

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.415 of 2011

Kuttiappan @ Rajendran

Convict No.14269
Central Prison,
Cuddalore.

... Appellant/Accused

Vs

State by Tamil Nadu,
Rep. by
The Inspector of Police,
Sirkazhi Police Station,
Nagapattinam District.
Cr.No.400 of 2008

...Respondent/complainant

Prayer:- Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records and to set aside the judgment of conviction dated 04.01.2011 passed in S.C.No.4 of 2010 on the file of the Sessions Judge, Nagapattinam and to allow the appeal.

For Appellant : Mr.E.R.K.Moorrthy

For Respondent : Mr.G.Ramar
Govt. Advocate (Crl.side)

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The present appeal has been filed by the appellant against the judgment passed in S.C.No.4 of 2010 dated 04.01.2011 on the file of the Sessions Judge, Nagapattinam.

2.The appellant is the sole accused in the above said case. The accused stood charged for the offences under Sections 307 and 302 IPC. The accused denied all the charges and opted for trial. Therefore, he was put on trial of the charges. After full fledged trial, the

learned Sessions Judge found the accused guilty of the offences under Sections 304(1) and 324 IPC. Accordingly, the accused was convicted and sentenced to undergo Rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- in default to undergo Simple imprisonment for one year for the offence under Section 304 (1) IPC and sentenced to undergo Rigorous imprisonment for one year and to pay a fine of Rs.500/- in default to undergo Simple imprisonment for three months for the offence under Section 324 IPC. The trial Court ordered the sentences to run concurrently. Challenging the conviction and sentence, the accused is before this Court by way of filing the present Criminal Appeal.

3. The case of the prosecution in brief is as follows:

(i) P.W.1 Ramamurthy is the father of the deceased Pappathy, further he is the father-in-law to the accused. After solemnizing the marriage, the Pappathi and the appellant, were leading a matrimonial life in Papanasam for three months. After some time, both of them came to the house of P.W.1 situated in Manalmedu village and settled there. Subsequent to that, they lead their life happily. At that time, the deceased regularly going to the coolie work. But, the accused occasionally used to go to work. Out of the wedlock, they were blessed with one male and one female child.

(ii) On the date of occurrence, the said Pappathi went to her regular work as usual. The accused remained in their house and prepared food. The children came to the house at 4.30 p.m. Since his wife did not return to house in time, the accused went to the place where the Pappathi was working and brought her to the house and assaulted her. Thereafter, the accused requested her to take food, but, she replied that she will not eat the food prepared by the appellant. Subsequently, she started sleeping. Agitating over the same, the accused by using knife, stabbed his wife on her neck. Immediately, she came out from the house. At the time of occurrence, P.W.1 was seated in the entrance of his house. After coming out from the house, the accused chased his wife and stabbed her on the cheek and hand. When P.W.1 tried to prevent the attack, the accused assaulted P.W.1 also. The knife is marked in the trial Court as M.O.1. After hearing the noise, P.W.2, who is the sister of the deceased and P.W.3, who is the neighbour to P.W.1, came to the scene of occurrence and found the Pappathi with stab injury. Thereafter, she was taken to the hospital. Simultaneously, P.W.1 gave a complaint to the police. Further, he was treated for the injury sustained by him.

(iii) On 10.11.2008, at about 7.30 p.m, P.W.4, the Doctor attached with Mayiladuthurai Government Hospital, on seeing the injured, he declared as brought dead, for which he issued A.R copy under Ex.P.2. Further, he intimated the same to the police station under Ex.P.3.

(iv) On the same date, at midnight, he treated P.W.1 and found injury on the left wrist. So, P.W.1 was also admitted as inpatient in the said hospital, In this regard, he issued A.R copy under Ex.P.4. According to him, injury sustained by P.W.1 is simple in nature.

(v) On 10.11.2008, after receiving intimation, P.W.11 Saminathan, the then Sub Inspector of Police, Vaitheeswaran Koil Police Station, went to the Government Hospital, Mayiladuthurai and found that the dead body was kept in mortuary. Since no one was available for lodging complaint, he returned to the police station. At that time, P.W.1 came there and lodged a complaint under Ex.P.1. On receipt of the complaint given by P.W.1, a case has been registered in Crime No.400 of 2008 under Sections 302 and 307 IPC. He forwarded the First Information Report to the Magistrate concerned. After registration of the case, he handed over the case records to P.W.12 for further investigation.

