

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.785 of 2016

and

CrI.M.P.No.12520 of 2016

Sathyamoorthi ... Appellant/ Sole Accused

- Vs -

State rep by the Inspector of Police,
M-4, Thudiyalur Police Station,
Coimbatore District.
(Cr.No.530 of 2013)

... Respondent / Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned I Additional District and Sessions Judge, Coimbatore in S.C.No.143 of 2015 dated 24.10.2016.

For Appellant : Mr.C.S.Saravanan

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

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J U D G M E N T

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

The appellant is the sole accused in S.C.No.143 of 2015 on the file of the learned I Additional District and Sessions Judge, Coimbatore. He stood charged for offence under Section 302 I.P.C. The trial Court by judgment dated 24.10.2016, convicted him under Section 302 I.P.C. and sentenced him to

undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months. 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 appellant is the husband of the deceased. The deceased Mrs.Revathi was married to the accused ten years before the date of occurrence. Out of the said wedlock, two children were born. They were all living together in a rented house in Edayapalayam village. Sometime after the marriage, there started arising quarrel between the appellant and the deceased. The accused was not regular in going to coolie work and he spent his time lavishly as well. The family went into penury. At one stage, the deceased returned to her parental home.

2.2. On 03.07.2013, the accused came to the house of the parents of the deceased and persuaded her to return back to his house. It is alleged that on the same day, during night hours, there arose a quarrel between the deceased and the accused. It is also alleged that the accused had suspicion over her fidelity. It is further alleged that in the said quarrel, the accused took out a knife and gave a single blow on the right side of her neck and the deceased died on the spot. The accused left the body of the deceased inside the house, locked it from outside and ran away.

2.3. P.W.1 the father of the deceased has stated that on 03.07.2013, the deceased was taken back by the accused to his house. He has also spoken about the frequent quarrels between the accused and the deceased. He has further stated that around 03.30 a.m. on 04.07.2013 one Mr.Ravi has informed him that the deceased was found lying dead inside the house and the house was locked. Immediately, he rushed to the house of the accused and through the window he peeped through and found the deceased lying dead with injuries. Then, P.W.1 went to the police station and made a complaint.

2.4. P.W.10, the then Sub Inspector of Police registered a case in Crime No.530 of 2013 at 05.30 a.m. on 04.07.2013 against the accused under Section 302 I.P.C. Ex.P1 is the complaint and Ex.P8 is the F.I.R.

2.5. The case was then investigated by P.W.13 the then Inspector of Police. He proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. He broke open the door of the house, went into the house and examined the witnesses. During inquest, he recovered the bloodstained earth and sample earth from the

place of occurrence where the dead body was lying. Then, he recovered the bed sheet and pillow cover also from the place of occurrence which was bloodstained. Then, he forwarded the body for postmortem.

2.6. P.W.12 conducted autopsy on the body of the deceased on 04.07.2013 at 04.00 p.m. He found the following injuries:

"Injuries: (1) Transverse cut wound noted on front and side of neck at the level of lower part of thyroid cartilage. A wound passing inwards and backwards and cutting the underlying upper part of thyroid cartilage muscles vessels nerves and cutting the underlying paraspinal muscles and spinal cord between C-4 and C-5 vessels.

(2) Transversely oblique stab wound 2 x 1cm x muscle deep noted on lower part of right side neck, the blunt medial end 2 cm right to mid line and sharp lateral end is 2 cm above to the right clavicle.

(3) An incised wound 5 cm in numbers each measuring 2x1, 3x1, 2x1, 4x1, 2x1 cm noted on left fronto parieto temporo region up to scalp deep. On dissection of scalp skull and dura: left temporalis muscle found contused. Skull dura intact.

Other Findings: Pleural and peritoneal cavities - empty; Heart - all chambers contains about few cc of fluid blood, coronaries patent; Stomach contains about 50 ml of blood clot. No specific smell, mucosa pale. Small intestine contains about 10 ml of bile stained fluid, no specific smell, mucosa pale - spleen, kidneys, lungs and liver - cut section pale; Urinary bladder - empty; Uterus - Normal in size cut section empty."

Ex.P10 is the postmortem certificate and Ex.P11 is his final opinion regarding the cause of death. He opined that the deceased died due to shock and hemorrhage due to the injuries found on the body of the deceased.

