

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.01.2018
CORAM
THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR
Cr1.A.No.228/2017

Ponnayee

..Appellant/Sole Accused

Vs.

State rep. by,
The Inspector of Police
Pappireddipatty Police Station
Dharmapuri District.

..Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the conviction and sentence made in SC.No.157/2014 dated 14.02.2017 on the file of the learned Principal Sessions Judge, Dharmapuri.

For Appellant : Mr.P.Sivakumar

For Respondent : Mr.V.Arul, APP

JUDGMENT

[Judgment of the Court was delivered by C.T.SELVAM, J.,]

Appellant is the sole accused in case tried in SC.No.157/2014 on the file of the Court of Principal Sessions Judge, Dharmapuri, for offence u/s.302 IPC. The Trial Court, under impugned Judgment dated 14.02.2017, found her guilty of offence u/s.302 IPC and sentenced her to imprisonment for life and fine of Rs.1,000/-. Aggrieved, the present appeal has been filed by the appellant/accused.

2 The brief facts of the prosecution case, are as follows:-

[a] The deceased Nachiappan, husband of the appellant/accused, used to suspect her fidelity. On account of the same, frequent arguments ensued. On 05.08.2006, at about 11.00 a.m., enraged over accusations of unchastity, the appellant/accused took a Koduval and assaulted her husband/deceased on his left cheek, left ear, left neck, left shoulder and right hand repeatedly and caused his death. Case in

Cr.No.326/2006 on the file of the respondent was registered for offence u/s.302 IPC, on the complaint of P.W.1

[b] P.W.1-Lakshmanan, Village Administrative Officer, Pappireddipatty, was on duty on 05.08.2006, when one Sakthivel - P.W.7 and the appellant/accused appeared before him. Appellant/accused gave an extra-judicial confession, admitting to murdering her husband. The same was reduced in writing under Ex.P.1. P.W.1 prepared a Special Report under Ex.P.2. He handed over Exs.P.1 and P.2 and the appellant/accused to the police.

[c] P.W.2-Murugan deposed that he knew the deceased. There was a wordy quarrel between spouses on the date of occurrence on 05.08.2006 at about 11.00 a.m.. When he went to the house of the deceased, it was bolted from inside. Neighbouring shop owner Sakthi-P.W.4 called P.W.2. When P.W.2 looked into the house of the deceased from the terrace of the neighbouring house, he saw the deceased lying on his bed. P.W.2 informed P.W.3-Senthil, relative of the deceased, who came, broke open the door and took the deceased Nachiappan to hospital. He further deposed that the spouses alone were living in the occurrence house.

[d] P.W.3-Senthil deposed to the deceased Nachiappan being his friend's father. On receipt of information from P.W.2, he went and took the deceased to Salem Government Hospital. He has turned hostile.

[e] P.W.4-Sakthi, deposed that he had a shop adjacent to the house of the appellant/accused and he knew the spouses. He would further depose that on hearing shouting from the deceased's house, he went and knocked the door as the door was locked from inside. Thereafter, when P.W.2 and he went to the terrace through the stairs beside his shop, they saw deceased Nachiappan lying in a pool of blood with cut injuries on his neck and hands. They informed P.W.3. When nearing the occurrence place, they found that the villagers had broke open the door and went inside. Appellant/accused was in the house. P.W.3 took deceased to the hospital. P.W.4 heard of deceased's death, on the way to hospital.

[f] P.W.5-Ranjith, a driver, deposed that deceased Nachiappan was taken to hospital in his car by P.W.3 and others. He found injuries on the deceased.

[g] P.W.6-Sellamuthu, deposed that deceased Nachiappan was his father and appellant/accused was his step-mother and they quarreled frequently. On 05.08.2006, he heard that

appellant/accused had caused cut injuries to his father and that he was taken to Salem Government Hospital. P.W.6 went to hospital and found his father dead with injuries on shoulder, wrist, neck etc.

[h] P.W.7-Sakthivel deposed that on 05.08.2006 he heard of the murder of deceased Nachiappan and on enquiry, was informed that appellant/accused had cut him. He immediately informed Village Administrative Officer and went along with him to the spot. They found appellant/accused inside the house.

