.W.1 to P.W.3 along with P.W.4 Mohan rushed inside the house where they saw the appellant in all blood and with a knife. No sooner the appellant ran away from the scene of occurrence (henceforth would be referred to as SOC) and was unsuccessfully chased by P.W.4. An emergency ambulance service was summoned to transport the injured to the hospital, but before its arrival, Vembarasi succumbed to her injuries and died. P.W.1 to P.W.3 found a deep cut injury on her right neck. At about 1.00 p.m in the noon, P.W.1 went to the police station which is about 5 kms. from the SOC and preferred Ext.P1 complaint based on which P.W.21 Inspector of Police registered Ext.P.13 FIR. Thereafter, he took up the matter for investigation went to the SOC at about 11.00 pm in the night and prepared observation magazar (Ext.P2) and rough sketch Ext.P14 in the presence of P.W.6 and P.W.7. He then held an inquest on the body of the dead and prepared Ex.P.15 inquest report. Thereafter, he caused the body forwarded to the hospital through P.W.15, Madhavan for postmortem. P.W.-17 is Dr. Balaji Rajasekar and he conducted postmortem and detailed the injuries and his opinion in Ext.P7 postmortem report. Viscera collected during postmortem was forwarded by P.W.17 for chemical analysis and the report received by him indicated absence of any poisonous substances therein. In the meantime, on the very next day of the occurrence i.e., on 14.11.2011, appellant had met P.W.12 and confessed to the crime. P.W.12 is a mason and he claims that the appellant used to work under him. P.W.12 would then take the accused to the police station and handed him over to P.W.21. In the course of interrogation, appellant provided information to the investigating officer that led to the recovery of a blood stained knife from his haystack. He also handed over his blood stained lungi and shirt. They are marked respectively during trial as M.O.4 and M.O.5. The material objects were then forwarded to Forensic Science Laboratory and after necessary biological analysis, P.W.19, Scientific Officer has produced her Ext. P-10 biological report. After completing investigation, P.W.21 laid his final report.

3. On committal, the case was made over to Additional Sessions Court, Chengalpet and it framed charge under Section 302 IPC against the appellant to which the latter pleaded not guilty.

For establishing the charge, prosecution has examined P.W.1 to P.W.21, and produced Exts.P1 to P15 and M.O.1 to M.O.8. Interestingly enough, the defence has marked the confession statement given by the accused to the investigating officer which except to the extent permitted by Section 27 of the Evidence Act is otherwise inadmissible under Sec.25 of the Evidence Act as Ext.D1. Considering the evidence before it, the Sessions Court held the appellant guilty of the charge framed against him and sentenced him as indicated above.

4. The prosecution's effort to prove the charge essentially pinned on the veracity of P.W.1 to P.W.4, all of who are, as already indicated, relatives of the victim. Their testimony were sought to be corroborated by P.W.8 to P.W.11, and they were independent witnesses of the locality.

5. P.W.1 to P.W.4 were consistent in their narration as to what they have witnessed on the date of occurrence. All of them had deposed that they had gone to the house of the appellant to pay a visit to P.W.1's daughter. They saw the P.W.1's grandson, the elder son of the appellant and Vembarasi, rushing out of the house screaming that his father had inflicted cut injury on his mother. Admittedly none of P.W.1 to P.W.4 had actually seen the appellant inflicting the injuries on his wife that ultimately consumed her life. However, all of them would say that they entered the house and they saw the appellant with blood stained knife and Vembarasi bleeding with cut injuries on her neck. P.W.4 in particular would say that he had even attempted to chase the appellant but the latter managed to make his way. That the appellant came rushing out of the house with blood stained knife was also spoken to P.W.8 to P.W.11. Not one of their evidence was discredited by the defence nor could they pick any material inconsistency to suspect their veracity.

6. It is in this context the learned counsel for the appellant has raised two aspects in aid of the defence:

- According to P.W.13, the knife seized by the investigating agency pursuant to the information provided by the appellant (marked as M.O.1) has a steel handle whereas M.O.1 does not have a steel handle.
- Tamilselvan the minor son of the appellant and his alleged victim who had actually seen the occurrence was not examined.

7. The first point raised by the appellant's counsel does not impress this Court as it cannot amount any material inconsistency capable of upsetting the prosecution's apple cart. However, non-examination of Tamilselvan can have some significance. The point is whether non-examination of Tamilselvan is a fatal miss in the prosecution's effort to prove the charge. This Court considers that it is not so when his non-examination is juxtaposed with other evidence available on record. As already indicated evidence of P.W.1 to P.W.4 is unscathing and does not possess any element to suspect their individual as well as their combined credibility. So were the evidence of P.W.8 to P.W.11. It might be true that P.W.1 to P.W.4 might not have witnessed the occurrence per se but still they have seen the accused immediately after the occurrence at the scene of occurrence with a blood stained knife in his hand and Vembarasi struggling to hold on to her life with a deep cut injury on her neck. And, there is no case for the defence that there was any other person other than the couple who was present in the house to create any alternate possibility for the murder of Vembarasi. After all the occurrence had taken place inside the house and how Vembarasi suffered cut injury especially when the appellant was holding the knife that P.W.1 to P.W.4 spotted inside the house was something within his personal knowledge, and if he intends this Court to infer anything other than the one that legitimately and logically flow from the circumstances, he is under a compulsion to explain the same to the satisfaction of the Court how Vembarasi suffered fatal injury. Here, the defence has done precious nothing. Necessarily it must be held that the prosecution has been successful in its endeavour to bring home the guilt of the appellant beyond all reasonable doubts. It must however be added that the manner of accusation of the prosecution and the evidence available indicate that it is a case of spousal difference that led to homicide in the heat of the moment. Therefore, this Court hold an offence under Section 304(i) IPC.

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8. It may be indicated here that even as the defence had brought in the confession statement of the accused given to the police during the course of investigation on record as Ext.D-1 no attempt was made as to show how this document was sought to be used in negating the impact of prosecution's evidence.

9. To conclude this Court finds little merit in the appeal and confirms the involvement of the appellant in the crime. The appeal is partially allowed and the conviction and sentence imposed on the appellant for offence under Section 302 I.P.C., is set aside and instead, he is convicted for offence under

Section 304(i) I.P.C., and sentenced him to undergo rigorous imprisonment for 10 years. The period of sentence already undergone by appellant/accused shall be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The Additional District and Sessions Court,
Chengalpattu.
2. Do Thro The principal Sessions Judge,
Chengalpattu.
3. The Judicial Magistrate No.2
Chengalpattu.
4. Do Thro The Chief Judicial Magistrate,
Kancheepuram.
5. The Superintendent,
Central prison,
Puzhal, Chennai-66
6. The District Collector,
Kancheepuram.
7. The Director General of Police,
Mylapore, Chennai-4.
8. The Inspector of Police,
Guduvancherry Police Station,
Guduvancherry.
9. The Public Prosecutor,
High Court, Madras.

Copy to:
The Section Officer,
Crl. Section, High Court,
Madras-104

+lcc to M/s.Sridevi, Advocate, S.R.No.9678

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RJ (CO)
CS/24/05/17



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