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Crl.A.No.66 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.08.2023

DELIVERED ON : 23.08.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.66 of 2022

Murugesan

...Appellant

vs.

State rep by
The Inspector of Police,
Thirupattur Taluk Police Station
Thirupattur
Vellore District
(Cr. No.46 of 2014)

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, against the judgment dated 11.04.2018 made in S.C.No.165 of 2015 on the file of the Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Vellore District.

For Appellant : Mr. V. Rajamohan

For Respondent : Mr.S. Sugendran
Additional Public Prosecutor.



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J U D G M E N T

The appellant Murugesan, aged 71 years, was convicted for an offence under Section 304(i) IPC, by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore District, vide judgment and order dated 11.04.2018 in S.C. No.165/2015 and was sentenced to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month. Challenging the same, the present appeal is filed.

2. The case of the prosecution flows as follows:

2.1. The accused Murugesan and the deceased victim Muniyammal were husband and wife. They had 2 sons and one daughter. Muniyammal was the second wife of the accused after the demise of his first wife Sakunthala. The accused was an alcoholic and was not in good terms with the victim wife though both were living together under the same roof.

2.2. Dharmaraj (P.W.1), who is the younger son of the accused and the deceased victim, was living with them while both the elder son



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Muniraj (P.W.3) and the only daughter Jayanthi (P.W.2) were already married and living separately.

2.3. According to P.W.1, he was the eye witness to the fatal assault by his father Murugesan (accused) on his mother Muniyammal on 02.02.2014 at about 8.30 p.m. His deposition is that the accused Murugesan was in an inebriated state and hit his wife with an iron rod (M.O.1) (oil engine starter handle) on her head causing grievous bleeding injury. P.W.1 informed his sister Jayanthi (P.W.2), who immediately rushed to her mother's house.

2.4. P.W.1 along with his sister P.W.2 took the victim Muniyammal to the Government Hospital, Tirupattur. Dr. Subashini (P.W.12) was the doctor who attended to the bleeding victim Muniyammal, who was in an unconscious state when brought to the hospital by her son P.W.1. The Accident Register (Ex.P.16) was prepared by her (P.W.12) and she had recorded, as stated by P.W.1, that the victim was assaulted with an iron rod by the accused husband at about 8.30 p.m. on 02.02.2014 and that they used to pick up quarrel very frequently as the accused was an alcoholic. She found the following injuries on the



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body of the victim.

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1) Lacerated wound over the right side scalp 8x5x6 cm bleeding

present swelling present.

2) Lacerated wound over the left side scalp 7 x 6 x 5 cm

3) Left eye raconon eye

4) Bleeding from right ear

5) Bleeding from nostrils.

Dr. Subashini (P.W.12) referred the victim to the Government Hospital, Dharmapuri. The doctor in the Government Hospital, Dharmapuri, in turn referred the victim to the Government Hospital, Salem, where the victim was declared as brought dead on 03.02.2014.

2.5. A police complaint (Ex.P1) was lodged by Dharmaraj (P.W.1), the younger son of the deceased victim, with the Sub Inspector of Police, Tirupattur Taluk Police Station, Vellore District. Tmt. Hemavathy (P.W.13) who received the complaint (Ex.P.1) from P.W.1 and registered an FIR (Ex.P17) in Crime No.46/14 on 03.02.2014 at about 8 a.m against the accused for an offence punishable under Section 302 IPC and sent the same to the Judicial Magistrate No.II, Tirupattur, at about 11.20 a.m on the same day.



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2.6. Thiru.Santhalingam (P.W.14), the Inspector of Police holding additional charge of Tirupattur Police Station, took up the FIR (Ex.P17) in Crime No.46/14 for investigation, went to the scene of offence on 03.02.2014 at about 9 a.m., prepared an observation Mahazar (Ex.P19) and a rough sketch (Ex.P18) in the presence of the witnesses, namely, Sivakumar (P.W.5) and Venkatesan (P.W.6). Later on, P.W.14 seized the blood stained cement mortar (M.O.6), cement mortar without blood stain (M.O.7) from the scene of occurrence and also one blood stained blanket (M.O.5) under the cover of a mahazar (Ex.P20) in the presence of the same witnesses (P.W.5 and P.W.6) and also recorded their statements. Then he conducted inquest on the body of the deceased at the mortuary of the Government Hospital, Salem, in the presence of the panchayatdars at about 1 p.m. and the inquest report was marked as Ex.P.21. Later he submitted his requisition (Ex.P.13) to the Government Hospital, Salem, for conducting postmortem on the body of the deceased. Thereafter, at about 6 p.m. on the same day, he arrested the accused near Karuppanur junction on Tirupattur-Kovilur road and recorded his confessional statement (Ex.P7) in the presence of Thiru. Karthikeyan, Village Administrative Officer (P.W.7), and Thiru. Kadirvelu, his assistant (not examined). Based on the confessional statement of the



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accused, blood stained iron rod (M.O.1) used by him for assaulting his wife was recovered, which was hidden behind the bushes at Pudukottai village. The iron rod was seized under the cover of a mahazar (Ex.P8) in the presence of the same witnesses. The accused was thereafter produced before the concerned court for judicial custody.