2.7. P.W.13, during the course of investigation, recovered the bloodstained clothes from the body of the deceased and forwarded the same also to Court. On 06.07.2013, he arrested the accused at 11.00 a.m. in the presence of witnesses. On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden a knife. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.1-knife. P.W.13 recovered the same under a mahazar in the presence of the same witnesses.

2.8. On returning to the police station, he forwarded the accused to Court for judicial remand and also forwarded the material objects to Court. At his request the material objects were sent for chemical examination. The report revealed that there were bloodstains on all the material objects including the knife recovered from the accused. On completing the investigation, he laid chargesheet against the accused.

2.9. Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C. against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 16 documents and 14 material objects were marked.

2.10. Out of the said witnesses, P.W.1 the father of the deceased has stated about the frequent quarrel between the accused and the deceased and the fact that the deceased was taken from his house by the accused on 03.07.2013. He has further stated that on the next day early morning, he was informed that the deceased was no more. He has further spoken about the complaint made. P.W.2 is the maternal uncle of the deceased. He has stated that around 12.30 a.m. on 04.07.2013, when he had gone to the bus stand in the same village, he found the accused with bloodstains on his shirt. On seeing him, the accused ran away from the said place. P.W.3 is the mother of the deceased. She has stated that the accused had suspicion over the fidelity of the deceased. She has further stated that on 04.07.2013, early morning, she was informed that the deceased was no more.

2.11. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch prepared at the place of occurrence. P.W.5 is an important witness for the prosecution. She is a neighbour of the deceased. She has stated that on 03.07.2013, in the evening, she found the accused and the deceased together retuning in the motorcycle to their house around 09.00 p.m. After some time, the deceased started taking to somebody over phone. The accused questioned the same. Then he took the deceased inside the house. From inside the house, according to her, she heard that there was a quarrel between the accused and the deceased.

2.12. P.W.6 is yet another neighbour. He has also stated that around 09.30 - 10.00 p.m. on the day of occurrence, there was a quarrel between the accused and the deceased. P.W.7 has also stated that he found the accused and the deceased going together into their house in the evening of 03.07.2013. P.W.8 has spoken about the arrest of the accused, confession made by the accused and the consequential recovery of the knife (M.O.1).

P.W.9 is a constable who has stated that he handed over the material objects to the forensic lab on the directions of the Court for examination.

2.13. P.W.10 has spoken about the registration of the case. P.W.11 has spoken about the photographs taken at the place of occurrence as directed by P.W.13. P.W.12 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.13 has spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine anyone nor mark any documents. Having considered all the above, the trial Court convicted the appellant as detailed in the first paragraph of this judgment and that is how the appellant 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. It is a case based on circumstantial evidence as there is no eyewitness to the occurrence. P.Ws.5, 6 and 7 are important witnesses for the prosecution. They have stated that around 09.00 p.m. on 03.07.2013, the accused and the deceased came together in a motorcycle and by sitting just before the house, they were talking for some time. P.W.1 the father of the deceased has stated that the accused came to his house and took the deceased on 03.07.2013 after persuading her. There is no reason to reject this part of the evidences of P.Ws.1, 5, 6 and 7.

6. P.W.5 has further stated that for some time, the deceased started talking to somebody through her cellphone and the accused shouted at her and took her inside the house. Inside the house, according to P.W.5, there was some quarrel between them. P.Ws.6 and 7 have also stated so. P.Ws.5 to 7 are independent witnesses whose credentials cannot be doubted. From their evidence, it is crystal clear that lastly inside the house, there were only two persons viz., the accused and the deceased.

7. On 04.07.2013, early in the morning around 03.30 a.m., it was found that the house of the accused was locked from outside. Through the window when P.W.1 peeped through, the dead body of the deceased was found lying inside the house. The house was not opened either by P.W.1 or by the neighbours. After the case was registered on the complaint of P.W.1, P.W.13 the Inspector

of Police came to the place of occurrence and with the help of others broke open the door, went into the house and inside the house, the accused was not present. The accused has got no explanation as to how and when he went out of the house and who locked the house. This is a very strong circumstance against the accused. Even after the news has spread that the deceased was no more, the accused did not bother to return home. Had he been really innocent, he would have made a complaint to the police. The conduct of the accused in absconding until he was arrested by the police is also a very important incriminating circumstance against the accused. These three circumstances namely the accused and the deceased alone were lastly there in the house, thereafter the dead body of the deceased alone was found in the house with injuries, the house was found locked from outside, the conduct of the accused in absconding until he was arrested would all go to show that it was this accused who stabbed the deceased and caused her death. We do not find any ground at all to doubt the prosecution case in this regard.

