

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.784 of 2016

Amsavalli

... Appellant/Accused

Vs

The State by
Inspector of Police,
Kumaratchi Police Station,
Cuddalore District,
Crime No.39/2014

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., by the appellant against the judgment dated 07.11.2016 passed in S.C.No.27/2015 on the file of the learned District Mahalir Sessions Judge, Cuddalore.

For Appellant : Mr.I.C.Vasudevan

For Respondent : Mr.P.Govindarajan,

Additional Public Prosecutor

JUDGEMENT

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

The appellant is the first accused in S.C.No.27/2015 on the file of the learned District Mahalir Sessions Judge, Cuddalore. The second accused is one Mr.Kalirathinam. The accused/A.1 & A.2 stood charged for offence under Section 302 I.P.C. By judgment dated 07.11.2016, the trial Court convicted both the accused for offence under Section 302 I.P.C., and sentenced them to undergo

imprisonment for life and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellant/A.1 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 one Mrs.Meenatchi. She had two sons, by name, Mr.Laxmanan & Mr.Elavarasan. A.1 is the wife of Mr.Laxmanan. For about two years, prior to the occurrence, Mr.Laxmanan had gone to Abroad, on account of his job. Thus, A.1 was living with the deceased and the other family members at New Street, Siragizhandanallur Village, Cuddalore District. A.2 is a close friend of Mr.Elavarasan. He used to visit Mr.Elavarasan at the house of the deceased. In such a way, A.2 came to develop illicit intimacy with A.1. This came to the knowledge of the deceased and the other family members. The deceased used to reprimand both these accused and wanted them to disconnect such illicit relationship. But A.1 and A.2 continued to have such illicit intimacy. This was not to the liking of the deceased and she was a hurdle for A.1 and A.2 to continue their illicit relationship. This is stated to be the motive for A.1 and A.2 against the deceased.

3.On 15.04.2014, around 11.00 pm, just behind the garden of the house of the deceased, A.1 and A.2 had a meeting exclusively. A.2 had brought "7" up cool drinks to A.1. On intimation over phone by A.2, A.1 had gone to the garden where, she met A.2. When A.1 and A.2 were together exclusively, the deceased found them and shouted and threatened them that she would inform the said relationship to the husband of A.1. In that quarrel, it is stated that when the deceased came out of the house, A.1 dragged her into the house and pushed her down and A.2 thereafter, took out a grinding stone and dropped the same against the neck of the deceased. The deceased died due to such strangulation. She also suffered other injuries on her body. The occurrence was witnessed by P.W.2, the son of A.1. A.2 then fled away from the scene of occurrence.

4.P.W.3, a neighbour heard the commotion from the house of the deceased. When he rushed to the house of the deceased, he found A.2 fleeing away from the house of the deceased. He further found the deceased lying with injuries on her neck. P.W.3 raise alarm which attracted the other neighbours. Thereafter, he informed about the occurrence to P.W.1. P.W.1 Mr.Elavarasan, who is yet another son of the deceased came to the house and after verifying the facts, went to the Kumaratchi Police Station at 3.00 pm on 16.04.2014 and made a complaint. The said complaint was received by P.W.8, the then Sub Inspector of Police and on the basis of the said complaint, he

registered a case in Crime No.39/2014 for offence under Section 302 I.P.C. Ex.P.1 is the complaint and Ex.P.11 is the F.I.R. P.W.8 forwarded Ex.P.1 - complaint and Ex.P.11 F.I.R., to Court which were received by the learned Judicial Magistrate at 10.00 pm on 16.04.2014.

5.The case was taken up for investigation by P.W.9, the then Inspector of Police. He went to the place of occurrence, prepared an observation mahazar and a rough sketch. Then he conducted inquest on the body of the deceased and forwarded the same for post mortem.

6.P.W.6 - Dr.Mythili, conducted autopsy on the body of the deceased on 17.04.2014 at 1.15 pm. She found the following injuries:-

- "(i)Contusion right cheek r cm lateral to the right ear lobule
- (ii)Contusion right side neck above the posterior border of sternomastoid 2 x 1 cm
- (iii)Contusion along the alterior border of sternomastoid
- (iv)Contusion 3 cm above the sternal ankle 3x1cm".

