



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:05.10.2021

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
AND

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.A (MD)No.329 of 2021

and

Crl.MP (MD)No.5407 of 2021

Rajesh

... Appellant/Sole Accused

-vs-

State Through,
The Inspector of Police,
Vadasery Police Station,
Kanniyakumari District.
Crime No.566/2010

... Respondent/Respondent

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 17.07.2012 passed in S.C.No.35 of 2011 on the file of the Court of Sessions, Kanyakumari Division at Nagercoil and set aside the same and allow the appeal.

For Appellant ::Mr.K.Samidurai

For Respondent :: Mr.A.Thiruvadikumar,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)

The appellant is the sole accused in S.C.No.35 of 2011, on the file of the Court of Sessions, Kanyakumari Division at Nagercoil. He stood charged for the offence under Section 302 I.P.C. The trial Court convicted him and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo four years Rigorous Imprisonment and challenging the above conviction and sentence, the appellant is before this Court with this Criminal Appeal.

2.The case of the prosecution in brief is as follows:

The deceased by name Mary Lilly, is the mother of the appellant. The appellant used to quarrel with his mother demanding money. On 03.06.2010, at about 9.00 p.m., the accused quarrelled with the deceased demanding money and intimidated her. Fearing that the accused might attacked the deceased, both P.W.1 brother of the



deceased and his wife(P.W.2), went to the house of the deceased and stayed. On the next day, early morning at about 5.00 a.m., there was a quarrel between the deceased and the accused, in which, the accused threw a grinding stone on the head of the deceased and caused her death. On hearing the noise, both P.Ws.1 and 2, woke up and saw that the deceased found dead. Immediately, P.W.1 went to the police station and lodged the complaint(Ex.P1).

3. P.W.6, the Sub-Inspector of Police working in the respondent police on receipt of the complaint, registered the F.I.R in Crime No.566 of 2010 for the offence under Section 302 I.P.C and sent the F.I.R to the Judicial Magistrate Court, also sent the copy of the F.I.R to the Investigating Officer and other higher officials for investigation.

4. P.W.7, the Inspector of Police working in the respondent police station, on receipt of the F.I.R., rushed to the scene of occurrence where he prepared the observation mahazar(Ex.P2) and Rough Sketch(Ex.P8) and collected blood stained cement tiles(M.O.4), ordinary cement tiles(M.O.5). At about 10.30 a.m., conducted inquest on the dead body in the presence of panchayatars and other witnesses and prepared the inquest report(Ex.P9) and sent the dead body for postmortem autopsy to the Government Medical College Hospital, Kanniyakumari.

5. P.W.5, an Assistant Professor working in the Government Medical College Hospital, Kanniyakumari, has conducted postmortem autopsy and given a postmortem report (Ex.P5) and found the following injuries:

"The following ante - mortem injuries noted :

1. 6 x 4cm x bone deep lacerated injury seen over the left temporal region.

O/D Scalp, Skull and dura:

Sub Scalpal bruising seen over the entire scalp. Communitated fracture of left temporal and parietal bone noted. Fissure fracture of right temporal and parietal bone noted. Diffused Sub Dural and Sub Arachnoid Haemorrhage seen over the both cerebral hemispheres. Laceration of brain noted over the left temporal and left parietal lobes. Fracture of all the cranial fossae of base of skull noted.

Other findings noted:

Heart : Normal, Coronaries patent.

Lungs: Normal, C/S pale.

Hyoid: Intact.

Stomach: About 200gms of identifiable partly



digested cooked rice

Liver, Spleen & Kidneys: Normal, C/S pale.

Small intestine: About 20ml of chyme like fluid with pungent odour, Mucosa pale.

Bladder: Empty

Uterus: Normal, C/S Empty.

Brain: Injuries described.

He was of the opinion that the deceased would appear to have died of shock and hemorrhage due to head injury.

6. P.W.7, arrested the accused, on such arrest, he voluntarily came forward to give confession admitting his guilt, thereafter, sent the accused for judicial custody. Since he was transferred, he handed over the investigation to P.W.8, he continued the investigation and recorded the statement of witnesses and on completion of investigation, he filed the final report.

7. Considering the above materials, the trial Court framed charge as mentioned above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 8 witnesses, marked 12 documents and also produced 5 material objects.

8. Out of the witnesses examined, P.W.1 is the brother of the deceased. According to him, he spoke about the frequent quarrel between the deceased and the accused and on the date of occurrence, he and his wife stayed in the house of the deceased and on the next day, early morning at about 5.00 a.m., on hearing the noise, he woke up and saw that the accused throwing a grinding stone on the head of the deceased, caused her death, immediately, he filed the complaint.

9. P.W.2, is the wife of P.W.1, she is also an eyewitness to the occurrence. P.W.3 is the son of P.Ws.1 and 2. He is only a hearsay witness. P.W.4 is the witness to the observation mahazar and rough sketch. P.W.5 is an Assistant Professor working in the Government Medical College Hospital, Kanniyakumari, he conducted postmortem autopsy on the dead body and given postmortem report (Ex.P5), and he was of the opinion that the deceased would appear to have died of shock and hemorrhage due to head injury. P.W.6, the Sub-Inspector of Police working in the respondent police, on receipt of the complaint, registered the F.I.R. P.W.7, the Inspector of Police working in the respondent police station, conducted the initial investigation. Since, P.W.7 was transferred, he handed over the investigation to P.W.8, P.W.8, completed the investigation and filed the final report.

