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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2018

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Cr1.A.(MD)No.380 of 2016

Thangavel

... Petitioner/Appellant/Sole Accused

-vs-

State through

The Inspector of Police,
Muneerpallam Police Station,
Thirunelveli District.

(Crime No.246 of 2010)

... Respondent/Respondent/complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure praying to call for the entire records connected to the judgment in S.C.No.206 of 2011 on the file of the Hon'ble I Additional District Sessions Judge, Tirunelveli dated 09.10.2015 and set aside the conviction and sentence imposed against the appellant.

For Appellant

: Mr.R.Alagumani

For Respondent

: Mr.Anandha Raj

Addl. Public Prosecutor

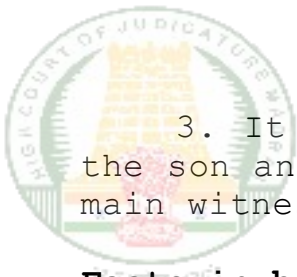
Orders Reserved on	28.02.2018
Orders Pronounced on	02.03.2018

O R D E R

S.VIMALA, J.,

The son, the hapless and innocent, as he was, earned the enmity of his evil incarnate father, just because of his efforts in eroding the chances of erotic encounters of his father with his elusive life partner, whose cause and concern the son believed to be espousing. Thus, the son exposed his own life to fatality, fit enough to be a sacrifice, sufficient to save his mother from her tormentor for a considerable period, but not sufficient to save his own life.

2. The triangular emotional inner burst between the father, mother and the son had been at the cost of the father taking away the life of his own son. How it happened will be known by unfolding the prosecution case.



3. It is a rare case where the father has allegedly murdered the son and in respect of the same, the wife of the accused is the main witness.

Facts in brief:

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i) The accused is the husband of PW1 / Sasikala and the father of the deceased. The accused is a drunkard and he would sexually abuse the wife, whenever he was inebriated. Even twice or thrice in a single day, he used to have sex with his wife, in a normal way as well as in an abnormal way and also unmindful of the presence of the children. The accused was also interested in having oral sex with his wife. The wife was compelled to see obscene sexual movies at night in the T.V. The midnight quarrel reached the ears of the son and daughters at home and the son used to question the conduct of the accused. The relationship was not cordial between the accused and the deceased. The accused believed that the deceased is the road block for his sexual journey towards his wife.

ii) While so, at about 11:30pm on 18.09.2010, when the deceased was sleeping in the Muttram (a place in front of the house), the accused, while returning from agricultural field with a spade, murdered him by using the same weapon. When the wife attempted to prevent the occurrence, it was beyond reparation and the accused ran away with the weapon from the scene of occurrence. In respect of the same, the wife preferred a complaint before the concerned police with the assistance of her brother PW5.

iii) PW13 / Joseph, the Sub Inspector of Police received the complaint at about 01:00am in midnight and registered a case in Crime No.246 of 2010 under Section 302 IPC (Ex.P6) and the complaint is Ex.P1.

iv) PW17 / Inspector of Police continued the investigation and after visiting the scene of occurrence, recording statement of witnesses, recovering material objects from the scene of occurrence, sending the body for postmortem after inquest, recovering the cloth from the body of the deceased, arresting the accused, recording the confession, recovering the material objects based on the confession given by the accused, completed the investigation and laid the final report.

v) Considering the oral and documenetary evidence, the Trial Court came to the conclusion it was only the accused, who is responsible for causing the death of the deceased.

4. The learned counsel for the appellant would submit <https://hcservices.ecourts.gov.in/hcservices/crimeinfo> the accused is entitled to acquittal on the following grounds:



- a) PW2 / eyewitness has turned hostile,
b) motive for the occurrence is not proved,
c) the medical evidence with regard to cause of death did not corroborate the oral evidence
d) it is not safe to rely upon the evidence of the wife, who was not in cordial terms with her husband.

5. Before considering these contentions, it is necessary to find out the reasons, which led the Trial Court while finding the accused guilty of the offence.

5.1. The Trial Court has relied upon the following decision, in which, it has been held that conviction can well be founded on the testimony of a single witness, if the Court finds the version to be trustworthy and corroborated by record on material particular. [**2015 SAR (Criminal) page 891**] (**Kamala kant Dubey vs. State of U.P. And others**).

6. The learned Additional Public Prosecutor would contend that the question of motive is irrelevant, where the direct evidence of the commission of offence is found to be credible and in support of the same a decision reported in **1999 SCC (Cr1.) 1452 (Rajesh Govindjagesha vs. State of Maharashtra)** is relied upon.