Ex.P.5 is the post mortem certificate. She gave opinion that the death of the deceased was due to strangulation.

7.The appellant/A.1 had also sustained injuries in the same occurrence. She was taken to the hospital at 7.20 pm on 17.04.2014 by the Sub Inspector of Police. P.W.6, Doctor examined her. The appellant/A.1 told the Doctor that on 16.04.2014 around 2.00 am, her mother-in-law bite her left index finger. The Doctor found a bite injury on the right index finger of A.1. Ex.P.6 is the accident register. She gave opinion that the said injury found on A.1 was simple in nature.

8.P.W.9, during the course of investigation, arrested both A.1 & A.2 at 7.00 am on 17.04.2014. On such arrest, A.2 made a voluntary confession, in which, he disclosed the place where he had hidden the grinding stone (M.O.1). In pursuance of the said disclosure statement, he took the Police and witnesses to the place of hide out and produced the grinding stone (M.O.1) and a cell phone (M.O.3). He recovered the same under a mahazar and forwarded the same to Court. On completing investigation, he laid charge sheet against the accused.

9.Based on the above materials, the trial Court framed a lone charge against both the accused for offence under Section 302 I.P.C. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many

as 9 witnesses were examined and 13 documents were exhibited, besides 3 Material Objects were marked.

10. Out of the said witnesses, P.W.1 is the second son of the deceased and he has spoken about the motive of A.1 & A.2 to commit the murder of the deceased. He has further stated that on receiving intimation about the death of his mother, he made a complaint to the Police. P.W.2, the son of A.1 has vividly spoken about the occurrence however, he is a child witness. P.W.3, neighbour has stated that on hearing the commotion from the house of the deceased, he rushed to the house of the deceased and he found A.2 fleeing away from the scene of occurrence. Then, he found the deceased lying with injuries. On hearing the alarm raised by P.W.3, the other neighbours came there and then P.W.3 informed the same to P.W.1. P.W.4 has spoken about the preparation of observation mahazar and the rough sketch. P.W.5 has spoken on hearsay information. P.W.6 has spoken about the post mortem conducted and her final opinion regarding the cause of death of the deceased. P.W.7 has spoken about the arrest of A.1 and A.2 and the consequential recovery of M.Os.1 to 3 on the disclosure statement made by A.2. P.W.8 has spoken about the registration of the case. P.W.9 has spoken about the investigation done and the final report filed.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor did they mark any documents on their side. Their defence was a total denial.

12. Having considered all the above materials, the trial Court convicted and sentenced the accused as stated in the first paragraph of this judgment. The present Criminal Appeal has been filed by the first accused.

13. We have heard the learned counsel for the appellant/A.1 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

14. In this case, as we have already pointed out, P.W.2 is the son of A.1. He is the star witness for the prosecution. He has stated that he witnessed the entire occurrence. According to him, the deceased was brought into house by A.1 and thereafter, A.2 took out a grinding stone and attacked the deceased with the same. At the time of examination, P.W.2 was hardly aged 5 years and thus, he is a child witness. The trial Court has recorded that P.W.2 was competent to depose as required under Section 118 of the Indian Evidence Act.

15. The learned counsel for the appellant/A.1 would submit that before giving evidence, P.W.2, the child witness was

tutored and therefore, he should not be believed. Ofcourse, it is true that the child is prone for tutoring. But, in the instant case, absolutely there is no material to show that P.W.2 - the child witness was tutored by anybody. This witness was examined in chief on 18.01.2016. But he was not cross examined on the same day. He was cross examined by the learned counsel for the accused only on 17.03.2016. This attempt, probably, was either with a view to win over the child witness or to make the witness to forget the facts. But P.W.2 withstood the cross examination and nothing could be elicited even to remotely infer that P.W.2 would have been tutored. Above all, the presence of P.W.2 at the place of occurrence also cannot be doubted. From the evidence of P.W.2, in our considered view, the prosecution has clearly established that it was A.2 who attacked the deceased and killed her and the appellant herein who is A.1 facilitated him.

