

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2017

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE

Criminal Appeal No.870 of 2016

Velusamy

... Appellant/Accused

-Versus-

State Rep. by
The Inspector of Police,
Devala Police Station,
In Charge Nellakottai P.S.,
The Nilgiris District.
[Crime No.55 of 2007]

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C against the judgement of conviction and sentence passed by the learned Sessions Judge, Udhagamandalam, Nilgiris District in S.C.No.13 of 2008 dated 12.01.2009.

For Appellant : Mr.K.Seetha Ram

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.13 of 2008 on the file of the learned Sessions Judge, The Nilgiris at Udhagamandalam. He stood charged for offence under Section 302 of IPC. The trial court, by judgement dated 12.01.2009, convicted the accused under Section 302 of IPC and sentenced him to undergo imprisonment for life, however, no fine was imposed. Challenging the said conviction and the sentence, the accused is before this court with the present criminal appeal.

2. The case of the prosecution in brief is as follows:-
The deceased in this case was one Mrs.Alagamma. The accused is her husband. The deceased was aged about 60 years at the time of occurrence and the accused was aged more than 62 years. They

were residing at Sholadi village. P.W.1 is the eldest son of the deceased. P.W.4 is the younger son of the deceased. P.Ws.1 and 4 were residing in the same house, but, in different portions having separate entries. The accused and the deceased were living with P.W.4. Three months before the occurrence, there arose quarrel between the accused and the deceased and, therefore, the deceased left the house of P.W.4 and started residing with P.W.1. However, the accused continued to be with P.W.4. It is alleged that the accused was insisting upon the deceased to return to the house of P.W.4 and to live with him. The deceased has refused. This resulted in frequent quarrels between the accused and the deceased.

2. On 06.05.2007 around 07.00 p.m. the deceased came to the house of P.W.4 and wanted to return her clothes. P.W.4 accordingly returned. The accused got aggrieved because he was insisting upon the deceased to come and live with him at the house of P.W.4.

3. The deceased went into the portion of the house where P.W.1 was residing. It is alleged that the quarrel continued and in the said quarrel the accused took out a knife and stabbed the deceased. The occurrence was witnessed by P.W.2, the daughter of P.W.1. P.W.2 raised alarm. P.W.1 and others went into the portion of the house where P.W.4 was residing. On seeing them, the accused came out of the said portion with the blood stained knife and fled away from the scene of occurrence. P.W.1 entered into the house of P.W.4 and found the deceased lying in a pool of blood with a number of stab injuries. Immediately, he took out her to the Government Hospital at Gudalur. The Doctor after examining her declared her dead. Thereafter, P.W.1 went to Nellakottai Police Station and made a complaint (Ex.P.1). P.W.13, then then Head Constable, on receipt of the said complaint, registered a case in Crime No.55 of 2007 under Section 302 of IPC. Ex.P.9 is the FIR. He forwarded both the complaint and the FIR to the court which were received by the learned jurisdictional Magistrate at 09.00 a.m. on 07.05.2007. In the mean time, he handed over the case diary to the Inspector of Police for investigation.

4. P.W.4 took up the case for investigation. He went to the place of occurrence and prepared an observation mahazar and a rough sketch and also recovered the blood stained and sample earth from the place of occurrence under a mahazar. After conducting inquest on the body of the deceased, he forwarded the dead body to the hospital for postmortem.

5. P.W.12, Dr.R.Jeyachandran, conducted autopsy on the dead body of the deceased at 11.15 a.m. on 07.05.2007. He found the following injuries on the dead body of the deceased:-

"Injuries:

(1) Cut injury about 14 cm extending from back of the middle of left ear cutter lobe. Course - Transverse towards right side ending at the point 5 cm away from right ear.

(2) Deep incised slashed cut injury extending from the middle of the left cheek exposing soft tissues with depth of 3 cm and 20 cm width. Course: Around the nape of neck with fracture cervical vertebra C2 depth of wound just right side of the fractured C2-8 cm and end at base of right shoulder medial end.

(3) Deep cut injury of about 17 cm length exposing the soft tissues, muscles and femur bone with depth of 12 cm.

Anatomical site: Middle of left thigh lateral and just posterior. Upper end 20 cm from anterior superior iliac spine. Lower end: 17 cm from left knee joint.

