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Crl.A.No.392 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	26.09.2024
Pronounced on	15.11.2024

CORAM :

THE HONOURABLE Mr. JUSTICE **M.S. RAMESH**
AND
THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

Crl.A.No.392 of 2019

Arumugam

... Appellant

Vs.

State Rep. by
Inspector of Police,
E4 Abhiramapuram Police Station,
Chennai.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment of conviction and sentence passed by the learned III Additional Sessions Judge, Chennai in S.C. No. 316 of 2011 dated 09.03.2018 and acquit the appellant from all the charges.

For Appellant : Mr.C.Samivel
For Respondent : Mr.A.Gokulakrishnan,



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Additional Public Prosecutor

J U D G M E N T

C.KUMARAPPAN, J.

The instant criminal appeal has been filed by the appellant/accused against the order of conviction passed by the learned III Additional Sessions Judge, Chennai, in S.C. No. 316 of 2011, dated 09.03.2018. The accused was convicted and sentenced for the offence under Section 302 of IPC

2. The brief facts which give rise to the instant Criminal Appeal are that, the accused and PW1/Kasthuri are husband and wife. Similarly, the accused and the deceased were close friends. It appears that, some time back all of them were working in Bangalore. While so, the deceased developed intimacy with the accused's wife, PW1. After knowing such romantic relationship outside of marriage, the accused developed a grudge against the deceased as well as PW1. Therefore, PW1/Kasthuri and the deceased shifted their residence to Chennai, and they had been staying at



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3. After knowing their whereabouts, on 06.02.2011, the accused came down to Chennai and started staying with them, and requested the deceased to sever the relationship, with his wife (PW1). The deceased accepted the accused's request and pleaded for a week's time. In the meanwhile all the them, qua the accused, the deceased, and PW1 were staying together under one roof from 06.02.2011, until the date of occurrence, i.e., 10.02.2011. On the fateful day, [10.02.2011], at about 11:00 p.m., when all of them had gone to bed, the accused was watching TV with high volume. This was objected by PW1 and she reduced the volume, and kept the remote out of the accused's reach. This was objected to by the accused, and assaulted PW1 with the TV remote control.

4. Immediately, thereafter, there was a wordy quarrel between them. Enraged by such wordy quarrel, and with his unquenched grudge against PW1, the accused suddenly took the vegetable knife, which serendipitously



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was placed near him, and attempted to attack PW1. The deceased, who intervened to pacify them, sustained two stab injuries in the melee, one on his stomach, and another on his chest. When the accused realised that the deceased succumbed to the stab injuries instantaneously, he fled from the scene of occurrence.

5. Immediately thereafter, PW1 went to Abiramapuram Police Station and gave a police complaint to PW16/Jebasingh, the Sub-Inspector of Police. Upon receiving the complaint, he registered FIR at about 24:00 hours in Crime No. 129 of 2011 under Section 302 of IPC. After registering the said FIR, he forwarded the same to the concerned jurisdictional Magistrate, as well as to the Investigating Officer. [PW20/R. Thalavaisamy]. He [PW20] after receiving a copy of the First Information Report, proceeded to the scene of occurrence at the intervening night of 10/11.02.2011, at about 00:30 hours, and prepared an observation mahazar and rough sketch. He also conducted an inquest upon the body of the deceased and, thereafter, made arrangements for the post-mortem of the



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deceased. He also recorded the statements of PW1/Kasthuri, PW2/Muniyan, PW4/Deepak, PW5/Bagavathi, Rajeshwari, and Vinoth. Additionally, he made arrangements to take photographs of the scene of occurrence. Furthermore, he recorded the statements of the relatives of the deceased, as well as PW1, and recovered blood-stained belt, towel, and other dress materials of the deceased from the scene of occurrence.

6. He also recorded the statement of the doctor, who gave the accident register. On 11.02.2011 at about 7:00 o'clock he arrested the accused. After arrest, the accused voluntarily gave a confession statement in the presence of one Arasu and Devaraj. In pursuance of the said confession statement, a discovery of facts was effected by recovering the blood-stained knife, and dress material of the deceased. After, his transfer, his, successor, S. Jaikrishnan, who was examined as PW21 proceeded with investigation,. He examined the post-mortem doctor, the forensic expert, and recorded their statements, and eventually laid the charge-sheet against the accused.



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7. Before the Trial Court, the prosecution relied on as many as 21 witnesses, and marked 15 documents. Besides this, the prosecution also marked 10 material objects. However, neither any witnesses were examined, nor any documents or material objects were marked on behalf of the accused.

