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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09.09.2021
Pronounced on	28.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Criminal Appeal No.352 of 2018

Palanisamy

... Appellant/Sole Accused

.Vs.

State Represented by
The Inspector of Police,
B-10 Selvapuram Police Station,
Coimbatore District.
(Crime No.580/2013)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the conviction and sentence made in S.C.No.121 of 2014, dated 11.04.2017 on the file of IV Additional District and Sessions Court, Coimbatore.

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

JUDGMENT
(Heard through Video conferencing)

R.N.MANJULA, J.

The Appellants have filed this Appeal challenging the conviction and sentence made in S.C.No.121 of 2014 on the file of IV Additional District and Sessions Court, Coimbatore, dated 11.04.2017.

2. The facts of the case in brief:

The accused is a resident of Selvapuram Coimbatore and he was working as a Mason. P.W.2 Ayishammal and her husband Abuthahir were residing at Erode along with their two sons Jamaaludin (PW1) and Kamaaludin (the deceased). Due to misunderstanding between PW.2 and her husband, they got separated and thereafter PW.2 developed relationship with the accused and lived with him along with her two children, at



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Coimbatore. After the deceased Kamaluddin got married, he was living at Palakadu, Kerala along with his family by doing baniyan business. He kept touch with his biological father Abuthahir also while he was doing the said business. He used to come to Coimbatore to visit his mother PW.2.

2.1. Whenever the accused quarrelled with his mother in a drunken mood, he would encourage his mother to leave the accused and come with him to Kerala. In view of that the accused developed hatred and anger towards the deceased and reprimanded him not to come to his house and talk with PW.1 and PW.2. On 5.5.2013 the deceased visited PW.1 and PW.2 at their house at Coimbatore. On seeing that, the accused got enraged and abused PW.2. When PW.1 went to attend a phone call, the accused shouted at her. So the deceased asked the accused not to shout at his mother. Due to which a quarrel ensued between the accused and the deceased. The accused developed doubts that the deceased would take away his mother and leave him alone. So he decided to take away his life.

2.2. Having such an intention in mind, at about 6.30 am on 6.5.2013 the accused attacked the deceased over his right side head with hammer and caused severe head injury. Immediately the deceased was rushed to the hospital, but he was succumbed to his injuries on 12.05.2013. Earlier on the complaint given by PW.1 on 06.05.2013, a case was registered by B-10 Selvapuram Police Station in FIR No.580/2013 under sections 294 (b) & 307 IPC. After the death of the deceased on an alteration report Ex.P.31 the charges have been altered to 294 (b) & 302 IPC. After completing the investigation, charge sheet was filed against the accused under Sections 294 (b) & 302 IPC.

2.3. The charge sheet was taken cognizance by the Judicial Magistrate No.V, Coimbatore in P.R.C.9/2014. After observing the due formalities the case was committed to the Principal District and Sessions Court, Coimbatore as per Section 209(a) Cr.P.C and thereafter it was assigned to the file of IV Additional District and Sessions Judge. Charges have been framed against the accused under Section 294 (b) and 302 PC and the accused denied the charges and claimed to be tried.

2.4. During the course of trial on the side of the prosecution, 21 witnesses have been examined as P.Ws.1 to 21 and Exs.P-1 to P-34 were marked and material objects 1 to 6 were marked. On the side of the defence no witnesses was examined or no documents have been marked.

3. The brief facts of the case as it emerged from the evidence on the side of the prosecution:-



PW.1-Jamaaludin and the deceased are the sons of PW.2 and one Abuthahir; as his parents got separated, PW2 lived with the accused along with her sons at Coimbatore; subsequent to the marriage of the deceased, he was living in Kerala as a separate family and he used to visit PW.1 and PW.2 at Coimbatore; the accused used to abuse PW.2 by suspecting her conduct; during that time the deceased would quarrel with the accused in defense of his mother; he would also convince his mother and brother to get rid of the accused and come out of the house; at about 5.30 pm on 05.05.2013 the deceased came to the house of PW.1 and was having dinner along with PW.1 and PW.2; at that time the accused came in a drunken state; he abused PW.2 when she went to attend a phone call; the deceased defended his mother and asked the accused not to shout; this caused a brawl between the family members and at the end of which the accused declared that either he should live or the deceased should live; thereafter he went out; next day morning at about 6.00 am PW.2-mother went to her work place; at that time PW.1 and the deceased alone were at the house; at that time the accused came with a hammer and attacked on the right side of the head of the deceased by growling that he should not live. On seeing this PW.1 cried loudly; on hearing the noise, the neighbours came to the place of occurrence and tried to catch the accused; but he ran away by taking away the hammer (M.O.2); immediately they rushed to the hospital by taking the deceased in an auto; he also informed his mother about the occurrence through phone; PW1 gave the complain statement (Ex.P.1) and on the basis of the said complaint a case been registered in Crime No.580/2013 (Selvapuram P.S) under section 294 (b) & 307 IPC.

