

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM

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

Crl.A.No.696 of 2017

N.Ganesan, S/o.Nachimuthu ... Appellant/Accused

Vs.

State The Inspector of Police,
Mettupalayam Police Station.
Crime No.1524 of 2011,
Coimbatore District ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to allow this Appeal on question of sentence by reducing the sentence of life imprisonment and also to waive the payment of fine imposed on him by Judgment dated 16.04.2013 in S.C.No.54 of 2012 passed by the learned I Additional District and Sessions Judge, Coimbatore.

For Appellant : Mr.R.Karunakaran

For Respondents : Mrs.M.Prabavathi
Additional Public Prosecutor

JUDGMENT

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

Appellant is the sole accused in the case tried in SC.No.54/2012 on the file of the I Additional District and Sessions Judge, Coimbatore for offence u/s.302 IPC. The Trial Court, under impugned Judgment dated 16.04.2013, found him guilty of offence u/s.304(i) IPC and sentenced him for life imprisonment and a fine of Rs.10,000/-, 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:-

The deceased is the brother of P.W.1. P.W.1 is co-brother of P.W.2. P.W.3 is cousin of P.W.1 and relative of P.W.2. P.W.5 is mother of P.W.1 and the deceased. The accused married P.W.8. P.W.8 is also niece of P.W.5. Having married P.W.8, the accused used to commit cruelty on her and used to abuse her without any reason. On 31.05.2011 at about 7 p.m., when P.W.1 went to his mother's house, the deceased, brother of P.W.1 was present there and one Amavasai, relative of P.W.1 was also present there. At that time, P.W.8 arrived there at about 7 p.m. and informed the witnesses that her husband, the accused, in a drunken mood picked up a quarrel with her and took away the TV and VCR player and their two little children and left the place and requested P.W.1 and the deceased to help her to search her husband.

Accordingly, P.W.1 and Kanagaraj, went in search of the accused. On such search, they spotted the accused at Mettupalayam in Ramasamy Nagar at 10.00 p.m. The deceased advised the accused to go to home with children, for which the accused replied that it is the routine job of P.W.1 and his brother to intervene in his family matter and by saying that, he picked a bill hook from his waist and cut the deceased on the knee. Immediately, the deceased fell down and the accused sat on his chest and cut him on his face repeatedly and also on his neck. P.W.1 on seeing the accused attacking the deceased rushed to the place of occurrence. One Amavasai and P.W.4, an auto driver also came to the rescue of the deceased. Immediately, the accused left the place. The deceased succumbed to the injuries there itself. The above occurrence was also witnessed by P.W.2 to 4 and the minor daughter of the accused also witnessed the occurrence. P.W.1 immediately lodged Ex.P.1 report with the help of P.W.1, to P.W.17 Sub Inspector of Police.

3. P.W.17, on receipt of Ex.P.1 report, registered Ex.P.16 First Information Report and forwarded it with the complaint to the Judicial Magistrate. Thereafter, P.W.18, Inspector of Police took up the case for investigation and proceeded to the scene of occurrence and prepared Ex.P.2 Observation Mahazar and Ex.P.17 Rough Sketch in the presence of P.W.6 and another witness. He also seized M.Os.1 and 2, under Ex.P.3 Mahazar in the presence of the same witnesses and arranged to take M.Os.6 to 9 photographs of the deceased through P.W.10. Thereafter, he conducted inquest over the dead body of the deceased and prepared Ex.P.18 Inquest Report and forwarded the body of the deceased to the Government Hospital for postmortem.

4. P.W.13, Medical Officer, attached to the Government Hospital, Mettupalayam and conducted autopsy and found the following injuries :

1. 10x5x7cm cut injury rt thigh just above rt. Knee jus exposed subcutaneous tissue and muscles
2. 15cm above the prior marked injury is right thigh a cut injury above 3 x 2 x 3 cm present.
3. 5x2x5cm cut injury over left inguinal region
4. 15x5cm cut injury front of neck with fracture of trachea
5. 7x4x5cm cut injury extending from rt. Cheek to nose
6. 15x5x6cm cut injury extending from rt. Cheek to left cheek
7. 5x4x5cm cut injury inserting root of nose extending from rt ear to left eye brow.
8. Cut injury over lt ear
9. Cut injury over cavity with # mandible Tongue cutting over rt side tongue
10. Cut injury over Lt. Anterior chest 4x2x5cm over intercostal region.
11. Cut injury 2x2x3cm just below 4 clavicle nose
12. Cut injury lt. Cheek 6x2x5cm
13. Cut injury over rt. Flank region

and issued Ex.P.7 Postmortem Certificate and gave final opinion Ex.P.9 that the deceased died of shock and hemorrhage due to injuries to vital structures namely trachea and adjacent blood vessels within 12-24 hours prior to autopsy.

