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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**  
AND  
THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

**CRL.A[MD].No.172 of 2015**

Arumuga Asari : Appellant/Sole Accused

Vs.

State Rep by  
The Inspector of Police,  
Melapalayam Police Station,  
Tirunelveli District,  
Crime No.231 of 2006.

: Respondent/Complainant

**PRAYER:** Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 03.09.2010 made in S.C.No.290 of 2006 on the file of the learned Additional Sessions Judge cum Fast Track Court, No.II, Tirunelveli.

For Appellant : Mr.S.Duraiaraj

For Respondent : Mr.C.Ramar  
Additional Public Prosecutor

**JUDGMENT**

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[JUDGMENT of the Court was delivered by **S.NAGAMUTHU, J**]

The appellant is the sole accused in S.C.No.290 of 2006, on the file of the learned Additional Sessions Judge cum Fast Track Court, No.II, Tirunelveli. He stood charged for the offences punishable under Sections 302 and 506(ii) of the Indian Penal Code. By Judgment dated 03.09.2010, the Trial Court has convicted the appellant under both the charges and sentenced him, as detailed below:-

| Section of Law | Sentence                          | Fine amount                                                            |
|----------------|-----------------------------------|------------------------------------------------------------------------|
| 302 IPC        | To undergo imprisonment for life. | Rs.5,000/- in default to undergo rigorous imprisonment for six months. |



|             |                                                  |          |
|-------------|--------------------------------------------------|----------|
| 506(ii) IPC | To undergo rigorous imprisonment for six months. | No fine. |
|-------------|--------------------------------------------------|----------|

The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

**2. The case of the prosecution, in brief, is as follows:-**

The deceased, in this case, was one Mrs. Isakkiammal, the wife of the deceased. They were residing at 16-C, Kannivinayagar Kovil Street, Tirunelveli District. PW-1 is her son, aged about 21 years. The accused, in due course of time, developed suspicion over the fidelity of the deceased. This resulted in frequent quarrels between the accused and the deceased. It is further alleged that on 02.05.2006, on account of the above suspicion, there arose a quarrel between the accused and the deceased. It is further alleged that in the said quarrel, the accused attacked the deceased with a stick and also cut her neck with vegetable cutter [Aruvamanai]. The deceased died instantaneously. The occurrence was witnessed by PW-1. The accused immediately ran away from the scene of occurrence. PW-1, the son of the deceased, went to the Melapalayam Police Station and made a complaint, at 01.45 PM, on 02.05.2006. On receipt of the said complaint, the then Sub-Inspector of Police, Melapalayam Police Station, registered a case in Crime No.231 of 2006 against the accused. EX-P1 is the complaint and EX-P9 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

**2.1.** Taking up the case for investigation, at 02.00 PM, on 02.05.2006, PW-12 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of the witnesses. He recovered bloodstained earth and sample earth from the place of occurrence. Then, he conducted inquest on the body of the deceased. EX-P8 is the inquest report. Then, he forwarded the dead body for postmortem.

**2.2.** PW-8 Dr.K.Selvaraj conducted autopsy on the body of the deceased. He noticed the following injuries:-

- "1. Incised wound left side of front of neck, 10x4.5 cm x 3 cm depth; the margins are clean and regular. The underlying muscles, bloodvessels of the neck are clean-cut
2. Split lacerated wound right side of scalp 8x3 cm x bone deep.
3. Depressed irregular wound involving the center of forehead, nose, right eye, both cheeks and upper jaw, 12 x 8 cm x bone deep. ® eyeball gouged out of the orbit. On dissection there is irregular fracture of the nasal bone, right maxilla, and upper and lower jaw



bones. All the teeth in the upper jaw dislodged out of their sockets.

1. On dissection of scalp, skull, and dura: Sub-scalpal contusion midfrontal region 6x3 cm; mid parietal region 5x2 cm; subdural and subarachnoid hemorrhage front of both cerebral hemispheres. Diffused intracerebral hemorrhage noted both cerebral hemispheres. Fracture of both anterior and middle fossae of the base of skull on both sides".

EX-P11 is the postmortem certificate. He gave opinion that the deceased would appear to have died of shock and hemorrhage due to multiple injuries found on the body of the deceased.

**2.3.** During the course of investigation, PW-12 arrested the accused at 08.15 AM, on 04.05.2006. On such arrest, he gave a voluntary confession, in which he disclosed the place, where he had hidden the vegetable cutter. In pursuance of the same, the accused took the police and the witnesses to the hide out and produced the vegetable cutter. PW-12 recovered the same under a mahazer. On returning to the Police Station, he forwarded the accused to the Court for judicial remand and handed over the material objects to the Court. At his request, the material objects were forwarded for chemical examination. The report revealed that there was human blood on all the material objects, including the vegetable cutter. On completing the investigation, he laid charge sheet against the accused.

**2.4.** Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the prosecution, 12 witnesses were examined, 16 documents and six material objects were marked. Out of the said 12 witnesses, PW-1 has stated about the frequent quarrel between the accused and the deceased. He has also stated about the entire occurrence and the complaint made by him. PW-2 is the mother of the deceased. She has stated that she heard about the occurrence and later she came to the place of occurrence and found the deceased in a pool of blood. PW-2 is a neighbour. He has stated that he heard about the occurrence and came to the place of occurrence. PW-4 has turned hostile and he has not supported the case of the prosecution in any manner. PW-5 has not stated anything incriminating against the accused. PW-6 has spoken about the preparation of Observation Mahazer and the Rough Sketch and the consequential recovery of material objects. PW-7 has also spoken about the same facts. PW-8 has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. PW-9 has stated that he handed over the complaint and the Information Report to the learned Judicial Magistrate No.V, Tirunelveli, as directed by the Investigating Officer. PW-10 has



spoken about the fact that he took the dead body and handed over the same to the hospital for postmortem. PW-11 has spoken about the registration of the case on the complaint made by PW-1. PW-12 has spoken about the investigation conducted by him and the filing of final report.