(vi) On receipt of the case records, P.W.12 Murugavelu, the then Inspector of Police, Vaitheeswaran koil went to the scene of occurrence and in the presence of P.W.3 Mariappan and Kaliaperumal, he prepared observation magazar under Ex.P.6. Further, he drew rough sketch under Ex.P.16. In the presence of the said witnesses, he recovered the blood stained mat(nfhiug; gha;), blood stained soil and sample soil under the cover of recovery mahazar Ex.P.7. These material objects were marked as M.O.2 to M.O.6 respectively. Thereafter, he reached the Government Hospital, Sirkazhi, in which, the dead body was kept. After seeing the dead body, he examined panchayatars and the other witnesses. Consequently, he prepared inquest report under Ex.P.17. After completing the above formalities, through Head Constable Ramasamy, he made arrangements for conducting autopsy over the dead body. For which, he sent a requisition to the Doctor through P.W.10. P.W.5 Dr.Senthil Kumar, on receiving the requisition given by P.W.12, conducted autopsy on the dead body of the deceased Pappathy and found the following injuries:

"A Moderately built female body lies on her back, eyes partially opened. Tongue inside the mouth.

External Injuries:

1.Stab wound of size 4 cm x 2 cm x 2 cm present over left cheek.

2.Stab wound of size 5 cm depth 3

cm length and 2 cm breadth present over left side neck.

3.Lacerated wound of size 3 cm x 1 cm x 0.5 cm present over left arm.

4.Lacerated wound of size 3 cm x 2 cm x 1 cm present over left dorsum of Hand.

Internal Examination:

1.Skull - No fracture skull. Brain matter normal with intact membrane.

2.Neck - On left side neck, muscles found to be cut. Carotid vessels found to be cut diffuse hemorrhage seen over left side neck extending upto anterior mediastinum clotted blood seen over left side neck wound.

3.Thorax: No fracture rib. Heart pale and empty. Lungs congested.

4.Abdomen - Stomach pale and empty. Intestine pale and distended with gas. Liver spleen kidney are pale and in normal position.

5.No fracture spine.

6.Hyoid bone intact.

Postmortem concluded at 1.30 P.M on 11.11.2008."

(vii)According to him, the deceased would appear to have died of shock and hemorrhage due to multiple injuries 12 to 16 hours prior to autopsy. The post-mortem certificate was exhibited as P.4.

(viii)Subsequent to that, P.W.12 the Inspector of Police sent the requisition under Ex.P.8 to the Magistrate concerned for sending the material objects for chemical examination. Based on the requisition, the learned Magistrate issued a letter under Ex.P.9 to the Forensic Science Department for conducting chemical examination, after completing the chemical examination, P.W.12 received Biology report and Serology report under Ex.P.10 and Ex.P.11 respectively. In the meantime, P.W.9 Head Constable handed over the express First Information Report to the Court at Mayiladuthurai since Sirkali Judicial Magistrate was on leave on 11.11.2008. After completing Autopsy, P.W.10 gave a Special report to P.W.12 and handed over the dresses of the deceased, which have been marked as M.O.Nos.9 and 10.

(ix)In continuation of the investigation on 12.11.2008, near to the bus stand, P.W.12 arrested the accused in the presence of P.W.6 Sekar and P.W.8, Krishna, Village Administrative Officer. After arresting the accused, he

recorded the voluntary confession from the accused under Ex.P.12. Pursuant to the admission portion, he seized M.O.1 and M.O.2 knife and Lungi respectively under Ex.P.13 recovery mahazar. Thereafter, he made arrangements for sending the accused to the judicial custody. After receiving the chemical examination report, he laid a charge sheet against the accused under Sections 307 and 302 IPC.

(x)Based on the materials available, the trial Court framed charges under Sections 302 and 307 IPC. The accused denied the charges and opted for trial. Therefore, the accused was put on trial. During the course of trial proceedings, the prosecution in order to prove charges against the accused, examined as many as 12 witnesses and exhibited 17 documents, besides marked 10 material objects.

