



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Criminal Appeal(MD)No.491 of 2018

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S.Kiliraja

... Appellant/Sole Accused

vs.

State rep by
The Inspector of Police,
Sayalkudi Police Station,
Ramanathapuram.
(Cr.No.166 of 2013)

... Respondent/Complainant

Appeal filed under Section 374 of the Code of Criminal Procedure, 1973, against the judgment of conviction and sentence passed in S.C.No.64 of 2014 dated 27.07.2018 by the learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram, convicting the appellant for the offences under Section 302 IPC and sentencing the appellant to undergo life imprisonment and to pay a fine of Rs.75,000/- and in default to undergo one year rigorous imprisonment for each offence.

For Appellant : Mr.G.Karuppasamy Pandian

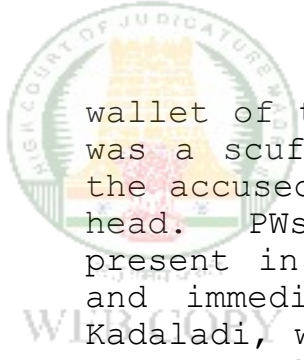
For Respondent: Mr.S.Ravi, Standing Counsel on behalf of
the Government of Tamil Nadu

JUDGMENT

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

The appellant is the sole accused. He stood charged for the offence under Section 302 IPC, in S.C.No.64 of 2014, on the file of the learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram. The trial Court convicted the appellant, for the offences under Section 302 IPC, and sentencing him to undergo life imprisonment and also to pay a fine of Rs.75,000/-, in default to undergo one year rigorous imprisonment. Challenging the abovesaid conviction and sentence, the appellant is before this Court with this appeal.

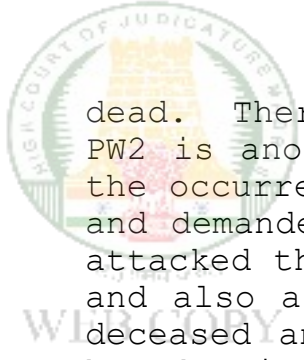
2.The case of the prosecution in brief is that, the deceased is the wife of the appellant/accused. PWs 1 and 2 are their sons. The accused is a drunkard, used to demand money from the deceased, for consuming liquor and there were frequent quarrel between them. On 06.08.2013, at about 02.45 p.m., the deceased after came back from the work, preparing food, at that time, the accused demanded money from her, but she refused, immediately, the accused had taken the



wallet of the deceased, the deceased tried to get it back and there was a scuffle between the accused and the deceased, at that time, the accused attacked the deceased with sickle on the backside of the head. PWs 1 and 2, sons of the accused and deceased, were also present in the house. After hearing the noise, they rushed there and immediately taken the deceased to the Government Hospital, Kadaladi, where she was declared brought dead. Immediately, PW1 had gone to the respondent police station and filed Ex.P1-complaint. PW13, Inspector of Police, working in the respondent police station, on that complaint, registered the FIR, in Crime No.166/2013(Ex.P9), for the offence under Section 302 IPC, and sent the FIR to the learned Judicial Magistrate, Muthukulathur, and copies of the same to the higher officials. PW16, Deputy Superintendent of Police, Cuddalore Sub Division, on receipt of the FIR, commenced the investigation, and visited the scene of occurrence, where he had prepared the observation mahazar, rough sketch, and also taken photographs. From the scene of occurrence, he recovered the blood stained soil and also the sample soil, in the presence of witnesses and he recorded the statements of witnesses. On 07.08.2013, he sent a requisition for conducting postmortem autopsy of the body of the deceased, through PW11, Head Constable. PW15, Doctor working in the Government Hospital, Kadaladi, conducted postmortem autopsy of the deceased on 07.08.2013 about 10.15 a.m., and issued postmortem report(Ex.A11), stating that the death was due to shock and haemorrhage due to head injury in the vital part, namely, brain. In the meantime, the accused surrendered before PW8-Village Administrative Officer, Narippaiyur Village, on 07.08.2013, and given extra judicial confession, and PW8, produced the accused before the respondent/police, where the accused had voluntarily given a confession before PW16. Based on the said confession statement, PW16 recovered a sickle(M.O-1) under Ex.P3 Mahazar. Thereafter, PW16, recorded the statements of the Doctor, who conducted postmortem autopsy and other witnesses, and after completion of the investigation, he filed the final report before the concerned Judicial Magistrate Court.

