



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
21.10.2019	23.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN**AND****THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH****Crl.A. (MD) No. 517 of 2017****and****Crl.M.P.No. 11577/2017**

Manthirammoorthy

: Appellant/Accused

Vs.

State Represented by
the Inspector of Police
Thalamuthu Nagar Police Station
Thoothukudi District
Crime No.60/2008

: Respondent /Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 07.05.2009 in S.C.No.297/2008 on the file of the Additional Sessions Judge/Fast Track Court No.I, Thoothukudi.

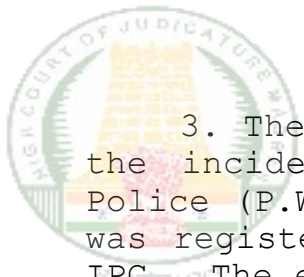
For Appellant
For Respondent

: Mr.S.Muthalraj
: Mr.M.Chandrasekaran
Additional Public Prosecutor

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

The sole accused, aggrieved by the judgment of the learned Additional Sessions Judge/Fast Track Court No.I, Thoothukudi dated 07.05.2009, made in S.C.No.297/2008, convicting him for an offence under Section 302 IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment, has preferred the present criminal appeal before this Court.

2. The case of the prosecution is that the deceased and the appellant herein were married in the year 2007 and the appellant used to fight with the deceased in an inebriated condition on a very regular basis and used to ask for money for consuming alcohol. On 05.04.2008 at about 4.30 a.m., the appellant is said to have strangled the deceased with her saree and thereafter had attacked her immediately all over the body with kitchen knife (அரிவாள் மறை) (M.O.-1) and scissors (M.O.-2) and caused her instantaneous death.



3. The aunt of the deceased immediately on coming to know about the incident gave a complaint (Ex.P-1) to the Sub Inspector of Police (P.W.-13) on the same day at 10.00 a.m. and an FIR (Ex.P-20) was registered in Crime No.6/2008 for an offence under Section 302 IPC. The express FIR was sent through P.W.-8 and he handed over the same at the residence of the Judicial Magistrate, No.II, Tuticorin at about 4.00 p.m.

4. After the registration of the FIR, the investigation was taken up by the Inspector of Police (P.W.-14) and he went to the scene of occurrence at about 10.45 a.m. on 05.04.2008. He prepared the observation mahazar (Ex.P-2) and the rough sketch (Ex.P-21) in the presence of the witnesses (P.W.-5) and he also collected the material objects. He conducted the inquest over the dead body of the deceased and prepared the inquest report (Ex.P-22) and handed over the dead body along with a requisition for postmortem to P.W.-11.

5. The postmortem was conducted by the Doctor (P.W.-9) and the Postmortem Certificate (Ex.P-9) revealed the following injuries:

"The following postmortem injuries were noted in the body:

1. Multiple, parallel, vertical incised wounds of varying lengths from 20 cms to 26 cms seen extending from the inner ends of collar bones to the umbilicus with tailing in their lower ends.

2. A transverse incised wound of size 5 cms x 0.25 cm seen 1 cm below the right nipple.

3. An oblique incised wound of size 25 cms x 0.25 cm seen extending from the left side of abdomen to the right labium majora with tailing in its lower end.

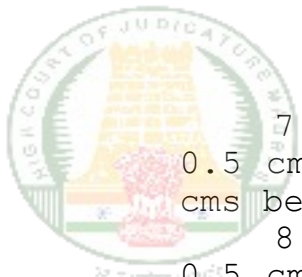
4. An annular cut wound of size 13 cms x 3 cms x 1 cm seen in the lower border of right breast. The margin of the wound is irregular.

The margins and bases of the above wounds are pale and there are no ante mortem reactions.

The following ante mortem injuries were noted in the body:

5. The head found almost decapitated at the root of neck and attached to the trunk with a skin flap of length 7 cms at the left side of neck. Wind pipe, food pipe, major vessels and nerves of neck found completely severed. The margins of the wound are irregular and bruised.

6. A horizontal ligature mark measuring 28 cms x 3 cms found encircling the neck at the level of thyroid cartilage with surrounding abrasion. It lies 7 cms below the right ear, 6 cms below the chin and 7 cms below the left ear. On dissection of the neck, thyroid cartilage found fractured with surrounding bruise and muscles of neck found bruised. Larynx contused.



