SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

A.Selvaraj Kumar Vs. State Through The

A.Selvaraj Kumar Vs. State Through The

SooperKanoon Citation : sooperkanoon.com/64906

Court : Chennai

Decided On : Aug-20-2015

Judge : S.Nagamuthu

Appellant : A.Selvaraj Kumar

Respondent : State Through The

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

20. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRL A(MD)No.331 of 2013 A.Selvaraj Kumar : Appellant Vs. State through the Inspector of Police, Anjukiramam Police Station, Suseendram, Crime No.1253 of 2011, Kanyakumari District. : Respondent PRAYER Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 06.11.2013 made in S.C.No.88 of 2012, on the file of the Sessions Judge, Kanyakumari District at Nagercoil. !For Appellant : Mr.V.Kathirvel Senior Counsel For Mr.K.Prabhu ^For Respondent : Mr.C.Ramar Additional Public Prosecutor :

JUDGMENT
[

JUDGMENT

of the Court was delivered by S.NAGAMUTHU, J]. The appellant is the sole accused in S.C.No.88 of 2012, on the file of the learned Sessions Judge, Kanyakumari District at Nagercoil. He stood charged for the offences punishable under Sections 498(A) and 302 of the Indian Penal Code. By Judgment dated 06.11.2013, the Trial Court has acquitted the appellant from the charge under Section 498(A) of the Indian Penal Code, but convicted him under Section 302 of the Indian Penal Code 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. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:- The deceased, in this case, was one Mrs.Anitha. The accused is the husband of the deceased. There were frequent quarrels between the accused and the deceased for a long time. On 12.12.2011, it is alleged that there was a quarrel between the accused and the deceased. PW-1 is the father of the deceased. He came to the house of the accused incidentally. On seeing the accused and the deceased quarreling, he tried to pacify them. The accused sent him out of the house and closed the door. When PW-1 was outside the house, he heard the cry of the deceased from inside seeking help. But, the accused did not open the door. The neighbours also gathered. Then, the accused opened the door and came out of the house. At that time, the accused had an aruval in his hand, which was stained with blood. When PW-1 and the others entered into the house, they found the deceased lying dead with cut injuries on her body. This was witnessed by PW-2 and PW-3 also. 2.1. Then, PW-1 rushed to the Anjukiramam Police Station. At 10.00 AM, on 12.12.2011, he made a complaint to PW-12. She registered a case in Crime No.1253 of 2011, under Section 302 of the Indian Penal Code. EX-P1 is the complaint and EX-P12 is the First Information Report. Then, he forwarded EX- P1 and EX-P12 to the Court through a Constable and handed over the case diary to PW-13 for investigation. 2.2. Taking up the case for investigation, PW-13 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence, in the presence of PW-6 and another witness. Then, he conducted autopsy on the body of the deceased between 11.30 AM and 01.30 PM. He forwarded the dead body for postmortem.

2.3. PW-8, Dr.R.Rajesh, conducted autopsy on the body of the deceased, on 12.12.2011, at 03.40 PM. He found the following injuries:- "1. 7 X2CM X bone deep oblique cut injury seen over the centre of lower with trailing of 3 CM over the left side of wound. On examination, the underlying muscles and mandible bone found cut.

2. 4 X3CM X skin deep horizontal flapping type of cut injury seen over the upper aspect of neck. It is 2 CM below the symphysis menti.

3. 12 X2CM X cervical bone deep, horizontal cut injury seen over the right side of neck. It is 5 CM below the lower end of right ear. On examination, the underlying muscles, vessels, wind pipe, food pipe and C4 and C5 cervical vertebra found cut.

4. 3 X1CM X skin deep horizontal cut injury seen over the left side of front of neck. It is 6 CM below the symphysis menti.

5. 8 X1CM X skin deep cut injury seen over the right side of neck. It is 6 CM below the lower end of right ear.

6. 10 X3X cervical bone deep horizontal cut injury seen over the right side of neck 7 CM below the lower end of right ear. On examination, the underlying muscles, vessels, wind pipe, food pipe and C6, C7 cervical vertebra found cut.

7. 2 X1CM X12 CM horizontal cut injury seen over the left side of front of chest. It is 7 CM below the middle of left collar bone, there is a trailing of 5 CM over the right side of the wound.

8. 1 X11/2 X12 CM cut wound seen over the outer aspect of left collar bone region.

9. 4 X12 CM X skin deep superficial horizontal cut injury seen over the left side neck, 5 CM below the lower end of left ear.

