



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

CRL.A[MD].No.515 of 2017
and
CRL.MP. (MD) .No.11575 of 2017

Selvaraj : Appellant/Accused

Vs.

State through
The Inspector of Police,
V.K.Puram Police Station,
Ambasamudram,
Tirunelveli District. : Respondent/Complainant

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure to call for the entire records connected to the judgment in S.C.No.94 of 2016, on the file of the Learned Principal Sessions Judge, Tirunelveli, dated 14.03.2017 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani
For Respondent : Mr.R.Anandraj
Additional Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in S.C.No.94 of 2016, on the file of the learned Principal Sessions Judge, Tirunelveli. He stood charged of the offences punishable under Sections 341 and 302 of the Indian Penal Code. By Judgment dated 14.03.2017, the Trial Court has convicted the appellant and sentenced him, as



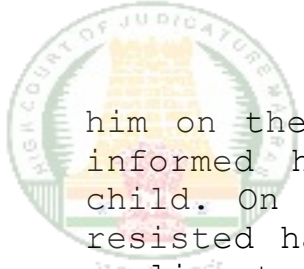
Section of Law	Sentence of imprisonment	Fine amount
341 IPC	To undergo simple imprisonment for one month.	No fine.
302 IPC	To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for three months.

The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant/accused has moved this Criminal Appeal.

2. The case of the prosecution is that on 07.08.2015, at about 03.15 p.m, the appellant/accused came across the deceased, on the Kalibarvilai Street, Tana, V.K.Puram Taluk, Ambasamudram, when she was proceeding along with her daughter/wife of the accused and her grandchildren/children of the accused. Appellant/accused restrained her from proceeding further with intent to cause death and he picked up a small hammer, lying on the side of the road and caused multiple injuries to the deceased, as a result of which, she died on 07.08.2015. On the complaint of PW-1, the wife of the accused, case in Crime No.180 of 2015, on the file of the respondent police, was registered, on 07.08.2015. EX-P1 is the complaint and EX-P16 is the First Information Report. On completion of investigation, filing of charge sheet and committal, the case was tried in S.C.No.94 of 2016, on the file of the learned Principal Sessions Judge, Tirunelveli, for offences under Sections 341 and 302 of the Indian Penal Code. Prosecution examined 20 witnesses and marked 22 exhibits and five Material Objects. No evidence was let in on the side of the defence nor was any document marked. On appreciation of materials, Trial Court convicted and sentenced appellant/accused, as stated supra.

3. Heard Mr.R.Alagumani learned counsel for appellant and Mr.R.Anandraj, learned Additional Public Prosecutor for respondent.

4. PW-1, wife of the appellant/accused, is the complainant. She has deposed to having been estranged from her husband for a period of three years, but, as the appellant/accused was the father of the children, she has permitted him to visit the house of the deceased, with whom she was residing along with her children. On the previous day, the appellant/accused had taken away the youngest boy, aged five years and had negligently left



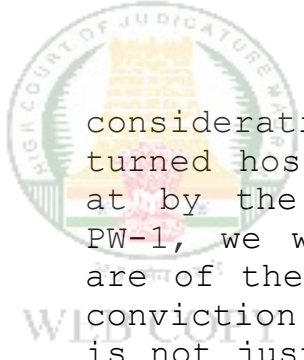
him on the street. Such position was noticed by her brother, who informed her and thereafter, PW-1 had gone and picked up the child. On coming across the accused, her mother, the deceased had resisted handing over the child to him informing that he had been negligent in handling the child. Angered, the appellant/accused had stated that the deceased was the cause of his being separated from his wife and children and picking up a small hammer lying by the side of the road, caused injuries to the head of the deceased. She has spoken to calling for the Ambulance and accompanying the deceased to hospital. The deceased, at first, was taken alive to the Taluk Hospital at Ambasamudram, but, on the advice of the hospital authorities, the deceased had been moved by the same Ambulance to the Medical College Hospital, Tirunelveli, where she was declared 'brought dead'.

5. Learned counsel for appellant/accused submitted that though PW-1 had spoken to witnessing the occurrence, PW-2 to PW-6, who were workers engaged in drainage work, in and around the scene and allegedly were eye-witnesses to the occurrence, had turned hostile. Learned counsel further submitted that the very presence of PW-1, at the scene, was doubtful, since the Accident Register, EX-P6, did not inform that the deceased had been brought to hospital by PW-1 and the same merely informs of injuries having been suffered at the hands of a known person. Learned counsel submitted that if indeed, PW-1 had witnessed the occurrence and accompanied the deceased to hospital, the position of her having brought the deceased to the hospital would have been recorded. Further, as the wife of the appellant/accused, she would have informed that the assailant was her husband.

