



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
21.10.2019	23.10.2019

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

Crl.A. (MD)No.529 of 2017

P.Velukaniyan : Appellant/Sole Accused

Vs.

State Represented by
the Inspector of Police
Alwarthirunagari Police Station
Thoothukudi District
Crime No.24/2011

: Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 27.08.2013 in S.C.No.201/2012 on the file of the Principal Sessions Judge, Thoothukudi.

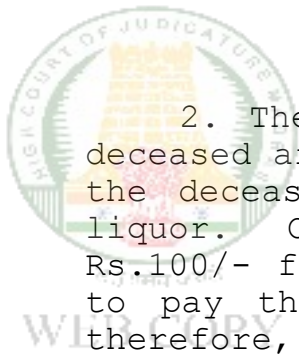
For Appellant : Mr.V.Santhakumaresan

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

JUDGMENT

S.VAIDYANATHAN, J.
AND
N.ANAND VENKATESH, J.

The sole accused, aggrieved by the judgment of the learned Principal Sessions Judge, Thoothukudi dated 27.08.2013, made in S.C.No.201/2012, convicting him for an offence under Section 302 IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs.500/-, in default, to undergo three months rigorous imprisonment, has preferred the present criminal appeal before this Court.

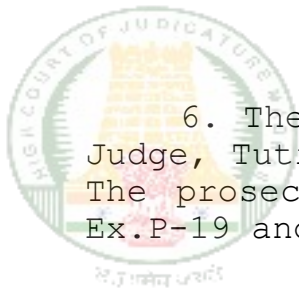


2. The case of the prosecution is that the appellant and the deceased are husband and wife and the appellant used to quarrel with the deceased frequently by demanding money from her for drinking liquor. On 01.02.2011, at about 2.00 p.m., he demanded a sum of Rs.100/- from the deceased to purchase liquor and when she refused to pay the money, he poured a pot of water over her head and therefore, the deceased came running out of the house. The appellant followed her and by uttering that if she refuses to pay him money for drinking liquor, then, she is not fit to be alive and saying so, he is said to have attacked the deceased with iron rod (M.O.-1) on her head, mouth, chin, chest and left leg and thereby committed the murder of the deceased.

3. The daughter of the deceased (P.W.-1), who was examined as eyewitness in this case, had taken the deceased to the hospital at Tirunelveli in an Ambulance with the help of P.W.-2., who is the sister of the deceased and another and the deceased was declared to be brought dead. The police reached the hospital and the Sub Inspector of Police (P.W.-7) recorded the statement from P.W.-1 (Ex.P-1) and she returned back to the police station at about 8.00 p.m. and registered an FIR in Crime No.24/2011 for an offence under Section 302 IPC. She prepared an express FIR and had sent it through Head Constable (P.W.-9) and it reached the Judicial Magistrate, Srivaikundam, at about 12 midnight.

4. The investigation was taken up by the Inspector of Police (P.W.-11) and he came to the scene of crime and prepared the observation mahazar (Ex.P-2) and the rough sketch (Ex.P-18) in the presence of the witnesses (P.W.-3). He also recovered the material objects in the scene of crime. The Investigating Officer thereafter left to the hospital on 02.02.2011 at about 9.30 a.m. and conducted inquest over the dead body in the presence of Panchayatdars and prepared the Inquest Report (Ex.P-19). After completion of the inquest, the dead body was handed over to the Special Sub Inspector of Police (P.W.-10) with the requisition for conducting the postmortem and thereafter hand over the same to the relatives. The dress of the deceased (M.O.-5 and M.O.-6) were also sent to the Court with the requisition to send the same for serological report. The Investigating Officer arrested the appellant on 02.02.2011 at about 4.00 p.m. and based on the voluntary confession given by him, recovered M.O.-1 and brought him before the Judicial Magistrate, Srivaikundam and thereafter he was remanded to judicial custody.

5. The statements of the witnesses were recorded under Section 161(3) Cr.P.C. The postmortem certificate (Ex.P-10), chemical examination report (Ex.P-13), serological report (Ex.P-14) and blood report (Ex.P-15), were all collected and on completion of the investigation, the final report was filed on 24.02.2011 before the Judicial Magistrate, Srivaikundam.



