

N.Ravi Vs. State Through

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Court : Chennai

Decided On : Aug-13-2015

Judge : S.Nagamuthu

Appellant : N.Ravi

Respondent : State Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

13. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL (MD).No.122 of 2015 N.Ravi S/o.Nallaperumal Door No.50 Subam Colony, KTC Nagar, Palayamkottai, Tirunelveli. : Appellant Vs. State through Inspector of Police Taluk Police Station Tirunelveli District. in Crime No.259 of 2013 :Respondent PRAYER Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the Principal Sessions Judge, Tirunelveli, in S.C.No.114 of 2014 dated 06.03.2015. !For Appellant : Mr.S.Saji Bino ^For Respondent : Mr.C.Ramesh Additional Public Prosecutor :

JUDGMENT

(Judgment of the Court was delivered by S.NAGAMUTHU, J.) The appellant is the sole accused in S.C.No.114 of 2014 on the file of the Principal Sessions Judge, Tirunelveli. He stood charged for offences under Sections 302 and 201 IPC. By

judgment dated 06.03.2015, 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 one year for the offence under Section 302 IPC and to undergo rigorous imprisonment for five years and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for six months for the offence under Section 201 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 Latha. The appellant/accused is her husband. P.Ws.8 and 9 are their children. They were all living together at Subam Colony Street, in a rented house. P.W.10 is their landlord. It is the further case of the prosecution that there were frequent quarrels between the accused and the deceased. On every such occasion, the family members of the deceased used to visit the house of the accused and pacify them. The accused also had suspicion about the chastity of the deceased. While so, on 08.08.2013, early, in the morning, P.Ws.8 and 9 had gone to their schools. The accused and the deceased were alone in the house. It is alleged that at that time, using the loneliness of the deceased, the accused stabbed the deceased with an aruval on her stomach, left wrist, left palm, neck and other parts of the body. The deceased succumbed to the injuries. It happened around 10.00 a.m. Then, it is alleged that the appellant went out to purchase petrol from PW.11, then, came to the house and set fire to the body. The body remained half burnt. At that juncture, P.Ws.1 and 2 (the sisters of the deceased) had come. They knocked at the door. The accused opened the door and fled away from the house. While leaving, it is alleged that he shouted at P.Ws.1 and 2 and cried that he had stabbed and killed the deceased and also set fire. Thereafter, P.Ws.1 and 2 with the help of P.W.2's husband, went to the police station and made a complaint. 2.1. P.W.20, the then Sub Inspector of Police attached to Tirunelveli Taluk Police Station received the said complaint under Ex.P1 and registered a case in Crime No.259 of 2013 under Section 302 IPC. Ex.P19 is the FIR. He forwarded Exs.P1 and P19 to the learned Judicial Magistrate No.III, Tirunelveli through P.W.15. Then, he forwarded the case diary to the Inspector of Police for investigation. 2.2. P.W.21, who was then Inspector of Police, took up the case for investigation at 12.30 p.m. on 08.08.2013. He proceeded to the place of

occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. Then, he arranged for a police photographer to take photographs. Exs.P10 and P11 are the photographs. Between 1.45 and 3.45 p.m., he conducted inquest on the body of the deceased, during which, he examined P.Ws.1 to 3 and few more witnesses. On completing the inquest, he prepared inquest report under Ex.P22 and then, forwarded the body for postmortem. 2.3. P.W.18 ?. Dr.Sudalaimuthu conducted autopsy on the body of the deceased at Tirunelveli Medical College Hospital on 08.08.2013 at 4.10 p.m. He found the following injuries: Antemortem injuries:

1. 3 x 2 cm x bone stab injury seen over lower part of right cheek 3 cm right to angle of mouth.
2. 4 x 1 cm x bone stab injury seen over right side of chin 5 cm right to the chin and 1 cm below lower border of mandible.
3. 3 x 2 cm x muscle deep oblique stab injury seen over middle of front of neck, 9 cm below chin. The stab injury is directed towards left side and backwards. Muscles, vessels, nerves of left side of neck found stabbed. Right and left margins of the stab injury are regular. Upper end of the stab injury is blunt and lower end is sharp.
4. 3 x 2 cm x right side pleural cavity deep oblique stab injury seen over right side of front of lower part of neck.
5. 1 x 0.5 x 0.5 cm (Muscle deep) stab injury seen over front of right shoulder.
6. 1 x 0.5 cm x 0.5 cm (Muscle deep) stab injury seen over right side breast.
7. 1 x 1 x 0.5 cm (Muscle deep) stab injury seen over lower part of right side of abdomen.
8. 4 x 1 x 3 cm (Muscle deep) and fat horizontal stab injury seen over middle of front of abdomen 3 cm below and right side of umbilicus.
9. 1 x 1 x 0.5 cm (Muscle deep) stab injury seen over right side of abdomen 1 cm above injury No.7 10. 1 x 1 x 0.5 cm stab injury seen over front of right knee.

11. 1 x 1 x 0.5 cm stab injury seen over back of left elbow.

12. 2 x 1 cm x muscle deep cut injury seen over right hand in between right thumb and index finger.

13. 8 x 2 cm x bone deep cut injury seen over inner aspect of left wrist. Underlying muscles, vessels, nerves and 5th meta carpal bone found cut at site.

14. 5 x 1 cm x bone deep cut injury seen over inner aspect of left index finger.

15. 2 x 1 cm x muscle deep vertical stab injury seen over middle of front of left thigh. He opined that the deceased would appear to have died of all the stab injuries on the neck and other injuries on the body due to shock and hemorrhage. Ex.P16 is the postmortem certificate. The viscera was sent for chemical examination and according to the report of the analyst under Ex.P.17, there was no poison detected in the internal organs of the deceased. According to P.W.18, the stab injuries on the body of the deceased would have been caused by M.O.2 knife. 2.4. Continuing the investigation, P.W.21 examined few more witnesses. On the same day, at 5.40 p.m., he arrested the accused at Tuticorin Main Road, near Saradha College. On such arrest, he made a voluntary confession in the presence of P.W.4. In the said confession, he disclosed the place, where he had hidden the aruval. Accordingly, he took the police and the witnesses to the said place and produced M.O.1. On returning to the police station, he forwarded the accused to the Court for judicial remand. Then, he forwarded the material objects to Court. He made a request to the Court for forwarding the material objects for chemical examination. Then, he prepared Ex.P23 alteration report altering the offence under Section 302 IPC to one under Sections 302 and 201 IPC Ex.P24 is the serology report. According to the said report, human blood was found on the aruval and other materials. On completing the investigation, he laid charge sheet against the accused. 2.5. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 22 witnesses were examined and 25 documents and 13 material objects were marked. Out of the said witnesses, P.Ws.1 and 2 are the sisters of the deceased. According to them, on the date of occurrence, P.W.1 received an information that there was a quarrel

going on between the accused and the deceased. This information was passed on by the deceased herself over phone. P.W.1, in turn, informed the same to P.W.2, yet another sister of the deceased. Then, P.Ws.1 and 2 joined together and came to the house of the deceased. It is alleged that when they knocked at the door, the accused suddenly opened the door and came out of the house. At that time, the accused was found carrying an aruval. He shouted at them and cried that he had cut the deceased and killed her and set fire to her body. So saying, the accused fled away from the scene of occurrence. When P.Ws.1 and 2 entered into the house, according to them, they found the dead body of the deceased in a half burnt condition. There were injuries on the body. They have further stated that with the help of P.W.3, they went to the police station and presented a complaint. P.W.2 had stated that she attested the signature of P.W.1 in the said complaint. P.W.3 is the husband of P.W.1, who had accompanied P.Ws.1 and 2 to the police station. P.W.4 has stated about the arrest of the accused and the consequential recovery of aruval. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner. 2.6. P.W.6 is yet another star witness for the prosecution. According to him, on the crucial date, he had gone to the house of the accused for repairing certain electrical fittings. When he found the main entrance of the house closed, he went to the backside. Through the backside entrance, he found the accused dragging the deceased and setting fire by pouring petrol on her body. P.W.7 is the Principal of the school, where P.Ws.8 and 9 were studying. According to P.Ws.8 and 9, they left for school in the morning, when the accused and the deceased alone were at home. They have further stated that by about 5.30 p.m., a relative of them came to the school and with the permission of P.W.7, he took them back to their house. They have further stated that on reaching the house, they found the dead body of their mother in a half burnt condition with injuries. P.W.10 is the landlord of the house, where the accused and the deceased were residing. He has not stated anything incriminating against the accused. P.W.11 has turned hostile and he has not stated anything in favour of the prosecution. P.W.12 was the then Manager of Professional Couriers Company at Tirunelveli, where the accused was working. On 08.08.2013, according to him, the accused did not turn up for his duty. P.W.13 ?. the police photographer has spoken about the photographs taken. 2.7. P.W.18 ?. Dr.Sudalaimuthu has spoken