[i] P.W.8-Devaraj, son of deceased Nachiappan and appellant/accused deposed to living in a joint family with his parents along with his wife and son. He deposed to his mother's spendthrift ways and as deceased Nachiappan did not earn enough, there used to occur frequent quarrels between them. As a driver, he used to go away on work for a week. His wife, a teacher in a private school used to leave for work after sending her son to school. She used to return only at 6.30 p.m. On 04.08.2006, P.W.8 went for work. On 05.08.2006 at about 12.00 Noon, he heard of his father not being well through P.W.3 and that he had been taken to Salem Government Hospital. On reaching hospital, he learnt his father had died. He further deposed to appellant/accused and deceased alone being in the house. Since both spouses spoken often of finishing of each other, P.W.8 affirmed that it was his mother - appellant/accused who was responsible for the death of his father.

[j] P.W.9-Santhanam, was running a hotel. His routine work is to close hotel at 11.00 a.m. and open in the evening at 5.00 p.m. On 05.08.2006, at about 6.00 p.m., he attested his signature on the Observation Mahazar [Ex.P.3] and Rough sketch [Ex.P.7] along with one Kumar. He also attested the Seizure Mahazar [Ex.P.4], recovering M.O.1-lungi, M.O.2-Nighty, M.O.3-Pillow cover, M.O.4-Pillow, M.O.5-Bedsheet and M.O.6-Koduval.

[k] P.W.11-Kumar attested the Observation Mahazar, Rough Sketch and the Seizure Mahazar [Ex.P.4]. P.W.12-Aslam, photographer, took photographs in the crime scene. M.O.8-Photographs were marked through him. P.W.13-Dr.Manimegalai, Professor in Casualty Department, examined deceased Nachiappan on 05.08.2006 at about 3.00 p.m., brought by Sellamuthu [P.W.6]. P.W.11 was informed that deceased was attacked by a person. On examination, the deceased was found dead. There were several injuries all over his body. He issued the Accident Register.

[l] P.W.14-V.Ramesh, was Station House Officer attached to Pappireddipatty Police Station, before whom P.W.1 and appellant/accused appeared on 05.08.2006 at about 4.30 p.m. and P.W.14 received Special Report [Ex.P.2] and extra-judicial

confession [Ex.P.1] from P.W.1-VAO. He registered the crime in Cr.No.326/2006 u/s.302 IPC. FIR is marked as Ex.P.6 and he forwarded the Express Report to the jurisdictional Court, viz., Judicial Magistrate, Harur. P.W.14 took up the case for investigation, arrested the appellant/accused in the presence of P.W.1. Thereafter, on the same day, at about 6.15 p.m. he went to the scene of crime and prepared Observation Mahazar [Ex.P.6] and Rough Sketch [Ex.P.7 series] in the presence of P.Ws.9 and 11. He examined P.Ws.1, 7, 4, 2 and one Athik, Shahjahan, Nagarajan, Pandu and Dasthakeer and recorded their statements. He seized M.Os.1 to 6 [cited supra] and M.O.7-HMT Watch, M.O.9-burnt cloth taken from stove, M.O.10-burnt cloth taken from washroom in the presence of P.Ws.9, 11 and 2. Appellant/accused was produced before the Court concerned on the same day. On 06.08.2006, P.W.14 conducted inquest on the dead body of the deceased in the presence of villagers and panchayatdhars and prepared the Inquest Report [Ex.P.8]. He forwarded the material objects to Court under Form 91. He also sent the dead body for postmortem.

[m] P.W.10-Dr.Kesavalingam, District Police Surgeon and Professor attached to Mohan Kumaramangalam Medical College Hospital, Salem, conducted autopsy on the dead body of the deceased as per the requisition, on 06.08.2006 at 9.45 a.m. He found the presence of rigor mortis all over body and found the following injuries:-

"Injuries:- [1] Abrasions seen over [a] Left Shoulder 3x2 cms [b] Left Clavical 4x3 cms.

