

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 15.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

Crl.A.No.820 of 2016

K.Kaliappan

... Appellant

vs.

State, rep.by
The Inspector of Police,
Gopichettipalayam Police Station,
Erode District

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 28.03.2016 passed by the Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode, in S.C.No.129 of 2015.

For Appellant : Mr.K.Seetharam

For Respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

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

The appellant is the sole accused in Sessions Case No.129 of 2015, on the file of the learned Fast Track Mahalir Sessions Court, Erode. He stood charged for the offence under Section 302 IPC. By judgement dated 28.3.2016, the trial Court convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.100/-, in default, to undergo rigorous imprisonment for one year. 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:

(a) The deceased in this case was one Mrs.Palaniammal. The deceased had a daughter by name Maheswari. She was given in marriage to one Mr.Thangavel. Thangavel's brother is one Mr.Krishnamurthy @ Murthy. In respect of partitioning the

property, there arose mis-understanding between the accused and other persons mentioned herein above. This is stated to be the motive for the occurrence. The accused believed that the deceased was responsible for the dispute. Therefore, according to the case of the prosecution, the accused decided to do away with the deceased.

(b) It is further alleged that on 17.3.2015, at about 7.15 a.m., the deceased was proceeding on the road between Thadapalli channel, Vandipalam and Andaperumal temple in the same village. She was followed by P.W.2 and others. The accused came some time late, following them. The deceased was going 10 feet ahead of the others. At that time, the accused walked fast towards the deceased and on reaching her, mounted attack on her with a knife. The others, who accompanied the deceased, raised alarm. But the accused did not stop cutting. He indiscriminately cut the deceased and caused her death instantaneously. Since the others raised alarm, the accused ran away from the scene of occurrence. P.W.2, who accompanied the deceased, immediately informed P.W.1, the son of the deceased, about the occurrence. P.W.1 rushed to the place of occurrence and after noting down the dead body and injuries, went to the police station, at 8.45 a.m., on 17.3.2015 and made a complaint, vide Ex.P1. The Sub-Inspector of Police, Gobichettipalayam Police station, registered a case in Crime No.223 of 2015, under Section 302 IPC against the accused. Ex.P14 is the FIR. He forwarded both the documents to Court, which were received by the learned Magistrate at 12.00 p.m., on the same day.

(c) The case was taken up for investigation by P.W.15. He went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of witnesses. He recovered the blood stained earth and sample earth from the place of occurrence, in the presence of the same witnesses. After holding inquest on the body of the deceased, he forwarded the body to the hospital for post-mortem. P.W.3-Dr.Ilavarasan, conducted autopsy on the body of the deceased on 17.3.2015, at 2.45 p.m. He found the following injuries.

"External: (1) Deep lacerated wound 12x4x6 cm severing major blood vessels, nerves, muscles and other internal structures (+) below (L) ear lobe extending backwards upto basiocciput region(2) Deep lac.wound 6 x 2 x2 cm 1 cm below to injury No.(1). (3) Dep lac. wound 5 x 2 x 2 cm (+) over (L) temple region (4) Deep l.wound 5 x 3 x 3 cm (+) extending from (L) cheek to (R) cheek involving the nasal bone-fractured crosses the midline. (5) (R) ear lobe torn along with laceration 7 x 3 x 2 cm

behind the (R) ear. (6) D.L.wound 4 x 2 x 2 cm (+) over (R) parieto occipital region (7) D.L.wound 5 x 2 x 2 cm (+) Over (R) side of chin (8) Deep Laceration 8 x 6 x 3 cm (+) over (L) ulna border of (L) forearm severing muscles, blood vessels, bones etc. (9) D.L wound 7 x 6 x 3 cm (+) over inner aspect of wrist (+) (10) D.L.wound 6 x 3 x 2 cm (+) over palmar aspect of hypothenar eminence (L) (11) open # of 3rd and 4th digits (L) Hand involving small bones (12) D.L.wound 6 x 4 x 3 cm involving bone near the (R) elbow (13) D.L.wound 10 x 3 x 2 cm (+) over (L) patellar region involving bones, soft tissues etc. Eyelids closed. Face-blood stained. Nasal bone # ed. o/D sternum - # ed. Heart - wt.270 g both chamber empty. lungs - pale (R) 400g (L) 350 g. hyoid bone-chip #tip of (R) Horn stomach - 300 g of partially digested food particles."

Ex.P3 is the post-mortem certificate. He gave opinion that the deceased died due to shock and haemorrhage due to multiple injuries found on the body. He further opined that the injuries found on the body of the deceased could have been caused by a weapon like M.O.1, knife.

