

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Crl.A.No.343/2017

Marimuthu ..Appellant / Sole Accused
Vs.

State rep. by,
The Inspector of Police
B7 Police Station,
Ramanathapuram
Coimbatore. ...Respondent

Criminal Appeal filed under Section 374 of the Criminal Procedure Code against the judgment and order in SC.No.251/2013 u/s.302 IPC passed by the learned Sessions Judge, Magalir Needhimandram [Mahila Court], Coimbatore on 17.09.2016.

For Appellant : Mr.P.G.Perumal Pandian
Legal Aid Counsel

For Respondent : Mr.V.Arul, APP

JUDGMENT

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

Appellant, sole accused, in the case in SC.No.251/2013 on the file of the Court of the Sessions Judge, Magalir Needhimandram [Mahalir Court], Coimbatore, was tried for offence u/s.302 IPC. The Trial Court, under impugned Judgment dated 17.09.2016, found the appellant / accused guilty of the above said offence and sentenced him to undergo imprisonment for life and a fine of Rs.5000/- with a default sentence of 3 months simple 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 Kalieswari is the wife of the appellant/accused. P.W.1 and the deceased Kalieswari were friends and they were working in the Municipality Office. P.W.2 is the husband of P.W.1. On 02.05.2012, near Vinayagar

temple, Puliakulam, while P.W.1 and deceased were waiting for the bus, there was a wordy quarrel between the deceased and the appellant/accused and the appellant/accused stabbed the deceased with the knife [M.O.6] on her neck. Immediately, the public present near the scene of crime, beat the appellant/accused and took the deceased to the Government Hospital, Coimbatore. P.W.1 went to the police station and lodged the first information under Ex.P.1 with P.W.13-Krish, Sub Inspector of Police.

[b] P.W.8-Hari, an auto driver by profession, used to park his auto near the place of occurrence. On 02.05.2012, at about 9.15 p.m., when he and his friend went to have dinner in a hotel, he saw a man and woman fighting with each other in the Puliakulam bus stand and when he returned from hotel, he found the lady, lying down in a pool of blood and that the person who was fighting with her, was fleeing away from the scene with a knife.

[c] P.W.12-Muniyasamy, an employee in a hotel stated that on 02.05.2012, at about 8.30 p.m., he saw a crowd in front of his hotel and that a couple was fighting with each other in the place of occurrence and seen that the lady was stabbed.

[d] P.W.13-Krish, Sub Inspector of Police, after the receipt of the complaint from P.W.1 under Ex.P.1 on 02.05.2012 at about 9.45 p.m., registered the crime in Cr.No.231/2012 u/s.307 IPC. Ex.P.14 is the First Information Report. He despatched the originals of

Ex.P.1 and Ex.P.14 to the jurisdictional Court and copies to the higher officials.

[e] P.W.14-Venkataraman, Inspector of Police attached to the respondent police station, on receipt of FIR in Cr.No.231/2012 on 02.05.2012, went to the place of occurrence at 10.45 p.m., and prepared the Observation Mahazar [Ex.P.4] and Rough Sketch [Ex.P.15] in the presence of P.W.6 and P.W.4. He recorded the statements of the witnesses. On 03.05.2012, at about 2.45 a.m, on receipt of the death intimation from the hospital, he altered the crime from u/s.307 IPC to one u/s.302 IPC. Ex.P.16 is the Alteration Report. He despatched the same to the jurisdictional Magistrate Court. On the same day, at about 7.00 a.m., he went to Mortuary at the Government Hospital, Coimbatore, and held inquest on the dead body of the deceased in the presence of Panchayatdars and witnesses and prepared Ex.P.17-Inquest Report. Thereafter, he sent the dead body for postmortem along with a requisition.

[f] P.W.9-Dr.Kuzhandaivelu, Senior District Police Surgeon in the Department of Forensic Medicine, at the relevant point of time, received the requisition sent by

P.W.14 and commenced the postmortem on 03.05.2012 at 11.15 a.m., and found the following injuries:-

"External Injuries:-

[1] Incised wound 13x1cmxmucle deep noted middle of dorsum of nose, right side nose and right side cheek. The wound passes right to midline and cutting the underlying space between the nasal bone cartilage junction. The outer end is 5cm medial to tragus of right ear and the medial end is 3cm below glabella. Both margins are sharp.