10. The above incriminating materials were put to the accused under Section 313 Cr.P.C. The accused denied the same as false. On his side, he has not examined any witnesses and marked any documents.



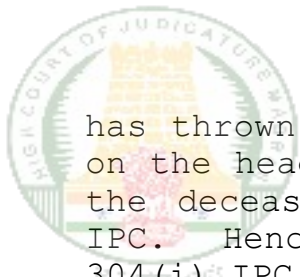
11. Having considered the above materials, the trial Court convicted the appellant/accused and sentenced him as stated above. Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.

12. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

13. The deceased is the mother of the accused. From the evidence of P.Ws.1 & 2, who are the brother and sister-in-law of the deceased, it could be seen that the deceased used to quarrel with the deceased frequently. On 03.06.2010, at about 9.00 p.m., the deceased quarrelled with the deceased and unable to bear that, the deceased called P.Ws.1 and 2 to stay with her. On the next day, early morning at about 5.00 a.m., both P.Ws.1 and 2, heard the loud noise of the deceased and immediately, they woke up and found that the accused throwing a grinding stone on the head of the deceased, P.W.1, rushed to the police station and filed a complaint at about 8.15 a.m. There is no delay in filing the F.I.R and the F.I.R was also reached the jurisdictional Court on the very same day at about 10.00 a.m. The medical evidence is also corroborating the evidence of P.Ws.1 and 2. From the perusal of postmortem report(Ex.P5), it could be seen that the deceased suffered a fracture in the left temporal and parietal bone and the deceased died due to the shock and hemorrhage to the head injury. The evidence of P.Ws.1 & 2 is consistent and their presence in the scene of occurrence is natural, medical evidence also corroborates their evidence. Their testimony is truthful and trustworthy, and we find no reason to disbelieve their evidence. Considering all those materials, we are of the opinion that the prosecution has clearly proved that it is only the accused has put a grinding stone on the head of the deceased and caused her death.

14. The next question arises for consideration is, what was the offence that was committed by the accused. Whether the act of the accused amounts to murder or culpable homicide not amounting to murder.

15. From the evidence of P.Ws.1 and 2, it could be seen that prior to the occurrence, there was a quarrel between the accused and the deceased and on the next day, early morning, again there was a quarrel, in the heat of passion, the accused said to have thrown a grinding stone, which was available in the scene of occurrence, on the head of the deceased. From that, we could see that the accused has no intention to cause death of the deceased. However, he has an intention of causing bodily injury, which is likely to cause the death of the deceased. The act of the accused will fall under the third limb of 300 I.P.C. The accused without any premeditation, attacked the deceased, in a sudden fight, out of heat of passion, he



has thrown the grinding stone available in the scene of occurrence, on the head of the deceased. In the said circumstances, the act of the deceased will fall under the fourth exception to Section 300 IPC. Hence, the appellant is liable to be punished under Section 304(i) IPC not under Section 302 IPC.

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16. So far as the quantum of sentence is concerned, the accused is a young man at the time of occurrence, he has a chance to reform himself, the occurrence has taken place in the heat of passion on a sudden quarrel between the accused and the deceased and the accused has attacked the deceased with a grinding stone available in the scene of occurrence, and there is no serious motive attributed against him. Considering the aggravating and mitigating circumstances, we are of the considered view that sentencing the appellant to undergo 9 years of rigorous imprisonment will meet the ends of justice.

17. In the result, this Criminal Appeal is partly allowed and the conviction imposed on the appellant/sole accused by the Sessions Judge, Kanyakumari at Nagercoil in S.C.No.35 of 2011, dated 17.07.2012, under Section 302 IPC, is set aside, instead the appellant/accused is convicted for the offence under Section 304 (i) IPC and sentenced to undergo nine years Rigorous Imprisonment. The period of imprisonment already undergone by the appellant-accused shall be given set-off under Section 428 Cr.P.C. The fine amount, if any paid by the appellant/accused, shall be refunded to him. It is stated by the learned counsel for the appellant that the appellant is in jail for more than 9 years and 3 months. In view of the same, the appellant, is directed to be released forthwith, unless his custody is required in any other case. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Sessions Judge,
Kanyakumari at Nagercoil.

2.The Judicial Magistrate No.II Nagercoil.

3.-do-Through The Chief Judicial Magistrate,
Kanyakumari at Nagercoil.

4.The Superintendent, Central Prison, Palayam Kottai.

5.The District Collector, Kanyakumari District.

6.The Director General of Police Mylapore Chennai.

7.The Superintendent of Police, Kanyakumari District.

8.The District Collector, Tirunelveli District.

9.The Inspector of Police,
Vadasery Police Station,
Kanniyakumari District.

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

Copy to

The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-31308[F] dated 06/10/2021)

Criminal Appeal No.(MD) No.329 of 2021

05.10.2021

_RD(26.11.2021) 6P 14C