

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.01.2018
CORAM
THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR
Cr1.A.No.240/2017

Mohan

.

Appellant/Sole Accused

Vs.

State rep. by,
The Inspector of Police
Rasipuram Police Station
Namakkal District.

..Respondent/complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment dated 29.01.2016 passed in SC.No.19/2015 on the file of the learned Additional District and Sessions Judge, Namakkal.

For Appellant : Mr.I.C.Vasudevan
For Respondent : Mr.V.Arul, APP

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

Appellant is the sole accused in the case tried in SC.No.19/2015 on the file of the Court of Additional District and Sessions Judge, Namakkal, for offence u/s.302 IPC. The Trial Court, under impugned Judgment dated 29.01.2016, found her guilty of offence u/s.302 IPC and sentenced him imprisonment for life and a fine of Rs.1,000/-, in default, 6 months rigorous imprisonment. Aggrieved over the said conviction and sentence, the present appeal came to be filed by the appellant/accused.

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

[a] The deceased Logambal, mother of the appellant/accused is unmarried and was living with his mother in Agaram Chettiyar Colony of Rasipuram. P.W.2-Sampath Kumar and P.W.3-Rajendran are the neighbours of the deceased and the appellant/accused. The appellant/accused is a drunkard and used to quarrel with his mother frequently and also demanded transfer of house property

in his name. However, P.Ws.2 and 3 and others used to pacify the dispute between the appellant/accused and the deceased on several occasion. When the matter stood thus, on the evening hours of 18.08.2014, the appellant/accused, in intoxicated state, was proceeding towards his house and in the presence of P.Ws.2 and 3, Arun, Gnanaselvi and Nagaraj, was murmuring that he will do away the life of his mother/deceased as he could not get the property transferred in his name and that his marriage could not take place on account of the same. The next day, P.Ws.2 and 3 found the dead body of Logambal in her house with cut injuries on her head.

[b] P.W.4-Kannan, was working as Driver in SRV Higher Secondary School. The appellant/accused was also working as a Cleaner with him. On the evening hours of 18.08.2014, the appellant/accused informed P.W.4 that since his mother did not make arrangements for his marriage, he wanted to settle the issue with her and that he would go home and question her the same.

[c] P.W.6-Selvam, Real Estate Businessman, is known to the appellant/accused. On 19.08.2014, at about 4.00 a.m., when P.W.6 was proceeding towards Pudupatti, Rasipuram, for official purpose, he found the appellant/accused sitting alone in front of the Anjaneyar temple. On seeing the appellant/accused, he enquired him as to why he was sitting there. The appellant/accused informed P.W.6 of the quarrel between his mother and himself and that he beat his mother and therefore, his mind was not alright. P.W.6 also came to know of the death of the mother of the appellant/accused on the morning hours of 19.08.2014.

[d] P.W.7-Kanagaraj, is the brother of the deceased Logambal and maternal uncle of the appellant/accused. He deposed that on 19.08.2014, in the morning hours, the appellant/accused called P.W.7 over phone and informed him that his mother was lying unconscious and he has also informed that there was a quarrel between himself and his mother and as a result, she fell unconscious. Immediately, P.W.7 informed P.W.8-Mani, paternal uncle of the appellant/accused to rush to the scene of crime. Accordingly, P.W.8 also reached the place of occurrence and found the dead body of Logambal.

[e] P.W.9-Nithya, sister of the appellant/accused was also aware of the fact that the appellant/accused surrendered before P.W.1-Krishnamoorthy, Village Administrative Officer. In the meanwhile, the appellant/accused appeared before P.W.1-Village Administrative Officer at 6.00 a.m. on 19.08.2014 and confessed

the crime and he confessed to the effect that at 10.30 p.m. on 18.08.2014, the appellant/accused came in an intoxicated mood, which was objected by his mother. Immediately, the appellant/accused took the kitchen implement [mhpths;kid] and cut her on the head. Thereafter, she fell unconscious and he concealed the said implement on the loft and went to the Anjaneyar temple and stayed there and subsequently, surrendered before P.W.1-VAO. P.W.14-Mutthan, Village Assistant was also present while the appellant/accused surrendered before P.W.1-VAO and gave the extra-judicial confession. P.W.1 recorded the said extra-judicial confession given by the accused under Ex.P.1. With his Special Report [Ex.P.2], he handed over the appellant/accused and Ex.P.1 to the police. The police also examined the appellant/accused and obtained the confession, the admissible portion of which is marked as Ex.P.3.

