



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
14.10.2019	18.10.2019

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

**Crl.A. (MD)No.368 of 2017
and
Crl.MP (MD)No.8515 of 2017**

Thirisangu : Appellant/Single Accused

.Vs.

The State, by
The Inspector of Police,
Theriveli Police Station,
Muthukulathur,
Ramanathapuram District
(Crime No.26 of 2014)

: Respondent/Complainant

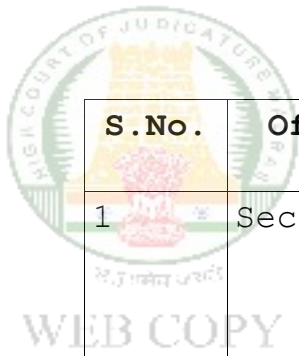
PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment and sentence passed by the District and Sessions Judge, Fast Track Mahila Court, Ramanathapuram District in S.C.No.119 of 2014, dated 8.8.2017.

For Appellant : Mr.A.Arunprasad
For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

JUDGMENT

S.VAIDYANATHAN, J.
AND
N.ANAND VENKATESH, J.

This Criminal Appeal has been filed against the judgment of the District and Sessions Court(FTC), Fast Track Mahila Court, Ramanathapuram District, dated 8.8.2017 and made in S.C.No.119 of 2014, convicting and sentencing the appellant as follows:



S.No.	Offence for which convicted	Sentence of Imprisonment	Fine Amount
1	Section 302 IPC	Life sentence	To pay a fine amount of Rs.20,000/- and in default, to undergo one year rigorous imprisonment

The case of the prosecution:

2.The deceased Mangaleswari is the wife of P.W.4 and daughter of P.W.5. The appellant is said to have developed illicit intimacy with the deceased. This was interfered with by the elders of the village and therefore, the deceased had stopped all her contacts with the appellant. On 26.06.2014, at about 2.30 p.m, when the deceased was grazing her cattle in the field, the appellant is said to have requested the deceased to revive the relationship and she told him that the relationship is all over. The appellant got enraged and he is said to have stabbed the deceased with a knife on her hip, neck and hand and thereafter, escaped from the scene of occurrence. The deceased was immediately taken in an ambulance to the hospital, where she was declared to be brought dead.

3.The compliant and the materials collected in the Course of Investigation:-

3.1.The complaint(Ex.P1) was given by one Ramalingam(PW1), who is the brother of the deceased, to the Head Constable(P.W.18) on 26.6.2014 at 3.30 p.m. An FIR was registered in Crime No.26 of 2014 for the offence punishable under Section 302 IPC. An Express FIR was sent through the Head Constable(P,W.19), to the Judicial Magistrate Court, Muthukulathur and the same reached the Magistrate Court at about 5.30 p.m.

3.2.The investigation was taken up by the Inspector of Police (P.W.24) and he came to the scene of occurrence on 26.6.2014 at about 4.45 p.m.. He prepared the Observation Mahazar and the Rough Sketch(Ex.P2 and Ex.P17) in the presence of witnesses (P.W.14 and P.W.15). He also recovered the materials from the scene of occurrence(M.O.7 and M.O.8). The Investigating Officer conducted the inquest on the body of the deceased at about 5.30 p.m. in the presence of Panchayatdars and completed the same at about 7.30 p.m. He also prepared the Inquest Report(Ex.P18).

3.3.The Investigating Officer handed over the body of the deceased to the Head Constable (P.W.23) with a requisition for



conducting post-mortem and directed him to hand over the body to the relatives after completion of the post-mortem.

3.4.On 27.6.2014 at about 2.00 p.m., the appellant was arrested and based on the confession given by him in the presence of P.W.16 and P.W.17, the material objects were recovered(M.O.1, M.O.5 and M.O.6). The appellant was produced before the Judicial Magistrate Court and he was remanded to judicial custody. The Investigating Officer proceeded to record the statements of the witnesses under Section 161(3) of Cr.P.C. All the material objects were handed over to the Court with a requisition to send it for chemical examination. The Investigating Officer collected the Post-mortem Report, Chemical Analysis Report and the Serological Report (Ex.P13, Ex.P14, Ex.P15, Ex.P16 and Ex.P23). On completion of the investigation, the final report was laid on 22.8.2014 before the Judicial Magistrate Court, Mudukulathur.

4.The case was committed before the District and Sessions Court (FTC), Fast Track Mahila Court, Ramanathapuram District and the trial Court framed charges against the appellant for the offence punishable under Section 302 IPC. The prosecution examined P.W.1 to P.W.24 and marked Ex.P1 to Ex.P23 and M.O.1 to M.O.8.

