

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.08.2019

Pronounced on: 27.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.810 of 2017

Venkatachalapathy @ Vekatrajalapathy ..Appellant/Sole Accused
Vs.

State by the Inspector of Police,
Kelamangalam Police Station,
Krishnagiri District.
Crime No.144/2006 .. Respondent

Appeal filed under section 374[2] of Code of Criminal Procedure, to call for the records in connection with the S.C.No.33/2007 on the file of the learned Additional District and Sessions Judge, Hosur, Krishnagiri District and set aside the Judgment dated 19/12/2017.

For Appellant : Mr.V.Parthiban
for Mr.E.Kannadasan
For Respondent : Mr.R.PrathapKumar,
Additional Public Prosecutor

JUDGMENT

M.NIRMAL KUMAR, J.

The appellant is the sole accused in SC.No.33/2007 on the file of the learned Additional District and Sessions Judge, Hosur, Krishnagiri District, stood charged and tried for the commission of offence under section 302 IPC. The Trial Court, vide impugned Judgment dated 19.12.2017, convicted him for the commission of the offence under section 302 IPC and sentenced him to undergo rigorous imprisonment for life and also imposed a fine of Rs.1,000/- and in default, to undergo six months rigorous imprisonment.

2. Aggrieved by the conviction and sentence awarded by the Trial Court, vide impugned Judgment dated 19.12.2017, the sole accused/appellant has preferred the present Criminal Appeal.

3. The facts leading to the filing of this Criminal Appeal briefly narrated, as follows:

3.1. The gist of the case is that on 26.09.2006 at about 8.30 p.m., P.W.1's younger daughter viz., Radha went to feed the sheep in the Sheep Shed, next to her house. At that time, the appellant inflicted the chop injury on her neck, thereby causing instantaneous death. The incident had taken place before 5 days of her marriage. It is the fact that her marriage was fixed 5 days after the date of incident.

3.2. The deceased Radha and the appellant were working in a Growmore Nursery at Hosur. During that period, they got acquittance. The appellant was interested in marrying her and the deceased informed that her marriage was fixed with her relative. Thereafter, the appellant had approached P.W.1/father of the deceased and expressed his willingness to marry his daughter. However it was rejected by P.W.1. The appellant got infuriated over the same and murdered the deceased. P.W.1 to 5 and P.W.7 who were sitting in the pial of the house witnessed the occurrence and rushed to the scene. By that time, the appellant had left billhook / M.O.1 and his chappals and ran away from the scene of occurrence. Thereafter P.W.1 lodged a complaint with P.W.19/Sub Inspector, who registered a case in F.I.R/ Ex.P11. P.W.20/Investigating Officer had taken up the case, visited the scene of occurrence, prepared Mahazars, examined the witnesses, conducted inquest and sent the body for postmortem and after obtaining reports had filed the charge sheet in this case.

4. The Trial Court framed charge under Section 302 IPC and examined P.Ws.1 to 20, marked Exs.P.1 to 14 and also marked M.Os.1 to 6. On the side of defence, D.W.1 was examined and no documents were marked.

4.1. P.W.1 is the father of the deceased. His younger daughter Radha's marriage was to be held shortly. On 26.09.2006, he along with P.Ws.2 to 5 and PW.7 were sitting in their pial of their house and discussing about the marriage of the deceased. At about 08.30 p.m, his younger daughter Radha went to feed the cattle in the Shed. The appellant came there and by using billhook / M.O.1 inflicted chopped injury on her neck and thereby caused instantaneous death. P.W.1 and others who were present there reached to the scene. By that time, the appellant ran away from the scene of occurrence. Thereafter P.W.1 went to the Police Station. P.W.11/one of the Villager who accompanied P.W.1, had written the complaint as per the version of P.W.1 and

P.W.1 had signed. Thereafter, P.W.19 had received the complaint, registered an FIR /Ex.P11 and informed P.W.20 and his superiors.

4.2. P.W.2 is the brother of P.W.1. P.W.3 is the Uncle of P.W.1. P.W.4 is the younger brother of the deceased. P.W.5 is the another brother. P.W.7 is the Sister of the deceased, who are all eyewitnesses to the scene of occurrence and their evidences corroborated with each other with the evidence of P.W.1. The appellant also hails from the same Village. Hence identifying the appellant was not in dispute. They have also spoken about the presence of light and witnessing the attack. Further it is seen from the evidence of these witnesses that both the deceased and the appellant were working together in a Nursery for quite some time and the appellant was interested in marrying the deceased, which was rejected by P.W.1. Hence the appellant was furious and further the appellant had stated that if the deceased was not married to him, she shall not marry anyone.