External Injuries:-

1 An Oblique gaping cut injury from left cheek to back of left ear 14x2cms bone deep cut left ear lobe.

2 2 cm below the previous injury oblique gaping cut injury on left side neck 12x1cms cavity deep.

3 0.5cm below the previous injury oblique gaping cut injury left side neck 6x1cms cavity deep.

4 0.5cm below the previous injury oblique gaping cut injury 8x1 cms cavity deep.

5 3 cm below the previous injury oblique gaping cut injury on left shoulder 5x1x2 cms.

6 Oblique gaping cut injury on left shoulder 5x3x0.5 cms bone deep bone exposed.

7 An oblique gaping cut injury dorsal aspect of right hand 19x2cms bone deep with complete cut fracture all right metacarpals and phalanges almost tag with all fingers.

Internal injuries:-

External injury No.1 on dissection of cut fracture of mandible.

External injury No.3 on dissection complete cut injuries of all left side great vessels [antemortem].

Other findings:-

Extremities finger toes nails found pale. Heart-chambers and valves normal cavities contained empty lungs both on c/s page, larynx, trachea, hyoid bone-intact. Stomach-150 gms of partly digested cooked rice food. No specific smell. Mucosa-pale. Liver, spleen and kidneys-all are c/s.pale. Bladder-empty. Pelvis membranes and spinal column all are intact. Brain o/s.Pale."

Ex.P.5 is the Postmortem Certificate, wherein he had opined that "the deceased would appear to have died of shock and hemorrhage due to multiple cut injuries."

[n] P.W.14, on his transfer, handed over Case Diary to his successor. He, in his testimony, deposed that P.W.3 on enquiry, stated that on 05.08.2006 at 10.00 a.m., while he was conversing with deceased Nachiappan, he was accusing his wife-appellant/accused of her unchastity and P.W.7 pacified him. At about 11.30 a.m., P.W.4 informed P.W.3 of hearing some noise from deceased house and the house is bolted from inside. When P.W.3 along with P.W.4 went and opened the door of appellant/accused house, they found deceased lying on bed with cut injuries.

[o] P.W.15-Tamilselvan, Inspector of Police - successor of P.W.14, took up further investigation ; recorded the statements of the witnesses, doctor who conducted autopsy, received Chemical Analysis Report [Ex.P.9] and Serologist Report [Ex.P.10] and on completion of investigation, filed the Final Report against the appellant/accused u/s.302 IPC on 04.08.2007 before the learned District Munsif-cum-Judicial Magistrate, Pappireddipatty, who took it on file in PRC.No.19/2011 and issued summons to the accused and on her appearance, furnished her the copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the Principal Sessions Judge, Dharmapuri, who took it on file in SC.No.157/2014 and on appearance of the appellant / accused, had framed charge u/s.302 IPC and questioned her. The appellant / accused pleaded not guilty to the charge framed against her.

[p] The prosecution examined P.Ws.1 to 15 and marked Exs.P.1 to 10 besides marking M.Os.1 to 12.

[q] The appellant/accused was questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against her in the evidence rendered by the prosecution and she denied it as false. No witness was examined and no documentary evidence was marked on the side of the appellant/accused.

[r] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced the appellant/accused as above stated and hence, this appeal.

3 Mr.P.Sivakumar, learned counsel for the appellant/accused submitted that the presence of P.Ws.2 and 4 at the scene of crime was doubtful, inasmuch as P.W.2 has stated that when he arrived at the scene, more than 20 persons were present and in cross, he had admitted that the house had been bolted from outside. Similarly, P.W.4 had also stated that 10-20 persons were present when he arrived at the scene and they had arrived after he banged on the door. Though in chief, he has stated that he and P.W.2 had used the stairs to look into the house and they had found the deceased on his bed with multiple injuries, in cross, he had admitted that there was no possibility of reaching the house through the staircase. Learned counsel also submitted that P.W.3, another alleged eyewitness, had turned hostile. He further contended that Ex.P.1-Extra-judicial confession of the appellant/accused tendered to P.W.1-Village Administrative Officer, was unbelievable inasmuch as though P.W.1 had spoken to the same having been attested by his Menial/Village Assistant, a perusal of Ex.P.1 did not reflect such position. Contending that given the several injuries suffered by the deceased he could have suffered an attack at the hands of several persons enmical to him, learned counsel sought acquittal. Alternately, learned counsel submitted that Ex.P.1 informed circumstances which would require this Court to consider the application of section 304 IPC.