8. The Trial Court, after considering the oral and documentary evidences, as well as the material objects, found that the prosecution had proved the charge against the accused beyond reasonable doubt and ultimately, convicted and sentenced the accused to undergo life imprisonment and to pay a fine of Rs. 1,000/-, in default to undergo six months' rigorous imprisonment, for the offence under Section 302 IPC. Aggrieved by the said order, the appellant/accused is now before this Court.

9. Assailing the said order of conviction, the learned counsel appearing for the appellant/accused would vehemently contend that, though



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the petition under Section 311 Cr.P.C was allowed to recall PW4, the prosecution had miserably failed to produce him, and that the evidence of PW1 is highly untrustworthy. It was also contended that, there was no premeditation by the accused against the deceased. Further, the learned counsel for the appellant/accused contended that there are numerous contradictions between the eyewitnesses, and that there was delay in registering the First Information Report. It was also contended by the learned counsel for the appellant/accused that the prosecution has miserably failed to examine the wife of the deceased. According to the learned counsel for the appellant/accused, the arrest and recovery have also not been proved in a manner known to law. Hence, he prayed to interfere with the order of the learned Sessions Judge.

10. Per contra, the learned Additional Public Prosecutor would vehemently contend that the prosecution has proved the charges, by examining eyewitness/PW1, whose evidence inspires confidence. PW1 admitted the relationship between herself and the deceased, and that, she



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had also spoken about the accused's grudge against her relationship with the deceased. Therefore, it is the contention of the learned Additional Public Prosecutor that the prosecution has proved the motive, and also the occurrence through the eyewitness account. Moreover, PW1's evidence was corroborated by PW2, PW3 and PW4 who were neighbours. Thus, it is the contention of the learned Additional Public Prosecutor that the prosecution has proved the charge beyond reasonable doubt. The Trial Court also rightly appreciated the evidence and arrived at a correct conclusion, which does not require any interference by this Court. Hence, he prayed to dismiss the instant Criminal Appeal.

11. We have given our anxious consideration to the submissions made on either side.

12. The prosecution's case primarily rests upon the oral testimony of the eyewitness (PW1). According to the prosecution, PW1 and the deceased were in a live-in relationship, which the prosecution projects as a



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motive for the accused to do away the deceased. The PW1, in her evidence had chronicled the proclivity of the events: For ready reference, we deem it appropriate to extract the relevant portion of PW1's evidence, the same is as follows:-

“....10.02.2011 அன்று இரவு 11.00 மணிக்கு சாப்பிட்டுவிட்டு 3 பேரும் படுத்துக்கிடருந்தோம். என் வீட்டுக்காரர் டி.வியை அதிகமாக சவுண்டு வைத்தார் ரிமோட் எடுத்து நான் மறைத்து வைத்தேன் ரிமோட்டை கண்டுபிடித்து எடுத்து என் தலைமேல் அடித்தார். உடனே நான் கத்தினேன். காய் நறுக்குகிற கத்தியை எடுத்து வந்து என்னை குத்த வந்தார். லோகநாதன் வேண்டாம் என்று விலக்க வந்தார். உடனே லோகநாதனை, என் புருசன் ஆறுமுகம் வலது பக்க மேல் நெஞ்சிலும், கூலது பக்க வயிற்றிலும் குத்தினார்.....”

She further stated that immediately after the occurrence, PW2/Muniyan and PW4/Deepak rushed to the scene of occurrence.

13. The PW2/Muniyan deposed before the Court about the deceased's injury and the presence of the accused with the knife. He [PW2] further deposed about the presence of the body of the deceased lying in a pool of blood. The accused while cross examining this witness, there is no serious dispute about his presence. Interestingly, it was suggested to the



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PW2 that, the accused, on seeing the compromising position of PW1 and deceased, got annoyed and shouted at them, and enraged by the accused's conduct, the deceased who instigated PW1 to stab the accused, by holding him, but the stab landed on the deceased as the accused dexterously avoided the stab. Thus, the defence of the accused is an attempt to divert the allegation towards PW1. But except for their suggestion, there is no other evidence against PW1.