3.1. PW.21 took up the investigation, went to the place of occurrence on 07.05.2013 at about 1.00 pm and prepared the Observation Mahazar Ex.P.10 and Rough Sketch Ex.P.34 in the presence of the witnesses PW.8- Manikanndan and one Krishnaraj. He also collected blood stained cement mortar and plain cement mortar from the place of occurrence vide Ex.P.11 Seizure Mahazar (M.O.3 & 4). He sent them through Form 95 to Court, Ex.P.32.

3.2. P.W.21 arrested the accused at about 12 p.m. on 07.05.2021 and recorded his confession statement in the presence of the witnesses. In pursuance of the confession given by the accused he also recovered the weapon M.O.2 used for the occurrence through Ex.P.13 Seizure Mahazar. On 12.05.2013, PW.21 went on Other Duty. On the said date the incharge Officer PW.20 received the death intimation of the deceased and altered the charges to 294 (b) and 302 IPC by preparing the alteration report Ex.P.31. On 13.05.2013 he also conducted the inquest on the body of the deceased and prepared the inquest report Ex.P.33. On 13.05.2013 PW.21 returned to duty and continued the investigation and enquired the rest of the witnesses.



3.3. P.W.16-Dr.Raghuramaiah is the doctor who attended the injured when he was brought to the hospital on 06.05.2013 at about 7.35 am. And he learnt from the injured himself that he was attacked by a known person with a hammer at his house. A copy of the accident register registered by PW16 has been marked as Ex.P.21.

3.4. PW.11-Karthikeyan is the duty doctor who admitted the deceased when he was brought on 06.05.2013 and sent the intimation the police vide Ex.P.14. According to PW.11 the injured was conscious at that time when he was brought to the hospital and he told PW11 that he was attacked by a known person with a hammer. He sustained injury on the right side of his head. Due to some surgical treatment given to the deceased he was unconscious and was under life support. Subsequently he succumbed to his injuries on 12.05.2013 at about 2.40 pm. The death intimation is marked as Ex.P.14.

3.5. PW.17-Dr.Jeyasingh has conducted the post-mortem on the body of the deceased and issued the post mortem certificate (Ex.P.22). The viscera report of the accused is marked as Ex.P.23 and the final opinion given by the doctor is marked as Ex.P.24. In the final opinion it is stated as under:

"the deceased would appear to have died of Head injury. Viscera does not contain any poison."

3.6. In the post mortem certificate the following injuries on the body of the deceased were noted:-

(i)The following Ante-mortem injuries noted on the body:-

- Tracheostomy wound noted on front of neck.
- Sutured wound 4 cm noted over right parietal region.
- Surgical sutured wound 28 cm noted over right fronto temporo parietal region.

On dissection of scalp, skull, udra: sub scalp contusion entire scalp with sparing right temporal region. A bony flap 11 x 8 cm surgically removed and replaced in situ. Sutural separation noted over left fronto parietal bone. Diffused subdural and subarachnoid haemorrhage noted on entire brain. Fracture noted over both middle cranial fossa.

(ii) OTHER FINDINGS:-

- Plural & peritoneal cavity - empty.
- Hyoid bone : Intact.



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- Larynx and Trachea : Cut section congested
- Heart - all chambers contains about few cc (fluid blood,
- Coronaries patent.
- Stomach contains about 100 ml of dark brown colour fluid, no specific smell, mucosa congested
- Small Intestine contains about 10 ml of dark brown colour fluid, no specific smell, mucosa congested. - spleen. Kidneys, Lungs, Liver and Brain - Cut section congested.
- Urinary bladder - empty.
- Viscera preserved and sent for chemical analysis
- Blood preserved for grouping.

3.7. The scientific expert, PW15 has examined the material objects like the cement mortar, cloths of the deceased and the hammer and detected blood on them and given reports Ex.P19 and Ex.P.20. After examining all the witnesses and completing the investigation, the Investigation Officer has filed the charge sheet against the accused under Section 294 (b) and 302 IPC. After the completion of the trial, the learned trial Judge has found the accused guilty for the offence under section 302 IPC and sentenced him to undergo rigorous imprisonment for Life and to pay a fine of Rs.2,000/, in default to undergo simple imprisonment for a period of two months. Aggrieved over that the accused has preferred this criminal appeal.

