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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2021

DELIVERED ON : 20.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.690 of 2018

Kalirathinam

... Appellant/Accused 2

vs.

State through
The Inspector of Police,
Kumaracathi Police Station
Cuddalore District
(in Crime No.39 of 2014)

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973 praying to call for the records and set aside the judgment made in S.C.No.27 of 2015 on the file of the District and Sessions Judge, Mahila Court, Cuddalore, dated 07.11.2016.

For Appellant : Mr. P. Palanikumar

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor.

J U D G M E N T

(R.HEMALATHA, J.)

The appellant is the second accused in S.C. No.27 of 2015 on the file of the District and Sessions Judge, Mahila Court, Cuddalore. The first accused is one Amsavalli. The accused 1 and 2 stood charged for an offence under Section 302 IPC. By judgment dated 07.11.2016, the trial court convicted both the accused for the offence under Section 302 IPC and sentenced them to undergo Life Imprisonment and to pay a fine of Rs.1,000/- each in default, to undergo Rigorous Imprisonment for six months.



2. Facts of the case as presented by the prosecution flows as follows:

- i. The deceased Meenakshi, her first daughter-in-law (A1) and her two grand sons were living together in Siragizhandhanallur village of Kattumannarkovil Taluk, Cuddalore. The deceased's elder son Lakshmanan was employed in Saudi Arabia as a driver. The deceased had reportedly suspected the activity of her daughter-in-law (A1) who appeared to be showing more than usual interest on A2 Kaliratnam of the same village. It so happened that on 15.04.2014 at about 11 P.M., both A1 & A2 were caught red handed by the deceased victim in the garden backyard, followed by which she was murdered by A2 with the help of A1 using a grinding stone (M.O.1). This was witnessed by the minor son of A1, Bhuvanesh (P.W.2). On hearing the desperate cries of the deceased victim, her neighbour Thillairaj (P.W.3) rushed to the house of the deceased and found her lying on the floor with an injury on her neck. He also saw the second accused fleeing the scene of occurrence. Elavarasan (P.W.1), the second son of the deceased victim, residing in Tiruppur, rushed to his mother's (deceased) village, on receiving intimation from his cousin Dhanavalli (P.W.5) at about 3.30 a.m on 16.04.2016 and saw his mother's body with injuries kept in a glass ice-box. Suspecting foul play, he enquired his nephew Bhuvanesh (P.W.2) who narrated as to how A2 strangulated his grand mother with a grinding stone while A1 was holding her feet. Subsequently, P.W.1 went to Kumaratchi Police Station and gave a written complaint (Ex.P1) on 16.04.2014 at about 3 p.m.
- ii. Thiru. Arjunan (P.W.8), Sub Inspector of Police, Kumaratchi Police Station, received the complaint from P.W.1 and registered FIR (Ex.P11) in Crime No.39 of 2014 for an offence under Section 302 IPC against the present appellant and Amsavalli (A1).
- iii. Thiru. Rajaram (P.W.9), the Inspector of Police, took up investigation, went to the scene of offence on 16.04.2014 at about 4 p.m and prepared an Observation Mahazar (Ex.P2) in the presence of Ramesh (not examined) and Kubendran (P.W.4) and also a Rough Sketch (Ex.P12). At about 4.45 p.m he conducted inquest (Ex.P13) on the body of the deceased in the presence of panchayatdars and sent the body for postmortem.



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iv. Dr. Mythili (P.W.6) conducted autopsy on the body of the deceased on 17.04.2014 and found the following injuries:

- "(i) Contusion right cheek 2 cm lateral to the right ear lobule
- (ii) Contusion right side neck above the posterior border of sternomastoid 2 x 1 cm
- (iii) Contusion along the anterior border of sternomastoid
- (iv) Contusion 3 cm above the sternal angle 3x1cm".

Ex.P.5 is the postmortem certificate. She sent the visceral organs to Forensic Science Laboratory, Chennai. The Hyoid Bone report (Ex.P4) showed that there was antemortem fracture of Hyoid bone. In the viscera report (Ex.P3), no poison/alcohol was detected in any of the visceral organs. In the opinion of P.W.6, the death was due to strangulation.

v. On the same day, i.e. on 17.04.2014, A1 was treated by P.W.6 for a bite injury on her left index finger which according to A1 was caused when her mother-in-law bit her finger at about 2 a.m. on 16.04.2014. In the opinion of P.W.6, the injury sustained by A1 was simple in nature. A copy of the Accident Register was marked as Ex.P6.

vi. P.W.9 arrested both the accused on 17.04.2014 at about 7 a.m. and recorded their confessional statements. Based on the confessional statement of A1, he recovered her cell phone (M.O.2) which was used by A1 to call A2 on the night of 15.04.2014. Similarly, based on the confessional statement of A2, A2's cellphone (M.O.3) and a grinding stone (M.O.1) which was hidden behind the house of the deceased were recovered. Both A1 and A2 were sent for judicial remand.

vii. After concluding investigation, P.W.9 filed the final report before Judicial Magistrate II, Chidambaram, in P.R.C. No.XX/2014, who committed the case to the court of sessions.

viii. In order to establish the guilt of the accused, the prosecution examined 9 witnesses and marked 13 exhibits and 3 Material Objects.

ix. When both the accused were questioned under Section 313 of the Code of Criminal Procedure, they denied of having committed any offence. No witness was examined on the side of the accused.