6. The case was committed to the file of the Principal Sessions Judge, Tuticorin and a lone charge was framed under Section 302 IPC. The prosecution examined P.W.-1 to P.W.-11 and marked Ex.P.-11 to Ex.P.-19 and M.O.-1 to M.O.-7.

7. The appellant was questioned under Section 313(1)(b) of the Code of Criminal Procedure putting all the incriminating materials collected during the course of trial and the same was denied as false.

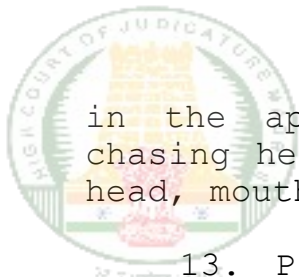
8. The trial Court, on consideration of the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to the conclusion that the prosecution has proved its case beyond reasonable doubts and proceeded to convict and sentence the appellant in the manner stated supra.

9. The learned counsel appearing on behalf of the appellant submitted that P.W.-1, who is the daughter of the appellant and the deceased, could not have seen the occurrence, since P.W.-2 says that she had ran away from the place immediately after the deceased was attacked by the appellant. Similarly, P.W.-2 had come to the scene of incident only after the occurrence. P.W.-2 is the neighbour of the deceased. It is very unnatural on the part of P.W.-1 and P.W.-2 not to have gone near the deceased after the incident and not to have gone along with her to the hospital in the Ambulance. The learned counsel further submitted that the confession and the recovery has not been proved, since the admissible portion has not been marked in this case. In the alternative, the learned counsel submitted that there was admittedly a wordy quarrel between the deceased and the accused and the same ended in the accused attacking the deceased under grave and sudden provocation and therefore, this Court may consider altering the conviction and bringing the same under Exception I to Section 300 IPC and punish the appellant under Section 304(i) IPC.

10. The learned Additional Public Prosecutor appearing on behalf of the State submitted that P.W.-1 and P.W.-2 have clearly spoken about the incident and there is nothing to discredit their evidence. The injuries as stated by P.W.-1 and P.W.-2 is corroborated by the evidence of postmortem Doctor and the postmortem Certificate. That apart, there was no delay at any stage of the investigation. There are absolutely no grounds to interfere with the conviction and sentence imposed by the Court below.

11. This Court has carefully considered the submissions made on either side and also carefully analyzed the oral and documentary evidence.

12. The daughter of the deceased and accused (P.W.-1) has clearly stated that the accused was in the habit of drinking liquor and used to quarrel with the deceased frequently asking for money. ~~Server.com~~ of occurrence, there was a wordy quarrel resulting



in the appellant pouring water on the deceased and thereafter chasing her from the house and assaulting her with M.O.-1 over her head, mouth, chin, chest and left leg.

13. P.W.-2, who is the neighbour of the deceased, had also deposed on similar lines. There is absolutely no ground to discredit the evidence of P.W.-1 and P.W.-2. These witnesses have spoken very cogently.

14. The contention of the learned counsel for the appellant that the conduct of P.W.-1 and P.W.-2 is unnatural, since they do not go near the deceased and accompany her in the Ambulance, is liable to be rejected. The incident happened in the spur of the moment and even before they could react, the attack was completed. Therefore, an arrangement was made to take the deceased in the Ambulance for treatment to High Ground Hospital and she was declared brought dead. Immediately thereafter, information was sent from the hospital to the respondent police and P.W.-7 came to the hospital and recorded the statement of P.W.-1. The FIR was registered at about 8.00 p.m. and investigation commenced immediately. The FIR also reached the Court at 12 midnight. Therefore, there was no delay at any stage.

15. The postmortem Doctor, who was examined as P.W.-6 had given a postmortem certificate, which was marked as Ex.P-10, and it revealed the following injuries:

"Antemortem injuries:

1.Abrasions on the following areas : 1 x 1 cm - outer respect of left lower cheek, 4 x 2 cm - right cheek, 4 x 1 cm - below right side of lower lip. 1 x 1 cm - left side of lower lip, 3 x 2 cm - right lower cheek, 2 x 2 cm - front of upper chest, 3 x 2 cm - back of right elbow, 2 x 0.5 cm - front of right knee, 1 x 1 cm - inner side of left knee, 1 x 1 cm - outer aspect of left knee and 5 x 2 cm - back of left elbow.