about the postmortem conducted by him. P.W.19, who is the Assistant Director of Regional Forensic Science Department, Tirunelveli, has spoken to the fact that during chemical analysis, he found human bloodstains on all the material objects including aruval. P.W.20 the Sub Inspector of Police has spoken about the registration of the case and P.W.21 about the investigation. P.W.22 is yet another Doctor. He has stated that on 08.08.2013 at 9.45 p.m., the accused was brought to the Tirunelveli Medical College Hospital for treatment by a Head Constable attached to the respondent police station. According to him, he found a lacerated injury on the left thumb measuring 4 x 3 x 1 cm. The accused told him that at 9.30 a.m., on the same day, he caused the said injury to himself. Ex.P25 is the Accident Register. 2.8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same. However, he did not choose to examine any witnesses on his side nor marked any documents. Having considered all the above, the trial Court convicted the appellant and accordingly, punished him as stated in the first paragraph of this judgment. That is how, he is before this Court with this appeal.

3. We have heard the learned counsel for the appellant, the learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

4. The learned counsel for the appellant would submit that the presence of P.Ws.1 and 2 cannot be believed at all. He would point out that they belonged to two different villages and therefore, there would have been no occasion for them to come to the house of the accused at the crucial time. He would further point out that P.W.6, the Electrician, who claims to have seen the accused setting fire to the body of the deceased, has not stated about the arrival of P.Ws.1 and 2. He would further submit that the conduct of P.W.6 in not disclosing the occurrence to anybody would make his evidence unbelievable. In the light of the evidence of P.W.6, the evidence of P.Ws.1 and 2 cannot be believed, the learned counsel contended. The learned counsel would further point out that the arrest of the accused and the consequential discovery of aruval cannot be believed. He would further submit that in a case based on circumstantial evidence, all the proved circumstances should form a complete chain unerringly pointing to the guilt of the

accused. Here in this case, the so called circumstances pleaded by the prosecution have not been proved and thus, the conviction and sentence imposed on the appellant is liable to be set aside, he contended.

5. The learned Additional Public Prosecutor would, however, oppose this appeal. He would submit that the presence of P.Ws.1 and 2 at the crucial moment, at the place of occurrence, cannot be doubted at all. He would submit that they have vividly spoken the reasons for arrival at the place of occurrence at the crucial moment. From the evidences of P.Ws.1 and 2, according to the learned Additional Public Prosecutor, the prosecution has clearly proved the case that it was this accused, who caused the death of the deceased. The learned Additional Public Prosecutor would further submit that the evidence of P.W.6 also further strengthens the case of the prosecution. He would also submit that the arrest of the accused and the consequential recovery of aruval cannot be doubted, because P.W.6 is an independent witness, against whom, the accused has got no axe to grind. The evidences of P.Ws.8 and 9 are also cogent, the learned Additional Public Prosecutor contended. Thus, from these evidences, the prosecution has clearly proved the case against the accused beyond reasonable doubts, he contended.

6. We have considered the above submissions.

7. At the outset, we should say that in a case based wholly on circumstantial evidence, the circumstances pleaded by the prosecution should be proved beyond reasonable doubts and all such proved circumstances should form a complete chain unerringly pointing to the guilt of the accused and there should be no other hypothesis inconsistent with the guilt of the accused. With this broad principle in our mind, let us now proceed to analyse the circumstances pleaded by the prosecution.