6. Per contra, learned Additional Public Prosecutor submitted that the testimony of PW-1 was clear and cogent. The entry in EX-P6 could have been made at the instance of the Ambulance Driver and therefore, the name of the person, who brought the deceased to hospital, would have not been mentioned. He further submitted that the appellant/accused had been arrested at 06.00 a.m, on 08.08.2015, in the presence of PW-7 and another and pursuant to confession made by him, MO-1 to MO-4 had been recovered in the presence of PW-7 and PW-20. Their evidence has not been shaken in any manner by the defence. In such circumstances, the fact that PW-2 to PW-6, who are strangers, working at the scene, turned hostile, would not be very material.

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

<https://hcservices.courts.mys.in/hcservices/> 8. The arrest of the accused and recoveries of MO-1 to MO-4 have been duly spoken to by PW-7 and PW-20. In excluding from

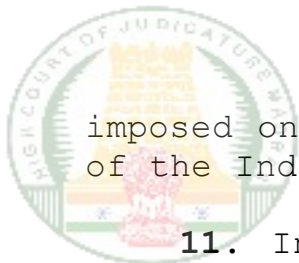


consideration the fact that PW-2 to PW-6 alleged eye-witnesses had turned hostile and finding that conviction stands rightly arrived at by the Trial Court given the clear and cogent testimony of PW-1, we would be drawing the gold from the dross. We, however, are of the view that in the admitted facts and circumstances, the conviction for offence under Section 302 of the Indian Penal Code is not justified. It is the very prosecution case that there was a small disagreement between the deceased and the accused, who was unarmed, over the accused picking up his own infant child. Angered, the accused had uttered that it was the deceased, who was the cause of separation between his wife and children and himself. Appellant/accused has picked up MO-1, a small hammer lying on the wayside and caused multiple blows to the head of the deceased, which, unfortunately, resulted in her death.

9. In the said scenario, the decision of the Hon'ble Supreme Court in **Jagtar Singh Vs. State of Punjab, (1983) 2 SCC 342**, comes into play, wherein at Paragraph No.8, it has been observed as follows:-

"...8. The next question is what offence the appellant is shown to have committed? In a trivial quarrel, the appellant wielded a weapon like a knife. The incident occurred around 1.45 noon. The quarrel was of a trivial nature and even in such a trivial quarrel, the appellant wielded a weapon like a knife and landed a blow in the chest. In these circumstances, it is a permissible inference that the appellant at least could be imputed with a knowledge that he was likely to cause an injury, which was likely to cause death. Therefore, the appellant is shown to have committed an offence under Section 304 Part II of the IPC and a sentence of imprisonment for five years will meet the ends of justice..."

10. In the instant case, though more than one blow has been caused, the circumstances indicate that the occurrence took place, when the appellant/accused was deprived of the power of self control. As we have already narrated, the deceased is none other than the mother-in-law of the accused. The occurrence took place in a sudden quarrel between the accused and the deceased and without premeditation and owing to the deceased resisting the accused handling his own child. The act of the accused would fall within the First Exception to Section 300 of the Indian Penal Code and thus, the accused is liable to be punished under Section 304 (ii) of the Indian Penal Code. Sentencing the accused to undergo rigorous imprisonment for five years and fine of Rs.1,000/-, in view of the facts and circumstances, a sentence of rigorous imprisonment for three months, in our considered view, would meet the ends of justice. The conviction and sentence



imposed on the appellant/accused for the offence under Section 341 of the Indian Penal Code is confirmed.

11. In the result, the Criminal Appeal is partly allowed on the following terms:-

- Conviction and sentence imposed on the appellant/accused under Section 341 of the Indian Penal Code is confirmed.
- Conviction and sentence imposed by the Trial Court on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304(ii) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and fine of Rs.1,000/- [Rupees Thousand only], in default rigorous imprisonment for three months.
- It is directed that both sentences shall run concurrently.
- Period already undergone by the appellant shall be set off under Section 428 of the Code of Criminal Procedure.

Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Tirunelveli.
2. The Judicial Magistrate,
Ambasamudram,
Tirunelveli District.
3. The Superintendent,
Central Prison,
Palayamkottai
(In duplicate for Communicated to the accused)
4. The District Collector,
Tirunelveli District.
5. The Director General of Police,
Mylapore, Chennai 4
6. The Inspector of Police,
Ambasamudram,
Tirunelveli District.



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

8. The Record Keeper, (2 Copies),
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Nb

MK/SV MMS/SAR 1/18.06.2018/6P/11C

**JUDGMENT MADE IN
CRL.A[MD].No.515 of 2017
13.04.2018**