

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2016

(Judgment reserved on 19.08.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.A.No.620 of 2013 and M.P.No.1 of 2013

Elangovan

.. Appellant/Accused

Vs.

State rep. by
the Inspector of Police,
Sendurai Police Station,
Ariyalur District.
(Crime No.187 of 2012)

.. Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C., against the judgment dated 30.07.2013 passed in S.C.No.5 of 2013 on the file of the Principal Sessions Court, Ariyalur District.

For appellant : Mr.K.Gandhi Kumar

For respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

This Criminal Appeal is filed against the judgment dated 30.07.2013 passed in S.C.No.5 of 2013 on the file of the Principal Sessions Court, Ariyalur, in and by which, the appellant/accused was convicted for the offence under Section 304 (Part 2) IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month. The appellant was acquitted of the charges under Sections 294(b), 323, 324 and 506 (Part-2) IPC. The trial Court, altered the offence of Section 302 IPC and convicted the appellant for the offence under Section 304 (Part-2) IPC, as noted above.

2. The gist of the prosecution case leading to conviction of the appellant/accused is that the appellant/accused is the grand-son of the deceased Dhanabhagiyam. P.W.1/de-facto complainant is the father of the appellant/accused. The deceased Dhanabhagiyam was residing along with her son P.W.1. The

deceased had been receiving the old-age-pension of Rs.1,000/- per month. The appellant/accused was regularly threatening the deceased (grand-mother) by demanding the pension amount. On 03.07.2012 at about 1 p.m., the appellant came to the house of P.W.1 and indulged in quarrel with his grand-mother. When she refused to budge the undue demand of the accused, the appellant/accused scolded her in filthy language and took an iron rod and attacked her over her neck and hip, thereby causing serious injuries. Besides, the appellant threatened that he would not leave her alive. On hearing the noise, P.W.1 son came there and took his mother (deceased) to Ariyalur Government Hospital, where P.W.1 was instructed to take her to Thanjavur Government Hospital, where she was admitted. Subsequently, P.W.1 lodged Ex.P-1 complaint with P.W.15 Special Sub-Inspector of Police, who received the said complaint and registered a case in Crime No.187 of 2012 for the offences under Sections 294(b), 324, 323 and 506 (Part 1) IPC. P.W.15 who registered the case, went to the place of occurrence, prepared Ex.P-7 observation mahazar and drew Ex.P-8 rough sketch and recorded the statement of the father of the appellant, i.e. P.W.1, and other witnesses. Thereafter, the accused was arrested on 05.07.2012 at about 14.30 hours. The appellant/accused produced iron pipe, with which he assaulted his grandmother-deceased. P.W.15 prepared Ex.P-2 seizure mahazar and also recovered M.O.1 iron rod. Thereafter, P.W.15 sent the accused to jurisdictional Magistrate for remanding him to judicial custody. He sent the material object in Form-95 to the Court. Despite treatment, the deceased succumbed to injuries on 26.07.2012. Since the victim died, further investigation was taken over by P.W.17 Inspector of Police and the offence under Section 302 IPC was included with the offences already registered in the FIR and he prepared Ex.P-9 alteration report, which was sent to Court. He went to Thanjavur Government Hospital at about 9 a.m. on 27.07.2012 and conducted inquest over the body of the deceased and prepared Ex.P-10 inquest report. Thereafter, the body of the deceased was sent for post-mortem and after conducting post-mortem/autopsy on the body of the deceased, the same was handed over to Head Constable, who in turn handed over it to the relatives of the deceased. P.W.17 investigating officer recorded the statement of other witnesses. After completion of all formalities and investigation, P.W.17 filed charge-sheet before the trial Court. The case was taken on file in S.C.No.5 of 2013 by the trial Court. During the course of trial, on the side of prosecution, P.Ws.1 to 17 were examined, Exs.P-1 to P-10 were marked and M.O.1 was produced. When the appellant/accused was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. He neither examined any witness nor marked any document. Upon hearing the submissions of either side and considering the oral and documentary evidence available on

record, the trial Court convicted and sentenced the appellant/accused as stated above. Challenging the said judgment of conviction and sentence, the appellant/accused has filed this appeal.

3. Learned counsel for the appellant/accused submitted that there is material contradiction between the oral evidence and the medical evidence. As per Ex.P-6 FIR, the accused assaulted the deceased on her cheek and waist, but P.Ws.2 and 3 deposed that the accused attacked his grand-mother on her back, shoulder, waist and the back portion of the head. Further, P.W.4 deposed that the accused assaulted the deceased on her backside of the head and her left hand got twisted and beaten up. Hence, learned counsel for the appellant/accused submitted that the contradiction in the evidence of P.Ws.1 to 4 shows that they might not have witnessed the occurrence.

4. Learned counsel for the appellant/accused further submitted that even P.W.13 Doctor in Ex.P-4 post-mortem certificate opined that the deceased would appear to have died due to effects and complications of multiple injury involving brain and cervical cord injury. But the evidence of P.W.1 shows that the appellant has assaulted the deceased on her neck and waist of the deceased; when that being so, there is no possibility for sustaining multiple injuries in the brain and cervical cord. Without considering these aspects, the trial Court has come to the conclusion that the deceased died only due to injuries caused by the appellant/accused. Learned counsel further submitted that in case this Court comes to the conclusion of confirming the conviction, he requested alternatively that by taking lenient view, the sentence of imprisonment may be reduced to the period already undergone by the appellant.

