

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2009

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM  
AND  
THE HONOURABLE MR.JUSTICE V. PERIYA KARUPPIAH

CRIMINAL APPEAL No.342 of 2009

Alagappan .. Appellant/Accused

Vs.

State by  
Inspector of Police,  
Mecheri Police Station,  
Salem District  
(Crime No.378/2008)

.. Respondent/Complainant

This criminal appeal is preferred under Section 374(2) Cr.P.C against the judgment of the learned Additional District and Sessions Judge cum Fast Track Court No.2, Salem, made in S.C.No.345 of 2008 dated 21.4.2009

For Appellant : Mr.T.R.Ravi

For Respondent : Mr.Babu Muthu Meeran, APP

J U D G M E N T

(The judgment of the Court was made by M.CHOCKALINGAM, J.)

Challenge is made to the judgment of the Additional Sessions Division cum Fast Track Court-II, Salem, made in S.C.No.345/2008 whereby the sole accused/appellant stood charged, tried and found guilty under section 302 I.P.C. and awarded life imprisonment along with fine of Rs.1000/+, in default to undergo six months rigorous imprisonment.

2. The short facts necessary for the disposal of this appeal can be stated thus:

(a) The accused/appellant is the husband of the deceased. P.W.1 is their son. P.W.1 was employed in a tailoring shop. After the marriage, the relationship of the deceased and the appellant became

strained and they were living separately for 30 years. Since P.W.1 was not married, on the advise of the elderly persons in the village stating that only when they live together, P.W.1 could get married, the accused and the deceased were living together. They constructed a small house in the land belonged to the appellant and they were living there. P.W.1 was also living with them at the relevant time. The accused/appellant were going for work to eke their livelihood. For a period of two weeks, the accused/appellant did not go for work and he also made attempt to sell the land property for which the deceased raised objection and regarding the same, there was often quarrel between them. On 29.7.2008 during night hours at 2.00 a.m., while P.W.1 was sleeping in one room and the accused and the deceased were sleeping in the other room, P.W.1 heard distress cry. Immediately, P.W.1 got up and went to the accused room. He found the accused running from the room and found his mother with severe injuries and was lying in a pool of blood. Immediately, he came out of the house and raised alarm. All the neighbours gathered there. P.Ws. 2 and 3, brothers of the deceased were informed and they came over there. On 30.7.2008 at about 7.30 a.m. she was taken to the Salem Government Hospital where initial treatment was given by P.W.7 doctor. The accident register copy was marked as Ex.P5. Despite treatment, the deceased died at 9.30 a.m. An intimation was given to the respondent police. P.W.12 Head Constable went over there and recorded the statement of P.W.1 which was marked as Ex.P1. On the strength of Ex.P1, a case came to be registered in Crime No.378 of 2008 under section 302 I.P.C. The F.I.R., Ex.P11 was dispatched to court.

(b) On receipt of the copy of the F.I.R., P.W.15, Inspector of that circle took up investigation. He proceeded to the spot, made an inspection and prepared Ex.P.2 observation mahazar and also drew a rough sketch, Ex.P.12. The photographs were taken and they were marked as M.O.2 series. The Investigating Officer recovered the material objects from the place of occurrence, including the blood stained earth and sample earth along with the other material objects. He went to the mortuary and conducted inquest on the dead body of the deceased in the presence of witnesses and prepared inquest report Ex.P.13.

(c) Pending investigation, on 31.7.2008, the accused was arrested. He came forward to give confessional statement which was recorded in the presence of witnesses. Pursuant to the requisition made, P.W.7, doctor attached to the Government Hospital conducted autopsy and gave his opinion in Ex.P.9, post mortem certificate that the deceased died of shock and haemorrhage due to head injuries. The material objects were subjected to chemical analysis and Ex.P8 chemical report was obtained and was placed before the Court. On completion of the investigation, the investigating officer filed a final report.

