

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2019
PRONOUNCED ON : 14.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.A.No.6 of 2018 and
Crl.M.P.No.4491 of 2017

Rajan @ Lourdu Raj Antony,
S/o.Irudhyaraj ...Appellant/Accused

-Vs-

State, rep. by,
The Inspector of Police,
B-2, R.S.Puram Police Station,
(Law and Order),
Coimbatore City,
Coimbatore District. ...Respondent/ Complainant

PRAYER : Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to set aside the Judgment and sentence passed in S.C.No.25 of 2015 dated 08.02.2017, on the file of the Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, and acquit the appellant.

For Appellant : Mr.Philip Ravindran Jesudoss.

For Respondent : Mr.R.Prathap Kumar
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by M.NIRMAL KUMAR, J.]

This appeal arises out of the conviction and sentence imposed by the learned Sessions Judge Magalir Neethimandram (Mahila Court), Coimbatore in S.C.No.25 of 2015 dated 08.02.2017, wherein the appellant was tried for the offence punishable under Section 302 IPC. The learned trial Judge has convicted the appellant for offence under Section 302 of IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/- in default, sentenced to undergo three months rigorous imprisonment.

2.The background facts, as projected by the prosecution are as follows:

2.1.The deceased is the wife of the appellant. On

07.09.2003, the deceased and the appellant got married and lastly they had resided as tenants in the house of PW2. The appellant possessed a Goods Carriage Vehicle and he was running the same for hire. The Deceased was working in Pothys Textile Shop. They used to leave the house at 08.30 a.m in the morning and they would return to house after work at 09.30 p.m. They had a child and the child was brought up by PW3, whose house was situated near the house of the appellant. The appellant is a drunkard. There was quarrel between the appellant and the deceased from the date of their marriage. The appellant suspected fidelity of the deceased and used to beat and treat her with cruelty. The deceased shared the incidents with PW1 and PW3, who are the brother and mother of the deceased and she also used to share her problems with PW4, neighbour of PW3 and with her colleagues PW7 and PW8.

2.2. One month prior to the date of occurrence, the appellant set fire to the new sarees of the deceased suspecting to have been given by paramour and he also threatened the deceased that he would set fire on her. Hence, the deceased got feared, stayed in her mother's house PW3 for about a month. Just three days prior to the date of occurrence ie., on 11.12.2013, the appellant came to the house of PW3, made a request and took the deceased with him. But again on 13.12.2013, the appellant suspected and beaten the deceased and asked her not to go to job. The deceased informed about this incident to PW3 on the morning of 14.12.2013. On 14.12.2013 at night deceased returned after work visited her child in the house of PW3 and left to her house by saying that her husband/appellant had bought tiffin for her.

2.3. On 14.12.2013 PW2 was watching T.V in his house in the ground floor. At about 09.30 p.m he saw the appellant going to his house in the upstairs and at 10.00 p.m, PW2 saw the deceased also going to their house. At about 11.00 p.m the neighbours of PW2 viz., Sathyanarayanan, Ganesan and his wife Girija came and informed PW2 that they heard huge noise "அய்யய்யோ" from the house of the appellant and they went upstairs and knocked the door and the door was not opened. They heard only the sound of T.V and subsequently the T.V sound was increased. So PW2 and others on the belief that they would have compromised between them, returned to their house. Next day i.e., on 15.12.2013 at about 06.00 a.m PW2 during his morning walk, on his way saw PW1 in front of his house and informed the incident of the previous night. Immediately PW1 along with PW2 proceeded to the house of the appellant, they knocked the door. After few minutes, the appellant opened the door. When PW1 attempted to enter the house to see his sister, the appellant said "நான் எவ்வளவு சொல்லியும் உன் அக்கா திருந்தவில்லை, ஆதனால் அவளை அரிவாளால் வெட்டி கொண்டு விட்டேன்" and

pushed them and ran away from the scene of occurrence. PW1 and PW2 went inside the house, saw the body of the deceased on the floor in a pool of blood. So, PW1 went to the R.S.Puram Police Station and lodged a complaint [Ex.P1]. A case was registered in Crime No. 1831 of 2013 [Ex.P31] on the file of the respondent for the offence under Section 302 of IPC. On completion of investigation and filing of charge sheet, the case, on committal was tried against the appellant in S.C.No.25 of 2015 on the file of the Sessions Judge Magalir Neethimandram (Mahila Court), Coimbatore.

