

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Criminal Appeal No.411 of 2017

Chinnapparaj

: Appellant/Accused

Vs.

State: Represented by

Inspector of Police

Pollachi Taluk Circle,

Vadakipalayam Police Station

Cr.No.38 of 2015

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records in connection with judgment in S.C.No.223 of 2015 on the file of III Additional District and Sessions Judge, Coimbatore passed on 29.11.2016 and set aside the same and acquit the accused from the charges leveled against him.

For Appellant : Mr. C. Sivakumar

For Respondent : Mr.V. Arul

Additional Public Prosecutor

JUDGMENT

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

1. Aggrieved over the conviction and sentence of life imprisonment under Section 302 I.P.C. the present appeal came to be filed by the appellant.

2. The brief facts of the prosecution in nutshell is as follows:

2. (a). The deceased one Selvi was the wife of the accused. The deceased, P.W.3 and others used to work as farm labourers in the land belonging to P.W.1 Mayilsamy. P.W.2 is the daughter of P.W.1. On 22.04.2015 at about 8.00 a.m. in the morning, the deceased, P.W.3 and others, as usual came to the farm of P.W.1 to pluck the coconut. At that time, the accused came there and quarreled with his wife about her talking to some other person. During the quarrel, the accused took the M.O.1 bill hook and cut the deceased indiscriminately and decapitated the head and ran away from the place of occurrence with M.O.1 and severed head from the place of occurrence. The occurrence was witnessed by

P.Ws.1, 2 and 3. P.W.1 immediately called his brother-in-law P.W.5 to the place of occurrence and P.W.5 on receipt of information from P.W.1 rushed to P.W.1's place, thereafter, P.W.1 and P.W.5 went to the police station and P.W.1 has lodged report Ex.P.1 with the Sub-Inspector of Police P.W.10.

2(b) P.W.10, on receipt of Ex.P.1, registered a case in Cr.No.38 of 2015 under Section 302 I.P.C. under Ex.P.12 F.I.R. and forwarded the original F.I.R. to the Court and copies to the superior officers. P.W.12 Inspector of Police took the case for investigation and went to the place of occurrence and prepared Observation Mahazar Ex.P.3 in the presence of P.W.6 and one Kathirvel and also drawn Rough Sketch Ex.P.15 and seized bloodstained earth and ordinary earth M.Os.2 and 3, under Ex.P.4 Seizure Mahazar. P.W.12 had conducted inquest over the headless dead body of the deceased in the place of occurrence and prepared Inquest Report Ex.P.16. In the meanwhile at about 10.30 a.m. on the same day, the accused appeared before P.W.4 V.A.O. and confessed about the crime. P.W.4 reduced the same into writing and obtained the impression of the accused. The statement of the accused recorded by P.W.4 is Ex.P.2. P.W.4 handed over the accused to the police along with special report.

2.(c) P.W.12 Inspector of Police arrested the accused produced by P.W.4 and recorded his confession. The admitted portion of the confession statement is Ex.P.5. Pursuant to the same, he seized M.O.1 billhook in the presence of P.W.6 and Kathirvelu and also conducted inquest over the severed head and prepared Inquest Report Ex.P.17. Thereafter, he sent the dead body along with severed head for Post-Mortem. Besides, he has also seized bloodstained cloths from the accused and sent the same to the Court under Form-95 Ex.P.18. The seized items are M.Os.7 and 8. P.W.9 Assistant Professor attached to the Coimbatore Medical College Hospital conducted autopsy over the dead body and found the following:

- Head found decapitated with the body at the level of C-3 vertebra and margins of the injury is regular and clean cut. On comparison with the head with body in its amputated surface it reciprocally fit with each other in its colour, contour and complexion. So both parts belong to one and the same individual.
- Cut injury 2x0.5xbone deep noted over right frontal eminence.
- Cut injury 8cmx0.5xbone deep extending from 1cm in front of vertex up to 2 cm from anterior hairline
- Chop wound 9x5x muscle deep noted over left side shoulder prominence
- Cut injury 3x0.5x muscle deep noted over outer aspect of lower 1/3rd of left arm
- Cut injury two in number 3x0.5x soft tissue deep, 2x0.5x soft tissue deep noted over upper

- 1/3rd of outer aspect of left arm
- Linear cut injury 6x0.25x soft tissue deep present over outer aspect of middle 1/3rd of left arm
 - Chop wound 8cmx3cmxbone deep present over inner aspect of middle 1/3rd of left forearm
 - Cut injury two in number 3x0.5cm x muscle deep, 3cmx0.5cmxsoft tissue deep noted over outer aspect of middle 1/3rd of left forearm
 - Cut injury 6cmx0.5cm x muscle deep noted over outer aspect of left wrist and hand.
 - Left index, middle and ring fingers found traumatically amputated at the level of middle phalanx exposing muscles, vessels, nerves, tendons and fractured bones with surrounding tissue contusion.
 - Cut injury 5cmx1cmxbone deep noted over junction between right index finger and thumb.
 - Cut injury 1x1cmx muscle deep noted over inner aspect of base of all fingers of left hand
 - Cut injury 14cmx2cmxbone deep noted over junction between right index finger and thumb.
 - Chop wound 23x8cmxbone deep present over right side hip exposing intestine, muscle, bones with surrounding tissue contusion.
 - Cut fracture of size 6x2cm noted over iliac crest of hip bone on right side with surrounding tissue contusion.

