

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.773 of 2016

Senthil Kumar .. Appellant/Accused (A1)S/o.
Ranganathan

- Vs -

State rep by
The Deputy Superintendent of Police,
Panrutti Sub Division,
Nellikuppam Police Station,
Cuddalore District.
(Cr.No.368 of 2013) .. Respondent/Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Sessions Judge, District Mahila Sessions Court, Cuddalore in S.C.No.281 of 2013 dated 27.08.2015.

For Appellant : Mr.K.Sathyaraj

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.Nagamuthu,J.)

The appellant is the first accused in S.C.No.281 of 2013 on the file of the learned Sessions Judge, Mahila Sessions Court, Cuddalore. The second accused in this case was one Mrs.Mangavarthal, the mother of the appellant. The appellant stood charged for offences under Sections 498(A) and 302 I.P.C. The second accused stood charged for offences under Section 498(A) and Section 302 r/w 34 I.P.C. By judgment dated 27.08.2015, the trial Court acquitted the second accused from both the charges, however, convicted the appellant / first accused under both the charges and sentenced him to undergo rigorous imprisonment for one year and pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months for offence under Section 498(A) I.P.C. and to undergo imprisonment for life and pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months for offence

under Section 302 I.P.C. 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:

2.1. The deceased in this case was one Mrs.Vijayalakshmi. She was hardly aged about 24 years. The first accused is her husband. Marriage between them was celebrated three years before the occurrence. It was a love marriage. Out of the said wedlock, they have a child also. The deceased and the accused were residing together at Mariamman Kovil Street, Periyannari Medu village. The second accused is the mother of the first accused. She was also living with them.

2.2. Though the initial marriage life was peaceful but after some time due to misunderstanding it became strained. Both the accused demanded six sovereign of gold jewels as dowry. It is alleged that both the accused harassed the deceased demanding the said dowry. It is further alleged that on 27.05.2013, around 07.30 p.m. the first accused quarreled with the deceased demanding six sovereign gold jewels from her parents. Unable to bear the same, the deceased ran out of the house. It is alleged that the accused 1 and 2 assaulted her, the second accused hold her and the first accused took up a grinding stone lying there and dropped the same on the head of the deceased. The deceased fell down. Immediately, the appellant / first accused took out an aruvalmanai (vegetable cutter) and cut the deceased on the right ear. The occurrence was witnessed by P.Ws.1 and 2. They raised alarm. The accused ran away from the scene of occurrence and the deceased died instantaneously.

2.3. P.W.1 took the deceased immediately to the Government Hospital at Panruti in an ambulance. The doctor who examined her declared her dead. Immediately thereafter, P.W.1 went to Nellikuppam police station and made a complaint at 11.00 p.m. on 27.05.2013.

2.4. P.W.11 the then Sub Inspector of Police registered a case on the said complaint in Crime No.368 of 2013. Ex.P1 is the complaint and Ex.P9 is the F.I.R. He forwarded both the documents to Court, which was received by the learned Magistrate at 12.10 a.m. on 28.05.2013.

2.5. The case was taken up for investigation by P.W.12, the Inspector of police. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered bloodstained earth and sample earth from the place of occurrence. After holding inquest on the body of the deceased, he forwarded the body for postmortem.

2.6. P.W.10 Dr.Santhi conducted autopsy on the body of the deceased on 28.05.2013 at 11.55 a.m. She found the following injuries:

"External injuries: (1) Lacerated injury behind right ear 2x0.5 cm (2) Black coloured contusion 3x3 cm in front of right ear near cheek. (3) Contusion of right temporal eye 7x6 cm; lacerated injury 2x0.75 cm and venereal appearance, eye side left eye contused (black colour) right eye closed. Nose frothy discharge and mouth and lips frothy discharge. Tongue inside, teeth intact ears no discharge. Thorax-well formed. Venereal organs normal.

Internal examination: Ribs no #, Heart pale, Chambers empty, Lungs, liver, spleen, kidneys pale. Hyoid bone preserved. Stomach contains 250 gms of undigested food particles, 100 ml of black coloured fluid, intestine distend with gas, bladder empty, uterus normal in size, cavity empty. Skull no #, membranes intact. Left temporal eye contusion with intraceable hemorrhage. Spinal cord intact."

Ex.P8 is the postmortem certificate. She 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.

2.7. P.W.12 examined P.Ws.1 and 2 and recorded their statements. On the same day at 04.00 p.m., P.W.12 arrested the first accused in the presence of witnesses. On such arrest, the first accused made a voluntary confession, in which, he disclosed the place of hideout and from where he produced M.O.1 (Bloodstained grinding stone) and M.O.2 (bloodstained vegetable cutter). P.W.12 recovered the same under a mahazar. He then forwarded the accused to Court for remand and also forwarded the material objects to the Court. Then he altered the case into one under Section 498(A) I.P.C. and Section 302 I.P.C. and he sent the alteration report to the Court. The case was thereafter taken over by P.W.13 the then Deputy Superintendent of Police. He examined few more witnesses and on completing the investigation, he laid chargesheet against the accused.

2.8. Based on the above materials, the trial Court framed charges against the accused as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 12 documents and 6 material objects were marked.