(xi)Out of the above said witnesses, P.W.1 is the father of the deceased. He has spoken about the wordy altercation, about the attack made by the accused and in regard to the injury sustained by the deceased. Moreover, he had stated about the injury sustained by him and about the treatment to the said injury. Finally, he has spoken about the lodging of complaint before P.W.11.

(xii)P.W.2 is the sister of the deceased she has stated in her evidence that at the time of reaching the house of P.W.1, she saw the deceased lying on the floor with bleeding injuries and further, she stated that when P.W.1 attempted to caught hold of the accused, the accused pushed his father and ran away. Further, she stated about the injury sustained by the deceased. P.W.3 is the neighbour, who has also spoken about the quarrel happened between the accused and the deceased and in respect to the assault committed by the accused.

(xiii)P.W.4 Dr.Gurunathan attached to Government Hospital, Mayiladuthurai stated in his evidence that on the fateful day, he examined the deceased and found that the deceased already died. Further, he gave evidence with regard to the details of treatment given to P.W.1. P.W.5 stated in his evidence about the injuries found on the body of the deceased and also about the cause of death. P.W.6 is a resident of Manalmedu village stated in his evidence about the preparation of observation mahazar and with regard to the recovery of M.Os.2 to 6. P.W.7, who is the Head Constable, has spoken about receiving of material objects in the District Munsif cum Judicial Magistrate, Sirkali and sending the same for chemical examination.

(xiv)P.W.8, who is the Village Administrative Officer, Sattanathapuram, has spoken about the arrest of the accused and about the recovery of weapon used by the accused in the

commission of offence. P.W.9, who is the Head Constable, handed over the First Information Report to the Court of District Munsif cum Judicial Magistrate, Sirkali. P.W.10, who is the Sub Inspector of Police, received the clothes found on the dead body and handed over the same to the Inspector of Police under a Special report. P.W.11 and P.W.12 are the Sub Inspector of Police and the Inspector of Police respectively, who have spoken in their evidence about the registration of the case, manner of investigation conducted and with regard to the laying of final report before the Magistrate Court.

(xv) When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness or mark any document on his side.

(xvi) Having considered all the above, the learned Principal Sessions Judge found the appellant guilty for homicidal death and for causing simple injury by using the dangerous weapon. Accordingly, the accused was convicted under Section 304 (i) and 324 IPC and sentenced to undergo for the offences as stated in first paragraph of this judgement. Aggrieved by the above conviction and sentence, the appellant is before this Court with this appeal.

5. I have heard Mr.E.R.K.Murthy, learned counsel for the appellant and Mr.G.Ramar, learned Government Advocate (Criminal side). I have also perused the records carefully.

6. In the trial Court, the prosecution agency attempted to prove their case through eye witnesses, for which, P.Ws.1 to 3 are examined as eye witnesses to the alleged offence. In respect of the evidence given by P.W.3, the learned counsel for the appellant submitted that P.W.3 has come to the scene of occurrence only after completion of the occurrence. Thereby, the evidence of P.W.3 is not helpful for considering the case in favour of the prosecution.

7. On considering the said submission, P.W.3 gave evidence that when he reached the scene of occurrence, the accused ran away from the place of occurrence. So it is true that the said evidence clearly disclosed that P.W.3 has not seen the occurrence as stated by the prosecution and therefore, P.W.3 is not an eye witness.

8. Secondly, the learned counsel for the appellant/accused submitted that P.W.2, who is the sister of the deceased had also reached the occurrence place only after hearing the noise. So, this evidence also cannot be treated as an eye witness to the alleged occurrence.

9. On going through the said argument, in the evidence of P.W.2, i.e., in the chief examination she had stated

that only after hearing noise, she went to the scene of occurrence. However, when at the time, she was entering into the house of P.W.1, the accused, pushing the deceased and ran away from the scene of occurrence. So, she found the deceased with multiple injuries. Further, according to her, the blood of the deceased is oozing in the floor. Then only she took the deceased to the hospital.