10. 27 X8CM abrasion seen over the back of left arm and elbow.

11. 1 X1X12 CM cut injury seen over the palmar aspect of base of left thumb.

12. 1/2 X12 X12 CM cut injury seen over the palmar aspect of base of left thumb.

13. These oblique superficial cut injuries seen close to each other over the left side of upper aspect of back of chest measuring 10 X14 X14 CM, 12 X14 X14 CM respectively from above downwards.

14. 10 X2CM X bone deep oblique cut injury seen over the lower half of inner aspect and back of right forearm. On examination, the underlying muscles, vessels, nerves and right ulnox bone found fractured.

15. 12 X3CM X skin deep flapping cut injury seen over the inner aspect of middle of right forearm". He opined that the death was due to shock and hemorrhage due to the cumulative effect of all the injuries. EX-P6 is the postmortem certificate and EX-P7 is his final opinion, regarding the cause of death. However, he had sent viscera for chemical examination, which revealed that there was no poison in the internal organs. According to him, all the injuries found on the dead body would have been caused by a weapon, like an aruval, [MO-6].. 2.4. Continuing the investigation, PW-13 arrested the accused on the same day at 04.30 PM, in the presence of PW-5 and another witness. On such arrest, he gave a voluntary confession, in which he disclosed that he had hidden an aruval, a bloodstained pant and a shirt. In pursuance of the said disclosure statement, he took PW-13 and the witnesses to Alagappapuram and from the bush, he produced MO-1 - Aruval, MO-6 - a shirt and MO-7 - a pant. PW-13 recovered the same under a mahazer. Then, he forwarded the accused to the Court for judicial remand and handed over the material objects to the Court. He gave a request to the Court for sending the material objects for chemical examination. EX-P17 is the report, which revealed that there was human blood on the aruval as well as the pant and the shirt recovered from the accused. Then, the investigation was taken up by PW-14. He examined the doctor, collected the medical records and on his transfer, the investigation was taken up by his successor - PW-15. On completing the investigation, PW-15 laid charge sheet against the accused. 2.5. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, 15 witnesses were

examined, 17 documents and 9 material objects were marked. Out of the said 15 witnesses, PW-1 to PW-3 are the eye-witnesses to the occurrence. PW-1 is the father of the deceased, who is a resident of Vannarpettai at Tirunelveli. He has stated that on the date of occurrence, he had come to the house of the deceased at Mettukudiyuruppu in Tirunelveli and witnessed the occurrence. PW-2 is a neighbour of the deceased. He has stated that on 12.12.2011, at about 09.00 AM, he found that PW-1, the deceased and the accused were talking to themselves. At that time, according to him, the accused had sent PW-1 out of the house, closed the door and then, he heard the cry of the deceased from inside. After ten minutes, the accused came out of the house with an aruval in his hand stained with blood. 2.6. PW-3 is yet another neighbour. He has stated that on 12.12.2011, there was a quarrel between the deceased and the accused. According to him, PW-1 tried to pacify them. After sometime, the accused sent PW-1 out of the house and closed the door. Then, the deceased started crying for help from inside. Thereafter, the accused came out of the house with an aruval stained with blood. The deceased was found dead inside the house. Thus, PW-1 to PW-3 have almost spoken about the occurrence, though had not seen the accused killing the deceased. PW-4 is the brother of the deceased. He has spoken about the frequent quarrel between the accused and the deceased. PW-5 has spoken about the arrest of the accused, the confession made by him and the consequential recovery of MO-1, MO-6 and MO-7. PW-6 has spoken about the Observation Mahazer prepared by PW-13. PW-7 has stated that as instructed by the police, he carried the dead body of the deceased for postmortem to the hospital. 2.7. PW-8, the doctor, has spoken about the postmortem conducted by him and his final opinion regarding the cause of death of the deceased. PW-9 has spoken about the photographs taken at the place of occurrence including the dead body. PW-10 is the Head Constable, attached to the Anjukiramam Police Station. He has stated that he carried the First Information Report - EX-P12 from the Police Station and handed over the same to the learned Judicial Magistrate No.III, Nagercoil, at 03.00 AM, on 13.12.2011. PW-11 was the then Judicial Magistrate No.II, Nagercoil. He recorded the statements of PW-1 to PW-3 under Section 164 of the Code of Criminal Procedure. He has stated about the same. PW-12 is the Sub-Inspector of Police, who registered the case on the complaint of PW-1. He has spoken about the same. PW-13 to PW-15

are the Investigating Officers, who have spoken about their investigation done by them. 2.8. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. On the side of the accused, four photographs were marked as EX-D1 to EX-D4. However, he did not choose to examine any witness. Having considered all the above materials, the Trial Court acquitted the accused from the charge under Section 498(A) of the Indian Penal Code, but, convicted him, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned Senior Counsel appearing for the appellant, the learned Additional Public Prosecutor for the respondent and also perused the records carefully.