2.9. Out of the said witnesses, P.Ws.1 and 2 are eyewitnesses to the occurrence. P.W.1 is the sister of the deceased and a neighbour. She has vividly spoken about the dowry demanded by the accused and also about the entire

occurrence. P.W.2 is the husband of P.W.1. He has also vividly spoken about the entire occurrence. He has also spoken about the motive also. P.Ws.3 and 4 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.5 is the sister of the deceased. She has spoken about the demand for dowry made by the accused and the harassment meted out to her.

2.10. P.W.6 has spoken about hearsay information and he has not stated anything incriminating. P.W.7 has spoken about the preparation of the observation mahazar and rough sketch and the recovery of bloodstained earth and sample earth from the place of occurrence. P.W.8 has spoken about the arrest of the accused, confession made by the first accused and consequential recovery of M.Os.1 and 2. P.W.9 has turned hostile and she has not supported the case of the prosecution in any manner. P.W.10 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.11 has spoken about the registration of the case. P.W.12 has spoken about the investigation done and P.W.13 has spoken about the further investigation done and the final report filed.

3. When the above incriminating materials were put to the accused, they denied the same as false. However they did not choose to examine anyone nor mark any documents. Having considered all the above the trial Court convicted the appellant alone as detailed in the first paragraph of this judgment and that is how the appellant / first accused is before this Court with this appeal.

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

5. As we have already pointed out, the prosecution mainly relies on the evidence of P.Ws.1 and 2, who have stated that they have witnessed the entire occurrence. The learned counsel appearing for the appellant would submit that the evidence of P.Ws.1 and 2 cannot be believed. He has pointed out that they are closely related to the deceased and their evidence should be viewed with suspicion. We are not persuaded by the said argument. They are not unnatural witnesses. P.Ws.1 and 2 are neighbours to the deceased and therefore, their presence at the place of occurrence cannot be doubted. Apart from that, the occurrence had taken place just at the entrance of the house of the first accused.

6. The conduct of the first accused / appellant in absconding until he was arrested by the police is yet another strong circumstance against the first accused. Had it been true that he was innocent, by all natural human conduct, he would have gone to the police station and gave a complaint or he would have at least been present at the place of occurrence

and raised a distress call. The very fact that he was absconding from the place of occurrence would go to further corroborate the evidence of P.Ws.1 and 2, who have stated that it was the first accused who dropped the grinding stone on the head of the deceased and cut her with vegetable cutter. These two witnesses have been cross examined at length and nothing has been elicited to doubt their veracity.

7. Further there was no delay in making the complaint and the F.I.R. reaching the hands of the learned Magistrate, which also to some extent vouches to the truthfulness of the allegations in the complaint. Thus, we find no reason to reject the evidence of P.Ws.1 and 2.

8. The medical evidence also duly corroborates the eyewitness account. Thus, the prosecution has clearly established that the death of the deceased was caused only by the appellant / first accused and the second accused had nothing to do with the same. Now the question is what was the offence which is committed by the first accused by his said conduct.

9. Admittedly, there was no motive for the accused to kill the deceased. The quarrel which preceded the actual occurrence was not a premeditated one and it was domestic in nature. When the deceased rushed out of the house, the appellant would have got provoked. Even at that time, he was not armed with any weapon. The grinding stone was lying there, which he took out and dropped on the deceased. The vegetable cutter which was used for domestic purpose was also lying there and he took it and inflicted injuries on the deceased. Thus, it is crystal clear that upon provoked by the deceased by her act of rushing out of the house crying, which in our considered view, was not only sudden but also grave, the appellant had caused injuries on the deceased which resulted in her death. Thus, the act of the accused would squarely fall within the third limb of Section 300 I.P.C. and the same would fall under the first exception to Section 300 I.P.C. Therefore, he requires to be punished only under Section 304(i) I.P.C.

10. Now turning to the quantum of punishment, the first accused is a poor man and he has got a family to take care. He has got no bad antecedents. The occurrence was not a premeditated one. The accused was not armed with any weapon already. He took out the grinding stone and the vegetable cutter lying there and inflicted injuries on the deceased. There are lots of chances for reformation. Having regard to the mitigating as well as the aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for ten years and pay a fine of Rs.1,000/- for offence under Section 304(i) I.P.C. and for offence under Section 498(A) I.P.C. to undergo rigorous imprisonment for one year and pay a fine of Rs.1,000/- in

default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

11. In the result, the criminal appeal is partly allowed in the following terms:

(i) The conviction and sentence imposed on the appellant by the learned Sessions Judge, District Mahila Sessions Court, Cuddalore in S.C.No.281 of 2013 dated 27.08.2015 under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and he is sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for four weeks. The conviction of the accused under Section 498(A) is confirmed however the sentence is modified and it is directed that he shall undergo rigorous imprisonment for one year and pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for four weeks. Both the sentence shall run concurrently.

(ii) It is directed that the period of detention already undergone by the accused shall be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kk

To

1. The Sessions Judge,
District Mahila Sessions Court,
Cuddalore.
2. -do- Thro' The Principal District Judge, Cuddalore.
3. The Judicial Magistrate, Cuddalore.
4. -do- Thro' The Chief Judicial Magistrate, Cuddalore.
5. The District Collector/District Magistrate, Cuddalore.
6. The Director General Officer, Mylapore, Chennai-4.

7. The Deputy Superintendent of Police,
Panrutti Sub Division,
Nellikuppam Police Station,
Cuddalore District.

8. The Superintendent, central Prison, Cuddalore.

9. The Public Prosecutor, Madras High Court.

+ 1 cc to Mr.K. Sathyaraj, Advocate Sr.4236

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