

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.76 of 2018

Ravi @ Ravivarman
S/o.Uthandi

... Appellant

Vs

The State represented by
The Inspector of Police,
Perugavalthan Police Station,
Perugavalthan,
Thiruvarur District.
Crime No.111 of 2014

... Respondent

Criminal Appeal filed u/s.374(2) Cr.P.C. against the
judgment of learned District and Sessions Judge, Thiruvarur,
passed in S.C.No.23 of 2015 on 08.10.2015.

For Appellant : Mr.S.Senthil Kumar

For Respondent : Mr.R.Prathap Kumar,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by C.T.SELVAM, J]

This appeal arises against the judgment of learned District
and Sessions Judge, Thiruvarur, passed in S.C.No.23 of 2015 on
08.10.2015.

2. Case of the prosecution is that appellant/accused, on
14.06.2015 at about 06.00 a.m., owing to previous enmity, abused
PW-2's wife using filthy language and with an aruval caused her
an injury to the head. Deceased attempted to intervene and
accused set upon him with the aruval causing cut injuries behind
the right ear and when deceased fell down, accused, using a
crowbar, caused further head injury, resulting in death. PWs.1

and 3 called 108 ambulance and while they were moving the deceased and PW-2's wife into the ambulance, the deceased died. PW-1/brother of deceased preferred Ex.P1, complaint and a case was registered in Crime No.111 of 2014 for offences u/s.294-B, 324, 307 and 302 IPC. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.294-B, 326, 307 and 302 IPC, the case, on committal, was tried in S.C.No.23 of 2015 on the file of learned District and Sessions Judge, Thiruvavarur.

3. Before trial Court, prosecution examined 15 witnesses and marked 21 exhibits and 7 material objects. None were examined on behalf of defence nor were any exhibits marked.

3.1. PW-1, PW-3 and deceased were brothers. PW-1 spoke to deceased and himself having gone over to the house of PW-2 to take him to work, of accused assaulting PW-2's wife using an aruval and when the deceased tried to intervene, accused assaulted him using an aruval and crowbar and that thereafter, accused ran away. PW-1 spoke to deceased dying while they were lifting him into 108 ambulance and of preference of Ex.P1, complaint. PW-1 also spoke to enmity between the family of PW-2 and accused and that a case was also pending. PW-3 and deceased has also spoken on similar lines.

3.2. PW-2 spoke to previous enmity between his family and that of the accused, of accused being his relative, of accused's wife having committed suicide by consuming poison and rites in connection therewith having been conducted on the day prior to occurrence, of PW-2 not attending the same, of accused assaulting his wife and deceased using an aruval owing to which deceased died, and to taking his wife and deceased to hospital using a 108 ambulance. PW-2 also deposed that his wife could not speak and understand. PW-2 was treated hostile.

3.3. PW-4 spoke to his returning home on 14.06.2014 at about 06.00 a.m., of a crowd having gathered before the house of PW-2 and of seeing deceased and PW-2's wife being lifted into the 108 ambulance. PW-4 has been treated hostile.

3.4. PWs.5, 6 denied knowledge of the occurrence and have been treated hostile.

3.5. PW-7, a resident of Mukkalkarai, spoke to attesting Ex.P2, observation mahazar, Ex.P3, seizure mahazar of Mos.3 and 4, blood stained earth and sample earth, Ex.P4, admissible portion of confession of accused and Ex.P5, seizure mahazar of MOs.1 and 2, aruval and crowbar.

3.6. PW-8, wife of deceased, spoke to having seen the deceased and Muthulakshmi with bleeding injuries. PW-8 also spoke to the death of the deceased.

3.7. PW-9, Head Constable, spoke to submitting the First Information Report to Court and of handing over the seized articles to Forensic Department.

3.8. PW-10, Head Constable, spoke to handing over the body of deceased to Doctor towards conduct of postmortem and on completion thereof, handing over the same to his relatives. PW-10 handed over the seized articles to higher official under Ex.P7, Report.

3.9. PW-11, Doctor, spoke to examining the deceased and declaring him dead and of issuing Ex.P8, Accident Register. PW-11 also spoke to referring Muthulakshmi, wife of PW-2 to Thanjavur Medical Hospital after being given first aid.

3.10. PW-12, Doctor, who conducted postmortem, has stated that the deceased appeared to have died due to multiple cut injuries.

3.11. PW-13, Doctor, spoke to treatment given to PW-2's wife and of issuing Ex.P12, Accident Register. Ex.P13 is the final opinion issued by PW-13.

3.12. The evidence of PW-14, wife of PW-2, was not recorded since she was unable to comprehend questions and was mentally unstable.

3.13. PW-15, who conducted investigation in the case, spoke to registration of First Information Report on the complaint of PW-1, forwarding the same to Court and higher officials, visiting the scene of crime, preparation of mahazars, conducting inquest in the presence of panchayatdhars and witnesses, forwarding the body of deceased towards conduct of postmortem, seizure of material objects, examining witnesses, arrest of accused, recording of confession of accused, forwarding the accused to judicial custody, obtaining various reports, forwarding material objects to Court under Form 91 and on completion of investigation, filing of charge sheet informing commission of offences u/s.294-B, 326, 307 and 302 IPC.

