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CRL.A.No.124 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.A.No.124 of 2019

P.Guna

... Appellant

Vs.

The State rep. by
The Inspector of Police,
Salem Town Police Station,
Salem.
(Crime No.281 of 2014)

... Respondent

Prayer: The Criminal Appeal filed under Section 374 of Cr.P.C. praying to allow the appeal and set aside the judgment of conviction imposed in S.C.No.44 of 2015 on the file of the Principal Sessions Judge, Salem, dated 25.01.2019.

For Appellants : Mr.S.Shankar
for Mr.S.Kumaradevan

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

ORDER

This criminal appeal is directed as against the judgment passed in S.C.No.44 of 2015 dated 25.01.2019 on the file of the Principal Sessions



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Judge, Salem, thereby convicting the appellant for the offence under Section 304(1) IPC.

2. The case of the prosecution is that the defecto complainant is a spinster and she is living with her father namely the deceased. Her brother, namely Sampath is living separately. The minor daughter of the said Sampath namely Abinaya aged about 15 years and she is under the care and custody of said Sampath. While being so, the accused waylaid the said Abinaya when she was on her way to her grandfather's house and coerced her to marry him on the pretext of loving her and she resisted his approach. In spite of that, the accused gave mental torture to her and drove her to commit suicide. However, she was saved by her parents. Therefore, the parents of said Abinaya warned the accused not to approach their child. In spite of the warning, two days prior to the date of occurrence, on seeing the accused near the house of Abinaya, the deceased scolded him and beaten him not to disturb her and at the time, the accused enraged him and decided to do away the life of deceased. While being so, on 13.07.2014 at about 10.30 p.m., the accused came to the house of the said Sampath with stone and demanded the deceased to come out of his house. Thereafter, the deceased came out and spoke to the accused to pacify him and on seeing the deceased, the accused, with an intention to cause death, scolded



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him in filthy language and attacked him with stone on his head repeatedly.

Therefore, he sustained grievous injuries and immediately, he was taken to hospital. However, he died on 17.07.2014 due to grievous injuries sustained by him. Hence the complaint.

3. In order to bring home the charges, the prosecution examined PWs 1 to 13 and marked Exs.P1 to 15 and also produced M.O.1 and 2 and on the side of the petitioner no one was examined and no document was marked.

4. On perusal of oral and documentary evidence, the trial Court found the appellant guilty for the offence under Section 304(1) IPC and sentenced him to undergo 10 years rigorous imprisonment and also imposed fine of Rs.3,000/- in default to undergo six months rigorous imprisonment. Aggrieved by the same the present appeal.

5. The learned counsel for the appellant would submit that the accused had absolutely no intention to murder the deceased; due to a sudden provocation, he attacked the deceased and not intended to murder him. He would further submit that the trial Court concluded that it is not a culpable homicide by the accused not amounting to murder punishable under Section



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302 IPC and after narrating the injury found on the body of the deceased the

Trial Court came to the conclusion that the offence is punishable under Section 304(1) IPC. However, the reasons given and the punishment awarded are entirely not sustainable in law. The accused, on seeing the deceased got angry and attacked him with stone. However, the deceased was an aged person about 70 years old and therefore, the simple injury caused to him is likely cause to his death. There was no pre-intention or there was no weapon involved and if the accused have any intention to murder the deceased, in the absence of the above ingredients, the trial Court ought not to have convicted the appellant for the offence under Section 304(1) IPC. If the accused attacked a person, on a sudden and grave provocation, punishment can be awarded only under Section 304(1) IPC. Hence he prays for acquittal.

6. Per contra, in order to prove the charges, the prosecution examined PW1 to 13. The eye witness categorically deposed about the occurrence. In fact, the accused went to the house of PW1 and called upon the deceased. Therefore, the deceased came there and he attacked the deceased with a concrete stone, which was being carried by him. Therefore, the intention was clear namely to do away with the life of the deceased. However, the trial Court convicted the appellant for the offence under Section 304(1) IPC, though the



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accused was charged for the offence under Section 302 IPC. Hence, he vehemently contended that the judgment passed by the Court below does not warrant any interference by this Court.

7. Admittedly, the accused fell in love with one Abinaya and it was a one side love. She was a minor at the time of occurrence. It was questioned by the deceased since he saw the accused near the house of the said Abinaya. Thereafter, on 13.07.2011 the accused went to the house of PW3. He deposed that his father died on 23.12.2016. The accused had given love torture to his sister Abinaya which was warned by the deceased. Therefore, on 13.07.2014, the accused went to the house of PW3 at about 10.30 p.m., and he demanded to get marry with her sister. Her father also scolded him. Immediately, PW3 was sent out of the house of PW1. Therefore, PW1 and his sister came to the house of PW3. At this juncture, the accused attacked him with concrete stone. The deceased fainted and fell down. The concrete stone was produced as M.O.1. Immediately, he was taken to Kamala Hospital by PW1. PW7, the Doctor, who treated the deceased, recorded the Accident Register, the said Accident Register was marked as Ex.P5. He also deposed that the accused attacked the deceased and thereafter, the deceased had taken treatment till 17.03.2014 and unfortunately he succumbed to death on the same day. PW8, who conducted



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post-mortem, submitted a report which has been marked Ex.P7, he opined that the deceased would have died due to effects of head injury sustained by him during the occurrence on 13.07.2014. Therefore, the prosecution categorically proved its case beyond any doubt and it does not warrant any interference by this Court.

8. Further, though the accused was charged for the offence under Section 302 IPC, the trial Court convicted the appellant for the offence under Section 304(1) IPC since the act of the accused was pre-mediation, in a sudden fight in the heat of passion without having taken undue advantage and not having acted in a cruel or unusual manner. Therefore, following the judgment of Hon'ble Supreme Court of India reported in **2017(2) MWN (crl) 187 SC** in the case of **Surain Singh Vs. State of Punjab**, the trial Court convicted the appellant for the offence under Section 304(1) IPC and sentenced him to undergo ten years rigorous imprisonment. However, the learned counsel for the appellant would submit that the appellant is a young man and his sentence itself not even suspended till now and he is continuously incarcerated in the prison and hence he prays to reduce the sentence.



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9. In view of the above submission made by the learned counsel for the appellant and also considering the above facts and circumstance, this Court is inclined to reduce the sentence to some extent. Accordingly, the conviction for the offence under Section 304(1) IPC is hereby confirmed. In so far as, the sentence is concerned, it is reduced from ten years to five years.

10. In the result, the criminal appeal stands partly allowed.

24.11.2022

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Index : Yes / No

Speaking / Non Speaking order

To

1.The Principal Sessions Judge, Salem.

2.The Inspector of Police,
Salem Town Police Station,
Salem.

3.The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.
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