

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.804 of 2008

Achu

.. Appellant

Vs

State By
The Inspector of Police(L & O),
J-1, Saidapet Police Station,
Chennai – 600 015.
(Cr.No.163/2006)

.. Respondent

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C.,
against the judgment dated 14.11.2008 in S.C.No.52 of 2007 on the
file of IV Additional Sessions Judge, Chennai.

For Appellant : Mr.P.Ramesh Kumar

For Respondent : Mr.M.F.Shabana,
Gov. Adv. (Crl. Side)

JUDGEMENT

The sole accused in S.C.No.52 of 2007 on the file of the IV
Additional Sessions Judge, Chennai, is the appellant herein. He stood
charged for the offences under Sections 323, 302 and 386 of IPC. By

the Judgment dated 14.11.2008, the trial court convicted the appellant/accused under Sections 386 and 325 of IPC and sentenced him to undergo rigorous imprisonment for 3 years and imposed a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for one year for the offence under Section 386 of IPC, and sentenced him to undergo rigorous imprisonment for 5 years and imposed a fine of Rs.5000/- for the offence under Section 325 of IPC and acquitted the accused from the offence under Sections 323 and 302 of IPC. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

The deceased, in this case, one Girija, is the mother of the accused. P.W.1 is his father. P.W.1, deceased and the accused are all living together in an apartment in the third floor. The accused is a drunkard and frequently harassed the deceased, and P.W.1 demanding money for consuming liquor. On 22.02.2006, at about 3.00 p.m., while the deceased and P.W.1 were in the house, the accused came to the house and threatened them to give money. When P.W.1 refused to give money to the accused, he had beaten P.W.1 by hands and kicked him, and P.W.1 fell down. Then, the

accused went into the bed room of the deceased and closed the door and beaten the deceased with a walking stick and caused injuries. Thereafter, P.W.1 went inside the room and given him Rs.100/-, after receiving the same, he went away. Since P.W.1, aged about 77 years and also sick person, he was not able to help the deceased, who was seriously injured. Hence, he informed P.W.2, his daughter-in-law and with the help of the neighbours, he took the deceased to the ground floor and called an ambulance, and admitted the deceased in a private hospital. Thereafter, P.Ws.1 and 2 went to the police station and P.W.1 lodged a complaint before the respondent police on 23.02.2006.

3. Based on the complaint, P.W.7, registered a case under Section 324, 385, 506(ii) of IPC and sent the First Information Report, Ex.P.8 to the jurisdiction court and copies of the same to his higher officials. Then, he proceeded to the scene of occurrence, prepared an observation mahazar, Ex.P.2, and a rough sketch, Ex.P.9, in the presence of the witnesses. Thereafter, he recovered the walking stick(M.O.1) from the scene of occurrence and recorded the statements of the other witnesses. Subsequently, he recorded the statement of the doctor, who admitted the deceased in the hospital. On 23.02.2006, at about 9.30 p.m., in a play ground, 5th street, Nandanam, he arrested the accused and remanded him to

judicial custody. Based on the above material, he altered the charge into 307 IPC and the alteration report is Ex.P.10.

4. P.W.11, the Inspector of Police, took up the case for further investigation. He proceeded to the hospital and found the deceased in an unconscious condition, subsequently, on 23.04.2006, the deceased succumbed to injuries. Then, P.W.11, conducted an inquest on the dead body of the deceased in the presence of panchayathars and prepared Inquest Report, Ex.P.13, and he sent the body of the deceased for postmortem/autopsy to the Government Hospital, Royapettah.

5. P.W.7, Doctor, working in the Government Hospital, Royapettah, conducted postmortem on the dead body and found the following injuries :

“1.Tracheotomy wound present.

2. Bed-sores seen on both sides of lumbo-sacral area measuring 8 x 6 cms and 7 x 4 cms.”

Ex.P.7 is the Postmortem certificate and P.W.7 gave opinion that the deceased would appear to have died of head injuries and its consequences.

6. Then, P.W.11, recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased and altered the charge into 302 IPC, and on completion of investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges as mentioned in paragraph one of the judgment. The accused denied the same. In order to prove its case, on the side of the prosecution, as many as 12 witnesses were examined and 14 documents were exhibited, besides one material object was marked.

8. Out of the witness examined, P.W.1 is the father of the accused. According to him, the accused is a drunkard, used to harass P.W.1 and the deceased, mother, demanding money for consuming liquor. On the date of occurrence, the accused demanded P.W.1 to give money. But P.W.1 refused to give money. Hence, the accused had beaten him and kicked him. Then, the accused went inside the bed room, where the deceased was lying and beaten her indiscriminately with a walking stick and caused serious injuries to her. Thereafter, P.W.1 gave the accused Rs.100/- then, he went away. Thereafter, P.W.1 informed the occurrence to P.W.2, his daughter-in-law, and with the help of neighbours, P.W.1 admitted the

deceased in the hospital in an unconscious stage and after two months , on 23.04.2006, the deceased died in the hospital.