10.P.W.1, had also clearly stated in his evidence that due to refusal of taking food, the accused enraged and assaulted the deceased by using knife. When at the time of occurrence, P.W.1 was seated in the entrance of his house. Even though he is not a direct eye witness, at the time of occurrence, as per his evidence, except the deceased and the accused, nobody were present inside his house. So, the said evidence proved that the accused alone assaulted the deceased. In the said circumstances, the arguments advanced by the learned counsel for the appellant is no way helpful to hold that P.W.1 and P.W.2 are not an eye witnesses.

11.On culmination of the entire evidence given by P.W.1 to P.W.3, it is seen that due to the attack made by the accused, the deceased sustained incised wound on her neck, cheek and her hands. Now, complimentary to the eye witness, P.W.5 Doctor had conducted autopsy and stated in his evidence that at the time of autopsy, he found the external injuries over the dead body in the place of her neck, cheek and in the hands. So, the medical evidence also corroborated the evidence given by P.W.1 and 2. Moreover, as per the cross examination of P.W.5, it is seen that the injury sustained by the deceased seems to be happened only due to attack made by using the sharp weapon. Further, death may occurred due to the multiple injuries found on the dead body. Accordingly, the medical evidence corroborated the evidence given by P.W.1 and P.W.2.

12.In the said situation, the learned counsel for the appellant submitted that as per the evidence of P.W.1, the deceased and the accused having two grown up children aged about 8 years and 6 years respectively and at the time of occurrence, they also resided with them. Being the child aged about 8 years, is capable to say the occurrence before the Court. But, without any reason, she had not been examined as witness to the occurrence. Accordingly, the lapse on the part of the prosecution creates a doubt whether the occurrence had happened as stated by the P.W.1 or not.

13.In this regard, in support of his submission, the learned counsel for the appellant relied on the decision in Deny Bora vs. State of Assam [2014 (14) SCC 22]. According to the decision of the Hon'ble Supreme Court, the non examination of material witness is not fatal to

prosecution subject to condition that their explanation is properly offered.

14. Further, the learned counsel for the appellant relied on yet another decision in 2011 (10) SCC 173, in which, the Hon'ble Apex Court held that even after the occurrence, non-examination of the minor children were present at the time of occurrence is fatal to the prosecution.

15. Now, considering the submission made by the learned counsel, it is true that the accused and the deceased are having two children. So, probably they are with him at the time of occurrence. In this regard, P.W.1 had not stated anything about the presence of his grand children in the occurrence place. P.W.12, who is the investigation officer had also not examined the children born to the deceased. However, at the time of cross examination, on the side of the appellant, no question was put forth before P.W.1 and before the investigation officer as to whether the children were present in the occurrence place or not. In the said circumstances, this Court cannot accept the contention raised by the appellant on presumption. Accordingly, the non-examination of the children born to the deceased is only the defective investigation and it would not suffer the case of prosecution.

16. Now, on going through the evidence given by P.W.8, Village Administrative Officer, only through the disclosure made by the accused in his confession statement, the weapon, which was used by the accused for the commission of offence was recovered through the mahazar.

17. In this regard, the learned counsel for the appellant submitted that the weapon was hidden only in the occurrence place. In the said circumstances, if really, the investigation officer went to the scene of occurrence and prepared observation mahazar, definitely, he would have mentioned the same in the observation mahazar itself. But, the investigation officer, in the observation mahazar did not say anything about the presence of weapon.

18. Considering the said arguments with the evidence available in this case, P.W.12 clearly stated in his evidence that the weapon was hidden in the bush. Accordingly, at the time of preparing observation, it is not possible to identify the weapon. Considering the evidence given by P.W.12, the explanation given by him is highly reasonable one. Moreover, during the time of cross examination on the side of the accused, the said aspect is not suggested.

19. More over in this case, after recovering the blood stained clothes, blood stained knife etc., all the said

material objects were sent to the Forensic Science Department for chemical examination and thereafter, Biology report and Serology report were received by the investigation officer under Ex.P.10 and Ex.P.11.

20.Now, on going through the finding arrived in the chemical examination report, it is seen that the blood found in the knife as well as in the cloth worn by the accused and the deceased belongs to "A" group. The above aspects are corroborated the evidence given by P.W.1 and P.W.2.