5. On the other hand, learned Additional Public Prosecutor appearing for the respondent submitted that the prosecution has proved its case beyond reasonable doubt by cogent, clinching and convincing evidence and hence, no interference is called for in the impugned judgment of conviction and sentence and hence, he prayed for dismissal of this appeal.

6. While keeping in mind the above submissions made on either side, I have anxiously considered the same and perused the materials available on record.

7. Though P.W.1 has stated in his evidence that the accused assaulted his grandmother with hands and thereafter, by iron road, on her neck and waist, P.Ws.2 and 3 have categorically stated that the deceased was assaulted on the back, waist,

shoulder and backside of the head. Therefore, there is every possibility for the deceased to sustain multiple injuries involving the brain and cervical cord. Though learned counsel for the appellant/accused pointed out some minor contradictions in the evidence of P.Ws.1 to 3, I am of the view that much credence cannot be attached to the said contradictions, which do not attach any importance to a great extent to drive home the case of the prosecution. Moreover, this Court is of also the view that the said minor contradictions will not vitiate the entire case of the prosecution and it can, at the most be termed only as an insignificant error, unless the contradictions or infirmities found in the evidence raise great suspicion in the mind of the Court and the same has not affected the genesis of the case of the prosecution in its entirety.

8. In fact, the evidence of P.Ws.1 to 3 is cogent and convincing to prove that the deceased died only due to the multiple injuries caused by the accused with M.O.1 iron rod. I am not able to accept any of the submissions of the learned counsel for the appellant.

9. Moreover, though the trial Court has rendered a specific finding that from the manner in which the offence had taken place and the condition in which the accused was there at the time of the commission of the offence, it is inferred that the accused has committed the offence without knowing the consequences thereof and without the knowledge that his act would cause the death of his grandmother, but, by taking into consideration the totality of the facts and circumstances of the case, the trial Court concluded that the category of homicide in this case, would not amount to murder and that the charge would not come under the purview of Section 302 IPC, thereby, the trial Court convicted the accused only for the offence under Section 304 (Part-2) IPC and awarded ten years of rigorous imprisonment.

10. However, taking into consideration the plea of the learned counsel for the appellant/accused that some leniency may be shown in awarding the sentence to the one period already undergone, this Court is of the view that the sentence could be reduced from ten years to five years rigorous imprisonment.

11. Accordingly, the appeal is partly allowed, confirming the conviction imposed on the appellant/accused by the trial Court, but reducing the quantum of sentence from ten years to

five years rigorous imprisonment. The miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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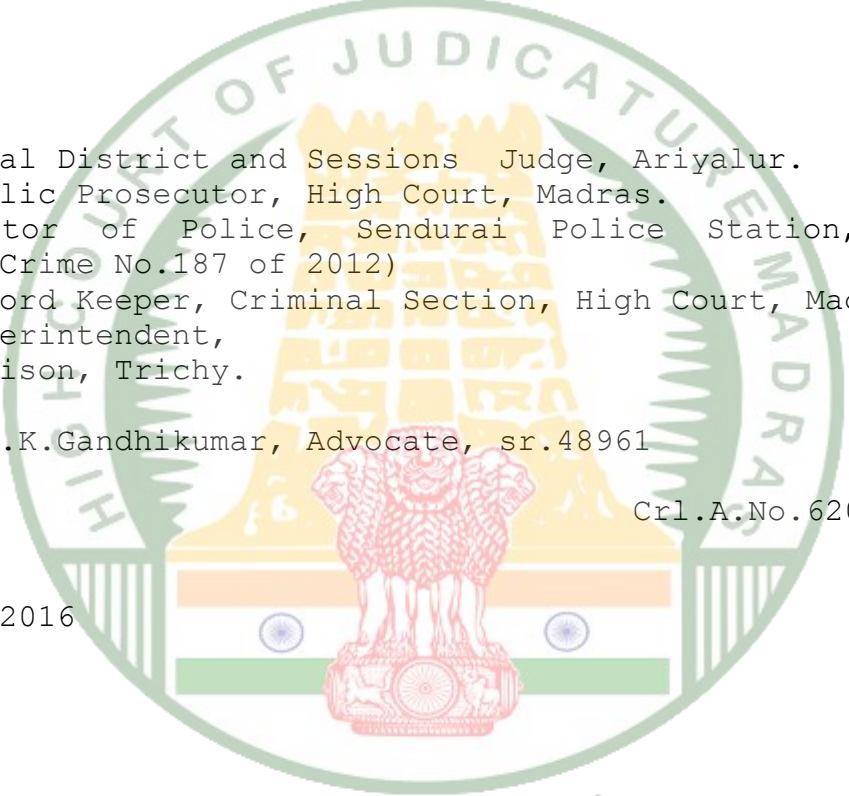
Copy to

1. Principal District and Sessions Judge, Ariyalur.
2. The Public Prosecutor, High Court, Madras.
3. Inspector of Police, Sendurai Police Station, Ariyalur District (Crime No.187 of 2012)
4. The Record Keeper, Criminal Section, High Court, Madras.
5. The Superintendent, Central Prison, Trichy.

1 cc to Mr.K.Gandhikumar, Advocate, sr.48961

Cr1.A.No.620 of 2013

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