

Boopathy Vs. State rep. by Inspector of Police, Ammapet Police Station, Salem District

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Court : Chennai

Decided On : Jun-03-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : Criminal Appeal No. 270 of 2014

Appellant : Boopathy

Respondent : State rep. by Inspector of Police, Ammapet Police Station, Salem District

Judgement :

(Prayer:- Criminal Appeal filed under Section 374(1) Cr.P.C., against the judgment dated 10.03.2014 in S.C.No.206 of 2012 on the file of the learned II Additional Sessions Judge, Salem.)

S. Nagamuthu. J

1. The appellant is A.1 in S.C.No.206 of 2012 on the file of the learned II Additional Sessions Judge, Salem. A.2/ Mrs. Saraswathy is his mother. A.1 stood charged for offences under Sections 498(A) and 302 I.P.C., and A.2 stood charged for offences under Sections 498(A) and 302 r/w.34 I.P.C. By judgment dated 10.03.2014, the trial Court acquitted A.2 from both the charges. However, convicted the appellant/A.1 for offence under Section 302 IPC and sentenced him

to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for one month and acquitted him from the charge under Section 498(A) IPC. Challenging the said conviction and sentence, A.1/appellant is before this Court with this Criminal Appeal.

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

The deceased in this case was one Mrs.Lakshmi @ Abirami. Earlier, she had fallen in love with A.1. In culmination of the said love affair, 10 years prior to the occurrence, A.1 married the deceased. A.1 was an Auto Driver by profession. After some time of their marriage, A.1 demanded the deceased to get money from her brother, who was a Professor by profession, for the purpose of purchasing Auto for him. Accordingly, Dr.Karthikeyan, the brother of the deceased, made arrangement for loan through a bank and purchased an Auto. After some time, Dr.Karthikeyan wanted A.1 himself to pay the loan dues to the bank. A.1 was not satisfied with the same. On account of the same, he started harassing the deceased and demanding more money and property from the parents of the deceased.

3. While so, on 22.09.2010, at about 8.30 p.m., at the house of A.1, the deceased and A.2, namely, the mother of A.1 were there. It is alleged that on the instigation made by A.2, A.1 using a screw driver as a weapon, stabbed the deceased and caused more than 20 stab injuries on her body. The occurrence was witnessed by PWs.1 and 2, who are the brother and mother of the deceased respectively. The deceased was immediately taken to the hospital. PW.1 took the deceased to a private hospital at Ammapettai, Salem and then to Gokulam Hospital, Salem and finally to Salem Government Mohan Kumara Mangalam Medical College and Hospital.

4. On receipt of the intimation from the hospital, PW.10, the then Sub-Inspector of Police rushed to the hospital. Since, the deceased was unconscious, she recorded the statement of PW1 and on returning to the Police Station, at 3.30 a.m., on 23.09.2015, she registered a case in Crime No.1194/2010 for offences under Sections 498(A), 307 IPC. Then, she forwarded Ex.P1- complaint and Ex.P.11-F.I.R to the Court which were received by the learned Jurisdictional Magistrate at

11.15 am on 28.09.2010.

5. P.W.13, the then Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence on 23.09.2010 at 6.30 a.m., and prepared an Observation Mahazar (Ex.P2) and a Rough Sketch (Ex.P20) in the presence of P.W.4 and another witness and examined few more witnesses and recorded their statements. On 24.09.2010, at 6.30 a.m., he arrested A.1 in the presence of PW.5 and another witness. On such arrest, A.1 gave a voluntary confession in which, he disclosed the place where he had hidden the screw driver. In pursuance of the said disclosure statement, he took the police and witness to the place of hide out and produced the weapon (M.O.1). P.W.13 recovered the same under a mahazar. On returning to the Police Station, he forwarded A.1 for judicial remand and also handed over the Material Object to the Court.

6. On 12.10.2010 at 7.45 pm, PW.13 received intimation from the hospital that the deceased succumbed to the injuries. Therefore, he altered the case into one under Section 302 IPC. On going over to the hospital, he conducted inquest on the body of the deceased and forwarded the same for Post mortem.