2.Contusions seen on the following areas:

11 x 11 cm - right cheek, 4 x 2 cm - left shoulder, 4 x 3 cm - left upper chest, 3 x 3 cm - medial aspect of left breast, 7 x 4 cm - front of left lower chest, 4 x 2 cm - front of right lower chest and 9 x 7 cm - back of left hand.

3.Lacerations: Avulsion of 3rd, 4th finger nail on left hand, 7 x 4 cm x bone deep laceration seen on the left side of frontal region, 1 x 0.5 cm x bone deep laceration seen on the root of nose. On dissection underlying bone fracture with surrounding bruise, 2 x 1 x 1 cm laceration seen on the middle of upper lip, 4 x 1 x 0.5 cm laceration seen on the inner aspect of lower lip, 5 x 1 cm x bone deep laceration seen on the chin. On dissection underlying jaw bone found fractured with surrounding loosening of teeth, 1 x 1 cm x skin deep



laceration seen on the front of right knee, 1 x 1 cm x skin deep laceration seen on the outer aspect of left knee, 5 x 2 x bone deep laceration seen on the occipital region.

On dissection of thorax: 6 x 3 cm contusion noted on upper sternum. 1 to 7 right sided ribs found fractured in their front with surrounding bruise. 2 to 7 left sided ribs found fractured in their front with surrounding bruise.

On dissection of scalp, skull and dura: 15 x 10 cm contusion over left frontal, parietal region. 7 x 5 cm contusion over occipital region. Diffuse subarachnoid and subdural hemorrhage noted over the cerebellum.

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Opinion as to cause of death:

The deceased would appear to have died of complications of multiple injuries."

16. The final opinion given by the Doctor is that the deceased had died due to complications of multiple injuries. The postmortem report reveals that there are three injuries out of which, two are only abrasion and contusions and other one is laceration.

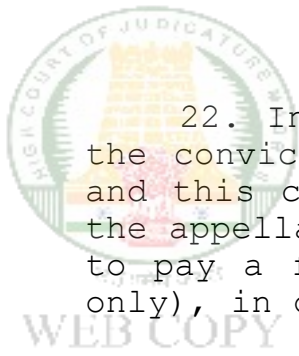
17. This Court finds that there is absolutely no doubt that it was the appellant alone, who had committed this crime and the same has been substantially proved by the prosecution beyond reasonable doubts.

18. The other issue that requires consideration of this Court is as to whether this case can be brought under Exception I of Section 300 IPC.

19. It is clear from the evidence of P.W.-1 and P.W.-2 that there was a wordy quarrel between the deceased and the appellant before the occurrence. The appellant was demanding for money to drink alcohol and the deceased was refusing to pay the amount. At one stage, the appellant was enraged and he poured water from a pot and attacked the deceased with M.O.-1. The injuries have already been extracted supra.

20. The facts stated hereinabove and the evidence of P.W.-1 and P.W.-2, clearly brings this case under Exception I of Section 300 IPC. The appellant had attacked the deceased, when he was deprived of the power of his control, due to grave and sudden provocation and thereby he has caused the death of the deceased.

21. In view of the above finding, this Court is of the considered view that the appellant has to be punished under Section 304(I) IPC taking into consideration the weapon used for committing the crime and the part of the body, which was attacked by the



22. In the result, this criminal appeal is allowed in part and the conviction and sentence imposed by the trial Court is modified and this case is brought within Exception I of Section 300 IPC and the appellant is punished with seven years rigorous imprisonment and to pay a fine of Rs.2,500/- (Rupees two thousand and five hundred only), in default, to undergo three months rigorous imprisonment.

Sd/-

Assistant Registrar (Ad-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The Principal Sessions Judge, Thoothukudi District.
- 2.The Judicial Magistrate, Srivaikuntam.
3. - do - Thro' The Chief Judicial Magistrate, Tuticorin.
- 4.The District Collector, Tuticorin.
- 5.The Superintendent of Police, Tuticorin.
- 6.The Superintendent, Central Prison, Palaymakottai.
- 7.The Inspector of Police,
Alwarthirunagari Police Station, Thoothukudi District.
- 8.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

Copy to: The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

Judgment made in
Crl.A. (MD)No.529 of 2017
23.10.2019

CS(11.11.2019) 6P 11C