



BSIL SLIP

The Appellant herein/ Accused Vis., namely Rajendran, S/o. Chellappan, was released on bail dated 24/07/2018 made in CRL.MP (MD).No. 5266 of 2018 in CRL.A.(MD).No. 301 of 2018.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2021

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

AND

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRL.A (MD)No.301 of 2018

Rajendran .. Appellant/Sole Accused

-vs-

State through

The Inspector of Police,
Thakkalai Police Station,
Nagercoil District.

(Crime No.488 of 2004).

.. Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment of the Fast Track Mahila Court, Kanyakumari @ Nagercoil, in S.C.No.199 of 2004, dated 04.06.2015.

For Appellant

:: Mr.R.Alagumani

For Respondent

:: Mr.S.Ravi

Standing Counsel for State

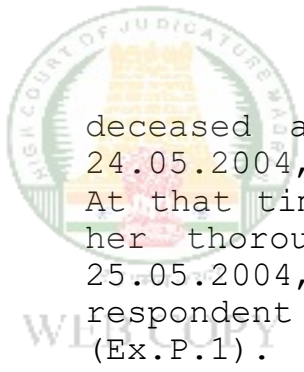
JUDGMENT

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

The appellant is the sole accused in S.C.No.199 of 2004, on the file of the Fast Track Mahila Court, Kanyakumari District at Nagercoil. He stood charged and convicted for the offences under Sections 498-A and 302 I.P.C. and sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months Rigorous Imprisonment for the offence under Section 498-A I.P.C. and sentenced to undergo Life Imprisonment and to pay a fine of Rs.15,000/-, in default, to undergo one year Rigorous Imprisonment for the offence under Section 302 I.P.C. and the sentences were ordered to run concurrently. Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased Rani, is the wife of the appellant/accused. The appellant is a driver. There were frequent quarrel between the



deceased and the appellant and the appellant harassed her. On 24.05.2004, at about 11.30 p.m., there was a quarrel between them. At that time, the accused kicked her in the abdomen and also beaten her thoroughly and left the house. On the next day i.e., on 25.05.2004, P.W.1, mother of the deceased, took her to the respondent police station, where the deceased gave a complaint (Ex.P.1).

3. Based on that complaint, an F.I.R. (Ex.P.11) has been registered by P.W.13, Head Constable, in Crime No.488 of 2014, for the offences under Sections 341 and 323 I.P.C. and sent the original F.I.R. to the Judicial Magistrate, Padmanabapuram and copies to the higher officials and one copy to P.W.14, Sub-Inspector of Police, for investigation. He also sent the deceased to Government Hospital, Thuckalay, for treatment along with memo (Ex.P.4).

4. P.W.3, Dr. Josephsen, working in the Government Hospital, Thuckalay, admitted the deceased as inpatient on 25.05.2004 at 12.00 p.m. and has given treatment. The Accident Register copy issued by P.W.3 is marked as Ex.P.3.

5. P.W.14, Sub-Inspector of Police, on receipt of the F.I.R. commenced the investigation, visited scene of occurrence and prepared Observation Mahazar (Ex.P.7) and Rough Sketch (Ex.P.12). Thereafter, he went to Thuckalay Government Hospital and recorded the statement of deceased Rani and other witnesses. Subsequently, at 7.15 p.m., the deceased succumbed to the injuries and P.W.3 sent intimation (Ex.P.2) to the police. After the death of Rani, he altered the offence to Section 302 I.P.C. and sent the alteration report (Ex.P.13) to the Judicial Magistrate Court and copies to the Higher Officials and sent a copy to P.W.15, Inspector of Police for investigation.

6. On receipt of the altered F.I.R., P.W.15, continued the investigation, went to the scene of occurrence and recorded the statements of witnesses. Then he proceeded to Thuckalay Government Hospital, conducted inquest over the body of the deceased between 12.30 a.m. to 2.30 a.m. and prepared Inquest Report (Ex.P.14). He recovered the dresses worn by the deceased and examined the witnesses and recorded their statements. On 26.05.2004, he arrested the accused and remanded him to judicial custody.