7. An oblique gapping stab wound of size 3 cms x 0.5 cm x peritoneal cavity deep seen at the midline 6 cms below the umbilicus.

8. An oblique gapping stab wound of size 2 ½ cms x 0.5 cm x peritoneal cavity deep seen in the left side of abdomen 2 cms lateral to the injury no.7.

9. An oblique gapping stab wound of size 2 ½ cms x 0.5 cm x peritoneal cavity deep seen in the left side of abdomen 6 cms lateral to the injury no.8.

The margins of the stab wounds are mildly serrated and abraded and both ends are blunt.

...

Opinion:

The deceased would appear to have died of shock and hemorrhage due to decapitation injuries. Death would have occurred 6-24 hours prior to the autopsy and within 3-4 hours from her last meal."

6. On 11.04.2008, at about 9.00 am., the appellant was arrested and based on his voluntary confession made in the presence of the witness (P.W.-7), the material objects (M.O.-1 and M.O.-2) were recovered. Thereafter he was produced before the Judicial Magistrate Court and was remanded to judicial custody. All the other material objects recovered from the scene of occurrence were sent to the Court under Form 95 with a requisition to send the same for chemical analysis.

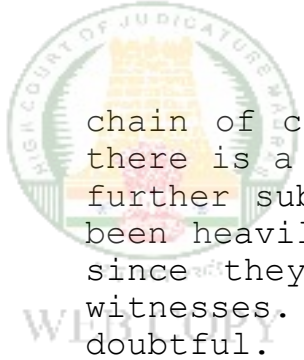
7. The Investigating Officer recorded the statement of the witnesses under Section 161 (3) Cr.P.C. and collected the serological reports (Ex.P-18 and Ex.P-19) and the postmortem certificate (Ex.P10) and filed the chargesheet on 14.06.2008 before the Judicial Magistrate, No.II, Thoothukudi.

8. The case was committed to the file of the Additional District and Sessions Judge, Fast Track Court No.I, Thoothukudi and a lone charge was framed against the appellant under Section 302 IPC. The prosecution examined P.W.-1 to P.W.-14 and marked Ex.P-1 to Ex.P22 and M.O.1 to M.O.10.

9. The appellant was questioned under Section 313(1)(b) of the Code of Criminal Procedure putting all the incriminating materials collected during the course of trial and the same was denied as false.

10. The trial Court, on consideration of the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to the conclusion that the prosecution has proved its case beyond reasonable doubts and proceeded to convict and sentence the appellant in the manner stated supra.

11. The learned counsel for the appellant submitted that the case of the prosecution is based on circumstantial evidence and the

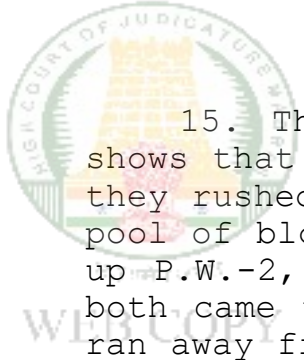


chain of circumstances have not been proved by the prosecution and there is a break in the chain at various links. The learned counsel further submitted that the evidence of P.W.-1 and P.W.-2, which has been heavily relied upon by the prosecution, is totally unreliable, since they are related to the deceased and they are interested witnesses. Infact, their presence in the scene of occurrence is doubtful. The learned counsel further submitted that even though P.W.-1 and P.W.-2 had dealt with the deceased after the incident and their dresses were stained with blood, the same was never recovered and that itself shows that they were not present in the scene of occurrence. The learned counsel submitted that there are too many contradictions in the evidence of P.W.-1 and P.W.-2 and even the arrest and recovery becomes highly doubtful. The learned counsel further questioned the time of the occurrence by placing reliance upon the evidence of P.W.-9 Doctor and submitted that even as per the Doctor, the death could have happened between 4.00 p.m. on 04.04.2008 and 10.00 a.m. on 05.04.2008. The learned counsel concluded his arguments by submitting that this Court may also consider for the modification of the conviction and sentence.

