



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.386 of 2019

Ezhumalai

...Appellant/Accused

Vs.

The State Rep. by
The Inspector of Police
(Law & Order),
H-1, Washermanpet Police Station,
Chennai - 600 021.
(Crime No.1482 of 2017)

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the conviction and sentence passed by the learned Sessions Judge, Mahila Court, Chennai (Mahalir Needhimandram) by her judgment dated 06.09.2018, made in S.C.No.96 of 2018, convicting the appellant herein for the alleged offence under Section 304 Part II of IPC and sentenced to undergo five years simple imprisonment.

For Appellant : Mr.S.Panneerselvam

For Respondent : Mr.Leonard Arul Joseph Selvam,
Government Advocate(crl.side)

JUDGMENT

The present Criminal Appeal is directed as against the judgment of conviction and sentence dated 06.09.2018 made in S.C.No.96 of 2018, passed by the learned Sessions Judge, Mahila Court, Chennai.

2. The appellant is the sole accused in the above referred case. He stood charge for the offence punishable under Section 304 Part II of IPC. After elaborate trial, the learned Session Judge came to the conclusion that the accused found guilty for the offence punishable under Section 304 Part II of IPC, and accordingly, convicted and sentenced him to undergo simple imprisonment for five years. Challenging the said



conviction and sentence, the appellant/accused is before this Court with this present Criminal Appeal.

3. The case of the prosecution in brief, is as follows:-

(i) P.W.1 Kalidoss is the brother of the accused and the deceased Dhanalakshmi is his mother. Before six months, during one Sunday, the accused came to his house and ate non vegetarian food that had been cooked in their house. Due to the same, the daughter of P.W.1 scolded the accused for which, the accused tried to assault P.W.1's daughter. After seeing the same, the mother of P.W.1 went to the scene of occurrence and attempted to rescue P.W.1's daughter. At that time, P.W.1 who was sitting outside, rushed inside the house and found that the accused was keeping his leg on the neck of his mother. Immediately, P.W.1 went and pushed the accused and thereafter the accused got up and ran away. Due to the assault made by the accused, P.W.1's mother became unconscious and thereafter Ambulance was called for and the staff attached in the ambulance told that the mother of P.W.1 has already died. In the meanwhile, at the time the accused ran outside, fell down on the railway track and got injury on his head. Likewise, the accused would behave like a mental person. Further for the said occurrence, P.W.1 lodged a complaint in the police station under Ex.P.1.

(ii) P.W.8, Jawahar, the then Inspector of Police, H1 Washermanpet Police Station, received the complaint from P.W.1 and registered a case in Crime No.1482 of 2017 under Section 302 of IPC. The printed First Information Report has been marked as Ex.P.4. He visited the scene of occurrence and prepared observation mahazar under Ex.P.2. He drawn the rough sketch under Ex.P.6, examined the witnesses and recorded their statements. He held inquest enquiry and prepared a inquest report under Ex.P.5. He submitted an application before the hospital authority for conducting post mortem.

(iii) P.W.7 Dr.Priyadarshini, Assistant Professor, attached to the Government Stanley Medical College Hospital, Chennai, on receipt of requisition given by P.W.8, conducted post mortem on the body of the deceased Dhanalakshmi and found the following injuries :-

"Moderately nourished female body with
no external injury anywhere on the body
On dissection of head:
Scalp, vault and dura : Intact; Brain :
Diffuse subarachnoid hemorrhages all over the



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brain surface; C/S: Normal; base of skull : intact; multiple raised atheromatous deposits on the inner surface of all the cerebral blood vessels.

On further dissection:

Heart: Normal in size, c/s: Chambers contained fluid and clotted blood; Valves : Thickened; multiple raised atheromatous plaques on the inner surface of root of aorta and the coronary vessels.

Lungs : Normal in size; multiple subpleural petechial haemorrhages on the surface of both the lungs; C/S : congested.

On dissection of neck:

Dark red contusion 1X0.5X0.5cm on the left side of the neck, 4cm below left angle of mandible.

Both side carotid arteries were normal; on dissection: Atheromatous deposit were noted on the inner surface of carotid vessels.

Larynx & Trachea : Empty; Hyoid Bone : Intact.

Stomach : Contained 350 grams of brownish partly digested cooked rice particles with no definite smell; Mucosa : Normal.

Liver, Spleen and Kidneys: Normal in size; C/S: Congested

Bladder: Empty; Uterus: Normal in size; c/s cavity empty

Pelvis and Spinal Column : intact.

(Viscera preserved for chemical analysis)

(Tissue bits from heart, brain and kidney were preserved for histopathological examination of tissues)"

The post-mortem certificate was marked under Ex.P.3. She collected viscera and sent the same for chemical examination. In the chemical examination, it was found that there was no poisonous substance found in the viscera. On receipt of the report from the Forensic Science Department, she opined that the deceased would appear to have died of subarachnoid haemorrhage. The final report issued by P.W.7 was marked as Ex.P.12.