5. P.W.16 handed over M.Os.10 and 11, the dress worn by the deceased, under Special Report, Ex.P.19. P.W.17, on the next day, i.e., on 01.0.2011, arrested the accused and recorded voluntary confession statement of the accused in the presence of PW.7 and pursuant to the admissible portion of the confession statement Ex.P.4, he seized M.O.1 Bill hook and M.O.4 and M.O.5 blood stained shirt and dhoti concealed in a bush under Ex.P.5 Mahazar and he sent Ex.P.10 requisition to send the material objects to the Forensic Laboratory. The Biological Report is Ex.P.11, Ex.P.12 is Sample blood report and Ex.P.13 is Serological Report and Ex.P.14 is Soil report. P.W.17, after completion of investigation laid final report for the offence under section 302 IPC.

6. The prosecution examined P.W.1 to P.W.18 and marked Ex.P.1 to Ex.P.18 and M.O.1 to M.O.12 were marked.

7. 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.

8. The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced him imprisonment for life and a fine of Rs.10,000/-, in default, 6 months rigorous imprisonment as against which, the present appeal came to be filed.

9. The learned counsel appearing for the appellant submitted that eye witnesses version is not reliable and the offence took place at 10.00 p.m. and all the witnesses are interested witnesses and their evidence is not reliable. It is the further contention of the counsel appearing for the appellant that the occurrence took place in a sudden quarrel and leniency may be shown to him and lesser punishment may be awarded.

10. Heard Mrs.M.Prabhavathi, learned Additional Public Prosecutor and perused the entire materials available on record.

11. P.W.8 is the wife of the accused. She is niece of P.W.5. The deceased and P.W.1 are sons of P.W.5 and P.W.9 is the minor daughter of the accused. The relationship of these witnesses with the accused is not in dispute. It is the version of the prosecution that the accused having married P.W.8, used to cause all sorts of cruelty to her both physically and mentally and he is a drunkard. On 31.5.2011, P.W.1, his brother were present along with his father P.W.5 and one Amavasai in the house of P.W.5. When they were all talking together, P.W.8, wife of the accused came to their house and informed P.W.1, P.W.2 and P.W.5 about the act of the accused taking two minor children with him along with TV and DVD. It is the evidence of P.W.1, that P.W.8 sought the help of P.W.1 and P.W.2 and the deceased and the family members to intervene and solve the issue. Accordingly, P.W.1, P.W.2 and the deceased went in search of the accused. P.W.1 and 2 spotted the accused in Mettupalayam Road near Ramasamy Nagar and P.W.1 followed the deceased. The deceased stopped the accused and requested him to go to the house with children. The accused by saying that 'you and your brother were always interfering in my family matters', cut the deceased indiscriminately, as a result of which he succumbed to the injuries.

12. P.W.2 was also present in the house, when P.W.8 sought the help from P.W.1 and the deceased. Thereafter, when P.W.2 after unloading certain goods in the saw mill, where he was working, when he and P.W.3 were returning, he found the deceased

and the accused speaking in front of the Ameerbai work shop. When the deceased questioned the accused as to why he had taken the children at night, the accused took M.O.1 and cut the deceased indiscriminately. P.W.2 and P.W.3 also rushed to the place of occurrence. However, the accused left the place, leaving the children there itself. P.W.3 also supported the version of P.W.1 and P.W.2 about the occurrence. P.W.4 is an auto driver and while he was sitting in the auto along with his friend, he saw the accused bringing two children at 10 p.m. and in a nearby workshop, the deceased and the accused were talking for some time. At that time, as P.W.1 made an alarm, they ran towards place of occurrence. P.W.4 also followed P.W.1 and witnessed the accused cutting the deceased repeatedly. P.W.5 also rushed to the place of occurrence and found the dead body. P.W.9, minor daughter of the accused, in her evidence has stated that the accused in a drunken mood fought with her mother and took P.W.9 and her sister from the house towards the place called 'Odam' at about 10.00 p.m. and when they were coming to the place called Ramasamy Nagar, the deceased came there and requested the accused to go to the house and the accused removed M.O.1 from his waist and cut on the knee of the deceased. Immediately, the deceased fell down. Thereafter, the accused cut the deceased at several places all over his body. The above witnesses witnessed the accused cutting the deceased indiscriminately and they witnessed the occurrence in the street light.

