

Aruchami Vs. State Represented by The Inspector of Police, Coimbatore District

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Court : Chennai

Decided On : Jul-05-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : Criminal Appeal No. 201 of 2015

Appellant : Aruchami

Respondent : State Represented by The Inspector of Police, Coimbatore District

Judgement :

(Prayer: Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment dated 13.06.2013 in S.C.No.52 of 2012 by the learned IV Additional District and Sessions Judge, Coimbatore.)

S. Nagamuthu, J.

1. The appellant is the sole accused in S.C.No.52 of 2012 on the file of the learned IV Additional District and Sessions Judge, Coimbatore. He stood charged for the offences under Sections 302 (2 counts) and 309 I.P.C. By judgment dated 13.06.2013, the trial Court convicted the accused under both the charges and sentenced him to undergo imprisonment for life for each count for the offence under Section 302 I.P.C. No separate sentenced was imposed for offence under

Section 309 I.P.C. Considering the financial status of the accused, the trial Court has not imposed any fine amount on the accused. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The accused is a resident of Mampalli Village in Coimbatore District. He had a wife by name Mrs.Sankarayee and two children by name Nagaraj and Periyasamy. Nagaraj and Periyasamy were aged 11 and 10 years respectively. The wife of the accused had become seriously mentally ill and thus, she was taken to her parental home where she was residing. His first son Nagaraj was mentally retarded. The second son Periyasamy was a dumb. Thus, both the sons were patients and required constant help from the appellant. The appellant was taking care of the mentally retarded as well as dumb children at his house.

3. It is alleged that out of frustration, since, his wife was suffering from mental illness and since, his two sons were disabled persons, he decided to end his life after ending the lives of his children. According to the case of the prosecution, on 15.08.2011, around 10.00 pm, he gave endosulfan poison to both the children namely Nagaraj and Periyasamy and he also consumed the same poison. He locked the house from inside. All the three were lying inside the house unconscious. P.W.1 is a relative of the accused. Casually, he went to the house of the deceased. He found the house locked from inside. He called the accused. But there was no response from inside the house. Then using a ladder, he went atop of the roof and peeped through. The scene was shocking. He found them critically ill and struggling for life. Immediately, P.W.1 arranged for an Ambulance and took all the three to the hospital. The Doctor declared the children dead (hereinafter Nagaraj is referred to as D.1 and Periyasamy is referred to as D.2). P.W.9 Dr.Dr.Karupusamy, examined the accused and admitted him as inpatient. He was discharged from the hospital on 24.08.2011 after treatment.

4. P.W.1 went to Kinathukadavu Police Station and made a complaint at 8.30 am on 16.08.2011. P.W.13, on receipt of the said complaint registered a case in Crime No.920/2011 against the accused for offence under Sections 302 and 309 I.P.C. Ex.P.1 is the complaint and Ex.P.11 is the F.I.R. He forwarded both the

documents to Court which were received by the learned Judicial Magistrate at 4.15 pm on 16.08.2011.

5. On the same day, P.W.14 the then Inspector of Police, took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered two plastic containers at the place of occurrence, from which, he found that there was a smell of endosulfan poison. He recovered the same under a mahazar. Then he conducted autopsy on the body of D.1 and D.2 and forwarded the same for post mortem.

6. P.W.8 Dr.Jayasingh, conducted autopsy on the bodies of the deceased and gave opinion that both of them would appear to have died of endosulfan. P.W.14 made a request to Court to forward the material objects for chemical examination. The report revealed that a plastic container of 500 ml capacity was found in profenofos poison. In another container, he found endosulfan. In a tumbler recovered from the place of occurrence, he found endosulfan and profenofos poison. P.W.14 on completing the investigation, laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 19 documents were exhibited, besides 7 Material Objects were marked.

