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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2022

CORAM:

THE HON'BLE MS.JUSTICE R.N.MANJULA

CRL.A.NO.230 OF 2018

1) Durai

2) Parimala

... Appellants /
Accused 1 & 2

versus

State of Tamil Nadu
Represented by Inspector of Police,
Kanjanoor Police Station,
Crime No.109/2015
Villupuram District.

... Respondent

PRAYER:

Criminal Appeal filed under section 374 of the Criminal Procedure Code, against the order of conviction passed by the learned Court of Sessions Judge, Magalir Neethimandram, (Fast Track Court), Villupuram in S.C.No.11 of 2016 dated 08.03.2018.

For Appellants : Dr.S.Manoharan

For Respondent : Mr.A.Gopinath,
Government Advocate (Crl. side)

J U D G M E N T

This Criminal Appeal has been preferred challenging the judgment of the learned Court of Sessions Judge, Magalir Neethimandram, (Fast Track Court), Villupuram in S.C.No.11 of 2016, dated 08.03.2018, convicting the first appellant under Sections 326 and 304(1) of the Indian Penal Code (hereinafter referred to as 'I.P.C.') and the second appellant under Section 326 of I.P.C.



2. The appellants herein, were the first and second accused before the Trial Court. The case of the prosecution is that, on 13.07.2015 at about 6:30 p.m., when P.W.1/ Ananth was returning from Nemmur through Mathakoil street and when he was coming near the water pipe behind the house of one Iruthayam, the sister of the first accused, namely Rosy intercepted P.W.1 and queried about the misunderstanding and fight that existed between the said P.W.1 and the first accused. At that time, the first accused, who was inside his house came with an iron rod and picked up a quarrel with him by stating that how could P.W.1 talk to his sister Rosy, when he had refused to do business with him. By stating so, he attacked P.W.1 with iron rod on his right eye, left ear, left and right knees, nose and on his right hand. At that time, the aunt of P.W.1, Rahini came for his rescue and to prevent the quarrel between them. But the first accused attacked Rahini with the same iron rod on the backside of her head. At that time, the wife of the first accused, who is the second accused herein, took a wooden log and pushed Rahini down and attacked her with the wooden log and as a result of which Rahini succumbed to the injuries. Hence, the 1st and 2nd accused have been charged for the offence under Sections 341, 294(b), 326 & 302 of I.P.C.

3. On the same day itself i.e., on 13.07.2015, at about 21:30 hours, a complaint was given by P.W.1 and the Sub Inspector of Police, Kanjanur Police Station registered a case in Crime No.109 of 2015 under Sections 294(b), 341, 324, 323 & 302 of I.P.C. and prepared the F.I.R. (Ex.P.12). Then, the Circle Inspector of Police, Kanjanur Police Station (P.W.12) took up the case for investigation on 14.07.2015. He went to the place of occurrence and prepared the Observation Mahazar (Ex.P.2), rough sketch (Ex.P.13) in the presence of one Bala (P.W.10) and one Karnan (P.W.7). Thereafter, P.W.12 went to Mundiampakkam Government Hospital and conducted the inquest over the body of the deceased in the presence of the witnesses, namely P.Ws 1 to 6 and prepared the inquest report (Ex.P.14). He arrested the 1st and 2nd accused on the same day near Arasalapuram Madha Koil and recorded the confession statement given by the first accused in the presence of one Mr.Sundaramoorthi, Village Administrative Officer, (P.W.9) and the Village Assistant, namely Sakthivel. The admissible portion of the confession statement of the first accused has been marked as Ex.P.16.

4. In pursuance of the confession of the first accused, P.W.12 recovered the material objects (M.O. 1 & 2) in the presence of P.W.9 and the Village Assistant covered under the



Seizure Mahazar (Ex.P.7). Thereafter, P.W.12 produced the 1st and 2nd accused before the Judicial Magistrate and they were subjected to judicial custody. Since P.W.12 got transferred, P.W.17 Inspector of Police, Kanjanur Police Station conducted the investigation. He also went to the place of occurrence and examined the witnesses. P.W.17 examined the Doctor (P.W.8) who recorded the Accident Register and P.W.13 /Doctor, who treated P.W.1 and P.W.14 / another Doctor who took X-ray for P.W.1 and recorded his statement. P.W.17 also examined the Doctor who conducted the post-mortem on the body of the deceased and recorded her statement and obtained the post-mortem certificate (Ex.P.8). Thereafter, he altered the charges from 294(b), 341, 324, 323 & 302 of I.P.C. to 294(b), 341, 326 & 302 of I.P.C. and prepared an alteration report and sent it to the Court. After concluding the investigation, he filed the charge sheet against the 1st and 2nd accused under Sections 294(b), 341, 326 & 302 of I.P.C.

