

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.07.2019
DATE OF VERDICT: 09.07.2019

CORAM

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

CrI.A.No.746 of 2017
and
CrI.M.P.No.14739 of 2017

Ravi

..Appellant

-Vs-

State rep. by
The Inspector of Police,
B-8 Variety Hall Road
(Law & Order) Police Station,
Coimbatore.
(Crime No.115/2015)

..Respondent

Appeal filed under Section 374 Cr.P.C. against the conviction and sentence of life imprisonment and to also pay a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment under Section 302 IPC passed against him by judgment dated 13.09.2017 made in S.C.No.159 of 2015 on the file of the Principal District and Sessions Judge, Coimbatore.

For Petitioner : Mr.P.Maheshkumar

For Respondents : Mr.R.Prathap Kumar,
Addl. Public Prosecutor

सत्यमेव जयते

JUDGMENT

M.M.SUNDRESH, J.

Appellant is the sole accused in S.C.No.159 of 2015 charged for the offence punishable under Section 302 I.P.C. and thereafter convicted for life. Assailing the conviction and sentence rendered by the Trial Court, the appellant has filed this appeal.

2.PROSECUTION VERSION:

2.1.The appellant and the deceased were husband and wife.

The appellant in a drunken mood picked up a quarrel with the deceased on the fateful day i.e. 24.03.2015. P.W.15, who is the son of the appellant, called the police over phone and thereafter, the matter was resolved between the appellant and the deceased. In the wee hours of the night, the appellant strangled the deceased in the presence of P.W.15. Thereafter, P.W.15 went to the house of P.W.7, who is none other than the mother of the appellant and informed her. In the meanwhile, the appellant called for the ambulance. The ambulance personnel checked the deceased and found her head. P.W.1, who is the neighbour of the appellant, gave his complaint in Ex.P1 at about 01.30 a.m. on 25.03.2015. P.W.13 is the Sub Inspector of Police, who registered the complaint given by P.W.1. Based on the complaint, a case was registered for the offence punishable under Section 174 Cr.P.C. under Ex.P11. Post mortem was done by P.W.8. The appellant was arrested by P.W.17 after alteration of first information report which was sent to the Judicial Magistrate No.5, Coimbatore. The arrest was made on the same day. Pursuant to the confession statement given under Ex.P3 by the accused, recovery of material objects were made. Witnesses have also signed the observation and recovery mahazars. Thereafter, the final report was filed before the Court.

2.2.The appellant was charged for the offence punishable under Section 302 I.P.C. He denied the charge. The prosecution examined 17 witnesses in total. It also marked 15 documents in Exs.P1 to P15. M.O.1 is the dhupata worn by the deceased.

2.3.The appellant was questioned over the incriminating materials. He once again denied the charges levelled against him and the offence committed. The Trial Court, after considering the evidence available on record, convicted the appellant for the offence punishable under Section 302 I.P.C. Seeking to set aside the conviction and sentence awarded by the Trial Court, the appellant has come forward with this appeal.

3.Before proceeding further, the evidence available both oral and documentary will have to be assessed and analysed.

4.P.W.1 is the neighbour of the appellant and the deceased. He speaks about the first occurrence in which there was a quarrel between the appellant and the deceased in the presence of P.W.15 and thereafter when the body of the deceased was found in the presence of P.W.15 along with P.W.3 - pilot of the ambulance and the appellant. In his evidence, he had stated that the appellant went away from the place after knowing that the deceased was no more. He also acknowledged the presence of the appellant holding the dhupata in his hand. In his cross examination, he has stated that the appellant went behind the ambulance. He is also aware of the complaint.

5.P.W.2 is one of the witnesses to the observation mahazar. P.W.3 is the pilot who was driving the ambulance. He has deposed that it is the appellant who asked the ambulance to come to his house. P.W.3 after reaching the house of the appellant actually met him. According to him, the appellant went away, after knowing that the deceased was no more. However, he has stated that the appellant ran away even before the ambulance started. Though this part of evidence is not in tune with the evidence of P.W.1, we do not find any material discrepancy in the evidence of P.Ws.1 and 3 as a whole.

