

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.674 of 2017

Ramasamy

..Appellant

Vs

State by the Inspector of Police
Erode Taluk Police Station
Erode

..Respondent

Prayer:- This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 31.05.2017, made in SC.No.16 of 2017, on the file of the Additional Sessions Judge-Mahalir Neethi Mandram (FTC Mahila Court) Erode, thereby convicting and sentencing the Appellant/ accused, for the offence under Section 302 of IPC to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo two years Simple Imprisonment.

For Appellant : Mr.E.C.Ramesh

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

(Judgement of the Court was made by A.D.JAGADISH CHANDIRA)

This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 31.05.2017, made in SC.No.16 of 2017, on the file of the Additional Sessions Judge-Mahalir Neethi Mandram (FTC Mahila Court) Erode, thereby convicting and sentencing the Appellant/ accused, for the offence under Section 302 of IPC to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo two years Simple Imprisonment.

2. The case of the Prosecution is as follows:-

a. The deceased, Perumayee is the wife of the Appellant/ accused and they were living with their son, Erusappan, PW.1 and his wife, Rukmani, PW.2. There were quarrels and disputes, between the deceased and the Appellant/ accused, since the Appellant was in illicit relationship with another lady. On 13.10.2014, at 6.15 p.m. pursuant to a quarrel

between the accused and the deceased, the Appellant/ accused, with an intention to murder his wife, assaulted on her head, with a casuarina log, due to which she sustained grievous injuries and immediately, she was admitted in the Government Hospital, Erode and thereafter, after five days, referred to Mohan Kumaramangalam Medical College Hospital, Salem, for further treatment, where she died on 18.10.2014 at 10.10. a.m.

b. On 13.10.2014 at 11.00 p.m., the PW.1 gave a complaint, Ex.P1 to PW.15, Sub Inspector of Police, Erode Taluk Police Station, and on receipt of the said complaint, PW.15 registered a case in Cr.No.265 of 2014 under Section 307 of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act and prepared a First Information Report, under Ex.P11 and sent the case papers to the Higher Officials.

c. PW.16, Inspector of Police, took up the case for further investigation and went to the scene of occurrence and prepared a rough sketch under Ex.P12 and a observation mahazar. He seized MO.1 in the presence of the witnesses. On 14.10.2014, at 13.00 hours, he arrested the accused and recorded his voluntary confession. Since he came to know that on 18.10.2014, at 10.10 a.m. the deceased died, he altered the Section from 307 of IPC into Section 302 of IPC and sent the alteration report to the Judicial Magistrate I, Erode, under Ex.P13. At 13.30 hours, he went to the hospital and conducted inquest and prepared a inquest report under Ex.P14. After examining the witnesses and recording their statements, he sent the body of the deceased to the Hospital for post-mortem. After completion of the investigation, on 15.4.2015, he laid a final report against the appellant/accused for the offence under Section 302 IPC.

3. The case was taken on file in SC.No.16 of 2017, by the Additional Sessions Judge-Mahalir Neethi Mandram (FTC Mahila Court) Erode and necessary charges were framed. In order to bring home the charges against the accused, the prosecution examined as many as sixteen witnesses as PW.1 to PW.16 and also marked Exs.P1 to P14 and MO.1. On completion of the evidence on the side of the Prosecution, the accused was questioned under Section 313 of Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case and sought for trial.

4. The Trial Court, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellant guilty and awarded punishments as referred to above, which is challenged in this Criminal Appeal.

5. This court heard the submissions of the learned counsel on either side.

6. The learned counsel for the Appellant, while assailing the impugned judgement of conviction and sentence, would contend that the Prosecution has miserably failed to prove its case, by adducing clear and consistent evidence. The learned counsel would alternatively contend that even in the event of accepting the case of the Prosecution that the Appellant is guilty of causing the death of his wife, it would attract the offence only under Section 304(ii) of IPC and not for the offence under Section 302 of IPC, inasmuch as the Appellant, who was in an inebriated condition at the time of occurrence, during the quarrel with his wife, in view of sudden grave and provocation, assaulted the deceased, with a casuarina log, with no intention to cause her death and it had happened due to grave and sudden provocation and the victim died after five days i.e. on 18.10.2014, from the date of occurrence, i.e. 13.10.2014. In support of his arguments, the learned counsel for the Appellant would also rely on the evidences of the eye witnesses that there was a domestic quarrel between the Appellant/ accused and his wife, on the day of occurrence. The evidence would suggest that the Appellant/ accused had no intention to commit the murder of his wife and that he had not taken undue advantage or acted in a cruel or unusual manner. He would submit that it is the evidence of PW.14, Doctor, that the victim could have sustained the injuries due to fall and further, no evidence has been let in by the Prosecution, regarding the nature of treatment given to her, thereby conclusively proving that the injury suffered was sufficient to cause death. He would thereby submit that the case would fall within Exception 4 of Section 300 of IPC.

7. The learned counsel for the Appellant would further submit that the Appellant/ accused is old aged person and that he has to take care of his daughter, who is a widow, living with her children and he has been in prison for more than 1 ½ years. He would further pray that in the event of this Court coming to the conclusion that the Appellant/ accused is guilty of the offence of homicide, this Court may modify the sentence to a lesser sentence, taking into consideration the evidence on record and the above said mitigating circumstances.

8. On the other hand, the learned Additional Public Prosecutor would submit that as per the case of the Prosecution, there was a quarrel between the Appellant and the deceased, due to suspicion of illicit intimacy of the Appellant with another lady, which fact was also spoken to by PW.1 and PW.2 and the other witnesses, who are neighbours and that the Prosecution has proved its case by adducing clear and cogent evidence and that there are no infirmities or discrepancies or inconsistencies inconsistency in the evidence adduced by the Prosecution. He would further submit that the case of the Prosecution is also corroborated by the recovery of weapon and the medical evidence

and that considering the evidence, both oral and documentary, in a proper perspective, the Trial Court had rightly convicted and sentenced the Appellant/ accused, by the impugned judgement, which warrants no interference by this Court.