4 Heard Mr.V.Arul, learned Additional Public Prosecutor appearing for the State on the above submissions and perused the materials on record.

5 P.Ws.2 and 4 are immediate neighbours of the appellant/accused and they uniformly have spoken to the house having been broken into by several persons and that there upon the body of the deceased was found with several grievous injuries. They uniformly have deposed to the presence of the appellant/accused - wife of the deceased at such time. The discrepancies regards the house having been locked from outside, viz., that P.W.2 in his chief, has spoken to the same having been locked from inside and in cross, he has spoken otherwise as also the question of manner of access to the house hardly are

material in the facts of the present case. So, to is a minor slip in the evidence of PW.1 to the effect that Ex.P.1-extra-judicial confession also bears the initial of his Menial. We have to take note that P.W.8 - son of the accused/deceased specifically has informed that appellant/accused and deceased resided together. Though not too much can be made of it, he has also deposed that it was none other than his mother who had done away with his father. It is not disputed that the appellant/accused was in the house when the same was broken into. When so, if she is to contend that she was not the cause of death, section 106 of the Indian Evidence Act, would require her to explain the same. We have no doubt that finding of conviction stands rightly arrived at by the Trial Court. However, we have to take note of the fact that Ex.P.1-Extra-Judicial confession, specifically informs of the deceased, husband of the appellant/accused continuously hurling accusations of unchastity at her, of his having done so, immediately after the visit of Senthil who used to help the couple from time to time, of having bolted the house from inside and of requesting the deceased not to hurl abuses and allegations against her and of deceased stating that he would continue to do so. Ex.P.1 goes on to state that it is in such circumstance and in a fit of anger that appellant/accused picked up the Koduval lying in the house and set up on the deceased, causing multiple injuries and death.

6 Statements in Ex.P.1 would bring the case under Exception [1] to section 300 IPC which informs, "culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident." Clearly, in the instant case, the acts of the appellant/accused came to be committed in a fit of anger and while she was deprived of the power of self-control owing not merely to grave and sudden provocation but also sustained provocation on the part of the deceased in attributing unchastity to her.

7 In the circumstances, we consider it appropriate to convict appellant/accused for offence u/s.304 [Part I] IPC and impose a sentence of 7 years rigorous imprisonment.

8 Accordingly, the criminal appeal is partly allowed and the conviction and sentence imposed on the appellant/accused for offence u/s.302 IPC made in SC.No.157/2014 by the learned Principal Sessions Judge, Dharmapuri, by judgment dated 14.02.2017 are hereby set aside. Instead, the appellant/accused is convicted for offence u/s.304 [Part I] IPC and sentenced to undergo seven years rigorous imprisonment. Fine amount imposed by the Trial Court, remains unchanged.

9 It is reported that the appellant/accused is in jail. Hence, it is directed that the appellant/accused is to undergo the modified sentence now awarded by this Court. The period of incarceration already undergone by her, shall be set off u/s.428 Cr.P.C.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AP
To

- 1.The Principal Sessions Judge
Dharmapuri.
 - 2.The District Munsif-cum-Judicial Magistrate,
Pappireddipatty.
 - 3.The Chief Judicial Magistrate,
Dharmapuri.
 - 4.The Inspector of Police
Pappireddipatty Police Station,
Dharmapuri District.
 - 5.The Director General of Police
Mylapore, Chennai-4.
 - 6.The District Collector
Dharmapuri District.
 - 7.The Superintendent of Prison
Central Prison, Vellore.
 8. The Public Prosecutor,
High Court, Madras.
- +1 cc to M/s.N.S.Sivakumar Advocate sr 4180

Cr1.A.No.228/2017

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