

S.Soman Vs. State Through

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Court : Chennai

Decided On : Aug-21-2015

Judge : S.Nagamuthu

Appellant : S.Soman

Respondent : State Through

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

21. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRL A(MD).No.397 of 2013 S.Soman : Appellant Vs. State through The Inspector of Police, Koodalpudur Police Station, Madurai District. (In Crime No.87 of 2008) : Respondent PRAYER Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 15.06.2010 made in S.C.No.280 of 2009, on the file of learned Principal Sessions Judge, Madurai. !For Appellant : Mr.M.Daniel Manoharan ^For Respondent : Mr.C.Ramesh, Additional Public Prosecutor :

JUDGMENT

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JUDGMENT

of the Court was delivered by S.NAGAMUTHU, J]. The appellant is the sole accused in S.C.No.280 of 2009 on the file of learned Principal Sessions Judge,

Madurai. He stood charged for the offence punishable under Section 302 of the Indian Penal Code. By Judgment dated 15.06.2010, the Trial Court has convicted the appellant under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for 3 months. Challenging the same, the appellant is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:- 2.1. The deceased, in this case, was one Selvi. The accused is her husband. The deceased and the accused have two daughters and a son. P.W.1 is the daughter-in-law of the accused. Her husband Mr.Mathavan, during the relevant period, was in Singapore. Previously, the accused was also in Singapore, but, once for all, he had returned to India. After the accused had gone to Singapore, he had become a addict to liquors and also had developed intimacy with many women. After the accused had returned to India, he continued the same. The deceased, namely, the wife of the accused questioned the same. Because of the same, there arose ill-feeling between the accused and the deceased. As a result, there were frequent quarrels between them. It is stated to be the motive for this occurrence. 2.2. One month prior to 05.04.2008, the grandson of the accused Meenakshi Sundaram was hospitalized for some disease. The daughter of the accused, by name Palvannam and the deceased were in the hospital taking care of Mr.Meenakshi Sundaram. P.W.1 used to cook food at her home and to take the same to the deceased and her sister-in-law Palvannam and Meenakshi Sundaram. 2.3. On 05.04.2008, by about 10.00 a.m., as usual, P.W.1 was proceeding to the hospital from her house with food. The accused, at that time, came to her house and enquired as to how the health condition of Meenakshi Sundaram was. She said that he was alright. At that time, the deceased had come to her house. She told that she was proceeding to the hospital and accordingly, she went away. At 12 noon, while she was returning from the hospital, when she was nearing her house, she heard the cry of the deceased from her house. When she went to the house, she found the accused cutting the deceased indiscriminately. In the struggle between the accused and the deceased, when the accused pulled the aruval, which the deceased was trying to ward off, by holding the same, three fingers were cut and severed. On seeing this occurrence, P.W.1 raised alarm. Immediately, the accused fled away from the

scene of occurrence. The deceased died instantaneously. 2.4. On hearing the alarm raised by P.W.1, P.W.2, one of the neighbours, rushed to the house of the deceased. But, even before she could go, the accused had already left. P.W.1 was sitting and crying. When she enquired, P.W.1 told her that the accused had killed the deceased. P.W.3 is yet another neighbour. He has also stated that by 12 noon, on hearing the alarm raised, when he went to the house, he found the deceased in a pool of blood. He also noticed the accused running away from the place of occurrence. P.W.1 told P.W.3 that the accused was running. This was noticed by P.W.3. P.W.4 is also a neighbour and he also rushed to the place of occurrence, immediately, on hearing the alarm raised by P.W.1. P.W.1 cried that the accused had killed the deceased. He also noticed that the deceased was dead. 2.5. Thereafter, P.W.1 went to the police station and made a complaint. P.W.13 the then Sub-Inspector of Police of Koodalpudur Police Station, registered a case in Crime No.87 of 2008 under Section 302 IPC at 01.30 p.m., on the basis of the complaint preferred by P.W.1. Ex.P.1 is the complaint and Ex.P.14 is the First Information Report. She forwarded Ex.P.1 and Ex.P.14 through P.W.10 to the Court of the learned Judicial Magistrate. P.W.10 has stated that he handed over the First Information Report at 04.00 p.m., to the learned Magistrate Court No.IV. P.W.13, then, handed over the case diary to the Inspector of Police for investigation. 2.6. P.W.14 took up the case for investigation, proceeded to the place of occurrence and prepared an observation mahazar in the presence of P.W.7 and another witness. He also prepared a rough sketch showing the place of occurrence. Then, he recovered the bloodstained material objects viz., M.Os.2,3 and 6 to 9 from the place of occurrence. Then, he conducted inquest on the body of the deceased and forwarded the dead body for post-mortem. 2.7. P.W.12 conducted autopsy on the body of the deceased. He noticed the following injuries:

1. An oblique cut injury 17 x 5 cms x bone deep noted on the front of middle of right side of neck. On dissection, the wound found cutting the underlying muscles, vessels, nerves, wind pipe, food pipe and body of C4 cervical vertebra partially.
2. An oblique cut injury measuring 17 x 2 cms x brain deep noted on the top of vault of skull. On dissection, the wound found cutting the underlying right fronto, parietal bone measuring 16 x 0.5 cms x through & through, underlying dura and fronto parietal lobe of brain measuring 15 x 0.5 x 1 cm.

