

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.11.2017

PRONOUNCED ON : 14.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Crl.A.No.790 of 2013

Thabetha

... Appellant

Vs.

State:Inspector of Police
B8 Pullarambakkam Police Station
Tiruvallur.

... Respondent

Criminal Appeal filed under Section 374 (2) of Cr.P.C. against the judgment and sentence passed by the Principal Sessions Judge at Tiruvallur in S.C.No.292 of 2012 dated 12.11.2013 convicting the appellant for an offence under Section 304(II) IPC and sentencing to undergo 5 years imprisonment and also to pay a fine of Rs.5,000/-, in default to undergo 6 months S.I. and the period of sentence already undergone by the appellant ordered to be set off u/s 428 Cr.P.C.

For Appellant : Mr.M.Rajavelu
For Respondent : Mr.K.Madhan
Govt.Advocate (crl.side)

JUDGMENT

This appeal has been filed against the judgment dated 12.11.2013 passed in S.C.No.292 of 2012 by the learned Principal Sessions Judge at Tiruvallur.

2. This is a case of mariticide (not matricide). It is the case of the prosecution that the deceased M.G.R. suspected the fidelity of his wife, on account of which, there were frequent quarrels between them. It is alleged that on 23.06.2011, around 15 hours, the accused tied her husband to the cot and murdered him by banging his head with a grinding stone. On the complaint [Ex.P.1] lodged by Radha [P.W.1], R.C.Sekar [P.W.11], Sub-Inspector of Police, registered a case in Cr.No.124 of 2011 under Section 302 IPC on 23.06.2011 at 23.00 hours and prepared the printed FIR [Ex.P.9] and sent the original complaint [Ex.P.1] along with the printed FIR [Ex.P.9] through Narayanamurthy, Head Constable 756 to the jurisdictional Magistrate, who received the same at 8.00 a.m. on 24.06.2011, as could be seen from the endorsement thereon.

[a] Investigation of the case was taken over by Gokulrajan [P.W.12] Inspector of Police, who went to the place of occurrence on 24.06.2011 at 6.00 a.m. and prepared the Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.10] in the presence of witnesses Suresh [P.W.5] and Ezhumalai [not examined]. At the place of occurrence, the Investigating Officer seized a blood-stained grinding stone [M.O.1], blood-stained grinding stone of an electric grinder [M.O.2], blood-stained lungi [M.O.3], blood-stained pillow cover [M.O.4], blood-stained cement plaster [M.O.5] and cement plaster without blood stain [M.O.6] under cover of Mahazar [Ex.P.3], in the presence of Suresh [P.W.5] and Ezhumalai [not

examined]. He went to the hospital, where the body of the deceased was kept and conducted the inquest from 9.00 a.m. to 11.00 a.m., in the presence of panchayatdars and the inquest report was marked as Ex.P.11. He sent the body for post-mortem.

[b] Dr.Vijayaraj [P.W.10] performed autopsy on the body of the deceased, who, in his evidence and in the Post-mortem Certificate [Ex.P.7] has noted the following injuries:

- "1. A lacerated injury of size 7 cm x 2 cm x 1 cm in the left eyebrow with shaggy edges red in colour nearby contusion.
2. Blackish contusion in the left side of cheek of size 8 cm x 3 cm.
3. A lacerated injury of size 5 cm x 2 cm x 1 cm in the left parietal regional of the skull.
4. A large irregular shaggy lacerated injury of size 12 cm x 6 cm x 3 cm in the left parieto-occipital region red in colour.
5. A blackish contusion of size 4 cm x 2 cm in the back side of the neck.

On dissecting the scalp, a large hematoma blackish red in colour is seen in the occipito parietal region below the scalp. There is fracture of the left parietal bone and occipital bone. Cheek symmetrical dried bloody discharge seen in the left ear and both nostril. Hyoid bone intact. No rib fracture."

[c] After receiving the Viscera Report [Ex.P.8] from the Tamil Nadu Forensic Science Laboratory, Dr.Vijayaraj [P.W.10] has opined thus:

"The deceased would have died due to shock and haemorrhage following head injury."

[d] On 24.06.2011, around 17 hours, Gokulrajan [P.W.12] Inspector of Police arrested the accused and recovered nighty [M.O.7] and a petty coat [M.O.8]

with dark brown stains. The accused was produced before the jurisdictional Magistrate for judicial custody. The properties were sent through the Judicial Magistrate No.I, Tiruvallur to the Tamil Nadu Forensic Science Laboratory for examination and in the examination report [Ex.P.13] dated 29.09.2011, except the sample plaster piece [M.O.6], all the material objects, viz., M.Os.1 to 5, 7 and 8 were found stained with human blood "B". Gokulrajan [P.W.12], Inspector of Police examined some witnesses and on transfer, he handed over the investigation to N.C.Sarathy [P.W.13], Inspector of Police on 24.09.2011, who completed the investigation and filed a Final Report, which was taken on file as PRC No.6 of 2011 by the Judicial Magistrate No.I, Tiruvallur.

