



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	DELIVERED ON
14-09-2018	19-09-2018

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CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.A[MD].No.334 of 2016

Johnrose : Appellant/Sole Accused

Vs.

The State Rep. by
The Inspector of Police,
Thiruvathar Police Station,
Kanyakumari District.
(Crime No.423 of 2010).

: Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence imposed by the Fast Track, Mahila Court, Nagercoil, in S.C.No.25 of 2011, dated 27.07.2016.

For Appellant : Mr.M.R.Sreenivasan

For Respondent : Mr.R.Anandharaj,
Additional Public Prosecutor

JUDGMENT**N.SATHISH KUMAR, J.**

Aggrieved over the life sentence imposed by the Fast Track, Mahila Court, Nagercoil, under Section 302 of the Indian Penal Code, by Judgment dated 27.07.2016 in S.C.No.25 of 2011, the present appeal came to be filed by the appellant.

2. The brief facts leading to the prosecution case are as follows:

(i) The deceased-Rani was the second wife of the accused. Through the first wife, the accused had three children. After the second marriage, the accused, the deceased and the children born through the first wife were residing in the house of P.W.6 as tenants. The accused had developed suspicion over the deceased that she was having illegal connection with his son born through the first wife. P.W.3, the brother of the deceased also pacified the above issue.



(ii) When the matter stood thus, on 01.08.2010, at about 03.30 p.m., P.W.1-Sundaradas and P.W.2-Sureshkumar went to over see the Panchayat work and at that time, on hearing the hue and cry from the house of the accused, they went inside the compound wall of the house of the accused and saw the accused beating the deceased with M.O.1-cement stone. The deceased succumbed to injuries there itself and P.W.1 and P.W.2 immediately took the accused to Police Station and gave Ex.P.1-report.

(iii) P.W.17-Special Sub-Inspector of Police at that point of time, received Ex.P.1-report from P.W.1 and registered a case in Crime No.423 of 2010 under Ex.P.21-the First Information Report and sent the report and the First Information Report to the Court concerned and a copy to the Investigating Officer-P.W.20.

(iv) P.W.20-Inspector of Police, on receipt of FIR, took up the case for investigation, went to the place of occurrence, prepared an Observation Mahazar-Ex.P.3 and rough sketch-Ex.P.24, conducted inquest over the dead body of the deceased and issued an inquest report-Ex.P.25, recorded the statements of witnesses, arrested the accused on 01.08.2010 and recorded his confession, pursuant to which, seized Material Objects under Athatchis-Exs.P.6 and P.7.

(v) P.W.10-the Medical Officer conducted autopsy over the dead body of the deceased and found the following injuries:

"Contusion of 5 x 3 cm present in the left Molar region.

Left temporomandibular joint distorted.

Left side of cheek distorted.

Contusion of 2 x 2 cm size present joint below the left lower eye lid.

Abrasion of 1 x 0.5 cm above the left eye brow.

Laceration of 2 x 1 cm on the forehead - left side.

Lacerated wound of 6 x 3 cm present in the occipital region.

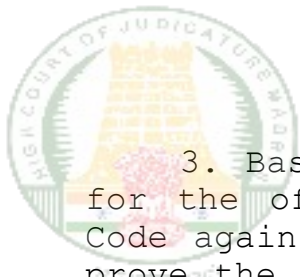
Swelling of 10 x 5 cm size starting from left Parietal bone extending into the occipital region.

Swelling of 3 x 3 cm size present in right Parietal region."

and issued Ex.P.8-Post-mortem Certificate and final opinion-Ex.P.9 stating that the deceased would have died because of shock and hemorrhage due to head injury.

(vi) P.W.11-the Scientific Officer examined the Material Objects and issued Ex.P.10-Biological Report and also Serological Report-Ex.P.11.

(vii) P.W.20, in continuation of investigation, laid final report as against the accused for the offence punishable under Section 302 of the Indian Penal Code.



3. Based on the above materials, the trial Court framed charge for the offence punishable under Section 302 of the Indian Penal Code against the accused. The accused denied the same. In order to prove the charges, on the side of the prosecution, P.W.1 to P.W.20 were examined and Exs.P.1 to P.26 and MOs.1 to 11 were marked.

4. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he neither choose to examine any witnesses nor to mark any document.

5. The trial Court, after considering the oral and documentary evidence, has found the accused guilty and accordingly, convicted the accused under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo one year rigorous imprisonment. Challenging the said conviction and sentence, the appellant/sole accused has come up with this appeal.

6. The learned counsel appearing for the appellant would contend that except P.W.1 and P.W.2, the other independent witnesses have not spoken about the occurrence. P.W.1 and P.W.2 are only chance witnesses. Their visiting the place of occurrence is unbelievable. Rough sketch did not show any Panchayat work being carried out at the relevant point of time. Hence, it is submitted that the evidence of P.W.1 and P.W.2 cannot be relied upon to base the conviction.

7. Adding further, the learned counsel would submit that at any event, the offence under Section 302 IPC has not been made out. The entire occurrence has taken place due to provocation when the accused found the deceased in a compromised position with the accused own son born through the first wife. There was not only the immediate provocation but also sustained provocation, which led to causing injury on the deceased. Hence, the offence under Section 302 IPC would not be attracted in this case. At the most, the offence under Section 304(ii) IPC alone would be attracted in this case. Hence, he prayed for modification of sentence.

