



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Ms. Justice R.N.MANJULA

Crl.A.No.523 of 2018

Manoharan
S/o.Pichamuthu

.. Appellant/Accused

Vs.

State represented by
The Inspector of Police,
Valappady Police Station,
Salem District.
(Crime No.230 of 2015)

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment and order dated 19.09.2017 passed in S.C.No.223 of 2015 on the file of the Sessions Court, Mahila Court, Salem and to set aside the same.

For Appellant : Mr.B.Vasudevan

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

JUDGMENT

(Delivered by P.N.PRAKASH, J.)

This criminal appeal has been filed against the judgment and order dated 19.09.2017 passed in S.C.No.223 of 2015 on the file of the Sessions Court, Mahila Court, Salem and to set aside the same.

2. The prosecution story runs thus:

2.1 The appellant got married to Shanthi (deceased in this case) about twenty five years prior to the day of occurrence (03.04.2015) and was blessed with a daughter Dhavamani and two sons viz., Manivannan (PW14) and Periyasamy (not examined). The appellant and his family were living in Chinnamanaickenpalayam in Salem District. About two years prior to the incident, Dhavamani was given in marriage to someone, but, she committed



suicide, on account of which, the family was in great distress.

2.2 It is alleged that the appellant suspected the fidelity of his wife Shanthi and picked up quarrel with her very frequently. About six months prior to 03.04.2015, a quarrel ensued between the appellant and Shanthi, on account of which, Shanthi left for her natal home with her two sons in Kolathukombai, which is around four or five kilometres from Chinnamanaickenpalayam. The appellant went to the residence of Rayar (PW1), brother of Shanthi, in Kolathukombai and brought back his wife and children after mediation two days prior to the day of occurrence.

2.3 On 03.04.2015, from 4.00 p.m. onwards, the appellant and Shanthi were quarrelling in their matrimonial house in Chinnamanaickenpalayam, which news reached Rayar (PW1) and Raji (PW2), a distant relative, in Kolathukombai and therefore, they both came to Chinnamanaickenpalayam around 8.30 p.m. While Rayar (PW1) and Raji (PW2) were entering into the house of the appellant, they saw the appellant quarrelling with his wife Shanthi and thereafter, the appellant took a billhook (M.O.4) and hacked his wife to death. Thereafter, the appellant took his two children with him in the motorcycle and left the house.

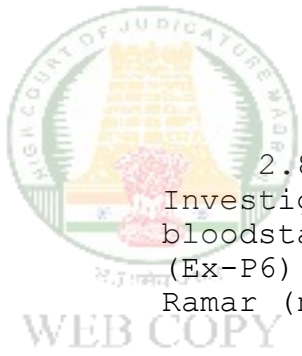
2.4 On a written complaint (Ex-P1) given by Rayar (PW1), Marimuthu (PW11), Sub-Inspector of Police, registered a case in Valappady Police Station Crime No.230 of 2015 for the offence under Section 302 IPC at 23.00 hours on 03.04.2015 against the appellant and prepared the printed FIR (Ex-P11), which reached the jurisdictional Magistrate on 04.04.2015 at 10.00 a.m., as could be seen from the endorsement thereon.

2.5 Investigation of the case was taken over by Umashankar (PW15), Inspector of Police, who went to the place of occurrence and prepared the observation mahazar (Ex-P2) and rough sketch (Ex-P14).

2.6 From the place of occurrence, the Investigating Officer recovered the following items under the cover of a seizure mahazar (Ex-P3) in the presence of witnesses Mahalingam (PW4) and Rajasekaran (not examined):

- i. Bloodstained cement chips ... M.O.2
- ii. Unstained cement chips ... M.O.3

2.7 The appellant was arrested on 04.04.2015 at 11.45 a.m. and on his confession, Yamaha Crux Bike (M.O.1) was seized under the cover of a seizure mahazar (Ex-P5) in the presence of witnesses Gopinath (PW5), Village Administrative Officer (for brevity "the V.A.O.") and Ramar (not examined).



2.8 That apart, on the disclosure of the appellant, the Investigating Officer seized the billhook (M.O.4) and bloodstained white shirt (M.O.5) under the cover of a mahazar (Ex-P6) in the presence of witnesses Gopinath (PW5), V.A.O. and Ramar (not examined).

2.9 The Investigating Officer conducted inquest over the body of Shanthi and marked the inquest report (Ex-P15) and thereafter, the body of Shanthi was sent to the Government Mohan Kumaramangalam Medical College Hospital (for brevity "GMKMC"), Salem, for postmortem, where, Dr.Sangeetha (PW6) performed autopsy and issued the postmortem certificate (Ex-P8).

2.10 Samples of the visceral organs were sent to the Regional Forensic Science Laboratory for chemical analysis. After obtaining the viscera report (Ex-P9), which did not disclose the presence of any poison in the visceral organs, Dr.Sangeetha (PW6) gave her final opinion (Ex-P10), wherein, she has stated as follows:

"Final Opinion: The deceased would appear to have died due to multiple injuries."

2.11 The seized articles were sent through the jurisdictional Magistrate to the Regional Forensic Science Laboratory for biological and serological examination, where, Bhavani (PW13), Scientific Officer, examined the same and issued serological report (Ex-P13), wherein, human blood group "A" was found in the bloodstained cement chips (M.O.2) and in the apparel of Shanthi (M.Os.6,7 & 8), which were handed over to the police after postmortem. Though human blood was found in the billhook (M.O.4) and bloodstained white shirt (M.O.5), the grouping test showed that the result was inconclusive.

