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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.04.2022
PRONOUNCED ON : 29.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Crl.A.No.697 of 2017

Muthan @ Muthusamy
S/o. Sadayan

...Appellant / Accused

Vs

State by the Inspector of Police
Kainathu Kadavu Police Station,
Coimbatore

...Respondent / Complainant

Prayer :- This Criminal Appeal has been filed, under Section 374 (2) of Cr.PC, against the judgment of conviction and sentence, dated 25.06.2010, made in SC.No.65 of 2010, by the I Additional District Sessions Judge, Coimbatore.

For Appellant : Mr.Philip Ravindran Jesudoss

For Respondent : Mr.M.Babu Muthu Meeran, APP

JUDGMENT

(Judgment of the Court was made by A.A.NAKKIRAN, J.)

- 1.This Criminal Appeal has been filed, against the judgment of conviction and sentence, dated 25.06.2010, made in SC.No.65 of 2010, by the I Additional District Sessions Judge, Coimbatore, thereby convicting and sentencing the Appellant, for the offence under Section 302 of IPC to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo three years Simple Imprisonment and for the offence under Section 309 of IPC to undergo one year Imprisonment and to pay a fine of Rs.100/-, in default to undergo two months Simple Imprisonment and ordering the sentences to run concurrently.
- 2.The case of the Prosecution is that the deceased Deivanai is the wife of the Appellant/accused and both were residing at Muruganpathi Village, Muthugoundanur. The accused is a drunkard and he used to pick up quarrel with the deceased,



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suspecting her fidelity. PW.1 is the younger sister of the deceased and PW.2 is the husband of PW.1. On 03.08.2009, at about 01.30 p.m. PW.1 and the deceased went to the river bed of Othakkalmandapam for washing clothes and PW.2 was fishing nearby in the river bed. At that time, the accused came there and demanded Rs.50/- from the deceased for consuming liquor, for which, she refused and hence, there ensued a wordy quarrel between them. Enraged over the act of the deceased and also suspecting her fidelity, the accused pushed her down and dragged her for a certain distance and he stabbed her with the knife MO.1 on her chest and abdomen repeatedly. Immediately PW.1 and PW.2 rushed to the place of occurrence and tried to save the deceased and at that time, the accused attempted to commit suicide by stabbing himself with the knife. On hearing the sound of PW.2, all the villagers came there and one of the neighbours telephoned to the police and also 108 ambulance. The deceased succumbed to injuries there itself and the accused was taken to the Government Hospital in the ambulance. Ex.P.1 written complaint was given to PW.12, the Sub-Inspector of Police, Kinnathukadavu Police Station, at about 14.30 hours on 03.08.2009 and he registered the First Information Report, Ex.P.10 in Crime No.357 of 2009 for the offences under Sections 302 and 309 IPC. On 03.08.2009, at about 4.00 p.m., the accused was brought to Coimbatore Medical College Hospital. PW.8, the Medical Officer attached to Coimbatore Medical College Hospital, admitted him and treated him. When the accused was conscious, he stated before the Doctor that he stabbed himself on 03.08.2009 at about 2.00 p.m at Muthugoundanur Village river bed. PW.8 found 3x1 cm injury in the abdomen and he was admitted as an inpatient in the hospital. Ex.P.4 is AR copy.

3.PW.13 Neelakumar, Inspector of Police, Kinnathukadavu Police Station took up the case for investigation and prepared observation mahazar, Ex.P.2, seized blood stained earth and ordinary earth, MOs.5 and 6 under Ex.P.3 in the presence of PW.7 and also seized Knife, M.O.1. Further, he conducted inquest on the body of the deceased in the presence of the Panchayatars from 17.00 to 19.30 hours and examined the witnesses and recorded their statements and thereafter, sent the body of the deceased to the Coimbatore Medical College Hospital for conducting Post-Mortem.

4.PW.9 is the medical officer attached to the Coimbatore Medical College Hospital, who conducted post mortem on the body of the deceased and he found the following injuries:-

- i. Transversely oblique stab wound 3x1 noted on right side chest at the level of 3rd inter costal space, the lower inner end is 3 cm right to mid line and upper end is 10 cm below to right clavicle. On dissection, the wound passes



obliquely right side along the muscle plane to a depth of 7 cm and ending as a point.

