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Crl.A.No.1120 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.1120 of 2022

and Crl.M.P.No.6705 of 2023

Mallesh

... Appellant/sole Accused

v.

State represented by
Inspector of Police
Thali Police Station,
Krishnagiri District.
(Crl.No.54/2012)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in S.C. No.255 of 2016 dated 01.04.2019, on the file of the learned Additional Sessions Judge, Hosur, Krishnagiri and set aside the conviction and sentence imposed in judgment dated 01.04.2019 and acquit the appellant.

For Appellant : Mr.P.Pugalenthai

For Respondent : Mr.M.Babu Muthu Meeran



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Additional Public Prosecutor



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JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 01.04.2019 in S.C.No.255 of 2016 on the file of the learned Additional District and Sessions Judge, Hosur, Krishnagiri.

2. For the sake of convenience, the accused is hereinafter referred to as 'appellant'.

3(i) It is the case of the prosecution that the deceased and the appellant were known to each other; that the deceased was a married man; that the appellant had requested the deceased to get his grand daughter, who was studying in 7th standard, married to him; that the deceased refused; and that on 13.04.2012, at about 10.00 p.m., the appellant entered the house of the deceased with an intention to cause his death and attacked him with a billhook [கொடுவாள்] indiscriminately, as a result, he sustained injuries



and succumbed to it.

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(ii) When PW1 the daughter of the deceased attempted to save her father, the appellant also attacked her with the billhook [கொடுவாள்] and that PW1 sustained injuries and was treated for the same. When PW1 was in the hospital, PW12 went to the hospital on 14.04.2012 and recorded her statement [Ex.P1] at 10.00am and registered the FIR [Ex.P8] in Cr.No.54 of 2012 for the offences under Sections 302 and 324 of the IPC at 10.30am.

(iii) One Kathirvel Special Inspector of Police, Land Grabbing Cell took up the investigation and went to the scene of the occurrence at about 12.00noon on 14.04.2012 and prepared the Observation Mahazar (Ex.P5) and Rough Sketch (Ex.P10). Then in the presence of the Panchayatars, he conducted an inquest and prepared the inquest report (Ex.P9). He thereafter sent the body for postmortem, which was conducted by PW13, who issued postmortem certificate Ex.P11. He seized the bloodstained earth (M.O.4) and the earth which was not bloodstained (M.O.5) under the seizure mahazar (Ex.P12) and thereafter, he examined the witnesses. On 17.04.2012 at about 10.00 a.m., he arrested the appellant in the presence of



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PW7-Village Administrative Officer and on the confession of the appellant, the admissible portion of which is marked as Ex.P3, the said Kathirvel seized the billhook [கொடுவாள்] from a canal near a public road. He thereafter altered the offence from Sections 302 and 324 of the IPC to Sections 302 and 307 of the IPC and sent the alteration report-Ex.P13 to the learned Magistrate. After examination of all the witnesses he filed the final report against the appellant, before the learned Judicial Magistrate, Denkanikottai, for the offences under Sections 452, 302 and 307 of IPC.

(iv) On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.255 of 2016 and was made over to the learned Additional District and Sessions Judge, Hosur, Krishnagiri for trial. The trial Court framed charges against the appellant, and when questioned, the appellant pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 14 witnesses as P.W.1 to P.W.14 and marked 14 exhibits as Exs.P1 to P14, and marked 5



Material Objects as M.O.1 to M.O.5. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant neither examined any witnesses, nor marked any documents.

(vi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellant guilty of offence under Sections 452 and 302 of the IPC. However, the trial Court held the appellant not guilty of offence under Section 307 of the IPC and acquitted him against the said offence. The appellant was sentenced as follows:

<i>Offence under Section</i>	<i>Sentence imposed</i>
302 IPC	To undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo RI for six months.
452 IPC	To undergo RI for five years and to pay a fine of Rs.500/-, in default to undergo SI for three months.
Sentences are ordered to run concurrently.	

Hence, the accused has preferred the appeal challenging the said conviction and sentence.



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4. Heard, Mr.P.Pugalenth, learned counsel appearing for the appellant, and Mr.M.Babu Muthu Meeran, learned Additional Public

Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

5 (i) Mr.P.Pugalenth, the learned counsel for the appellant submitted that the prosecution case is falsified by the evidence of the witnesses themselves; that PW1 had admitted that she was not present when the occurrence took place; that the evidence of PW5, the grand-daughter of the deceased would show that the appellant did not commit any trespass; and that the occurrence did not take place in the manner alleged by the prosecution.

