



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2017

CORAM:

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**THE HONOURABLE MR.JUSTICE R.SUBBIAH**  
AND  
**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA**

**CRL.A[MD].No.215 of 2016**

Sooramuthu : Appellant/Sole Accused

Vs.

State Represented by  
Inspector of Police,  
Thirumangalam Taluk Police Station,  
Thirumangalam, Madurai District.  
[Crime No.95/2010].

: Respondent/Complainant

**PRAYER:** Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 17.02.2011 made in S.C.No.420 of 2011, on the file of the learned Principal Sessions Judge, Madurai.

For Appellant : Mr.S.Arivalagan

For Respondent : Mr.R.Ramachandran  
Additional Public Prosecutor

Reserved on : 11.10.2017

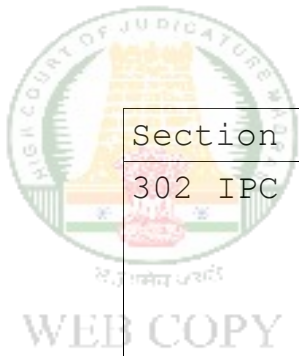
Pronounced on : 07.11.2017

#### **JUDGMENT**

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**R.SUBBIAH, J.**

The appellant is the sole accused in S.C.No.420 of 2011, on the file of the learned Principal Sessions Judge, Madurai. He stood charged for the offences punishable under Sections 302 and 506(ii) of the Indian Penal Code. By Judgment dated 17.02.2011, the Trial Court convicted the accused and sentenced him, as detailed below:-



| Section of Law | Sentence of imprisonment                       | Fine amount                                                              |
|----------------|------------------------------------------------|--------------------------------------------------------------------------|
| 302 IPC        | To undergo imprisonment for life.              | Rs.5,000/- in default to undergo Rigorous imprisonment for three months. |
| 506(ii) IPC    | To undergo rigorous imprisonment for one year. | 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, as put forth by its witnesses, is consciously narrated below:-

The deceased, in this case, was one Mrs.Thangammal. The accused is her husband. PW-1 and PW-2 are their son and daughter respectively. The deceased was not in talking terms with her husband, since he was leading a wayward life, without any work. On 31.05.2010, there was a quarrel between the deceased and the accused. PW-2, who is the sister of PW-1 and who was in the house, informed the quarrel that had taken place between the accused and the deceased over phone to his brother PW-1. Hence, PW-1 came to the house and warned the accused as to why he was quarreling with his mother unnecessarily. Thereafter, he left the house. Again, at 02.30 PM, on the same day, while the deceased was sleeping on the cot under a Neem Tree, the accused took out a grinding stone and dropped on her face. PW-2 tried to prevent the accused from making further attack. The accused threatened PW-2 that if she prevents him, he would also kill her. Further, saying so, again, the accused caused injury on the face of the deceased with the grinding stone and fled away from the scene of occurrence. PW-2 immediately informed the same to PW-1 over phone. PW-1 came to the house and made arrangements for 108 Ambulance and took his mother to Thirumangalam Government Hospital, where from she was referred to the Government Rajaji Hospital, Madurai.

2.2. On receipt of intimation from the hospital authorities, PW17, the then Sub-Inspector of Police, attached to the Thirumangalam Taluk Police Station, went to the hospital at 04.30 PM and received a written complaint from PW-1 and registered a case in Crime No.95 of 2010, under Sections 307 and 506(ii) of the Indian Penal Code. EX-P1 is the complaint and EX-P14 is the First Information Report. Then, she forwarded both the documents to the Court and handed over the investigation to the Inspector of Police, Thirumangalam Police Station - PW18.



**2.3.** Taking up the case for investigation, at 09.30 PM, on 31.05.2010, PW-18 proceeded to the place of occurrence, prepared an Observation Mahazer [EX-P4] and a Rough Sketch [EX-P15], showing the place of occurrence in the presence of PW-8 and another witness. He recovered bloodstained earth [MO-3] and sample earth [MO-4] from the place of occurrence. He also recovered the bloodstained grinding stone [MO-1] in the presence of the witnesses. On 01.06.2010, at 01.50 AM, the deceased succumbed to the injuries in the Government Rajaji Hospital, Madurai. On receipt of the said information, PW-18 altered the case into one under Sections 302 and 506(ii) of the Indian Penal Code. Then, he forwarded the alteration report to the Court through PW-16. Later, he conducted inquest on the body of the deceased between 10.00 AM and 12.00 Noon on the same day. EX-P17 is the inquest report. Finally, he forwarded the dead body for postmortem.

**2.4.** PW-11 - Dr.G.Natarajan conducted autopsy on the body of the deceased. EX-P9 is the postmortem certificate. He noticed the following injuries:-

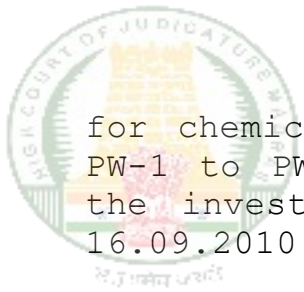
"Laceration 4 CM x 2 CM X bone deep noted on the right side of forehead.