- ii. Transversely oblique stab wound 3x2 cm x cavity deep noted on left side abdomen. Upper outer end is 20 cm below the left nipple, 8cm above left to umbilicus through which a part of omentum protruded out. On dissection the wound is seen passing upwards and medially piercing spleen 2.5x0.5 cms through and entering the stomach 2x0.5 cms and has ended into the cavity. The total depth of the wound tract is about 8 cms.
- iii. Transversely oblique gapping stab wound 3x2 cm x cavity deep noted on the 9th inter coastal space at the level of left anterior axillary line. The upper anterior end is 13 cm below and left to left nipple, lower end is 14 cm left to mid line. On dissection the wound has entered the peritoneal cavity and punctured the omentum. The total depth of the wound tract is about 6 cms.
- iv. Vertically oblique stab wound noted on left lateral chest at the level of mid axillary line. Upper end is 18 cm below to left axilla. Lower end is 12 cm above to left iliac crest. Wound tailing towards downwards. On dissection the wound is seen passing downwards along the muscle plane up to a depth of 5 cm and ending as a point.
- v. A vertical stab wound 3x2 cm x cavity deep noted on left lateral abdomen. The upper end is 25 cm below to left axilla, lower end is 4 cm above to left iliac crest. On dissection the wound is seen passing inwards, medially and backwards and entered into the abdomen then piercing and entered into the lumen of descending colon measuring 4x3 cm. The total depth of the wound tract is about 9 cms.
- vi. A vertical stab wound 3x1 cm x cavity deep noted on left lateral aspect of abdomen. The upper end is 29 cm below to left axilla, lower end is 1 cm above to left iliac crest. On dissection the wound seen passing inwards medially and backwards and has entered into the abdomen then piercing and entered into the lumen of descending colon measuring 4x3 cm. Peritoneal cavity contains 500 ml of fluid blood mixed with fecal materials. The total depth of the wound tract is about 9 cms.

PW.9 issued Ex.P6 post mortem certificate, stating that the deceased died due to shock and haemorrhage due to multiple stab injuries and send the viscera for analysis and after receiving the viscera report Ex.P7, he issued a final opinion under Ex.P8.



5. On 11.08.2009, at about 16.30 hours, the Investigating Officer arrested the accused and recorded his confession in the presence of the witnesses, Krishnan and Kannagaraj and examined the Post-Mortem Doctor on 18.09.2009 and recorded his statement. Before that, on 12.08.2009, he sent a requisition to the Judicial Magistrate for Chemical Examination and he received Chemical Examination Report, which was marked as Ex.P.15 and the Serology Report, which was marked as EX.P.16 and after completion of the investigation, he filed the final report against the accused for the offences under Sections 302 and 309 IPC.

6. After the charge sheet was filed, the Judicial Magistrate No.I, Pollachi took cognizance of the same and observed the committal proceedings in PRC.No.1 of 2010. The case was committed to the Principal Sessions Court, Coimbatore and was taken on file in SC.No. 65 of 2010. Thereafter, it was assigned to the file of the I Additional District and Sessions Judge for trial. The Trial Judge has framed the charges against the accused under Sections 302 and 309 IPC. The accused had denied the charges and sought for trial. In order to bring home the charges against the accused, the Prosecution had examined PW.1 to PW.13 and also marked Exs.P1 to P16 and Mos.1 to 8. On the side of the Defence, neither any witness was examined nor any document was marked.

7. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused had come with the version of total denial. The court below, after hearing the arguments advanced on either side and also looking into the materials available on record, had found the Appellant guilty and awarded punishments, as referred to above, which is challenged in this Criminal Appeal by the Appellant.

8. This court heard the submissions of the learned counsel on either side.

9. The learned counsel for the Appellant would submit that PW.1 and PW.2 are the interested witnesses and hence, their evidence cannot be relied on and that witnessing the accused stabbing the deceased is highly improbable. He would further submit that the evidence of PW.1 and PW.2 cannot be given much credence and that even if their evidence is taken as true, the same shows that there was no motive whatsoever to commit the murder and that the accused is admittedly a drunkard and that out of sudden provocation, he had caused such injuries and therefore, his act will fall within the ambit of Exception to Section 302 of IPC.



10. The learned Additional Public Prosecutor for the Respondent would submit that the evidence of the witnesses are cogent, clear and trustworthy and that the report of the Doctor, who conducted the post mortem and other material objects collected by the Investigating Officer would point towards the accused and that PW.1 and PW.2 are the witnesses to the occurrence. He would further submit that the injuries found on the abdomen of the accused clearly shows that he made an attempt to commit suicide after the incident and that the statement of the accused before the Doctor is a clear confession and therefore, taking into consideration the entire aspects and the nature of injuries inflicted on the deceased, the Prosecution has established the guilt of the accused and pray for dismissal of this appeal.

11. This Court considered the submissions of the learned counsel on either side and also the entire evidence available on record.

12. The point for consideration is whether the conviction and sentence imposed on the accused for the offences under Sections 302 and 209 of IPC by the Trial Court based on the material available on record is fair and proper.

13. This is a case based on the evidence of the eye witnesses to the occurrence. The deceased Pappathi @ Deivanai is the sister of PW.1. PW.2 is the husband of PW.1. Both of them are the eye witnesses to the occurrence. The specific charge of the Prosecution is that the accused used to quarrel with his wife frequently and demand money for consuming alcohol. Besides, he also suspected her fidelity. On 03.08.2006, at about 01.30 p.m. the deceased and PW.1 were washing their clothes in the river bed and PW.2 was fishing in the river bed at that time. At that time, the accused came there and demanded Rs.50/- from the deceased and when the same was refused, there ensued a quarrel between them and the accused stabbed her repeatedly in his vital parts of the body with the knife and caused six injuries on her chest and left side abdomen. The same was witnessed by PW.1 and PW.2.

