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NADIMUTHU AND ORS.

v.

THE STATE REP. BY INSPECTOR OF POLICE

B

FEBRUARY 26, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

C

*Penal Code, 1860—s. 302 read with s. 34 and 114—Prosecution for murder—Eye-witness to the incident—Different version of incident by the eye-witness before Village Administrative Officer, police and also Judicial Magistrate—Later version of eyewitness corroborated by medical evidence and evidence of other witnesses—Conviction by courts below—On appeal, held: Conviction justified in view of the facts of the case.*

D

Accused Nos. 1 to 4 were prosecuted for accused having caused death of one person. The deceased was brother of accused Nos. 1 to 3 and son of accused Nos 4. The accused first tied the deceased with a rope, beat him on his forehead, strangled him with a rope and then poured poison in his mouth. As a result the deceased died. PW-1 (wife of the deceased) was the witness to the incident. On hearing the cry of the deceased, PWs. 4 and 6 reached there and had asked the accused as to why they were beating him, they were told not to interfere as the matter was their family affair. Accused threatened PW-1 not to reveal the truth. Hence she narrated a false story to Village Administrator, as tutored by the accused. When her father came to he, she narrated him and also to the police, the true version. She also gave a statement before the Judicial Magistrate. Trial Court found the accused guilty under section 302 read with ss. 34 and 114 IPC. Conviction was confirmed by High Court. Appeal of accused No. 4 before High Court was abated due to his death.

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Dismissing the appeal, the Court

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**HELD:** 1. The accused have committed a heinous crime and there is no reason to interfere with the judgment of the High Court. There is no reason to disbelieve P.W. 1 and PW. 4 PW1 was the wife of the deceased and her evidence inspires confidence. [Paras 6 and 8] [185-E; 186-C]

H

2. P.W 1 has stated in her evidence that the statement before the Village Administrative Officer was made at that time because she was terrified at the time and was told by the accused that they would kill her if she told the truth. At that time she had no support from anyone, and it was only after arrival of her father that she got the courage to speak the truth. Hence, her statement made to the Village Administrative Officer was under duress and threat, and her evidence given before the Trial Court is credible and is supported by the medical evidence as well as the evidence of PW. 4 and other witnesses.

[Para 7] [185-H; 186-A-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 680 of 2006.

From the Judgment and Final Order dated 3.3.2005 of the High Court of Judicature at Madrasin Criminal A. No. 86/1997.

P.R. Kovilan Poongkuntran, V. Vasudevan and T. Harish Kumar for the Appellants.

Sundaravaradan, V.G. Pragasam, S. Vallinayagam and S. Prabhu Ramasbramanian for the Respondents.

The Judgment of the Court was delivered by

**MARKANDEY KATJU, J.** 1. This appeal has been filed against the impugned judgment of the Madras High Court dated 3.3.2005 in Criminal Appeal No. 86 of 1997. Heard learned counsel for the parties and persued the record.

2. The procecuton case is that P.W.1 is the wife of the deceased. The deceased is the elder brother of accused nos.1 to 3. Accused no. 4 is the father of the deceased and accused nos.1 to 3. PW .1 is the daughter-in-law of accused no.4. The deceased and the procecuton witnesses are the residents of Sodiankadu village. PW.1 married the deceased about 9 years prior of the date of occurance. PW.1 and the appeallants herein lived as a joint family. It is alleged that the deceased was leading a wayward life. PW.1 was having a five and half years old daughter and a son, who was two years old at the time of occurance. PW.1's father was looking after his daughter and children. On 14.7.1994 at about 9.30 p.m. the deceased came in a bicycle to his house. PW.1 offered him food, but he refused to eat. He enquired from PW.1 as to where

A his father was. At that time, accused no. 4, the father of the deceased was in the house. The deceased demanded a sum of Rs. 500/- from him, but he refused to give him the money since he was allegedly leading a wayward life. The deceased threatened accused no.4. At that time, accused nos.1 to 3 were sitting in the tractor shed. The mother of the deceased was in the kitchen.

