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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.A. (MD) .No.285 of 2016

V.Lakshmanan

.. Appellant/Sole accused

Vs.

The state rep. By
The Inspector of Police,
Kovilpatti East Police Station,
Thoothukudi District.
(Crime No.102 of 2013)

.. Respondent/Complainant

PRAYER: Appeal filed under Section 374 (2) Cr.P.C. to set aside the conviction and sentence dated 28.04.2016 passed by the Principal Court of Sessions in S.C.No.10 of 2014 and allow this appeal.

For Appellant : Mr.S.Deenadayalan

For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

Judgment Reserved on	07.09.2017
Judgment Pronounced on	14.09.2017

JUDGMENT

(Judgment of the Court was delivered by **N.SATHISH KUMAR, J.**)

Aggrieved over the judgment of the learned Principal Sessions Judge, Thoothukudi, the present appeal has been filed, in and by which the appellant/accused has been convicted and sentenced as under:



Conviction	Sentence
Section 302 IPC	Life imprisonment + fine Rs.1,000/- in default 6 months R.I.
Section 307 (2 counts) IPC	3 years. R.I. + fine Rs.1,000/- in default 3 months R.I. for each count.

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

The deceased Dhanalakshmi is the mother of the PW2. PW3 is the wife of PW1 and PW5 is the brother of PW1 and accused is the husband of the deceased and father of PW2.

ii) PW1, PW2, PW3 and accused and deceased were residing in the same compound in opposite houses. The houses were owned by PW4. On 10.03.2013 at about 4 a.m. while PW2, the deceased and the accused were in the house, on hearing the noise of her mother, PW2 woke up and saw the accused beat his wife, the deceased with MO1, namely Kuthuvilaku (long lamp) made up of metal. Despite PW2 beseeched the accused not to attack the deceased, the accused attacked the deceased on the head and dragged her to the side room and repeatedly caused injuries on the both sides of the head.

iii) The accused also attacked PW2 with MO1 on the left side of the head. PW1 and PW3 on hearing the cry, who were residing in the same compound, rushed to the place of occurrence and witnessed the occurrence. PW1 tried to prevent the accused from beating. The accused also attacked PW1 on the left shoulder. On hearing the noise of PW1, when the neighbours surrounded the place of occurrence, the accused fled away from the place of occurrence throwing MO1. The deceased succumbed to injuries there itself. Thereafter PW1 and PW2 were admitted in the Kovilpatti Government Hospital. While in the hospital, the police came to the hospital and recorded the statement from PW1/Ex.P1. Thereafter PW1 and PW2 were referred to Tirunelveli Medical College and Hospital.

iv) PW14, Sub Inspector of Police at the relevant point of time, on 10.03.2016, after receipt of intimation from Kovilpatti Government Hospital, he went to the hospital at 7 p.m and recorded the statement from PW1 and came to the police station at 8.30 p.m. and registered the crime in Crime No.102 of 2013 for the offences punishable under Sections 324, 307 and 302 IPC. Ex.P12 is the First Information Report and forwarded the same to the Court and copy to the superior officials.

v) PW5 on hearing the occurrence, returned to home and PW4 owner of the houses on hearing the occurrence rushed to the place of occurrence and found the deceased found dead in the side room and PW2 also found crying.

<https://hcservices.ecourts.gov.in/hcservices/>

vi) PW13 Medical Officer attached to Tirunelveli Medical



College attended PW1 and found that fracture on the left clavicle bone in respect of which he has issued Ex.P10/discharge summary and PW2 also treated by PW13 and CT scan also taken and Ex.P11 is her discharge summary.

vii) PW10 is an Orthopaedist, who took x-ray of PW1 and found fracture on the left clavicle collar bone. PW9 is a Medical Officer owning to the hospital namely Raja Hospital On 10.03.2013 at 7.30 a.m. in the morning PW2 was brought to his hospital after first aid from Kovilpatti Government Hospital and Tirunelveli Government Hospital. On examining PW2, he found blood clot on the brain and also abrasion all over the body and surgery was conducted and blood clot was removed and opined that injuries are grievous in nature.

