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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2017

CORAM

THE HONOURABLE **MR. JUSTICE A.SELVAM**
and
THE HONOURABLE **MR. JUSTICE P.KALAIYARASAN**

Crl.A.(MD)No.36 of 2016
in
CRL MP(MD)No.1086 of 2016

Sundarraaj .. Appellant/Sole Accused

Vs.

State rep.by
The Inspector of Police,
Kadayam Police Station,
Tirunelveli District,
Crime No.378 of 2012. .. Respondent/Complainant

Criminal appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence dated 26.06.2015 passed in Sessions Case No.380 of 2013 by the III Additional District and Sessions Court, Tirunelveli.

For Appellant : Mr.S.R.A.Ramachandran

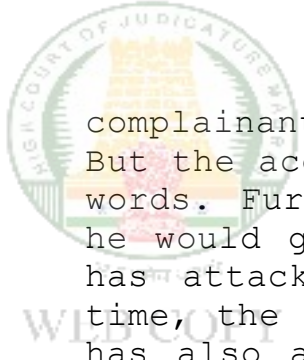
For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by **A.SELVAM, J.**)

The convictions and sentences dated 26th July, 2015 passed in Sessions Case No.380 of 2013 by the III Additional District and Sessions Court, Tirunelveli are being challenged in the present Criminal Appeal.

2.The case of the prosecution is that the defacto complainant by name Mallika is the mother of the accused and his father name is Sankarapandi Nadar (deceased). Since the accused has used to take liquor and very often made tussle with his wife, she left matrimonial abode prior to eight months from the date of occurrence. On 14.12.2002 at about 10.00 am., both the defacto



complainant and deceased have directed the accused to go for work. But the accused has hurled invectives against them by using filthy words. Further he openly declared that only after murdering them he would get peace. During the course of occurrence, the accused has attacked his father (deceased) by using a cudgel. At that time, the defacto complainant has tried to deter him. The accused has also attacked her by using the very same weapon. Due to his overtacts, the deceased has passed away and the defacto complainant has sustained some injuries. After occurrence, she has given a complaint and the same has been registered in Crime No.378 of 2012. The complaint given by the defacto complainant has been marked as Ex.P1.

3.On receipt of Ex.P1, the Investigating Officer viz., PW18 has taken up investigation; examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly, Dr.Alar Santhi (PW12) has conducted post-mortem and she found the following internal and external injuries:

External Injuries:

- 1)Lacerated wound 4 cm x 1/2 x 1/2 cm on the centre of forehead 10 cm above the globella
- 2)Lacerated wound 8 cm x 2 cm x bone depth on the vertex with underlying bone fracture
- 3)Lacerated wound 7 cm x 3 cm x bone depth on the left occipital region
- 4)Lacerated wound 3 cm x 1 cm x bone depth on the right temporal region
- 5)Abrasion 20 cm x 1 cm on the back of left forearm.

Internal examination:

Lungs pale, heart, chambers empty, liver, spleen, kidneys pale, bladder empty. Small intestines distended with gas, stomach contains 300 gms of undigested food particles. Hyoid intact. skull : fracture 2 cm length seen on the vertex (parietal bone). Subscalpal contusion seen on the vertex region. Subdural and subarachnoid haemorrhages seen on the left occipital and right temporal regions. Intra cerebral haemorrhage seen in both cerebral hemispheres.

4.The post-mortem report has been marked as Ex.P9. After transfer of PW18, PW19, his successor in office has continued investigation and after completing the same, laid a final report on the file of the Judicial Magistrate Court, Ambasamudram and the

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

5.The Judicial Magistrate, Ambasamudram after considering



the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, committed the case to the Court of Sessions, Tirunelveli Division and the same has been taken on file in Sessions Case No.380 of 2013 and subsequently made over to the trial Court.

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6.The trial Court after hearing arguments of both sides and upon perusing relevant records has framed first charge against the accused under Section 294(b); second charge against him under Section 307 and third charge under Section 302 of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

7.On the side of the prosecution, PWs.1 to 19 have been examined and Exs.P1 to P16 and M.Os.1 to 6 have been marked.

8.When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of the accused, Ex.D1 has been marked. However, no oral evidence has been adduced on his side.

9.The trial Court after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the accused guilty under Section 307 of the Indian Penal Code and sentenced him to undergo seven years rigorous imprisonment and imposed a fine of Rs.500/- with usual default clause. Further he has been found guilty under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. Against the conviction and sentence passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

10.The crux of the case of the prosecution is that the accused is the eldest son of both the defacto complainant and deceased by name Sankarapandi Nadar. The accused has very often used to take liquor and made tussle with his wife and due to that prior to eight months from the date of occurrence, she left matrimonial abode. On 14.12.2012, at about 10.00 am., both the defacto complainant and deceased have directed the accused to go for work. But the accused has hurled invectives against them by using filthy words and further he declared that only after murdering them, he would get peace and with an intention to murder, he attacked the deceased by using a cudgel and the defacto complainant has tried to deter the accused. But he has also attacked her and thereby caused injuries. Further due to his injuries the deceased has passed away.