3.Before trial Court, prosecution examined 16 witnesses and marked 41 exhibits and 8 materials objects. The defence examined 3 witnesses and marked 2 exhibits.

3.1.PW1, the brother of the deceased has stated the marriage between the appellant and the deceased was conducted on 07.09.2003. They had a child aged about 10 years and the child was taken care by PW3, since the appellant and the deceased were working and they used to leave the house at 08.30 a.m in the morning and they would return to house after work at 09.30 p.m. Frequent fight between the appellant and the deceased doubting the chastity of her wife/deceased was picked up the appellant. One month prior to the occurrence, the appellant burned the new sarees of the deceased suspecting it was got by someone else to her. Hence, the deceased was living with her parents, who were residing nearby. Three days prior to the occurrence i.e., on 11.12.2013, the appellant came to the house of PW3, made a request that he would not suspect and ill-treat the deceased and took her with him and went back to his house. PW1 on 15.12.2013, received information from PW2 that a huge cry sound from the house of the deceased was heard at about 11.00 p.m. When PW2 and their neighbours went to the deceased house and knocked the door, the door was not opened. Since the volume of T.V was high, they thought that the family dispute was compromised between them and hence, they returned to their house. On coming to know about the same PW1 went to the house of the deceased with PW2 and knocked the door. The appellant after ten minutes opened the door. When PW1 attempted to enter the house to see his sister, the appellant said that "despite several warnings, her sister has not changed and corrected herself, hence I have done away" and pushed them and ran away from the scene of occurrence. PW1 and PW2 entered into the house and saw the body of the deceased on the floor in a pool of blood covered with blanket. PW1 informed his family members and went to the respondent Police and lodged a complaint [Ex.P1].

3.2.PW2 the house owner has stated about the relationship between the appellant and the deceased and fight aroused between them on the date of occurrence. He informed the same to PW1 and thereafter PW1 and PW2 entered the house

of the deceased, found the deceased was murdered by appellant and saw the appellant run away from the scene of occurrence.

3.3.PW3 the mother of the deceased has stated about the marriage between the appellant and the deceased and their child was brought by her. Due to the suspicious character of the appellant, there was frequent quarrels between them and the appellant used to assault the deceased. The deceased had informed about the assault on 13.12.2013 to PW3. Further, on coming to know about the death of the deceased PW3 and her family members rushed to the scene of occurrence.

3.4.PW4 neighbour of PW3 stated that her son and the son of the deceased were studying together. Hence PW4 was in constant interaction with the deceased. The deceased used to pour out her sufferings and assault of the appellant.

3.5.PW5 witness for Observation Mahazar [Ex.P8] and Seizure Mahazars [Ex.P19] of MO1 to MO3 and MO5, the blood stained patches found in the scene of occurrence.

3.6.PW6 Manager of Pothys Textile has stated about the deceased was employed as Sales girl.

3.7.PW7 and PW8 the co-workers of deceased has stated about the suspicious nature of the appellant and the deceased being constantly subjected to cruelty and assaulted by the appellant.

3.8.PW9 the Village Administrative Officer, in whose presence the appellant was arrested and confession was recorded. PW9 identifies the signature [Ex.P20] in the confession statement. PW9 marked the Seizure Mahazar [Ex.P21] and MO7 and MO8, blood stained clothes of the appellant.

3.9.PW10 photographer who took photographs [Ex.P2 to Ex.16] of the deceased in the place of occurrence.

3.10.PW11 the Scientific officer of Forensic Department, Coimbatore collected the blood stained articles from the scene of occurrence handed to PW16 for forwarding to forensic examination.

3.11.PW12 the learned Judicial Magistrate, Tiruppur recorded the statements of PW1 and PW2 under Section 164 of Cr.P.C under Ex.P22 and Ex.P23 respectively.

3.12.PW13 the Assistant Electrical Engineer TNEB through him TNEB Report [Ex.P24] has been marked and it is seen that there was no power-cut during the relevant time.

3.13.PW14 Doctor, who conducted Autopsy on the body of the deceased, issued postmortem certificate under Ex.P26, the Toxicology Report [Ex.P27] and final opinion [Ex.P28], the Serological and Biological reports Ex.P29 and Ex.P30 have been marked. The following injuries noted over the body of the deceased:-

1)Cut injury 6 X 2 cm X skin deep noted over from of right ear to cheek.

2)Cut injury 5 X 1 cm X muscle deep extending from right side top of ear lobe to right cheek.

3)Cut injury 6 X 1 cm X bone deep noted over right side mandible extending from mid of chin.