7. PW.12- Dr.G.Panneerselvam, conducted autopsy on the body of the deceased on 12.10.2010 at 10.40 am and he found the following injuries:-

" 1. An oblique healed incised wound over right back of chest at the level of infra scapular region measuring 1 cm and it is situated 135 cms above right foot and 16 cms below occipital protuberance.

2. A healed incised wound over back of left side chest at the level of infra scapular region measuring 1 cm and it is situated 135 cms above left foot and 11 cms below occipital protuberance.

3. A healed incised wound over back of left side chest-measuring 1 cm and it lies 136 cms above left foot and 1.5 cms medial to the previous injury.

4. A healed stab injury over upper part of left side of chest and it lies 1 cm below left clavicular region measuring 1 x 0.5 x 2 cms and it is situated 133 cms above left foot.

5. A healed incised wound over front of upper part of left side of chest measuring 2 cms and it lies 4.5 cms above left nipple and 10 cms below mid clavicular region.
6. A healed incised wound over left upper part of chest measuring 1 cm and it lies 8 cms above left nipple and 7 cms below left nipple and 117 cms above left foot.
7. A healed incised wound over front of chest below the breast on left side-measuring 1.5 cms and it is situated 4 cms below left nipple and 117 cms above left foot.
8. A healed incised wound over left side of front of chest and it lies 4 cms lateral to the nipple and 121 cms above left side foot.
9. A healed incised wound over top of left shoulder measuring 1.5 cms.
10. A healed incised wound over upper part of left Axilla measuring 1.5 cms.
11. A healed incised wound over upper third of inner aspect of left arm-measuring 1.5 cms and it lies 10 cms below acromial process and 17 cms above left elbow.
12. A healed incised wound over lower third of left forearm-measuring 1 cm and lies 4 cms above left wrist and 14 cms below left elbow.
13. A healed incised wound over lower third of left forearm-measuring 1 cm and lies 4 cms above left wrist.
14. A healed wound over left forearm measuring 1 cm and lies 6 cms above left wrist and 18 cms below left elbow.
15. A healed incised wound over left lower abdomen measuring 1 cm and lies 2.5 cms lateral to the level of umbilicus.
16. A healed incised wound over the upper part of left gluteal region measuring 1 cm and lies 92 cms above left foot and 45 cms below left acromial process.
17. (In all the above injuries, the edges appeared regular, acute angled, clean cut and slightly everted Ante-mortem injuries)

18. Fracture ribs on left side 1 to 3 and on right side 1 to 3 in the mid axillary line with surrounding intercostal muscle contused.
19. A surgical sutured vertical wound seen over the front abdomen-extending from Epigastric Region to supra-pubic region measuring 21 cms in length. Sutures intact. On opening the abdomen, peritoneum lost its shiningness. Peritoneal cavity contained 750 cc of foul smelling yellowish green pus with white flakes of slough tissues. Multiple sutured jejunal tears made out.
20. Tracheostomy seen at the classical site over the front of the neck(surgical).
21. CD tube seen over lateral aspect of both sides of chest. At the level of fifth intercostal space (surgical).
22. Drainage tubes seen over both sides of flanks of abdomen(surgical).
- P.W.12 gave opinion that the death of the deceased was due to septicemia. Ex.P.16 is the Post Mortem certificate and Ex.P18 is the Final Opinion of P.W.12. Ex.P17 is the Biology report. Ex.P.19 is the Viscera Report.
8. P.W.13 collected the medical records and examined the Doctors and recorded their statements. A.2 had obtained an anticipatory bail from this Court and after surrender, she came out on bail. P.W.13 made a request to the Court to send M.O.1 screw driver recovered from A.1/appellant for chemical examination. The report would reveal that there were blood stains on the same. On completing investigation, P.W.13 laid charge sheet against the accused.
9. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the appellant. The appellant denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 24 documents were exhibited, besides one Material Object.
10. Out of the said witnesses, P.Ws.1 and 2 are the eye witnesses to the occurrence. P.W.3 has spoken only on hearsay information. P.W.4 has spoken about the preparation of the Observation Mahazar and Rough Sketch. P.W.5 has

