



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	10.01.2018
Date of Judgment	01.02.2018

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DATED : 01.02.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA
and
THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Cr1.A.(MD)No.199 of 2016

Manikandan : Appellant/Accused

Vs.

The State through the Inspector of Police,
Lalapet Police Station,
Lalapet, Karur District,
(Crime No.201 of 2013) : Respondent/Complainant

Prayer:-Criminal Appeal has been filed under Section 374(2) of Cr.P.C. against the conviction and sentence, dated 21.05.2015 passed in Sessions Case No.8 of 2015 by the Sessions Judge (Fast Track Mahila Court), Karur.

For Appellant : Mr.RM.Sivakumar

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

J U D G M E N T(Judgment of the Court was made by **T.KRISHNAVALLI, J**)

The present appeal is directed against the conviction and sentence passed in Sessions Case No.8 of 2015 by the Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Karur, holding the accused/appellant guilty of the offence under Section 302 of Indian Penal Code and awarding sentence of Life Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months Rigorous Imprisonment.

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2.Brief case of the prosecution is that due to previous enmity with regard to returning of cell phone between the



complainant's mother Papathi and the accused, on 10.09.2013 at 7.30 a.m., when the mother of the complainant was washing clothes near Syntax Water Tank at M.Puthupatti Colony Street, the accused attacked with Aruval on her neck, hand, ear and head, thereby caused the death.

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3. On receipt of the Complaint (Ex.P1) from Sanjeevi Perumal (PW1), who is the son of the deceased, PW12 Thiyagarajan, the Special Sub Inspector of Police, attached to Lalapet Police Station has registered the First Information Report (Ex.P9) in Crime No.201 of 2013 under Section 302 of IPC.

4. In continuation of the investigation, PW14 Baskaran, the Inspector of Police attached to Lalapet Police Station took up further investigation and proceeded to the scene of occurrence, made investigation in the presence of Kannadasan (PW5) and one Subbiah, prepared the Observation Mahazar (Ex.P2) and Sketch (Ex.P13) and collected bloodstained earth (MO5) and ordinary earth (MO6) by Athachi (Ex.P3) and he conducted inquest on the body of the deceased in the presence of the witnesses Subramani (PW6) and Manivannan (PW7) and panchayadhars. The Inquest report is Ex.P14. After completion of inquest, he sent the body of the deceased to the Kulithaiai Government Hospital through PW11 Rajagokila Devi, Head Constable, for postmortem.

5. PW8 Dr. Sathish Kumar, had conducted the postmortem. The postmortem report (Ex.P5) reads thus:-

"Appearances found at the Post-mortem:-

Moderately built female body lies on her back with arms closed to her sides. Both eyes partially closed, pupils (NC), mouth opened, Tongue inside the mouth.

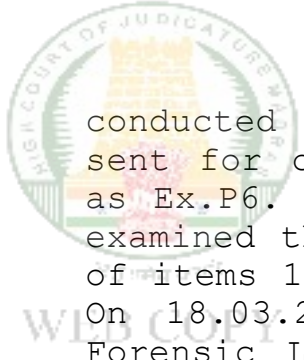
External Injury:-

4 x 1 cm cut Injury present over the left hand dorsum.

2 x 1 cm cut Injury present above the 4th finger.

2 x 1 cm cut Injury present above the IIInd toe.

6 x 3 cm cut Injury present over the Left frontal of parietal region exposing the scalp cut Injury of size 15 x 3 cm present over the right temple extending through the right ear right ear cut into two pieces.



conducted examination on the Material Objects 1 to 7, which were sent for chemical examination. The inner-organ report was marked as Ex.P6. Thereafter, PW13 Tmt.Jaya, Forensic Science Officer had examined the Material Objects 1 to 7 and found bloodstain on each of items 1, 4 to 7. The Biology report has been marked as Ex.P11. On 18.03.2014, the Material Objects 1, 4 to 7 were sent to Forensic Laboratory, Chennai, for ascertaining the group of the blood. The Serology report was marked as Ex.P12. After completing investigation, PW15, Thiru.Jayakumar, the Inspector of Police has laid a final report under Section 302 of IPC on the file of the Judicial Magistrate No.1, Kulithalai and the same has been taken on file in PRC No.10 of 2014.

8.The learned Judicial Magistrate No.1, Kulithalai, after considering the fact that the offence alleged to have been committed by the accused is triable by the Sessions Court, has committed the case to the Sessions Judge, (Fast Track Mahila Court), Karur and the same has been taken on file in Sessions Case No.8 of 2015.

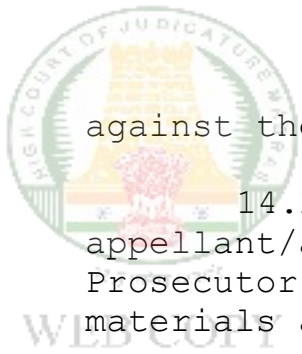
9.The trial court, after hearing both sides and upon perusing relevant records, has framed charge against the accused as afore-stated and the same had been read over and explained to him. The accused denied the charge and claimed to be tried.