8. But the learned counsel appearing for the appellant would submit that the motorcycle in which the accused and the deceased returned home on 03.07.2013 has not been recovered by the police. In our considered view, it is immaterial. P.Ws.5, 6 and 7 have seen the deceased and the accused returning home together around 09.00 p.m. on 03.07.2013. The mere non-recovery of the motorcycle would not in any manner cause any dent in the case of the prosecution.

9. The learned counsel would next contend that P.W.2 did not inform about the occurrence immediately to the police about the fact that he saw the accused in the bus stand with bloodstain clothes. This argument also deserves to be rejected because P.W.2 has stated that after having seen the accused in the bus stand with bloodstain shirt and after the accused had simply disappeared from the said place, he returned to the house of the accused and out of suspicion, peeped through the window and found the dead body of the deceased. He duly informed P.W.1 about the same. That is how, P.W.1 came to the house of the accused and then went to the police station with a complaint. Thus, the evidence of P.W.2 cannot be assailed in any manner. The evidence of P.W.2 is yet another incriminating circumstance. From these circumstances, in our considered view, the prosecution has clearly proved beyond any reasonable doubt that it was this accused who caused the death of the deceased by stabbing her with a knife. Now the question is what was the offence that was committed by the accused by his act.

10. As it has been spoken by P.Ws.5 to 7, it is crystal clear that the accused and the deceased came together in a cordial manner. It has been spoken by P.W.1 also. After having

reached the house, both were sitting just before the house chatting with each other. Until then, everything was going on smoothly. The problem started only when the deceased started talking to somebody over cellphone as spoken by P.W.3 already there was a suspicion that the deceased was having illicit intimacy with somebody else. Because of the suspicion, the accused had shouted at her and told her to disconnect the phone call and came into the house. The deceased went into the house. Thereafter, according to P.W.5, the quarrel went on for some time. From these circumstances, it is crystal clear that only in that quarrel, the accused had taken a knife and stabbed the deceased only once. The occurrence was thus not a premeditated one. The accused thus had no intention to cause the death of the deceased but he definitely had intention to cause injury and such intended injury was sufficient in normal course of nature to cause death. Thus, the act of the accused would squarely fall within the third limb of Section 300 I.P.C. and at the same time it would fall within the first exception to Section 300 I.P.C. and therefore the accused is liable to be punished for offence under Section 304(i) I.P.C.

11. Now turning to the quantum of punishment, we have to take into account that there was no premeditation. The accused was hardly 39 years of age at the time of occurrence. He has got no bad antecedents. There are lots of chances for reformation. Having regard to all these mitigating as well as the aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for eight years and pay a fine of Rs.1,000/- for offence under Section 304(i) I.P.C. would meet the ends of justice.

12. 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 I Additional District and Sessions Judge, Coimbatore in S.C.No.143 of 2015 dated 24.10.2016 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 eight years and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for four weeks.

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

(iii) Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kk

To

1. The I Additional District & Sessions Judge,
Coimbatore.
2. -do- Thro The Principal District & Sessions Judge,
Coimbatore.
3. The Judicial Magistrate No.I,
Coimbatore.
4. The Chief Judicial Magistrate
Coimbatore.
5. The Inspector of Police,
M4, Thudiyalur Police Station,
Coimbatore.
6. The District Collector,
Coimbatore.
7. The Director General of Police,
Mylapore, Chennai-4.
8. The Superintendent, Central Prison,
Coimbatore.
9. The Public Prosecutor,
High court, Madras.
10. The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.C.S.Saravanan, Advocate, S.R.No.5060(26.05.2017)

CrI.A.No.785 of 2016 and
CrI.M.P.No.12520 of 2016

GJ(CO)
RS(23/05/2017)