spoken about the arrest of A.1 and the disclosure statement and the consequential recovery of the screw driver. P.W.6 Dr.C.Ramamurthy has spoken about the fact that he admitted the deceased at Salem Mohan Kumara Mangalam College and Hospital on 23.09.2010 at 12.05 a.m. Ex.P.5 is the Accident Register. Ex.P.6 is the Discharge summary. P.W.7 has spoken about the death intimation received from the hospital. P.W.8 has stated that he handed over the Alteration Report of the case to the Court. P.W.9 has stated that he handed over the dead body of the deceased to the Doctor for Post Mortem.P.W.10 has spoken about the registration of the case. P.W.11 Dr.Parthasarathy Anand has spoken about the treatment given by him to the deceased at the Salem Gokulam Hospital. P.W.12 Dr.G.Panneerselvam has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.W.13 has spoken about the investigation done and the final report filed in this case.

11.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, as many as 10 witnesses were examined as D.Ws.1 to 10 and 8 documents viz., Exs.D.1 to D.8 were exhibited.

12. D.W.1 is the sister of the deceased. She has stated that when she went to the house of the deceased, there was a crowd of people and the deceased was found lying with the injuries. The children of the deceased were sleeping in the house. She has further stated about the information passed on by the neighbours and she has not seen P.Ws.1 and 2 at the place of occurrence. In effect, her evidence is that P.Ws.1 and 2 would not have been present at the time of occurrence. D.W.2 is a close relative of the accused. He has stated that around 8.30 pm, there was a huge crowd of people in front of the house of the accused and the deceased was found lying with the injuries. D.W.3 has stated about the registration of the case in Crime No.694/2008 for offence under Sections 341, 323, 353, 294(b) and 506(2) I.P.C., on the complaint of one Mr.Murugesan. The same has been marked as Ex.D.3. D.W.4 has stated about the registration of the case in Crime No.1639/2011 on the file of the Pallapatti Police Station, wherein one Mr.Vinothkumar was the complainant. D.W.5 has spoken about the registration of the case in Crime No.101/2005 on the file of the Sooramangalam Police Station.

D.W.6 has spoken about the cell phone call details of Cell Phone No.9443996985. He has stated that he is not in a position to give any details regarding the calls. D.W.7 is the then District Manager of 108 Ambulance. According to him, on 22.09.2010, at 9.11.pm, a telephone call was received from the cell phone No.9894128586 for taking the deceased to the hospital. According to him, at 9.20 pm on 22.09.2010, the deceased was admitted at Gokulam Hospital. D.W.8, the then Sub Inspector of Police has stated that on 22.09.2010, at Salem city, he was informed over phone that a woman with injuries has been admitted at K.S.Hospital, Salem. D.W.9 is A.1 in this case. He has stated that he was having the savings bank account with State Bank of India at Ammapettai. He has further stated that from that account, on two occasions, he had withdrawn money to the tune of Rs.20,000/- and purchased the auto. D.W.10 is A.2 in this case. She has stated that she was having a savings bank account in Salem Town Co-operative Bank from which, she had withdrawn Rs.20,000/- and paid the same to her son (A.1) for the purpose of purchasing Auto.

13. Having considered all the above, the trial Court found A.1 guilty under the said charge and accordingly, sentenced him as detailed in the first paragraph of this judgment. However, the trial Court acquitted A.2 from the above charges. Aggrieved over the same, A.1/appellant is before this Court with this appeal.

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

15. The learned counsel for the appellant would submit that P.Ws.1 and 2 would not have been present at all at the time of occurrence. The learned counsel would submit that the presence of P.Ws.1 and 2 at the place of occurrence is highly doubtful. He would further submit that even assuming that P.Ws.1 and 2 are believable even then, the appellant/A.1 is not liable to be punished under Section 302 I.P.C.

