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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.10.2017

Pronounced on : 27.10.2017

CORAM:

**THE HONOURABLE MR .JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA**

Crl.A. [MD] .No.256 of 2016

Raja @ Marimuthu

.. Appellant/Sole accused

Vs.

State rep. by the
Inspector of Police,
Adiramapattinam Police Station,
Thanjavur District.
(Crime No.160 of 2012)

.. Respondent/ Complaint

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment and order of conviction passed by the learned Principal Sessions Judge, Thanjavur District in S.C.No.166 of 2013, dated 28.04.2014.

For appellant : Mr.A.K.Manickam

For respondent : Mr.R.Ramachandran
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by **R.SUBBIAH, J.**]

This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 28.04.2014, made in S.C.No.166 of 2013 by the learned Principal Sessions Judge, Thanjavur.

2.The appellant stood convicted and sentenced to undergo imprisonment as detailed hereunder:
<https://hcservices.ecourts.gov.in/hcservices/>



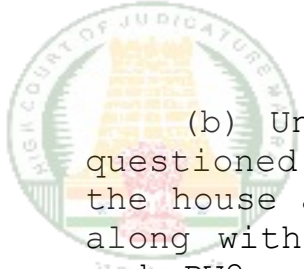
Conviction U/s.	Sentence	Fine amount
302 IPC (2 counts)	To undergo imprisonment for life.	To pay a fine of Rs.10,000/-, in default to undergo 3 months simple imprisonment for each count.
307 IPC (2 counts)	To undergo rigorous imprisonment for 5 years	To pay a fine of Rs.1,000/-, in default to undergo two months simple imprisonment for each count.
4 of Women Harassment Act	In view of the sentences imposed for the offences under Sections 307 (2 counts) and 302 (2 counts) IPC, no separate sentence was imposed for this offence.	

(All the sentences were ordered to run concurrently.)

3. The prosecution, in order to substantiate the case, examined PWs.1 to PW19 and marked Exs.P1 to P23 and produced MOs.1 to 24. Neither oral nor documentary evidence was let in on the side of the defence.

4.The case of the prosecution is consciously narrated below:

(a) PW1, PW2 and PW4 are daughter, son, daughter respectively of the deceased Rukmani (hereinafter referred to as "D1") born through one Ramaian. The said Ramaian died seven years ago from the date of occurrence. D1 had been taking care of PW1, PW2 and PW4 by doing coolie work. While so, the accused by name Raja @ Marimuthu had intimacy with D1 and because of the same, D1 gave birth to a child viz., deceased Akash (hereinafter referred to as D2). They all were living under the same roof. While so, a month prior to the date of occurrence, ie. during the day of Adi Perukku festival, PW1 had attained puberty. When PW1 was alone in her house, the foster-father viz., the accused herein pulled her hand, hugged and attempted to misbehave with her. But, she had pushed him aside and ran away from the house. When D1 returned, after attending her coolie work, PW1 informed about the said attempt made by the accused. D1 questioned the accused about his attempt on PW1, due to which, on the next day, when PW1 was alone, the accused attacked her with vegetable cutter (Aruvamanai) and caused injuries on her left forearm and on the left side of the head. After getting information about the attack, D1 took PW1 to a private hospital at Muthupet, where PW1 - Dr.Murukesan had treated PW1 as inpatient and discharged her on 09.08.2012.



(b) Under such circumstances, on 13.08.2012 around 8 p.m. D1 questioned the accused about missing of Rs.500/- kept by her in the house and hence, a quarrel arose between them. Thereafter, PW1 along with D1 slept in the pial of the house and the accused, D2 and PW2 slept inside the house. PW4, who went to play in the neighbour house, slept there. On 14.08.2012, in the early morning around 4 'O' clock, on hearing the hue and cry of her mother, PW1 woke up and witnessed the accused attacking D1 with aruval on her neck, head, hands and all over the body. D1 instantaneously succumbed to the injuries. On seeing PW1, the accused attacked PW1 on her right side shoulder and left hand. Suddenly, PW1 came out of the house. The accused went inside the house and attacked P.W.2 with aruval. At that time, the aruval slipped away from the hand of the accused and fell down. PW2 came out of the house. Since the accused was under the influence of alcohol, he was not able to lay his hands on the aruval to pick up the same. But, by using the shaving knife, which was in the house, he cut the throat of D2, who is his son Akash aged about 6 years. D2 died instantaneously.