<https://hccerestcourt.gov.in/checked>

11.The defacto complainant has been examined as PW1. The



alleged eye witnesses have been examined as PWs.2 and 3. Since PW1 has given evidence inconsonance with the allegations made in Ex.P1 and since PWs.2 and 3 have corroborated the evidence given by PW1, the trial Court has invited convictions and sentences as noted down earlier.

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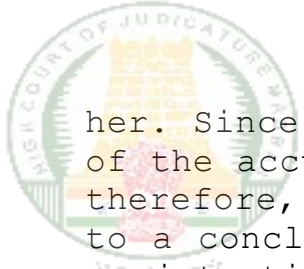
12.The learned counsel appearing for the appellant/accused has contended to the effect that on the date of occurrence the accused has had no intention to murder the deceased or attack PW1 and further, PW1 has clearly admitted in her evidence to the effect that prior to occurrence, the accused has come from outside and at that time, he has had no weapon and therefore, some modifications can be made in awarding punishment to the appellant/accused. Further PW1 has clearly admitted in her evidence to the effect that police have kept the accused at the time of arrival of PW1 to police station and therefore, the entire evidence given by PWs.1 to 3 is false.

13.The learned Additional Public Prosecutor has contended that in the instant case, the defacto complainant has been examined as PW1 and she is nothing but mother of the accused and her specific evidence is that in the place of occurrence, with an intention to murder the deceased, the accused has attacked him and further the accused has also attacked her. The evidence given by PW1 has been clearly corroborated by PWs.2 and 3 and the trial Court after considering the overall evidence available on record has rightly found the accused guilty under Sections 307 and 302 of the Indian Penal Code and therefore, the convictions and sentences passed against the appellant/accused do not warrant interference and further, from the evidence given by PW1, the Court can easily discern that only with an intention to murder the deceased, the accused has attacked him and therefore, question of giving modification in awarding sentence does not arise.

14.It is an admitted fact that the defacto complainant by name Mallika is the mother of the accused and her specific evidence is that in the place of occurrence, with an intention to murder the deceased, the accused has attacked him by using a deadly weapon and her further evidence is that during the course of occurrence, the accused has also attacked her by using the very same weapon and thereby caused injuries.

15.It is also equally an admitted fact that PW1 has sustained some injuries and therefore, she is an injured eye witness. Apart from the fact that she is an injured eye witness, as stated in many places, she is the mother of the accused. Since PW1 is the mother of the accused, we cannot expect false evidence from her mouth.

16.It is not an exaggeration to say that PW1 has given clear evidence about the overtacts alleged to have been committed by the accused on the person of both the deceased as well as on



her. Since PW1 is not only an injured eye witness, but also mother of the accused, her evidence cannot be discarded on any ground and therefore, evidence of PW1 itself would be sufficient for coming to a conclusion that in the place of occurrence, the accused with an intention to murder the deceased has attacked him and thereby caused fatal injuries and he also attacked PW1.

17.The first and foremost contention put forth on the side of the appellant/accused is that there is no intention on the part of the accused to murder the deceased.

18.In fact, this Court has perused the entire evidence given by PW1, wherein she has clearly stated that before attacking the deceased, the accused has openly declared that only after murdering them, he would get peace. Therefore, it is very clear that only with *mens rea*, the accused has attacked the deceased. Under the said circumstances, question of modification in awarding punishment does not arise.

19.The next contention put forth on the side of the appellant/accused is that PWs.2 and 3 are not at all eye witnesses.

20.It is an admitted fact that PWs.2 and 3 are neighbours of PW1 and even PWs.2 and 3 are not at all eye witnesses, as mentioned supra, the evidence given by PW1 cannot be discarded on any ground and therefore, evidence of PW1 itself is sufficient for inviting convictions and sentences against the appellant/accused. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/accused are not factually and legally sustainable.

21.The trial Court after considering the overall evidence available on record, has rightly invited convictions and sentences, as noted down earlier, against the appellant/accused and there is no illegality nor infirmity in the convictions and sentences passed by the trial Court and altogether the present Criminal Appeal deserves to be dismissed.

22.In fine, this Criminal Appeal is dismissed. The convictions and sentences passed against the appellant/accused in Sessions Case No.380 of 2013 by the trial Court are confirmed. Consequently, CrI.MP(MD)No.1086 of 2016 is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/



1. The Principal Sessions Judge,
Tirunelveli

2. The III Additional District and Sessions Judge,
Tirunelveli.

3 The District Collector, Tirunelveli

4 The Superintendent of Central Prison,
Central Prison, Palayamkottai.

5. The Inspector of Police,
Kadayam Police Station,
Tirunelveli District.

6 The Director General of Police,
Mylapore, chennai - 5

7 The Judicial Magistrate.
Ambasamudram

8 The Chief Judicial Magistrate, Tirunelveli

9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.R.A.Ramachandran, Advocate Sr.No. 3631

COPY TO:

THE RECORD KEEPER, CRIMINAL RECORD SECTION,
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JAM/09.02.17/CM-MSA/SAR 3 6P-12C

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19.01.2017