12. Per contra, the learned Additional Public Prosecutor appearing on behalf of the State submitted that the appellant has committed a brutal murder of his wife and the same is apparent from the injuries as found in the postmortem certificate. The learned counsel further submitted that the evidence of P.W.-1 and P.W.-2 is very clear and they have clearly spoken about the appellant coming out of his house after committing the incident and there is nothing to discredit their evidence. The learned counsel further submitted that the motive behind the incident has been spoken to by the mother of the deceased (P.W.-3) and the presence of the appellant after the incident by P.W.-4. The learned Additional Public Prosecutor also placed reliance upon the evidence of P.W.-6 and submitted that the appellant was under the influence of alcohol even on 04.04.2008 and he had asked him to go back home and informed the mother of the appellant about the conduct of the appellant. The learned counsel submitted that there has been absolutely no delay at any stage of the investigation and taking into consideration the cruel manner, in which, the murder has taken place, the learned counsel submitted that there is no scope for considering any modification of the conviction and sentence and the Court below has rightly convicted the appellant for an offence under Section 302 IPC.

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

14. The appellant is the husband of the deceased. The drinking habit of the appellant and the manner in which he was treating the deceased even before the incident is clear from the evidence of P.W.-1 to P.W.-3. It is also clear that the appellant was involved in another murder at Courtallam and he was already facing the case in that regard.



15. The evidence of P.W.-1, who is the aunt of the deceased shows that on 05.04.2008 at about 4.30 a.m., they heard a noise and they rushed to the scene of crime and found the deceased lying in a pool of blood, after being attacked all over the body. P.W.-1 woke up P.W.-2, who is the elder brother of the deceased and when they both came to the scene of crime, the appellant had pushed them and ran away from the place. This witness was the one, who arranged the marriage of the deceased with the appellant. He has described about the incident in a cogent manner and the same has not been discredited in the cross-examination.

16. In the similar manner, P.W.-2, who is the elder brother of the deceased, has also spoken about he being woken up at about 4.30 a.m. by P.W.-1 and the appellant pushing them and running away from the place. He also talks about the injuries that were sustained by the deceased.

17. The evidence of P.W.-1 and P.W.-2 makes it very clear that it was only the appellant, who had committed the murder and there was no one else, who was available in the scene of crime. That apart, the appellant had not given any plausible explanation, when he was questioned under Section 313(1)(b) of the Code of Criminal Procedure regarding this, except giving a bald denial.

18. P.W.-3, who is the mother of the deceased, had spoken about the sufferings undergone by the deceased in the hands of the appellant and also about another murder, which was committed by the appellant and the criminal case that was pending against him.

19. P.W.-4, who is the third party, who had come near the bus stand on 05.04.2008 at 5.30 a.m. and was drinking tea, saw the appellant and asked him as to how he was there so early in the morning and he had stated that he has some work and rushed away from the place. Thereafter, this witness came to understand about the incident that had taken place at 4.30 a.m.

20. The FIR has been registered by P.W.-13 at 10.00 a.m. and it has also reached the Court at 4 p.m. at the residence of the Judicial Magistrate.

21. This Court is not able to find any material in order to discredit the evidence of P.W.-1 to P.W.-3 and the brutal manner, in which, the deceased was attacked by the appellant as evident from the postmortem certificate and the evidence adduced by the postmortem Doctor. The deceased has been attacked in a very grotesque manner.

22. The earlier conduct of the appellant and the manner in which, he had committed the present crime, does not give any ground to modify the conviction and sentence imposed against the appellant. The Court below has properly appreciated the oral and documentary evidence and has categorically found that the injuries found in the body of the deceased is capable of being caused due to M.O.-1 and



M.O.-2 based on the medical evidence. There is nothing to discredit the said finding of the Court below.

23. In the result, this Court does not find any grounds to interfere with the judgment of the Court below and the Court below was perfectly right in convicting and sentencing the appellant for an offence under Section 302 IPC.

24. In the result, this criminal appeal is dismissed. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Additional Sessions Judge
Fast Track Court No.I,
Thoothukudi District.

2. The Chief Judicial Magistrate, Thoothukudi.

3. The Judicial Magistrate No.2 Thoothukudi.

4. The Inspector of Police
Thalamuthu Nagar Police Station
Thoothukudi District.

5. The Superintendent, Central Prison, Palayamkottai.

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

Copy to

The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
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and Crl.M.P.No.11577/2017
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