(c) Since PW1 and PW2 were running out of the house by raising alarm, PW3, who is the neighbour, enquired them and they informed that the accused attacked them and also D1 and D2. On seeing PW3, the accused ran away from the scene of occurrence with aruval. Thereafter, on information given by PW3, 108 ambulance came to the place of occurrence, through which PW1 and PW2 were taken to the Government Hospital, Pattukkottai, wherein PW12 - Dr.A.R.Sampath, at 07.56 a.m. gave first aid treatment to PW1 and PW2, and thereafter, he referred them to Thanjavur Medical College Hospital and accordingly, they were brought to Thanjavur Medical College Hospital.

(d) In Thanjavur Medical College Hospital, PW15 - Dr.Punithakumar gave treatment to PW1. At the time of admission, PW1 had stated to PW15 that she was attacked by her father by aruval at 3.00 a.m. He found the following injuries on PW1:

"1)Laceration of size 6 x 2 x 1 cm in dorsum of right hand exposing bones and tendons.

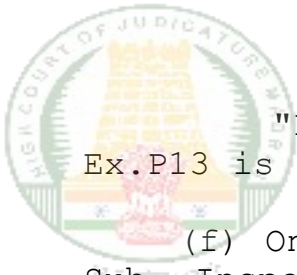
2)Laceration of size 8 x 3 x 1 cm in left scapular region.

3)Laceration of size 7 x 2 x 1 cm in left scapular region."

Ex.P12 is the wound certificate of PW1.

(e) PW16 - Dr.Jeevaraman gave treatment to PW2. He found the following injuries on PW2:

<https://hcservices.mca.gov.in/hcservices/>



"Laceration of size 3 x 1 x 0.5 in occipital region."
Ex.P13 is the wound certificate of PW2.

(f) On getting information from the hospital, PW17 - the then Sub Inspector of Police, attached to Adirampattinam Police Station, recorded the statement of PW1 and the same is marked as Ex.P1. Then, he went to the Police Station and registered a case in Crime No.160 of 2012 under Sections 324, 307 and 302 IPC and forwarded the express FIR to the learned Magistrate, Pattukkottai, through one Muthuramalingam, Special Sub Inspector of Police, Adirampattinam Police Station. Thereafter, he handed over the investigation to the then Inspector of Police - PW19.

(g) PW19, on the same day, at 11.15 a.m. rushed to the place of occurrence and prepared an observation mahazar (Ex.P3) and rough sketch (Ex.P18) in the presence of PW8 and one Muthaiah. Thereafter, he recovered a shaving knife as well as two bloodstained mats, bloodstained earth, sample earth from the place of occurrence. He conducted inquest on the dead bodies of D1 and D2 in the presence of panchayathars. The inquest reports are marked as Exs.P19 and P20. Then, he recorded the statement of witnesses and forwarded the dead bodies to the Hospital for postmortem.

(h) PW-14 - Dr.Lakshmikanth, on the same day, at 2.30 p.m. conducted postmortem on the dead body of D1. He found the following injuries:

"1) Incised wound 10 x 4 x bone depth on the left cheek and over the mandible; muscles over mandible divided; fracture of mandible present.

2) 2 x 2 x 2 cm size lacerated wound at the root of the nose.

3) 15 x 5 x 4 cm lacerated wound extending from midline of neck to right side of neck deep muscles and major vessels of the neck exposed and divided.

4) 4 x 3 x 2 cm lacerated wound extending from left side of neck towards the midline.