[f] P.W.16-Rajaranaveeran, Inspector of Police, Rasipuram Police Station at the relevant point of time, received the Special Report of P.W.1-VAO on 19.08.2014 at 7.00 a.m. and registered the crime in Cr.No.505/2014 u/s.302 IPC. The FIR is marked as Ex.P.14 and he forwarded the Express Report to the jurisdictional Court through P.W.11-Kangaraj, Head Constable. P.W.16 took up the case for investigation, arrested the appellant/accused in the presence of P.Ws.1 and 14. The appellant/accused came forward to give a voluntary confession statement, the admissible portion of which is marked as Ex.P.15. Thereafter, he went to the scene of crime and prepared the Observation Mahazar [Ex.P.4] and Rough Sketch [Ex.P.16] in the presence of P.Ws.1 and 14. The investigating officer conducted inquest on the dead body of the deceased in the presence of villagers and panchayatdars and prepared the Inquest Report [Ex.P.17] and seized Blood-stained earth [M.O.1] ; Sample earth [M.O.2] under the cover of Mahazar [Ex.P.5]. Pursuant to the confession of the appellant/accused, the Investigating Officer seized M.O.4-Blood-stained kitchen implement [mhpths;kid] under Ex.P.6. He also recovered the blood-stained clothes worn by the appellant/accused at the time of commission of the offence, viz., M.O.5-Blood-stained Pant ; M.O.6-Blood-stained shirt under Ex.P.7 and forwarded the material objects to Court under Form 91 - Exs.P.18, 19 and 20. He also sent the dead body for postmortem.

[g] P.W.15-Dr.Gokularamanan, Medical Officer attached to Mohan Kumaramangalam Medical College Hospital, Salem, conducted autopsy on the dead body of the deceased as per the requisition-Ex.P.11 and found the following injuries:-

"External Injuries:-

1 Cut injury seen behind the left ear over the occipital region M-6cmsx3cmsxbone deep exposing underlying cut fracture of vault bones.

2 Pressure abrasion below left side of chin M-5x4cms.

3 Contusion on the right side of upper aspect of chest M-15x10x0.5cms.

4 Contusion over upper aspect of left side of chest M-11x10x0.5cms.

Internal Examination:-

O/D Head:-

Extravasation of blood along the cut margins with scalp contusion over left side lower aspect of occipital region M-6x4x0.5 cms. Cranial vault-wide injury column. Dura membrane-intact. Brain-sub dural and sub arachnoid haemorrhage seen on the B1 parieto occipital region. Base of skull-fissured fracture of left posterior cranial fossa M-7cms long.

O/D NECK:- Neck structures-normal hyoid bone - intact.

O/D THORAX:- Ribs-fracture on left side 1 to 3 Nos. and right side from 2 to 4 Nos. in the mid clavicular line with surrounding soft tissue contusion. Heart-normal in size. Chambers contained fluid blood. Valves and coronaries-normal. Both lungs-C/S congested.

O/D ABDOMEN:-

Stomach-contains 150 gms of partly digested cooked rice particles with no specified odour mucosa-c/s.congested.... Liver, spleen, both kidneys - c/s.congested. Bladder-empty. Pelvis and spinal column-intact."

Ex.P.12 is the Postmortem Certificate and Ex.P.13 is the Final Opinion of the doctor, wherein he had opined that "the deceased would appear to have died due to effects of multiple injuries."

[h] P.W.16, in continuation of his investigation, examined the witnesses and recorded their statements and also taken steps to send the material objects to the Forensic Lab. P.W.13-Geetha, Scientific Officer examined the viscera and issued the Forensic Report and the Serology Report, marked as Exs.P.21 and 22.

[i] P.W.16, the Investigating Officer on completion of investigation, filed the Final Report against the

appellant/accused u/s.302 IPC before the learned Judicial Magistrate, Rasipuram, who took it on file in PRC.No.4/2015 and issued summons to the accused and on his appearance, furnished him 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 District and Sessions Judge, Namakkal, who in turn had made over the case to the learned Additional District and Sessions Judge, Namakkal, who took it on file in SC.No.19/2015 and on appearance of the appellant / accused, had framed the charge u/s.302 IPC and questioned him. The appellant / accused pleaded not guilty to the charge framed against him.

[j] The prosecution examined P.Ws.1 to 16 and marked Exs.P.1 to 22 besides marking M.Os.1 to 6.