6.P.W.3 also speaks about the examination of the deceased by the person who came in the ambulance. He further speaks that the appellant went out thereafter. Here also, P.W.3., in the same way as that of P.W.1 in the cross examination, has stated that the appellant ran away.

7.P.W.5 is the attesting witness to Ex.P4, by which, recovery was made. He is the Village Administrative Officer. We do not find any reason to disbelieve his statement. P.W.6 is another neighbour of the appellant. He has stated that the appellant was near the body along with P.W.15 and holding dhupata in his hand.

8.P.W.7 is the mother of the appellant. She deposed that P.W.15, who is her grandchild, aged about 10 years, has narrated the incident to her. Even in the cross examination, she has reiterated her earlier version. She has further deposed that M.O.2 cell phone has been handed over to the police by her. Thus, the evidence of P.W.7 certainly strengthens the case of the prosecution.

9.P.W.8 is the doctor who conducted the post mortem. He has opined that the deceased would have died of strangulation. Though a suggestion was put to her that the deceased must have died of hanging, it was accordingly denied. She had opined under Ex.P6 post mortem report that the deceased would have died of asphyxia. From the evidence of P.W.8 read with Ex.P6, we can come to the conclusion that the deceased died of asphyxia. P.W.15 is the child witness aged about 10 years. The Trial Court by raising queries got itself satisfied about the understanding capacity of P.W.15. This witness has clearly stated that the deceased was strangled by the appellant and there was a prior quarrel between them. Though he has deposed that the appellant strangled the deceased by a blanket, he has thereafter stated that it was only dhupata. However, he has deposed that it is the appellant who called the ambulance and when he returned with P.W.7, the appellant was very much there. It is the further evidence of P.W.15 that the appellant followed the ambulance crying.

10.The above evidence of P.W.15 while making one to believe that it is the appellant who strangled the deceased, there was no intention to commit the murder. He was found crying and was very much available apart from making efforts to revive the deceased. P.W.17 is the investigating officer who initially registered the case under Section 174 Cr.P.C. and thereafter altered the same into one under Section 302 I.P.C. He speaks about the investigation done, arrest and recovery.

11.With the abovesaid background, let us consider the contentions raised.

12.Learned counsel appearing for the appellant submitted that it is a case of hanging by the deceased. Admittedly, there was a prior quarrel. P.W.15 is the child witness and therefore, cannot be believed. He did not like the appellant and he has been tutored. There is discrepancy in the evidence of P.W.15 with respect to M.O.1. P.W.15, in his chief examination, says that what was used to strangle the deceased was a blanket, whereas in the latter portion, he took a stand that it was a dhupata. Even assuming the evidence of P.W.15 is taken as gospel truth, the offence punishable under Section 302 I.P.C. is not made out. Therefore, it is only within his knowledge and not intention he has committed the offence and hence the appellant ought to have been convicted under Section 304 (II) I.P.C. The other witnesses have not seen the occurrence. There is some discrepancy between the evidence of P.Ws.1 and 6 with respect to the conduct of the appellant. It is not correct to state that the appellant left the scene of occurrence after the arrival of ambulance and thereafter knowing that the deceased was no more. The appellant was very much present and he did not run away from the place. He was taken into custody on the same day and therefore, the arrest, confession statement and recovery cannot be believed. Thus, the prosecution has not proved its case beyond reasonable doubt and therefore, the conviction and sentence rendered by the Trial Court require to be interfered with.

