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Court : Chennai Madurai

Decided On : Nov-10-2016

Judge : S. Nagamuthu &Amp; M.V. Muralidaran

Appeal No. : Criminal Appeal (MD) No. 279 of 2015

Appellant : John Kennedy

Respondent : State represented by The Inspector of Police Kallakudi Police Station Tiruchy

Judgement :

(Prayer: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the Principal Sessions Judge, Tiruchy, in S.C.No.130 of 2014 dated 16.02.2015.)

S. Nagamuthu, J.

1. The appellant is the sole accused in S.C.No.130/2014 on the file of the learned Principal Sessions Judge, Tiruchirappalli. He stood charged for the offences under Sections 341 and 302 IPC. By judgment dated 16.02.2015, the trial Court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo rigorous

imprisonment for six months for the offences under Section 302 IPC and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one week for the offence under Section 341 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:

The deceased in this case was one Mr.Gopal @ Gopalakrishnan. He was residing at Vadugarkottai Village, Lalgudi Taluk. P.W.5 is the wife of the deceased. Out of the wedlock, they had a female child. The accused also hails from the same village. He had a daughter by name Jasmine. It is alleged that the deceased had expressed his love for Jasmine, who was a school going student and eve teased her on few occasions. He also expressed his desire to marry her. This was not to the liking of the accused. This is stated to the motive for the occurrence. It is alleged that on 03.10.2011 around 6.30 p.m., the deceased was proceeding in his motorcycle on the Vadugar Pettai Main Road. P.Ws.1 to 3 were following him on walk. At that time, suddenly, the accused appeared through. He was armed with an aruval. He mounted attacks on the deceased with aruval. The deceased fell down in a pool of blood. P.Ws.1 to 3 raised alarm. The accused ran away from the scene of occurrence. The deceased succumbed to the injuries instantaneously. Thereafter, P.W.1 went to the Kallakudi Police Station and made a complaint at 8.15 p.m. on 03.10.2011. P.W.18 - the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.221/2011 under Sections 302 and 201 IPC against the accused. Ex.P1 is the complaint and Ex.P10 is the FIR. He forwarded both the documents to the Court.

2.1. Thereafter, the investigation was taken up by P.W.20, the then Inspector of Police. He proceeded to the place of occurrence at 9 p.m. and prepared an observation mahazar and a rough sketch in the presence of witnesses between 10 p.m. and 11.30 p.m. He conducted inquest on the body of the deceased. He recovered bloodstained earth and sample earth from the place of occurrence. He examined P.Ws.1 to 3 and few more witnesses and then, he forwarded the dead body for postmortem.

2.2. P.W.19 Dr.Renuka Devi conducted autopsy on the body of the deceased on 04.10.2011 at 11.00 a.m. She found the following injuries:

1. A transverse cut wound 17 m x 5 cm x bone deep on the back of upper third of right leg. O/E. Edges are clean cut. The muscles, blood vessels and nerves are clean cut. Cut fracture of right leg bone (tibia) present.

2. A transverse cut wound, 28 cm x 10 cm x exposing the underlying structures on the back of neck, left ear and left side of face. O/E. The edges are clean cut. The muscles, blood vessels and nerves are clean cut. Cut fracture of C1 vertebra, left side of lower jaw bone and left upper jaw bone present.

3. Subdural Haemorrhage and sub arachnoid haemorrhage on both cerebellar hemisphere.

Ex.P12 is the postmortem certificate. Ex.P13 is the chemical analysis report regarding the visceral organs. She gave opinion that the death of the deceased was due to shock and haemorrhage due to multiple injuries found on the deceased. On chemical analysis of the viscera, the deceased was drunk as ethyl alcohol was found.

2.3. P.W.20 recovered the bloodstained cloth from the body of the deceased and forwarded the same to the Court. On 04.10.2011, at 2 p.m in the presence of witnesses, he arrested the accused. On such arrest, he disclosed the place, where he had hidden an aruval. In pursuance of the same, he took the police and witnesses to the place of hide out and produced M.O.1 aruval. P.W.20 recovered the same under a mahazar and returned to the police staiton and forwarded the material objects also to the Court. The accused also produced a lungi and a shirt, which were also recovered and forwarded to the Court. At his request, the material objects were sent for chemical examination. The report revealed that there was human blood on all the material objects including the aruval allegedly recovered from the accused. On completing the investigation, he laid the charge sheet against the accused.

2.4. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same as false. In order to prove the case, as many as 20 witnesses were examined, 24 documents and 12 material objects were marked.

2.5. Out of the said witnesses, P.Ws.1 to 3 have claimed that they witnessed the entire occurrence. They have vividly spoken about the occurrence. P.W.1 has further stated about the complaint made by him to the police. P.Ws.4 and 5 have stated that they heard about the occurrence and went to the place of occurrence thereafter. P.Ws.6 to 9 and 11 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.10 has spoken about the hear say information and he has not stated anything incriminating. P.W.12 Village Administrative Officer has spoken about the arrest of the accused, confession made by him and the consequential recovery of M.O.2 aruval and the bloodstained lungi and shirt. Since he has not supported the case of the prosecution in full, he has been treated as hostile. P.W.13 - the Head Clerk of the Court has stated that he forwarded the material objects from the Court and to the Forensic Lab for examination. P.W.14 has spoken about the photographs taken at the place of occurrence on the instructions of the Investigating Officer. P.W.15 has not stated anything incriminating. P.W.16 - a Constable has stated that he handed over the FIR to the Judicial Magistrate. He has not stated the time at which, he handed over the same. P.W.17 yet another Constable. He handed over the dead body to the Doctor for postmortem. P.W.18 is the Sub Inspector of Police has spoken about the registration of the case and the complaint made by P.W.1. P.W.19 Dr.Renugadevi has spoken about the postmortem conducted and final opinion regarding the cause of death. P.W.20 has spoken about the investigation done and final report filed.