5. The final report was taken cognizance by the learned Judicial Magistrate No.1, Villupuram in P.R.C.No.22 of 2015 under Sections 294(b), 341, 326 & 302 of I.P.C. Copies of the documents were served as required under Section 207 of the Criminal Procedure Code and after complying all the legal mandates, the case was committed to the learned Principal Sessions Judge, Villupuram. Thereafter, the case was taken on file and assigned to the file of the Sessions Judge, Magalir Neethimandram, (Fast Track Court), Villupuram for trial.

6. After hearing both sides and on being satisfied with the materials available on record, charges were framed against the 1st accused under Sections 294(b), 341, 326 & 302 of I.P.C. and against the 2nd accused under Section 326 of I.P.C. When the accused were questioned, they pleaded innocence and claimed to be tried.

7. During the course of the trial, in order to prove the guilt of the accused, 17 witnesses, namely P.W.1 to P.W.17, were examined on the side of prosecution and exhibits Ex.P.1 to Ex.P.18 were marked. The incriminating materials surfaced from the prosecution evidence were put to 1st and 2nd accused under Section 313 Cr.P.C., they denied the same. On the side of defence, no oral or documentary evidence were marked.

8. At the conclusion of trial and upon considering the evidence available on record, the learned trial Judge found the 1st and 2nd accused guilty for the offences as mentioned below and convicted as under:



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Sl.No.	Rank of the accused	Charges u/s	Findings	Punishment
1	A1	326	Guilty	Three Years Rigorous Imprisonment and to pay a sum of Rs.5,000/- towards fine, in default to undergo further period of Simple Imprisonment for three months.
		304 (I)	Guilty	
	A1	341	Not Guilty	Ten Years Rigorous Imprisonment and to pay a sum of Rs.5,000/- towards fine, in default to undergo further period of Simple Imprisonment for Six Months.
		294 (b)	Not Guilty	Acquitted Acquitted
2	A2	326	Guilty	Three Years Rigorous Imprisonment and to pay a sum of Rs.5,000/- towards fine, in default to undergo further period of Simple Imprisonment for three months.

Aggrieved over the same, the 1st and 2nd accused have preferred this present Criminal Appeal.

9. Heard the learned counsel for the appellants and the learned Government Advocate (Crl.side) appearing for the State and perused the materials available on record.

10. Learned counsel for the appellants submitted that the sister of the first accused namely Rosy was not examined on the side of the prosecution; despite the witnesses have stated that the deceased was strangled, the doctor did not notice any injuries on her neck; P.W.1 has stated that M.O.1 was not the rod which was used for the occurrence; this would show that the recovery of the Material Objects were not done in the manner stated by the prosecution; the prosecution witnesses are close relatives to the deceased and injured and therefore, the testimony of such witnesses are not reliable; in the Accident Register, P.W.3 and P.W.4 have stated that the injured and deceased were attacked by eight persons; among them, there were two male and six female members; it is further stated that the



occurrence had taken place at the house of P.W.1; there are material contradictions in the evidence of prosecution witnesses as to the place of occurrence and other relevant facts; the learned trial Judge overlooked the above weakness in the case of the prosecution and has omitted to give the benefit of doubt to the 1st and 2nd accused; hence, this Criminal Appeal should be allowed.

11. The learned Government Advocate submitted that the first accused is a butcher and P.W.1 was doing the same business along with him; later, there was a misunderstanding arose between themselves; thereafter P.W.1 refused to join with the first accused; only because of that, the first accused had attacked P.W.1 and his aunt deceased Rahini, who came for his rescue at the time of the occurrence; since the house of both the accused as well as the victims are situated in the same street in which the occurrence had taken place, the informants to the doctor have stated that the occurrence had taken place at another house; the other contradictions pointed out by the learned counsel for the appellants are not material contradictions and so it will not affect the case of the prosecution; the evidence of the injured witnesses and other eye witnesses and the evidence of the doctors, who treated P.W.1 and the doctor who conducted the post-mortem on the body of the deceased would only conform to the fact that the occurrence is true and the 1st and 2nd accused are involved in the occurrence; the learned trial Judge has rightly appreciated the evidence and hence, the Criminal Appeal should be dismissed.

12. Point for consideration:

Whether the findings of the guilt of the first accused for the charges under Sections 326 & 304(1) of I.P.C. and the second accused for the charges under Section 326 of I.P.C. by the learned Court of Sessions Judge, Magalir Neethimandram, (Fast Track Court), Villupuram, based on the materials available on records, is fair and proper?

