

Marimuthu Vs. State Rep. by The

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Court : Chennai

Decided On : Sep-02-2015

Judge : S.Nagamuthu

Appellant : Marimuthu

Respondent : State Rep. by The

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

02. 09.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU and THE HONOURABLE MR. JUSTICE V.S.RAVI CrI.A(MD)No.59 of 2011 Marimuthu .. Appellant/ Sole accused Vs. State rep. by the Inspector of Police, Murappanad Police Station, Tuticorin District. (Crime No.294/2008) .. Respondent/ Complainant PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the conviction and sentence, dated 07.01.2011, made in S.C.No.176 of 2009, by the learned Principal Sessions Judge, Tuticorin. For appellant : Mr.R.Anand For respondent : Mr.C.Mayilvahana Rajendran, Additional Public Prosecutor :

JUDGMENT

(Judgment of the Court was made by S.NAGAMUTHU, J.) The appellant is the sole accused in S.C.No.176 of 2009 on the file of the learned Principal Sessions Judge, Tuticorin. He stood charged for the offence under Section 302 IPC. By judgment dated 07.01.2011, the trial Court convicted him for the offence under

Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for one year. 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; (a) The deceased in this case was one Mr.Pooliah Pandian. At the time of occurrence, he was aged 63 years. The deceased had originally married one Noorzahan, hailing from Ooty. He had a daughter by name Rasitha Banu through Noorzahan. Subsequently, he married yet another woman, through whom he has got three children. PW1 is the daughter of the deceased, who was already given in marriage. PW1 has got a child and she was staying with her father, because her husband was employed in a ship. The accused is the elder son of the deceased. Already he was married and got children also. PW3 is yet another son of the deceased. (b) The family members decided to arrange marriage for PW3. A paper advertisement was given under the matrimonial column searching for a girl for PW3. Having seen the matrimonial advertisement, one Anuradha of Tirupur contacted the deceased over phone. Anuradha was also ready for marriage. Initially, she responded to the matrimonial advertisement to marry PW3. In connection with the same, Anuradha frequently spoke to the deceased over phone. In course of time, out of such frequent talks, the deceased and Anuradha developed a liking for each other. At the end, Anuradha and the deceased decided to marry. Twenty days prior to the occurrence, Anuradha came all the way to the house of the deceased. When she was there, some talk about the marriage between the deceased and Anuradha went on. This was known to PW1, PW3 and the accused. All the family members, including PW1 and the accused, tried to persuade the deceased not to make any marriage, at his old age, as he had already got number of children. Anuradha, therefore, left for her native place. (c) On 26.12.2008, at about 8.00 a.m. again Anuradha spoke to the deceased over phone. That phone talk went on for some time, during which the deceased was saying that the accused was opposing the marriage between the deceased and Anuradha. After the phone talk, the deceased went to KTC Nagar in his motorcycle. Again, he returned to his house at 5.30 p.m. At that time, in the house, PW1 and PW2 - sister of the deceased were there. Some renovation work was going on in the house. The accused was standing in front of the house and he was

actually cleaning the sand for the purpose of renovation of the house. On seeing the deceased, suddenly, the accused took a spade handle which was lying there and attacked him repeatedly on his head. PW1 tried to intervene. The accused intimidated her. Therefore, she did not intervene. After attacking the deceased, the accused fled away from the scene of occurrence. (d) PW1 and others, immediately, took the deceased in an ambulance to Tirunelveli Medical College Hospital. The doctor, who was on duty at Tirunelveli Medical College Hospital, after examining him, declared him as dead. Thereafter, at 8.00 p.m. PW1 went to Murappanadu Police Station to give a complaint under Ex.P1. PW11, the then Sub Inspector of Police, attached to Murappanadu Police Station, on receipt of Ex.P1, registered a case in Crime No.294 of 2008 under Section 302 IPC. Ex.P12 is the FIR. Then, she forwarded both the documents to the Court through PW8. PW8 handed over the FIR and the complaint to the learned Judicial Magistrate at 4.15 a.m. on 27.12.2008. PW8, thereafter, handed over the case diary to the Inspector of Police for investigation. (e) PW13 ? the Inspector of Police took up the case for investigation. He proceeded to the place of occurrence forthwith and prepared an observation mahazar and a rough sketch in the presence of PW6 and another witness. Then, he conducted inquest on the body of the deceased and prepared Ex.P16 ? inquest report. Then, he forwarded the body for postmortem. (f) PW12 - Dr.Sudalaimuthu conducted autopsy on the body of the deceased at 11.45 a.m. on 27.12.2008. He found the following injuries: ?1) 5cm x 2 cm cranial cavity deep laceration seen on the right forehead, outer 1/3rd of right eyebrow.