[2] Horizontal incised wound 3x0.5cmxskin deep noted over left upper chest at the level of 3rd inter costal space. The medial end is 4cm below to mid clavicular region and the lateral end is 8cm medial to anterior axillary line.

[3] Vertical oblique stab wound 3x1cmxleural cavity deep noted over right side upper chest at the level of 4th inter costal space. The lower outer blunt end is 2cm medial to right anterior axillary line and the upper medial sharp end is 6cm below to outer end of right clavicle. Both margins are regular. On dissection, the wound passes downwards, inwards and medially piercing the underlying 3rd inter costal muscle at the level of costo-condyle junction and entering into the pleural cavity then piercing the anterior aspect of upper lobe of right lung measuring 2x0.5x1cm depth. The total depth of the wound track is 7cm in length.

[4] Stab wound 2.5x1x1.5cm note over right side upper chest at the level of 4th inter costal space, 1 cm medial to the wound No.3. The medial sharp end is 3cm lateral to right nipple and outer blunt end is 2cm lateral to right nipple. The both margins are regular.

[5] Stab wound 3.5cx2cmx5cm muscle deep with exposing the underlying bone noted over inner aspect of left arm. The upper end is 4cm below to the axilla and the lower end is 16cm above to olecranon process.

[6] Incised wound 3x2mxskin deep noted over upper 1-3d of back of left arm. The upper end is 4cm below and lateral to axilla and the lower end is 15cm above to olecranon

process. The medial end is sharp and lateral end is blunt.

[7] Stab wound [entry] 2.5x0.5x2.5cm noted over outer aspect of middle of the left arm. The upper end is 3cm below to the wound No6 and lower end is 13cm above to olecranon process. The wound passes upwards and laterally passing the subcutaneous tissue and the exit through the skin measuring 0.5x0.5cm.

[8] Incised wound 2.5x0.5cmxmuscled deep noted over lateral aspect of left side chest. The outer end is sharp and the inner end is blunt. The inner end is 3cm inner to posterior axillary region and the outer end is 6cm outer to lower end of scapula.

[9] Stab wound 14x1x7cm noted over lateral aspect of left side of abdomen with linear scratch abrasion measuring 4cm in length starting from the wound and ends up to epigastric region. The outer sharp end is 10cm above to posterior ileac crest. Medial blunt end is 8cm below and lateral to epigastric region. The wound passes upwards, medially piercing the underlying muscles, spleen and piercing the diaphragm and enter into the left pleural cavity. Peritoneal cavity contains about 1000ml of fluid blood. Left side pleural cavity contains about 200 ml of fluid blood.

[10] Incised wound 2x1x0.5cm noted over medial aspect of right middle finger at the level of proximal and middle joint.

[11] Vertical oblique stab wound 4x3xcavity deep with exposing a part of small intestine and omentum noted over right side lateral abdomen. The upper end is sharp and the lower end is blunt. The upper end is 17cm below to mid-axillary line and the lower end is 16cm above and lateral to umbilicus. On dissection, the wound passes upwards, piercing 10th inter costal space, liver thorough and through and ends up to gastro duodenal junction.

Ex.P.7 is the Postmortem Certificate issued by him, wherein he had opined that "the deceased would appear to have died of shock and hemorrhages due to multiple stab injuries and its corresponding internal injuries." Ex.P.9 is the Viscera Report, wherein it has been stated that "Viscera does not contain any poison".

[g] P.W.14, the Investigating Officer, in continuation of investigation, examined the witnesses and recorded their statements ; recovered the material objects from the dead body under Form 91 and sent the same for chemical analysis through Court.

