

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	28.09.2019
Date of Judgment	25.10.2019

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

CRL.A.(MD).NO. 11 of 2018

K.Nagarajan : Appellant/Sole Accused
Vs.

State through
The Inspector of Police,
Taluka Circle,
Patteeswaram Police Station,
Thanjavur District.
(In Crime No.254 of 2015)

: Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of Code of Criminal Procedure against the judgment made in S.C.No.262 of 2016, dated 11.04.2017 on the file of Fast Track Mahila Court, Thanjavur.

For Appellant : Mr.D.Malaichamy

For Respondent : Ms.M.Anantha Devi
Government Advocate (Crl.side)

J U D G M E N T

This Criminal Appeal is directed against the judgment passed in S.C.No.262 of 2016, dated 11.04.2017 by the Fast Track Mahila Court, Thanjavur.

2.The case of the prosecution is that the accused and the deceased were living under the same roof and the deceased was the mother of the accused and PW1 is the sister of the accused and the accused is a drunkard and he used to simply sit in the house without going to any work and on 23.11.2015, at 4.00 pm, the deceased was lying on the varanda and the accused was seated near her and he asked the deceased to bring some water to drink and the deceased told him to go and drink himself and due to it, the accused with an intention to cause death of his mother assaulted on her head with wooden reaper and due to which, the deceased died. The Inspector of



Police attached to Taluka Circle, Patteeswaram Police Station, Thanjavur District, has filed a final report against the accused examining the witnesses.

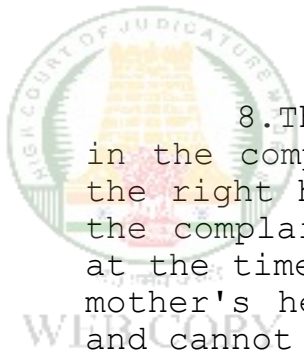
3.The trial court, on proper appreciation of the evidence, both oral and documentary, found the accused guilty for the offence under Section 304(II) IPC, convicted and sentenced him to undergo Rigorous Imprisonment for 10 years. Aggrieved by the judgment of the trial court, the appellant/accused is before this court.

4.Heard both sides and perused the materials available on record.

5.The main contention raised on the side of the appellant/accused is that PW1 and PW2 have not seen the occurrence and there are contradictions in the evidence of the prosecution witnesses and the oral evidence of PW1 is not corroborated with the medical evidence and prays that the appellant/accused is entitled to acquittal.

6.PW1 is the daughter of the deceased and the accused is the son of the deceased. PW1 gave the complaint in respect of the alleged occurrence. PW1 in her complaint stated that she lived with her mother in her mother's house and on 23.11.2015 at 4.00 pm, she came to her house, where her mother was lying in the veranda and the accused sat near her mother and asked her to bring drinking water, for that her mother told him to take the water himself and for that, the accused got annoyed and took a wooden log and assaulted on her mother's head and her mother fell down and bleeding of blood from her head and when she shouted, the accused ran away from the house and she informed his occurrence to his brother Sivakumar and after the arrival of his brother Sivakumar, she and her brother went to police station and gave the complaint.

7.PW1 deposed before the Court that she lived in her mother's house and the accused never went to do any work and he is a habit of consuming liquor and on 23.11.2015 at 4.00 pm, after she returned to her house, at that time the accused asked her mother to bring some water, for that her mother asked him to take water himself and subsequently, wordy quarrel arose between her mother and her brother and thereafter she went to the shop and returned and saw that the accused took a wooden log and assaulted her mother's left hand and then, the accused assaulted on her mother's head, thereby caused injury and due to the assault, her mother fell down and the accused ran to the back side of their house and her mother was in the pool of blood and then, she informed the occurrence to her brother Sivakumar and after the arrival of Sivakumar, she and her brother Sivakumar went to the police station and gave the complaint. Hence, the evidence of PW1 is corroborated with the contents found in Ex.P1 complaint.



8.The learned counsel for the appellant/accused argued that in the complaint, PW1 has not stated that the accused assaulted on the right hand of her mother with wooden log and she only stated in the complaint that she came to the house after finishing her work, at the time of occurrence, the accused with wooden log beaten on her mother's head and during her evidence, he exaggerated her evidence and cannot be believed.

9.It is not necessary to state all the details in the complaint because due to the occurrence, the complainant was in a stage of tension. Hence, it is not possible for her to say the occurrence in detail. Hence at the time of giving evidence, she has stated the occurrence in detail.

10.PW1 categorically stated that when she entered into the house, she saw that the accused assaulted her mother with wooden log and caused injury on her head. Hence, there is no contradiction between the evidence of PW1 and the contents found in Ex.P1 complaint. Therefore, the argument put forth on the side of the appellant/accused stating that PW1 during her evidence exaggerated the occurrence is not at all acceptable.