3.Considering the above materials, the trial Court framed the charge, for the offence under Section 302 IPC, and the accused denied the same. In order to prove its case, the prosecution has examined 16 witnesses and marked 15 documents, apart from 6 material objects.

4.Out of the witnesses examined, PW1, is the son of the deceased and the accused, who has lodged the complaint. According to PW1, the accused is a drunkard and he used to quarrel with the deceased, demanding money and on the date of occurrence, there was a wordy quarrel between the accused and the deceased, there was a scuffle between them, over taking of deceased wallet and the accused attacked the deceased with a sickle, in the head and PW1, along with PW2, another son of the deceased and accused, took the deceased to Government Hospital, Kadaladi, where he was declared brought



dead. Thereafter, PW1 filed complaint before the respondent/police. PW2 is another son of the deceased. He is also an eye witness to the occurrence and stated that, the accused came in inebriated mood, and demanded money from the deceased, when she refused, the accused attacked the deceased with sickle over her head. PW3 is a neighbour and also a co-worker of deceased, according to her, after both the deceased and PW3 returned back to house, at about 02.45 p.m., she heard noise from the house of the deceased and she saw the accused came out of the house with sickle, thereafter, she along with PWs 1 and 2, took the deceased to hospital. PW4 is the neighbour went to the scene of occurrence and saw PW1 and PW2 taking the deceased to the hospital, thereafter, on enquiry, he came to know that the accused attacked her wife and caused her death. PWs 5 to 7 are also neighbours and they are all hearsay witnesses. PW7 is also another neighbour. He saw the deceased immediately after the occurrence and he helped PW1 and PW2, to take the deceased to hospital. PW8 is the Village Administrative Officer, before whom, the accused surrendered and gave extra judicial confession, and also witness to the confession of the accused. PW9, witness to the observation mahazar and also witness to recovery of MO-3, 4 and 5. PW10, Scientist, working in the Forensic Lab, examined the blood stained dress and soil and filed a report in Ex.P8. PW11, Constable, who identified the body of the deceased, for postmortem. PW12, Head Constable, handed over the FIR to the Judicial Magistrate Court, and also to the higher officials. PW13, Sub Inspector of Police, registered the FIR, based on the complaint given by PW1. PW14, Assistant Director, in the Forensic Lab, Tirunelveli, filed a report in Ex.P10. PW15, conducted postmortem autopsy of the body of the deceased, and given the postmortem report in Ex.P11, which reads as follows:-

"Moderately built body of female lies on her back with arms lying close to the sides of the body. Both eyes and mouth partially open. Rigor mortis present in all four limbs. External injuries; (1)cut laceration of size 30x6x3 cm which is extended from (Lt) ear lobe, pass through the (Lt) occipital region and extended upto the (Rt) region. (2)cut laceration of size 10x3x0.5 cm present in (Rt) Pareto occipital region. No other external injuries noted.

Internal Examination: Hyoid bone-intact, on opening the throat, ribs-Normal, Heard Chambers empty, lungs congested on opening the abdomen, stomach empty with no specific odour, All internal organs are congsted, Bladder-empty, External genitalia-Normal. Spinal Column - Intact. On opening the skull, skull bones are fractured corresponding to the injured areas. Brain (1)10x4 cm size lacerations present in (Rt) occipital and (Lt) occipital region (2)6x2 cm sie of laceration present in the pareto occipital region. PM concluded at 1.00 p.m.

Time of Death : 12-24 hrs prior to the autopsy

Final opinion reserved due to pending analysis of chemical report."

<https://hcc.mca.gov.in/services> PW16, Accounts Officer, conducted inquest and recovered



material objects, arrested the accused, sent him to judicial custody, recorded the statement of the witnesses and after completing the investigation, he filed final report under Section 302 IPC.