2.12 After examining witnesses and collecting the various reports, the Investigating Officer completed the investigation and filed a final report in P.R.C.No.8 of 2015 before the Judicial Magistrate No.VI, Salem, for the offences under Sections 498-A and 302 IPC against the appellant.

2.13 On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Salem, in S.C. No.223 of 2015 and was made over to the Sessions Court, Mahila Court, Salem, for trial.

2.14 The trial Court framed charges under Sections 498-A, 302 and 201 IPC against the appellant and when questioned, he pleaded "not guilty". The charge under Section 201 IPC was framed on the premise that the appellant had hidden the billhook (M.O.4) and bloodstained white shirt (M.O.5).



2.15 To prove the prosecution case, the police examined fifteen witnesses and marked twenty three exhibits and eight materials objects.

2.16 When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. From the side of the appellant, no witness was examined nor any document marked.

2.17 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 19.09.2017 in S.C.No.223 of 2015, convicted and sentenced the appellant as follows:

S.No.	Provision under which convicted	Sentence
1	Section 498-A IPC	Three years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo six months simple imprisonment.
2	Section 302 IPC	Life imprisonment and fine of Rs.10,000/-, in default to undergo six months simple imprisonment.
3	Section 201 r/w 302 IPC	Seven years rigorous imprisonment and fine of Rs.5,000/-, in default to undergo six months simple imprisonment.

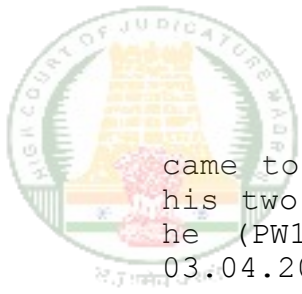
The aforesaid sentences were ordered to run concurrently.

2.18 Challenging the above conviction and sentences, the appellant has preferred the present appeal.

3. Heard Mr.B.Vasudevan, learned counsel for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent/State.

4. The prosecution case rests on the testimonies of Rayar (PW1), Raji (PW2) and Manivannan (PW14).

5. Rayar (PW1), in his evidence, has stated that he is the brother of Shanthi; Shanthi was married to the appellant about twenty five years prior to the incident; they were blessed with three children viz., Dhavamani, Manivannan (PW14) and Periyasamy; Dhavamani was married to a person, after which, there was a problem in her matrimonial home, on account of which, she committed suicide; thereafter, the appellant was living with his wife Shanthi and two sons in Chinnamanaickenpalayam; the appellant used to suspect the fidelity of his wife and quarrel with her; six months prior to the incident, he picked up a quarrel with her and sent her to his (PW1's) house; two days prior to the incident, the appellant



came to his house and promised to take good care of Shanthi and his two children; based on the assurance given by the appellant, he (PW1) sent Shanthi with him to Chinnamanaickenpalayam; on 03.04.2015, around 4.00 p.m., he received information that there was a quarrel going on between the appellant and his sister Shanthi and so, he (PW1) along with Raji (PW2) went around 8.30 p.m. to the appellant's house in Chinnamanaickenpalayam; at that time, the appellant was quarrelling with his wife Shanthi and took out a bill hook (M.O.4) and hacked her; thereafter, the appellant took his two children with him in his motorcycle and left the place; thereafter, he (PW1) went to the police station and lodged a written complaint (Ex-P1).

6. The testimonies of Raji (PW2) and Manivannan (PW14) also, by and large, corroborate that of Rayar (PW1).

7. However, we are unable to find any material for sustaining the conviction of the appellant under Section 201 IPC, inasmuch as Manivannan (PW14), in his evidence, has stated that the billhook (M.O.4) was lying in the house itself near the body of his mother Shanthi.

8. From the evidence, it appears that the couple was quarrelling from 4.00 p.m. onwards and the climax reached around 8.30 p.m. when the appellant is alleged to have attacked his wife with the billhook (M.O.4), which normally peasants like the appellant have in their house. That apart, Manivannan (PW14), in his evidence, has clearly stated that his father (appellant) was mentally disturbed at that time.

9. On a conspectus of the evidence on record, we find that there was no calculated premeditation on the part of the appellant to cause the murder of his wife Shanthi for attracting Section 302 IPC, especially, in the light of the aforesaid evidence of Manivannan (PW14), who had witnessed the incident.

10. In view of the foregoing discussions, we find that the proved facts disclose the commission of an offence under Section 304-I IPC.

11. In the result:

- a) this criminal appeal is partly allowed;
- b) the conviction and sentence imposed on the appellant for the offence under Section 498-A IPC stands confirmed;
- c) the appellant is acquitted of the offence under Section 201 IPC;
- d) the appellant is acquitted of the offence under Section 302



IPC, but, convicted of the offence under Section 304-I IPC and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months simple imprisonment;

e) it is not necessary for the appellant to pay fine, if he had already paid the same before the trial Court; and

f) the sentences shall run concurrently.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

Nsd

To

1.The Sessions Judge,
Mahila Court,
Salem.

2.The Inspector of Police,
Valappady Police Station,
Salem District.

3.The Superintendent,
Central Prison,
Coimbatore.

4.The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

5.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.B.Vasudevan, Advocate, S.R.No.41797

Cr1.A.No.523 of 2018

JPL(CO)
GN(20/09/2021)