8. The following are the circumstances pleaded: (1) The accused and the deceased alone were at the house on the crucial date at about 8.30 a.m., when P.Ws.8 and 9 left for school. (2) P.W.6, the Electrician had found the accused dragging the body and setting fire by pouring petrol at 10.45 a.m. (3) P.Ws.1 and 2 arrived at the house of the deceased at 11.00 a.m., and at that time, they found

the house locked from inside and the accused opened the door and came out of the house with aruval in his hands. (4) The accused shouted at P.Ws.1 and 2 saying that he had killed the deceased by cutting her with aruval and also burnt the body. (5) The conduct of the accused in fleeing away from the scene of occurrence, after the arrival of P.Ws.1 and 2. (6) When P.Ws.1 and 2 entered into the house, they found the dead body of the deceased half burnt with cut injuries. (7) The accused was arrested on the same day in the presence of P.W.4 at 5.30 p.m. on 08.08.2013. As soon the arrest was made, he made confession, in which, he disclosed the place, where he had hidden the aruval. (8) The aruval so recovered in pursuance of the said disclosure statement contained human blood, which tallied with the human blood of the deceased on her dress materials. (9) P.W.8 ? Dr.Sudalaimuthu gave opinion that the death was due to injuries on the body and he has opined that the body was burnt thereafter. (11) The last circumstance is the evidence of P.W.22. He stated that the accused had sustained an injury in his thumb by self inflicting.

9. Let us now analyse whether the above stated circumstances have been proved by the prosecution or not.

10. P.Ws.8 and 9, the children of the deceased have categorically stated that on the date of occurrence at 8.30 a.m., when they left for the school, the deceased and the accused alone were at home. Though it is contended by the learned counsel for the appellant that these two witnesses are now under the care and custody of the relatives of the deceased and therefore, they are falsely deposing, we find no force in the said argument at all. A reading of the entire evidence of these two witnesses including cross examination would go to show that there is no need to doubt the veracity of these two witnesses. It is not the case of the accused that the children were not with him and that they were studying in the school. From these two witnesses, who are the children of the accused and the deceased, the prosecution has proved that at 8.30 a.m., at the house of the accused, the deceased and the accused alone were there.

11. Next comes the evidence of P.W.6. P.W.6 is an Electrician. He has stated that at 10.45 a.m., he went to the house of the deceased for the purpose of fixing an

electrical equipment. Since the main entrance of the house was found closed, he went to the backside. At that time, he found the accused dragging the body and setting fire. The learned counsel for the appellant would submit that this witness cannot be believed, which is evident from his conduct. We agree with him for many reasons. During cross examination, he has stated that he did not inform about the occurrence to anybody. Had it been true that he had witnessed the occurrence, either he would have raised alarm or he would have informed the neighbours. The very fact, according to him that he left the place of occurrence and did not disclose the same to anyone would go to show that he is not telling the truths. His unnatural conduct makes him unbelievable. Therefore, the evidence of P.W.6 is rejected and thus the second circumstance has not been proved.

12. Next comes the evidence of P.Ws.1 and 2. The learned counsel for the appellant would submit that these two witnesses would not have been present at the time of occurrence, as they belonged to two different villages. It is true that these two witnesses belonged to two different villages. But they are the sisters of the deceased. According to the prosecution case, P.W.1 received phone message from the deceased that there was quarrel going on between her and her husband. It is her further evidence that on the previous occasions also, similar quarrel happened. On those occasions, she along with her relatives came to the house of the deceased and pacified the accused and the deceased. In the usual course, according to her, this time also, as soon she received the said message, she informed P.W.2 and both had gone to the house of the deceased. Thus, the reasons for the presence of P.Ws.1 and 2 at the place of occurrence at the crucial moment has been duly explained away by these two witnesses. Though they are closely related to the deceased, on that score, we find no reason to reject their evidence. A close reading of their evidence would go to show that they have deposed in a very cogent and convincing manner and there is no reason to doubt them at all. According to P.Ws.1 and 2, when they knocked at the door of the deceased, the accused came out of the house and when they entered into the house, the dead body of the deceased alone was found and there was nobody else. This would clinchingly go to prove that inside the house, only there were two persons of whom, one was dead and the other one was carrying the weapon, namely, the aruval. They have further stated that the aruval contained bloodstains.