13.Learned Additional Public Prosecutor appearing for the State placed much reliance upon the evidence of P.W.15 and P.W.7. P.W.15 has clearly deposed against the appellant. There is nothing to discredit the testimony of P.W.15. Small discrepancies would not vitiate the case of the prosecution. The evidence of P.W.8 along with Ex.P6 corroborated the case of the prosecution. The Trial Court took into consideration the evidence of P.W.15 and P.W.7 coupled with the recovery made. Merely because P.W.15 is a minor, the same cannot be eschewed. Thus, the appeal will have to be dismissed.

14. We have to analyse the evidence of P.W.15 being the sole eye witness. P.W.15 is a ten year old boy born out of the wedlock between the appellant and the deceased. Though P.W.15 has stated that he did not like his father, the same cannot be a ground to disbelieve his evidence. He has deposed that he did not like his father because of his conduct. There was also a wordy quarrel happened on the same day. Merely because P.W.15 has stated that the strangulation was done with the blanket and thereafter dhupata, his evidence cannot be disbelieved. The Trial Court took care to satisfy itself on the capacity of P.W.15 to understand and answer. Questions were put to him which he answered clearly. P.W.15 is not a child of tender age but a ten year old boy. It is he who called the police when the first incident happened. When P.W.15 could have the mental capacity to call the police and inform the quarrel between the appellant and the deceased, we cannot come to the conclusion that he, being the minor child, his evidence has to be eschewed.

15. However, we find considerable force in the submission made by the learned counsel for the appellant on the second issue that the offence for which the appellant is liable to be punished. The question for consideration, therefore, is whether the appellant is liable to be punished under Section 302 I.P.C. for having committed a murder or a culpable homicide warranting punishment under Section 304 (II) I.P.C. In other words, we have to see as to whether an intention is available to commit the murder as against the mere knowledge.

16. As discussed above, there is no need to deeply analyse the other witnesses not being eye witnesses. If we consider the evidence of P.W.15, he has clearly deposed that it is the appellant who called the ambulance. This was corroborated by the evidence of P.W.3-pilot of the ambulance. He has also deposed in his chief examination that the appellant was present and he told the same that it is he who called the ambulance. P.W.1 has clearly deposed that the appellant was found crying. He was not aware of any prior quarrel between the appellant and the deceased. Though some of the witnesses have stated that the appellant ran away, P.Ws.4, 7 and 15 have only stated that the appellant left. If at all, the appellant wanted to murder the deceased, he would not have called the ambulance. Secondly, he would not have allowed P.W.15 to inform this to P.W.7. The fact that he was present when all other came and was crying would also show the conduct of the appellant. The post mortem report also shows that the deceased died of strangulation and other injuries were minor.

17. In such view of the matter, we are of the view that the case on hand would fall under maximum punishment under Section 304(II) I.P.C. with the existence of knowledge to be imparted on the action of the appellant as against intention to commit the offence of murder. Therefore, what has been done by the

appellant is culpable homicide and is not amounting to murder. This we hold so while accepting the evidence of all other witnesses including the recovery made.

18.The Trial Court, in our considered view, has not considered this aspect. It was concentrating on the issue as to whether the appellant has committed the offence or not. Though we do not find any error in the assessment of evidence by the Trial Court, for the reasons stated above, we hold that the conviction and sentence require modification.

19.In such view of the matter, we are inclined to modify the conviction and sentence awarded by the Trial Court. Accordingly, the conviction and sentence imposed on the appellant under Section 302 I.P.C. by the Trial Court are set aside and instead, he is convicted for the offence under Section 304 (II) I.P.C. and sentenced to undergo rigorous imprisonment for a period of seven years.

20.In the result, the Criminal Appeal is partly allowed. Consequently, connected miscellaneous petition is closed.
mmi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge, Coimbatore.
- 2.The Inspector of Police, B-8 Variety Hall Road (Law & Order) Police Station, Coimbatore.
- 3.The Superintendent, Central Prison, Coimbatore.

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

Copy to:-

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

+1cc to Mr.P.Mahesh Kumar, Advocate, SR.No.57438

CRL.A.No.746 of 2017

Kak (26/09/2019)