



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.10.2016

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CORAM:

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

Crl.A.[MD].No.184 of 2015
and
Crl.M.P.(MD).No.7427 of 2016

E.Rajendran : Appellant/ Sole accused

Vs.

State rep. by
the Deputy Superintendent of Police,
Jeeyapuram Sub Division,
Pettavaithalai Police Station,
Trichy District.
(Crime No.129/2013)

: Respondent/Complainant

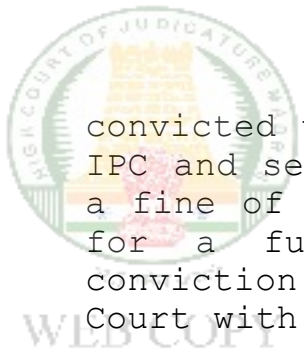
PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the judgment, dated 02.07.2014, made in Spl.S.C.No.10 of 2014, by the learned Ist -Additional District and Sessions Judge (PCR), Trichy.

For appellant : Mr.E.Somasundaram
For respondent : Mr.C.Ramesh,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was made by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C.No.10 of 2014 on the file of the learned Ist Additional District and Sessions Judge (PCR), Tiruchirapalli. He stood charged for the offences under Sections 302 r/w 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. By judgment dated 02.07.2014, the trial Court acquitted the appellant/accused from the charge under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, however,



convicted the appellant/accused under the charge under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for a further period of six months. Challenging the said conviction and sentence, the appellant/accused is before this Court with this appeal.

2. The case of the prosecution in brief is as follows;

(a) The deceased in this case was one Mrs.Kavitha. PW1 is the brother of the deceased. The deceased was a masonry worker. She was residing with PW1 and other family members at Mariamman Kovil Street, Pettavaithalai, Tiruchirapalli District. The accused hails from Kancheepuram District. He had come down to Pettavaithalai and he was working as a mason. When the accused and the deceased were so working, they fell in love with each other. The deceased belonged to scheduled caste, whereas the accused belongs to a community which is not either a scheduled caste or a scheduled tribe. Out of love, they married each other and started living together as husband and wife in a rented house at Pettavaithalai, Kancheepuram. Out of the said wedlock, four children were borne to them. The deceased and the accused were living with the children, and the accused was eking out his livelihood by doing masonry work.

(b) In due course of time, there arose quarrel between the accused and the deceased, because of poverty. The accused was not in a position to meet out the family expenses from out of his meagre income. On few occasions, the accused could not even provide rice for cooking. This aggravated the ill-feeling between the accused and the deceased. On few occasions, the accused also had come to the house in drunken state and questioned the deceased as to why she had not cooked for him as well as for the children. On 27.10.2013 at 8.00 a.m. similar quarrel arose. The deceased shouted at the accused that since he had not given money for purchasing rice and groceries, she did not cook. This resulted in further quarrel between them. In the said quarrel, it is stated that the accused pulled the hair of the deceased and dashed her head against the wall. The deceased fainted. This was witnessed by the children at home. The children were under the belief that the deceased was sleeping. The accused, who went out for job, returned after some time and touched the hands of the deceased. Since the deceased was motionless, realising that she was no more, the accused fled away from his house. PW4, the daughter of the deceased, then, went to the house of PW1 and informed the same to him.

(c) PW1, along with PW4, rushed to the house of the deceased. He found bloodstains on the wall indicating that the head of the deceased had been dashed against the wall. There were also other minor injuries on her body. The deceased was dead. But, the



accused was not available at his house. Immediately, PW1 went to Pettavaithalai Police Station and made a complaint at 9.30 a.m. on 28.10.2013. On the said complaint, a case was registered in Crime No.129 of 2013 under Sections 302 IPC r/w 3 (2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

(d) The case was taken up for investigation by PW20, the then Deputy Superintendent of Police. He was specially authorised by the Superintendent of Police, Tiruchirapalli to investigate the case. He went to the place of occurrence at 11.00 a.m. and prepared an observation mahazar and a rough sketch in the presence of the witnesses. He conducted inquest on the body of the deceased and then, forwarded the same for postmortem.

(e) PW13 Dr.Saravanan, conducted autopsy on the body of the deceased on 28.10.2013 at 4.05 p.m.. he found the following injuries:

"On dissection of head, dark red contusion 5 x 3 x 0.5 cm on left temporal region of scalp; Diffuse dark red contusion of left temporal muscle; dark red contusion 9 x 6 x 0.5 cm on the occipital region of scalp vault and dura matter - intact; Diffuse dark red sub dural haemorrhage and such arachnoid haemorrhage on all over the brain; brain wa soft; C/s.dark red intra cerebral haematoma on left occipital region of the brain; skull base: intact."