4.3. P.W.6 is the Villager who had seen the appellant running from the scene of occurrence. P.W.8 is the mother of the deceased, who had gone to the Village to distribute the marriage invitation for her daughter/deceased. P.W.9 is the Sister of the bride groom who stated about the appellant being in a infuriated mood. P.W.10 is the Uncle of appellant who admitted the fact of approaching P.W.1 for the marriage proposal of the appellant with the deceased. P.W.11/Villager accompanied P.W.1 to the Police Station and written complaint / Ex.P1 as per the statement of P.W.1. P.W.12 is the Manager of Growmore Nursery, under whom the deceased and the accused were working. He stated that the deceased had stopped working 15 days prior to her marriage and the appellant had also stopped working. Further the appellant stated to him that he was in love with the deceased. P.W.13 is the another Villager, who is a witness to the arrest and seizure of blood strained shirt of the accused / M.O.3. P.W.14 is the Villager who had seen M.O.1/ billhook in the scene of occurrence. P.W.15 is the Village Administrative officer on coming to know about the incident at about 11 p.m on 26.09.2000 had reached the scene of occurrence. In his presence, the observation mahazar /Ex.P3 and Seizure Mahazar of M.O.1 and M.O.3 to 5/ Ex.P14 were marked. P.W.16 is the postmortem Doctor who on 27.09.2016 had conducted autopsy on the body and issued postmortem certificate in which injuries were marked.

4.4. P.W.17 is the Head Clerk, Judicial Magistrate Court, Dhenkanikottai who had forwarded the articles to forensic department and through him, Exs.P7 to P9 report have been marked. P.W.18 is the Head Constable, who handed over the dress of the deceased along with Special Report/Ex.P10. P.W.11/the Sub Inspector of Police, who on 26.09.2006 at about 11 a.m, on

receipt of complaint / Ex.P1 from P.W.1 had registered FIR / Ex.P11 and thereafter he informed P.W.20 / Investigating Officer about the incident and sent FIR to his higher official and to the Court. P.W.20 is the Investigating Officer who on 27.09.2006 received information about the incident, visited the scene of occurrence at about 6 am. He prepared rough sketch between 6.30 to 7.00 am, Observation Mahazar between 7.00 am to 7.30 am and enlisted the service of the photographer marked M.O. 6/photographs and negatives and seized blood strained articles from the scene of occurrence between 7.30 a.m and 8.00 am, conducted inquest between 8 am and 11 am and prepared Inquest Report. Thereafter at 5.30 pm, he received the articles found in the body of the deceased through Ex.P.10 and examined the witnesses in the scene of occurrence and other witnesses and recorded their statement. On 02.10.2006, on information, at about 9.30 am he arrested the appellant who had given confession statement/Ex.P14 at about 9.45 am. The accused had produced his blood strained shirt and thereafter, the accused was sent for remand. After obtaining postmortem report and other reports, he had filed the charge sheet in this case.

5. The Trial Court, taking into consideration the oral and documentary evidences and also the materials, found that the appellant / accused is guilty u/s.302 IPC and convicted and sentenced him as stated above and hence, this appeal.

6. The contention of the appellant is that P.W.s.1to 5 and 7 are all close relatives hailing from the same family and therefore, their evidences are motivated one. According to the witnesses they were sitting 20 feet away from the scene of occurrence in the Verandah of the house and they could not have witnessed the occurrence properly from that far distance. Further the occurrence had taken place at 8.30pm in dark and there was no light in the scene of occurrence. The conduct of P.W.s 1 to 5 and 7 in not trying to apprehend the appellant creates doubt about their presence. M.O.6 photographs cannot be looked into since the photographer Babu has not been examined and photos have not been marked through him. M.O.2 shirt of the accused and M.O.3 chappals were not proved to be that of the accused. None of the witnesses have identified the same.

7. Exs.P8 and P.9 are the Forensic Report which has been marked through PW17, the Head Clerk of the Court and not through the Scientific Officer of the Forensic Department. Further from Ex.P.9, it is seen that blood samples are inconclusive.

8. P.W.1 admits that he does not know to write in Tamil and it is P.W.11 who had written the complaint. Thus the authenticity of the particulars found in Ex.P1 are highly doubtful. P.W.20 / the Investigating Officer is the Inspector of

Police of Dhenkanikottai Police Station and the occurrence had taken place within the jurisdiction of Rayakottai Police Station. P.W.20 admits that he was instructed by the Deputy Superintendent of Police to take over the investigation. However no documents authorizing him to take up the investigation has been produced.

9. The learned counsel appearing for the appellant submits that it is an admitted fact that there was a love affair between the appellant and the deceased and both belong to same community and there was no obstacle for the marriage. The appellant had been working along with deceased and the deceased was also interested in him and were in relationship for quite some time which can be seen from Ex.P14/the confession of the accused corroborated by the evidence of P.W.10 the Uncle of the appellant. PW10 approached P.W.1 on the marriage proposal which has been rejected. Further the family members have admitted about the fact of the appellant was interested in marrying the deceased. The deceased had rejected the marriage proposal and the deceased having affair with the appellant had suddenly changed her mind and refused to marry the appellant which infuriated the appellant and due to sustained provocation, the incident had happened. The injury which has been inflicted is only one and thus, the learned counsel for the appellant has stated that it is not a case of murder, it would fall under one of the exceptions.

10. To support his contention, the learned counsel appearing for the appellant has relied on the decisions of this Court in the case of Venkatesan Vs. State by Inspector of Police, Thirupporur reported in 1997 (2) MWN (Cr.) 141 and CrI.A.No.61 of 1984 dated 07.10.1987.