3. When the above incriminating materials were put to the accused, the accused denied the same as false. However, he did not choose to examine any witnesses nor marked any documents. His defence was a total denial. Having considered all the above, the trial Court convicted him as narrated in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

4. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondents and we have also perused the records carefully.

5. As we have already narrated, in the instant case, the prosecution relies on the eye witness account of P.Ws.1 to 3. They have vividly stated that it was this accused, who have come to the place of occurrence and cut the deceased with aruval repeatedly, which resulted in the death of the deceased.

6. The learned counsel for the appellant would submit that the evidence of P.Ws.1 to 3 cannot be believed because they are interested witnesses and their presence at the place of occurrence is by chance. We are not at all persuaded by the said argument. It is not the law that the evidence of the interested witnesses should, under all circumstances, be rejected. As per the settled law, prudence requires that the evidence of interested witnesses require only close scrutiny. So far as the presence of witnesses by chance is concerned, it is the law that the occasion for the chance witnesses to be present at the place of occurrence is to be explained to the satisfaction of the Court. If these requirements are satisfied, there would be no impediment at all for the Court to act upon the evidence of such witnesses. In the instant case, though P.Ws.1 to 3 were cross examined at length, nothing has been brought on record, even to slightly doubt about their credibility. They have stated vividly about their presence at the place of occurrence. Though we hold that P.Ws.1 to 3 are reliable witnesses, on whose evidence reliance was made by the Court, the learned counsel for the appellant would submit that FIR, in this case is doubtful. According to him, P.W.1 has stated that he did not remember as to who actually wrote the complaint/Ex.P1. This, in our considered view, is not at all a point in favour of the accused. Since P.W.1 had given evidence, after a long time, out of fading of memory, he would have forgotten as to who wrote the complaint. Thus, it is not a flaw in the case of the prosecution so as to disbelieve the entire case of the prosecution.

7. The learned counsel for the appellant would further submit that P.Ws.2 and 3 have stated that the accused was already in the police station, when the complaint was lodged. When that be so, the case of the prosecution that the accused was

arrested later in the presence of the Village Administrative Officer and the aruval recovered cannot be believed. The learned counsel for the appellant would further submit that P.Ws.2 and 3 have further stated that the aruval with bloodstains was lying at the place of occurrence and the same was taken by the police. From these evidences, as rightly pointed out by the learned counsel for the appellant, it is difficult to believe the case of the prosecution. When the accused was arrested, later on, on his confession, M.O.2 aruval was recovered. Simply because, we are disbelieving this part of the case of the prosecution, we cannot afford to reject the evidence of P.Ws.1 to 3 in respect of the occurrence. Thus, from the evidence of P.Ws.1 to 3, in our considered view, the prosecution has clearly established that it was this accused, who cut the deceased, which resulted in the death of the deceased.

8. Having come to the said conclusion, now, it is for us to examine as to what was the offence committed by the accused by the said Act. It is in evidence that the deceased was already married and having a child had developed love for the daughter of the accused. It was a one side love. The deceased had eve teased the daughter of the accused. According to P.W.2, when they were walking on the road, the deceased overtook them in his motorcycle, at a distance, they found the accused and the deceased engaged in a conversation. The deceased was also a drunkard. From these facts, it is inferable that the accused would have questioned the deceased about his conduct for eve teasing his daughter and expressing the desire to marry her. In the said quarrel, it is further inferable that the accused would have been provoked by the deceased by his words and deeds. This inference is based on the natural human conduct, which is presumable under Section 114 of the Evidence Act. Thus, we have got reasons to hold that the accused, who had lost his mental balance on the provocation made by the deceased, which, in our considered view, was grave and sudden, the accused had cut the deceased with aruval. Thus, the act of the accused, though would fall within the 3rd limb of Section 300 IPC would fall within the first exception to Section 300 IPC and therefore, the appellant is liable to be punished only for the offence under Section 304(i) IPC, besides for the offence under Section 341 IPC.

9. Now, turning to the quantum of punishment. The accused had no bad antecedents. He has got a big family to look after. The occurrence was not premeditated. It was out of sudden quarrel. After the occurrence also, the accused has not involved in any crime. Having regard to all these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for four weeks and the fine imposed for the offence under Section 341 IPC is liable to be confirmed would meet the ends of justice.

10. In the result, the criminal appeal is allowed in part, in the following terms:

(i) The conviction and sentence imposed on the appellant under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- (Rupees one thousand only), in default, to undergo rigorous imprisonment for four weeks.

(ii) The conviction and sentence imposed on the appellant under Section 341 is confirmed;

(iii) It is directed that the period of sentence already undergone by the accused shall be set off under Section 428 Cr.P.C.

(iv) The fine amount, if any paid already, shall be adjusted.

(v) The trial Court shall take steps to secure the accused to commit him in prison to serve out the remaining period of sentence.

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