14. The Prosecution had mainly relied on the evidence of the said eye witnesses, PW.1 and PW.2 to the occurrence and also the evidence of PW.4, PW.5 and PW.6, who are the sons and daughter of the deceased and the accused.

15. The evidence of PW.1 and PW.2, eye witnesses to the occurrence is perused. PW.1 is none other than the sister of the deceased and PW.2 is the husband of PW.1. PW.1 in her evidence has spoken that on the date of the occurrence, i.e. on 03.08.2006, at about 01.30 p.m. she and the deceased were



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washing their clothes in the river bed and PW.2 was fishing in the river nearby and at that time, the accused came there and asked the deceased to come to home immediately and also demanded Rs.50/- for consuming liquor. When the deceased told the accused that she would come later, the accused dragged the deceased to some distance and repeatedly stabbed the deceased on the chest and abdomen. On hearing the cry of the deceased, PW.1 and PW.2 rushed to the place of occurrence and at that time, the accused tried to commit suicide and stabbed himself on his chest. Even though PW.1 and PW.2 are relatives to the accused as well as the deceased, there was no reason for them to implicate the accused falsely and there was no motive whatsoever suggested to them for such false implication. The entire evidence of PW.1 and PW.2 remains unchallenged.

16.PW.4, son of the deceased, in his evidence had deposed that his father always used to quarrel with his mother after consuming alcohol and he never went for any work. PW.6 another son of the deceased also stated that everyday his father used to demand money for consuming alcohol and that there was a quarrel in the house between the deceased and the accused and that whenever the money was refused to be given, he used to fight with the deceased. The evidence of PW.4 and PW.6 remains unchallenged.

17.The accused was admitted in the hospital immediately after the occurrence. The accused has stated before PW.8 Doctor that he himself made an attempt to commit suicide. The statement before the Doctor is a voluntary one and there is no evidence to show that such statement was influenced by any other person. So, the same can be treated as confession of the accused.

18.PW.9 is the medical officer attached to the Coimbatore Medical College Hospital, who conducted post mortem on the body of the deceased and found six injuries. Ex.P6 is the post mortem certificate, issued by PW.9, stating that the deceased died due to shock and haemorrhage due to multiple stab injuries.

19.When the accused was questioned with regard to the incriminating circumstances found against him under Section 313 of Cr.PC, he categorically stated that he had made an attempt to commit suicide and further, stated as follows:-

“எனது சம்சாரத்திற்கும் மற்ற இரண்டு நபர்களுக்கும் கள்ளத்தொடர்பு இருந்து வந்தது. ஆகையால், நான் வேறுஇடத்தில் குடியிருந்து வந்தேன், நான் வீட்டிற்கே அதிகம் வரமாட்டேன். அன்றைய தினம் நான் பார்க்க வந்ததினால் என்மீது சந்தேகம் வந்துவிட்டது ”



20. From the above, it is clear that the accused suspected the fidelity of his wife and it was the one of the motive for him to murder the deceased.

21. Another contention raised by the learned counsel for the Appellant is that the occurrence took place out of sudden provocation and therefore, his act will fall within the ambit of Exception to Section 302 of IPC. When the evidence available on record is analysed, almost there is no evidence available on record to attract the Exception. The evidence of PW.1 and PW.2 do not show that there was sudden provocation, which made the accused to stab his wife. On the other hand, the accused inflicted six multiple stab injuries on the vital parts of the body of the deceased, particularly in the chest and abdomen.

22. The case of the accused is that he had no intention of causing bodily injuries. As stated above, the accused repeatedly stabbed the deceased and caused six multiple stab injuries with force on the vital parts of the body, which are grievous in nature and it would clearly indicate that the accused had the intention of causing such bodily injuries, which are suffice to cause death.

23. Considering the manner, in which the injuries were inflicted, the force with which the accused stabbed the deceased, the depth of the injuries and the nature of the injuries, the act of the accused is certainly only fall under Section 302 of IPC. Further, the charge under Section 309 of IPC for having attempted to commit suicide is also proved.

24. In view of the above discussions, we do not find any reason to interfere with the impugned judgment of conviction and sentence and accordingly, it is liable to be confirmed.

25. In fine, this Criminal Appeal is dismissed. The impugned judgment of conviction and sentence, dated 25.06.2010, made in SC.No.65 of 2010, by the I Additional District Sessions Judge, Coimbatore is confirmed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

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To

1. The I Additional District Sessions Judge,
Coimbatore.

2. The Inspector of Police,
Kainathu Kadavu Police Station,
Coimbatore

3. The Superintendent,
Central Prison,
Coimbatore.

4. The Public Prosecutor,
High Court, Madras

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

Copy To

The Judicial Magistrate No.1,
Pollachi.

+1cc to Mr. Philip Ravindran Jesudoss, Advocate Sr.No.30795

Cr1.A.No.697 of 2017

MG(CO)
RVM(06/05/2022)