7. In the meantime, P.W.4, Doctor, working in the Government Hospital, Padmanabapuram conducted postmortem autopsy on the dead body on 26.05.2004 at 12.30 p.m. and given the postmortem report (Ex.P.5), he was of the opinion that, the deceased would appear to have died of shock and septicemia due to stomach and small intestine (jejunum) rupture.



8.P.W.15 examined the doctors and recorded their statements and after completing the investigation, filed the final report on 14.06.2004 for the offences under Sections 498-A and 302 I.P.C.

9.Considering the above materials, the trial Court framed charges as stated above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 15 witnesses, marked 14 documents and also submitted 3 material objects.

10.Out of the witnesses examined, P.W.1, is the mother of the deceased. She has spoken about the occurrence, which took place on 24.05.2004. On 25.05.2004, she took the deceased to the police station, where they have given a complaint, thereafter, admitted her in the hospital. P.W.2 is the son of the accused and the deceased. He is an eye-witness to occurrence. According to him, on 24.05.2004, the accused in an inebriated mood attacked the deceased, kicked her in abdomen and the deceased fell down. On the next day, the deceased informed the occurrence to P.W.1, who took her to the hospital.

11.P.W.3, Doctor, admitted the deceased in the Government Hospital Thuckalay and issued Accident Register (Ex.P.3), wherein, she stated that on 24.05.2004, at about 11.30 p.m., she was assaulted by one known person at her residence.

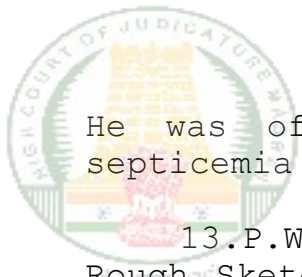
12.P.W.4, Doctor, who conducted autopsy and issued postmortem certificate (Ex.P.5) , which reads as follows:

"The body was first seen by the undersigned at 12.30 P.M. on 26.05.2014. Its condition then was cold. Rigor Mortis present in all 4 limbs. Post mortem commenced at 12.30 P.M. on 26.05.2004.

Appearances found at the post-mortem:

Lies on back, symmetrical moderately nourished, Pale, Jaws clenched, Tongue inside, Eyes closed forthy blood stained discharge present from Nostrils and mouth. Hands free No external injuries: On opening the Abdomen 1 litre of serosanguinous fluid present in the peritoneal cavity. Stomach empty. Rupture of stomach in the posterior wall present. (5 cms vertical) Rupture of Antimesenteric border of jejunum present + (1Cm) Liver 1400 gms C/S/ congested. Spleen 120 gms. C/S. Congested Kidneys 120 gms. each. C/S. Congested. On opening the thorax Heart wt250 gms. Lungs weight450 gms. Left 400 gms C/S/ congested. No fracture ribs No fracture Pelvis V Bladder empty. Uterus empty. On opening the Skull No fracture Brain wt.1200 gms. C/S. Pale. No fracture spine. P.M. concluded at 2.00 P.M.

The deceased would appear to have died of shock and septicemia to stomach and small intestine (Jejunum) rupture 18-20 hrs. prior to P.M.



He was of the opinion that the deceased died of shock and septicemia to stomach and small intestine (Jejunum) rupture.

13.P.W.5 is an witness to the Observation Mahazar (Ex.P.7) and Rough Sketch (Ex.P.12). P.W.6 is a witness to confession statement (Ex.P.8) of accused. P.Ws.7 to 10 are the neighbors of the deceased, who turned hostile. P.W.11 is the Head-Constable, who handed over the Express F.I.R. to Judicial Magistrate Court. P.W.12 is the Head-Constable, who identified the dead body for postmortem. P.W.13 is the Head-Constable, who registered the F.I.R. for the offences under Sections 341 and 323 I.P.C. P.W.14 is the Sub-Inspector of Police, who conducted the initial investigation and recorded the statement of the deceased and after the death of the deceased, he altered F.I.R. for the offence under 302 I.P.C. P.W.15 is the investigation officer. He examined the witnesses and recorded their statements and filed the final report on 14.06.2004 for the offences under Sections 498-A and 302 I.P.C.

14.The above incriminating materials were put to the accused under Section 313 Cr.P.C.. The accused denied the same as false and he has not examined any witness or marked any document.