14. At this juncture, while looking at the evidence of PW4, he was admittedly not cross-examined. It is in this background, the learned counsel for the appellant/accused would submit that, since the prosecution did not produce the PW4 despite allowing the 311 Cr.P.C petition, his evidence has to be eschewed. However, notwithstanding the evidence of PW4, the landlord, PW5, who leased the ground floor to the deceased, independently testified about the information given by PW2 & PW4 (Muniyan and Deepak) about the occurrence and the presence of blood in the scene of occurrence. The cross examination of PW5 did not discredit the presence of



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15. Thus, in view what has been stated herein above, the presence of PW2 & PW4 at the scene of occurrence is not in serious dispute. In this background, the presence of PW4; the hearing of hue and cry; his visit to the scene of occurrence; witnessing the presence of the accused with a knife; presence of PW1; and the presence of body of the deceased in the pool of blood, though not cross examined, can be relied upon, as a corroboration to the evidence of PW1 and PW2. Therefore, if we look at the evidences of PW1, with the aid of the evidence of PW2, PW4 & PW5, the same categorically proves the charge against the accused beyond reasonable doubt. Thus, the findings rendered by the Trial Court that the accused caused the death of the deceased cannot be faulted.

16. This finding is further supported by the testimony of the Postmortem Doctor/PW14, who opined that the deceased is appeared to have died of shock and hemorrhage due to the stab injury on the right side of his chest. Though PW1 had spoken about two stab injuries, one on the



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right side chest, and another on right side abdomen, the Doctor's evidence would only indicate the injury on the right chest, which was fatal. Therefore, it is amply clear that, though the accused had knife in his hand, he did not stab the deceased indiscriminately, but had inflicted only a single stab on the right chest of the deceased.

17. While looking at the rough sketch (P11), it was a single room where, in one corner, there is a cooking counter and a TV in the other corner. Through the evidence, it is apparently clear that just before the occurrence all of them were preparing for their sleep. While looking at P11/rough sketch, the grabbing of the vegetable cutting knife would not have been intentional, since finding a knife on the kitchen counter is normal. If we look at the evidence of PW1, in the above factual scenario, the occurrence took place on the spur of the moment. The accused made a single stab on the right chest of the deceased in the melee, when the deceased intervened to safeguard PW1. Further, from the evidence of PW1, PW2 and PW5, we could not find any premeditation of the accused, against



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18. In view of what is stated herein above, and on a harmonious and forensic analysis of the evidence of PW1, as extracted herein above, the accused came to the deceased's house about 4 days back, on 06.02.2011, and all of them, namely the accused, deceased, and PW1 stayed together in the same room. Even on the fateful day, there was no quarrel between the accused and the deceased, but for a bickering between PW1 and the accused over a trivial issue of reducing the volume of the TV, when the accused assaulted PW1 with the TV remote control and in the middle of the quarrel, he had suddenly grabbed the vegetable cutting knife from the kitchen counter and stabbed the deceased in the melee.

19. On analyzing the entire incidents, it is clear that the occurrence took place in a spur of the moment. From PW1's evidence, it could be discernible that there was no premeditation to cause the death of the deceased, and the duration of the entire episode was very short. If the



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accused had really intended to harm either PW1, or the deceased, he would have armed himself and would have assaulted the deceased indiscriminately.

20. Thus, from the proved facts, the present case comes within Exception 4 of Section 300 of the IPC, as the occurrence took place without premeditation and was a result of sudden fight, which started with trivial squabbles. Further, the accused did not take any undue advantage, nor acted in a cruel or unusual manner. Therefore, the findings rendered by the Trial Court that, the accused committed an offence under Section 302 IPC is liable to be interfered with, as from the proved facts, there are no material to prove the intention of the accused to cause death of either the deceased or PW1. Accordingly, this case would fall only within the purview of Section 304(ii) of IPC.

21. In the light of the above findings, if the conviction and sentence of the accused imposed by the Trial Court is modified to one under Section



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304(ii) of IPC, by imposing a punishment of 10 years rigorous imprisonment and a fine of Rs. 1,000/-, in default to undergo six months rigorous imprisonment, the ends of justice could be secured.

22. In the result, this Criminal Appeal is partly allowed and the judgment dated 09.03.2018 passed by the III Additional Sessions Judge, Chennai in S.C.No.316 of 2011 is modified, by convicting the accused under Section 304(ii) of IPC sentencing him to a punishment of 10 years rigorous imprisonment and a fine of Rs. 1,000/-, in default to undergo six months rigorous imprisonment. The trial Court shall secure the accused and commit him to prison to undergo remaining period of sentence. The bail bond executed, if any, shall stand cancelled.

[M.S.R., J.]

**[C.K.,
J.]**

15.11.2024

Index:Yes/No

Speaking order /Non Speaking Order

Neutral Citation: Yes/No



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To

1. The III Additional Sessions Judge, Chennai.
2. The Inspector of Police,
E4 Abhiramapuram Police Station,
Chennai.
3. The Public Prosecutor,
High Court of Madras.



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M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

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judgment made in
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