Ex.P3 is the postmortem certificate and Ex.P4 is his final opinion. He opined that the death of the deceased was due to head injuries.

(f) During investigation, PW20 recovered bloodstained clothes on the body of the deceased, examined the witnesses and recorded their statements. He obtained community certificate of the deceased as well as of the accused. The investigation was, thereafter, continued by his successor - PW21. On 24.02.2014 at 8.00 a.m. he arrested the accused. On such arrest, he made a voluntary confession. But, no discovery of any fact was made out of the same. PW21 forwarded the accused to the Court for judicial remand. He collected the medical records. On completing the investigation, he laid charge sheet against the accused.

(g) Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgement. He denied the same. In order to prove the charges, on the side of the prosecution, as many as 21 witnesses were examined, 15 documents and 4 material objects were marked.



(h) Out of the said witnesses, PW4 is the daughter of the deceased, aged 8 years. She has spoken about the entire occurrence. PW1, the brother of the deceased, has spoken about the frequent quarrel between the accused and the deceased. He has further stated that on 28.10.2013 at 8.00 a.m. PW4 came and informed about the occurrence. He has further spoken about the complaint made by him to the Police. PW2 is a neighbour of the deceased. He has stated that on 27.10.2013 at 10.00 a.m. when he went to the tea shop near the house of the deceased, he found the quarrel between the accused and the deceased, in which the accused was found beating his wife viz., deceased. PW3 is yet another neighbour. He has also stated that when he was along with PW2 in the tea shop near the house of the deceased, he found the quarrel, at the house of the deceased, between the accused and the deceased, and he further found the accused beating the deceased. PW5 is the mother of the deceased. She has not stated anything incriminating against the accused. PW6 is the sister of the deceased. She has also spoken about the frequent quarrel between the accused and the deceased.

(i) PW7 is the sister-in-law of the deceased. She has also spoken only about the fact that she heard about the occurrence. PW8 has spoken about the preparation of observation mahazar and rough sketch and recovery of material objects from the place of occurrence. PW9 is the landlord of the accused. He has not stated anything incriminating. He has stated that he heard about the occurrence. PWs.10 to 12 are other neighbours. They have also stated only about the hearsay information. PW13 has spoken about the postmortem conducted and his final opinion regarding the cause of the death of the deceased. PW14 - Tahsildar has spoken about the community certificate issued by him for the deceased. According to him, the deceased belonged to the scheduled caste community. PW15, yet another Tahsildar, has spoken about the community certificate issued to the accused. According to him, the accused belongs to Vanniyar community. PW16 - a Constable, has stated that she took the dead body to the hospital and handed over the same to the Doctor for postmortem, as directed by the investigating officer. PW17 has spoken about the arrest of the accused. PW18 has spoken about the registration of the case and the complaint made by PW1. PW19 is yet another Constable. He has stated that he handed over the FIR to the learned Magistrate at 3.00 p.m. on 28.10.2013. PWs.20 and 21 have spoken about the investigation done and the final report filed.

(j) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor to mark any documents on his side. The defence of the accused was total denial. Having considered all the above, the trial Court convicted him, as detailed in the first paragraph of this judgment. That is how he



is before this Court with this appeal.

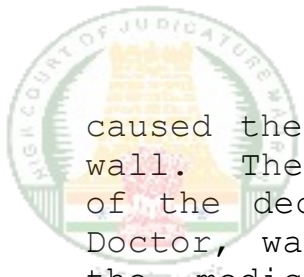
3. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and we have also perused the records carefully.

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4. In this case, there is no denial of the fact that the deceased was living with the accused in a rental house, which belongs to PW9. There is enormous evidence to the effect that the family was in utter poverty. The accused was doing masonry work and he was trying to make both the ends meet. There is also evidence to the effect that the accused was not able to, at times, provide money, for purchasing rice and groceries for cooking. Thus, the deceased as well as the accused and the children had to suffer on many occasions out of poverty.

