



CrI.A. No.173 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	14.09.2022
DELIVERED ON	20.10.2022

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

and

THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN

CrI.A. No.173 of 2019

Madhu

Appellant

vs.

State represented by the
Inspector of Police
Mathur Police Station
Cr. No.196 of 2014

Respondent

Criminal Appeal filed under Section under Section 374(2) Cr.P.C. seeking to set aside the conviction and sentence imposed on the appellant *vide* judgment and order dated 23.11.2016 in S.C. No.55 of 2016 on the file of the Sessions Court (Mahila Court), Krishnagiri.

For appellant Mr. K. Ramesh

For respondent Mr. M. Babu Muthu Meeran
Additional Public Prosecutor

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JUDGMENT

P.N. PRAKASH, J.

The judgment and order of conviction and sentence dated 23.11.2016 made in S.C. No.55 of 2016 on the file of the Sessions Court (Mahila Court), Krishnagiri, is under assail in this criminal appeal by the sole accused, *viz.*, Madhu.

2 The appellant stands convicted and sentenced for uxoricide, in that, he had murdered his wife, Kamala, in the night of 17/18.04.2014 by dropping a stone weighing around 21 kgs. that was used as a base for manually washing clothes (for brevity “the stone”) (M.O.1) on her head while she was fast asleep, as she had earlier fought with him for being a chronic tippler.

3 The prosecution story, minus minute details, is as under:

3.1 The appellant and Kamala have two children, *viz.*, Chandrasekar (P.W.2) and Deepika (not examined). They were residing in Perumalkuppam Village.

3.2 While so, on 17.04.2014, around 6.30 p.m., the appellant went to Mathur, purchased liquor and returned home. When he started to drink in his house, Kamala objected to it and so, he quarrelled with her. Therefore, Kamala left



with her children, viz., Chandrasekar (P.W.2) and Deepika, to her mother's house nearby; around 10.30 p.m., Kamala's relatives consoled her and sent her back to her house and so, she returned home with her son, Chandrasekar (P.W.2), leaving her daughter Deepika in her mother's house. That night, Chandrasekar (P.W.2) was sleeping on a cot in their hut and Kamala was sleeping on the floor. The appellant returned home late, fully drunk and while Kamala was fast asleep, he took the stone (M.O.1) from the bathroom and dropped it on her head. When Kamala hollered, her son Chandrasekar (P.W.2), who was sleeping nearby on the cot, woke up and saw the appellant standing, his mother lying on the ground with blood injuries on her head and the stone (M.O.1) nearby. Immediately thereafter, the appellant fled.

3.3 Chandrasekar (P.W.2) raised a hue and cry and neighbours gathered there. Word was sent to Kamala's father Devaraja Naidu (P.W.1), who came to that place and at that time, Kamala was alive. When Devaraja Naidu (P.W.1) enquired Kamala, she stated that her husband had dropped the stone on her head and that she would not survive.

3.4 Kamala was immediately taken to the Government Hospital, Krishnagiri, where, it was advised that she be taken to the Government Hospital,



Dharmapuri. However, Kamala died *en route* and so, she was brought back to the Government Hospital, Krishnagiri.

3.5 On a complaint (Ex.P.1) given by Devaraja Naidu (P.W.1), Parthiban (P.W.11), Sub Inspector of Police, registered a case in Mathur P.S. Cr.No.196 of 2014 at 7.00 a.m. on 18.04.2014 against the appellant under Section 302 IPC and prepared the printed FIR (Ex.P.7), which reached the jurisdictional Magistrate at 12.50 p.m. on the same day, as could be seen from the endorsement made thereon.

3.6 Investigation of the case was taken over by Ravikumar (P.W.12), Inspector of Police, who went to the place of occurrence and prepared the observation mahazar (Ex.P.5) and rough sketch (Ex.P.4). From the place of occurrence, the I.O. (P.W.12) seized the bloodstained stone (M.O.1) weighing 21 kgs., soil with bloodstains (M.O.2), soil without bloodstains (M.O.3), a bloodstained white shirt (M.O.4), 5 beedies (M.O.5) and one Nokia cell phone (M.O.6) under the cover of a mahazar (Ex.P.6).