(d) P.W.15 recovered the blood stained clothes from the body of the deceased. On the same day at 3.15 p.m., near Athani, he arrested the accused in the presence of witnesses. While in custody, the accused made a voluntary confession, in which he disclosed the place where he had hidden the knife. In pursuance of the same, he took the police and the witnesses to the place of hide-out and produced M.O.1, knife. P.W.15 recovered the same under mahazar, in the presence of witnesses. On returning to the police station, he forwarded the accused to the Court for judicial remand. The material objects were sent for chemical examination, which reveal that there were human blood stains on all the material objects, including the weapon. On completing the investigation, he laid a charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charge against the accused under Section 302 of the Indian Penal Code. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 15 witnesses were examined, 16 documents were exhibited, besides 11 material objects. Out of the said witnesses, P.W.1, the son of the deceased, has spoken about the motive. He has further stated that on the day of occurrence, he was informed by P.W.2 about

the occurrence. He went to the place of occurrence and then went to the police station to make a complaint. P.W.2 is the eyewitness to the occurrence. He has stated that he accompanied the deceased and witnessed the entire occurrence. P.W.3, the Doctor, has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.4, an expert in the Forensic Science Department, has stated that he examined the material objects and found that there were human blood stains on all the material objects, including the knife. P.W.5 is yet another eyewitness to the occurrence. He has stated that he accompanied P.W.2 and the deceased and witnessed the entire occurrence. P.W.6 has spoken about the hear-say information. He has not stated anything incriminating against the accused. He has further stated about the arrest of the accused and the confession made by him and the consequential recovery of M.O.1 from his possession, in pursuance of the disclosure statement made by the accused. P.W.7 is the daughter of the deceased. She has also stated only about the motive for the occurrence. P.W.8 has stated about the recovery of the blood stained clothes from the accused by the police. P.W.9 has stated that he handed over the FIR to the Court at 12.00 p.m. on 17.3.2015. P.W.10, a Constable, has stated that he recovered the blood stained clothes from the body of the deceased and handed over the same to the investigating officer. P.W.11, a Forensic Science Expert, has stated that he examined the material objects and found that there were human blood stains on all the material objects, including the knife. P.W.12 has spoken about the further examination conducted. He has stated that the blood grouping of the blood stains found on the material objects were of 'A' group. P.W.13 has spoken about the photographs taken at the place of occurrence. P.W.14 has spoken about the registration of the case and P.W.15 has spoken about the investigation done and the final report filed.

4. When the above materials were put to the accused, he denied the same as false. However, he did not choose to examine any one on his side nor mark any document. His defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused, as detailed in first paragraph of this judgement and that is how the accused is before this Court.

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

7. In this case, as we already narrated, there are two eyewitnesses, namely, P.Ws.2 and 5. They have vividly spoken about the entire occurrence. According to them, they

accompanied the deceased and the deceased was going 10 feet ahead of them. The accused came from behind and on reaching the deceased, cut the deceased with M.O.1, knife. Though these two witnesses have been cross-examined at length, nothing has been elicited from them, so as to disbelieve their presence and their veracity. Thus, we do not find any reason to reject the evidence of these two eyewitnesses, who are independent witnesses also. The conduct of P.W.2 in immediately informing P.W.1 about the occurrence would also be an added strength to the evidence of P.W.2. On the complaint made by P.W.1, P.W.14 registered the case without any delay at 8.45 a.m. and the FIR also reached the hands of the learned Magistrate without any delay at 12.00 p.m. itself. From these evidences, we are of the considered view that the prosecution has clearly established that it was this accused, who caused the death of the deceased. The evidence of P.W.3, the Doctor, who conducted autopsy, would go to prove that the death was due to shock and haemorrhage due to multiple injuries found on the deceased. Thus, the prosecution has succeeded in establishing that it is this accused who caused the death of the deceased.

8. Having come to the above conclusion, now we have to examine as to what was the offence that the accused had committed by the above act?. P.Ws.1 and 7 have spoken about the motive. P.W.1 is the son and P.W.7 is the daughter of the deceased. They have spoken about the property dispute and the motive. The accused had gone to the place of occurrence with knife, which he was already possessing and cut the deceased and ran away from the scene of occurrence, which shows that he had pre-meditation. Driven by the motive, he went to the place of occurrence only with a view to cause the death of the deceased. Thirteen injuries were found on the body of the deceased, which would also go to prove that the accused had definite intention only to cause the death of the deceased. The accused cut the deceased repeatedly until he was satisfied that the deceased was no more. Only after the deceased fell down and died, the accused ran away from the scene of occurrence. Therefore, the act of the accused in causing the death of the deceased would fall squarely within the first limb of Section 300 of the Indian Penal Code. There is no other material even to infer that the act of the accused would fall under any one of the general exceptions or exceptions appended to Section 300 of the Indian Penal Code. Therefore, the appellant is liable to be punished only for offence under Section 302 IPC.

9. Now turning to the quantum of punishment, the trial Court has imposed only a minimum punishment, which is just and reasonable and the same does not warrant any interference.

10. In the result, the criminal appeal fails and the same

is dismissed and the conviction and sentence imposed by the trial Court are hereby confirmed.

sd/
Assistant Registrar(CS III)

/true copy/

Sub Assistant Registrar

To

- 1.The Sessions Judge, Magalir Neethi Mandram
(Fast Track Mahila Court), Erode.
 - 2.-do-thro-'The Principal Sessions Judge, Erode District.
 - 3.The Judicial Magistrate No.2,
Gobichettipalayam.
 - 4.-do-thro-'The Chief Judicial Magistrate,
Erode District.
 - 5.The District Collector, Erode District.
 - 6.The Director General of Police,
Mylapore, Chennai-4.
 - 7.The Superintendent Centrall Prison,
Coimbatore.
 - 8.The Inspector of Police,
Gopichettipalayam Police Station,
Erode District
 - 9.The Public Prosecutor, सत्यमेव जयते
High Court, Madras
 - 10.The Section Officer,
Criminal Section, High Court, Madras.
- +1cc to Mr.K.Seetharam, Advocate SR.No.9976

Cr1.A.No.820 of 2016

SVI (CO)
GN(09/03/2017)