5.The incriminating materials were put to the appellant and he was questioned under Section 313 (1)(b) of Cr.P.C., and the appellant denied the same as false.

6.The trial Court, on considering the facts and circumstances of the case and also after analyzing the oral and documentary evidence, came to the conclusion that the prosecution has established its case beyond reasonable doubts and therefore, proceeded to convict and sentence the appellant, in the manner indicated supra.

Submissions :-

7.Mr.A.Arun prasad, learned counsel appearing on behalf of the appellant made the following submissions:-

*There were three eye-witnesses, who were examined on the side of the prosecution and none of them have stated about the incident or seeing the appellant stabbing the deceased.

*The complaint(Ex.P1) and the evidence of P.W.1 completely differs and there is a contradiction about the complaint itself as between the evidence of P.W.1 and P.W.4.

*The evidence of the Doctor(P.W.21) along with the Certificate shows that all are cut



injuries and such injuries could not have been caused by M.O.1.

*There is a complete contradiction between the ocular evidence and the medical evidence, since the eye-witnesses spoke about stab injuries caused to the deceased and the medical evidence shows that she sustained cut injuries.

*The so-called recovery of the weapon(M.O.1) is false and it is clear from the evidence of P.W.2 which shows that he saw the weapon in the scene of crime being dropped by the accused after the incident. This evidence goes completely contra to the evidence of the Investigating Officer(P.W.24)

*The evidence of P.W.1 and P.W.2, who are the relatives of the deceased shows their unnatural conduct after the incident, wherein, instead of taking the deceased to the hospital, both of them proceeded to the Police Station to give a complaint.

*Even if the case of the prosecution is taken as it is and is taken have been proved, this case will clearly fall under Exception 4 to Section 300 IPC and the appellant is liable to be punished only under Section 304(i) IPC.

8.Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent/State, made the following submissions:

*The motive behind the crime namely, the illicit relationship between the deceased and the accused has been spoken to by P.W.5, P.W.6, P.W.9, P.W.10, P.W.11, P.W.12 and P.W.13 and there is absolutely nothing to discredit their evidence.

*P.W.1 has categorically stated about the incident and the presence of the accused in the scene of crime. P.W.1 has also stated about the injuries sustained by the deceased. This evidence is corroborated by the evidence of P.W.2 and P.W.3.

*The arrest and the recovery has been completely proved and the witnesses(P.W.16 and P.W.17) have spoken about the same.

*The minor contradictions pointed out by the learned counsel appearing for the appellant does not in



there is absolutely nothing to doubt their evidence, which is natural and cogent.

*There are absolutely no grounds to interfere with the judgment of the trial Court and the present Criminal Appeal is liable to be dismissed.

9. This Court has carefully considered the submissions made on either side and also assessed the oral and documentary evidence.

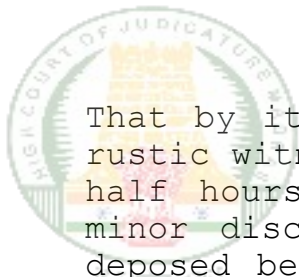
Discussion:

10.The specific case of the prosecution is that there was an illicit relationship between the deceased and the appellant This relationship has been spoken by P.W.5, P.W.6, P.W.9, P.W.10, P.W.11, P.W.12 and P.W.13. In fact, P.W.10 to P.W.13 were the Panchayatdars before whom this dispute was brought and they advised the deceased not to have any relationship with the appellant. Therefore, the reason behind the incident has sufficiently been proved by the prosecution.

11.P.W.1 is the brother of the deceased. A careful reading of his evidence shows that on the date of incident, he was gracing his cattle along with P.W.2, who is also a relative of the deceased. At that time, the deceased was also gracing her cattle at a close distance. There was a wordy quarrel between the deceased and the appellant and P.W.1 heard the cries of the deceased. He saw the deceased lying in a pool of blood with stab injuries on her abdomen, neck and shoulder. He further states that the deceased was taken in an Ambulance to the hospital by the villagers and he along with the husband of the deceased(P.W.4) went to the Police Station and gave a complaint. From there, they went to the Government Hospital at Muthukulathur and saw the dead body of the deceased. This witness also talks about the earlier illicit relationship between the deceased and the appellant.