3.7 The I.O. (P.W.12) went to the mortuary at the Government Hospital, Krishnagiri and conducted inquest over the person of Kamala and the inquest report was marked as Ex.P.8.



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3.8 Dr. Kalayarasan (P.W.9) performed autopsy on the body of Kamala and in his evidence as well in the postmortem certificate (Ex.P.3), he has stated as under:

“A deep laceration of about 7 x 3 cms. over the right parietal region bone depth. Skull intact.”

3.9 After completing the postmortem and obtaining the viscera report which did not disclose the presence of poison in the visceral organs, Dr.Kalayarasan (P.W.9) gave his final opinion as to the cause of death as under:

“The deceased appears to have died of shock and haemorrhage due to head injury.”

3.10 The appellant was arrested on 19.04.2014 at 7.30 p.m. and was remanded in judicial custody.

3.11 After examining various witnesses and collecting various reports of experts, the I.O. (P.W.12) completed the investigation and filed a final report in P.R.C. No.9 of 2014 in the Court of the Judicial Magistrate, Pochampalli, for the offence under Section 302 IPC against the appellant.



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3.12 On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Krishnagiri, in S.C.No.55 of 2016 and was made over to the Mahila Court, Krishnagiri, for trial.

3.13 The trial Court framed a charge under Section 302 IPC against the appellant and when questioned, he pleaded not guilty.

3.14 To prove the case, the prosecution examined 12 witnesses and marked 11 exhibits and 10 material objects.

3.15 When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined on his behalf nor any document marked.

3.16 After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 23.11.2016 in S.C. No.55 of 2016, convicted the appellant under Section 302 IPC and sentenced him to undergo life imprisonment and pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for a period of six months.



3.17 Challenging the aforesaid conviction and sentence, the present criminal appeal has been instituted by the accused.

4 Heard Mr. K. Ramesh, learned counsel for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent State.

5 The learned counsel for the appellant contended that the prosecution has not proved the case satisfactorily, inasmuch as, there is no eyewitness to the occurrence and the entire case, being based on circumstantial evidence, circumstances have not been established satisfactorily. He further contended that it would not have been possible for the appellant to lift the stone (M.O.1), especially when he was said to be inebriated.

6 *Per contra*, the learned Additional Public Prosecutor refuted the aforesaid contentions.

7 This Court gave its anxious consideration to the rival submissions.

8 Chandrasekar (P.W.2), in his evidence, has, *inter alia*, stated that Kamala is his mother and the appellant is his father; at the time of the incident, he was studying in XII standard; he was also going for work with his mother everyday as a daily wager; on 17.04.2014, around 7.00 p.m., his mother and he



returned home; at that time, his father came home drunk; he (appellant) questioned his mother as to where she had been and abused her in filthy language; so, his mother left their house along with him (P.W.2) to her uncle's house, which is just 3 houses away from their house; however, on the intervention of his relatives who brokered a truce, his mother and he (P.W.2) returned home; around 11.30 p.m, he was sleeping on the cot and his mother was sleeping on the floor; while he was fast asleep, he heard his mother shouting and when he woke up, he saw his father standing there and on seeing him (P.W.2), his father fled; next to his mother, he saw a stone which he identified in the Court as M.O.1; blood was oozing from his mother's head; he gave her water; soon, his grandfather came there; his mother told his grandfather that she would not survive; she was carried to the Government Hospital, Krishnagiri and there, they were advised to take her to the Government Hospital, Dharmapuri, but, *en route*, she breathed her last; his grandfather gave a police complaint. This evidence of Chandrasekar (P.W.2) is very cogent.

9 Devaraja Naidu (P.W.1) has, *inter alia*, stated that he gave his daughter Kamala in marriage to the appellant; the appellant used to ill-treat her; 2 ½ years ago, he received information around 11 p.m. that the appellant had dropped a stone on his daughter's head and so, he rushed to her house and found blood



oozing from her head; when he enquired his daughter, she told him that the appellant had dropped a stone on her head and that she would not survive; she was carried to the Government Hospital, Krishnagiri; from there, she was taken to the Government Hospital, Dharmapuri, upon being advised so; however, she died *en route* and therefore, she was brought back to the Government Hospital, Krishnagiri; on the next day, he gave a complaint to the police; he also identified the stone (M.O.1).