13. The injured witness, who was examined as P.W.1 has stated in his evidence about his previous involvement with the first accused in his butcher business. At some point of time, there arose some misunderstanding between P.W.1 and the first accused and hence, the P.W.1 stopped involving himself in the business of the first accused. But, the first accused went on insisted P.W.1 and his brother to help him in the business. Since P.W.1 refused to respond to his call and join with him, he was angry with him. On 13.07.2015, at about 6:30 p.m., P.W.1 was going to his uncle's house to sleep. At that time, he was intercepted by Rosy, who was the sister of the first accused. Rosy asked P.W.1 regarding the misunderstanding between himself



and his brother (the first accused). On seeing this, the first accused got irritated and came to the place of occurrence and abused P.W.1 by picking up a quarrel by stating that why was he developing conversation with his sister, when he refused to work under him. By so stating, he attacked P.W.1 with an iron rod on his hands. When the deceased Rahini came to his rescue and tried to stop the untoward event, the first accused attacked Rahini also with the same iron rod on her head. The second accused, who is the wife of the first accused, also came with a wooden log and attacked the deceased. When the deceased was taken to the hospital, she was declared dead. P.W.1 was given medical treatment by P.W.8 /Doctor. The above evidence of P.W.1 would show that the first accused had a previous enmity with him on account of his refusal to work under him in his meat shop. P.W.10 has further stated in his evidence that he was attacked by the first accused with an iron rod on his right eye, left ear, right and left knees, right hand and on the nose. The doctor, who had treated P.W.1 and who was examined as P.W.8 has also stated in his evidence that P.W.1 had the following injuries:-

- (i) Torn wound found at the Left ear measuring 1 x .5 x .5
- (ii) Abrasion injuries found near the Right side of the posterior end of the eyes measuring 1.5 cm and at the right side ear measuring 1.5 cm; and
- (iii) Pain reported in the right ear.

14. The injuries have been noted down in the Accident Register, marked as Ex.P.4. X-ray was taken for P.W.1 and it shows that he had a fracture on his nose. Considering the same, the Doctor/ P.W.8 has certified that the injuries sustained by P.W.1 was grievous in nature. P.W.13 has also treated P.W.1. He has stated about the fracture sustained by P.W.1 on his nose. The injuries found on the body of P.W.1 would also corroborate to the manner in which P.W.1 was attacked by the first accused.

15. Though the learned trial Judge has found the second accused not guilty for the offence under section 302 of I.P.C., based on the post-mortem report of the doctor(P.W.11), she has found the second accused guilty for the offence under Section 326 of I.P.C. The doctor, who performed the post-mortem (P.W.11) has given his opinion that the deceased would have died due to the combined effects of blunt injuries on head and thorax. Since the prosecution witnesses have stated that the second accused attacked the deceased on her neck with a wooden log and P.W.11 did not notice any injury on the neck of the deceased, the benefit of doubt was given to the second accused. In such a context, it is not known on what basis, the second accused was convicted for the offence under Section 326 of I.P.C.



16. Even according to the evidence of P.W.1, the second accused has not caused any injury to him. In order to convict the accused for the offence under Section 326 of I.P.C., the specific overt act of the accused in causing the grievous injury on his body with any deadly weapon ought to have been proved. Even according to the case of the prosecution, the second accused had only a wooden log in her hands and her alleged overt act against the deceased, did not show any corresponding injury on the body of the deceased. On such circumstances, the second accused ought to have been acquitted. The learned trial Judge, without properly appreciating the evidence on record, had convicted the second accused for the offence under section 326 of I.P.C.

17. But so far as P.W.1 is concerned, it has already been observed that the injuries sustained by P.W.1 was noticed by P.W.8 (Doctor), who registered the Accident Register and P.W.13 (Doctor), who conducted further medical examination on P.W.1 and also P.W.12, who assisted in treating P.W.1. Apart from the evidence of P.W.1, his evidence was corroborated by other prosecution witnesses, who were examined as P.W.2 to P.W.6. Despite P.W.2 to P.W.6 were close relatives of the deceased, and P.W.1, being the natural witnesses available at the place of occurrence, their presence is quite natural only.

18. Though P.W.1 had some confusion in identifying M.O.1, which was used by the first accused for attacking him, the sister of the deceased/ P.W.2 has clearly identified M.O.1 and stated that it was the iron rod which was used by the first accused to attack P.W.1. Except the fact that the evidence of P.W.1 to P.W.6 did not match with injury, especially on the neck region of the deceased, they do not suffer from any other major infirmity. P.W.4 has seen the second accused running with the wooden log. Though it might be true that the second accused was also be armed with a wooden log, he ran away from the place of occurrence after seeing P.W.1 and the deceased Rahini, heavily injured.

19. The deceased Rahini was found to be having the following injuries on her body by the doctor, who conducted the post-mortem.

"Internal Injuries: Laceration of size 4 x 3 x 1 cm over the contusion of sizes 7 x 6 x 2 cm in the occipital region.