5) 9 x 3 x 3 cm size lacerated wound on left side of neck.

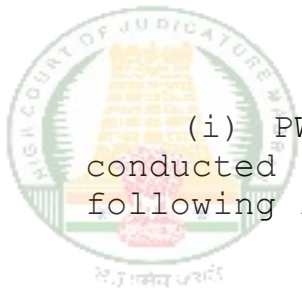
6) 7 x 3 x 2 cm size incised wound on right side of back.

7) 3 x 2 x 2 cm size lacerated wound on left side of wrist.

8) 5 x 4 x 3 cm size contusion on midline.

9) Fracture of parietal bone present."

Ex.P11 is the postmortem certificate. He opined that the deceased have died of shock and haemorrhage due to injury to major blood vessels prior 12 to 14 hours of the postmortem.



(i) PW13 - Dr.Gowsalya Rani, on the same day, at 5.05 p.m. conducted postmortem on the dead body of D2. She found the following injury:

"A lacerated wound extending from midline of neck towards left side of neck 9 x 3 x 4 cm bone depth."

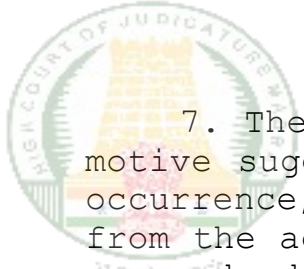
Ex.P10 is the postmortem certificate. She opined that the deceased would appear to have died of shock and haemorrhage due to injury to vital organs prior 12 to 14 hours of the postmortem.

(j) During the course of investigation, PW19, on 15.08.2013 at 4.30 p.m. arrested the accused at Thambikottai Vadakadu Sundaram Colony Bus stop in the presence of PW9 and one Dharmaraj. On such arrest, the accused gave a voluntary confession in the presence of PW9, in which he disclosed the place where he had hidden the aruval and lungi. In pursuance of the said disclosure statement, he took the Police and witnesses to the place of hide out and produced aruval (M.O.1) and bloodstained lungi (MO.8). PW19 recovered the same under a mahazar. On returning to the Police Station, he forwarded the accused to the Court for judicial remand and handed over the material objects under Form 95 to the Court. At his request, the material objects were sent for chemical examinations through Court. The chemical examination report (Ex.P22) and serological report (Ex.P23) disclosed that there are human blood of "A and O" groups on most of the material objects, including on the billhook of aruval, knife, etc.

(k) PW21, during the course of investigation, collected the medical records and examined medical witnesses and few more witnesses, and recorded their statements. After completion of investigation, he laid charge sheet against the accused.

5. Based on the above materials, the trial Court had framed as many as four charges against the accused. When the accused was questioned under Section 313 of Cr.P.C. with reference to the incriminating materials adduced by the prosecution, the accused denied his complicity in the crime and pleaded innocence. However, he did not choose to examine any witness or to mark any document on his side.

6. The trial Court, after considering the oral and documentary evidence, has found the accused not guilty of the charge under Section 379 IPC and found him guilty of three charges under Sections 302 (2 counts), 307 (2 counts) and 4 of Women Harassment Act and accordingly, convicted and sentenced the accused, as stated supra. Challenging the said conviction and sentence, the accused has come up with this appeal.



7. The learned counsel for the appellant would submit that the motive suggested by the prosecution is that ten days prior to the occurrence, the accused had misbehaved with PW1, but PW1 escaped from the accused and informed the same to D1 and D1 shouted at the accused, due to which, on the next day, i.e on 02.08.2012 when PW1 was alone in the house, the accused attacked PW1 with vegetable cutter (Aruvamanai). Then, D1 took PW1 to a private hospital at Muthupet, wherein PW1 was treated as inpatient by PW11 and discharged on 09.08.2012. According to the learned counsel, though PW1 was stated to be given treatment about 8 days due to the alleged attack made by the accused with vegetable cutter (Aruvamanai) prior to the occurrence, the same has not been proved by the prosecution by adducing any medical records and therefore, the alleged misbehavior of the accused cannot be believed and thus, the very motive for the occurrence is not at all proved.