10 The defence was unable to make any serious dent in the testimony of Devaraja Naidu (P.W.1) and Chandrasekar (P.W.2). It was suggested to Devaraja Naidu (P.W.1) that Chandrasekar (P.W.2) was not there in the house when the incident happened and he (P.W.2) was in Bangalore, which suggestion he denied.

11 The learned counsel contended that both Devaraja Naidu (P.W.1) and Chandrasekar (P.W.2) had accepted that there were two pillows on the floor and therefore, Kamala was having illicit intimacy with one Balraj, which was seen by the appellant, owing to which, a fight ensued betwixt the said Balraj and the appellant, during the course of which, Balraj threw a stone at the appellant which missed him and fell on Kamala who was sleeping. To probabilise this theory, the learned counsel took us through the opinion expressed by Dr.Kalayarasan (P.W.9)



in the cross-examination that the injuries sustained by Kamala would have been caused if a stone had been thrown on her in a melee between two persons.

12 We are unable to appreciate the aforesaid submission of the learned counsel for the appellant for the simple reason that the evidence of Dr.Kalayarasan (P.W.9) is only an opinion evidence and that is not an evidence for the proof of fact in issue. To be noted, the theory of the defence referred to in paragraph 11, *supra*, was not even put as a suggestion to Devaraja Naidu (P.W.1). However, when it was put as a suggestion to Chandrasekar (P.W.2), he denied the same. We have no reason to disbelieve the evidence of Chandrasekar (P.W.2) because he had no animus against his father. He did not tell the Court that he saw his father dropping the stone on his mother's head. What he told the Court was, while he was asleep on the cot nearby, he heard his mother shouting and when he woke up, he saw his father standing nearby and thereafter, fleeing from the house and he saw his mother in a pool of blood with a bloodstained stone nearby. The serology report (Ex.P.11) shows that “O” blood group was detected on the stone (M.O.1) as well in the blouse (M.O.7) and nightie (M.O.8) that were worn by Kamala at the time of the occurrence, which were handed over to the police after the postmortem.



WEB COPY 13 As regards the contention that the appellant would not have been able to lift a stone weighing 21 kgs., this Court is unable to appreciate the same, because, the appellant was aged 45 years at the time of the occurrence and was not suffering from any physical handicap. That apart, when the appellant was questioned under Section 313 Cr.P.C., he did not project the theory that when he went home, he saw his wife with Balraj, a fight ensued between them, Balraj threw the stone at him; it missed him (appellant) and hit Kamala and caused her death. Thus, it is easily discernible that this theory is a concoction by the defence.

14 Devaraja Naidu (P.W.1), in his evidence, has stated that he came to Kamala's house and saw Kamala lying on the floor in a pool of blood; he also saw Kamala's son Chandrasekar (P.W.2) there. Eswaramoorthy (P.W.4), Kamala's elder brother, in his evidence, has, *inter alia*, stated that on getting information about the incident, he rushed to Kamala's house and identified the stone as the one which she used as a base for washing clothes. Likewise, Shanmugam (P.W.6) of the same village, has, in his evidence, has, *inter alia*, stated that on coming to know about the incident, he went to Kamala's house and there he saw Kamala's son who told him how the incident occurred. That apart, Kamala's statement to



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her father Devaraja Naidu (P.W.1) that the appellant had dropped a stone on her head and that she would not survive, is a dying declaration relevant under Section 32 of the Evidence Act.

15 In view of the aforesaid discussion, we find no reason to disbelieve the evidence of Devaraja Naidu (P.W.1) and Chandrasekar (P.W.2).

For all the aforesaid reasons, this criminal appeal fails and is accordingly dismissed.

(P.N.P., J.) (TKR, J.)
20.10.2022

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To

- 1 The Inspector of Police
Mathur Police Station
Krishnagiri
- 2 The Sessions Judge
Mahila Court
Krishnagiri
- 3 The Public Prosecutor
Madras High Court
Chennai 600 104



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