21.Accordingly, the judgment rendered by the learned Sessions Judge, Nagapattinam, in S.C.No.4 of 2010 dated 04.01.2011 is a well considered judgment. The learned Principal Sessions Judge, before passing the judgment, discussed all the points, which are necessary and convicted the accused as indicated in first paragraph of this judgment. Hence, interference is not necessary in the finding arrived at by the learned Sessions Judge, Nagapattinam, in S.C.No.4 of 2010 dated 04.01.2011.

22.At concluding stage, the learned counsel for the appellant submitted that the appellant is in prison from 12.11.2008 to 3.1.2011 and thereafter from 04.01.2011 to till date and as of now, he is having two children. So, he prayed this Court that some leniency may be shown on appellant and prayed for reducing the sentence.

23.Considering the submission made by the learned counsel, this Court is inclined to reduce the sentence for the reason that the circumstances happened at the time of occurrence show that the occurrence had happened for the minor reasons and the accused was not having any intention to kill his wife.

24.In the result, the appeal is dismissed. The sentence of Rigorous Imprisonment of 10 years awarded to the appellant in S.C.No.4 of 2010 dated 04.01.2011 is reduced to one that of Rigorous Imprisonment of 7 years. The sentence already undergone by the accused shall be set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge
Nagapattinam.

2.The Public Prosecutor,
High Court, Madras.

3.The Inspector of Police
sirkazhi police Station,
Nagapatinam District

4.The Judicial Magistrate
Sirkazhi.

5.do thro The Chief Judicial Magistrate,
Nagapatinam (for information)

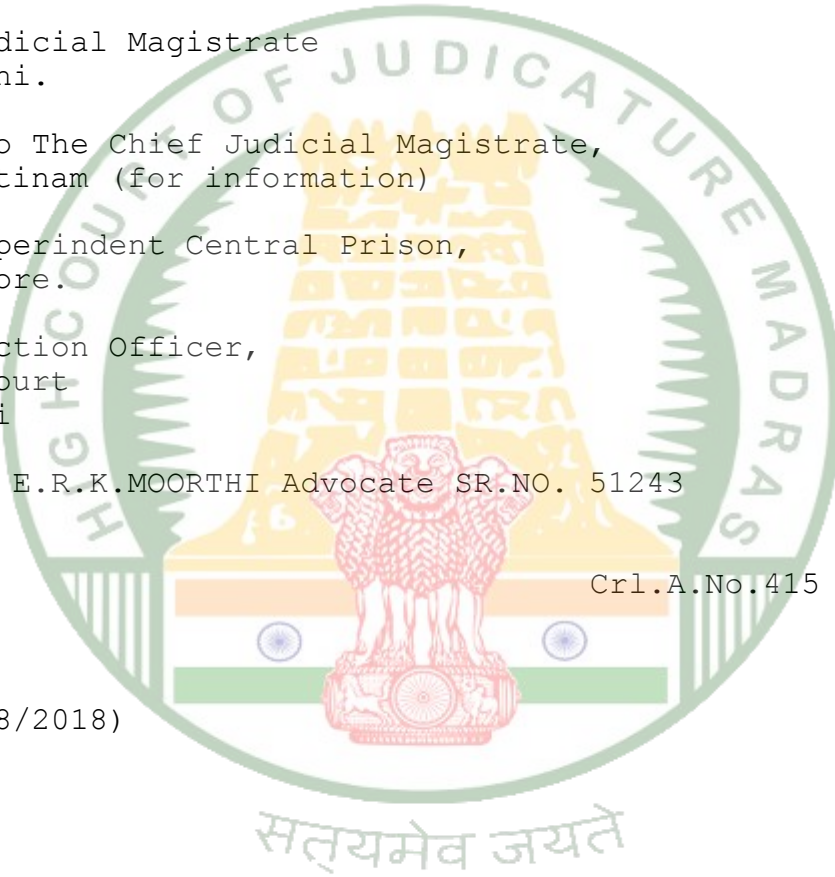
6.The Superintendent Central Prison,
Cuddalore.

7.The Section Officer,
High court
Chennai

+1 cc to E.R.K.MOORTHY Advocate SR.NO. 51243

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