8. The learned counsel appearing for the appellant/accused submitted that PW1 and PW2 are minors and they are interested and tutored witnesses and therefore, their evidences cannot be believed.

9. The next submission of the learned counsel for the appellant is that there was a considerable delay in lodging the complaint and the same was not satisfactorily explained by the prosecution and the same creates doubt in the case of the prosecution and hence, benefit of doubt must be extended to the accused.

10. Further the learned counsel appearing for the appellant submitted that in this case, PW10, who took photographs at the place of occurrence, had stated that as per the instruction of the Inspector of Police, on 14.08.2012 at 8.00 a.m. he went to the place of occurrence and took photographs and they are marked as MO.9 to MO.20 and out of the same, in MO.11 - photograph, the weapons used by the accused viz., aruval and shaving knife are shown. That means, the weapons were available in the place of occurrence on the date of occurrence itself. When that be so, PW19 has stated that based on the confession statement of the accused, on the next day, the aruval was seized from the hide out, which would go to show that the alleged confession and recovery are false. Thus, the prosecution has failed to prove the case with cogent and convincing reasons ie., beyond reasonable doubts. Thus, he prayed to set aside the conviction and sentence passed by the trial Court and to acquit the accused.

11. Per contra, the learned Additional Public Prosecutor submitted that though PW1 and PW2 are minors, they are injured and natural witnesses and through the said witnesses and coupled with the evidence of PW3 and other documents, the prosecution has categorically proved the guilt of the accused beyond reasonable doubts. Under such circumstances, no infirmity can be found on the conviction and sentence passed by the trial Court. Thus, he prayed for dismissal of the appeal.

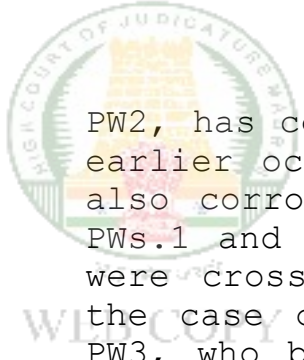


12. We have given our anxious considerations to the rival submissions made on either side and perused the materials available on record.

13. It is a case of double murder. In this case, there is no dispute about the relationship of the accused and D1. It is also not in dispute that the appellant/accused was living along with D1, D2, PW1, PW2 and PW4 under the same roof. PW1 has stated in her evidence that she had attained puberty prior to the occurrence and when she was alone in the house, the appellant/accused attempted to misbehave with her. But, she escaped and came out of the house. After D1 returned from coolie work, she informed that the said attempt made by the accused. D1 shouted at the accused and there was a quarrel between D1 and the accused. On the next day, when she was alone, the accused shouted at her, questioned her as to why she told the said incident to her mother, attacked her with vegetable cutter (Aruvamanai) and caused injuries on her left forearm and left side of the forehead. After getting information about the attack, D1 took her to a private hospital at Muthupet, where she was given treatment. Then, they returned to the house. On 13.08.2012, when D1 questioned the accused about missing of Rs.500/- from the house, a quarrel arose between them. Thereafter, she along with D1 slept in the pial of the house and the accused, D2 and PW2 slept inside the house. PW4, who went to play in the neighbour house, slept there.

14. PW1 has further stated in her evidence that on 14.08.2012, in the early morning around 4 'O' clock, on hearing the hue and cry of her mother, she woke up and witnessed the accused attacking D1 with aruval on her neck, head, hands and all over the body. Hence, D1 instantaneously succumbed to the injuries. On seeing her, the accused attacked on her right side shoulder and left hand. Suddenly, she came out of the house and informed to PW3, who is the neighbour. Then, they saw the accused attacking PW2 with aruval on his head. At that time, the aruval slipped away from the hand of the accused and fell down. PW2 came out of the house. Since the accused was under the influence of alcohol, he was not able to lay his hands to pick up the aruval. But, by using the shaving knife which was in the house, he cut the throat of D2, who is his son Akash, aged about 6 years. D2 died instantaneously.