viii) PW16, the medical officer attached to Kovilpatti Government Hospital at about 5.30 a.m. on 10.03.2013 PW2 was brought to the hospital and she has stated before the doctor and she was assaulted by her father and found that 4 x 2 x bone depth laceration on the head and she gave first aid and referred the patient to the Tirunelveli Medical College, in respect of which he issued Ex.P15/wound certificate on the same day. She has also treated PW1 and found .5 x .5 x .5 cm laceration on the left clavicle and 2 x 2 cm blood clot on the left clavicle. He was also referred to Tirunelveli Government Hospital and issued Ex.P16/wound certificate.

ix) PW18, Inspector of Police, who took up the investigation on 10.03.2013 at 10 am went to the place of occurrence and prepared observation mahazar/Ex.P2 and Rough Sketch/Ex.P18 in the presence of PW6 and one Ponnuraj and also seized bloodstained mosaic(MO2), ordinary mosaic(MO3) and centre part of Kuthuvilaku (MO1) under Ex.P3/Attathchi. Thereafter he conducted inquest over the body of the deceased and prepared Ex.P19/inquest report and gave a requisition to Medical Officer to conduct the autopsy.

x) PW15 is the Medical Officer attached to Kovilpatti Government Hospital conducted autopsy over the dead body and found the following injuries;

"1. Irregular 2 x 7 cm, bone deep, vertical lacerated injury seen over centre forehead.

2. 1 ½ cm dia bone deep circular lacerated injury seen just above and right lateral to wound No.1

3. 2 cm dia irregular, circular, bone deep lacerated injury seen 4 cm away & right to wound No.1

4. Irregular 2 x 4 cm semi circular, bone deep lacerated injury seen 3 cm away & left to wound No.1.

5. 2 x 3 cm punctured lacerated injury seen over the underlying bone and entering the cranial cavity.

6. Irregular 8 x 3 cm bone deep lacerated injury



seen over right occipital region, oblique in nature.

7. Irregular 3 x 4 cm x bone deep lacerated injury seen over left occipital region.

8. 2 cm dia circular, bone deep lacerated injury seen just below the previous injury.

9. 2 cm dia circular, bone deep lacerated injury seen just below and left lateral to previous injury.

All these injuries are ante-mortem in nature. On exposing wound No.5, irregular 3 cm dia punctured fracture seen over right temporal skull bone and on further exposure, plenty of blood seen inside the cranium and a haematoma of 3 x 3 cm seen over right temporal lobe of brain. On exposing wound No.6, plenty of blood clots seen over occipital region and a 6 cm long fracture seen over the occipital skull bone."

and issued Postmortem certificate/Ex.P14 and opined that the deceased would appear to have died due to shock and haemorrhagic due to the injuries sustained.

xi) PW18 in continuation of the investigation arrested the accused on the same day at 4.15 p.m. and recorded his admissible portion of confession. In pursuant to the same he seized blood stained shirt (MO4) and lungi (MO5) in the presence of witnesses under Ex.P4/Attatchi and after examining the medical officer, he also sent the material objects to the forensic lab.

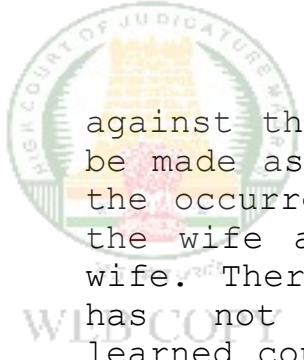
xii) PW11 examined the material objects and issued Ex.P7 chemical analysis report and serologist report Ex.P8 and finally PW18 laid a charge sheet against the accused under Sections 302 and 307 (2 counts) IPC.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. the accused pleaded innocence. During trial, on the side of prosecution as many as 18 witnesses were examined and 20 documents were exhibited besides 8 material objects. On the side of the defence neither any witness was examined nor any document was marked.

4. Having considered the above materials, the trial Court found the accused guilty as detailed in the first paragraph of this judgment and accordingly, punished him and that is how the appellant is before this Court with the appeal.

