

Shanmugham Vs. Inspector of Police, Marina Police Station, Madras

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Court : Chennai

Decided On : Feb-29-1996

Reported in : 1996CriLJ3702

Judge : Rengasamy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304 and 449; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Criminal Appeal No. 436 of 1988

Appellant : Shanmugham

Respondent : inspector of Police, Marina Police Station, Madras

Advocate for Def. : R. Raghupathy, Add. Public Prosecutor

Advocate for Pet/Ap. : L. Pandiah, Adv. for ;M/s. J.K. Sampath

Judgement :

1. This appellant stands convicted by the learned XIth Additional Sessions Judge, Madras in sessions Judge No. 72 of 1988 for the offence under section 304(ii) of Indian Penal Code, to undergo rigorous imprisonment for five years for having caused the death of his wife by name Ambika. 13 witnesses were examined on the side of the prosecution, of whom P.W. 1 is the eye witness and PW 2 had partly witnessed the occurrence.

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

The appellant - accused married the deceased Ambika about 14 years prior to the occurrence. The accused was unfaithful to her as she was having illicit intimacy with one Kumaresan from three years prior to the occurrence. Though this couple is having four children and the appellant also advised his wife-deceased to mend her ways she did not yield and six months prior to the date of occurrence, she deserted the appellant and joined the said Kumaresan her paramour.

3. On 14-1-1986 at 12.00 Noon PW 2, who is residing in Door No. 4 in Nadukuppam, Triplicane, was sitting outside her house and at that time, the deceased Ambika came there for a chit chat. While they were in conversation, the appellant-accused, who is a fisherman, was returning from the sea and on seeing the deceased, sitting along with PW 2, he came towards her. The deceased also on seeing the appellant ran into the house of PW 2, The appellant chased her inside the house and PW 2 on seeing this incident called PW 1, the sister of the deceased, who is residing opposite to her house in door No.

16. When PW 1 came and learnt what had happened from PW 2, she ran inside the house and saw the appellant stabbing the deceased with a broken horlicks bottle glass at her neck. After inflicting the injury, the appellant came out and escaped with the bleeding broken glass piece, P.Ws. 1 and 2 shouted for help and PW 3 who was coming by that way helped them for lifting the victim Ambika from inside the house to the front pial. PW 4, the paramour of the deceased, also came there on hearing the news and the victim was sent in an autorickshaw along with PW 1 to hospital. In Government Hospital at Royapettah, the victim Ambika was examined by P.W. 11, who found her already dead. Ex. P. W. 13 is the Accident Register prepared by him. P.W. 1 immediately went to the Merina Police Station at 1.30 p.m. and lodged the complaint Ex. P1 with P.W. 12, the Sub-Inspector of Police, who was on duty. The Sub-Inspector of Police registered the same in Crime No. 28 of 1988 for the offence under section 302 of Indian Penal Code and prepared the First Information Report Ex. P. 14, which was forwarded to the Court and other superior officials. P.W. 13 - Inspector of Police who received the phone message relating to this occurrence, came to the police station. He proceeded to

the place of occurrence, where he prepared the observation Mahazar Ex. P. 4, in the presence of P.W. 6 and another and also prepared a rough sketch Ex. P15. He also found the blood stained articles M.Os. 11 to 24, which are the plastic container, tiffin-carrier, brick, blood stained cement floor, blood stained wall plastering and the sample floor and wall plastering etc., in addition to the broken Horlicks bottle pieces, and seized them under the Mahazar Ex. P5. He proceeded to the, hospital, where he conducted the inquest, in the presence of the panchayatdors. Ex. P16 is the inquest report. He also seized the blood stained saree, jacket and skirt M.Os. 6 to 8 under the Mahazar Ex. P. 6 in the presence of P.W.

6. He sent a requisition through P.W. 10 to the Forensic Science department, attached to the Madras Medical college for doing the post-mortem of the deceased. P.W. 5, the Professor attached to the Forensic Department in the Madras Medical college, after receiving the requisition Ex. P. 2, conducted post-mortem on 15-1-1988 at 3.30 p.m. He found as many as six external injuries, namely,

(1) A linear oblique abrasion 3 x 0.5 cms over right posterior aspect of upper third of forearms,

(2) An obliquely placed abrasion over the outer aspect of right forearm,

(3) A linear abrasion seen over outer aspect of right upper arm.

(4) An oblique abrasion over back of left forearm, (5) Two obliquely placed abrasion over a sternal area and left lateral to midline over the intercostal space close to anterior midline, and (6) An obliquely situated gaping deep incised stab wound over the left side of neck. The Doctor was of the opinion that the death was due to shock and the injury to the left jugular veins.