4. On questioning u/s.313 Cr.P.C., appellant/accused denied charges. On appreciation of evidence, oral and documentary, trial Court, under judgment dated 08.10.2015, while acquitting accused of offence u/s.294-B IPC, convicted him for offences u/s.307 and 302 IPC and sentenced him to 10 years R.I. and fine

of Rs.1,000/- i/d 1 year R.I. for offence u/s.307 IPC and life imprisonment and fine of Rs.1,000/- i/d 1 year R.I. for offence u/s.302 IPC. Trial Court directed that sentences run concurrently. Hence, the present appeal.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor for respondent. Perused the materials on record.

6. On a fair appreciation of the evidence on record, trial Court has rendered a finding of conviction. Injuries suffered by the deceased as also the wife of PW-2 at the hands of appellant/accused have been spoken to by PWs.1 and 2, who, as persons at the scene towards calling their brother, the deceased, to join them at work, are natural witnesses. Ex.P9, Accident Register, relating to Muthulakshmi, wife of PW-2, as also Ex.P10, Postmortem Report of deceased, corroborates the prosecution case. Even so, while conviction for offence u/s.307 IPC as regards assault on the wife of PW-2 does not call for interference that for u/s.302 IPC in relation to death, does. It is in evidence that the accused, deceased and PWs.1 and 2 were close relatives. It is further in evidence that there was some property dispute between them. The wife of the accused had committed suicide few days before the occurrence and rites relating to her death had been conducted on the day prior to the occurrence. PW-2, brother of deceased, informs that they had not attended the same. It is easy to see that a person, placed in the position of accused, would have been of distressed mind. In such state, he steps out of his house on the occurrence day and finds the wife of PW-2 mumbling. It is admitted by PW-1 that the accused set upon Muthulakshmi, wife of PW-2, since she abused him. PWs.1 and 2 as also the accused are agricultural labour to whom possession of an aruval is quite natural. Being in distressed state, accused, has, in a fit of rage, attacked the wife of PW-2 and again, in the continued heat of the moment, set upon the deceased, who sought to intervene. Given the circumstances, particularly, the mental frame of the accused, we consider it appropriate to alter the finding of conviction u/s.302 IPC to one u/s.304(ii) IPC.

7. Accordingly, this Court alters the finding of conviction u/s.302 IPC to one u/s.304(ii) IPC and impose sentence of 9 years R.I. for each of the offences u/s.307 and 304(ii) IPC. Sentences to run concurrently. Fine imposed shall stand confirmed.

The Criminal Appeal is disposed of with the above modification.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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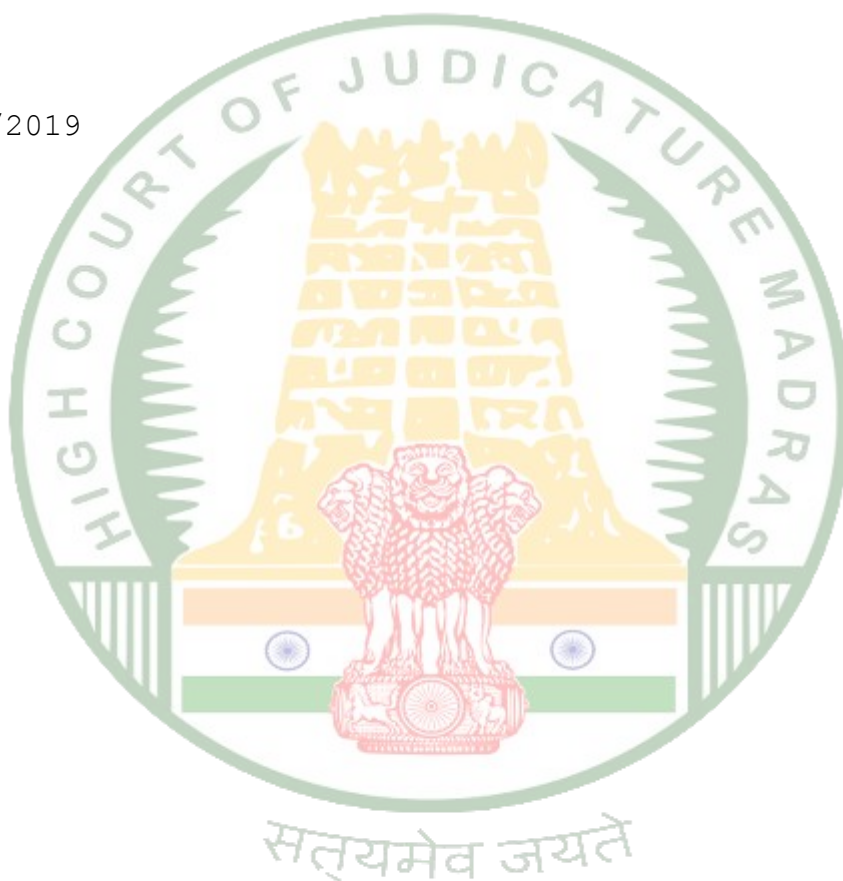
- 1.The District and Sessions Judge,
Tiruvarur.
- 2.The Judicial Magistrate No.2,
Mannargudi.
- 3.-Do- Thro' The Chief Judicial Magistrate,
Tiruvarur.
- 4.The District Collector,
Tiruvarur.
- 5.The Director General of Police,
Mylapore, Chennai.
- 6.The Superintendent of Police,
Tiruvarur District.
- 7.The Superintendent,
Central Prison,
Trichy.
- 8.The Inspector of Police,
Perugavalthan Police Station,
Perugavalthan,
Thiruvarur District
- 9.The Public Prosecutor,
High Court, Madras.

10.The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.Senthilkumar, Advocate Sr.72491

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srg 26/02/2019



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