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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Criminal Appeal No.255 of 2018

J.Jeyaseelan
S/o.Jeyaraj

.. Appellant/Accused

Vs.

State represented by
The Inspector of Police,
R.10, M.G.R.Nagar Police Station,
Chennai - 78.
(Crime No.1991/2013)

.. Respondent/Complainant

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order dated 21.12.2017 passed in S.C.No.347 of 2014 on the file of Mahalir Neethimandram, Chennai.

For Appellant : Ms.S.Sridevi

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

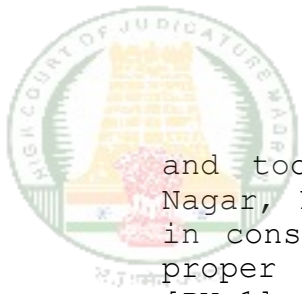
JUDGMENT

[Judgment of the Court was delivered by P.N.PRAKASH, J]

This criminal appeal is directed against the judgment and order of conviction and sentence dated 21.12.2017 passed by the Sessions Judge, Mahalir Neethimandram, Chennai, in S.C.No.347 of 2014.

2. The prosecution story runs thus:

2.1. Prabu [PW-1] hailed from Melputhupakkam village in North Arcot District. He was married to Venilla [deceased] and the couple has two children. Prabu [PW-1] was living with his parents and his younger brother Jeyaseelan (appellant herein), who was also married. Due to acute unemployment in the countryside, Prabu [PW-1] migrated with his family to Chennai



and took up residence in Door No.6/11, MGR Street, Bharathi Nagar, Nesapakkam, Chennai - 600 078 and was working as a mason in construction sites. Since the appellant also did not have a proper employment in the village, he joined his brother Prabu [PW-1] and used to accompany him as a helper in construction work. However, the appellant was not regular to work, on account of which, he was not getting his wages properly. This was resented by Prabu [PW-1] and his wife Venilla.

2.2. It is alleged that Venilla felt that appellant was a parasite on her family and upbraided him for not going to work and instead roaming around. On account of this discard, there used to be frequent quarrels between Venilla and the appellant and in one such quarrel, the appellant is said to have retorted to Venilla that he is after all staying in his brother's house and that he would not go out. However, the appellant is said to have parted company with Prabu [PW-1] and had taken up residence somewhere.

2.3. It is the specific case of the prosecution that on 06.12.2013, around 14.30 hours, the appellant came to Prabu's [PW-1's] house when Venilla was alone there, picked up a quarrel with her and hacked her to death. This incident was witnessed by Nandakumari [PW-3], a neighbour. When Prabu [PW-1] returned home for lunch, he saw the appellant running out of the house with bloodstains on his apparel and when he went inside the house, he saw his wife in a pool of blood. Soon, Venilla died. Prabu [PW-1] gave a written complaint [Ex.P1], based on which, Subramanian [PW-16], Inspector of Police (hereinafter referred to as the 'Investigating Officer'), registered a case in R10, MGR Nagar P.S.Crime No.1991 of 2013 on 06.12.2013 at 15.00 hours for the offence u/s.302 IPC against the appellant and prepared the printed First Information Report [Ex.P13], which was received by the jurisdictional Magistrate at 05.15 p.m. on the same day, as could be seen from the endorsement thereon.

2.4. The Investigating Officer [PW-16] went to the place of occurrence and prepared the observation mahazar [Ex.P15] and rough sketch [Ex.P14] and also collected the spilled blood in a gauze cloth under the cover of a mahazar [Ex.P16] from the place of occurrence. The Investigating Officer [PW-16] conducted inquest over the body of Venilla and the inquest report was marked as Ex.P17. The body was sent to the Government Hospital, Royapettah, where Dr.Baskaran [PW-10] conducted autopsy on the body of Venilla and issued the postmortem certificate [Ex.P4]. After obtaining the serology report [Ex.P5], which showed that poison was not detected in the visceral organs, Dr.Baskaran [PW-10] gave his final opinion in the postmortem certificate [Ex.P4] as to the cause of death, which is as under:



'Opinion : The deceased would have died of shock and haemorrhage due to multiple injuries.'

2.5. The Investigating Officer [PW-16] arrested the appellant on 07.12.2013 and based on his disclosure, recovered a knife [MO-1] kept inside a plastic bag [MO-2] in a bush beneath the Ekatuthangal bridge, under the cover a mahazar Ex.P3.

2.6. After examining witnesses and collecting the various reports, the Investigating Officer [PW-16] completed the investigation and filed a final report in P.R.C.No.81 of 2014 before the XXIII Metropolitan Magistrate, Chennai, for the offences u/s.450 and 302 IPC, against the appellant.

2.7. On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.347 of 2014 and was made over to the Mahila Court, Sessions Level, Chennai, for trial. The trial Court framed charges u/s.450 and 302 IPC against the appellant and when questioned, the appellant pleaded 'not guilty'.

2.8. To prove the case, the prosecution examined 16 witnesses and marked 18 exhibits and 6 material objects. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. None was examined from the side of the appellant and no exhibit was marked.

2.9. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 21.12.2017 in S.C.No.347 of 2014, convicted and sentenced the appellant as follows :

Provision under which convicted	Sentence
Section 302 IPC	Life imprisonment and fine of Rs.4,000/- in default to undergo 6 months simple imprisonment.
Section 450 IPC	6 months rigorous imprisonment and fine of Rs.1,000/- in default to undergo one month simple imprisonment.