8. Per contra, the learned Additional Public Prosecutor would submit that the evidence of P.W.1 and P.W.2 clearly established the specific overt act against the accused. The occurrence took place inside the house of the accused and the deceased. P.W.6 has also clearly spoken that both husband and wife were residing in her house. There was no explanation from the accused as to what had transpired inside the house. Hence, it is submitted that the prosecution has proved the guilt of the accused beyond all reasonable doubt. Therefore, he prayed for dismissal of the appeal.

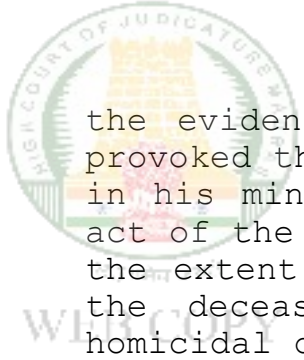


9. We have considered the submissions made on either side and also perused the materials available on record.

10. The undisputed fact is that the deceased is the second wife of the accused. They were residing in a rental house belonged to P.W.6. It is also not in dispute that the accused was living with three children born through the first wife along with the deceased second wife. The evidence of P.W.1 and P.W.2, when carefully seen, on the date of occurrence, namely on 01.08.2010 at about 03.30 p.m., while they were proceeding to over see the Panchayat work, on hearing the hue and cry of the deceased from the house, they went there and saw the accused beating her with M.O.1-cement stone. When P.W.1 and P.W.2 rushed to the house, by that time, the deceased succumbed to injuries. Therefore, P.W.1 and P.W.2 took the accused to the police station and handed over him to P.W.17 with Ex.P.1-report. Based on that, immediately the investigation started and P.W.20 proceeded with the investigation and seized the bloodstained earth and sample earth from the place of occurrence, besides the other Material Objects.

11. It is not the case of the accused that the occurrence never took place inside the house where he was living together with his wife. The evidence of P.W.10-post mortem doctor clearly shows that the deceased died only due to homicidal injuries. Admittedly, the occurrence took place inside the house where the husband and wife were residing in a dwelling house. There was no explanation forthcoming from the accused as to what had transpired inside the house. Whereas, the evidence of P.W.1 and P.W.2 have clearly indicated that the accused only beat the deceased and she succumbed to injuries and immediately the accused was taken to the police station by P.W.1 and P.W.2. The evidence of P.W.1 and P.W.2 has not even seriously disputed by the accused. There was no motive for P.W.1 and P.W.2 to falsely implicate the accused in this case. The evidence of P.W.1 and P.W.2 further clearly shows that the accused beat the deceased, since she had illegal connection with the accused own son born through his first wife. The above fact clearly indicates that the accused not only due to sustained provocation but also on seeing the deceased in a compromised position with his son, beat the deceased. The evidence of P.W.3, the brother of the deceased, also clearly shows that prior to occurrence, there was a dispute between the accused and the deceased and he also pacified the issue.

12. The evidence of eye witnesses, namely P.W.1 and P.W.2, clearly shows that on the date of occurrence, only on seeing the deceased in a compromised position with her son, the accused took the extreme step of beating her. Seeing the wife in such a position, the accused is deprived of the power of self-control, which provoked him suddenly. Witnessing such incident, namely the wife involved in the illegal act with his own son, certainly is nothing but provocation which is grave and sudden. Further, there was a previous warning in respect of above incident, as could be seen from



the evidence of P.W.3. The act of the deceased also persistently provoked the accused and the provocation was sustained and persisted in his mind. Above all, on the date of occurrence, on seeing such act of the deceased, he lost his self-control and he was provoked to the extent of losing his self-control, thereby caused the death of the deceased. Therefore, we are of the view that though the homicidal death established the act of the accused, it would clearly fall within the Exception I to Section 300 IPC. Using M.O.1 and causing injury on a vital part, the intention to cause injuries was very much on the part of the accused. Therefore, his act would certainly fall within the ambit of Section 304(i) IPC and the appellant is liable to be punished under Section 304(i) IPC. Accordingly, we are inclined to modify the sentence from 302 to 304 (i) IPC.

13. In the result, the Criminal Appeal is partly allowed in the following terms:-

- The conviction and sentence imposed by the Trial Court on the appellant/sole accused under Section 302 of the Indian Penal Code is set aside and instead, the appellant/sole accused is convicted under Section 304(i) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs.10,000/- [Rupees Ten Thousand only], in default, to undergo rigorous imprisonment for one year.
- It is further directed that the period of sentence already undergone by the appellant/sole accused shall be set off under Section 428 of the Code of Criminal Procedure.

Sd/-

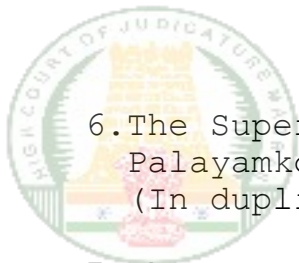
Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS-II)

To

- 1.The Sessions Judge,
The Fast Track Mahila Court,
Nagercoil.
- 2.The Principal District and Sessions Judge,
Nagercoil, Kanyakumari.
- 3.The Judicial Magistrate, Padmanabhapuram.
- 4.The District Collector, Tirunelveli.
- 5.The Director General of Police, Mylapore, Chennai.



6.The Superintendent, Central Prison,
Palayamkottai, Tirunelveli.
(In duplicate for communication to the Accused)

7.The Commissioner of Police,
Nagercoil at Kanyakumari.

8.The Inspector of Police,
Thiruvathar Police Station,
Kanyakumari District.

9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To:

The Record Keeper,
Criminal Section/Record Section
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1CC to Mr.M.R.Sreenivasan, Advocate, SR.No.85351

Judgment made in
CRL.A[MD].No.334 of 2016
19.09.2018

SML
ES/SKN/RSK/SAR 2/28.09.2018/6P/14C