15. PW2 has corroborated the above version of PW1. PW3, who is the neighbour of PW1, has corroborated the earlier occurrences as narrated by PW1 and further he has categorically stated that PW1 and PW2 came to his house and informed about the occurrence and he immediately rushed to the house of D1 along with PW1 and PW2. D1 was lying in the pial with cut injuries and pool of blood, and D2 was lying inside the house with cut injury on the throat. When he shouted at the accused, the accused ran away with aruval from the scene of occurrence. PW4, who is the sister of PW1 and

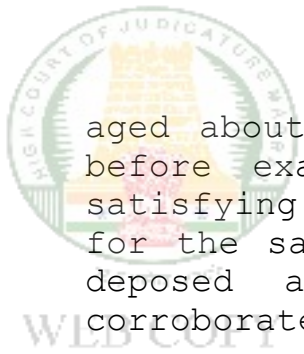


PW2, has corroborated the version of PW1 and PW2 in respect of the earlier occurrences. PW5 to PW7, who are neighbours of PW1, have also corroborated the versions of the injured eyewitnesses viz., PWs.1 and 2 in respect of earlier occurrences. Though PW1 to PW7 were cross-examined at length, nothing could be brought against the case of the prosecution. More over, at the initial stage, PW3, who brought PW1 and PW2 to the Government Hospital through 108 Ambulance, has clearly stated before PW15 and PW16 respectively that they were attacked by their father. The medical evidences also tallied with the version of PW1 and PW2. Apart from that, as per the forensic report, on the billhook of the weapons recovered from the accused, there were bloodstains. Thus, the prosecution has clearly proved that it was this accused who caused the death of D1 and D2, and injuries to PW1 and PW2.

16. So far as the motive is concerned, PW1 to PW7 have clearly stated that in the recent past to the occurrence, the accused attempted to misbehave with PW1 and since PW1 informed the said attempt to D1, on the next day, the accused attacked PW1 with vegetable cutter (Aruvamanai). The above version has been clearly established by the prosecution by examining PW11 - Dr.S.Murugesan, who had stated that on 02.08.2012 PW1, along with her mother, came to his hospital and he gave treatment to PW1 and PW1 had sustained two cut injuries and that PW1 took treatment till 09.08.2012 as inpatient. PW11 has further stated in the cross examination that in respect of the treatment given to the patients, they are maintaining records in the hospital. PW11 has further deposed that only after seeing the records maintained in the hospital, he is giving the evidence. Though it is stated by the learned counsel for the appellant/accused that no medical records were produced in respect of the treatment given to PW1 prior to the occurrence, in view of the categorical evidence of PW11, this Court is of the view that the non production of the medical records would not affect the case of the prosecution.

17. According to the prosecution, on 13.08.2012, a quarrel arose in respect of missing of Rs.500/- kept by D1 and thereafter, in the early morning, the accused cut D1, D2, PW1 and PW2. From the above incidents and from the evidences of PWs.1 to 7, it is clearly established by the prosecution that prior to the occurrence, the accused and D1 were not in good terms, which resulted the above occurrence.

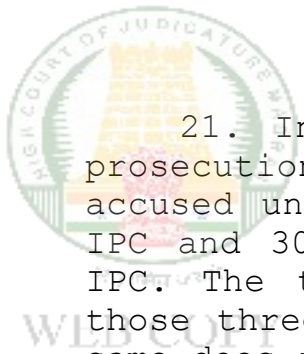
18. According to the learned counsel for the appellant, the evidences of PW1 and PW2 cannot be believed as they are interested and child witnesses and they were tutored by the Police. Merely because, an eyewitness is a child witness, the Court cannot disbelieve his/her evidence. The evidence of child witnesses <https://hcservices.gov.in/hcservices> close scrutiny and corroboration, as they are prone to tutoring. In this case, PW1 and PW2 are natural and injured eyewitnesses. At the time of giving evidence, they were



aged about 14 years and 11 years respectively. The trial Court, before examining PW1 and PW2, had questioned them and after satisfying that they could understand the question and give answer for the same, examined them. They have also in categorical terms deposed against the accused and their versions have been corroborated by PWs.3 to 7. Hence, this contention is rejected.