5. When the above incriminating materials put to the accused, the accused denied the same as false and he has not examined any witness nor marked any documents. Considering those materials, the trial court, convicted the appellant under Section 302 IPC, and sentenced him to undergo sentence, as stated in paragraph 1 of this order. Now challenging the same, the appellant is before this Court.

6. Mr. G. Karuppasamy Pandian, learned counsel for the appellant, would vehemently contend that, the entire prosecution case stands on the testimony of eye witnesses namely, PW1 and PW2, who are none else than the sons of the deceased and the accused. Their presence is highly doubtful, as the occurrence had taken place in afternoon, PW1 being Auto driver, he might not have been available in the scene of occurrence and PW2, also unlikely to be present in the house of the deceased, at the time of occurrence. According to the learned counsel, the motive stated by the prosecution, is very trivial in nature, and for a small money dispute, the appellant would not have committed murder of his own wife. That apart, the alleged extra judicial confession said to have been given by the accused, before PW8, Village Administrative Officer, also cannot be believed, and there is no reason for him to appear before PW8, and give confession. PW8 has clearly stated that, after the accused surrendered before him, he directly took him to the respondent police station, where he has given confession which was recorded by PW16. In those circumstances, the alleged extra judicial confession cannot be true. Finally, the learned counsel would submit that at any rate, the occurrence has taken place in a wordy quarrel, and out of sudden provocation, the accused is said to have attacked the deceased, with the weapon available in the scene of occurrence, the appellant/accused had no intention to cause the death of the deceased, but the trial Court without considering those circumstances, erroneously convicted him under Section 302 IPC.

7. Mr. Ravi, learned Standing Counsel appearing for the State, would contend that the deceased is none other than the wife of the accused. The occurrence had taken place inside the house. PW1 and 2 are their own sons, and they have clearly deposed that they were present at the time of occurrence and the accused in inebriated mood, demanded money from the deceased and when she refused, he attacked her with sickle in the head and there is no reason to disbelieve their evidence. That apart, PW3, neighbour who saw the accused, running out of the house after the occurrence, was not at all cross examined by the accused. The medical evidence also corroborating the evidence of PWs.1 and 2, eye witnesses, and there is no reason to doubt the veracity in it. It is a case, where the accused has



attacked the deceased, with intention to cause her death, but attacked her in the vital part, in the head of the deceased, caused her death. The trial Court after considering all those materials, rightly convicted the accused under Section 302 IPC, and there is no reason to interfere with the same.

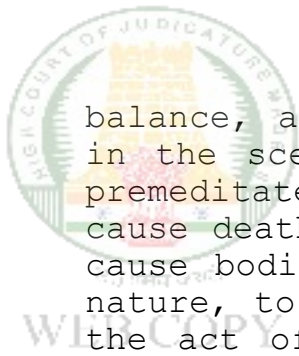
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8. We have considered the rival submissions and also perused the records carefully.

9. There are two eye witnesses to the occurrence namely, PW1 and PW2, who are none other than the sons of the accused and the deceased. Admittedly, the occurrence has taken place, inside the house of the deceased and PW3, neighbour, saw the accused running out of the house with weapon. From the evidence of PW1 and PW2, it is clear that there was a quarrel between the accused and the deceased, inside the house. When the accused took the wallet of the deceased, she tried to get it back from the accused, in which, there was a scuffle, at that time, the accused attacked her with sickle available there on her head twice, and caused her death. Immediately, PW1, a Auto driver, took the deceased to the Government Hospital, where she was declared brought dead. Immediately, PW1 filed a complaint and there is no delay in filing the complaint, where he clearly named the accused. The medical evidence also clearly corroborates the evidence of the eye witness. We find no reason to doubt that testimony.