10.To prove the charge against the accused, on the side of the prosecution, PW1 to PW15 have been examined and Exs.P1 to P17 and M.Os.1 to 7 have been marked. After examining the prosecution witnesses, the accused had been questioned under Section 313 of the Code of Criminal Procedure, 1973 in respect of the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

11.The trial Court, after perpending the available evidence on record, has found that the accused is found guilty of the offence under Section 302 of IPC and awarded sentence of Life Imprisonment and to pay a fine Rs.1,000/-, in default to undergo three months of Rigorous imprisonment.

12.The specific case put forth on the side of the prosecution is that due to previous enmity with regard to returning of cell phone between the complainant's mother Papathi and the accused, on 10.09.2013 at 7.30 a.m., while the mother of the complaint washing clothes near Syntax Water Tank at M.Puthupatti Colony Street, attacked with Aruval on her neck, hand, ear and head and thereby caused death.

<https://hcservices.ecourts.gov.in/hcservices/> 13.The trial Court, based on the materials available on record, has come to the conclusion that the occurrence has taken place on 10.09.2013 and ultimately invited conviction and sentence



against the accused as set out earlier.

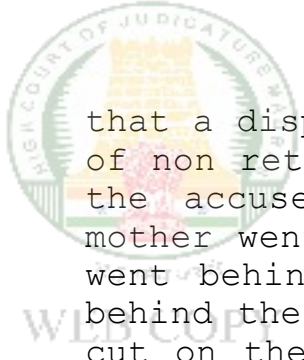
14. Heard **Mr. RM. Sivakumar**, learned counsel for the appellant/accused and **Mr. C. Ramesh**, learned Additional Public Prosecutor appearing for the respondent/State and also perused the materials available on record.

15. The learned counsel for the appellant/accused submitted that PW1 has stated in his complaint that only on hearing, he reached the place of occurrence, but whereas in his statement before the Investigation Officer and in his chief examination, he improved the version stating that he has witnessed the occurrence directly and PW1 during his cross examination stated that when he ran to the occurrence spot, he did not see any one there and thus, PW1 has not seen the occurrence and PW8 has stated in his evidence that the deceased is alive for 30 minutes after sustaining injuries, but PW1 stated that when he went to the place of occurrence, the deceased was found dead and PW1 has stated that the accused took the bill hook, which was concealed behind the Syntax Tank, but in his chief examination, PW1 has stated that the accused was carrying weapon in his hand and attacked the deceased and the Investigating Officer has reached the place of occurrence even before registration of the First Information Report and thus, there is a possibility of deliberation and consultation before lodging the First Information Report and hence, Ex.P1 complaint cannot be relied upon and except the evidence of PW1, there is no other evidence available on record in respect of guilt of the accused and hence, PW1's evidence is highly suspicious and MO1 alleged to have been recovered at the instance of the accused does not contain any bloodstain and hence, MO1 is not the real weapon and the place of occurrence is a public place, but the prosecution has failed to examine the independent witnesses and the alleged contradiction of evidence of the witnesses and the prosecution has failed to prove the case beyond reasonable doubt and therefore, the accused is entitled to acquittal and prays that the criminal appeal may be allowed.

16. On the other hand, on the side of the prosecution, it is argued that the prosecution has proved the case by examining the witnesses and also by producing relevant documents and since the deceased failed to return the cellphone of the accused, he caused the death of the deceased and PW1 is the direct eye witness to the occurrence and there is no contradiction between the averments found in the First Information Report and the evidence of PW1 and further the Doctor's evidence was also corroborated with the evidence of PW1 and hence, the prosecution has proved the case beyond reasonable doubt and the accused is not entitled for acquittal and prays that the criminal appeal has to be dismissed.

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17. In this case, PW1 is the son of the deceased and he gave Ex.P1 complaint to the police. PW1 in his complaint has stated



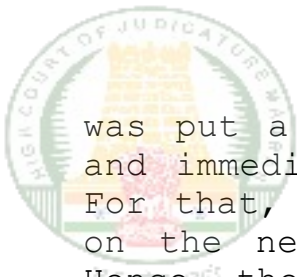
that a dispute arose between his mother and the accused in respect of non returning of a cell phone to the accused and due to which, the accused threatened his mother and on 10.09.2013, when his mother went to wash the clothes near the Syntax Tank, the accused went behind his mother and took the Aruval, which was concealed behind the above said tank and said that "'';njhL xHpe;J ngh"and cut on the neck of his mother and he, his relatives Krishnan and Sanjeevi came there and they saw the accused causing injury with Aruval on the head and hand of his mother and then, the accused ran away.