16. The learned Additional Public Prosecutor appearing for the State would vehemently oppose this Criminal Appeal. He would submit that the presence of P.Ws.1 and 2 at the place of occurrence is quite natural. He would further submit

that their evidence is duly corroborated with the medical evidence also. He would further point out that when the deceased was taken to the hospital, she told the Doctor that it was this accused (A.1/appellant) who stabbed her with screw driver. Repeatedly, to all the Doctors who had attended her, the deceased would have repeated her statements. These statements, according to the learned Additional Public Prosecutor are sufficient to sustain the conviction imposed on the appellant/A.1 as they are dying declarations under Section 32 of the Indian Evidence Act. He would further submit that the evidence of defence witnesses would not in any manner help the case of the appellant/A.1.

17. We have considered the above submissions.

18. P.Ws.1 and 2, though they are the relatives of the deceased, their evidences could be believed because their presence in our considered view is quite probable and they have explained as to how they went to the place of occurrence and as to how they witnessed the entire occurrence. Though, the said witnesses have been extensively cross examined, nothing has been elicited to create any doubt in their veracity. Further, we do not find any reason to reject the evidences of P.Ws.1 and 2 as the same was so cogent and convincing. From these evidences, we have no doubt that the prosecution has clearly established that it was this accused/A.1 who stabbed the deceased with screw driver and caused her death.

19. The medical evidence also duly corroborates the same. Apart from that, when the deceased was taken to various hospitals, at every stage, the deceased told the Doctors consistently that the injuries were caused on her by her husband namely A.1 with the screwdriver. We do not find any reason as to why the said statements of the deceased should be doubted. These statements are all dying declarations falling within the ambit of Section 32(1) of the Indian Evidence Act. Even these dying declarations duly corroborate with the eye witness account of P.Ws.1 and 2. The recovery of screwdriver containing human blood also further strengthens the case of the prosecution.

20. Though, it is true that the children of the deceased were not examined, who were present at the time of occurrence, on that score, we cannot reject the evidence of P.Ws.1 and 2 as well as the dying declarations made by the

deceased.

21. Though, number of witnesses have been examined on the side of the defence, nothing has been elicited to help the case of the accused.

22. D.Ws.1 and 2 have given evidence that when they came to the place of occurrence, the deceased was found lying in a pool of blood with multiple stab injuries and crowd of people were there and they have stated that P.Ws.1 and 2 were not present at the time of occurrence. Thus, their evidences have got no relevance at all to the facts of the case. Similarly, the evidences of all the other defence witnesses are not with reference to any fact in issue or relevant facts which deserves any consideration.

23. The learned counsel for the appellant would submit that the cause of the death of the deceased has not been duly proved by the prosecution. We do not find any force in the said argument at all. There were more than 20 injuries found on the body of the deceased. Though, many of the injuries had healed, the surgical wounds which were caused to cure the stab injuries caused by A.1 on the body of the deceased, got infected. There were two fractures in the ribs also. The internal organs were also injured. It was only to cure the injuries caused by A.1 on the body of the deceased, the surgery was conducted. As stated above, the surgical wounds got infected resulting in septicemia which let to the death of the deceased. It is not as though the surgery was conducted for any other reason other than to cure the stab wounds which had injured the internal organs. Thus, the death of the deceased was caused only by the accused. The said act of A.1/appellant would fall with the ambit of limb of Section 300 I.P.C.

24. But, the learned counsel for the appellant would submit that the deceased would have been provoked by the deceased and thus, his act would fall with the first exception to Section 300 I.P.C. Absolutely, we find no evidence, either direct or indirect, making out any circumstance to infer that A.1/appellant would have been provoked by either by words or by deeds of the deceased. We cannot assume in vaccum that A.1/appellant would have been provoked by the deceased. Thus, we do not find any reason to bring the act of the accused under the first exception to Section 300 I.P.C. Thus, in our considered view, the prosecution has

clearly established that it was this accused/A.1 who committed the murder of the deceased and hence, he is liable to be punished for offence under Section 302 I.P.C.

25. Now, turning to the quantum of punishment, the trial Court has imposed only a minimum punishment which does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

26. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. It is reported that A.1/appellant is in jail. A.1/appellant is directed to undergo the remaining period of sentence as imposed by the trial Court.

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