5. Heard the learned Counsel for the appellant and the learned Additional Public Prosecutor for the State and also carefully perused the records.

6. The learned counsel appearing for the appellant submitted that the prosecution has not proved the guilt of the accused beyond all reasonable doubt. Even in the event this Court comes to the conclusion that the prosecution established the case



against the accused, the charges under Section 302 IPC would not be made as against the accused. According to the learned counsel, the occurrence took place inside the house due to quarrel between the wife and husband only. In the sudden quarrel, he beat his wife. Therefore at any event, the offence under Section 302 IPC has not been made out. It is the further contention of the learned counsel for the appellant that there was a quarrel between PW1 and the accused over the property dispute and in the above melee, PW2 and the deceased sustained injuries. Therefore, the learned counsel submitted that the offence under Section 304 IPC alone is made out in this case. In support of his contention, the learned counsel for the appellant relied on the following judgments:-

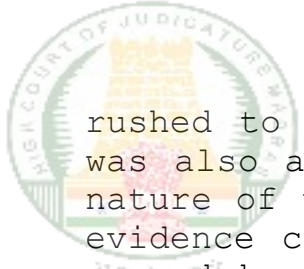
1) **2016 CrI.L.J.2727 (Annamali v.State)**, wherein this Court has stated as follows:-

"12... From the evidence available, it is presumed under Section 114 of the Indian Evidence Act, i.e. Going by the natural human conduct, that in the sudden quarrel, the deceased would have provoked the accused and in our considered view, the said provocation was so sudden and grave, which would have made the accused to lose his mental balance. It was under those circumstances, the accused had committed the crime. Thus, in our considered view, the act of the accused would squarely fall within the first exception to Section 300 IPC."

2. **SLP (Crl.) No.7068 of 2016, dated 14.08.2017, (Madhaan vs. The State of Tamil Nadu)** wherein the Hon'ble Supreme Court has held as follows:-

"10. Considering the above and keeping in mind the facts of the present case, the nature of the crime, subsequent conduct of the appellants, the nature of weapon used and all other attending circumstances and the relevant facts including that no subsequent untoward incident has been reported against the appellants and the mitigating circumstances, we are inclined to modify the sentence period in the following terms:-"

7. On the other hand, the learned Additional Public Prosecutor submitted that PW2/minor child, evidence clinchingly established the overt act as against the accused. Absolutely there is no evidence to presume that there was quarrel between the accused and the deceased at the relevant point of time. The accused used MO1 metal object called as Kuthuvilaku, which is a long one to beat the deceased on the both side of the head repeatedly and dragged the deceased to another room in front of PW2. PW2 beseeched with the accused not to attack her mother. The accused has not spared PW2 despite she was the girl of tender age and caused murderous attack on her also on the head. PW1 and PW3, who were residing in the same compound, just opposite to the house of the accused, also

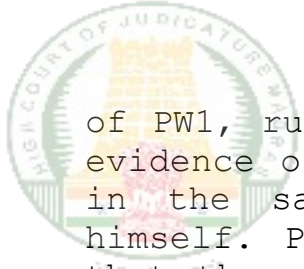


rushed to the spot and PW1 when tried to prevent the accused, he was also attacked. The Medical Officer evidence clearly prove the nature of the injuries sustained by PW1 and PW2. Postmortem doctor evidence clearly established the fact that multiple injuries were caused by the accused on the deceased. Therefore, at any stretch of imagination, it can be stated that the offence would not fall under any exception to Section 300 IPC. Hence, prayed for dismissal of the appeal.

8. In the light of the above submissions, now it has to be analysed that whether the prosecution has proved the guilt of the accused beyond all reasonable doubt and whether the accused is entitled to benefit under any of the exception of Section 300 of the Indian Penal Code.