9. P.W.2 is the wife of the accused and the daughter-in-law of the deceased. According to her, the accused is a drunkard, he used to beat her demanding money. In the above circumstances, two days prior to the occurrence, on 20.02.2006, she left for her parental house. Subsequently, on 22.02.2006, at about 5.00 p.m, P.W.1 called her over phone and informed her that the accused had beaten him and also attacked the deceased and caused serious injuries to her. Then, she went to the house of the deceased, where she found P.W.1 in a very frightened, and the deceased was lying in the bed room in an unconscious stage. Then, P.W.2, with the help of others, took the deceased to a private hospital and admitted her. Subsequently, on 24.02.2006, the deceased died in the hospital. P.W.3 is the brother of P.w.2. On the date of occurrence, he went to the house of P.W.1 and found the deceased with injuries and when enquired, P.W.1 told him that the accused attacked her and then, he called an ambulance and admitted her in the hospital. P.W.4 is the brother of the deceased. According to him, after hearing the news, he went to the house of the deceased and found the deceased in an unconscious stage and he, along with others admitted her in a private hospital.

1. P.W.5 is a witness to the Observation Mahazar and recovery of M.O.1. P.w.6 is a Doctor, working in Aswini Soundariya Hospital, who admitted the deceased in the hospital and had given an Accident Register, Ex.P.4. P.W.7, Doctor, working in the Government Hospital, Royapettah, conducted postmortem on the dead body of the deceased and had also given an opinion that the deceased appears to have died of head injuries and its consequences. P.W.8 is a cook, working in the house of the deceased and her evidence has no substance. P.W.9, Sub-Inspector of Police, had spoken about the registration of the case and arrest of the accused. P.W.10, Doctor, who treated the deceased in the Aswini Soundariya hospital. According to him, there are very many injuries on the body of the deceased and she was suffering from hemorrhage and fracture near the left eye. P.W.11, Inspector of Police, had stated that he continued the investigation, and recorded the statements of the doctor, who conducted postmortem on the dead body of the deceased and other witnesses and on completing investigation, he laid charge sheet against the accused. P.W.12, Head Constable, who accompanied the dead body of the deceased to the Government Hospital, Royapettah and identified the same for postmortem.

2.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not examine any witness or mark any documents on his side.

12. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

13. Mr.P.Ramesh Kumar, learned counsel appearing for the appellant would submit that there are lot of contradictions in the evidence of P.W.1. In the chief examination, he had stated that the accused had beaten him and kicked him and thereafter, the accused went inside the bed room and attacked the deceased and he saw the occurrence through a window. But there is no window available in the house and for the recovery of M.O.1 a walking stick, there is no proof. Eventhough P.W.1 says that he saw the deceased with blood injuries, but blood stained clothes were not recovered from the place of occurrence and no blood stains in M.O.1, Stick. As per the evidence of P.W.1, the deceased was unconscious after the occurrence, but the doctor, who admitted the deceased in the hospital has stated that the

deceased was conscious at the time of admission. Pointing out all the contradictions, the learned counsel for the appellant submits that the prosecution did not prove the case beyond any reasonable doubt and sought for acquittal.

14. Mr.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the respondent would submit that P.W.1 is a injured witness and father of the accused. He had categorically stated that it is this accused who had beaten him and kicked him and thereafter, went inside the bed room and attacked the deceased. P.W.2, wife of the accused and the medical evidence also corroborates the evidence of P.W.1. Hence, the prosecution has clearly proved the case beyond reasonable doubt and sought for dismissal.

15. I have considered the rival submissions and perused the records carefully.

16. It is an unfortunate case, where a son, who is supposed to maintain his father and mother, addicted to alcohol and gone to the extent of attacking his mother for money to consume liquor. P.W.1, who is the father of the accused, aged about 77 years, had clearly spoken about the occurrence. It is the evidence of P.W.1 that on the date of occurrence, the accused demanded money for consuming liquor. When he refused to give money, the accused had

beaten him and kicked him and pushed him down, then went inside the bed room and demanded money from his mother. When she also refused, the accused had beaten her with a walking stick and caused serious head injuries on her. Then, on threat, the accused received Rs.100/-. Subsequently, he called his daughter-in-law, P.W.2, wife of the accused, who was also driven away from the house of the accused and living in her parental house with her child. Then, P.W.2, along with her brother P.W.3, came to the house and all of them with the help of others, took the deceased to a private hospital, where, the doctor found serious head injuries and fracture in the head and also hemorrhage and treated her for nearly two months. Thereafter, she succumbed to injuries. There is no reason for P.Ws.1 and 2, who are none other than the father and the wife of the accused to falsely implicate the accused in this case. From the evidence of P.W.1, it is very pathetic to note that how the accused had treated his aged parents.