On dissection of scalp, skull & Dura:-

Contusion of scalp measuring 15 CM X 10 CM noted on right fronto parieto temporal region. Right temporalis muscle bruised. Fracture of skull bone 9 CM in length noted on right fronto parietal region. Diffused subdural haemorrhage and subarachnoid haemorrhage noted on both the cerebral hemispheres. Laceration of brain 6 CM X 4 CM X 2 CM noted on left parieto occipital region. Cerebrospinal fluid increased in volume and bloodstained. Cut section of brain congested and oedematous. Fracture of base of skull 6 CM in length noted on right anterior cranial fossa".

He gave an opinion that the deceased would appear to have died of cranio cerebral injuries.

**2.5.** PW-18, on the same day at 02.00 PM, arrested the accused at Thirumangalam Bus Stand in the presence of PW-7 and PW-14. On such arrest, he gave a voluntary confession, in which he disclosed the place, where he had hidden the lungi. In pursuance of the same, the accused took the police and the witnesses to his house and produced the lungi [MO-2]. PW-18 recovered the same under a mahazer. On returning to the Police Station, PW-18 forwarded the accused to the Court for judicial remand. He also handed over the material objects to the Court with a request to forward the same



for chemical examination. Then, PW-18 recorded the statements of PW-1 to PW-4, PW-6, PW-7, PW-14, PW-15 and PW-16. On completing the investigation, he laid charge sheet against the accused on 16.09.2010.

**2.6.** 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, 18 witnesses were examined, 17 documents and five material objects were marked.

**2.7.** 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 has neither choose to examine any witness nor to exhibit any document. His defence was a total denial. 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. The learned counsel appearing for the appellant contended that there are lot of contradictions in the evidence of the prosecution witnesses, which would go to the very root of the case of the prosecution and those contradictions would go to show that the occurrence would not have taken place, as it is alleged by the prosecution. The learned counsel appearing for the appellant further submitted that PW-2 to PW-4 would not have been present at the place of occurrence and their presence is doubtful. PW-3 and PW-4 are school going children. They were studying eleventh and tenth standard. The alleged occurrence took place on 31.05.2010, viz., Monday, which was a working day and hence, the presence of PW-3 and PW-4 at the place of occurrence is doubtful. In this regard, the learned counsel has relied on the cross-examination of PW-3, in which she has stated that after vacation, the school re-opened on 14.05.2010 and further she has stated that from May 14<sup>th</sup> onwards, she was going to the school. The place of occurrence is Melakottai, which is 20 Kilometres away from the school. Thus, according to the learned counsel, PW-3 and PW-4 would have been tutored by somebody to depose falsely against the accused. So far as PW-2 is concerned, according to the learned counsel, she was married and living along with her husband in a different place and as such, her presence at the house of the deceased, on the date of occurrence, is also highly doubtful.

4. The learned counsel appearing for the appellant further submitted that PW-2, PW-3 and PW-4 have stated that while the deceased was sleeping in the cot, outside the house under a Neem Tree, the accused dropped the grinding stone on the head of the



accused several times and blood was oozing out from the head of the deceased. The deceased was in a pool of blood. If it is so, the bloodstains must be in the cot and the earth. However, the prosecution has failed to seize the cot and nothing has been mentioned in the sketch about the presence of the bloodstains.

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5. The learned counsel appearing for the appellant, by inviting the attention of this Court to the evidence of PW-6 submitted that PW-6, the neighbour of PW-1, in her chief-examination, has stated that on hearing the alarm raised by the deceased, she rushed to the place of occurrence and witnessed that the accused was crushing the head of the deceased with grinding stone. On seeing the crowd that had gathered, he fled away from the scene of occurrence. However, the presence of PW-6 was not spoken to by PW-2 to PW-4. Therefore, according to the learned counsel, the evidence of PW-2 to PW-4 cannot be believed. Referring to the above grounds, the learned counsel submitted that the conviction and sentence imposed on the appellant is not sustainable.

6. The learned Additional Public Prosecutor, however, opposed this Criminal Appeal. According to him, the prosecution, on the basis of the evidences of PW-1 to PW-4 and PW-6 has clearly proved the case with cogent and convincing evidence. Under such circumstances, no infirmity can be found on the conviction and sentence recorded by the Trial Court. Thus, the learned Additional Public Prosecutor prayed for dismissal of the Criminal Appeal.

7. We have given our anxious consideration to the submissions made by the learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor appearing for the respondent.