13. Further it is to be noted that P.W.4, auto driver, is an independent witness and he has no axe to grind against the accused. He has also spoken about the role played by the accused. From the evidence of P.Ws.1 to 4 and P.W.8 and P.W.9, we are of the view that their evidence cannot be discarded merely on the ground that the occurrence took place at 10 p.m. P.W.1 and the deceased going to the place of occurrence, in search of the accused and two children, is quite natural. P.W.8 is the wife of the accused. She has categorically stated that she has requested P.W.1 and his family members to bring back her husband and the children. P.W.9, who is one of the children, taken away by the accused, in her evidence has categorically stated that her father had taken them out of the house along with TV and DVD and when the deceased spotted the accused and requested him to go to the house, her father cut him indiscriminately. There is no reason, whatsoever to disbelieve her evidence. The evidence of P.W.11, line man of Mettupalayam Municipality shows that there was power in that area on the date of occurrence. The medical officer conducted autopsy and found almost 13 cut injuries and opined that the death was due to shock and hemorrhage due to injuries to vital structures namely trachea and adjacent blood vessels within 12-24 hours prior to autopsy.

14. Complaint was given immediately within one hour of the occurrence without any delay and the FIR has also reached the Judicial Magistrate on the early morning 5 am. All these facts shows that there is no delay which creates serious doubt about the version of the witnesses. Normally, when the FIR is filed in the night hours, the same will reach the judicial Magistrate on the next day morning only. These facts cannot be ignored altogether. Merely there is some dispatching delay, the same cannot be meant to disbelieve the prosecution version.

15. P.W.18, the Investigating Officer also arrested the accused the very next day and recorded his voluntary confession and pursuant to the same, he has also seized the bill hook and blood stained dhoti and the shirt of the accused. These material objects contained human blood group 'B'. In fact, the dresses seized from the body of the deceased is also of the same blood group. Serology Report Ex.P.13 also clearly establish the complicity of the accused. Though the accused was carrying TV, VCR player and at the time of conversation with the deceased, those items were kept on the road and the accused removed the bill hook from the waist and attacked the deceased. Therefore, the minor discrepancies cannot be given much importance.

16. The trial Court, having found that the accused is the perpetrator of the crime has held that the act of the accused will fall within the ambit of 304(i) of IPC, convicted the accused for the offence under section 304(i) for life imprisonment and imposed fine of Rs.10,000/-. The manner in which several cut injuries caused on the body of the deceased namely 13 injuries as noticed by the medical officer P.W.13 under Ex.P.7 Postmortem Certificate, we are of the view that the accused had intention to cause the death of the deceased. The intention can be easily gathered from the nature of the injuries caused by him and there is no material available on record to hold that the occurrence took place in a sudden quarrel or without any premeditation. In the absence of any materials, to bring home the offence under section 304(i) IPC, culpable homicide, we are of the view that the manner in which the occurrence took place and the number of cut injuries inflicted, only offence under section 302 alone will be attracted in this case and the act of the accused will certainly fall under section 300 IPC. Though the trial Court found the accused guilty for the offence under section 304(i) of IPC, we are of the view that no notice is necessary for the accused as the trial Court has already awarded life imprisonment after hearing the accused before passing sentence. Hence, we are of the view that the imprisonment awarded by the trial Court for imprisonment of life does not require any modification at all. However, we hold that the above imprisonment shall be for an offence under section 302 of IPC instead of Rs.304(i).

17. With the above observations, the appeal is dismissed. The accused is convicted for the offence under section 302 IPC instead of 304(i) IPC. However, the sentence awarded by the trial Court in S.C.No.54 of 2012 dated 16.04.2013 is hereby confirmed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vrc

To

1. The Judicial Magistrate, Mettupalayam
2. The Chief Judicial Magistrate, Coimbatore.
3. The I Additional District and Sessions Judge, Coimbatore.
4. The Superintendent, Central Prison, Coimbatore.
5. The Inspector of Police, Mettupalayam Police Station, Coimbatore District.
6. The Principal Sessions Judge, Coimbatore
7. The District Collector, Coimbatore
8. The Director General of Police, Mylapore, Chennai-4
9. The Public Prosecutor, High Court, Madras.

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The Section Officer,
Crl.Section Records,
High Court, Madras.

Crl.A.No.696 of 2017

BR(CO)
CS/16/04/18