8. Out of the said witnesses, P.W.1, a close relative has stated that he found both the deceased and the accused lying unconsciously in the house and froth was oozing from the nose. He has further stated about his shifting of the deceased and the accused to the hospital and also the fact that he made complaint to Police. P.W.2 a neighbour of the house has also stated so. P.W.3 has stated about the fact that the accused was under a severe depression because both the children were disabled and his wife was also mentally ill. P.W.5 has also spoken about the same facts. P.W.6 has spoken only on hearsay information and he has not stated anything incriminating against the accused. P.W.7 has spoken about the

preparation of observation mahazar and rough sketch and also the recovery of material objects from the place of occurrence. P.W.8 has spoken about the post mortem conducted on the bodies of the deceased and his final opinion regarding the cause of death. P.W.10 has spoken that he handed over the internal organs of the deceased at Forensic Lab. P.W.11 has stated that since, the wife of the accused was seriously mentally ill, the accused kept the children with him in his house. P.W.12 has spoken about the arrest of the accused. P.W.13 has spoken about the registration of the case on the complaint of P.W.1. P.W.14 has spoken about the investigation done and the final report filed by him, in this case.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witnesses nor did he mark any document on his side. His defence was a total denial.

10. Having considered all the above materials, the trial Court convicted the appellant as stated in the first paragraph of this judgment. Challenging the same, the appellant is before this Court with this Criminal Appeal.

11. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. From the evidences of P.Ws.1 to 3, it is crystal clear that on 15.08.2011, during night hours, the house of the accused was found locked from inside and inside the house, the accused and both the deceased alone were there. All the three were found unconscious and froth was oozing through their mouth. They were taken to the hospital where, the Doctor declared D.1 and D.2 dead. The Doctor who conducted autopsy, based on the Analyst Report and the other facts has stated that both the deceased had died due to endosulfan poison. Similarly, the accused had also consumed endosulfan poison.

13. Now the question is, whether it could be presumed that it was this accused who administered poison to the deceased and he also consumed the same. In our considered view, this is the only inference which could be drawn from various

available circumstances. As we have already pointed out, his wife had become mentally ill and she had gone to her parental home. D.1 was mentally retarded and D.2 was dumb. Probably, there was depression in the mind of the accused. From the fact that the house was found locked inside, all the three had consumed poison, it can be safely presumed that it was this accused who consumed poison and also administered poison to his children viz., D.1 and D.2. D.1 was mentally retarded and therefore, on his own, he would not have consumed poison. D.2 was a dumb and he was too young therefore, he would not have consumed poison, on his own. Thus by all means, the only reasonable inference which should be drawn is that it was this accused who administered poison to the deceased and with a view to end his life, he had also consumed poison. Thus, the prosecution has clearly established that it was this accused who caused the death of the deceased viz., D.1 and D.2.

14. Having come to the said conclusion, now, we have to examine as to What was the offence that was committed by the accused ? . As we have already pointed out, the deceased, out of frustration and depression, had decided to end his life. He had no motive at all against the deceased (D.1 and D.2) after all they were his sons on whom he had lot of love. He had given poison to D.1 and D.2 only out of the sustained provocation. In this regard, we may refer to the judgment of a Division Bench of this Court in *Suyambu Kkani v. State* (1989 (1) L.W Criminal 86) wherein, the Division Bench of this Court in an identical situation has held that the accused had acted out of sustained provocation falling within the scope of first exception to Section 300 I.P.C.

15. Applying the same yardstick to the present case, we hold that the act of the accused in causing the death of D.1 and D.2 would squarely fall within the first exception to Section 300 I.P.C., and since, it would fall within the first limb of Section 300 I.P.C., he is liable to be punished for offence under Section 304(i) I.P.C. Similarly, the fact that the accused had consumed poison only with a view to commit suicide and since the said attempt failed, he is liable for offence under Section 309 I.P.C.

16. Now turning to the quantum of punishment, having regard to over all circumstances, more particularly, the mitigating circumstances, as we have already pointed out, sentencing the accused to undergo rigorous imprisonment for five years for offence under Section 304(i) I.P.C., would meet the ends of justice. Since, the trial Court had not imposed any sentence for offence under Section 309 I.P.C., we are unable to impose any sentence on him.

17. In the result, the Criminal Appeal is allowed in part in the following terms:-

(i) The conviction imposed on the appellant/accused by the trial Court for offence under Section 309 I.P.C., is confirmed;

(ii) The conviction and sentence imposed on the appellant/accused for offence under Section 302 I.P.C., (2 counts) are set aside and instead, he is convicted for offence under Section 304(i) I.P.C., (2 counts) and sentenced to undergo rigorous imprisonment for five years and considering the financial status of the accused, no fine amount was imposed on him and

(iii) The above sentences shall run concurrently. The period of sentence already undergone by the appellant is directed to be set off under Section 428 Cr.P.C.

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