3. On the appearance of the accused, she was furnished with the copies of the documents relied upon by the prosecution under Section 207 Cr.P.C. and the case was committed to the Court of Sessions in S.C.No.292 of 2012 and was made over to the First Additional Sessions Judge, Tiruvallur, who framed a charge under Section 302 IPC against the accused. When questioned, the accused pleaded not guilty. In order to prove the case, the prosecution examined 13 witnesses, marked 14 exhibits and 8 material objects. When the accused was questioned about the incriminating circumstances appearing against her under Section 313 Cr.P.C., she denied the same. No witness was examined on her behalf nor any document marked.

4. The trial Court, after considering the evidence on record and hearing either side, convicted the accused under Section 304(II) IPC and sentenced her to undergo 5 years Rigorous Imprisonment and pay a fine of Rs.5,000/-, in default to undergo 6 months Simple Imprisonment, challenging which, the accused is before this Court.

5. Heard the learned counsel for the appellant and the learned Government Advocate (Crl.Side) appearing for the State.

6. Learned counsel for the appellant submitted that Ammu [P.W.2], Sharmila [P.W.3] and Murugaiyan [P.W.4], who were examined as eyewitnesses, could not have witnessed the occurrence as their houses were a little away from the house of the deceased. He also submitted that they were close relatives of the deceased and therefore, their testimony should not be accepted.

7. Per contra, learned Government Advocate (Criminal Side) refuted the contentions.

8. Radha [P.W.1] is the sister of the deceased. Radha [P.W.1], in her evidence, has stated that the deceased got married to the accused sometime in the year 2004 and they were living in Pattabiram. While they were living there, the accused had illicit intimacy with their neighbour and ran away with him, on

account of which, the deceased was very much frustrated. Thereafter, the accused came back to the house. However, the deceased felt ashamed to live in that locality and therefore, he shifted his house to Ramathandalam Village, where the occurrence had taken place in the house of the deceased. She has further stated in her evidence that after the elopement episode of his wife, the deceased started consuming liquor. She also stated that on 23.06.2011, her sister's daughter Sharmila [P.W.3] who lived nearby, informed her about the incident, after which, she came to the house of the deceased and lodged the complaint [Ex.P.1]. Admittedly, Radha [P.W.1] is not an eyewitness and therefore, the averments with regard to the occurrence in the complaint [Ex.P.1] given by her would be of no use to the prosecution. However, in her evidence, she has spoken about the motive for the offence, viz., that the accused had ran away with her neighbour and after her return, the deceased shifted the residence to Ramathandalam and got addicted to liquor. In her evidence, she has further stated that the deceased would beat the accused and on one occasion, the accused went back to her parents house and on the intervention of Radha [P.W.1], she rejoined the deceased.

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9. Ammu [P.W.2] is the niece of the deceased who was living close by. Ammu [P.W.2], in her evidence, has stated that the deceased, who was her uncle, used to quarrel frequently with the accused and that on 23.06.2011, around 3.00 p.m., she heard them quarrelling and when it became noisy, she came to the

house of the deceased to enquire and at that time, she saw the accused throwing the grinding stone [M.O.1] on the deceased, on account of which, the deceased sustained injuries. This is also the version of Sharmila [P.W.3], who is also a niece of the deceased and who lived close by. In the cross-examination of Ammu [P.W.2], she has accepted that her house is about five houses away from the house of the deceased. However, she has stated in the cross-examination that she heard noise from the house of the deceased and came there to enquire and at that time, she saw the accused throwing the grinding stone [M.O.1] on the head of the deceased.

10. As regards Murugaiyan [P.W.4], he has stated in his cross-examination that he came to the house of the deceased immediately after the occurrence and had not seen the occurrence. It was not disputed by the defence that Ammu [P.W.2] and Sharmila [P.W.3] were not living very far away. It is the case of the defence that they lived five houses away from the house of the deceased.

11. Assuming for a moment that even if this Court is to accept the argument of Mr.Rajavelu, learned counsel for the appellant that Ammu [P.W.2] and Sharmila [P.W.3] could not have seen the occurrence themselves, yet, they have come to the spot immediately and have seen the deceased and the accused and when Ammu [P.W.2] questioned the accused, she told her that she was not able to withstand his torture and therefore, she threw the grinding stone [M.O.1] on him.

This evidence of Ammu [P.W.2] has not been shaken in the cross-examination and this is admissible as *res gestate* evidence under Section 6 of the Evidence Act and also as an extra-judicial confession.