(4) Cut injury base of right thumb exposing bone and (sic) of about 3 cm 1 x 1 cm"

Ex.P.8 is the postmortem certificate. He gave opinion that the shock and hemorrhage as a result of multiple injuries found on the dead body of the deceased. He further opined that the said injuries could have been caused by a weapon like knife.

6. During the course of investigation, P.W.14 recovered blood stained clothes from the body of the deceased. He arrested the accused at 01.00 p.m. on 07.05.2007 in the presence of witnesses. On such arrest, the accused made a voluntary confession in which he disclosed the place where he had hidden the knife. Then, he took the police and the witnesses to the place of hide out and produced the knife (M.O.1). P.W.14 recovered the same under a mahazar (Ex.P.5) in the presence of the same witnesses. Then, he forwarded the accused to the court for judicial remand. During investigation, he also forwarded all the material objects to the court with a requisition to send them to the Forensic Science Laboratory for chemical examination. At his request, the material objects were sent for chemical examination which revealed that there were human blood stains on all the material objects including the knife. On completing the investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial court framed a lone charge under Section 302 of IPC. The accused denied the same. In order to prove the case, on the side of the

prosecution, as many as 14 witnesses were examined, 17 documents and 6 material objects were marked.

8. Out of the said witnesses, P.W.2, the daughter of the P.W.1, is the eye witness to the occurrence. She has vividly spoken about the occurrence. P.Ws.1 and 3 have stated that on hearing the alarm raised by P.W.2 when they went to the house of P.W.4, they found the accused fleeing away from the scene of occurrence with knife with blood stains. They have also stated that the deceased was lying in a pool of blood inside the house of P.W.4. P.W.1 has further stated that he took the deceased to the hospital. After the deceased was declared dead by the doctor, he returned to the police station and made a complaint.

9. P.W.4, the younger son of the deceased has stated about the quarrel between the accused and the deceased that preceded the occurrence. P.W.5 is a neighbour. He has stated that on hearing the alarm raised by the deceased, when he went to the house of P.W.4, he found the accused fleeing away from the scene of occurrence. P.W.6 has stated that he heard about the occurrence and went to the place of occurrence. P.W.7 is the wife of P.W.1. She has also stated about the misunderstandings between the accused and the deceased. She has further stated that when she came to her house she found the deceased lying in a pool of blood. P.W.8 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence by the police. P.W.9 has spoken about the arrest of the accused and the consequential recovery of M.O.1- knife on the disclosure statement made by the accused. P.W.10 has stated that he took the deceased along with P.W.1 to Gudalur Government Hospital. P.W.11 has spoken about the photographs taken at the place of occurrence as requested by the investigating officer. P.W.12 has spoken about the postmortem conducted on the dead body of the deceased and his final opinion regarding the cause of death. P.W.13 has spoken about the registration of the case and the handing over of case diary to P.W.14 for investigation. P.W.14 has spoken about the investigation done by him in the case and the filing of charge sheet against the accused.

10. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

11. Having considered all the above, the trial court convicted the appellant/accused as detailed in the first paragraph of this judgement and sentenced him accordingly. Challenging the above said conviction and sentences, the accused is now before this Court with the present criminal appeal.

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

13. In this case, as we have already pointed out, there is no controversy over the fact that the occurrence had taken place at the house of P.W.1. P.W.2 alone was in the house at the time of occurrence. P.Ws.1 and his wife (P.W.7) were not in their house. Thus, the occurrence was witnessed by P.W.2. P.W.4, another son of the deceased has stated that the deceased came to his house and wanted her clothes to be returned to her. Then, he returned the clothes. The accused objected to the same because he was insisting upon the deceased to return to the house of P.W.4 and to live with the accused. This resulted in a quarrel. Despite the quarrel, the deceased went into the house of P.W.1 and the accused followed. It is inferable that inside the house the accused had insisted upon the deceased to return to the house of P.W.1. Going by the natural conduct, it is presumable that there would have been exchange of words between the accused and the deceased and in that process, the accused had stabbed the deceased with knife. The occurrence was witnessed by P.W.2 alone. The other witnesses namely, the neighbours have also stated that when they heard alarm raised by the deceased, they went to the house of P.W.1 and found the deceased lying in a pool of blood. P.W.1 and P.W.3 have stated that they found the accused fleeing away from the scene of occurrence with blood stained knife in his hands. From these evidences, in our considered view, the prosecution has clearly established that it was this accused who had stabbed the deceased with knife and killed her.