The aforesaid sentences were ordered to run concurrently.

2.10. Challenging the aforesaid conviction and sentences, the appellant/accused filed the present appeal.



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3. Heard Ms.S.Sridevi, learned counsel for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

4. The prosecution has proved beyond a peradventure that the appellant is the brother of Prabu [PW-1] and Venilla was his sister-in-law. It has also been established satisfactorily that Venilla's death was a homicide and the death occurred on 06.12.2013.

5. The short question that falls for consideration in this appeal is, whether the appellant was the perpetrator of the offence.

6. The entire prosecution case is predicated on the evidence of Prabu [PW-1] and Nandakumari [PW-3]. Nandakumari [PW-3] was examined in chief on 13.07.2015. In her examination, she stated that she was living in Door No.6/11, M.G.R.Street, Bharathi Nagar, Nesapakkam, Chennai, which is next to the residence of Prabu [PW-1]; her husband is a driver; she is a house wife; she knows the family of Prabu [PW-1] and knows the appellant; Prabu [PW-1] was working as a mason and his wife was working in Ipro company; the appellant was residing in his brother's [PW-1's] house for the last two months and he was not going for job; on account of this, there used to be frequent quarrels between the appellant and Venilla; Venilla used to scold him; the appellant left the house of Venilla and on 06.12.2013, while she was in her house alone, she heard Venilla and the appellant quarrelling in their portion and when she went to enquire, she was bewildered to see the appellant hacking Venilla; when she hollered, the people around there gathered and the appellant ran away. Nandakumari [PW-3] was not cross-examined on the same day. She was recalled and was cross-examined on 17.03.2017. In the cross-examination, the defence was not able to make any dent in her testimony. She has very clearly stated that while she was getting ready to bring her children from the school, she heard the quarrel and out of curiosity, she went into the portion of Venilla and saw the incident.

7. Prabu [PW-1], in his testimony, has stated about his family details and also the fact that he migrated to Chennai and took up employment as a mason. He has further stated that he brought his brother [appellant] to Chennai and the appellant used to accompany him to the construction sites as his helper; however, the appellant was not regular to job and this had caused lot of heart burn in the family; on 06.12.2013, he went from home in the morning; since he was not picked up by the



construction contractors, he returned home around 2'0 clock for lunch and at that time, he heard noise in his house and soon, saw the appellant rushing out of his house and running away; when he went inside the house, he saw his wife in a pool of blood; since his wife died within a short while, he went to the police station and lodged a complaint. He was examined in chief on 13.07.2015 and was not cross-examined on the same day, as required. He was recalled and was cross-examined on 16.02.2017. Even in the cross-examination, he has stated that his brother (appellant) did not go for job and was staying with him and eating everyday.

8. On a careful analysis of the prosecution witnesses, we are able to discern that Prabu [PW-1], being the eldest in the family, had brought his younger brother (appellant) to Chennai and had made him stay in his house. However, the appellant was not regularly going to work and was a burden on the meagre income of Prabu [PW-1] and Venilla. Prabu [PW-1] and Venilla also have two children to take care of. Therefore, they were not happy with the appellant and were asking him to look out for a separate residence for himself. On the fateful day, it is seen from the evidence of Nandakumari [PW-3] that there was an altercation between the appellant and Venilla, in which, the appellant is said to have hacked Venilla. We have no reason to disbelieve the testimonies of Nandakumari [PW-3] and Prabu [PW-1], who have withstood the cross-examination though it was conducted two years after the chief-examination.

9. However, we are of the opinion that the proved facts will not fall within the scope of murder to convict the appellant for the offence u/s.302 IPC but would attract offence u/s.304(I) IPC. As regards, the charge u/s.450 IPC, we find from the testimony of Prabu [PW-1] that the appellant was living in his house and that he had not trespassed into the house for the purpose of committing the murder of Venilla.

10. For the foregoing reasons,

- (i) the conviction and sentence imposed on the appellant for the offence u/s.450 IPC are set aside and the appellant is acquitted of the said charge.
- (ii) the conviction and sentence imposed on the appellant for the offence u/s.302 IPC are set aside. Instead, the appellant is convicted u/s.304(I) IPC and sentenced to ten years rigorous imprisonment and fine of Rs.4,000/-, in default to undergo six months simple imprisonment. If the fine amount has already been paid pursuant to the judgment and order of the trial Court, it is not necessary for the appellant to pay once again. Period of incarceration thus far undergone by the



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appellant shall be set off in keeping with Section 428 Cr.P.C.

In the result, the Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

gm

To

1. The Presiding Officer,
Mahalir Neethimandram,
Chennai.
2. The XXII Metropolitan Magistrate,
Saidapet, Chennai.
3. The District Collector,
Chennai.
4. The Director General of Police,
Mylapore, Chennai.
5. The Superintendent of Central Prison,
Puzhal, Chennai.
6. The Inspector of Police,
R.10, M.G.R. Nagar Police Station,
Chennai - 78.
7. The Public Prosecutor,
High Court, Madras.
8. The Section Officer,
Criminal Section (Records),
High Court, Madras.

+1cc to Ms.S.Sridevi, Advocate SR.No.59508(21/03/2022)

Criminal Appeal No.255 of 2018

SR(CO)
GMY(03/12/2021)