4. The learned Senior Counsel appearing for the appellant would submit that the original complaint, in this case, has been suppressed and in its place, EX-P1 has been substituted and thus, the case of the prosecution itself is doubtful. He would further submit that PW-1 is not residing in the locality, where the alleged occurrence had taken place. Thus, according to the learned Senior Counsel, his presence, at the place of occurrence, is doubtful. So far as PW-2 and PW-3 are concerned, though they are neighbours, their evidences cannot be believed, because their conduct is unnatural.

5. The learned Senior Counsel would further submit that the arrest of the accused and the consequential recovery of the weapon are concerned, the same also cannot be believed, as there are material contradictions. The learned Senior Counsel would further submit that the prosecution has failed to prove the case beyond reasonable doubts. He would, lastly, contend that even assuming that the accused was the one, who caused the death of the deceased, even then, the offences said to have been committed by the accused, would not fall under Section 302 of the Indian Penal Code and the same would fall only under Section 304(i) of the Indian Penal Code.

6. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, the presence of PW-1 has been duly explained by him and the same cannot be disbelieved. The presence of PW-2 and PW-3 is quite natural, because they are neighbours. The learned Additional Public Prosecutor would further submit that from the evidences of PW-1 to PW- 3, it is crystal clear that inside the house of the deceased, except the deceased and the accused, there was nobody else. He would further submit that when PW-1 to PW-3 were waiting outside the house, they heard the cry of the deceased. Thereafter, the accused came out of the house with an aruval in his hand stained with blood. Thus, this conduct of the accused, according to the learned Additional Public Prosecutor, would go to show that it was this accused, who caused the death of the deceased. So far as the arrest of the accused and the consequential recovery of weapon, shirt and pant are concerned, they contained human blood. Thus, there is no reason to reject the arrest of the accused, his disclosure statement and the consequential recovery of MO-1, MO-6 and MO-7. The learned Additional Public Prosecutor would further submit that the act of the accused would squarely fall within the ambit of Section 302 of the Indian Penal Code. Thus, the Trial Court was right in convicting the accused under Section 302 of the Indian Penal Code, which does not require any interference at the hands of this Court.

7. We have considered the above submissions.

8. So far as the motive for the occurrence is concerned, it has been spoken to by PW-1 to PW-4 that there were frequent quarrels between the accused and the deceased. There is no reason to disbelieve their evidences. It is the evidence of PW-1 that on 12.12.2011, at 09.00 AM, he had come to the house of the deceased. At that time, according to him, there was a quarrel between the accused and the deceased. This has been spoken to by PW-2 also. In the quarrel, the accused sent PW-1 out of the house and closed the door. Now, inside the house, there were two persons, namely, the accused and the deceased. PW-1 to PW-3 have further stated that when they were waiting outside the house, they heard the alarm raised by the deceased and the deceased cried for help. When they knocked at the door, nobody from inside the house opened the door. After sometime, the accused opened the door, came out of the case and at that time, he

had an aruval in his hand, which was stained with blood. We do not find any reason to reject the evidences of PW-1 to PW-3 in this regard. If the evidences of PW-1 to PW-3 are believed, then, it goes without saying that it was this accused, who alone caused the injuries on the deceased, which resulted in her death. The evidences of PW-1 to PW-3 are further corroborated by the medical evidence. The doctor, who conducted autopsy on the body of the deceased, opined that all the injuries found on the deceased would have been caused by a weapon, like an aruval. There were number of injuries, which were cut injuries on the body of the deceased. Thus, the medical evidence also duly corroborates the eye-witness account of PW-1 to PW-3.

9. Next comes the arrest of the accused. PW-5 has categorically stated about the arrest of the accused, his confession and the recovery of MO-1, MO- 6 and MO-7. The chemical analysis report has revealed that there was human blood found on the aruval - MO-1, shirt - MO-6 and pant - MO-7. Thus, the recovery of these material objects also duly corroborate the eye-witness account.