8. In this case, there is no controversy that the deceased was residing with the accused and PW-1 at the house of the accused. In order to prove the charges, the prosecution mainly relies on the evidences of PW-1 to PW-4 and PW-6. PW-2, the daughter of the deceased, delivered a baby and was staying in the house of the deceased. Thus, her presence at the time of occurrence is natural and cannot be doubted. PW-2 has categorically stated that on 31.05.2010, in the morning, there was a quarrel between the accused and the deceased. The quarrel went on for some time. On hearing about the quarrel between the accused and the deceased over phone, PW-1, son of the deceased and accused, came to the house and persuaded them to stop quarrel. Thereafter, he left the house. PW-2 has further stated that on the same day, at 02.30 PM, while the deceased was sleeping on the cot under a Neem Tree, the accused took out a grinding stone and dropped it on her face. PW-2 tried to intervene. The accused threatened PW-2 that if she prevents him, he would also kill her. Saying so, again, the



accused caused injury on the face of the deceased with the grinding stone and fled away from the scene of occurrence. PW-2 immediately informed the same to PW-1 over phone. PW-1 came to the house and made arrangements for 108 Ambulance and took his mother to Thirumangalam Government Hospital, where from she was referred to the Government Rajaji Hospital, Madurai, where the deceased succumbed to the injuries. The evidence of PW2 is cogent and convincing. Thus, we do not find any reason to reject the evidence of PW-2, who is the own daughter of the accused and who has no motive against accused, to falsely depose against him. Moreover, the evidence of PW-2 is duly corroborated by the evidence of PW-1.

9. The next submission of the learned counsel appearing for the appellant is that the evidences of PW-3 and PW-4 are not believable, as 31.05.2010 was Monday and PW-3 was in the school and as such, she would not have been present at the place of occurrence. From this, the learned counsel would try to make out a case that PW-3 and PW4 would have been tutored by her relatives.

10. In our considered view, simply because PW-3 and PW-4 happened to be the grandchildren of the deceased, it cannot be stated that they would have been tutored by somebody to speak against the accused. In this case, the evidence of PW-3 and PW4 inspires the fullest confidence of the court, even in the absence of any corroboration from any independent source, which by itself could be the basis for conviction. PW-3 and PW-4, who was hardly eighteen years and sixteen years old at the time of examination, had withstood the lengthy cross-examination. They have stated that they were not at all tutored. Thus, we find no material on record to show that PW-3 and PW-4 would have been tutored.

11. Now, turning to the submission of the learned counsel for the appellant that the prosecution has failed to seize the cot and nothing has been mentioned in the sketch about the presence of the bloodstains, in our considered view, the non-recovery of cot will not be fatal to the case of the prosecution and would not cause any dent in the case of the prosecution. Though it is submitted that the bloodstained earth was not seized and not shown in the Rough Sketch, PW-18, in his chief-examination, has categorically stated that he had recovered the bloodstained earth from the place of occurrence, [MO-3]. Therefore, we do not find any substance in the said argument advanced by the learned counsel for the appellant.

12. It is also the submission of the learned counsel for the appellant that PW-6, who is stated to have been present at the place of occurrence, did not speak about the presence of PW-2 to PW-4. Similarly, PW-2 to PW-4 also did not speak about the presence of PW-6 at the place of occurrence. In our considered view, merely because the presence of PW-6 was not spoken to by PW-



2 to PW-4, it does not mean that the entire case of the prosecution should be doubted. Moreover, in our considered opinion, this is not at all a contradiction in legal parlance.

13. It is yet another submission of the learned counsel appearing for the appellant that PW-2 to PW-4 are closely related to the deceased and thus, they are put up witnesses. Thus, according to the learned counsel appearing for the appellant, in the absence of any independent witnesses, it is not safe to record conviction on the accused.

14. In this regard, we have to state that PW-2 to PW-4, who are none other than the daughter and grandchildren of the deceased, have no motive to falsely depose against the accused, who is none other than their grandfather. As we have already pointed out, the evidences of PW-2 to PW-4 fully inspire the confidence of the court, which by itself could be the basis for conviction. Moreover, the evidence of PW-2 to PW-4 is duly corroborated by the evidence of PW-1. Thus, absolutely, we do not find any infirmity in the conviction and sentence recorded by the Trial Court for the offence under Section 302 of the Indian Penal Code and it is liable to be confirmed.

15. Insofar as the criminal intimidation made by the accused is concerned, we are convinced of the evidence of PW-2 that the accused threatened her that if she prevents him from attacking the deceased with the grinding stone, he will also kill PW-2. Therefore, the conviction recorded by the Trial Court for the offence under Section 506(ii) of the Indian Penal Code is also liable to be confirmed. Thus, we hold that the prosecution has proved both the charges against the accused beyond reasonable doubts.

16. Now, turning to the quantum of punishment, we do not find any reason to interfere with the same, as the Trial Court has imposed an appropriate punishment, which is also proportionate to the gravity of the offences as well as the mitigating circumstances. Thus, there is no reason to interfere with the quantum of punishment at all.

17. In the result, this Criminal Appeal is dismissed; the conviction and sentence imposed on the appellant/accused, by Judgment dated 17.02.2011 made in S.C.No.420 of 2011, on the file of the learned Principal Sessions Judge, Madurai, is confirmed.

Sd/-

Assistant Registrar(Records)

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Sub Assistant Registrar



To

1. The Principal Sessions Judge, Madurai.
2. The Inspector of Police,  
Thirumangalam Taluk Police Station,  
Thirumangalam, Madurai District.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
4. The Record Keeper,  
Criminal Section Record,  
Madurai Bench of Madras High Court,  
Madurai.
5. The Superintendent Central Prison,  
Madurai.

NB

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**JUDGMENT MADE IN  
CRL.A[MD].No.215 of 2016  
07.11.2017**