[h] On 03.05.2012, at about 12.00 p.m., upon receipt of information, he arrested the appellant/accused in front of R.H.R. Hotel Bus Stand in the presence of P.W.3-Rajan and one Irudhayaraj and the appellant/accused came forward to give a voluntary confession statement, admissible portion of which is marked as Ex.P.18, pursuant to which, P.W.14 seized M.O.6-knife and M.O.7-T-Shirt, in the presence the said witnesses under Mahazar-Ex.P.10. The appellant/accused was sent for judicial remand and the material objects seized from the appellant/accused as well as from the dead body of the deceased, were sent to Court under Form 95 [Ex.P.19 - Seizure of M.O.1 ; Ex.P.20 - Seizure of M.Os.1 to 4 and Ex.P.21 - Seizure of M.Os.6 and 7]. P.W.14 examined the witnesses ; medical officer who conducted autopsy and recorded their statements. After receipt of the medical reports and other documents and on completion of investigation, filed the Final Report u/s.302 IPC against the accused before the learned Judicial Magistrate No.6, Coimbatore, who took it on file in PRC.No.50/2013 and issued summons to the accused and on his appearance, furnished him 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, Coimbatore, u/s.209 Cr.P.C., who in turn had made over the case to the learned Sessions Judge, Mahalir Needhimandram [Mahila Court, Coimbatore, who took it on file in SC.No.251/2013 and on appearance of the appellant / accused, had framed the charges u/s.302 IPC and questioned him. The appellant / accused pleaded not guilty to the charge framed against him.

[i] The prosecution examined P.Ws.1 to 14 and marked Exs.P.1 to 21 besides marking M.O.1 to M.O.7.

[j] 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. Though no witness was examined on the side of the appellant/accused, Exs.D1 and D2- Forensic Lab Reports from Coimbatore and Chennai respectively were marked.

[k] 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 The learned counsel for the appellant submitted that the evidence of P.W.1 is highly unreliable and she has not spoken about the nature and number of injuries. It is his further submission that the other prosecution witnesses have not supported the prosecution version and the evidence of P.W.8 also appears to be a hearsay. Hence, learned counsel submitted that the prosecution has not established the

guilt of the appellant/accused beyond reasonable doubt and prayed for allowing of this appeal.

4 Per contra, Mr.V.Arul, learned Additional Public Prosecutor appearing for the State submitted that P.W.1 was present in the place of occurrence along with the deceased and she has seen the appellant/accused stabbing his wife/deceased and immediately, she was taken to the hospital by the passers-by/general public and P.W.1 went to the police station and lodged the complaint and in fact, FIR was registered initially for the offence u/s.307 IPC and subsequent upon receipt of the death intimation, the crime was altered to one u/s.302 IPC. The evidence of P.W.1 is natural and she has no axe to grind against the appellant/accused. Similarly, P.W.8 also seen the appellant/accused and the deceased quarreling with each other in the place of occurrence and also saw the appellant/accused running away from the scene of crime with blood-stained knife. It is further submission that the Investigating Officer has also effected the arrest and seized the knife [M.O.6] from the appellant/accused. Though the blood-grouping is not conclusive, the same cannot be a ground to disbelieve the prosecution version and therefore, submitted that the prosecution has proved the guilt of the accused beyond all reasonable doubt and the judgment of the Trial Court warrants no interference at the hands of this Court and 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, the only point that arises for consideration is whether the prosecution has proved the guilt of the appellant/accused beyond all reasonable doubt?

7 P.W.1-Lally was working with the deceased in the Municipality Office. She, in her evidence, has stated that on the date of occurrence, when she and the deceased were waiting in the Puliakulam Vinayagar Temple bus stand [place of occurrence], the appellant/accused started quarreling with his wife and stabbed her and the general public beat the appellant/accused and the injured was lifted immediately to the Government Hospital Coimbatore, in an auto and thereafter, P.W.1 went to lodge Ex.P.1-complaint with P.W.13. In the cross-examination also, P.W.1 asserted that it was only the appellant/accused who had stabbed the deceased Kalieswari.

The conduct of P.W.1 appears to be a natural one. If really P.W.1 has not witnessed the occurrence and was planted at a later point of time, she could have given the complaint for murder directly. This conduct of P.W.1 lodging the complaint at the earlier instance immediately after the injured was taken to the hospital, makes her evidence natural and believable. Though P.W.1 has not spoken about the nature and number of the injuries caused by the appellant/accused, it is to be noted that when a woman in normal circumstances, without anticipating anything sees a ghastly incident, it is highly impossible for her to give minute details about the nature and number of injuries caused by the assailant. Therefore, in every occurrence, the Criminal Courts cannot expect every minute details from the witnesses. Reaction will vary from person to person. The observations of one witness about the occurrence, may be different from that of the others. Hence, we are of the view that merely because P.W.1 has not stated as to the number of injuries inflicted on the deceased by the appellant/accused, the same cannot be fatal to the prosecution case.