4. Heard the arguments of Mr. T.Muruganantham, learned counsel for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

5. The learned counsel for the appellant has submitted that there is delay in filing the First Information Report and the learned Trial Judge has overlooked the fact that the eyewitness PW.1 is the brother of the deceased and is an interested witness; PW.2 is the mother of the deceased and hence she is also an interested witness; the evidences of PW.3 to PW.7 are also unreliable; the statement of the witnesses has contradictory facts with regard to the description of the weapon used for the occurrence. Since the deceased died after 6 days, while he was in treatment; sec.302IPC will not be attracted; if proper treatment is given the deceased would have survived. Hence the accused has to be given with the benefit of doubt and acquitted by setting aside the conviction and sentence of the Sessions Court.

6. The learned Additional Public Prosecutor has submitted that the evidence of the eyewitness is clear and other witnesses are cogent, clear and corroborating. The report of the doctor who conducted the post-mortem and the materials objects seized from



the accused on his confession coupled with the presence of blood stains on the material objects would prove the case of the prosecution and hence the judgement of the Sessions Court should be upheld.

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7. The point for consideration is

Whether the conviction of the accused for the offence under Sec.302 IPC on the basis of the materials available on the record is fair and proper?

8. This case is one in the series of cases based on the testimony of the eyewitness. The deceased and PW.1 are the sons born to PW.1 and Abuthahir and after PW.2 got separated from Abuthahir, she started to live with the accused along with her sons at Coimbatore. The deceased got married and thereafter he was living at Kerala as a separate family. He re-established contact with his biological father while he was living in Kerala and was doing business. He was in the habit of visiting his mother (PW2) and brother PW.1. During that course he had noticed the accused abusing his mother by suspecting her conduct. Because of that he was supporting and encouraging his mother to get rid of the accused and come with him. As the accused was living along with PW.2 and her children for several years, this has caused a sense of insecurity in his mind.

9. On the previous day of the occurrence the deceased had come to Coimbatore to visit his mother and brother. In his evidence PW.1 has stated that on 05.05.2013 when he was having dinner along with his mother and PW.2, the accused came in a drunken mood and abused the deceased and his mother and at the end he declared that he could not live until the existence of the deceased and went out. Next day early morning after PW2 went for work, the accused came to the house and attacked the deceased on his head with a hammer.

10. PW.2 has stated in her evidence that on the previous day at about 5.00 pm, a quarrel occurred between the deceased and the accused at about 5.00 pm. But PW.1 has stated that the previous day quarrel had occurred only when they were having their dinner. Despite the accused is said to have declared words to eliminate the life of the deceased, no complaint was given on 05.05.2013 itself.

11. Though PW.1 and PW.2 are relatives to the deceased in their capacity as brother and mother, they are not strangers to the accused as well. Despite the accused was in the habit of picking up quarrel with PW.2, PW.2 and her son PW.1 continued to live with the accused till the time of the occurrence. So the evidence of PW.1 and PW.2 can not be rejected as the evidence of interested witnesses.



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12. Until the accused entered his house on the morning of the day of the occurrence, no one was at home except PW1 and the deceased. The brothers did not have any ill will or motive between themselves and they were going cordial all along. However there is a delay in registering the First Information Report. When the occurrence was taken place at about 6.30 pm on 06.05.2013, the First Information Report has been registered only at about 11.00 pm at the night.

13. In Ex.P.1 complaint it is stated that a quarrel between the deceased and the accused had occurred on the previous day at 5.00 pm. But in his evidence PW.1 has stated that it had occurred during the dinner time. Though the delay in the First Information Report does not dilute the possibility of the involvement of the accused in the occurrence, there may be some variations in narrating the incidents that had preceded or followed the occurrence, especially the previous day quarrel.

14. PW.3 who is the neighbour of PW.1 had noticed the accused was entering the house on the morning at about 6.00 am with hammer in his hands. She has stated that she did not take it serious since the deceased was a construction worker and he used to possess such instruments. Only thereafter, she heard the noise of PW.1 that the accused had attacked the deceased. She also witnessed the accused was running away with the hammer in his hands. Had there been a quarrel on the evening of the previous day and if the accused entered on the next day morning with a hammer with all seriousness that would have caused a panic in the mind of PW3. So the probability for a quarrel on the previous day is less. But the quarrel between the accused and the deceased could have ensued only in the morning and during that course and in a fit of anger, the accused had attacked the deceased with a hammer.

15. PW.4 is also a neighbour and he heard the noise in the morning while he was washing his auto. He also noticed the accused running away by jumping out of the compound wall with a hammer in his hand. When they rushed to the place of occurrence the accused ran away and the deceased was showing his hands on the direction where the accused left.