(ii) The learned counsel further submitted that the prosecution witnesses had the tendency to exaggerate and the appellant was acquitted of the offence under Section 307 of IPC. The learned counsel submitted that



in any event, for the nature of injuries inflicted on the deceased in the shoulder, the appellant cannot be convicted for the offence under Section 302 of the IPC.

6. The learned Additional Public Prosecutor submitted that in the light of the medical evidence that the deceased died due to the injuries suffered by him and the evidence of the ocular witnesses, the judgment of the trial Court is in accordance with law and there is no reason to interfere with the same. Therefore, he prayed for dismissal of the appeal.

7. We have carefully considered the rival submissions and have perused all the relevant records.

8. PW1 is the daughter of the deceased, who according to the prosecution sustained injuries. However, she would say in the cross examination that she was not present in the house when the occurrence took place; PW2 is the husband of PW1, who is also an eyewitness to the occurrence; PW3, is the nephew of the deceased, who heard about the



occurrence later; PW4 is the son of the deceased and is also an hearsay witness; PW5 is the grand-daughter, who is an eyewitness to the occurrence; PW6 is known to both the appellant and the deceased, who saw the appellant with the knife, outside the house and also saw him attacking PW1; PW7 is the Village Administrative Officer, who witnessed the arrest of appellant and the recovery made from him; PW8 is the observation mahazar witness; PW9 is also a mahazar witness; PW10 is the photographer; PW11, is the corpse constable; PW12 is Sub Inspector of Police, who registered the FIR; PW13 is the postmortem doctor; and PW14 is the the Investigating Officer, who filed the final report.

9. PW13, the postmortem Doctor found the following injuries on the deceased.

- (i) Lacerated wound of size 2x1cm over the right clavicle region.
- (ii) Lacerated wound over the left eyebrow 2x5cm.
- (iii) Abrasion over the right chest extended to root of neck.

In the final opinion, the Doctor opined the cause of death as shock and haemorrhage due to injury to vital organs (lung and spleen) and asphyxia.



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10. Nothing has been elicited in the cross examination to disbelieve the opinion given by the doctor. The prosecution has thus established that the deceased sustained injuries due to homicidal violence and succumbed to the said injuries.

11. PW1, PW2 and PW5 are eyewitnesses to the occurrence. PW6 is the neighbour, who saw the appellant outside the house of the deceased with a billhook [கொடுவாள்]. The other witnesses are either hearsay witnesses or official witnesses, as stated earlier. PW1 the daughter of the deceased admitted in her cross examination that she was not in the house when the occurrence took place. Further, the charge under Section 307 IPC relating to the attack on PW1 has been disbelieved by the trial Court and the appellant has been acquitted of the said charge.

12. PW2 is the husband of PW1. He is also an eyewitness to the occurrence and speaks about the attack made by the appellant with a



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billhook [கொடுவாள்]. He had admitted in the cross examination that the deceased and the appellant were in the habit of consuming liquor together in the house. Further, in the cross examination, he would say that he went to the occurrence place only after hearing the noise and that when he went there, he saw the deceased with the billhook [கொடுவாள்]. His evidence in the cross examination is contrary to his deposition in the chief examination.

13. PW5 is also an eyewitness and the grand-daughter of the deceased. Her presence in the house is natural and her evidence is important to understand as to how the occurrence took place. In the cross examination, she had stated that the appellant was known to the deceased and; that both were in the habit of consuming liquor together at their house; that she saw her grandfather and the appellant quarrelling with each other and that suddenly the deceased picked up a knife in the house and attacked her grandfather. The relevant portion reads as follows:

“என் தாத்தாவுடன் எதிரி அதற்கு மது அருந்தும் பழக்கம் உண்டு என்றால் சரிதான். சம்பவத்தன்றும் எதிரி மது வாங்கிவந்து என் தாத்தாவும் எதிரியும் மது குடித்தார்கள் என்றால் சரிதான்.



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நான் சென்று பார்த்தபோதுதான் எதிரி என் தாத்தாவை வெட்டினார். எதிரியின் கையில் கத்தி இருந்ததால் நாங்கள் பயந்து கொண்டு அவரை தடுக்கவில்லை. எதிரி என் தாத்தாவை வெட்டியதை நான், என் அம்மா, என் தம்பி குமார், முருகன், பார்வதி ஆகியோர் பார்த்தோம். நாங்கள் பார்த்துவிட்டு வந்து சந்திரண்ணாவிடம் சொன்னோம். நான் சென்றபோது என் தாத்தாவும், எதிரியும் சண்டைபோட்டுக்கொண்டிருந்தார்கள், அப்போது எதிரி வெட்டவில்லை. அதன்பின்புதான் வெட்டினார். அப்போது நாங்கள் அங்கு இருந்தோம். எங்கள் வீட்டில் இருந்த கத்தியை எடுத்துதான் எதிரி என் தாத்தாவை வெட்டினார்”