16.P.W.3, the neighbour has stated that on hearing the commotion, when he rushed to the house of the deceased, he found A.2 fleeing away from the scene of occurrence. He is an independent witness. His evidence would further corroborate the evidence of P.W.2. The medical evidence also duly corroborates the eye witness account of P.W.2. From these evidences, the prosecution, in our considered view, has succeeded in establishing beyond reasonable doubt that it was A.2 who caused injury on the neck of the deceased by dropping the grinding stone and killed her. It has also been established that the appellant/A.1 had facilitated A.2.

17.Having come to the above conclusion, now we have to examine as to what was the offence that was committed by the appellant/A.1. Ofcourse, it is in evidence that A.2 had motive; he attacked the deceased by dropping the grinding stone on her neck and he also ensured the death of the deceased instantaneously. This would go to prove that A.2 had a definite intention to cause the death of the deceased. Thus, the act of A.2 would fall within the third limb of Section 300 I.P.C.

18.So far as the appellant/A.1 is concerned, she stands in a different footing. She did not cause any injury on the deceased. It is the positive case of the prosecution itself that there was a wordy quarrel developed by the deceased on seeing these two accused together on the backyard of the house of the deceased. It was in that quarrel, when the deceased rushed out of the house shouting that she would inform about this illicit relationship to the husband of A.1, A.1 dragged her into the house. At that time, A.2 had suddenly taken a grinding stone and attacked the deceased and killed her. This would not have been anticipated by A.1.

19. From the facts proved, it is inferable that the appellant/A.1 who had no common intention with A.2 to commit murder could be attributed with the knowledge when she was scolding the deceased that A.2 was likely to kill her. This knowledge she could have acquired from the moment when A.2 lifted the grinding stone. In the same transaction, A.2 had killed the deceased. After A.2 had lifted the stone, A.1 did not relieve the deceased. Neither she resisted A.2 in his attempt. Thus, her act facilitated A.1 to drop the stone on the deceased. Therefore, the act of A.1 in facilitating A.2 with the knowledge that A.2 was likely to cause the death would fall within the third limb of Section 299 I.P.C. Thus, the appellant/A.1 is liable to be punished only for an offence under Section 304(ii) r/w 38 I.P.C.

20. In this regard, we may refer to a judgement of the Hon'ble Supreme Court in Bhaba Nanda Sharma v. State of Assam (AIR 1977 SC 2252) wherein, the facts are almost similar to that of the case on hand. In that case, three persons who were brothers including the deceased, while on the way to their field were chased by the accused persons. One accused cried out that they must not escape whereon another accused B caught hold of the victim who on receiving blows from other accused persons namely P & H on his head fell down dead. It was held that 'B' did not share any common intention with the others. Applying the principle of law under Section 38 I.P.C., the case of B was separated from that of the other two accused and he was found guilty only under Section 304 Part II I.P.C., as he had intentionally joined in the commission of an act with the knowledge that the assault on the deceased was likely to result in his death. Applying the same yardstick, in the instant case, in our considered view, the appellant/A.1 is liable to be punished for offence under Section 304(ii) r/w 38 I.P.C.

21. Now turning to the quantum of punishment for an offence under Section 304(ii) r/w 38 I.P.C., the appellant/A.1 has got two children to take care of and she had no bad antecedents. There are lot of chances for reformation. Having regard to the aggravating as well as the mitigating circumstances, we are of the view that, sentencing the appellant/A.1 to undergo rigorous imprisonment for five 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.

22. In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/A.1 for offence under Section 302 IPC is set aside and instead, she is convicted for offence under Section 304(ii) r/w 38 I.P.C., and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo rigorous

imprisonment for four weeks. It is further directed that the period of detention already undergone by the appellant/A.1 shall be set off as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

JBMTTo

- 1.The District Mahalir Sessions Judge,
Cuddalore.
- 2.The Public Prosecutor,
High Court, Madras.
- 3.The Inspector of Police,
Kumaratchi Police Station,
Cuddalore District.
- 4.The Superintendent,
Central Prison, Cuddalore.
- 5.The District Collector, Cuddalore.
- 6.The Director General of Police,
Mylapore, Chennai.

Copy to
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.I.C.Vasudevan, Advocate SR.No.4821

Crl.A.No.784 of 2016

PA(CO)
GN(21/04/2017)

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