7. It is also necessary to look into the core of the evidence adduced by the prosecution.

7.1. Raja / PW3, a Mason, who had knowledge about the accused and owning a house behind the house of the accused had stated that on 18.09.2010, when he was speaking with the accused, the accused had been telling him that there is frequent quarrel between him and his wife on account of the conduct of his son / deceased and that, after sometime, on the same day, he was informed that the deceased was done to death by the accused.

7.2. PW4 / the child witness, who is the child of the accused has stated that on 18.09.2010 at about 8.00 o'clock there was a quarrel between the deceased and the accused and at about 11:30pm, the mother informed her that the deceased was done to death by the accused.

7.3. The Trial Court Judge has recorded the fact that while giving evidence, the child was crying.

7.4. PW5 / Chellappa, brother of PW1 would also state that at about 12:00 o'clock on 18.09.2010, on receipt of phone message, he came to the place of occurrence and was informed by his sister regarding the manner of accident and the person responsible for the same. He would state that at the time when he



reached the place of occurrence, there were two to three Police Officials and about 100 people.

8. The cross examination of this witness has brought to light the conduct of the accused. While the accused was living with his wife and while the witness was facing the trial, it is elicited in the cross examination that the accused had beaten his wife (sister of the witness) by causing head injury and in respect of the same, his sister had given a complaint (prior to the occurrence). The witness would further elaborate saying that the accused had beaten himself too, with chappal before he entered into the Court Hall for giving evidence in this case. The Court is sensitive enough to counter-check this statement by enquiring the Police Officials and was confirmed of the fact that the accused had beaten his brother-in-law / witness Chellappa with Chappal at the back of his head.

9. Originally, this Court thought of calling for the Probation Officer's report regarding the conduct of the accused in the jail and after going through this evidence, we are of the view that it is unnecessary to call for such a report.

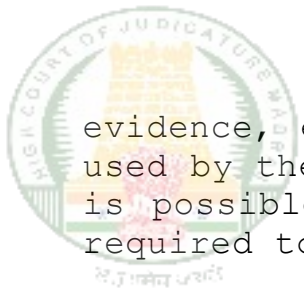
10. The confession and recovery of spade has been spoken by the Village Administrative Officer / PW9 (Swaminathan). PW11 / Arunkumar had spoken to the fact that the accused is a drunkard and he used to drink regularly and daily and after taking drinks, he used to have quarrel with his wife.

11. So far as cause of death is concerned, the Doctor had stated that there was only one injury, which was a lacerated injury and it is possible that it could have been caused using spade.

12. The conduct of the accused in running away from the scene of occurrence is spoken to in the complaint by PW1, thus pointing out the guilty mind of the accused.

13. The learned counsel for the accused would submit that motive in this case is not proved. This contention cannot be accepted, as the motive part of the occurrence is clearly spoken to by the wife. The conduct of the accused in causing harassment to the wife was questioned by the deceased as a dutiful son and the accused felt offended enough to cause this murder.

14. It is contended that the postmortem report speaks about the possibility of fatal injury having been caused either by a spade or by a long iron rod and therefore, when the mode of occurrence with a specific weapon is not proved, the prosecution case has to be thrown out. This contention cannot be accepted as there are innumerable possibilities of causing death using different weapons. The question is, whether this accused used that weapon in causing the fatal injury. When the wife had given direct



evidence, explaining the mode of occurrence along with the weapon used by the accused and when the Doctor has given evidence that it is possible to cause those injuries using spade, nothing more is required to be proved.

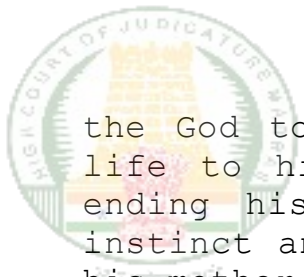
15. Yet another contention is that, PW2 / eyewitness turned hostile and therefore, the prosecution evidence must be viewed with suspicion. No doubt, PW2 turned hostile. There are innumerable reasons as to why the witness would have turned hostile. Just because one witness turns hostile, the entire case cannot be thrown out, when there is evidence of other witnesses, which are trustworthy.

16. The evidence of witnesses, including that of the wife, on the side of the prosecution would go to show that the accused had been an alcoholic, having developed a taste for fighting with his wife and the evidence reveals that the accused was in the habit of fighting with his wife; there had been previous Police complaint also and there had been animosity for the father towards his son / deceased, as the deceased wanted to save the mother; the evidence also indicates that there had been domestic violence of cruelty and marital rape suffered by the wife and ultimately, that has led to the accused taking away the life of his son. This evidence is convincing and it unerringly points out the guilt of the accused.

