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Crl.A.No.450 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02..11..2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **RMT.TEEKAA RAMAN**

Criminal Appeal No.450 of 2018

Vedipu Rajesh @ Rajesh

..... Appellant

-Versus-

The State Rep. by
The Inspector of Police,
Maharajakadai Police Station,
Krishnagiri District.
[Crime No.11 of 2016]

.... Respondent

Appeal filed under Section 374(2) of the Code of Criminal Procedure, praying to call for the records relating to the sessions case in S.C.No.128 of 2017 on the file of the learned Principal Sessions Judge, Krishnagiri and set aside the judgement and order of conviction and sentence dated 19.06.2018 passed by the learned Principal Sessions Judge, Krishnagiri, in S.C.No.128 of 2017 and allow the Criminal Appeal.

For Appellant : Mr.S.Samuel Raja Pandian

*For Respondent : Mr.M.Babu Muthumeeran,
Addl. Public Prosecutor*



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JUDGEMENT

WEB COPY The appellant/sole accused was convicted and sentenced as under by the learned Principal Sessions Judge, Krishnagiri, in S.C.No.128 of 2017 on 19.06.2018:-

Provision under which convicted	Substantive Sentence and Fine imposed
Section 302 of IPC	Sentenced to undergo imprisonment for life and to pay a sum of Rs.2,000/- in default of payment of fine to undergo rigorous imprisonment for a further period of three months
The aforesaid sentences were ordered to run concurrently.	

Challenging the same, he has preferred the present Criminal Appeal.

2. It is the case of the prosecution that the appellant and the deceased Velayutham were from the same village, namely, Pethamelpalli Village in Krishnagiri District and they were living in the same neighbourhood. The appellant led a wayward life in the village and was a source of nuisance to the law abiding people in the locality. Therefore, Velayutham used to frequently advise the appellant to mend his ways, which was not to the



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liking of the appellant. It is alleged that on 18.01.2016, around 07.30 in the evening, when Velayutham advised the appellant, a quarrel ensued, in which, the appellant is alleged to have hit the deceased on the rear side of his head with a half-brick, which proved fatal. On a written complaint (Ex.P1) given by Kalaivani (P.W.1), the daughter-in-law of Velayutham, Gunasekaran (P.W.17), the Inspector of Police, Maharajakadai Police Station, registered a case in Maharajakadai Police Station Crime No.11 of 2016 on 18.01.2016 u/s 302 IPC against the appellant and took up the investigation of the case.

3. Gunasekaran (P.W.17), Investigating Officer, prepared the printed FIR (Ex.P14), which reached the jurisdictional Magistrate on 19.01.2016 at 00.25 hours, as could be seen from the endorsement thereon. The investigating officer (P.W.17), went to the place of occurrence and prepared an observation mahazar (Ex.P2) and rough sketch (Ex.P5). From the place of occurrence, the investigating officer (P.W.17) seized five numbers of broken pieces of half-bricks (M.O.3), mobile phone (M.O.1) and a pair of slippers (M.O.2) under the cover of a mahazar (Ex.P13) in the presence of Prakash (P.W.7) and Thamizharasan (not examined). The investigating

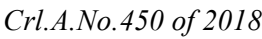


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officer, thereafter, conducted inquest over the body of Velayutham and prepared an inquest report (Ex.P.17). Thereafter, the body was sent to the Government Hospital, Krishnagiri, where Dr.Narayanasamy (P.W.8) performed autopsy on the body of Velayutham and issued the postmortem certificate (Ex.P.5). After receiving viscera report (Ex.P.4), as to the cause of the death, Dr.Narayanasamy (P.W.8) has opined as follows:-

“Opinion:- cause of death – severe head with injury intracranial hemorrhage and cardio respiratory arrest occurred 15 – 20 hours prior to autopsy”

4. The appellant was arrested by the police at 04..0 a.m. on 19.01.2016 and his police confession was recorded. Based on the admissible portion of the police confession of the appellant, a blood stained full sleeve shirt blue in colour with white checked (M.O.4) under the cover of a mahazar (Ex.P7) in the presence of the same witnesses. The seized material objects were sent to the Forensic Sciences Department through the jurisdictional court for chemical analysis. The chemical analysis report (Ex.P10) showed that human blood was detected in the shirt (M.O.4) but,



the grouping test proved inconclusive. However, no human blood was detected in the broken pieces of half-bricks (M.O.3 series).

5. After examining various witnesses and collecting the reports of the experts, Gunasekaran (P.W.17), the investigating officer completed the investigation and filed a final report in PRC No.8 of 2016 in the court of the Judicial Magistrate-II, Krishnagiri, u/s 294(b), 302 and 506(I) IPC against the appellant.

6. On appearance of the appellant, the provisions of Section 207 of Cr.P.C. were complied with and the case was committed to the Principal Sessions Judge, Krishnagiri, in S.C.No.128 of 2017, for trial.

7. The learned Principal Sessions Judge, Krishnagiri, framed charges under Sections 294(b), 302 and 506(I) IPC against the appellant/accused and when questioned, the appellant/accused pleaded not guilty. To prove the case, the prosecution examined 17 witnesses, marked 17 documents and 5 material objects. When the appellant was questioned under section 313 of



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Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. However, no explanation whatsoever was offered by him. No witness was examined from the side of the accused nor any document marked.