(d) The case was committed to the Court of Sessions. Necessary charges were framed. In order to substantiate the charges, the prosecution examined 15 witnesses and also relied on 13 exhibits and 4 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under section 313 Cr.P.C as to the incriminating circumstances found in the evidence of the prosecution witnesses and he denied them as false. No defence witnesses were examined. The Court heard the arguments advanced on either side and took the view that the prosecution has proved its case beyond reasonable doubt and found the accused guilty of murder and awarded life imprisonment. Hence, this appeal at the instance of appellant.

3. Advancing the arguments on behalf of the appellant, the learned counsel would submit, in the instant case, the only eye-witness available for the prosecution was P.W.1 and he was also an interested witness. It is an admitted position that the relationship of the appellant and his wife/deceased was strained for more than three decades and they were living apart and P.W.1 was living all along with his mother. Hence, it would have developed aversion towards his father. Thus, P.W.1 was interested witness. Apart from that, P.W.1 could not have seen the occurrence at all. When P.W.1 was actually inside the same house, after the occurrence was over, he could have taken his mother to the hospital immediately, but he did not do so. On the contrary, he informed to P.Ws. 2 and 3 who were not available in the same village. He waited till they come and thereafter, they took the deceased to the hospital. This conduct of P.W.1 would show that he could not have seen the occurrence at all.

4. Added further learned counsel, according to P.Ws.2 and 3, they had taken the severely injured deceased to the hospital. If to be so, P.W.1 was not available at the scene of occurrence. In the absence of the evidence of P.W.1, the prosecution has no direct evidence to offer. No one of the circumstances is available for the prosecution to indicate the nexus of the crime with the accused. Even the confessional statement recorded by the investigating officer would show that there was no recovery made from the accused. Even the grinding stone which was actually found at the place of occurrence was not recovered. Under such circumstances, there is no incriminating circumstances found pointing to the guilt of the accused. Therefore, the prosecution has not proved its case either by direct evidence or by circumstantial evidence, but the trial Court has taken an erroneous view and found the appellant guilty. Hence, the judgment of the trial Court has got to be set aside.

5. Added further learned counsel, as the second line of argument would submit that due to strained relationship, the accused and the deceased were living separately for a period of more than 30 years and thereafter, they constructed a house and were living together. The accused did not go for job for two weeks and he tried to sell the



landed property and the deceased questioned the same and there was often quarrel between them regarding the same. Even on the date of occurrence, there was quarrel between them, pursuant to which the accused got provoked and due to sustained provocation, the accused would have acted so. Under such circumstances, if the Court comes to the conclusion that it was the accused who attacked the deceased with grinding stone and caused her death, the act of the accused would not attract the penal provision of murder but only culpable homicide not amounting to murder, in view of the sustained provocation he entertained. Under such circumstances, this fact has to be considered by this Court.

6. The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

7. It is not in controversy that Saradha mother of P.W.1 following the incident that had taken place at 2.00 a.m. on the night of 29.7.2008 was taken to the Government Hospital, Salem. Despite treatment given by P.W.7 doctor, she died at 9.30 a.m. on the same day. Following the statement recorded from P.W.1 in Ex.P1 by P.W.12, Head Constable of the respondent Police Station, a case came to be registered directly for murder against the accused. P.W.15, Investigating officer conducted inquest on the dead body of the deceased and the dead body was subjected to post mortem. P.W.7, doctor attached to the Government Hospital conducted autopsy on the dead body of Saradha and gave Ex.P9 post mortem certificate wherein he has opined that the deceased "died of shock and haemorrhage due to head injuries." The fact that the deceased Saradha died out of the above cause was never disputed by the appellant at any stage of the proceedings. Hence, no impediment was felt by the trial Court in recording so and rightly too.

8. In order to substantiate the charge levelled against the appellant/accused the prosecution examined the only eye witness P.W.1. In a given case when there is only one eye witness available and who is also an interested witness, it would fall under the following three categories. viz., (i) Wholly reliable. (ii) Wholly unreliable. (iii) Neither wholly reliable nor wholly unreliable. Insofar as P.W.1 is concerned, it remains to be stated that his evidence is cogent and trust worthy. The trial Court has rightly accepted his evidence and has rendered the judgment of conviction.