4)Cut injury 7 X 1 cm X muscle deep noted over right upper neck, 3 cm below right ear lobe and 5 cm lateral to wound no. 3.

5)Cut injury 9 X 3 cm X bone deep noted over right lower neck, 8 cm below right ear and 5 cm below wound no. 4. On dissection the cutting underlying muscles, nerves and vessels including right common carotid artery and cutting the underlying C-6 cervical bone.

6)Incised wound 2 X 0.5cm X skin deep notes over 1 cm below right ear lobe.

7)Cut injury 9 X 2 cm X bone deep over low upper and posterior aspect of neck, 4 cm below left ear lobe. On dissection the cutting the underlying muscles, nerves and vessels and cutting the underlying C-3 cervical bone.

8)Cut injury 6 X 2 cm X bone deep noted over posterior aspect of left lower neck, 5 cm below to wound no 7. On dissection the cutting the underlying muscles, nerves and vessels including and cutting the underly C-7 cervical bone.

9)Cut injury 3 X 0.5 cm X skin deep noted over posterior aspect of left side neck, 2 cm above wound no 8.

10)Cut injury 5 X 0.5 cm X skin deep noted over posterior aspect of right side neck, 7 cm from right ear lobe.

11)Incised wound 3 X 1 cm X skin deep noted over left shoulder joint.

12)Incised wound 4 X 1 X 0.5 cm skin deep notes over inner aspect of left arm.

13)Scratch mark four in number each measuring 8 X 0.5 X 0.5, 7 X 0.5 X 0.5 cm noted over front of neck over thyroid region.

14)Cut injury 8 X 2 cm X muscle deep noted over posterior aspect of right side mid forearm.

15)Reddish abrasion 10 X 1 cm noted over

posterior and lateral aspect of right arm, 4 X 3 cm noted over right arm.

OTHER FINDINGS:

- Peritoneal and Plural cavities - Empty.
- Hyoid bone: Intact.
- Larynx and Trachea : cut section pale.
- Heart-all chambers contains about few cc of cluid blood. Coronaries patent.
- Stomach contains about 100 grams of partially digested food particles, no specific smell, mucosa pale.
- Small Intestine contains about 10ml of bile stained fluid, no specific smell, mucosa pale.
- Spleen, Kidneys, Lungs, Brain and Liver-Cut Section pale.
- Urinary bladder-empty.
- Uterus:empty
- Viscera preserved for chemical analysis.
- Blood preserved for analysis.

OPINION: The deceased would appear to have died of Shock and Hemorrhage due to MULTIPLE CUT INJURIES. The death would have occurred 12 to 24 hours prior to autopsy."

3.14.PW15, Sub-Inspector of Police registered F.I.R [Ex.P31] in Crime No.1831 of 2013 on the complaint [Ex.P1] from PW1.

3.15.PW16, Investigating Officer on receipt of F.I.R in Crime No.1831 of 2013 from PW15, reached the scene of occurrence at 08.00 a.m in presence of PW5, prepared Observation Mahazar [Ex.P18] and Rough Sketch [Ex.P32], enlisting the service of PW11 the forensic officer continued with the investigation, making arrangements to photograph the body of the deceased, conducting inquest in the presence of the witnesses, forwarding for postmortem, seizing of material objects, examining the witnesses, arrest of the accused, recording of confession of the accused, forwarding the accused to judicial custody, obtaining various reports, forwarding material objects to Court under form 95 and on completion of investigation, filing of charge sheet.

4.The appellant was charged for the offence under Section 302 of IPC. On questioning under Section 313 Cr.P.C., appellant denied the charges. On appreciation of evidence, oral and documentary, the trial Court under Judgment dated 08.02.2017 in S.C.No.25 of 2015 convicted the appellant. Against which the present appeal.

5.Heard the learned counsel for the appellant and the

learned Additional Public Prosecutor for the respondent.

6.The contention of the learned counsel for the appellant is mainly on the ground that at the time of occurrence the appellant was not present in scene of occurrence. The appellant was engaged by DW1 to shift his house hold articles, by using the appellant's load Auto between 10.30 p.m and 11.45 p.m. DW2 the mother of the appellant stated that the child of the deceased was living with PW3 on convenience. The family members of the deceased did not say anything about the appellant suspecting chastity and assaulting the deceased to her. DW2 had categorically stated that on 14.12.2012, the appellant came to her house after finishing his work at 12.00 midnight exhausted and he slept in her house and on the next day morning 07.00 a.m, after taking bath he went to Church. DW3 the load man stated that DW1 booked the appellant's vehicle and invited him to transfer the household articles to his new house on 14.12.2012 between 10.30 p.m and 11.45 p.m. Ex.D1 is the Ration Card of DW2 and Ex.D2 is the Xerox copy of Voter ID and Aadhar Card of DW3.