18.PW1 in his evidence has stated that due to non returning of the cell phone, there was a dispute between his mother and the accused and due to it, the accused threatened his mother and on 10.09.2013, while his mother went to wash the clothes near the Syntax tank, he heard the hue and cry of his mother and he went out of his house and saw that the accused had been cutting on the left side of the ear, left hand, right side of the neck of his mother and ran towards south and his mother was in the pool of blood and he, his relatives Krishnan and Sanjeevi saw the occurrence. Hence, the averments found in Ex.P1 complaint are corroborated with the evidence of PW1.

19.In this case, PW2 and PW3 were cited as eye witnesses. But they turned hostile and they did not support the case of the prosecution. PW3 and PW6 have stated during their evidence that in respect of non-returning of cell phone, there was a dispute between the family of the accused and the family of the de-facto complainant. Further, PW1 during his cross examination stated that in his presence, the accused threatened his mother for non returning of the cell phone and he has also admitted the non-returning of the cell phone to the accused.

20.It is settled law that even part of the evidence which inspires confidence (of a hostile witness) can also be relied upon. In this case, motive for the occurrence is spoken by PW3 and PW6, which corroborated the evidence of PW1. The Doctor, who conducted autopsy on the body of the deceased was examined as PW8. PW8 during his evidence stated that he found cut injuries on the left hand dorsum 4th finger, IInd toe, left frontal of parietal region exposing the scalp, right temple extending through the right ear and ear cut into two pieces, rool of nose, right side of neck of size 20 cm extending from the centre of neck exposing the spinal-card right side mandible fracture and hyoid bone fracture present.

21.PW8 during his cross examination stated that the deceased sustained cut injuries on her neck and hands and further PW8 during his cross examination that all the injuries sustained by the deceased are multiple in nature. While cross examining PW8 by the learned counsel appearing for the accused, he



was put a question, when the deceased was taken to the hospital and immediately there is a chance for the deceased to be alive. For that, PW8 stated that due to the multiple injuries sustained on the neck, it is not possible to the deceased to be alive. Hence, the Doctor's evidence is corroborated with the evidence of PW1.

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22. In this case, PW1 is the solitary witness. When the evidence of solitary witness is corroborated with the evidence of Doctor, the Court can very well convict the accused.

23. Further, in this case, PW10 is the arrest and recovery witness. PW10 has stated during his evidence that on 10.09.2013 at 4.30 p.m, the Inspector of Police, attached to Lalapet Police Station arrested the accused and the accused gave confession and on the basis of the confession, the accused handed over the weapon, which was used in the alleged occurrence and the shirt worn at the time of occurrence. PW10 identified the weapon and shirt of the accused before the Court. Further, PW10 stated that the shirt handed over by the accused was found bloodstain.

24. The Forensic Science Officer, Trichy was examined as PW13. PW13 has deposed that she found bloodstain on the Materials Objects 1, 4 to 7 and the blood found on the above materials objects is human blood. Hence, the evidence of PW1 is corroborated with the evidence of PW10 and PW13.

25. In this case, the motive put forth on the side of the prosecution is that PW1's mother refused to return the cell phone of the accused and when he requested the deceased to return his cell phone, for that, the deceased scolded him and due to it, the accused caused her death. Hence, it reveals that there is no previous enmity between the accused and the deceased and only due to sudden provocation, the accused caused the death of the deceased. Hence, this court is of the considered view that the finding of the trial court that the accused was found guilty under Section 302 IPC is not correct.

26. At this juncture, it is relevant to refer Section 304 IPC, which would run thus:-

"S. 304. Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with



the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

27. On examination of the factual circumstances and happenings, which led to the commission of offence, on going through various legal positions and material information both oral and documentary and upon consideration of the submissions made on either side, we are of the firm view that the offence committed by the accused does not attract the provisions of Section 302 IPC and it could only be an exception to Section 304(I) IPC, thereby converting the offence into Section 304(I) IPC instead of Section 302 IPC.

28. In the result, the Criminal Appeal is **partly allowed**. The conviction and sentence imposed on the appellant under Section 302 IPC is modified and the appellant is directed to undergo rigorous imprisonment for **five years** for the offence punishable under Section 304(I) IPC. The appellant, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period. The fine imposed by the trial court is confirmed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Sessions Judge, (Fast Track Mahila Court),
Karur.
2. The Judicial Magistrate No.1,
Kulithalai, Karur.
3. Do thro' The Chief Judicial Magistrate,
Karur.
4. The Superintendent of Central Prison,
Trichy. (in duplicate for communication to the accused)
5. The District Collector, Trichy.
6. The Director General of Police,
Chennai.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



8.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

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+ 1 cc TO Mr.Rm.Sivakumar , Advocate in SR No. 45657

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AE/KKR/SAR1/27.03.2018/9P/12C

Judgment
made in Cr1.A(MD)No.199 of 2016
01.01.2018