10. It is the contention of the learned counsel for the appellant that, PWs 1 and 2, being the sons of the deceased, their testimony cannot be believed, as their presence is doubtful. The said contention cannot be countenanced, for the simple reason that, the accused is the father of PW1 and PW2, absolutely there is no motive for them to implicate their father, in the crime. Even assuming for a moment, that the presence of PWs 1 and 2, is doubtful, admittedly, the occurrence has taken place, inside the house, where the accused and the deceased were residing. PW3, an independent witness, saw the accused came out of the house with weapon, immediately after the occurrence. In those circumstances, under Section 106 of the Indian Evidence Act, the burden is on the accused, to account for the injury sustained by the deceased. Absolutely, there is no explanation by the accused. Considering all those circumstances, we are of the considered view that it is only the accused, who attacked the deceased with sickle and caused her death.

11. Now the next question arises for consideration is whether the offence that was committed by the accused by his act. Perusal of the evidence of PW1 and PW2, it could be seen that, there was a wordy quarrel between the deceased and the accused, while the accused demanded money from the deceased, for the purpose of purchasing liquor, and there was a scuffle between them, at that time, suddenly, without any reason, a sudden fight, the accused is said to have lost mental



balance, and attacked the deceased with sickle, which is available in the scene of occurrence. It could be seen that, it is not a premeditated murder and the accused is not having any intention to cause death of his own wife. However, the accused has intention to cause bodily injury, which is sufficient in the ordinary course of nature, to cause death of the deceased. In the said circumstances, the act of the accused is clearly fall within the third limb of Section 300 IPC. But the accused committed act without premeditation, in a sudden fight, in a heat of passion in the quarrel attacked the deceased without taking any undue advantage, and thus, the act of the accused would fall under the fourth exception to Section 300 IPC, and therefore, the accused is liable to be convicted for the offence under Section 304(i) IPC, not under Section 302 IPC.

12.Now turning to the question of quantum of punishment, the accused is a poor coolie, he has no bad antecedents and it is not a premeditated murder. The accused is stated to be aged about 60 years and slowly losing his vision. As occurrence had taken place in a sudden wordy quarrel, the accused lost his mental balance and attacked the deceased with the weapon available in the scene of occurrence and caused his death. Considering the mitigating and aggravating circumstances, we are of the considered view that sentencing the accused to undergo 10 years of rigours imprisonment will meet the ends of justice. So far as the fine amount imposed on the accused, the trial Court has imposed the fine of Rs.75,000/-. Considering the fact that the appellant/accused is a poor coolie, he is not in a position, to pay the fine amount, we reduce the fine amount to Rs.5,000/-, in default, to undergo three months simple imprisonment.

13.Accordingly, this Criminal Appeal is partly allowed. The conviction and sentence imposed by the trial Court in S.C.No.64 of 2014 dated 27.07.2018 by the learned Sessions Judge, Fast Track Mahila Court, Ramanathapuram, under Section 302 IPC, is set aside, instead, the appellant/accused is convicted for an offence under Section 304(i) IPC, and sentenced to undergo 10 years rigours imprisonment and also to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment. The period of sentence already undergone by the appellant/accused shall be set off under Section 428 Cr.P.C.

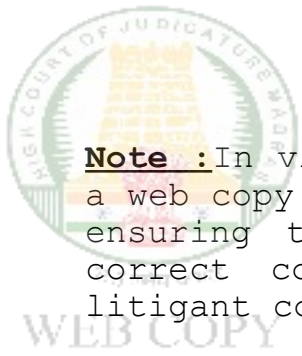
Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)



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, Ramanathapuram.
- 2.The Principal district Judge, Ramanathapuram.
- 3.The Judicial Magistrate, Muthukulathur.
- 4.The Chief Judicial Magistrate,
Muthukulathur.
- 5.The District Collector,
Ramanathapuram.
- 6.The Superintendent of Police, Ramanathapuram.
- 7.The Superintendent, Central Prison,
Madurai.
- 8.The Director General of Police, Mylapore, Chennai.
- 9.The Inspector of Police,
Sayalkudi Police Station,
Ramanathapuram.
- 10.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

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

CRL.A(MD)No.491 of 2018
DATED : 16.08.2021

PK(CO)
KB(21.09.2021) 7P 13C