10. However, the learned Senior Counsel would submit that the First Information Report, in this case, is doubtful document. In order to substantiate this contention, the learned Senior Counsel would rely on the evidence of PW-2, who has stated during cross-examination that from the place of occurrence, he gave a phone call to the Police Station, at 09.15 AM and the police arrived at the scene of occurrence at 09.20 AM itself. He has further stated that at 09.50 AM, the dead body was carried in the 108 Ambulance Service by the police. Referring to the same, the learned Senior Counsel would submit that according to the case of the prosecution, the First Information Report was registered only at 10.00 AM, whereas according to PW- 2, the dead body was taken from the place of occurrence at 09.50 AM itself. He has also submitted that there would have been some other information, which has brought the police to the place of occurrence. We find no much importance for this innocuous answer given by PW-2. He has narrated the events during cross-examination as though it was a minute to minute programme. He is a villager. We cannot give much importance for the timings mentioned by him. There is no much difference between 09.15 AM and 10.00 AM. Therefore, from the above evidence of PW-2, we cannot hold that the police had

arrived at the scene of occurrence even before the registration of the First Information Report. According to the First Information Report, after the registration of the case, at 10.00 AM, the police came to the place of occurrence. Probably, by inadvertently, PW-2 would have mentioned about the timings. Therefore, this argument is rejected. Similarly, the argument of the learned Senior Counsel that PW-1 to PW-3 would not have been present at the crucial time also deserves only rejection, as there are no materials to disbelieve their evidences.

11. From the above clear evidences of PW-1 to PW-3, which are duly supported by the medical evidence and the recovery of MO-1, MO-6 and MO-7, we have fullest satisfaction to hold that it was this accused, who alone caused the injury on the body of the deceased, which resulted in her death.

12. The next immediate question is as to what is the offence, that the accused had committed by his act. The alleged occurrence was not witnessed by any witness, since the occurrence was inside the house, as the door of the house was closed. But, before the said occurrence, there was a wordy quarrel between the accused and the deceased. The quarrel went on for some time. This has been spoken to by PW-1 to PW-4. It is inferable that the said quarrel would have continued inside the house also, when the accused and the deceased were alone inside the house. There is every possibility that the deceased would have provoked the accused. It is highly improbable that but for the said provocation, the appellant would have cut the deceased. After all, there was no motive for the accused to commit the murder of his wife. Therefore, we are able to presume that under Section 114 of the Indian Evidence Act, 1872, there would have been provocation at the end of the quarrel emanating from the deceased and in our considered view, the said provocation was grave enough to make the accused to lose his mental balance. It was because of the said grave and sudden provocation, the accused had caused injuries on the deceased, which resulted in her death. Thus, the act of the accused would fall within the ambit of First Exception to Section 300 of the Indian Penal Code. Since the injuries caused on the deceased were the intended injuries and since the above injuries are sufficient in the ordinary course of nature to cause death, the act of the accused would fall under the III limb of Section 300 of the Indian Penal Code. Since the act of the accused falls within the ambit of first

exception to Section 300 of the Indian Penal Code, the offence committed by the accused is not murder and it is only a culpable homicide, falling within the ambit of second limb of Section 299 of the Indian Penal Code and he is liable to be punished under Section 304(i) of the Indian Penal Code.

13. Now, turning to the quantum of punishment, the accused has got two young children. The children were also present before this Court, when the Criminal Appeal was heard. As a matter of fact, when we enquired, both the children started weeping and showing their concern for their father. It is stated that they are taken care of only by their grandmother, as their father is in prison. Their grandmother herself is an old lady and therefore, it would be difficult for her to maintain them. The children have further stated that their father, namely the accused, maintained them and he has got lot of love and affection for them. The future of these children, to avoid them becoming destitutes, itself is a mitigating circumstance. The occurrence was not a pre-meditated one, as the same was only out of the grave and sudden provocation. There is no history of the accused having bad antecedents. His family is in penury. He is the sole breadwinner of the family.

14. Having considered all the above mitigating and the aggravating circumstances, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

15. In the result, the Criminal Appeal is partly allowed in the following terms:- The conviction and sentence imposed by the Trial Court on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304(i) of the Indian Penal Code 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 four weeks. The period of sentence already undergone by the appellant shall be set off under Section 428 of the Code of Criminal Procedure. To 1.The Inspector of Police, Anjukiramam Police Station, Suseendram, Kanyakumari District. 2.The Sessions Judge, Kanyakumari District at Nagercoil. 3.The Public Prosecutor, Madurai Bench of

Madras High Court, Madurai.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com