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

[l] 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.I.C.Vasudevan, learned counsel appearing for the appellant would submit that offence u/s.302 IPC has not been made out. The extra-judicial confession given by the appellant/accused would clearly show that the entire occurrence took place due to sudden quarrel and the accused was provoked. Therefore, offence u/s.304 IPC alone would be made out in the given case. Though the learned counsel has attacked the extra-judicial confession during his arguments, but has fairly conceded that the same does not suffer any infirmities. However, it is the contention of the learned counsel that the entire occurrence took place due to sudden provocation and quarrel and that offence u/s.304 IPC alone would come into place. Hence, the learned counsel for the appellant prayed for leniency.

4 Countering the arguments of the learned counsel for the appellant, Mr.V.Arul, learned Additional Public Prosecutor submits that the extra-judicial confession is clear and cogent and does not suffer from any infirmities and P.W.6 who is the resident of the said village and P.W.7-maternal uncle of the appellant/accused, in their evidence, have categorically stated

about the conduct of the accused. In fact, their evidence would reveal that immediately after the occurrence, the appellant/accused left the house and he was staying in the temple and he has admitted to P.W.6 about the quarrel and his mother lying unconscious. Similarly, the evidence of P.W.7 also clearly shows that the appellant/accused has informed over phone that he quarreled with his mother and that she was lying unconscious. Besides that, the evidence of P.W.1-VAO and P.W.14-Village Assistant is cogent and does not suffer any infirmities. There was no reason, whatsoever for them to implicate the appellant/accused falsely. Hence, the learned Additional Public Prosecutor would submit that the prosecution has proved the ingredients of the offence u/s.302 IPC and the nature of the injuries sustained by the deceased itself would establish the fact that this case will not fall under 304 IPC and hence, prayed for dismissal of the appeal.

5 We have perused the entire materials and evidence on record.

6 In the light of the above submissions, now the point arise for consideration is whether the prosecution has proved the guilt of the appellant/accused beyond reasonable doubt and if so, whether the act of the appellant/accused fall within the ambit of section 304 IPC.

7 P.Ws.2 and 3 are the neighbours. They have spoken in one voice that the appellant/accused was in the habit of quarreling with his mother over his marriage and also frequently demanding transfer of house property in his name. They have also spoken that on the date of occurrence, the appellant/accused while returning from job, was in an intoxicated state and he was in a fighting mood and P.W.4-driver of the School where the appellant/accused was working as cleaner, in his evidence has also stated that on the date of occurrence, the appellant/accused informed that he was going to question his mother about his marriage. From the evidence of P.Ws.2 to 4, it is very clear that the appellant/accused is under the influence of alcohol and used to quarrel with his mother and also was demanding transfer of property in his name. Further, their evidence has also clinchingly established the fact that the appellant/accused and his mother alone were living in the house where the occurrence had taken place. It is also not disputed by the appellant/accused that at the relevant point of time, he was not living with his mother. Admittedly, the occurrence took place in the dwelling house and the evidence of P.Ws.2 to 4 also reveal that the appellant/accused went to his house on the date of occurrence.

8 Similarly, P.W.6, in his evidence has stated that on the early morning hours on 19.08.2014, i.e., at 4.00 a.m., the appellant/accused was found sitting in the temple and he has informed P.W.6 that he has beat his mother in the night hours and hence, his mind was not alright and therefore, he was sitting there. This evidence, amply establish the particular fact that the appellant/accused was in fact living with his mother in the same house on the date of occurrence. Therefore, it is for the appellant/accused to explain as to what had happened to his mother. It is in the exclusive knowledge of the appellant/accused as to what has transpired within the four walls of the house and such exclusive knowledge has to be explained by the person who was actually living with the deceased in the house. On a perusal of the questioning the appellant/accused u/s.313 Cr.P.C., we are unable to find any explanation offered by the appellant/accused for the injuries sustained by the deceased. It is further to be noted that P.W.7 is none other than the maternal uncle of the appellant/accused and brother of the deceased Logambal. P.W.7, in his evidence has categorically stated that the appellant/accused called him over phone in the early morning hours on 19.08.2014 and informed that his mother was lying unconscious due to quarrel between them. This extra-judicial confession of the appellant/accused to P.Ws.6 and 7 assumes significance. They have no motive whatsoever as against the appellant/accused to implicate him and no motive for false implication of the appellant/accused has been established. Hence, we are of the view that their evidence is natural, does not suffer from any infirmities at all. Besides, in the early morning hours on 19.08.2014, when P.Ws.1 and 14 were in the office, the appellant/accused surrendered before them and gave a detailed extra-judicial confession, wherein he has narrated as to what had happened in the house on the date of occurrence. The same was reduced to writing and exhibited as a document-Ex.P.1. A glance of Ex.P.1 makes us clear that the appellant/accused has given minute details about the occurrence and further, there was no motive whatsoever established against P.Ws.1 and 14 for their false implication.