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x. The trial court after analysing the evidence on record, convicted both the accused for an offence under Section 302 IPC and sentenced them to undergo Life Imprisonment and pay a fine of Rs.1,000/- each in default, to undergo Rigorous Imprisonment for six months. Challenging the same, the first accused filed an appeal in CrI.A. No.784 of 2016 before this court and this court, vide order dated 24.01.2017, partly allowed the appeal. The conviction of A1 was altered to 304 (ii) r/w 38 IPC and she was sentenced to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.1,000/- in default, to undergo Rigorous Imprisonment for four weeks.

xi. The present appeal is filed by A2.

3. Mr. P. Palanikumar, the learned counsel for the appellant contended that the only eye witness who was relied upon by the prosecution was a child barely 5 years old and could easily be tutored by the close relatives even though A1 was his own mother. According to him, the finger prints on the grinding stone were not lifted/examined, which was fatal to the case of the prosecution. Similarly, there was no satisfactory evidence to establish the theory of illicit relationship between A1 and A2 and therefore, the motive for the murder was non-existent.

4. Per contra, the Additional Public Prosecutor countered by stating that the sole eyewitness (P.W.2) was indeed the star witness instrumental in proving the involvement of both A1 and A2 in the murder of his deceased grandmother. It was also his contention that P.W.2 who was just 5 years old could withstand the testimony of cross examination with ease though many attempts were made to divert him and weaken his deposition.

5. It appears from the evidence that the deceased had reprimanded A1 for her proximity with A2 and also wanted to bring it to the knowledge of A1's husband. There is every reason to believe this version of prosecution since A2 was seen in the house of A1 on the fateful night of 15.04.2014 till the wee hours of 16.04.2014 by both P.W.2 and P.W.3. It can also be discerned that there was some tension building up between the deceased and A1 on financial matters too as the husband of A1 used to send money to his mother and not to his wife. P.W.1, the younger son of the deceased victim had conversed with his deceased mother on 15.04.2014 over phone at about 8.30 p.m. just a few hours before the fatal attack on her. As per P.W.1, when he received the death intimation at about 3.30 a.m. on the next day, it made him suspect about his mother's death. On reaching his mother's residence, he found his mother's body in an ice box



with a garland on her neck which arose more suspicion in him. According to P.W.1, he removed the garland and found the neck injury which would have gone unnoticed otherwise. He also found injuries on both the feet of his mother, which made him to suspect some foul play. The evidence of P.W.2, the only eyewitness, made things clearer as he was in a position to narrate what he saw right in front of him. His version that while his mother was holding the legs of his grandmother, A2 was seen strangulating his grandmother with a grinding stone (M.O.1). It can also be inferred from his evidence that A2 was an acquaintance and was not unknown to P.W.2. P.W.3, a neighbour also had seen A2 fleeing the scene of occurrence. There was one more aspect in which both the deposition of P.W.2 and P.W.3 was corroborative is that the T.V. volume was increased by A1 in order to prevent being heard from outside the house. It is also pertinent to mention here that the appellant / A2 had even slapped P.W.2 during the incident. P.W.5 who is also the niece of the deceased was the first one who was telephonically informed by A1 that the deceased had swooned after complaining of chest pain and when P.W.5 with her husband reached the house of the victim, she had found the dead body of the victim lying on the floor with visible injuries on her neck and feet.

6. There is every reason to believe that both the accused had involved in the commission of the crime. However, the one aspect which has to be analysed is whether both the accused had committed the murder with a common intention or it was an act at the heat of the moment. It is relevant to extract the relevant portion of the judgment of this court in CrI.A.No.784 of 2016 (filed by A1).

19. From the facts proved, it is inferable that the appellant/A.1 who had no common intention with A.2 to commit murder could be attributed with the knowledge when she was scolding the deceased that A.2 was likely to kill her. This knowledge she could have acquired from the moment when A.2 lifted the grinding stone. In the same transaction, A.2 had killed the deceased. After A.2 had lifted the stone, A.1 did not relieve the deceased. Neither she resisted A.2 in his attempt. Thus, her act facilitated A.1 to drop the stone on the deceased. Therefore, the act of A.1 in facilitating A.2 with the knowledge that A.2 was likely to cause the death would fall within the third limb of Section 299 I.P.C. Thus, the appellant/A.1 is liable to be punished only for an offence under Section 304(ii) r/w 38 I.P.C.



The same principle has to be applied to the present appellant also as it cannot be said that the present appellant had separate agenda to eliminate the victim. There was no common intention on the part of both the perpetrators except that they were annoyed with the victim. The victim's alleged threat that the secret affair between A1 and A2 will be exposed to A1's husband appears to have been the touching point which appears to have provoked both A1 and A2. Therefore, it can be safely concluded that the act of the present appellant was the result of grave and sudden provocation but definitely more serious than that of the other accused for the simple reason that the present appellant was the one who attacked the victim with a grinding stone.

7. In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/A2 by the District and Sessions Judge, Mahila Court, Cuddalore, in S.C. No.27 of 2015, dated 07.11.2016, for the offence under Section 302 IPC is set aside and he is convicted for the offence under Section 304(ii) and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for one month. The period of detention already undergone by the appellant/A2 shall be set off under Section 428 Cr.P.C.

SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The District and Sessions Judge,
Mahila Court, Cuddalore.
2. The Judicial Magistrate No.II,
Chidambaram.
3. The Chief Judicial Magistrate,
Cuddalore.



4. The Inspector of Police,
Kumaracthi Police Station,
Cuddalore District.
(in Crime No.39 of 2014)

5. The Superintendent,
Central Prison,
Cuddalore.

6. The Public Prosecutor,
High Court, Madras.

7. The District Collector,
Cuddalore

Copy to

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

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