8. After considering the evidence brought on record, the trial court, by judgement dated 19.06.2018, while acquitting the appellant/accused u/s 294(b) and 506(I) IPC, convicted the appellant u/s 302 IPC and sentenced him thereof as stated already in the first paragraph of this judgement. Challenging the conviction and sentence imposed on him by the trial court, the present appeal has been filed by the sole accused.

9. Heard Mr.Mr.S.Samuel Raja Pandian, learned for the appellant/accused and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor for the respondent/State.

10. The prosecution case is based on the eye-witnesses account of



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Kalaivani (P.W.1), Suseela (P.W.2), Munirathinam (P.W.3) and Ramachandran (P.W.4). Kalaivani (P.W.1) in her evidence has stated *inter alia* that Velayutham was her father-in-law; she was living adjacent to the house of her father-in-law with her husband; the appellant is known to her; the appellant used to consume alcohol and create fracas in the village; therefore, her father-in-law advised him frequently, which was not to his liking; therefore, the appellant used to threaten her father-in-law that his death will be in his (appellant's) hands; on 18.01.2016 around 07.30 in the evening, while she was on her way to participate in the village temple festivities, she stepped into the house of her father-in-law in order to take her mother-in-law; at that time; she saw the appellant quarrelling with her father-in-law and when her father-in-law went inside the house, the (appellant) threw a brick on his head from behind which caused him (Velayutham) to fall down; this was witnessed by Ramachandran (P.W.4), her brother-in-law, Priya (P.W.5), the wife of her brother-in-law (P.W.4), Munirathinam (P.W.3), her husband, Suseela (P.W.2), her mother-in-law; when they intervened, the appellant threatened them also and ran away leaving behind his slippers and mobile phone; immediately, Velayutham was



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taken to the hospital, where he was declared brought dead and the body was brought back to the house and kept in the entrance; and thereafter, she went to the police and gave the complaint (Ex.P1). Kalaivani (P.W.1) identified the slippers and the mobile phone of the appellant and also the brick pieces used by the appellant. In the cross examination, when it was suggested to Kalaivani (P.W.1) that she lived next door, she accepted the suggestion. It was also suggested to her that the temple festivities were going on which was also accepted by her. Though she was cross examined extensively, the defence was not able to make any serious dent in her testimony. The evidence of Kalaivani (P.W.1) has been substantially corroborated by Suseela (P.W.2), Munirathinam (P.W.3) and Ramachandran (P.W.4).

11. Mr.S.Samuel Raja Pandian, the learned counsel for the appellant/accused submitted that there are some discrepancies in the versions of these witnesses and, therefore, much credence cannot be placed on their testimony.

12. We carefully analysed the testimony of P.Ws.1 to 4. We do not



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find any contradictions in them. Of course, in the narration of facts, there are some discrepancies, which do not in any way affect the substratum of the prosecution case.

13. Mr.S.Samuel Raja Pandian, the learned counsel for the appellant/accused further contended that Kalaivani (P.W.1) in her evidence has stated that the body was taken to the hospital, which fact has been completely suppressed by the prosecution.

14. It is true that there is no reference to this fact in the complaint (Ex.P1), but, nevertheless, this cannot have any impact on the evidence of the witnesses with regard to the attack on Velayutham. Suseela (P.W.2) is none other than the wife of Velayutham and her presence at the place of occurrence is natural. That apart, Munirathinam (P.W.3) and Ramachandran (P.W.4) are the sons of Velayutham and, therefore, their presence at the place of occurrence also cannot be doubted.

15. There is no serious dispute with regard to the fact that Velayutham



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had died on account of the injuries suffered by him on his head, which stood established through the evidence Dr.Narayanasamy (P.W.8) and the postmortem certificate (Ex.P.5).

16. On a conspectus of the facts, the prosecution has satisfactorily established that the appellant had thrown a half-brick at the deceased, which proved to be fatal. However, we find that the appellant had not carried any weapon or any dangerous instrument with him with premeditation to cause the death of the deceased. The advice given by Velayutham was not music to the ears of the appellant and hence, he had thrown a half brick at the deceased resulting in his death. The appellant did not intent to cause the murder of deceased. In the facts and circumstances of the case, we are, therefore, of the view that the conviction and sentence of the accused under Section 302 IPC cannot be sustained and he could be convicted only under Section 304(ii) IPC.

17. For the foregoing discussions, we are of the view that the



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appeal succeeds in part and the conviction of the appellant/accused for the offence under Section 302 IPC is set aside and instead, he is convicted for the offence under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for 7 (seven) years and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) in default of payment of fine, he should undergo rigorous imprisonment for a further period of 3 (three) months. The fine amount, if any, already paid, by the appellant/accused for the sentence of fine imposed by the trial court for the offence under Section 302 IPC shall be adjusted towards the fine imposed by this court hereinabove for the offence under Section 304(ii) IPC. The appellant is entitled for set off under section 428 Cr.P.C. The bail bond executed by the appellant/accused shall stand cancelled and the respondent police are directed to secure the appellant/accused and produce him before the trial court so as to commit him to the prison to undergo the remaining portion of the sentence as imposed by this court above.

In the result, this Criminal Appeal is partly allowed as indicated



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above.

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[P.N.P., J.] [TKR., J.]
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Index: yes/no

Speaking/Non-speaking Judgement

kmk

1.The Principal Sessions Judge, Krishnagiri, Krishnagiri District

2.The Inspector of Police, Maharajakadai Police Station, Krishnagiri District.

3.The Public Prosecutor, High Court, Madras.



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P.N.PRAKASH.J.,
AND
RMT. TEEKAA RAMAN.J.,

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