9. We have given our careful and anxious consideration to the rival contentions put forward by the learned counsel on either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction and sentence.

10. It is a case of uxoricide, where the Appellant/ accused caused the death of his wife, by hitting her with a casuarina log. The case of the Prosecution is supported by the evidence of PW.1, who is the son of the Appellant/ accused and the deceased and PW.2, who is the wife of PW.1. The evidence of PW.1 and PW.2 are fortified by the evidence of the other witnesses, namely, PW.3 and PW.5, neighbours, PW.4, the Doctor, who admitted the victim for treatment, PW.6, who is the daughter of the deceased and the Appellant/ accused, PW.7, who attested to the observation mahazar, Ex.P3, PW.11, the Doctor, who had treated the deceased from 13.10.2014 from 11.40 a.m till her death on 18.10.2014 at 10.10 a.m., PW.12, the Doctor, who had admitted the victim, as an inpatient and issued the accident register, under Ex.P6, PW.14, the Doctor, who had conducted the post-mortem on the body of the deceased and issued a post-mortem certificate under Ex.P9 and PW.16, the Investigating Officer, who conducted the investigation, arrested the accused and filed the final report.

11. Though the learned counsel for the Appellant has raised several grounds on appeal, he had restricted his arguments to the extent that even if it is accepted that the Appellant/ accused had caused the death of his wife, Perumayee, the case would not fall under Section 302 of IPC, but it would fall under Section 304(ii) of IPC. Admittedly, the evidence of the eye witnesses would suggest that the incident had happened when there was a quarrel and when Appellant/ accused, who was in an inebriated condition, in a fit of anger, whilst deprived of his power of self-control, he had committed the offence by a single hit. We are convinced that the act of the Appellant/ accused was not pre-planned or premeditated, but had been committed by a husband in an inebriated condition during a domestic quarrel, in a fit of anger, whilst deprived of his power of self control and thereby, the case would fall under Exception 4 to Section 300 of IPC.

12. In order to fit in a case within Exception 4 to Section 300 of IPC, all the ingredients mentioned must be satisfied. Culpable homicide is not murder, if it is committed without premeditation in a sudden fight, in the heat of passion

upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner and it is immaterial in such cases which party offers the provocation or commits the first assault.

13. Further, from the perusal of the evidence, in the case on hand, there is no premeditation or pre-plan and the Appellant/ accused has not taken undue advantage or acted in a cruel or unusual manner and the incident had happened in a heat of passion during a domestic quarrel. The facts of the present case indicate that all the ingredients of Exception 4 to Section 300 of IPC are present. In similar circumstances, the same view has been taken by the Honourable Supreme Court in the decisions reported in 2017 5 SCC 796 (Surain Singh Vs. State of Punjab) and 2018 7 SCC 777 (Tularam Vs. State of MP).

14. Moreover, in this case, the incident had happened on 13.10.2014 at 6.15 p.m and the victim was admitted in the Government Hospital, Erode and thereafter, since her condition became critical, she was referred to Mohan Kumaramangalam Medical College Hospital, Salem, for further treatment, where she breathed her last on 18.10.2014 at 10.10 a.m. Admittedly, though two Doctors have been examined, no evidence has been let in by the Prosecution, regarding the nature of treatment given and that the injury sustained by the victim was sufficient to cause death.

15. Taking into consideration the nature of injuries and also the time gap between the time of infliction of the injury till the date of death, after the injury was inflicted and there being no sufficient material produced with regard to the nature of treatment given and that the injury sustained by the victim was sufficient to cause death, the Honourable Supreme Court in AIR 1993 SC 973 (Harish Kumar Vs. State (Delhi Administration)), has held that since it had not conclusively said that the injury suffered was sufficient to cause the death, the offence will fall under Section 304(ii) of IPC.

16. The decision of the Honourable Supreme Court reported in in AIR 1993 SC 973 (Harish Kumar Vs. State (Delhi Administration)), cited supra, has also been followed by the Division Bench of this Court in 2002 LW (Cr1) 789 (Rajan and others Vs. State by Inspector of Police and in a latter decision of this Court 2004 1 MWN Cr. 208 (DB) (Thamilarasan and Others Vs. State by Inspector of Police, Sirkazhi.

17. Thus, in entirety, considering the facts of the case, the legal evidence on record and in the background of the legal principles laid down, we come to the inevitable conclusion that all the requirements under Section 300 Exception 4 have been satisfied and thus, the appropriate conviction would be

under Section 304 (ii) of IPC instead of Section 302 of IPC.

18. In the result, this Criminal Appeal is partly allowed. The conviction and sentence imposed on the Appellant/Accused by the Trial Court, under Section 302 of IPC are set aside. Instead, the conviction and sentence made under Section 302 of IPC is modified to one under Section 304(ii) of IPC. Accordingly, the Appellant is convicted under Section 304 (ii) of IPC and is sentenced to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.1,000/- (Rupees One Thousand Only), in default, to undergo Rigorous Imprisonment for one month.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1.The Additional Sessions Judge,
Mahalir Neethi Mandram
(FTC Mahila Court), Erode.

2.The Inspector of Police,
Erode Taluk Police Station,
Erode.

3.The Superintendent,
Central Prison,
Coimbatore.

4.The Public Prosecutor,
High Court, Madras-104.

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

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NRL(CO)

rrs 13/03/2019