12. Ammu [P.W.2], Sharmila [P.W.3] and Murugaiyan [P.W.4] have further stated in their evidence that 108 ambulance was called and the deceased was rushed to the hospital. Dr.N.Vijayalakshmi [P.W.6], the duty Doctor in Tiruvallur Taluk hospital, has stated in her evidence that on 23.06.2011, around 6.00 p.m., one M.G.R. was brought by his wife Thabetha with injuries and when she was questioned, she stated that she had hit him with a grinding stone around 3.00 p.m. on that day. Dr.N.Vijayalakshmi [P.W.6] has further stated that when she examined M.G.R., she found him lifeless. She made necessary entries in the Accident register and the copy of the Accident Register was marked as Ex.P.4. In the opinion of this Court, this statement of the accused can also be treated as an extra judicial confession.

13. In fine, the prosecution has proved beyond reasonable doubt that it was the accused who had hit the deceased with a grinding stone [M.O.1], resulting in his death. Further, from the evidence on record, it is seen that the accused had once eloped with her neighbour and after her return to the family, the deceased was repeatedly torturing her and quarrelling with her. From the evidence of the prosecution witnesses, it is seen that even on the day of incident, there was a

quarrel, in which the accused had thrown the grinding stone at the deceased. The prosecution had failed to prove that the accused had tied the deceased to the cot and had murdered him. The mitigating circumstances in this case are:

- a] the accused is a woman;
- b] though she slipped once in her life, yet, she came back to the matrimonial home and started living with the deceased;
- c] the deceased tortured and beat her for her past conduct, despite her atonement;
- d] even on the fateful day, she had thrown the grinding stone at the deceased during quarrel;
- e] she did not run away, but took the deceased to the hospital;
- f] she has two children to take care.

14. In such view of the matter, though the conviction of the accused under Section 304(II) IPC, vide judgment dated 12.11.2013 in S.C.No.292 of 2012 by the learned Principal Sessions Judge at Tiruvallur, stands confirmed, yet, the sentence of five years Rigorous Imprisonment imposed by the trial Court is reduced to two years Rigorous Imprisonment.

With the above modification in sentence, this appeal is dismissed.

14.12.2017

gms

To

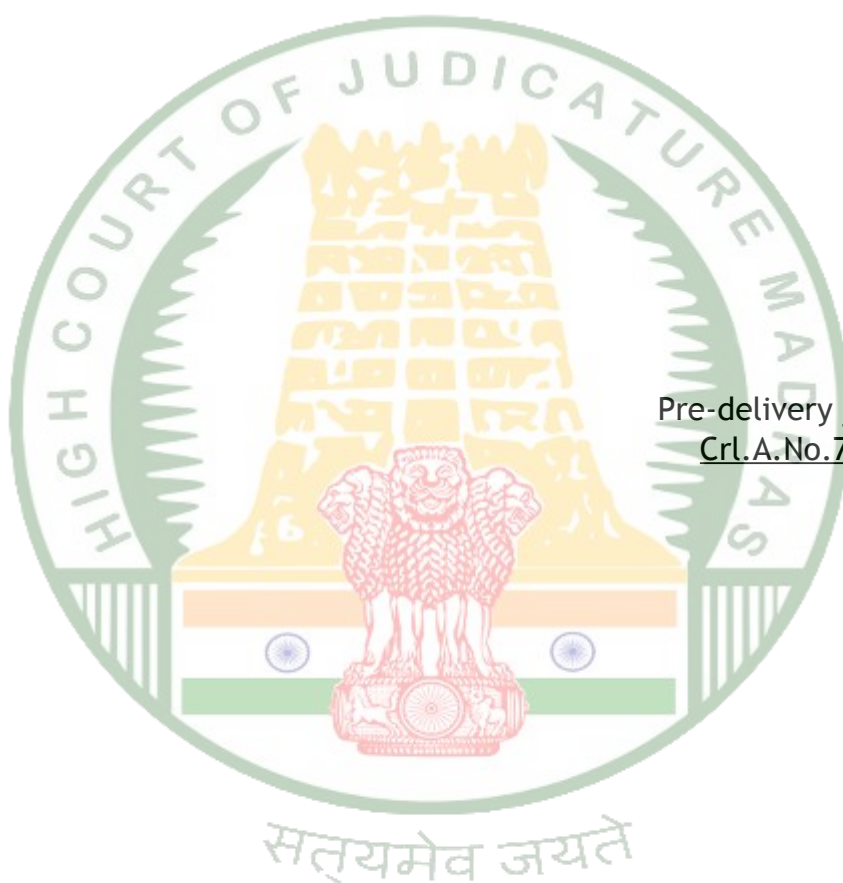
1. The Inspector of Police
B8 Pullarambakkam Police Station
Tiruvallur.

2. The Principal Sessions Judge,
Tiruvallur.

3. The Public Prosecutor,
High Court, Madras.



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Pre-delivery judgment in
Crl.A.No.790 of 2013

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