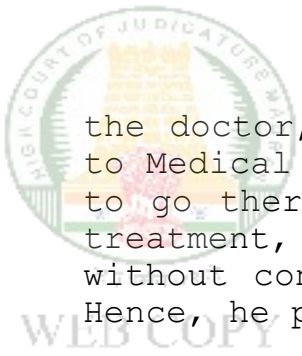
15.Having considered the above materials, the trial Court convicted the appellant/accused and sentenced him as state above. Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.

16.Mr.R.Alagumani, learned counsel appearing for the appellant would submit that the occurrence has taken place on 24.05.2004 and it is only a wordy quarrel between the husband and wife. Even as per the evidence of P.W.2, he has only beaten her on the cheek with hands and kicked her in the abdomen and he has not cause any injury, he has no intention of causing the death of his wife. However, on the next day, she died out of shock and septicemia due to the injury sustained in her stomach and small intestine, according to her, there is no possibility of developing septicemia within 24 hours of the occurrence, septicemia may be developed due to some other injury sustained by her earlier.

17.The learned counsel would further submit that, even assuming that the evidence of P.W.2 is true, he can only be punished under Section 323 I.P.C. and he is not liable to be convicted under Section 302 I.P.C. The medical evidence is not supporting the prosecution case and P.W.4, doctor, has clearly stated that even in a case of ulcer, the deceased might have developed septicemia, according to him, septicemia would develop only 3 to 6 days after the injury.

18.The learned counsel further submitted that while the deceased was admitted in the Government Hospital, Thuckalay, P.W.3,

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the doctor, working at Government Hospital, Thuckalay, referred her to Medical College Hospital, Asaripallam, Nagercoil, but she refused to go there, had she gone there, she would have been given better treatment, there is a chance of her survival. The trial Court without considering the above circumstances, convicted the accused. Hence, he prayed for acquittal of the appellant/accused.

19. Opposing the same, Mr.S.Ravi learned Standing Counsel for State would submit that, P.W.2 is none other than the son of the deceased and the accused and he was present at the time of occurrence. He has clearly deposed that the accused forcibly kicked the deceased in the abdomen, thereby, caused severe injury, which has resulted in the death of the deceased. There is no reason to disbelieve the evidence of P.W.2. The learned Standing Counsel further submitted that the ocular evidence of P.W.2 is sufficient to convict the accused.

20. The learned Standing Counsel for the State further submitted that the medical evidence corroborated the evidence of P.W.2. The evidence of P.W.2 proves the overtact of the accused and that the deceased died due to the injuries sustained. There is sufficient evidence available on record to show that the accused harassed the deceased frequently and in fact, indiscriminately attacked her on several occasions. Hence, the trial Court has rightly convicted the appellant under Section 498-A and 302 I.P.C. and the same requires no interference by this Court.

21. We have considered the rival submissions and also perused the records carefully.

22. The deceased is the wife of the accused. From the evidence of P.Ws.1 and 2, mother and son of the deceased, it could be seen that there were frequent quarrel between the husband and wife. The accused is a drunkard and used to beat the deceased frequently. There was a quarrel between the accused and deceased on 24.05.2004, at about 11.30 p.m., and P.W.2, was also present in the house and he is the eyewitness to the occurrence. According to him, the accused attacked the deceased and kicked her in the abdomen and has also beaten her in the cheek, subsequently, deceased developed pain, and on the next day, both P.Ws.1 and 2 took her to the hospital. P.W.1, mother of the deceased, corroborates P.W.2, regarding the harassment caused by the accused on the deceased. We have no reason to disbelieve their evidence.

23. On the next day, the deceased along with P.W.1 went to the police station and lodged the complaint (Ex.P.1), wherein the deceased has clearly stated that the accused in a inebriated mood quarreled with the deceased, when she resisted it, he attacked him in the cheek and kicked her in the abdomen. When she raised alarm, he left the house. This is the first dying declaration given by the



deceased, wherein she has clearly stated that it is only the appellant, attacked her and kicked her in the abdomen. Thereafter, she was admitted in the Government Hospital, Thuckalay. P.W.3, the doctor, admitted the deceased in the Government Hospital, Thuckalay, and issued Accident Register copy (Ex.P.3), wherein also she has clearly stated that a known person attacked her and kicked her, that is her second dying declaration, which is consistent with the earlier one.