8 Similarly, the evidence of P.W.8, an Auto Driver, clearly shows that on the date of occurrence, at about 9.15 p.m., when he went to hotel along with his friend to have dinner, he saw a couple fighting with each other in the bus stand and when he returned from hotel, he found the lady lying in a pool of blood and that the appellant/accused who was fighting with the lady, running away from the place of occurrence with the knife. This aspect of evidence also proves the fact that it was only the appellant/accused who had caused severe stab injuries on the deceased all over the body and the death was due to homicidal violence. There was no motive whatsoever, suggested either to P.W.1 or P.W.8 to implicate the appellant/accused or about the occurrence and P.W.12 also seen the couple fighting in the scene of crime and also seen the lady was stabbed, though he has not identified the accused and the lady. It is to be noted that P.W.12 is working as a Cook in the hotel in the place of occurrence and the occurrence took place in the busy area, in the place called Puliakulam. When such an occurrence takes place in a busy area, it is the common knowledge that normally, the witnesses or shop owners are very very reluctant to come and depose against the assailant. Hard reality is that when persons who are unconnected with the occurrence, witnesses an assault in a broad daylight or in a busy area, the shop owners and the general public, normally would be reluctant to be a witness. This cannot be ignored altogether. Though P.W.12 has not identified the appellant/accused, his evidence proves the fact that the spouses were fighting in the place of occurrence and the prosecution has established the death of the deceased and the presence of the appellant/accused with blood stained knife in the scene of crime and left the place immediately. P.W.1 also seen the appellant/accused stabbing his wife and the medical evidence also establishes the homicidal violence

and the evidence of the Investigating Officer coupled with the Observation Mahazar, also clearly establish the fact that the occurrence took place at Puliyakulam. The Investigating Officer also collected material objects and blood stains from the place of occurrence and the clothes seized from the dead body also contained "O" Group blood as per the Serology Report. Though Grouping test is inconclusive as regards the knife seized from the couple with the Observation Mahazar, we are of the view that it cannot be a ground to disbelieve the evidence of P.Ws.1 and 8. The Grouping sometimes could be inconclusive due to hematological changes and plasmatic coagulation of blood and that the Serologist may fail to detect the origin of the blood in question. Therefore, mere non-detection of the blood group in the materials seized, is in no way, affect the case of the prosecution. Therefore, we are of the view that when the evidence on record clearly shows that it was only the appellant/accused who had committed the offence, this Court finds it unnecessary to search for any other evidence. Hence, we are of the view that the prosecution has brought home the guilt of the appellant/accused. The judgment of the Trial Court warrants no interference at the hands of this Court.

9 In the result, the criminal appeal is dismissed and the conviction and sentence imposed on the appellant/accused by the learned Sessions Judge, Mahalir Needhimandram, [Mahalir Court], Coimbatore, for the offence u/s.302 IPC in SC.No.251/2013 vide Judgment dated 17.09.2016, are hereby confirmed.

10 It is reported that the appellant / accused is in jail. He is directed to undergo the remaining period of sentence. The sentence already undergone by him shall be given set off u/s.428 Cr.P.C.

11 Before parting with the matter, this Court appreciates the role played by Mr. P.G.Perumal Pandian, the Legal Aid Counsel, appearing for the appellant, in properly projecting the case. The Tamil Nadu State Legal Services Authority, is requested to pay him the remuneration as per norms.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Sessions Judge, Mahalir Needhimandram
[Mahila Court], Coimbatore.
- 2.The Principal District and Sessions Judge
Coimbatore.
- 3.The Judicial Magistrate No.6
Coimbatore.
- 4.The Chief Judicial Magistrate,
Coimbatore.
- 5.The Inspector of Police
B7 Police Station, Ramanathapuram,
Coimbatore District.
- 6.The District Collector
Coimbatore District.
- 7.The Director General of Police
Mylapore, Chennai-4.
- 8.The Superintendent of Prison
Central Prison, Coimbatore.
9. The Public Prosecutor,
High Court, Madras.
10. The Tamil Nadu State Legal Services
Authority High Court, Madras.

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