5. On the day of the occurrence i.e., on 27.10.2013, the accused and the deceased were in the house along with PW4, the daughter, aged about 8 years and other children. PW4 is the only eyewitness to the occurrence. She has spoken about the entire occurrence in a vivid fashion. According to her, when the accused, on returning home, questioned the deceased as to why she had not cooked, the deceased shouted at the accused and told him that since he had not provided money she could not purchase rice and groceries for cooking which resulted in a quarrel. In that quarrel, according to PW4, the accused pulled the hairs of the deceased and dashed her head against the wall. The deceased fell down. Neither the accused nor PW4 felt that the deceased was either in serious condition or not alive. The accused went out of the house and then returned. PW4 and other children tried to wake up the deceased. They were under the impression that the deceased was sleeping. Only on the next day morning around 8.00 a.m., the accused returned home and found the deceased died. He, immediately, left the house. Thereafter only PW4 had gone to the house of PW1. From out of these evidence of PW4, we find that it was this accused, who dashed the head of the deceased against wall and caused the death of the deceased.

6. The evidence of PW4 is further corroborated by the evidence of PWs.2 and 3. PWs.2 and 3 are neighbours of the deceased. They have stated that when they were standing in the tea shop near the house of the accused, they found the accused and the deceased quarrelling and they further found that the accused beating the deceased. There is no reason to reject the evidence of PWs.2 and 3. PW1's evidence also corroborates the evidence of PW4. PW1 has stated that PW4 came to his house around 8.00 a.m. on 28.10.2013 and informed him about the occurrence. PW4 has also stated so. Thus, the said earliest information passed by PW4 to PW1 also corroborates the evidence of PW4. From these evidences, in our considered view, the prosecution has clearly established that it was this accused, who



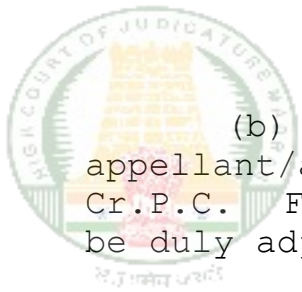
caused the death of the deceased by dashing her head against the wall. The medical evidence also would go to prove that the death of the deceased was due to head injury which, according to the Doctor, was possible by dashing her head against the wall. Thus, the medical evidence also duly corroborates the eyewitness account.

7. Having come to the said conclusion that it was this accused who caused the death of the deceased by dashing her head against the wall, now we have to examine as to what was the offence that was committed by the accused. Admittedly, the accused and the deceased were living together for 10 long years. There is enough evidence to prove that the family was in utter poverty. The accused was the sole earning member. He was not able to provide food for the family members, on few occasions, as he was not able to earn sufficiently. On the day of the occurrence, admittedly, the deceased did not cook. The accused questioned the same. The deceased shouted that since he had not provided money for purchasing rice and other groceries, she did not cook, which resulted in a quarrel. In that quarrel, the accused had dashed the head of the deceased against wall. He was not armed with any weapon. It was not a premeditated one. It was only in that quarrel, having lost his mental balance, the accused, without taking any undue advantage, had dashed the head of the deceased against the wall. Even dashing of head against the wall was not intended. Thus, though the act of the accused would squarely fall within the 4th limb of Section 300 IPC, his act would fall under exception 4 to Section 300 IPC. Therefore, the accused is liable to be punished only under Section 304(ii) IPC.

8. Now turning to the quantum of punishment, as we have already pointed out, there was no premeditation. The accused did not use any weapon and the occurrence was out of sudden quarrel. The accused has got no bad antecedents. He has not involved in any other crime subsequent to this occurrence also. He has to take care of his children. Having regard to all these mitigating as well as aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- for the offence under Section 304(ii) IPC would meet the ends of justice.

9. In the result, this Criminal Appeal is partly allowed in the following terms:

(a) The conviction and sentence imposed on the appellant/sole accused in Special S.C.No.10 of 2014 for the offence under Section 302 IPC is set aside and instead, he is convicted under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks.



(b) The period of sentence already undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C. Fine amount, if any, paid by the appellant/accused shall be duly adjusted.

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10. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Cr1.side)

/True Copy/

Sub Assistant Registrar

To

1. The I-Additional District and Sessions Judge (PCR),
Tiruchirapalli.
2. -do- through The Principal Sessions Judge,
Tiruchirapalli.
3. The Judicial Magistrate No.III,
Tiruchirapalli.
4. -do- through The Chief Judicial Magistrate,
Tiruchirapalli.
5. The Director General of Police,
Mylapore, Chennai.
6. The Superintendent of Police,
Trichy.
7. The District Collector,
Tiruchirapalli District.
8. The Deputy Superintendent of Police,
Jeeyapuram Sub Division,
Pettavaithalai Police Station,
Trichy District.
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

GCG

TE/MPA : 23/12/2016 : 7P/10C