2.7. Dr. Sangeetha (P.W.10) conducted autopsy at 12.15 p.m. on 04.02.2014 and found the following injuries on the body of the deceased.

- 1) Sutured wound over mid frontal region M6 cms long with 4 sutures on removal of sutures edges are irregular.
2. Sutured wound 8cms above occipital protuberance M-6 - cms long with 5 sutures on removal of sutures edges are irregular.

Other Findings:

1. O/D Thorax : Rib fracture on right side from 4 to 6 Nos. in the mid clavicular line with surrounding soft tissue contused. Heart – Normal in size. Chambers contains fluid blood valves and coronaries patent. Lungs – C/s. congested.



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2. O/D Neck : All neck structures are normal Hyoid Bone – intact.

3. O/D Abdomen : Stomach 100 ml of brown colour fluid with no specific smell. Mucosa –congested. Liver, spleen and both kidneys C/s congested. Bladder empty. Pelvis and spinal column – intact. Genitalia – intact.

4. O/D Head : Scalp contusion over B1 fronto temporal region M – 30x7 cms with both temporalis muscle contused. Cranial vault – Linear fracture over left temporal region M5 cms long. Dura membrane – intact. Brain – Sub dural and sub arachnoid haemorrhage seen over both cerebral hemisphere. Base of the skull – comminuted fracture of both sides of middle cranial fossa.

She sent the visceral organs of the deceased for further analysis to the Forensic Department, Vellore. Thiru.Vadivel (P.W.8), Scientific Officer of Forensic Department, Vellore, after analysis, issued Toxicology report (Ex.P9) stating that no poison was detected in any of the visceral organs. Based on the Chemical analysis report, Dr. Sangeetha (P.W.10) gave her final opinion stating that the deceased would appear to have died of the



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effects of head injury. The postmortem certificate was marked as Ex.P14

and the final opinion of the doctor was marked as Ex.P15.

2.8. Thiru.Ashok kumar, Assistant Director, Forensic Laboratory, Vellore, detected human blood on all the material objects except cement mortar piece without blood (M.O.7) and issued Biological report (Ex.P11). He then forwarded the blood stained items to Forensic Laboratory, Chennai, for serology report. Human blood group B was found in Iron rod (M.O.1) and blouse of the victim (M.O.3). The serological report was marked as Ex.P12.

2.9. P.W.14 later handed over the investigation to Thiru.Selvakumar (P.W.15), Inspector of Police, Tirupatur Taluk Police Station, who recorded the statements of Thiru. Vadivel, Scientific Officer (P.W.8), Thiru Ashok Kumar, Deputy Director, Forensic Science Lab (P.W.9), Dr. Sangeetha (P.W.10) and Dr. Subashini (P.W.12). After collecting various records and documents, he filed a final report against the accused for an offence punishable under Section 302 IPC before the Judicial Magistrate No.II, in PRC No.3/2015, who in turn committed the case to the Court of Principal Sessions Judge, Vellore, after furnishing



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copies of records to the accused under Section 207 Cr.P.C.

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2.10. The learned Principal Sessions Judge, Vellore, took the case on file in S.C. No.165/2015 and made over the same to the Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore, for conducting trial.

2.11. In order to bring home the guilt of the accused, the prosecution examined 15 Witnesses and marked 21 Exhibits and also 7 material objects. When the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313(1)(b) of Cr.PC, he denied of having committed any offence. However, he did not examine any witness on his side.

2.12. The learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore, after analysing the oral and documentary evidence or record, convicted the accused for the offence under Section 304 Part I IPC and sentenced the accused to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month.



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3. Heard Mr. V. Rajamohan, learned counsel for the appellant and Mr.S. Sugendran, learned Additional Public Prosecutor for the respondent/state.

4. Dharmaraj (P.W.1) who is the younger son of the victim, in the complaint as well as in his deposition, had stated that he witnessed his father assaulting his mother with an iron rod (M.O.1). Jayanthi (P.W.2), who is the daughter of the victim was the first one to arrive at the scene of occurrence after receiving information from P.W.1 and she along with her brother P.W.1 took the victim to the Government Hospital, Tirupathur and thereafter to the Government Hospital at Dharmapuri and then to Salem. P.W.2 corroborated the version of P.W.1 in all material particulars. Vajjiravel (P.W.4) is the brother of the victim Muniyammal. He also went to the scene of occurrence i.e., the house of Muniyammal on hearing the information. All of them supported the prosecution case.