4. P.W. 13 on 17-1-1988 at 2.00 p.m. arrested the appellant-accused in Marina Beach near Seerani Arangam in the presence of P.W. 8 and he gave a confession voluntarily, recorded in the presence of P.W. 8, the admissible portion of which is Ex. P7. The appellant took the police party and PW 8 to a place near a public

lavatory, where M.O. 9 broken Horlicks Bottle was lying. The same was seized under Ex. P8 Mahazar in the presence of the witnesses.

5. The Inspector of Police sent a requisition Ex. P. 9 to the Chief Metropolitan Magistrate to send the blood stained articles for forensic examination. They were sent accordingly under a covering letter Ex. P. 10 and after examination Ex. P. 11 forensic Report and Ex. P. 12 serologist Report were received by the court, P.W. 13 after completing the investigation, filed the charge sheet for the offences under Section 302 and 449 of Indian Penal Code.

6. After the evidence was over, the appellant was questioned under Section 313 of Criminal Procedure Code to explain the incriminating circumstances found against him. The appellant simply denied his complicity in the crime and said that the case was foisted against him. No witness was examined on his side.

7. The learned Sessions Judge after considering evidence has acquitted the appellant for the offence under sections 449 and 302 of the Indian Penal Code, but has convicted him under section 304(ii) of Indian Penal Code.

8. The learned counsel appearing for the appellants contended that the deceased was unfaithful to the appellant even after giving birth to four children, that on the fateful day, she was found in the house of P.W. 2, which enraged the appellant to commit the murder because of her conduct and therefore, this is a case in which sympathy has to be invoked to award lenient sentence on the appellant. The learned counsel further argued that the appellant is having four children and if he is sentenced to undergo rigorous imprisonment for five years, the life of the children will be doomed and therefore a favourable consideration has to be shown on the question of sentence. The learned counsel did not argue the appeal on the merit prosecution case. On a perusal of the evidence P.W. 1 who was present throughout the occurrence, it is well established that this appellant is the perpetrator of the crime in taking the life of the deceased. P.W. 2 though is the owner of the house in which the occurrence took place she did not enter into the house, but however she has spoken the events before the occurrence and subsequent to the occurrence. She has stated that the appellant when saw the deceased sitting in front of her house, chased her inside the house and thereafter

when the came out, he was having a broken Horlicks Bottle with blood stains. This evidence of P.W. 2 fully supports the evidence of P.W. 1 the eye witness to the occurence. Further P.Ws. 3 and 4 also have spoken in their evidence that soon after their arrival to the scene of of occurrence, P.Ws. 1 and 2 has told them that the appellant-accused had stabbed his wife-Deceased. Therefore, there is abundant evidence, to accept the commission of the crime by this appellant-accused, namely stabbing his wife on account of which she died on the spot.

9. I find no extenuating circumstances to bring down the offence under Section 304(ii) of the Indian Penal Code, as there was no occasion for the appellant to get provoked at the time of the occurrence as he was fully aware that his wife-deceased had already deserted him and was living with P.W. 4 for more than six months. The conduct of the appellant reveals that he wanted to take vengeance upon his wife when he happened to see her as she had deserted him and had chased her inside the house of P.W. 2 where he stabbed her with the broken Horlicks Bottle. It is true that when he was coming to the House of P.W. 2 he had no intention of committing the crime, but the moment he saw her his vengeance which was dormant, had compelled him to chase her and take her life out for her unfaithfull conduct this is a clear case of murder. But some how the learned sessions Judge has chosen to convict the appellant under section 304(ii) of Indian Penal Code for which there is no appeal from the state. Hence there is no need to go into the nature of the offence committed by the appellant.

10. The learned Sessions Judge has imposed the sentence of rigorous imprisonment for five years only for the offence under section 304(ii) of Indian Penal Code. But as mentioned above, there is no reason to show any sympathy to this appellant for the simple reason that his wife had deserted him. Any how for the offence under section 304(ii) Indian Penal Code, I feel that the sentence of five years rigorous imprisonment cannot be said to be excessive. Even though, the appellant-accused has four children, now I am told that they are in managable age. Even if they were unable to manage themselves, it is for the appellant to address any orphanage to take custody of the children. Any how, from the evidence and the circumstances available in this case, the sentence of five years rigorous imprisonment for the nature of offence committed by the appellant cannot

at all be excessive and, therefore, no intervention is necessary to modify the sentence already imposed by the learned Sessions Judge.

11. In the result, the appeal stands dismissed confirming the conviction and sentence imposed by the learned Sessions Judge.

12. Appeal dismissed.

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