2) 6 cm x 1 cm scalp deep vertical laceration seen on the right temporal region 2 cm behind the right ear.

3) 3 cm x 1 cm scalp deep vertical laceration seen on the right temporal region 1 cm behind the injury No.2.

4) 6 cm x 1 cm scalp deep laceration seen on the right occipital region, 7 cm above the nape of neck.

5) 3 cm x 1 cm x scalp deep laceration seen on the back of head 1 cm behind the injury No.4. On dissection of scalp: Contusions of scalp 15 x 8 cm seen on the left parietal region, 16 x 8 cm right temporal parietal region. Depressed fracture vault

of skull 7 x 3 cm seen on the right side of frontal bone, underlying brain substance lacerated. Fracture vault of skull of 10 cm in length seen on the left parietal bone and 10 cm in length right parietal bone intersecting with each other. Diffuse subdural and subarachnoid hemorrhages seen on the left parieto-temporal occipital lobes and entire surface of both cerebellar hemispheres. Fracture base of skull 20 cm in length seen on the both middle cranial fossa. Ex.P13 is the Postmortem Certificate. He opined that the deceased would appear to have died of head injury. (g) During the course of investigation, on the same day, at 12.45 p.m. PW13 arrested the accused at Sennalpatti Murappanadu Villakku in the presence of PW7 and another witness. On such arrest, he gave a voluntary confession in which he disclosed the place where he had hidden the spade handle. In pursuance of the same, he took PW13 and the witnesses to the said place and produced MO.1 - spade handle, measuring 78 c.ms. length. PW13 recovered the same in the presence of witnesses under mahazar. Then, he forwarded the accused to the Court for judicial remand. He handed over the material objects to the Court for chemical examination. He examined the doctor and collected all the medical records. Finally, he laid charge sheet against the accused under Section 302 IPC. (h) Based on the above materials, the trial Court framed a lone charge under Section 302 IPC against the accused. The accused denied the same as false. In order to prove the same, on the side of the prosecution, as many as 13 witnesses were examined and 16 documents and 8 material objects were marked. (i) Out of the said witnesses, PWs.1 & 2 are the eyewitnesses to the occurrence. PW1 is the daughter of the deceased and PW2 is the sister of the deceased. They have vividly spoken about the occurrence. PW3 is the younger son of the deceased. He has stated only about the move of the deceased to marry Anuradha. He has not stated anything incriminating against the accused. PWs.4 & 5 have turned hostile and they have not supported the case of the prosecution in any manner. PW6 has spoken about the observation mahazar and rough sketch prepared by PW13 in his presence. He has further stated that from the place of occurrence, PW13 recovered bloodstained earth and sample earth for chemical examination. PW7 has spoken about the arrest of the accused, disclosure statement made by him and the consequential recovery of MO.1- spade handle. PW8 is a Constable, who has stated that he handed over the FIR to the

learned Magistrate at 4.15 a.m. on 27.12.2008. (j) PW9 is the constable, who took the dead body to the hospital for postmortem. PW10 is the Head Clerk of the Magistrate Court, who forwarded the material objects for chemical examination on the orders of the learned Magistrate. According to the chemical analysts, there was human blood found on the wooden log and other material objects, like bloodstained earth, trouser, shirt and banian of the deceased. PW11 has spoken about the registration of the case, PW12 - Dr.Sudalaimuthu has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. PW13 has spoken about the investigation done. (k) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same. However, he did not choose to examine any witness nor to mark any document on his side. The defence of the accused was total denial. (l) Having considered all the above materials, the trial Court convicted him under Section 302 IPC and sentenced him accordingly. That is how he is before this Court with this appeal. 3. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

4. The learned counsel appearing for the appellant would submit that there is enormous delay in despatching the FIR to the Court, which creates doubt in the case of the prosecution. The learned counsel would further submit that PWs.1 & 2 cannot be believed as they are interested witnesses. He would further submit that the occurrence would not have happened as it is projected by the prosecution. So far as the motive is concerned, the learned counsel would submit that the non examination of Anuradha is fatal to the case of the prosecution. He would further submit that the recovery of MO.1 is immaterial. The learned counsel would make an alternative argument that even assuming that the accused was the one who caused the death of the deceased, the offence would fall only under Section 304(ii) IPC.