He shouted at them that he had killed the wife by cutting her with aruval and also burnt the body. This statement of the accused to P.Ws.1 and 2 is extra judicial confession, falling within the ambit of Section 24 of the Indian Evidence Act and this also false under Section 6 of the Indian Evidence Act. This is yet another circumstance. After so shouting at P.Ws.1 and 2, the accused fled away from the scene of occurrence. In our considered view, the very conduct of the accused in fleeing away from the scene of occurrence, when his wife was found dead with injuries, would go a long way to prove the guilty mind of the accused.

13. Thereafter, according to P.W.4, the accused was arrested at 5.30 p.m., in the evening. On such arrest, according to him, he gave a voluntary confession, in which, he disclosed the place, where he had hidden the aruval. The learned counsel would submit that this witness cannot be believed in the light of the evidence of P.W.8. P.W.8 has stated during cross examination that when P.Ws.8 and 9 were brought back to the house from the school at about 12.30 p.m., they found the police at their house and the accused in their custody. In view of this tacit evidence of P.Ws.8 and 9, we are forced to reject the evidence of P.W.4 and the Investigating Officer that the accused was arrested only at 5.30 p.m.

14. Then, comes the link between the aruval (M.O1) and the crime. The chemical analyst has stated that there was human blood on the same. But the recovery of the said aruval (M.O1) has lost its significance, because as we have already pointed out, the accused would not have been arrested at 5.30 p.m., as he was found at the custody even as early as at 12.30 p.m. on 08.08.2013. Therefore, the arrest of the accused at 5.30 p.m. and the consequential discovery of the aruval from the hide out cannot be believed. Accordingly, we reject them.

15. The next circumstance is the evidence of P.W.22. According to him, at 9.45 p.m., on the date of occurrence, the accused was brought to him for treatment by the police. He found a lacerated injury on the left thumb. He made statement to P.W.22 that he sustained the injury by means of self infliction on 08.08.2013 at 9.20 a.m. at his house. If this statement is construed as a confession, in our considered view, the same is not admissible in evidence, because at the time, when he made the statement to the Doctor, he was very much in the police

custody and therefore, the same is not relevant, in view of the bar contained in Section 25 of the Evidence Act. If it is construed as an admission of a mere fact, which is not incriminating, then Section 25 of the Evidence Act is not a bar. But, here, in this case, the accused had told the Doctor that he sustained injury at 9.20 a.m. on the same day by self infliction, which may even be true. But since this statement is only an admission of fact and the said admitted fact has got nothing to do with the alleged crime, the same, in our considered view, is irrelevant.

16. Last comes the evidence of P.W.18, the Doctor, who conducted autopsy. He found a number of injuries on the body and he has opined that the death was due to that injuries and thereafter the body was burnt. From the evidence of P.W.18, the prosecution has clearly established that the death was homicidal.

17. The above proved circumstances, in our considered view, would form a complete chain, which unerringly and undoubtedly point to the guilt of the accused alone. More particularly, the very fact that the accused fled away from the scene of occurrence, when the dead body of the deceased was found inside the house, would prove his guilty mind. All these proved circumstances would, in our considered view, clinchingly prove that it was only this accused and accused alone, who has caused the death of the deceased. The act of the accused squarely falls within the first limb of Section 300 IPC and therefore, he is liable to be punished under Section 302 IPC. It is also in evidence of P.W.18 that few bones were found crushed after the death. The accused burnt the body. It was done only to cause disappearance of the injury. This clearly establishes the offence under Section 201 IPC.

18. The learned counsel for the appellant would submit that the deceased would have been done to death by somebody else. But for this hypothesis, absolutely, there is no material even to make an inference. Therefore, this argument, is rejected.

19. In view of the foregoing discussions, we held that the prosecution has proved the guilt of the accused beyond reasonable doubts and so the conviction and sentence imposed by the trial Court is liable to be confirmed.

20. In the result, the criminal appeal is dismissed, the conviction and sentence imposed on the appellant by the trial Court is hereby confirmed. Consequently connected Miscellaneous Petition is closed. To 1.The Principal Sessions Judge, Tirunelveli 2.The Inspector of Police Taluk Police Station Tirunelveli District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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