14. Even if we were to disbelieve PW1 and PW2, we cannot discredit the evidence of PW5. PW6 is the neighbour who saw the appellant with knife outside the house of the deceased. Therefore, it is clear beyond doubt that the appellant caused the injuries on the deceased. PW5's evidence would show that the deceased and the appellant were closely acquainted with each other; that on the day of occurrence they both had liquor together; that they quarrelled with each other after consuming liquor and suddenly, the appellant took a knife in the house and attacked the deceased. The appellant therefore cannot be said to have come to the house of the deceased with an intention to cause his death. The fact that the appellant and



the deceased were close to each other and that he did not bring a weapon, rules out the intention of the appellant to cause the death of the deceased.

The nature of the injuries that we have extracted earlier also shows that there were lacerations in the right clavicle region and the eyebrow and the abrasion in the chest running up to the neck. The injuries also would suggest that the appellant did not intend to cause the injury that was sufficient in the ordinary course of nature to cause death. Under similar circumstances the Hon'ble Supreme Court in *Anbazhagan vs. State rep. by the Inspector of Police*, reported in **2023 SCC OnLine SC 857** held as follows:

“61. We once again recapitulate the facts of this case. On the fateful day of the incident, the father and son were working in their agricultural field early in the morning. They wanted to transport the crop, they had harvested and for that purpose they had called for a lorry. The lorry arrived, however, the deceased did not allow the driver of the lorry to use the disputed pathway. This led to a verbal altercation between the appellant and the deceased. After quite some time of the verbal altercation, the appellant hit a blow on the head of the deceased with the weapon of offence (weed axe) resulting in his death in the hospital.

62. Looking at the overall evidence on record, we find it difficult to come to the conclusion that when the appellant struck the deceased with the



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weapon of offence, he intended to cause such bodily injury as was sufficient in the ordinary course of nature to cause death. The weapon of offence in the present case is a common agriculture tool. If a man is hit with a weed axe on the head with sufficient force, it is bound to cause, as here, death. It is true that the injuries shown in the post mortem report are fracture of the parietal bone as well as the temporal bone. The deceased died on account of the cerebral compression i.e. internal head injuries. However, the moot question is – whether that by itself is sufficient to draw an inference that the appellant intended to cause such bodily injury as was sufficient to cause death. We are of the view that the appellant could only be attributed with the knowledge that it was likely to cause an injury which was likely to cause the death. It is in such circumstances that we are inclined to take the view that the case on hand does not fall within clause thirdly of Section 300 of the IPC.”

15. In the circumstances, therefore, we are of the view that the appellant can be only attributed with the knowledge that his act is likely to cause death which is punishable under Section 304(II) of the IPC.

16. The facts reveal that the ingredients of the Section under Section 452 of IPC is not made out since the appellant and the deceased were known to each other and his entry into the house cannot be said to be house-trespass. Accordingly, the conviction and sentence imposed upon the



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appellant for the offence Under Section 452 of the IPC, is liable to be set aside.

17. We are of the view that the interest of the justice would be served if the appellant is sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment, for the offence under Section 304(II) of the IPC.

18. Accordingly, this Criminal Appeal stands partly allowed the judgment of conviction and sentence imposed upon the appellant in S.C.No.255 of 2016 dated 01.04.2019 on the file of the learned Additional District and Sessions Judge, Hosur, Krishnagiri, is modified as follows:

(i) Conviction and sentence imposed on the appellant for the offence under Section 452 of the IPC, is set aside and the appellant is acquitted of the said charge;

(ii) Conviction of the appellant under Section 302 of IPC is modified to one that of Section 304(II) of the IPC and he is sentenced to undergo five years of rigorous imprisonment and to pay a fine of Rs.1,000/-,



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in default to undergo three months simple imprisonment;

(iii) It is directed that the period of sentence already undergone by the appellant shall be set off under Section 428 Cr.P.C.; and

(iv) Connected Criminal Miscellaneous Petition stands closed.

(M.S.R.,J.) (S.M.,J.)

06.02.2024

Index : Yes/No

Neutral citation : Yes/No

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To

1. The Additional District and Sessions Judge,
Hosur, Krishnagiri.
2. The Inspector of Police,
Thali Police Station,
Krishnagiri District.
3. The Superintendent,
Central Prison, Vellore.
4. The Public Prosecutor,
High Court, Madras



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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

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