11.PW2 is the son of PW1. PW2 deposed that on 23.11.2015 at 6.00 pm, when he was working in a Javuli Store, at 4.00 pm, he returned to his house due to illness and at that time, he saw that his grand-mother and the accused quarrelled with each other and the accused asked his grandmother to bring him some water, for that his grandmother asked the accused to take water himself and then the accused took a wooden log and caused injury on the head of the grandmother. He and his mother shouted the accused, the accused ran to the back side of their house and then his mother informed the occurrence to his brother and his mother went to the police station and gave the complaint.

12.PW2 during his chief examination stated that he saw the occurrence. But during his cross examination, he has stated that at the time of occurrence, he was in Javuli store and he came to the place of occurrence, only after hearing the occurrence. It is seen that PW1 in her complaint has not stated that PW2 saw the occurrence. On careful perusal of the cross examination PW2, it reveals that he has not seen the occurrence. Hence, no much importance can be given to the evidence of PW2.

13.PW3 is the son of the deceased. PW4 is the daughter in law of the deceased. PW3 and PW4 stated that they only came to the place of occurrence after hearing the occurrence. Hence, no much importance can be given to the evidence of PW3 and PW4. PW5 is cited as eyewitness, but he turned hostile and did not support of the prosecution case.

<https://hcservices.ecourts.gov.in/> 14.The Doctor. who conducted post-mortem on the body of the



deceased was examined as PW8. PW8 found the following external injuries on the body of the deceased:-

"(i)An irregular shaped laceration measuring 1.5x 1 0.5 cms at right lobe of right ear with cartilage exposed;

(ii)Horizontal placed laceration measuring 1 x 1 x 1 cm at the tip of the right index finger;-

(iii)A horizontal placed laceration measuring 1.5 x 1 x 0.5 cm, at the tip of the right middle finger,

(iv)Depressed deformity of entire right side of the skull and right side of the face with fracture right maxilla, right orbit and nose,

(v)An irregular shaped obliquely place laceration measuring 12.5 x 3 x 3 skull exposed at left parietal region of skull."

15.PW8 stated that the cause of death of the deceased was due to the injury sustained on her scalp. PW1 stated during her evidence that the accused caused injury on the right hand and scalp of her mother. Hence, the evidence of PW1 is corroborated with the evidence of PW8 Doctor.

16.The learned counsel for the appellant/accused argued that PW1 during her evidence stated that after the occurrence, the accused was found on the backside of their house and then police caught hold of him. But PW7 stated that on 24.11.2015, the accused was arrested in Keela Palayaru Bus stop by the police in his presence and he gave confession and on the basis of the confession, the wooden log was recovered and hence, the theory of arrest and recovery put forth on the side of the prosecution is not at all believable and it creates doubt about the prosecution case and prays that the accused is entitled to acquittal.

17.In this case, PW1 during her evidence stated that the police caught hold of the accused, who stood on the backside of their house. But she has not stated that the police arrested the accused. But PW7 categorically stated that on 23.11.2015, the police arrested the accused and recorded confession and on the basis of the confession given by the accused, the weapon used for the occurrence was recovered. Hence, the evidence of PW1 stating that the police caught hold of the accused on the date of occurrence does not mean that was arrested on the same day. From the evidence of PW7, it reveals that on 24.11.2015, the accused was arrested by the police and he gave confession and on the basis of the confession, the wooden log which was used for the alleged occurrence was recovered.

18.Further, the learned counsel for the appellant/accused argued that the date of occurrence is 24.11.2015 at 4.00 pm, but the complaint was given on 23.11.2015 23.30 hours, hence there was a delay in giving the complaint to the police and hence, it is fatal



to the prosecution.

19. In this case, PW1 in her complaint and evidence stated that after the occurrence, she informed the occurrence to her brother and after arrival of her brother, she went to the police station and gave complaint. Hence, proper explanation was given for delay in giving the complaint and hence, it is held that it is not fatal to the prosecution.

20. For all the reasons stated above, this court is of the considered view that the trial court on proper appreciation of the entire materials available on record, both oral and documentary, given a correct finding, which does not require any interference by this court. However, considering the facts and circumstances of the case and the accused is sole breadwinner of the family, the punishment imposed on the appellant/appellant requires modification.

21. In the result, the Criminal Appeals are **partly allowed**. The punishment imposed on the appellant/accused for the offence under Section 304(II) IPC is reduced to 4 years RI. In other aspects, the findings of the trial court is confirmed. The period of sentence, if any already undergone by the appellant/accused shall be given set off under Section 428 of Cr.P.C. The appellant/accused, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar (CS)

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To,

1. The Fast Track Mahila Court, Thanjavur.

2. The Superintendent, Central Prison, Trichy (Convict No.22035)

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

CRL.A. (MD) No.11 of 2018
25.00.2019

JMN (13.12.2019) 5P : 4C