17. P.W.2 is none other than the wife of accused. She had also stated about the harassment of the accused and for that reason, she left the matrimonial house and went to her parental house. Apart from that the medical evidence also corroborates the evidence of P.W.1. Hence, I find no reason to disbelieve the evidence of P.W.1.

18. The contradictions pointed out by the learned counsel for the appellant are minor contradictions and they no way affect the prosecution case. So far as the recovery of M.O.1 is concerned, the walking stick was recovered inside the house of the deceased and it is also identified by P.W.1. Hence, the contention of the learned counsel for the appellant that the recovery is not proved is not correct. On perusal of the records, I am of the considered view that the prosecution has clearly established the case beyond all reasonable doubt. In the above circumstances, I find no irregularity or perversity in the finding of the court below and there is no reason to interfere with the judgment of the court below. Even though the appellant/accused committed a heinous crime, the trial court has convicted him only under Section 325 IPC, and sentenced him to undergo rigorous imprisonment for 5 years.

19. So far as the sentence is concerned, the learned counsel for the appellant would submit that already the appellant/accused was in jail for more than 20 months and he is mentally sick and is taking treatment and sought for modification of sentence. Considering the mitigating circumstance that the appellant now ill and taking treatment , and to have a chance to reform himself and in the interest of justice, the sentence imposed on the appellant under

Section 325 IPC, is modified to that of rigorous imprisonment for 4 years.

20. In the result, the Criminal Appeal is partly allowed and the conviction imposed on the appellant under section 325 of IPC is confirmed and the sentence is modified to that of rigorous imprisonment for 4 years and the conviction and sentence imposed on the appellant under Section 386 of IPC is confirmed. The period of sentence already undergone by the appellant/accused shall be set off under Section 428 Cr.P.C and both the sentences are directed to run concurrently.

mrp

Index:Yes/no

Internet: yes/no

30.01.2017

To

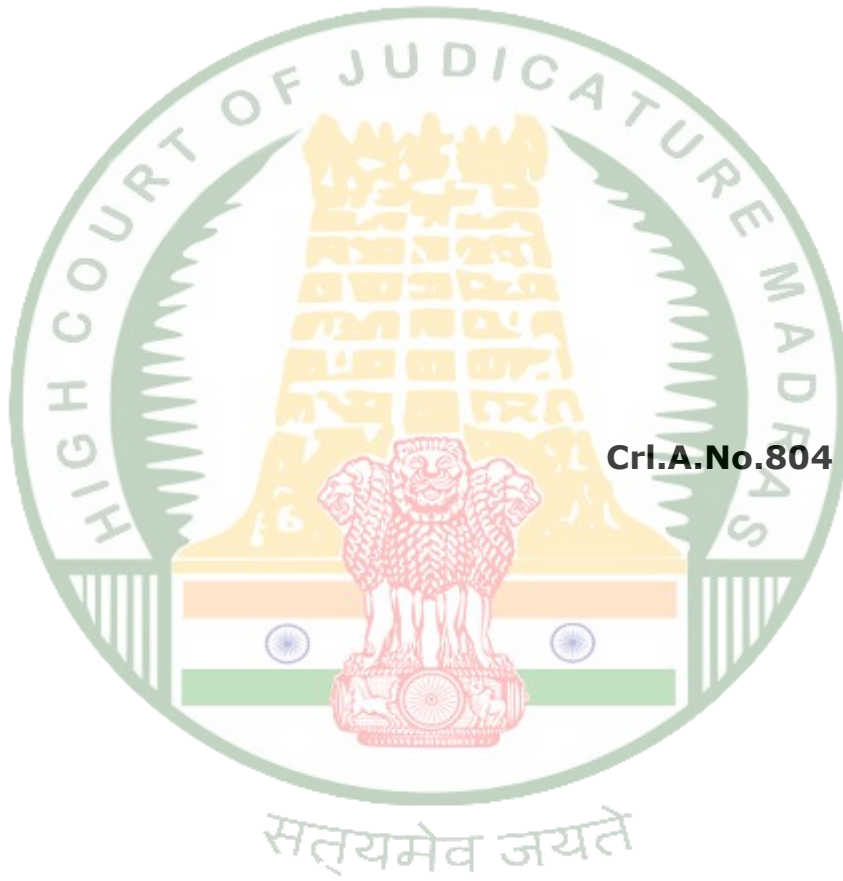
1. The IV Additional Sessions Judge,
Chennai.

2.The Public Prosecutor,
High Court, Madras.

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V.BHARATHIDASAN.J.,

mrp



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