5. Mr. V. Rajamohan, learned counsel for the appellant drew the attention of this court to the cross examination of P.W.1 and contended that P.W.1 on reaching his home on the fateful day, saw his mother lying in a pool of blood and his father sitting outside the house and hence he is



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not an eye witness to the occurrence. According to him, P.W.2 also clarified that she was informed by her brother P.W.1 that their mother was injured on the head, bleeding, fighting for her life. His another contention is that P.W.1 though admitted his signature on the complaint, (Ex.P1), had stated that he did not write the complaint in his own hand. Therefore, there is a suspicion with regard to the lodging of the complaint itself and the benefit of doubt should be given to the accused.

6. Per contra, Mr. Sugendran, learned Additional Public Prosecutor would contend that notwithstanding the contradictions found in the deposition of P.W.1, the fact remains that the accused was in the habit of physically assaulting his wife and that he was an alcoholic. He also pointed out that though the initial charge was one of Section 302 IPC, it was modified to Section 304(i) IPC as the trial court found that it was not a premeditated murder. The learned Additional Public Prosecutor also contended that the prosecution had done a good job by acting swiftly, completing the investigation on time and also seizing the weapon used in the attack.



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7. It is pertinent to point out that the key witnesses were examined in chief on 07.06.2016 and cross examined on 6.11.2016. In the instant case, the accused had also taken a plea of alibi and it was not proved by him by adducing any acceptable evidence. P.W.1 though during the course of cross examination contended that when he went home he saw his mother in a pool of blood and his father sitting outside the house, he did not state that his father was not at all present in the house. It is pertinent to point out that P.W.1 and P.W.2 are the children of the accused while P.W.4 is the brother of the victim. The evidence of P.W.1 and P.W.2 clearly shows that the victim and the accused were present in the house. This has not been properly explained by the accused when he was questioned under Section 313 Cr.P.C. It is not his case that someone entered his house and attacked his wife. Moreover, there cannot be any motive for the children to point fingers against their own father especially when P.W.1 is residing with his parents in the very same house.

8. The deposition of P.W.1 is that he signed on the complaint Ex.P1. It is not the case of the P.W.1 that he signed on a blank paper. Therefore, the contention of the learned counsel for appellant that the



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complaint itself is doubtful cannot be accepted.

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9. In the instant case, the iron rod was recovered by the police based on the confessional statement of the accused and it also contained human blood group B. Admittedly the victim's blood group is B. No explanation is offered by the accused in this regard. Thus the prosecution has proved the case beyond reasonable doubts against the accused and the trial court, in its wisdom, rightly converted Section 302 to Section 304 Part I IPC and sentenced the accused to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month.

10. After perusing the deposition of the prosecution witnesses and the narration of the sequences of offence, it is clear that the instant case is one of domestic violence. Such incidents are yet happening in many homes especially where the husbands are addicted to alcohol. As already observed, the depositions of P.W.1, P.W.2 & P.W.4 clearly show that the appellant used to consume alcohol and he was also in the habit of assaulting his wife in an inebriated condition. The prime witnesses are none other than the children of the accused. If there is no iota of truth,



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the children would not have accused their father. However, the entire act was in a fit of fury. It is very much possible that the accused would have never realised the seriousness of the injury inflicted upon his wife (victim). The injury was so serious that she bled from nose and ears even when she was taken to the Government Hospital, Thirupattur. It is unfortunate that though education has improved and literacy rate has gone up in a State like ours, the drinking habit and the consequent violent irrational behaviour also has increased disproportionately. Drinking is not only self harming but also causes such problems like in the instant case. Domestic violence is another blot on our society which needs to be eradicated by sensitising the public on the pseudo superiority of males. Gender equality is not only to be preached but also practised.

11. Be that as it may, in the instant case the accused is aged 70 years and he did not have the intention to commit murder of his wife. However, he has caused deep cut injury on the head of his wife by hitting her with an iron rod. Hence, the sentence awarded by the trial court judge is modified and the appellant is sentenced to undergo 7 years rigorous imprisonment without remission benefits and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for one month.



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12. In the result,

(i) This Criminal Appeal is partly allowed.

(ii) While the conviction passed by the trial court is confirmed the sentence is modified as follows:

The appellant/accused is sentenced to undergo Rigorous Imprisonment for seven years without remission benefits and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month.

(iii) The appellant in Crl.A. No.66 of 2022 (accused in Spl.S.C. No. 165/2015), shall surrender before the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Vellore District, within 15 days from today, failing which, the Trial Court shall take steps to secure him for undergoing the remaining period of sentence.

23.08.2023

bga
Index : yes/no
Speaking /Non speaking Order



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- To
1. The Inspector of Police,
Thirupattur Taluk Police Station
Thirupattur
Vellore District
(Cr. No.46 of 2014)
 2. The Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Vellore District.
 3. The Public Prosecutor, High Court, Madras.
 4. The Section Officer, Criminal Section, High Court, Madras



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R.HEMALATHA, J.

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Pre-Delivery Judgment in
Crl.A.No.66 of 2022

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