11. The learned Additional Public Prosecutor on the other hand submitted that in this case brutal murder has been committed by the appellant as could be seen from intensity of injury inflicted on her. The injury would show the furiosity of the attack inflicted by the appellant. The internal jugular vein of the deceased has been cut and the injury is a chopped injury using M.O.1/Billhook and the neck of the deceased has been totally cut. P.W.1/father of the deceased along with his family members P.W.2 to 5 and 7, who were sitting in the pial of the house discussing about the forth coming marriage of the deceased, had seen the occurrence properly when the deceased had gone to feed the sheep in the shed. Thus, the eyewitnesses categorically deposed about the appellant attacking the deceased with M.O.1. The medical evidence is also is in conformity to the attack as could be seen from the evidence of P.W.16/postmortem Doctor and Ex.P6 / Postmortem Certificate. P.W.10 the relative of the appellant and PW12/Employer had categorically stated

about the appellant was in a infuriated mood due to rejection of the marriage proposal by the deceased.

12. P.W.13 is the witness for the arrest. PW15/VAO is the witness for observation mahazar and seizure of articles. P.W.19 is the Sub Inspector of Police who immediately registered the FIR and informed P.W.20. PW.20 thereafter on receipt of information visited the scene of occurrence, seized the articles in the scene of occurrence, examined the witnesses, conducted inquest and sent the body for postmortem. After obtaining the postmortem certificate and other reports had filed the charge sheet. All the documents and the statements in this case had reached the Court then and there without any delay. P.W.20 the Investigating Officer had taken up strenuous efforts in conducting the investigation and after completed it within the stipulated period and after collecting all the documents filed the Final Report.

13. The appellant after receiving the charge sheet often absconded. Though charge sheet came to be filed in the year 2007, the Trial was commenced only in the year 2017, after nearly a decade due to the absconding of the appellant. The Trial Court after analyzing the evidence had rightly convicted the appellant. From the available evidence, it is a clear case of murder and it cannot be brought under any of the exceptions. Hence by cogent evidence, the prosecution has proved the case beyond any reasonable doubt and the Trial Court, on a thorough consideration and appreciation of the oral and documentary evidences has rightly reached the conclusion to convict and sentence the appellant/accused and would plead that the conviction and sentence rendered by the Trial Court vide impugned Judgment may not warrant interference and prays for dismissal of this criminal appeal.

14. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

15. P.W.1/father of the deceased is the eyewitness to the scene of occurrence. He lodged the complaint Ex.P.1, identified M.O.1/Billhook. P.W.2 is the brother of P.W.1. P.W.3/ Uncle of P.W.1. P.W.s 4 and 5 are the brothers of the deceased. PW.7 is the Sister of the deceased. These witnesses are eyewitnesses to the occurrence. It is natural that all these witnesses present together and talking about the forthcoming marriage of the deceased, which is only five days away. The accused is also hailing from same Village who was previously working with the deceased in the Nursery. No dispute with regard to identity of the accused. The accused had also approached for his marriage with the deceased, which was not agreed by the family of the deceased. These witnesses have seen the accused chopping the

neck of the deceased with M.O.1/billhook. The medical evidence is also in conformity. It is seen that the chopped injury has cut the right neck totally and the internal jugular vein of the deceased has been cut which caused the instantaneous death of the deceased. The complaint had been immediately lodged. Thereafter investigation has commenced and the accused has been arrested, material objects seized from the scene of occurrence and also from the body of the deceased which are in consonance with the case of the prosecution.

16. All the documents have reached the Court then and there without any delay. The motive aspect has been clearly spoken to by P.W.s.1, 9, 10 and 12 and it is an admitted case that the appellant with furiosity to do away the life of deceased, since his marriage proposal was rejected and he wanted none else to marry the deceased. Thus on the cogent evidence of the witnesses above discussed, it is proved that the accused had committed the murder of the deceased. The claim of sustained provocation cannot be countenanced. The intensity and the manner in which the chopped injury has been inflicted would reveal the furiosity and in an merciless manner the act has been executed.

17. Thus, we are of the view that the prosecution, through cogent evidence, both oral and documentary, had proved the guilt of the accused beyond all reasonable doubt. Hence, we are of the considered view that the Trial Court has rightly reached the conclusion of convicting the accused and the impugned judgment of the Trial Court does not require any interference at the hands of this Court.

18. In the result, the criminal appeal is dismissed and the judgment and sentence dated 19.12.2007 on the file of the learned Additional District and Sessions Judge, Hosur, Krishnagiri District in S.C.No.33/2007 is hereby confirmed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,
Hosur, Krishnagiri District.

2.The District Munsif cum Judicial Magistrate,
Thenkanikottai.

3.The Superintendent,
Central Prison, Vellore.

4.The Inspector of Police,
Kelamangalam Police Station,
Krishnagiri District.

5.The Public Prosecutor
High Court, Madras.

Copy To: The Section Officer, Criminal Section,
High Court of Madras.

+1 cc to M/s.E.Kannadasan, Advocate Sr.No. 73266

AKM/27.09.19/8P- 8C /

judgment in
Criminal Appeal No.810 of 2017



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