External Injuries: On opening of head, under surface of the scalp shows a hematoma size 6 x 5 x 3 cm in the occipital region. Vault- Intact, membranes - Intact. Brain- SDH and thin SAH over the occipital region. Base of skull- intact.



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Thorax: Ribcage- Intact. About 500 ml of blood stained fluid in the thoracic cavity. Heart Normal in size. c/s multiple atheromatous plaques seen in the inner surface of the root of aorta, valves and coronaries- normal. Chambers few grams of clotted blood seen. Both lungs (N) in shape - contusion in the middle and lower lobe at both lungs seen - c/s congested.

Abdomen: Stomach - About 200 ml of yellowish green fluid, undigested food particles, c/s mucosa intact, Liver, spleen, both kidneys normal in size and shape c/s congested, uterus 4 x 3 x 2 cm c/s cavity empty, Bladder - empty. Pelvis, Spinal Cord, Hyoid Bone - intact. Viscera sent to FSL".

20. The head injuries on the body of the deceased perfectly match with the kind of attack made by P.W.1 with iron rod. The doctor has also opined that the deceased had died due to the head injuries.

21. P.W.1. has stated that immediately after he got injured, he became unconscious. So it would not have been possible for him to tell exactly how many persons were around him at the time of occurrence. P.W.1 was taken to the hospital by P.W.5. So the history of the case could have been told to the doctor by P.W.5. P.W.5 has stated in her evidence that she came to the place of occurrence on hearing the noise and when she arrived at the spot, she saw the deceased on the ground and blood was oozing from her head. So P.W.5 could have given information to the doctor only with her knowledge of noticing the persons who had gathered in the place of occurrence. So it cannot be taken as a material contradiction and that will not demolish the clear evidence of P.W.1. So in all probabilities, the evidence of prosecution would prove the guilt against the first accused for the offence under Sections 326 & 304(1) of I.P.C., though it did not prove the guilt against the second accused for the offence under Section 326 of I.P.C. I feel that the judgment of the learned trial Judge needs to be modified, only to the above limited extent.

22. The learned counsel for the appellants submitted that the first accused did not have any motive to murder the deceased and all that he had done at the time of occurrence was out of fit of anger and hence some leniency should be shown in the matter of punishment.

23. The learned trial Judge has observed in his judgment that the first accused had attacked the deceased under the influence of passion, arising from provocation and not after the passion has cooled down by the lapse of time. Though the first



accused got the motive against P.W.1, he did not have any motive against the deceased Rahini. It is unfortunate that the deceased Rahini, who rushed to the spot for the rescue of P.W.1, had become a causality in the occurrence. Considering the fact that the accused did not have any previous enmity with the deceased and considering the other attending circumstance of the case, I feel that the sentence imposed on the first accused for the offence under Section 304(1) 'alone' should be reduced from Ten (10) years of Rigorous Imprisonment to Five (05) years R.I. of Rigorous Imprisonment.

24. In the result, this Criminal Appeal is Partly Allowed and the Judgment of the learned Court of Sessions Judge, Magalir Neethimandram, (Fast Track Court), Villupuram dated 08.03.2018 passed in S.C.No.11 of 2016 is modified and the second accused is not found guilty for her offence under Section 326 of I.P.C. and the second accused is acquitted. The bail bond, if any, is ordered to be canceled and the fine amount, if already paid by the second accused, is ordered to be refunded. The Appeal is partly Dismissed as against the first accused and the finding of the guilt of the first accused under Sections 304(1) and 326 of I.P.C. as against the first accused is confirmed. However, the punishment under Section 304(1) of I.P.C. is alone reduced from Ten(10) years of Rigorous Imprisonment to Five (05) Years of Rigorous Imprisonment and the fine amount and the punishment imposed for the offence under Section 326 of I.P.C. would remain unaltered. The learned Trial Judge is ordered to issue Non-Bailable Warrant to secure the first accused and send him to prison for undergoing the remaining period of punishment, if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1. The Court of Sessions Judge,
Magalir Neethimandram,
(Fast Track Court), Mahila Court,
Villupuram
2. The Judicial Magistrate No.I,
Villupuram



3. The Chief Judicial Magistrate,
Villupuram

4. The Superintendent,
Central Prison, Cuddalore.

5. The District Collector,
Villupuram.

6. The Director General of Police,
Mylapore, Chennai-5.

7. The Inspector of Police
Kanjanoor Police Station,
Crime No.109/2015, Villupuram District.

8. The Public Prosecutor
High Court of Madras.

9. The Section Officer
Criminal Section, High Court of Madras.

+1cc to Dr.S.Manoharan, Advocate, S.R.No.4515

Cr1.A.No.230 of 2005

GMR(CO)
PM/07/03/2022