7.The learned counsel further contended that the illegal relationship of the deceased with one Moidheen has not been examined as witness in this case. Hence there is no motive of the appellant against the deceased and he is not the reason for the death of the deceased. The evidence of PW2 is not trustworthy for the reason that while PW2 was watching TV how he saw the appellant entering the house. Hence PW2 has not seen the deceased and the appellant together. With regard to the constant fight and assaults of the appellant, there was no complaint lodged against the appellant, therefore it is a got-up story by the prosecution.

8.The trial Court failed to see the evidence of the defence, despite the appellant proving the fact that on the time of occurrence he was not present in the scene. The arrest, confessions and recoveries were got for the purpose of the case. The appellant attended the Church on 15.12.2012, he was picked up by the police and a case was foisted against him. Therefore, he prayed for acquittal from the charges framed against him.

9.Per Contra, the learned Additional Public Prosecutor appearing for the respondent Police would submit that PW2 has stated about the appellant and the deceased staying in a portion of his house and he saw both of them entering into their house. PW1, PW2, PW3, PW4, PW7 and PW8 have clearly spoken about the motive and suspicious character of the appellant. One month prior to the occurrence, the appellant burned the new sarees of the deceased and also attempted to set fire on her. The relationship between them was stormy and after the incident, the deceased left the house and was living with her parents, which has been corroborated by PW2, PW4, PW7 and PW8. The arrest, confessions and recoveries

have been proved by PW9. PW11 in his evidence has stated that the blood stained articles recovered from the scene of occurrence have been tested and the same blood group is found in MO7 and MO8 which has been recovered from the appellant.

10.The learned Additional Public Prosecutor would further submit that the Postmortem certificate [Ex.P26] would prove the fact that the deceased had indiscriminating cut over the face, neck and chest. The nature of injuries would prove the intention of the appellant to do away the deceased in a gory manner. After receiving the compliant [Ex.P1] from PW1, F.I.R [Ex.P31] has been registered which could be seen from the evidence of PW15. PW16 on receipt of Ex.P31, reached the scene of occurrence at about 08.00 a.m and in presence of PW5 prepared Observation Mahazar [Ex.P18] and Rough Sketch [Ex.P32], made arrangement to photograph the body of the deceased, conducted inquest in the presence of the witnesses, sent the body for postmortem, seized the material objects, examined the witnesses, arrested the accused, recorded the confession of the accused, sent the accused to judicial custody, obtained various reports, forwarded the material objects to Court under form 95 and on completion of investigation filed the charge sheet.

11.Hence, the prosecution has proved the existence of motive and recovery of incriminating materials at the instance of the appellant and clearly established the guilt of the appellant.

12.This Court considered the submissions made by the learned Counsel on either side and perused the materials available on record.

13.It is seen that the appellant and the deceased were staying in a portion of PW2's house. PW2 saw the appellant and the deceased entering into their house. PW1, PW2, PW3, PW4, PW7 and PW8 have clearly deposed about the motive and suspicious character of the appellant against the deceased. One month prior to the occurrence, the appellant has burned the new sarees of the deceased and also attempted to set fire on her. After the incident, the deceased had gone to her parents house. The relationship between the appellant and the deceased was stormy.

14.PW7 and PW8, the co-workers with whom, the deceased used to share her sufferings and cruelty and also her sufferings to PW4. PW9, the Village Administrative Officer has clearly stated about the arrest, confession and recoveries. Pursuant to which, MO7-knife, MO8-blood stained articles have been recovered.

15.PW14 confirms the blood group of the deceased is 'B'. Ex.P29, Serology Report reveals that the blood group 'B' was

found in the material objects. The Biological Report [Ex.P40] and Blood grouping report [Ex.P41] reveal that human blood group 'B' was detected in all the material objects. The recovery of knife [M01] recovered from the appellant has been found that it contains human blood 'B' group and it matches with the blood group of the deceased. Hence, the Serological and Biological Report have proved the blood in M01 to M06 with blood grouping of M07 and M08.