9. In the instant case, it is true P.W.1 was the only witness and he is the son of the deceased but at the same time it should not be forgotten that he is the son of the appellant/accused also. During the relevant time, the deceased and the accused were living peacefully. It is made clear that the accused did not go for job for two weeks, apart from that, he attempted to sell the landed property and the deceased raised objection for the same. Thus, the appellant

was aggrieved over the same. On the night of 29.7.2008 at 2.00 a.m., when P.W.1 was sleeping in one room and the accused and the deceased were sleeping in the next room, P.W.1 heard distress cry. Immediately, he woke up and saw the accused running from the room. When he got inside the room, he found his mother in a pool of blood with grievous injuries. Immediately, he informed the same to P.Ws.2 and 3, the brothers of the deceased. P.Ws. 2 and 3 took the deceased to the Salem Government Hospital where P.W.7 doctor gave treatment. The accident register Ex.P5 was also marked. Following the same, she died at 9.30 a.m. on the same day. The evidence of P.W.1, despite cross examination remains unshaky. Under such circumstances, the ocular testimony projected by the prosecution through P.W.1 fully corroborates with the medical evidence. The prosecution examined P.W.7, doctor who conducted autopsy wherein he has given opinion in ex.P.9 post mortem certificate that the deceased "died of shock and haemorrhage due to head injuries." Apart from this, the contention put forth by the learned counsel for the appellant that P.W.1 could not have seen the occurrence at all has got to be brushed aside. The evidence of P.W.1 is cogent and convincing. Hence, his evidence was rightly accepted by the trial Court. Under such circumstances, the Court is of the opinion that the prosecution has proved its case beyond reasonable doubt.

10. Insofar as the second line of argument that the accused was provoked by the objection raised by the deceased is concerned, the Court is able to see force in the said contention. It is an admitted position that the accused and the deceased lived separately for more than three decades and only on the advise of elders, they joined together and were living peacefully in the house where the occurrence had taken place. The accused was not going for job for the past two weeks and he also attempted to sell the landed property which was objected to, by the deceased/wife. The learned counsel for the appellant took the Court to the inquest report where it is categorically stated that just preceding the occurrence, there was a quarrel and exchange of words between the husband and wife and he has acted so. There is nothing to indicate that he had any intention to kill his wife. Thus, the act done by the accused cannot be said to be either intentional or premeditated. But at the same time, he has got the knowledge that by attacking her with grinding stone on her head, the death would likely to be ensued. Under these circumstances, the act of the accused would not attract the penal provision of murder, but it would be one culpable homicide not amounting to murder. Therefore, the court is of the opinion that the act of the accused would attract the penal provision of section 304 (I) I.P.C and awarding punishment of 7 years R.I. would meet the ends of justice.

11. Accordingly, the conviction and sentence imposed on the appellant under section 302 I.P.C are modified and instead, the appellant is convicted under section 304(I) I.P.C and sentenced to

undergo 7 years R.I. The period of sentence already undergone by the appellant is ordered to be given set off. The fine amount imposed under Section 302 I.P.C. shall be treated as the fine amount imposed under Section 304(I) I.P.C.

12. With the above modification in conviction and sentence, this criminal appeal is dismissed.

vsi

Sd/-  
Asst.Registrar

/True Copy/

Sub.Asst.Registrar

To

1. The Additional District and Sessions Judge cum Fast Track Court No.2, Salem.
2. -do- Through The Principal Sessions Judge, Salem.
3. The Inspector of Police, Mecheri Police Station, Salem District
4. The District Collector Salem.
5. The Director General of Police Mylapore, Chennai-4
6. The Superintendent Central Prison, Coimbatore.
7. The Public Prosecutor, High Court, Chennai.

+ 1 cc to Mr.M. Udhayakumar, Advocate SR.57738

+ 1 cc to Mr. T.R. Ravi, Advocate SR.57801

CRL. APPEAL No.342 of 2009

AKR(CO)  
EU 20.11.2009.