24.It is the contention of the learned counsel appearing for the appellant that in the postmortem report, it is seen that the deceased died of shock and septicemia. As the deceased died within 24 hours, there is no chance for developing septicemia. A careful perusal of the postmortem report along with the evidence of P.W.4, the postmortem doctor, it is seen that the deceased had died due to the injuries sustained in the abdomen and rupture in the small intestine. It is not the case of the appellant that the deceased sustained some other injury prior to the occurrence and due to that injury septicemia has developed. Hence, the said contention of the learned counsel for the appellant cannot be countenanced. From the above materials, it is clear that it is only the appellant, who has attacked the deceased and caused her death.

25.The next question arises for consideration is what is the offence, which was committed by the deceased by his act. From the evidence of P.W.2, the statement of the deceased, it could be seen that at the time of occurrence, there was a wordy quarrel between the appellant and the accused and in the sudden fight, the accused attacked her with hands and kicked her in the abdomen and admittedly there is no external injury on the body of the deceased. Therefore, it could be seen that the accused had no intention to cause the death of the deceased, and he has no intention of causing bodily injury, which likely to cause the death of the deceased. However, the accused has the knowledge that his act is immensely dangerous, in all probability his act is likely to cause bodily injury as is likely to cause her death. Hence, the act of the accused will fall under the fourth limb of Section 300 I.P.C. However, the appellant/accused attacked the deceased without any premeditation in a sudden fight, in a heat of passion, in a quarrel, he attacked the deceased with the hands and kicked her in the abdomen, which ultimately caused some internal injuries, which caused the death of the deceased. Hence, the act of the accused falls under the fourth exception Section 300 I.P.C. and he is liable to be convicted under Section 304(ii) I.P.C.

26.So far as the conviction under Section 498-A I.P.C. is concerned, the evidence of P.Ws.1 and 2 clearly shows that the appellant harassed the deceased frequently and considering those circumstances, the trial Court rightly convicted the accused under Section 498-A I.P.C. and we find no wrong in it.



27.As far as the sentences are concerned, the occurrence has taken place in a wordy quarrel, and the accused attacked the deceased with hands and kicked her on her abdomen and has no intention to cause the death of the accused. That apart, the accused has no bad antecedents and he has chance to reform. Considering the above circumstances, we are of the view that imposing a sentence of two years Rigorous Imprisonment with a fine of Rs.5,000/-, in default, to undergo six months Rigorous Imprisonment for the offence under Section 498-A I.P.C. and imposing a sentence of Seven Years Rigorous Imprisonment with a fine of Rs.15,000/-, in default, to undergo one year Rigorous Imprisonment for the offence under Section 304(ii) I.P.C. would meet the ends of justice.

28.In the result, the Criminal Appeal is partly allowed and the conviction imposed on the appellant/accused, by the Fast Track Mahila Court, Kanyakumari @ Nagercoil, in S.C.No.199 of 2004, by the judgment dated 04.06.2015, under Sections 498-A is confirmed, however the sentence imposed is modified to two years Rigorous Imprisonment with a fine of Rs.5,000/-, in default, to undergo six months Rigorous Imprisonment and the conviction and sentence imposed under Section 302 I.P.C. are hereby set aside, instead the appellant/accused is convicted under Section 304(ii) I.P.C. and sentenced to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.15,000/-, in default, to undergo Rigorous Imprisonment for one year. The sentences imposed shall run concurrently and the sentences already undergone shall be given set off under Section 428 Cr.P.C. After the period of Appeal, M.Os.1 to 3 shall be destroyed. The respondent is directed to take steps to procure the accused for undergoing the remaining period of sentence.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sj

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,
Fast Track Mahila Court,
Kanyakumari District
@ Nagercoil.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Judicial Magistrate,
Ambasamudram

3.Do through The chief judicial Magistrate, Tirunelveli District

4.The Inspector of Police,
Thakkalai Police Station,
Nagercoil District.

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

Copy to

The Section Officer, (2C)
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

Criminal Appeal No.(MD) No.301 of 2018
24.08.2021

KMV(CO)
KB(23.09.2021) 8P 8C