5. The learned Additional Public Prosecutor would, however, oppose this appeal. According to him, the presence of PWs.1 & 2 cannot be disbelieved as they are natural witnesses. There is no enmity between the accused and PWs.1 and 2. Therefore, there is no reason to reject the evidences of PWs.1 & 2. The learned

Additional Government Pleader would further submit that there is no delay in preparing the FIR and in despatching the FIR. The learned Additional Public Prosecutor would next submit that the medical evidence duly corroborates the eyewitness account of PWs.1 & 2. He would further submit that the recovery of MO.1, at the instance of the accused, has strengthened the further case of the prosecution. Thus, according to the learned Additional Public Prosecutor, the prosecution has clearly proved the case against the accused beyond reasonable doubts.

6. We have considered the above submissions. PWs.1 & 2 are the daughter and sister of the deceased. The accused, PW1, PW2 and the deceased were all residing in the same house under the common roof. There was no enmity between PWs.1 & 2 and the accused. Therefore, there is no need for PWs.1 & 2 to falsely depose against the accused. This is one circumstance against the accused. Secondly, the presence of PWs.1 & 2 at the house is quite natural and thus, their presence cannot be doubted. Thirdly, PWs.1 & 2 have very vividly stated as to how the occurrence happened and as to how it ended. They have also spoken about the telephonic conversation between the deceased and Anuradha, which was a cause for the entire occurrence. A close reading of the entire evidence of PWs.1 & 2 would go to show that there is nothing on record to even have a slightest doubt about the veracity of their evidences, which is duly corroborated by the medical evidence also. 7. The FIR was registered at 8.00 p.m. and the same reached the hands of the learned Magistrate at 4.15 a.m. Considering the distance between the place of occurrence and the Police Station, and between the Police Station and the house of the learned Magistrate, we are of the view that there is no enormous delay in registering and despatching the FIR and the same does not create any doubt in the case of the prosecution. Apart from that, MO.1 was discovered, at the instance of the accused and the blood group found on MO.1 tallied with the blood group of the deceased. The same would also further strengthen the case of the prosecution. Thus, a cumulative analysis of the entire evidence available on record would go to show that it was this accused, who caused the injury on the deceased, which resulted in his death. 8. Now, the next question is as to what is the offence that the accused has committed by his act?.. The learned counsel for the appellant would submit that the act of the accused

would fall under Section 304(ii) IPC, but the learned Additional Public Prosecutor would submit that the act of the accused would squarely fall within the ambit of Section 302 IPC. In our considered view, the act of the accused would not fall under Section 302 IPC at all. The reasons are as follows. 9. First of all, there was no motive between the deceased and the accused. The sudden provocation was the telephonic talk which the deceased had with Anuradha to marry her. It is quite natural that for a son in the stage of the accused to get provocation, when the old father was going to marry a woman unmindful of the fact that the said girl was to be fixed for marriage to the brother of the accused. On seeing the accused entering the house, there was some quarrel regarding this issue. The deceased was very adamant to marry Anuradha. At that time, the accused was actually engaged in cleaning the sand for the purpose of renovation of the house. It was only in the said quarrel the accused had taken the spade handle which was lying there and attacked the deceased. From these materials, we are able to presume, as required under Section 114 of the Indian Evidence Act, that the accused would have been provoked by the deceased both by his words and by his acts and because of the said provocation, the accused had attacked the deceased with spade handle. In our considered view, the provocation was not only sudden but also grave enough to lose his self control. Thus, the act of the accused would squarely fall under the first exception to Section 300 IPC. In our considered view, the accused would not have intended to cause the death of the deceased or to cause any injury which would be sufficient in the ordinary course of nature to cause the death. At the most, we can only attribute knowledge on the part of the accused that his act would imminently cause the death of the deceased. Thus, the act of the accused would fall under the limb 4 of Section 300 IPC. Since it falls under first exception to Section 300 IPC, the act of the accused would not amount to murder but only amounts to culpable homicide not amounting to murder under the 3rd limb of Section 299 IPC and thus, he is punishable under Section 304 (ii) IPC.

10. Now, turning to the quantum of sentence, the accused is a young man and having two female children and his wife. He has got a big family to take care of. He has got no bad antecedent. After the occurrence also, he has not committed any crime. The occurrence itself was not a premeditated one. Having regard to these

mitigating circumstances as well as aggravating circumstances, in our considered view, sentencing him to undergo rigorous imprisonment for four years and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for one month, would meet the ends of justice.

11. In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/accused in S.C.No.176 of 2009 by the trial Court under Section 302 IPC is set aside and instead, he is convicted under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for one month. The bail bond, if any, executed by him shall stand terminated. The sentence of imprisonment already undergone by the appellant/accused shall be set off under Section 428 Cr.P.C.

12. The trial Court is directed to take steps to secure the accused and to commit him in prison so as to serve out the remaining period of sentence. To 1.The Principal Sessions Judge, Tuticorin. 2.The Inspector of Police, Murappanad Police Station, Tuticorin District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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