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2.5. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he did not choose to examine any witness nor to exhibit any document. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

4. As we have already narrated, in this case, the prosecution mainly relies on the eye-witness account of PW-1, the son of the deceased. His presence, at the time of occurrence, cannot be doubted at all. He has spoken about the frequent quarrels between the accused and the deceased on account of suspicion over the fidelity of the deceased. On account of the said quarrel, the accused attacked the deceased with a stick and cut her neck with a Vegetable Cutter. He has vividly narrated about the entire occurrence. Thus, there is no reason to reject his evidence. Though he happens to be the son of the deceased, on that score, his evidence cannot be rejected, because he is the son of the accused also. He has no grudge against the accused.

5. The learned counsel for the appellant would submit that the evidence of PW-1 draws no corroboration from any other source and therefore, his evidence should be rejected. We are not persuaded by the said argument, for, it is not the law that the evidence of a solitary witness should be rejected under all circumstances. If the evidence of a solitary witness inspires the confidence of the Court, even in the absence of any corroboration from any other independent source, the evidence of the said witness can be the sole foundation for the conviction.

6. In the instant case, the presence of PW-1, as we have already narrated, cannot be doubted at all. Though he has been cross-examined at length, nothing has been elicited to doubt his credibility. There was no delay in making the complaint to the police. PW-1, at the earliest point of time, has narrated the entire occurrence in a vivid manner. From the evidence of PW-1, we are of the considered view that the prosecution has proved the

case beyond reasonable doubts that it was this accused, who alone caused the death of the deceased.

7. The recovery of Vegetable Cutter, on the confession made by the accused from his possession lends further assurance to the evidence of PW-1. Above all, the conduct of the accused in absconding until he was arrested by the police is also an important circumstance against the accused, which will also duly lend assurance to the evidence of PW-1. From this evidence, undoubtedly, the prosecution has proved the case that it was this accused, who killed the deceased.

8. Having come to the said conclusion, now the next immediate question is that as to what was the offence, that the accused had committed by the said act. The learned counsel for the appellant would submit that the act of the accused would not amount to murder. We find some force in the said argument. As we have already narrated, the accused had no motive against the deceased. The occurrence was not a premeditated one. The accused was not armed with any weapon already. It was in a sudden quarrel, the accused took out a vegetable cutter and cut the deceased and also attacked her with a stick.

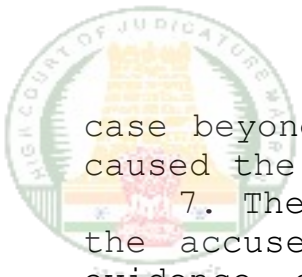
9. From the narration of the facts, it is inferable that the accused would have been provoked by the deceased by her words and deeds. Thus, on account of loss of self-control, the accused would have attacked the deceased. Thus, in our considered view, the act of the accused was out of grave and sudden provocation caused by the deceased and therefore, the act of the accused would squarely fall within the ambit of First Exception to Section 300 of the Indian Penal Code. Since it falls under the First Exception to Section 300 of the Indian Penal Code, he is liable to be punished under Section 304(i) of the Indian Penal Code, besides confirming the punishment imposed on the accused under Section 506(ii) of the Indian Penal Code.

10. Now, turning to the quantum of punishment, the accused has been in jail continuously. He is a poor man, aged about 64 years. He has got no bad antecedents. The occurrence was not a premeditated one. Having regard to the above mitigating as well as the aggravating circumstances, we are of the considered view that sentencing him to undergo rigorous imprisonment for ten years with fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks for the offence under Section 304(i) of the Indian Penal Code would meet the ends of justice. Insofar as the conviction and sentence imposed on the accused under Section 506(ii) of the Indian Penal Code is concerned, the same needs to be confirmed.

11. In the result, the Criminal Appeal is partly allowed in

the following terms:-

- The conviction and sentence imposed by the Trial Court on the



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accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304(i) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- [Rupees One Thousand only], in default to undergo rigorous imprisonment for four weeks.

- The conviction of the appellant/accused under Section 506(ii) of the Indian Penal Code is confirmed.
- It is directed that all these sentences shall run concurrently.
- It is further directed that the period of sentence already undergone by the appellant/accused shall be set off under Section 428 of the Code of Criminal Procedure.
- Fine amount, if any paid by the appellant/accused, shall be adjusted and the balance amount, if any, shall be refunded to him.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

- 1.The Principal District and Sessions Judge, Tirunelveli.
- 2.The Additional Sessions Judge  
cum Fast Track Court, No.II, Tirunelveli.
- 3.The Judicial Magistrate No.V, Tirunelveli.
- 4.The Inspector of Police,  
Melapalayam Police Station, Tirunelveli District.
- 5.The Director General of Police, Mylapore, Chennai.
- 6.The Inspector General of Prison, Chennai-9.
- 7.The Superintendent, Central Prison, Palayamkottai.
- 8.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1 cc to M/s.S.Durairaj, Advocate in SR.No.56029

NB

CSL/GSV-PM/03.11.2016: 6P/10C