12.The learned counsel for the appellant sought to discredit the evidence of P.W.1 on the ground that he has given graphic details about the incident in the complaint(Ex.P1) and in the evidence, he has not even spoken about seeing the incident, except for hearing the cries of the deceased. The learned counsel for the appellant also sought to discredit the evidence of P.W.1 on the ground that the complaint was given at 3.30 p.m. and the Investigating Officer had come to the scene of occurrence at 4.00 p.m and even before the complaint, the Police were present in the scene of crime.

13.This Court is not in agreement with the submission made by the learned counsel for the appellant. It is true that P.W.1 has not described the incident, as he describes in the complaint(Ex.P1).



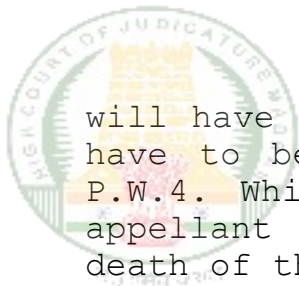
That by itself will not discredit the evidence of P.W.1. He is a rustic witness, who talks about the incident nearly after one and a half hours after the incident. Therefore, there is bound to be minor discrepancies. The complaint given by him and the evidence deposited before the Court clearly establishes the motive behind the crime, the presence of the accused in the scene of crime, the injuries sustained by the deceased and the complaint given to the Police. Therefore, this Court does not find any ground not to believe the evidence of P.W.1.

14.P.W.2 is the relative of the deceased, who was also present along with P.W.1 during the time when the incident took place. This witness also does not speak about the seeing the actual incident. However, he speaks about the presence of the deceased, injuries sustained by the deceased and the accused running away from the scene of crime. The learned counsel for the appellant seeks to discredit this witness by pointing out the fact that this witness had stated that the appellant after stabbing the deceased, dropped the knife in the scene of crime and ran away. Therefore, the recovery of the weapon at a different place on the alleged confession is questionable. It is true that there is a discrepancy to that effect. However, the question is whether that by itself will take away the credit worthiness of the evidence of P.W.2. The only answer that can be given is 'No'. Minor discrepancies should never be taken into account, unless it impugnalises the entire evidence of the witness. This witness is also a rustic witness, who is giving evidence after a long period of time after the incident and therefore, minor discrepancies are bound to happen. This Court does not find any reason to disbelieve the evidence of P.W.2.

15.P.W.3 is a third party, who speaks about the incident. This witness cannot be treated as a eye-witness and this witness can be relied upon only for the purpose of corroborating the incidents that took place after the offence was committed.

16.The husband of the deceased was examined as P.W.4. He heard the news regarding the death of his wife and came to the scene of crime and found the body of the deceased. He went along with P.W.1 to the Police Station to give the complaint.

17. A cumulative reading of the evidence of P.W.1 to P.W.4 will clearly establish the presence of the appellant in the scene of crime, the injuries sustained by the deceased and the fact that except the appellant, there was no-one else who was present at the scene of crime. The complaint that was given at 3.30 p.m., is the earliest document that was available immediately after the incident which took place at 2.30 p.m. The Investigating Officer had reached the scene of occurrence at 4.00 p.m. and the FIR had reached the Court at 5.30 p.m. Therefore, there is absolutely no delay in giving the complaint and the FIR reaching the Court. Therefore, credence



will have to be given to the complaint(Ex.P1).This complaint will have to be necessarily read along with the evidence of P.W.1 to P.W.4. While doing so, it establishes the fact that it was the appellant alone who had committed the offence, resulting in the death of the deceased.

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18.The next important issue that was raised by the learned counsel for the appellant is with regard to the discrepancy between the ocular evidence and medical evidence. It is now a settled law that the ocular evidence has more evidentiary value than the medical evidence, unless the medical evidence totally improbabilises the ocular testimony. This position of law is no longer res-integra.

19.It is submitted by the learned counsel for the appellant that the weapon used was a knife (MO1) and the witnesses have spoken about the stab injuries. However, the Post-mortem Certificate (Ex.P13) reveals the following injuries:

External injuries:

1.An incised wound just 2 cms above the right hypochondrium, 4X3x3 cm in size. On exploration of this wound depth upto muscle. No intra peritoneal extension.

2.An incised wound over the postem Medial aspect of right arm 5x1x0.5 cms.

3.An incised wound over anterior aspect of right thigh, 6x3x3 cm in size.

4.An (NC) incised wound over left loin 5x3x3 cm in size.

5.An incised wound over the antero lateral aspect of left side of neck 3 x 2 cm bone depth. On exploration of this wound great vessels of left side neck completely avulsed.

6.An linear incised over left in (NC) region 2x0.5x0.5 cms.