19. The contention with regard to the delay in lodging the complaint is concerned, the occurrence is said to have been taken place around 4.00 a.m. on 14.08.2012. The complaint was registered at 10.30 a.m. In the occurrence, D1 and D2 died on the spot, and PW1 and PW2 sustained grievous injuries. PW3 brought PW1 and PW2 to the Government Hospital at Pattukkottai through 108 ambulance and after giving first aid, they were referred to Thanjavur Medical College Hospital. PW17 has stated in his evidence that he got the information about the occurrence only through the Head Constable No.926. In Ex.P15, it is stated that at 7.00 a.m. he got the information through the Head Constable No.926, who had got the information from the Hospital. PW17 has also stated that he initially went to the Government Hospital, Pattukkottai and after getting information that PW1 and PW2 were referred to Thanjavur Medical College Hospital, he went to Medical College Hospital, Thanjavur. At 8.15 a.m. PW17 recorded the statement of PW1. Thereafter, PW17 returned to the Police Station and registered the FIR at 10.30 a.m. Considering the above circumstances, this Court is of the view that absolutely, there is no delay in lodging the complaint.

20. It is yet another submission of the learned counsel for the appellant that the seizure of MO.1 on the confession of the accused cannot be believed, since in MO.11 - Photo itself, which was taken on the date and at the place of occurrence, shows the weapons viz., aruval and shaving knife used by the accused in the occurrence. According to PW10, on 14.08.2012 at 8.00 a.m. he took photographs, as per the instruction of the Inspector of Police and the same are marked as MOs.9 to 20. According to PW19 - Inspector of Police, after seizure, he took photograph of aruval and shaving knife. In the cross-examination, PW19 has also specifically denied that MO.11 was not taken on the date of occurrence. PW9 has specifically stated in his evidence that on 15.08.2012, at 4.30 p.m. when he was standing in Sundaram Colony Bus-stop, along with one Dharmaraj, the police arrested the accused and on such arrest, he gave confession statement and then, the accused produced aruval and lungi from the hide out. More over, as per the forensic report, in the billhook of MO.1 - aruval, A and O human blood groups were found. When it is specifically proved by the prosecution that it was this accused, who caused the death of D1 and D2 and injuries to PW1 and PW2 by using the weapons, no significance could be attached to the above contradiction.



21. In view of the foregoing discussions, we hold that the prosecution has clearly established the charges against the accused under Sections 4 of Women Harassment Act, 307 (2 counts) IPC and 302 (2 counts) IPC, except the charge under Section 379 IPC. The trial Court has also rightly convicted the accused in those three charges and imposed the quantum of punishment and the same does not warrant any interference of this Court.

22. In the result, this criminal appeal fails and the same is, accordingly, dismissed and the conviction and sentence passed by the learned Principal Sessions Judge, Thanjavur in S.C.No.166 of 2013 against the accused is confirmed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Thanjavur.
2. The Inspector of Police,
Adiramapattinam Police Station,
Thanjavur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Superintendent,
Central Prison,
Trichy.

(Requiring to serve the copy
of Judgment on the accused)

5. The District Collector,
Thanjavur.
6. The Director General of Police,
DGP Office,
Chennai - 4.

+1cc to Mr.A.K.Manickam, Advocate Sr.No.84358

GCG

VB/MR/KKR/SAR1/13/11/2017/10P/8C

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Judgment made in
Cr1.A.[MD].No.256 of 2016
27.10.2017