9. It is the case of the prosecution that the accused while staying with his wife and a minor child, attacked the deceased repeatedly with MO1/Kuthuvilaku on the head. When PW2 tried to save her mother, and beseeched the accused not to attack her mother, she was also attacked by the accused on the head with the same MO1. PW1 and PW3 who are residing in the same compound also rushed to the spot on hearing the cry. They also witnessed the occurrence and PW1 was also attacked by the accused. On a careful perusal of the evidence of PW1 and PW2, injured witnesses, and PW3, who is the wife of PW1, they have spoken in an unison voice that on 10.03.2013 at 4 a.m. PW1 and PW3 on hearing some sound in the accused house, they rushed to the accused house. At that time, the accused with MO1 metal object caused repeated attack on the deceased and also attacked PW2 on the head and PW1 on the shoulder. PW2 is the minor child at the relevant point of time and her evidence was recorded after satisfying her capability of giving evidence. In her evidence it is categorically stated that while she was sleeping, on hearing the noise of her mother, she woke up and light also burning in his house and her father attacked her mother and dragged her to the next room. When she beseeched with the father not to attack her mother, he has repeatedly attacked the deceased on both sides of the head. Besides he also attacked PW2 on the left side of the head.

10. Though PW2 is a minor, when her entire evidence in the chief examination carefully seen, we are of the view of that PW2 has not succumbed to any pressure or tutoring, she has come out with the true version. It is not the case of the accused that occurrence never took place in his house. The only contention of the accused is that due to altercation with PW1 and others and in the above melee, both PW1 and PW2 sustained injuries. The said theory of the accused cannot be countenanced at all, on seeing the nature of the injuries sustained by PW1 and PW2 and also on the evidence of PW3, wife of PW1, who is the brother of the deceased. PW3, wife of PW1, also accompanied PW1 and she has spoken about the occurrence. It is quite natural for PW1, who is the brother of the deceased and PW3, who is the wife



of PW1, rushed to PW2's house after hearing the noise. As per the evidence of PW1 and PW3, it is very clear that they also residing in the same compound, which is not disputed by the accused himself. PW4 the owner of the house in his evidence also stated that the accused and PW1 were residing in the first floor in the opposite direction. Therefore PW1 and PW3 reaching the place of occurrence on hearing some commotion is quite natural and it cannot be discarded. Therefore, we of the view that their evidence is natural, which does not suffer from any infirmities.

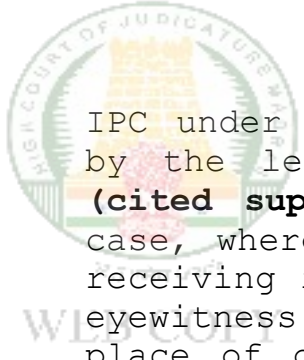
11. Though the child witness evidence requires corroboration and should be seen with scrutiny as stated above, we do not find any circumstances even to infer that the child was succumbed to any tutoring. Her evidence clearly shows that her father has repeatedly attacked her mother and dragged her to the next room and caused multiple injuries and she was also attacked and PW1 also sustained injuries while preventing the indiscriminate attack by the accused. PW1 and PW2 were immediately admitted in the hospital in the same morning at Kovilpatti Government Hospital, which is also spoken by PW16/Medical Officer. The Medical Officer has noticed 4 x 2 cm bone deep laceration on the head of PW2. Similarly she has also noted laceration on the left clavicle of PW1. Besides blood clot and issued Wound Certificates Ex.P16 and Ex.P15 respectively. It is also found that the injuries sustained by PW1 is grievous in nature and PW13 Medical Officer, Tirunelveli Medical College and Hospital, had seen PW1 and PW2 and found fracture on PW1 on the left clavicle bone and issued Ex.P10 in this regard. PW2 also treated in the hospital and scan was taken in respect of which Ex.P11 was issued. PW10/Medical Officer, also found fracture on the left cervical bone of PW1. PW9/Medical Officer attached to Raja Hospital, has in fact conducted surgery on the head of PW2 to remove the blood clot and also found head injury and fracture on the left side head. From the medical officer evidence it can be seen that the accused has indiscriminately attacked not only PW1, but also PW2, the minor daughter at tender age.