3. An oblique cut injury measuring 6 x 1 cms x brain deep noted on the right temporal region. On dissection, the wound found cutting the underlying skull bone measuring 6 x 0.5 cms x through & through underlying dura and brain 5 x 1 x 1 cms.

4. An oblique cut injury measuring 6 x 1 cm x muscle deep noted on the right chest, 1 cm above the nipple.

5. An oblique cut injury measuring 6 x 2 cm x muscle deep noted on the outer aspect of lower third of right upper arm.

6. An oblique cut injury measuring 11 x 2 cm x bone deep noted on the right palm separating the portion of palm with thumb, index finger and middle finger."

2.8. Ex.P.13 is the post-mortem certificate. According to him, all the injuries on the body of the deceased, would have been caused by a weapon, like aruval (M.O.1). He has further opined that the deceased would appear to have died of shock and haemorrhage due to the cut injuries. 2.9. During the course of investigation, on 07.04.2008, at 04.00 p.m., P.W.14 arrested the accused near Karuppasamy Temple in the presence of P.W.8 and another witness. On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden the weapon and a shirt and lungi. In the pursuance of the same, at 06.00 p.m., from the said place, he produced M.O.1 Aruval, M.Os.4 and 5 viz., the bloodstained lungi and bloodstained full hand shirt. On returning to the police station, he forwarded the accused to the Court for judicial remand and handed over the material objects to the Court. He gave a requisition to the Court to forward the material objects for chemical examination. The report revealed that there was human blood on all the items, except, the aruval, which was recovered at the instance of the accused. But, the lungi and shirt recovered from the accused contained human blood of 'A' group, which had tallied with the blood group of the deceased. On completing the investigation, he laid charge sheet against the accused. Based on the above materials, the Trial Court framed charge under Section 302 IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined and 17 documents and 13 material objects were marked. 2.10. Out of the said witnesses,

P.Ws.1,2,3 and 4 have stated about the fact that P.W.1 is an eye witness, who has stated vividly about the entire occurrence. P.Ws.2 to 4 were the neighbours. They have stated that when they reached the house, on hearing the alarm raised by P.W.1, they found that P.W.1 was sitting and crying and she also told that the accused had cut the deceased. P.W.3 has stated that he saw the accused from fleeing away from the scene of occurrence. P.W.5 is the daughter of the deceased, who has stated that in the hospital, the accused came and scolded the deceased. P.W.6 is the brother-in-law of the accused, who has also spoken about the motive. P.W.7 has spoken about the observation mahazar prepared. P.W.8 has spoken about the arrest of the accused and the consequential recovery of the aruval, shirt and lungi. P.W.9 is the doctor, who examined the deceased, when she was brought to the Government Rajaji Hospital, Madurai at 08.10 p.m., on the day of the occurrence. He has further stated that he declared her dead. P.W.10 has spoken about the fact that he handed over the First Information Report to the learned Magistrate at 04.00 p.m. P.W.11 is the Head Clerk of the Magistrate, who has stated that he forwarded the material objects for chemical examination. P.W.12 has spoken about the autopsy conducted and the cause of death. P.W.13 has spoken about the registration of the case and P.W.14 has spoken about the entire investigation done by him. 2.11. 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. However, he did not choose to examine any witness. On his side, Ex.D.1 was marked. 2.12. Having considered all the above materials, the Trial Court convicted the appellant, 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 counsel for the appellant, the learned Additional Public Prosecutor for the respondent and also perused the records carefully.

4. The learned counsel for the appellant would submit that P.W.1 would not have been present at the time of occurrence and therefore, her evidence cannot be believed. He would further submit that P.Ws.2 to 4 have not seen the occurrence and therefore, their evidences are of no use for the prosecution. Insofar as the

arrest and recovery of the material objects from the accused is concerned, the learned counsel for the appellant would submit that it cannot be believed, because they are all contradictory in nature. He would further submit that the medical evidence does not corroborate the eye-witness account. He would also state that there is delay in preferring the First Information Report which creates doubt in the case of prosecution. For all these reasons, according to the learned counsel, the accused is entitled for acquittal. In the alternative, the learned counsel would submit that assuming that the accused caused the death of the deceased, even then, the offence would fall within the ambit of Section 304(i) IPC, as the accused had cut the deceased sequent to the quarrel.

5. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, P.W.1 was seen by P.Ws.2 to 4. P.W.3 had seen the accused running away from the scene of occurrence. He would further submit that the medical evidence fully corroborates the eye-witness account. Insofar as the launching of the First Information Report is concerned, the learned Additional Public Prosecutor would submit that the occurrence took place around 12 noon and the complaint was lodged at about 01.30 p.m., and the First Information Report has reached the Court by 04.00 p.m., and thus, absolutely, there is no delay. The arrest of the accused and the consequential recovery of M.O.1 cannot be doubted, the learned Additional Public Prosecutor contended. Thus, according to him, the prosecution has proved the case beyond any reasonable doubt. Therefore, the conviction and sentence imposed on the accused are liable to be confirmed.

6. We have considered the above submissions.

7. P.W.1 is, after all, the daughter-in-law of the deceased and the accused. There is no reason for her to depose falsely. She had no axe to grind against the accused. The very fact that she has stated that when the accused came to her house, he enquired her about the welfare of the grandson, who was undergoing treatment in the hospital would go to show that there was a cordial relationship between them. Therefore, P.W.1 cannot be stated to be a motivated witness. She has categorically stated that when she came to the house by about 12 noon, she

heard the cry of the deceased and when she entered into the house, she found the accused cutting her indiscriminately. When she raised alarm, the accused fled away from the scene of occurrence. P.Ws.2,3 and 4 have rushed to the place of occurrence on hearing the alarm. They are all only the neighbours of the deceased. According to them, they found P.W.1 sitting in the house and crying and at that time when they enquired, P.W.1 told that the accused had cut the deceased and fled away from the scene of occurrence. This statement of P.W.1 falls within the ambit of Section 6 of the Indian Evidence Act, 1872, which carries much weightage. P.W.3 had seen the accused fleeing away from the scene of occurrence also, when he rushed to the house of the deceased. From this evidence, the prosecution, in our considered view, has clearly established that this accused would have cut the deceased and caused all the injuries.

8. P.W.12, the doctor, who conducted autopsy, has given opinion that the death was due to shock and haemorrhage due to cut injuries. Thus, he has further opined that all the injuries found on the deceased would have been caused by a weapon, like M.O.1 Aruval. Thus, the medical evidence also duly corroborates eye-witness account of P.W.1. From this evidence, the prosecution, in our considered view, has clearly established that this accused would have caused the death of the deceased.

9. The argument of the learned counsel for the appellant that the presence of P.W.1 is not natural is simply to be rejected, because she has explained as to how at the time of occurrence she was present and she has explained that when she had just returned from the hospital, the time was about 12 noon. Thus, we do not find any reason to reject the evidence of P.W.1. Further, her presence has been spoken by P.Ws.2 to 4. P.Ws.2 to 4 are natural witnesses, as they are the neighbours. Thus, we do not find any reason to reject the evidence of P.Ws.2 to 4 at all.

10. So far as the delay in launching the First Information Report is concerned, we do not find any delay at all, since the First Information Report was launched on 05.04.2008 at about 01.30 p.m., and it had reached the Court at 04.00 p.m. Thus, we do not find any delay, so as to have any doubt in the case of the prosecution.

Therefore, this argument is also rejected.

11. Then, coming to the arrest of the accused and the consequential recovery of material objects, this has been spoken to by the Investigating Officer and P.W.8. The dress materials recovered, at his instance, contained human blood of 'A' group, which has tallied with the blood group of the deceased. This evidence further strengthens the case of the prosecution.

12. Going by the weapon used, the situs of the injuries, the motive and all other attendant circumstances, we hold that the accused had definite intention to cause the death of the deceased. This act of the accused clearly falls within the first limb of Section 300 IPC.

13. The learned counsel for the appellant would submit that the act of the accused would fall within Sub-section (i) of Section 304 IPC. But, absolutely, there is no evidence to infer that the accused was provoked by the deceased. Of course, it is in evidence that there was quarrel going on frequently between them. There is no evidence whether at the time of occurrence, there was any quarrel between them. Assuming that there was quarrel, that may not be a reason for any provocation to commit murder of the deceased. At any rate, we do not find any reason to bring the act of the accused under Section 304(i) IPC. We hold that the act of the accused undoubtedly falls within the ambit of Section 302 IPC.

14. Now, coming to the quantum of punishment, the Trial Court has imposed only the minimum punishment, which also does not warrant any interference. Thus, we do not find any merit at all in this appeal.

15. In the result, this Criminal Appeal fails and the same is, accordingly, dismissed. The conviction and sentence imposed in S.C.No.280 of 2009, on the file of learned Principal Sessions Judge, Madurai, are, hereby, confirmed. To
1.The Court of Principal Sessions Judge, Madurai. 2.The Inspector of Police, Koodalpudur Police Station, Madurai District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..