On dissection of Scalp, Skull and Dura; Sub scalp contusion 6x4 cm noted over mid frontal region.

He issued Post-Mortem Certificate Ex.P.9 and after receipt of Viscera Report Ex.P.10 from the Forensic Science Laboratory, he has given his final opinion Ex.P.11 stating that the deceased appear to have died 24 - 36 hours prior to post-mortem of shock and hemorrhage due to multiple injuries.

2.(d) After the Post-Mortem, the Head Constable P.W.7 seized the dresses M.Os.4 to 6 and handed over the same to the Investigating Officer. P.W.8 Forensic Expert examined the Material Objects 1 to 8 and issued Ex.P.7 and issued Biological Report Ex.P.7. P.W.11 another Forensic Expert issued Serology Reports Exs.P.13 and P.14 stating that the bloodstains found in M.Os.1,2 and M.Os.4 to 8 were human blood "A" Group. P.W.12 Investigating Officer after completing his investigation, laid charge sheet as against the accused under Section 302 I.P.C.

3. The accused was put on trial. In order to establish the case, the prosecution examined P.Ws.1 to 12; marked Exs.P.1 to P.19 and M.Os.1 to 8. After the examination of prosecution witnesses, the accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances for which he denied the complicity. No witness was examined on the side of

accused. He has not marked any document on his side. The Trial Court, after analyzing the evidence on record, convicted the accused under Section 302 I.P.C. and sentenced to undergo Imprisonment for Life and considering his poor economic status, no fine was imposed.

4. The learned counsel for the Appellant has submitted that though the eye witnesses spoken about the nature of the occurrence, the offence under Section 302 I.P.C. would not be attracted in this case as the entire occurrence has taken place due to sudden quarrel and provocation. Therefore, the act of the appellant would come within the ambit of culpable homicide and not amounting to murder. Hence, considering the above, the appellant may be shown leniency.

5. Learned Additional Public Prosecutor has repudiated the above contention and submitted that the manner in which the appellant inflicted severe cut injuries and severed the head of the deceased clearly indicate the fact that there was no provocation whatsoever on the part of the deceased. The evidence on the contrary would show that only the accused provoked the deceased and inflicted severe cut injuries. Hence submitted that it is the clear case of 302 I.P.C. and this act of the appellant will not fall under the exception of Section 300 of I.P.C. and prayed for the dismissal of the appeal.

7. Point for consideration:

In the light of the above submissions, now the point for consideration in this appeal is,

1. whether the prosecution has established the charges framed against the accused beyond all reasonable doubts?
2. If so, whether the act of the accused would fall within the ambit of Section 300 I.P.C.?

Points:

8. The deceased in this case is one Selvi, wife of the accused. This fact is not in dispute. The law was set in motion on 22.04.2015 when Ex.P.1 lodged by P.W.1. P.W.1 is the owner of farm land, where the deceased and others used to work as farm labourers to pluck coconuts in coconut grove. It is the evidence of P.W.1 that on 22.04.2015 at about 8.00 a.m. the deceased along with other labourers came to the farm for work. At that time, the accused came to the farm land of P.W.1 and questioned the deceased as to why she is speaking with one Palani. Immediately the deceased replied to him that she will speak to him like that only and he cannot do anything. Immediately the accused took out M.O.1 bill hook from his bag and cut her indiscriminately on chest, abdomen and neck repeatedly and decapitated her head.

9. P.W.2 is the daughter of P.W.1 she has also in unison voice supported the version of P.W.1. P.W.3 was the co-worker of the deceased. He has also seen the accused, cutting his wife

indiscriminately and ran away with severed head and bill hook. P.W.1 to P.W.3 are independent witnesses they have no motive whatsoever to implicate the accused falsely in the grave crime. Further, no motive was established as against these witnesses in the cross examination for false implication of the accused. Therefore, there was no reason whatsoever to disbelieve the evidence of P.W.1 to P.W.3, which is consistent with all material particulars. P.W.1 immediately called his brother-in-law one Parthasarathy namely P.W.5 and informed him about the occurrence and P.W.5 also rushed to the place of occurrence. Thereafter, he wrote the complaint at the instance of P.W.1 and both of them went to the police station and lodged Ex.P.1. P.W.1 and P.W.5 are close relatives. Therefore, P.W.1 calling his brother-in-law to accompany him to police station is quite natural. When a gruesome crime took place in the farm land it is normal for a person like P.W.1 living in a village to seek aid of the close relative to go to the police station. Therefore, we are of the view that merely because P.W.1 waited till the arrival of P.W.5 to go to police station. His conduct was normal conduct of human being. Therefore, we have no reason whatsoever to disbelieve the evidence of P.Ws.1 to 3.