16.It is seen from Ex.P36, M04 and M06 were soaked with blood and it was returned to be dried and to be produced before the learned Judicial Magistrate No.I, Coimbatore by form 95 dated 16.12.2013. Further PW5 speaks about the preparation of Observation Mahazar [Ex.P18] and Rough Sketch [Ex.P32]. From the evidence of PW13, it is seen that at the relevant time, there was no power cut. From Ex.P26-Postmortem Certificate and Ex.P28-Final Opinion, it is seen that around 15 indiscriminating cut injuries forward over the face, neck and chest on the body of the deceased, which are gruesome in nature. Admittedly, the murder of the deceased has taken place inside the house of appellant. The appellant has not given any probable explanation for the same.

17.Ex.P33 is in conformity. The alibi defence has been taken by the evidence of DW1 to DW3. The evidence of DW1 to DW3 does not inspire confidence on the Ex.D1 and Ex.D2 and it is a got-up story for the purpose of the case. Hence, the trial Court has rightly rejected the same. The trial Court on proper analysis of the evidence and materials had given cogent reasoning in convicting the appellant and there is no ground to find fault and to intervene.

18.In view of the above, this Court finds that there is no reason to interfere with the Judgment passed by the learned Sessions Judge Magalir Neethimandram (Mahila Court), Coimbatore in S.C.No.25 of 2015 dated 08.02.2017.

19.Hence, the finding of the Court below is confirmed. In the result, this Criminal Appeal stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

vv2

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Sessions Judge Magalir Neethimandram (Mahila Court),
Coimbatore.

2. The Judicial Magistrate No.1, Coimbatore.

3. The Inspector of Police,
B-2, R.S.Puram Police Station,
(Law and Order),
Coimbatore City,
Coimbatore District.

4. The Superintendent,
Central Prison, Coimbatore

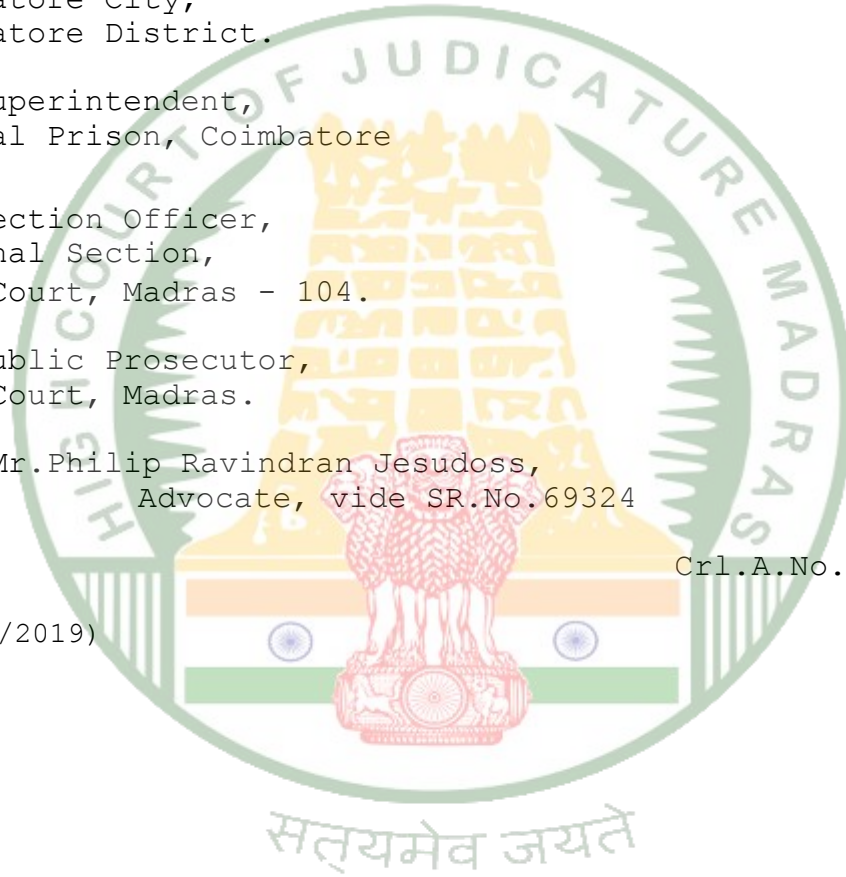
5. The Section Officer,
Criminal Section,
High Court, Madras - 104.

6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Philip Ravindran Jesudoss,
Advocate, vide SR.No.69324

Cr1.A.No.6 of 2018

Kak(09/10/2019)



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