9 It is now well settled that the extra-judicial confession which inspires the confidence of the Court alone is sufficient to base the conviction. In the instant case, besides the extra-judicial confession-Ex.P.1, the extra-judicial confessions given to P.Ws.6 and 7, who are the co-worker and close relative of the appellant/accused, assumes significance. It is normal for any human being to confess the crime to the persons who are connected to him/her. Admittedly, P.Ws.6 and 7 are known to the appellant/accused and the conduct of the

accused leaving the house and sitting in the temple also assumes significance and cannot be ignored altogether. Ex.P.1 clearly narrates the manner in which the occurrence took place. In the absence of any materials to suggest that Ex.P.1 is an after-thought, this Court is not in a position to disbelieve the same, in view of the series of extra-judicial confessions given by the appellant/accused, much prior to Ex.P.1, viz., one before P.W.6 and the other to P.W.7 over phone. Therefore, we are unable to persuade ourselves to raise any suspicion about Ex.P.1. Further, as already discussed, the appellant/accused has not explained as to what has transpired inside the house during the night hours on 18.08.2014. Admittedly, he and his mother alone were living in the said house. In the absence of any explanation from the appellant/accused, the series of acts committed within the house stare at the appellant/accused. Therefore, from the above materials, we have no other option except holding that it was only this appellant/accused who caused such injuries on his mother.

10 Learned counsel appearing for the appellant/accused placing reliance upon the extra-judicial confession, sought indulgence of this Court to show some leniency. The learned counsel mainly relied upon the statement of the appellant/accused that his mother scolded him when he entered the house in an intoxicated state which provoked him. As a result, he cut the deceased and caused injury. We are not persuaded by such arguments. It is normal conduct of any mother to question her son who frequently comes to the house in an intoxicated state. Such statements by loving mothers cannot be considered as a provocation at all. The view of this Court is also further fortified by the nature of injuries caused by the appellant/accused on his mother. If really the appellant/accused was provoked by his mother, he would not have caused such serious injuries all over the body. The Postmortem Certificate and the evidence of the Medical Officer not only show the presence of cut injury behind the left ear over the occipital region measuring 6x3cmsxbone deep exposing cut fracture of vault bones ; but also show contusion and abrasion on the left and right side of the chest. Further, it is seen from the said report that both left side and right side ribs 1 to 4 were fractured. These facts clearly indicate the fact that the appellant/accused has not only used the kitchen implement in cutting his mother ; but also caused the blunt injuries over the thorax and chest. The appellant/accused has committed the act intentionally on his mother. The manner of injuries sustained by the deceased would reveal that the appellant/accused has taken undue advantage and acted in a cruel and unusual manner. Not stopping with the act of causing injury on the head, he has

also caused several injuries over chest and ribs which led to the fracture of both side ribs. Hence, the appellant/accused had taken undue advantage even for the regular advise by his mother. Such advise cannot be taken as provocation and that cannot be a ground to take undue advantage over the aged mother. Therefore, we are not persuaded by the contention of the learned counsel for the appellant/accused. The manner in which severe injuries caused on the deceased and the failure to offer any explanation by the appellant/accused as to what had transpired inside the house and further that, based on the unblemished evidence on record, particularly, the extra-judicial confessions before P.Ws.6 and 7 and P.Ws.1 and 14, we are of the view that the appellant/accused has caused such bodily injury with intention, which was sufficient in an ordinary course of nature to cause a death. In view of the same, the criminal appeal lacks merit.

11 In the result, the criminal appeal is dismissed and the conviction and sentence imposed on the appellant/accused by the Trial Court vide impugned Judgment in S.C.No.19/2015 dated 29.01.2016 are hereby confirmed.

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

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

To

- 1.The Additional District and Sessions Judge
Namakkal.
- 2.The Principal District and Sessions Judge
Namakkal.
- 3.The Judicial Magistrate, No.1, Rasipuram.
- 4.The Chief Judicial Magistrate, Namakkal.

5.The Inspector of Police
Rasipuram Police Station,
Namakkal District.

6.The Director General of Police
Mylapore, Chennai-4.

7.The Superintendent of Prison
Central Prison, Coimbatore.

8. The Public Prosecutor,
High Court, Madras.

9.The District collector
Namakkal

10.The section officer
criminal section
High court Madras.

11.The Superintendent central prison
salem.

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.4033

ak(CO)
GSP(20/02/2018)



WEB COPY