10. The evidence of the Investigating Officer also clearly shows that the head of the deceased was discovered on the basis of the admitted portion of the confession of the accused. P.W.12 Investigating Officer conducted separate Inquest for the head alone and filed Report. Similarly, he conducted another Inquest with regard to torso and besides P.W.4 V.A.O., his evidence also clearly stated about the extra judicial confession given by the accused. Ex.P.2 statement of the accused reduced into writing by P.W.4 was also exhibited. From the evidence of P.Ws.1 to 3 eye witnesses and Extra Judicial Confession Ex.P.2, we have no hesitation in our mind to hold that the prosecution has clearly established the homicide violence on the deceased by the accused. Even the serology report also clearly proved the blood group found in the lungi seized from the accused, in fact, the above blood group is the blood group of the deceased as could be seen from the Seizure Mahazar. Similarly the blood found in the saree, blouse and skirt seized from the body of the deceased also the same blood group as per the version of the P.W.11 forensic expert. These evidences and also post mortem report, extra judicial confession statement of the accused are clearly proved that the accused committed the offence of homicidal violence. The post Mortem certificate and evidence of P.W.9 clearly indicates that the manner in which the deceased was inflicted with the cut injuries. From the above evidence, we hold that it is only the accused who committed the murder of his wife. The prosecution has established the complicity of the accused with the crime.

11. Now, it has to be analysed whether the act of the accused would fall under any of the exceptions of Section 300 I.P.C. Ex.P.1 complaint and evidences of P.Ws.1 to 3 when

carefully seen, the accused came to the place of occurrence and started quarrel with his wife and in fact suspected her and warned her not to speak with one Palani. When the deceased replied that she would continue to do so and challenged the accused by saying that he can do whatever he can, immediately the accused took M.O.1 and cut the deceased indiscriminately. To get the benefit of Exception-1 of Section 300 I.P.C., it must be established by the accused that he has been deprived of the power of self control by grave and sudden provocation, thereby caused the death. But on a perusal of entire evidence, not even a suggestion in this regard has been put to the witnesses by the accused. Further to avail the benefit under Exception-1 there must be evidence to show that the provocation is not sought by the accused. The evidence clearly indicates that the accused has come to the place of work of his wife and started quarrel and abused with her chastity. Thereafter, when the same was challenged by the deceased, he repeatedly cut the deceased and severed her head and ran away with the decapitated head. Therefore, we are of the view that Exception-1 of Section 300 I.P.C. cannot be pressed into this case in any manner.

12. Similarly, there is no evidence to hold that the offence was committed without any premeditation. The accused had hacked the deceased multiple times and even after she fell down, he attacked her in a gruesome manner and decapitated her head. The evidence available on record clearly established the fact that the accused himself has abused his wife about her fidelity. When she replied challenging the remarks made by her husband, he cut her indiscriminately on various parts of the body and he decapitated the head and ran away from the place with severed head. The nature of injuries caused by the accused on the deceased body was sufficient enough to cause the instant death. Therefore, it cannot be said that the offence would fall under any of the Exceptions of Section 300 of I.P.C.

13. It is further to be noted that to bring the offence under the ambit of Exception-4 of 300 I.P.C., even assuming that the occurrence took place without any premeditation when the provocation was grave and sudden enough, it must be established by the accused that he has not taken any undue advantage or acted in a cruel or unusual manner. In this case, the manner in which indiscriminate cut injuries are inflicted on the deceased indicative of the factor that the accused has taken undue advantage, repeatedly cut the deceased despite she evaded the attack at the first instance. The evidence available on record to show that even after the deceased fell down, the accused cut her indiscriminately not only on the chest and abdomen but also on the neck and severed her head. He acted in such a cruel and unusual manner. Therefore, we are of the view that his act certainly will not fall within the ambit of Exception-4 of Section 300 I.P.C.

14. Hence we have no other option except to hold that the appeal lacks merit and liable to be dismissed and the judgment of the learned trial Court sentencing the accused for life imprisonment is confirmed.

15. Learned trial Court while imposing the punishment has omitted to impose the fine which is mandatory as per Section 302 I.P.C. Learned trial Court took note of the poverty of the accused and decided not to impose any fine though it is mandatory as per section 302 I.P.C. Since we have confirmed the life imprisonment of the trial Court we do not want to delve upon the issue of imposition of fine. The points are answered accordingly.

16. In fine, the criminal appeal is dismissed, confirming the conviction and sentence of the learned III Additional District and Sessions Judge, Coimbatore, in S.C.No.223 of 2015 dated 29.11.2016.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

ggs

To

- 1.The III additional District and Sessions Judge, Coimbatore.
- 2.-do-thro The Principal Session Judge, Coimbatore
- 3.The Judicial Magistrate No.1, Pollachi
- 4.-do-Thro The Chief Judicial Magistrate, Coimbatore
- 5.The Inspector of Police, Pollachi Taluk Circle,
Vadakipalayam Police station
- 6.The Additional Superintendent, Central Prison
Coimbatore
- 7.The District Collector, Coimbatore
- 8.The Director General of Police, Mylapur, Chennai-4

Copy to:The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.C.Sivakumar, Advocate Sr.No.6396

RJ(CO)

sm:21.2.2018

Judgment in:
Crl. A.No.411 of 2017