B Accused no.4 decided to finish off the deceased since he had threatened him. Suddenly accused no.1 chased the deceased and caught hold of him and accused no.4 instructed accused no. 3 to bring a rope. There was a streetlight burning at that time. Accused nos.1 to 3 tied the deceased with the rope. On seeing that, PW.1 shouted and the deceased also asked to leave him. After tying the deceased, they brought him to a tractor shed. Immediately, accused

C no. 1 took a wooden reeper and beat the deceased on his forehead. Blood oozed out from his forehead. PW.1 cried and the deceased also shouted asking them to leave him. At that time, PW .4 came there and asked them as to why they are beating the deceased. The accused told him that it being their family affair, he should not interfere. Immediately PW.4 left the place. Thereafter,

D accused no.1 attacked the deceased again with the wooden reeper on his right wrist. PW.6 and one Gangammal intervened and asked them as to why they were attacking the deceased. They were also warned by the accused not to interfere, since it was their family affairs. Thereafter they also left th place. Even after the attack, since the deceased did not breathe his last, accused

E no.3 brought a rope and accused nos. 1 and 2 tied it on the neck of the deceased and strangled him. Further, accused no.3 brought pesticide at the instance of accused no.4. Accused no. 1 held the head of the deceased and accused no.2 poured the pesticide into the mouth of the deceased. PW.1 who was standing outside shouted. Immediately, the mother-in-law sprinkled some water on her face. The deceased was found dead. On receipt of the information, the villegers came to the scene of occurence. The accused threatened PW.

F 1 that she will also meet the same fate as the deceased if she told the truth. Hence before the village Administrative Officer, PW.1 stated everything by the accused, which was reduced into writing and the same was marked as Ex.P.1. The same was forwarded along with the report, Ex.P.6. to Thiruthraipoondi Police Station through a meinal servant. Thereafter the father

G of PW.1 reached there and asked her as to what transpired. She narrated to him what really happened as also to the police. After fifteen days, she also gave a statement before the judicial Magistrate, Thiruvarur, which was marked as Ex.P.2.

H 3. In the post-mortem report the injuries as mentioned in the body of

the deceased are as follows:-

“1. 4 cms x 1 cm bone exposed lacerated injury present just above the right inastoid region.

2. 2 cms x ½ cm x skin depth lacerated injury over the left eyebrow region.

3. Two ligature markings lower one just 2 cms above the sternoclavicular junction. Another one about 4 cms above the sternoclavicular junction.

4. 1 cm x 1/2 cm x skin depth lacerated injury over the right elbow region.”

4. The trial Court vide its judgment dated 13.12.1996 found the accused guilty under section 302 read with Sections 34 and 114 I.P.C. and sentenced them to life imprisonment and other terms of imprisonment mentioned of the said judgment.

5. Against that judgment an appeal was filed before the High Court which was dismissed. however, it was observed in the judgment that since accused no.4 had died his appeal had abated.

6. Having heard learned counsel for the appellants we see no reason to interfere with the impugned judgment of the High Court. We see no reason to disbelieve PW.1 and PW.4. PW.1 was the wife of the deceased and her evidence inspires confidence. She was stated that accused no.4 instructed accused no.3 to bring a rope and then accused nos. 1, 2 and 3 tied the deceased with the rope and brought him to a tractor shed and accused no.1 took a wooden reeper and beat the deceased on his forehead. When the deceased cried PW.4 came there and questioned the accused as to why they were beating the deceased but he was told not to meddle in the family affairs and hence he left. Thereafter, accused no. 1 again attacked the deceased with a wooden reeper. Accused no. 3 brought a rope and accused nos. 1 and 2 tied it on the neck of the deceased and strangled him. Further accused no.3 brought pesticide at the instance of Accused no.4 Accused no.1 held the head of the deceased and accused no.2 poured the pesticide into the mouth of the deceased. We see no reason to disbelieve the evidence of PW.1.

7. Learned counsel for the appellants submitted that PW.1 had earlier given a different version to the Village Administrative Officer stating that her husband had fallen down from a bicycle. However, PW.1 has stated in her

A evidence that the statement before the village Administrative Officer was made at that time because she was terrified at that time and was told by the accused that they would kill her if she told the truth. At that time she had no support from anyone, and it was only after arrival of her father that she got the courage to speak the truth. Hence we are of the opinion that her statement made to the Village Administrative Officer was under duress and threat, and her evidence given before the Trial Court is credible and is supported by the medical evidence as well as the evidence of PW.4 and other witnesses.

C 8. The accused have committed a heinous crime and we see no reason to interfere with the judgment of the High Court. The appeal is accordingly dismissed.

K.K.T.

Appeal dismissed.