16. PW.5 and P.W.6 also corroborated the evidences of PW.3 and PW.4. They had stated that they also saw the accused running away with hammer in his hands. Though PW.5 has stated in his chief examination that the accused had jumped out the compound wall and left, in his cross examination he has stated that the accused had gone out of the house through the doors. But the evidence of PWs. 3, 4 and 6 are consistent about the fact the the accused had jumped out the compound wall and went away.



17. After the accused was arrested on 07.05.2013, the hammer was recovered on his confession in the presence of the witness. PW.9, who stood as a witness for confession and recovery, has stated in his evidence about the said fact and he also identified the hammer (M.O.2), when it was shown to him in court.

18. During the course of the arguments, the learned counsel for the appellant submitted that there is a contradiction in the evidence of PW.1 with regard to the description of the weapon. PW1 has used both the words 'hammer' and 'sammatti' in his evidence while describing the weapon. So it is submitted by the learned counsel for the appellant that those two words refer to different types of weapons and hence there is a material contradiction. But P.W.9 has clarified that the weapon recovered from the accused is not a sammatti but it is a big hammer. Since the weapon by name sammatti also has a similar appearance but bigger in size, in local dialect the villagers use both the words and hence it can not be taken as a material contradiction, especially when the witnesses have identified the weapon correctly.

19. Further, the scientific expert (PW.15) who examined the hammer M.O.2 (hammer) has also stated that he found blood stain on it and given his report. On seeing M.O.2 weapon, the doctor who conducted the post mortem has also stated that the injuries present on the body of the deceased could have been inflicted by attacking the deceased with it. So these facts would confirm that the weapon used for the occurrence is nothing but M.O.2 and it is a hammer.

20. Though PW.1 has stated that the deceased had become unconscious immediately after he sustained the injuries. The doctor PW.16 who examined the deceased immediately after he brought to the hospital has stated that the deceased was conscious and he stated that he was attacked by a known person and he had pain on his head. PW.4 has also stated in his evidence that when he saw the deceased with blood injuries he showed the direction where the accused left. These facts would show that the deceased was conscious subsequent to the occurrence and when he was brought to the hospital. He was alive for nearly 5 to 6 days and died thereafter.

21. From these facts it has to be inferred that the accused had an intention to attack the deceased with a dreadful weapon like hammer knowing well that it would cause the death of the deceased, though he could not had any premeditated plan to murder him. The place of the occurrence is the house of the accused. At the time of the occurrence on 06.05.2013 there was no one at home except PW.1 and PW.2 until the accused entered in



to the house. Though the defense has claimed that PW.1 had quarrelled with his deceased brother and he only attacked him, there is no material placed before the Court to show that the brothers were at loggerheads and they had motive between themselves. On the other hand the evidence of the neighbours especially the evidence of PW.7, during his cross examination would confirm the fact that PW.1 and the deceased were in very affectionate terms. The accused had ill- will against the deceased because he was supportive of PW2. And that had created a sense of insecurity in the mind of the accused and he feared that the deceased would separate PW2 from him.

22. The cumulative effect of the ocular evidence, corroborative evidence of other witnesses, medical evidence, scientific evidence and the materials objects placed before the Court along with the motive proved by the prosecution would prove that the accused had caused the death of the deceased by attacking him with a hammer though he did not have any pre-meditation to kill him.

23. Despite the learned Sessions Judge is correct in his findings that it is the accused who had caused the death of the deceased, it is wrong to punish the accused for the offence of murder. Since the accused had committed culpable homicide not amounting to murder, at the best, he ought to have been convicted for the offence under sec.304(I) I.P.C. To that extent the conviction and sentence of the trial court has to be modified and the point is answered accordingly.

In the result the Appeal is partly allowed and the judgement of the trial court is modified to the extent that the Appellant is found guilty for the offence under Section 304(Part I) and sentenced to undergo 10 years of Rigorous Imprisonment and to pay a fine of Rs.2,000/, in default to undergo simple imprisonment for a period of two months. If the fine amount has already been paid pursuant to the Judgement and order of the trial Court, it is not necessary for the appellant to pay once again. Periods of incarceration so far undergone by the appellant shall be set off as per Section 428 Cr.P.C. The connected miscellaneous petitions if any are also closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jrs



Copy to

1. The IV Additional District and Sessions Judge,
Coimbatore.
2. The Principal Sessions Judge, Coimbatore.
3. The Judicial Magistrate No V
Coimbatore.
4. The Inspector of Police,
B-10 Selvapuram Police Station,
Coimbatore District.
5. The Record Keeper, Criminal Section,
High Court, Madras.
6. The Central Prison, Coimbatore.
7. The Public Prosecutor, High Court, Madras.

+1cc to Mr.T.Muruganantham, Advocate, S.R.No.45969

Crl.A.No.352 of 2018

RSI(CO)
PM/27/10/2021