14. The learned counsel for the appellant would submit that there was inordinate delay in lodging the complaint and also in dispatching the same to the court. On this score, according to the learned counsel, the case of the prosecution should be doubted. But, we are not persuaded by the said argument. While considering the question of delay, we should not lose sight of the close relationship between the accused and the prosecution witnesses. It is not the case that P.W.1, his wife and his daughter were inimical towards the accused. After all, the accused is the father of P.W.1 and the deceased was the mother of P.W.1. Therefore, there would have been some initial hesitation on the part of P.W.1 to go to the police station and lodge a complaint. However, he had taken the deceased to Gudalur Government Hospital under the belief that she was still alive. It was only after the doctor declared her dead, he had gone to the police station with the complaint. Thus, though there is delay in lodging the complaint, the same stands explained away. Of course, there is delay in FIR reaching the hands of the learned Magistrate. On this score, we are not inclined to reject the

eye witness account of P.W.2 which is convincing. P.W.2 is a child witness. There is no evidence even to remotely infer that she had been tutored to depose falsely against the accused. The recovery of knife (M.O.1) at the instance of the accused also lends assurance to the case of the prosecution. From these facts, in our considered view, though there had been a delay on the part of the police in dispatching the FIR to the court, on that score, we cannot reject the eye witness account of P.W.2 and the other circumstantial evidences. Above all, the police station and the court are located in hills station in the Nilgiris District. Therefore, the distance between the police station and the court, that too, in the night hours could be covered only with some delay. In view of these factual situation, we reject the argument of the learned counsel for the appellant.

15. Having come to the conclusion that it was this accused who caused the death of the deceased by stabbing her with knife. Now, we have to examine, as to "what was the offence that was committed by the accused". As we have already pointed out, there was no motive for the accused. The old couple were living together at the house of P.W.4. Hardly three months before the occurrence, on account of quarrel, the deceased had gone to the house of P.W.1. The accused was insisting upon the deceased to return to the house of P.W.4 and to live with him. On the crucial day, the deceased despite the said request made by the accused, came to the house of P.W.1 and took away her clothes thereby indicating that she could not live with the accused at the house of P.W.4. When the accused protested, there occurred quarrel. Thus, the quarrel continued in the house of P.W.1 also. After all, the house of P.W.1 and the house of P.W.4 are under the same roof. It was only in that quarrel triggered by the words of the deceased, the accused had taken out the knife and stabbed her and caused her death. In our considered view, such provocation was not only sudden but also grave so as to make the accused to lose his control over his mental faculty. In such view of the matter, we hold that the act of the accused though would squarely fall within the third limb of Section 300 of IPC, would fall within the first exception to Section 300 of IPC. Therefore, the appellant/accused is liable to be punished for the offence under Section 304(i) of IPC.

16. Now, coming to the quantum of sentence, the appellant/accused was aged more than 73 years. He has been in jail continuously for more than eight years. He has got no bad antecedents. The occurrence was not a premeditated one. Having regard to the aggravated and mitigating circumstances, we are of the view that for the offence under Section 304(i) of IPC, reducing the substantive sentence of imprisonment to the period already undergone by the appellant/accused with a fine of Rs.500/- would meet the ends of justice.

17. In the result, the criminal appeal is partly allowed. The conviction and sentence imposed on the appellant for the offence under Section 302 of IPC is set aside and instead, he is convicted under Section 304(i) of IPC and sentenced to the period of sentence already undergone by him with a fine of Rs.500/-. If the fine amount imposed above is not paid by the appellant/accused he shall suffer simple imprisonment for a further period of one week.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kmk

To

- 1.The Sessions Judge,
Udhagamandalam,
The Nilgiris District.
- 2.The District Judge Cum Chief
Judicial Magistrate,
Nilgiris.
- 3.The Judicial Magistrate,
Gudalur.
- 4.The Superintendent,
Central Prison, Coimbatore.
- 5.The District Collector,
Nilgiris.
- 6.The Inspector of Police,
Devala Police Station,
In Charge Nellakottai Police Station,
The Nilgiris District.
- 7.The Director General of Police,
Chennai 04.
- 8.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.K.Seetha Ram, Advocate, S.R.No.9975

Crl.A.No.870 of 2016

NRI (CO)
CA(04/05/2017)