12. Medical Officer/PW15 and postmortem certificate/Ex.P14 clearly show that there were multiple injuries numbering 9 on the head of the deceased. This clearly shows that the deceased has beaten up indiscriminately by the accused. The evidence of PW1, PW2 and PW3 and Medical Officer clearly show that the accused has in fact who caused indiscriminate attack. Absolutely there is no circumstances on record even remotely to suggest that there was a sudden quarrel between the husband and wife. Though in the 313 Cr.P.C. statement the accused has stated that there was altercation with regard to the properties, in which he was also sustained injuries, there was no circumstances or explanation of the occurrence either in the 313 Cr.P.C. statement or in the cross examination of witnesses as to what manner the occurrence took place. It is to be noted that the occurrence took place inside his



house and what was transpired in the house is within the exclusive knowledge of the accused. He has to come out with proper explanation for the same. In the absence of any explanation, as to what has transpired inside the house, we are of the view that the contention of the accused that the occurrence took place in a sudden quarrel, cannot be countenanced at all. It is not the case of the accused that provocation was sought by the deceased as a result, he attacked the deceased. In the cross examination of witnesses, he has taken a stand that there was altercation between himself and PW1. When the deceased and PW2 intervened, at that time, they sustained injuries and at the time there was a current failure. The said contention is absolutely found to be false. The evidence of PW1 to PW3 falsify the contention of the accused about the power failure statement. PW4 the owner of the house, has also rushed to the spot immediately and found the dead body in side room and also found PW2 was crying at the relevant time. Therefore, the contention of the accused that there was a sudden quarrel, which resulted in attack on deceased and PW1, cannot be countenanced. In the absence of any circumstances to suggest any provocation on the part of the deceased, the indiscriminate attack on the vital part of the body of the deceased, the only inference can be drawn by this Court is that the accused in fact has the intention to cause the death.

13. Third limb of Section 300 IPC, the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death itself is sufficient to attract Section 300 IPC. It is not the case of the accused that he was deprived of the power of self control by grave and sudden provocation. Therefore, exception I of Section 300 IPC cannot be attracted in the given case. Similarly, to apply exception IV of Section 300 IPC, there must be circumstances to show that there was no premeditation and there was a sudden fight in the heat of passion and the offender have not taken undue advantage or acted in a cruel or unusual manner. Only when the above ingredients are satisfied, then the offence would come under exception 4 of Section 300 IPC. Even assuming that there was no premeditation and there was some quarrel between the husband and wife. The manner in which repeated attacks on the head of the deceased and causing 9 injuries itself clearly show that the accused taken undue advantage and acted in a cruel manner. Besides he also caused head injury on the child of tender age cruelly and also attacked PW1. All these facts clearly show the act of the accused would not fall within the ambit of exception 4 of Section 300 IPC. Further, the chemical analysis report and serologist report also show that shirt and lungi seized from the accused also contain human blood group of 'B' group which is the blood group of the deceased and the First Information Report promptly lodged and dispatched to the Court on the same day. Therefore, we are of the view that the act of the accused would not certainly come under the ambit of Section 300



IPC under any of the exception. Moreover, the judgment relied on by the learned counsel for the appellant in **2016 Cr1.L.J.2727 (cited supra)** would not be applicable to the facts of the present case, wherein PW1 and PW2 went to the house of the deceased after receiving information. But, in the present case PW2 is the injured eyewitness and PW1 and PW3 after hearing the cry, went to the place of occurrence, who were also living in the same compound, and PW1 also prevented the accused from attacking the deceased, in which he was also sustained injuries. Thus, the judgment cited by the learned counsel is noway connected to the facts of the present case. The other judgment relied on by the learned counsel is also not applicable to the present case.

14. Hence, the judgment of the learned Sessions judge, Thoothukudi, in S.C.No.10 of 2014, dated 28.04.2016, is confirmed and the criminal appeal is dismissed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge, Thoothukudi.
- 2.The Judicial Magistrate No.I,
Kovilpatti.
- 3.The Inspector of Police,
Kovilpatti East Police Station,
Thoothukudi District.
- 4.The Superintendent,
Central Prison, Palayamkottai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to MR.S.Deenadhayalan, Advocate in Sr.No.79414

jikr

AE/MR KKR/SAR2/25.09.2017/9P/7C