Internal examinations:

Opening of abdomen-stomach contains fully digested material around 50 ml. Liver Pale, Both kidneys pale. Uterus empty. Opening of thorax both lungs pale. Heart chambers empty. Opening of skull - No fractures. Brain matter pale.



The deceased would appear to died to 24 hours prior to the autopsy.''

The Doctor has opined that the deceased has died due to shock and hemorrhage arising out of multiple injuries.

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20. According to the learned counsel for the appellant, the nature of injuries found in the Post-mortem Certificate are all incised injuries, which can be caused only with an Aruval and not with a knife. Therefore, according to him, the medial evidence improbabalises the oral testimony of P.W.1 to P.W.3.

21. The post-mortem Doctor was examined as P.W.21. She has stated that the injuries found in the body of the deceased are capable of being caused with M.O.1. This evidence is given by an expert. There is absolutely nothing in the cross-examination to discredit the evidence of the Doctor with regard to the injuries qua the material object(MO1). Unless the appellant has brought-forth any strong material in the course of cross-examination which makes the opinion of the Doctor questionable, this Court cannot doubt the opinion of the Doctor, more particularly, since the Doctor is a neutral witness and is an expert in the field.

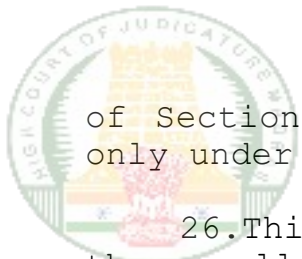
22. The description of M.O.1 is found in Ex.P21 and the same is extracted hereunder:

1) 9 1/2 செ.மீ நீளமுள்ள இரும்பு கைம்மடியுடன் ஹெட் டும் பகுதி 18 செ.மீ நீளமும் நுனிபகுதி உடைந்து இரத்தக்கரை மடிந்த இரும்பு கத்தி.

23. The front portion of the knife(M.O.1) is nearly 18 cms. Therefore the injuries found in the body of the deceased can be caused with such a weapon. Further, the Serological Report marked as Ex.P23 shows the presence of human blood in M.O.1 and the same tallies with the blood group(A Group) of the deceased. This further corroborates the fact that the deceased was in fact attacked only with M.O.1.

24. This Court, therefore is not in agreement with the submissions made by the learned counsel for the appellant and this Court does not find any discrepancy between the ocular evidence and the medical evidence.

25. The last issue that has been raised by the learned counsel for the appellant is that the facts of this case will fall under Exception 4 of Section 300 of IPC. The learned counsel submitted that there was a wordy quarrel between the appellant and the deceased before the incident and the same resulted in the appellant attacking the deceased in a heat of passion without any pre-meditation. Therefore, this case can be brought within Exception 4



of Section 300 of IPC and the appellant is liable to be punished only under Section 304 of IPC.

26.This Court is not in agreement with the learned counsel for the appellant, even on this issue. The manner in which the deceased was attacked by the appellant shows that she was repeatedly attacked with M.O.1 on her abdomen, neck and shoulder and he had acted in a cruel and unusual manner. In order to apply Exception 4 of Section 300 IPC, the facts of the case must satisfy the requirements of Exception 4. In this case, the appellant has taken undue advantage and acted in a cruel and unusual manner. The deceased was a lady unarmed and she had merely told the appellant not to come near her in future. For making such a statement, the appellant had attacked her indiscriminately with M.O.1. Therefore, this Court is not inclined to apply Exception 4 of Section 300 of IPC to the facts of the present case.

Conclusion :-

27.In view of the above discussion, this Court does not find any reason to interfere with the judgment of the trial Court and accordingly, the conviction and sentence imposed on the appellant is sustained. In the result, this Criminal Appeal is dismissed. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

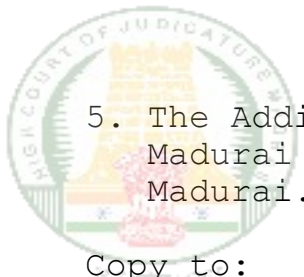
Assistant Registrar

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Sub Assistant Registrar(CS)

To

- 1.The District and Sessions Judge,
Fast Track Mahila Court,
Ramanathapuram District.
2. The Judicial Magistrate,
Muthukulathur, Ramanathapuram District.
3. The Superintendent,
Central Prison, Madurai
4. The Inspector of Police,
Theriveli Police Station,
Muthukulathur,
Ramanathapuram District.



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

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Criminal Section(2 Copies),
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Madurai

JUDGMENT MADE IN
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vsn

MK (07.11.2019) 10P 8C