17. As contended by the learned counsel for the appellant, there is no question of suspecting the evidence adduced by the wife, just because there had been quarrels between the accused and his wife. The dispute between the husband and wife stands on a different footing than on the dispute between third parties. The fact remains that there are two more female children. In Indian context, it is very difficult to hear the wife deposing against the husband, especially when the financial background is poor and there are children to be maintained. There is nothing to suspect the evidence of the wife to be out of vengeance. The evidence of wife in fact is corroborated by the evidence of the minor daughter as well as by the neighbour. Under the circumstances, the evidence of the wife convinces the mind of this Court that it was only the accused, who had committed the murder of his son.

18. The learned counsel for the accused would submit that number of injury caused is only one and that it did not indicate the intention to cause death and therefore, conviction should be altered to Section 304(II) IPC. No doubt, the injury caused is one, but it is caused by using a deadly weapon and that injury had been caused on the vital part of the body, namely, on the head.

of the father is bound to give protection to children, the conduct of the accused is otherwise. History shows a father in BABUR the founder of the Mogul Empire, who worshipped



the God to cut short his life in lieu of giving fresh lease of life to his ailing son Humayun ,which was granted by the God, ending his life in 1530 A.D. Such is the glory of paternal instinct and filial piety. But here for the sake of well being of his mother a son asserts and his father kills him.

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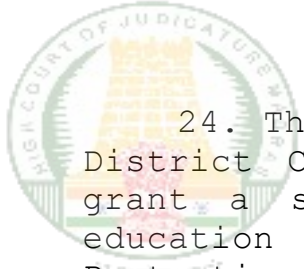
19. It is understood that there had been strained relationship between the accused and his betterhalf, who increasingly drifting away into a bitter half. Furthermore, presumed that the accused might have been afflicted with an aggravated sexual starvation, resultant of the almost perpetual presence of totting children, scarcely moving away from their mother, depriving him of any chances of satisfying his libido, apart from the presumed non-cooperation of his wife.

20. The eldest son, who doomed to be a victim in this case could have no understanding about this urge displayed by his father towards his mother, possibly because of his infantile imagination, confining the nocturnal overtures shown by his father only to the realm of torture / harassment alone, to the exclusion of everything we normally associate with this kind of behaviour, namely, passion, desire, love, lust etc., and this explains his taking sides with his mother, erroneously imagining his father as his sworn enemy, to which role, the accused, eventually, moves gradually, till his son is finished off forever.

21. It is in fact a case to be considered as rarest of rare case, where more severe sentence would have been appropriate. However, when the appeal is heard at this distant point of time, it may not be fair to enhance the sentence at this stage.

22. In the result, **this Criminal Appeal is dismissed**, confirming the conviction and sentence passed by the learned I Additional District Sessions Judge, Tirunelveli in S.C.No.206 of 2011 dated 09.10.2015.

23. In this case, no compensation has been awarded to the victim, who has been doubly victimized on account of death of the son as well as incarceration of the husband, while the victim has to maintain two minor daughters. Under the circumstances, as contemplated under the provisions of Section 357-A(2) of Cr.P.C., this Court recommends that the District Legal Services Authority, Tirunelveli shall conduct an enquiry with regard the necessities of the victim and shall award adequate and suitable compensation, which shall not be less than three lakhs, within a period of two months from the date of receipt of a copy of this order in terms of the provisions of Section 374(5) of Tamil Nadu Victim Compensation Scheme, 2013.



24. The Sponsorship and Foster Care Fund is available with the District Child Protection Society. The society is empowered to grant a sum of Rs.2,000/- for each child, who are pursuing education upto and below the age 18 years. The District Child Protection Society, after verification regarding the educational status of the two children, shall provide monthly financial assistance to each of the child and a copy of the judgment shall be marked to the Social Defence Department to enable the District Children Protection Officer to get the sanction.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The I Additional District Sessions Judge,
Tirunelveli.
2. The Principal District Judge,
Tirunelveli.
3. The Judicial Magistrate No V,
Tirunelveli.
4. The Chief Judicial Magistrate,
Tirunelveli.
5. The District Collector,
Tirunelveli.
6. The Director General of Police,
Mylapore.
7. The Superintendent of Central Prison,
Palayamkottai.
8. The Inspector of Police,
Muneerpallam Police Station,
Thirunelveli District.
9. The District Legal Services authority,
Tirunelveli.
10. The Social Defence Department,
Tirunelveli.
11. The District Children Protection Officer,
Tirunelveli.



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

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