(iv) In continuation of investigation, P.W.8, on 04.12.2017 at about 2.00 p.m., arrested the accused and recorded his confession statement in the presence of one Riyazydeen and Kumar. Afterwards the accused was sent to remand. While at the time of remanding the accused, the Magistrate has passed an



order to continue the treatment for assessing the mental ability of the accused. Later, on 08.12.2017, the Magistrate visited the hospital and pursued the doctor's opinion, statement of the accused, other records and observed that the accused is in need of some psychological treatment and referred him to Kilpauk Mental Hospital. In this regard, the Accident Register copy issued by the competent authority, medical report and discharge summary, have been marked as Ex.P.8 and Ex.P.9 series.

(v) After observation, it was confirmed that the accused was affected with "acute alcohol induced psychosis" and on 11.12.2017, the accused was ordered to be kept under the medical supervision. The Reception Order issued by the learned Magistrate was marked under Ex.P.10 and on that basis, the accused was sent to Mental Hospital, Kilpauk and he was under treatment till 17.01.2018. Thereafter, after concluding that the appellant is not a mentally disorder person, he was produced before the Court and sent to Puzhal Prison.

(vi) Later, P.W.8 examined the doctor, collected the O.P. Chit and Fitness Certificate from him in respect of the accused and the same has been marked as Ex.P.14 series. After completing the investigation, P.W.8 came to conclusion that the appellant is liable to be convicted under Section 304 Part II of IPC. He filed final report accordingly.

4. Based on the above materials available, the trial Court framed charges under Sections 304 Part II of IPC. The accused denied the charges and opted for trial. Therefore, the accused was put on trial.

5. During the course of trial proceedings, in order to prove the case of prosecution, on their side, as many as 8 witnesses were examined as PW1 to PW8. Apart from that 14 documents were exhibited as Ex.P1 to Ex.P14.

(i) Out of the said witnesses P.W.1 Kalidoss spoke about the occurrence, during the relevant point of time, the accused pushed his mother down and kicked, stamped on her chest and throat thereby she died.

(ii) P.W.2 Kanchana is the daughter of P.W.1. She deposed that on the date of occurrence, the accused who is also one of her paternal uncle came to the house and he ate all the non vegetarian food. When at the time her grandmother questioned about the same, the accused attacked her, pushed her down and thereafter stamped over her chest and neck. Later P.W.3 came there and after seeing her the accused got up and ran outside.



Further she has stated that immediately after the said occurrence, her grandmother was admitted in the hospital, wherein she was declared as dead.

(iii) P.W.3-Kalaiyarasan, is a son of P.W.1 and he has given evidence in support of the evidence given by P.W.2.

(iv) P.W.4-Annamalai is the neighbour of P.W.1. He spoke about the occurrence as during the relevant point of time, when he was standing nearby the house of P.W.1, he saw the accused, keeping his leg over the chest of the deceased and on seeing that, he went and pushed the accused. The accused fell down, got up and ran away from the scene of occurrence. According to him, while at the time of the accused ran away from the house, the accused fell down and sustained injury.

(v) P.W.5 - Venkatesan who is the relative of the accused has deposed that on 03.12.2017, when at the time he returned to home around 6.00 p.m., he found that the accused lying in the railway track with head injury. He took the accused to the Stanley Hospital in an auto.

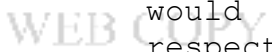
(vi) P.W.6 - Pachayappan who signed as witness in the observation mahazar deposed that on 04.12.2017, the police visited the scene of occurrence and prepared the observation mahazar in his presence.

(vii) P.W.7 - Dr.Priyadharshini, Assistant Professor, Government Stanley Medical College Hospital, deposed about the nature of injury sustained by the deceased. She also gave opinion as to the cause of death.

(viii) P.W.8 - Jawahar, Inspector of Police, spoke about the receipt of complaint, registration of case, investigation and about the filing of final report.

6. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. However, he did not chose to examine any witness or mark any documents on his side.

7. The learned Sessions Judge, Mahila Court, Chennai, after perusing all the materials and also considering the arguments advanced by either side, found the appellant guilty, convicted under Section 304 Part II of IPC and sentenced him, as stated in the 2nd paragraph of this judgment.



8. Aggrieved over the conviction and sentence, the defendant is before this Court with the present Criminal Appeal.

9. The learned counsel appearing for the appellant contend that the evidence given by P.W.1 to P.W.3 in of the occurrence are having lot of contradictions. The es who have given evidence as against the appellant are natives. Only in order to grab the property owned by the they have given evidence as against the appellant that ellant alone had committed the offence. According to him, secution did not prove its case beyond reasonable doubt.

10. Per contra, the learned Government Advocate (Crl. appearing for the respondent police would submit that the alleged occurrence had happened inside the house of it is impossible to see the same by a third party. re, non-examination of independent witness is not fatal case of the prosecution. Further the witnesses who are mined on the side of the prosecution had given evidence any contradiction and the evidence given by the eye- es are corroborated through the evidence given by the According to him, interferences in the findings arrived he trial Court is not required.

11. I have heard Mr.S.Panneerselvam, learned counsel
ing for the appellant/accused and Mr.Leonard Arul Joseph
learned Additional Public Prosecutor appearing for the
ent Police and I have also perused the records carefully.

12. Admittedly, the alleged occurrence had happened the house of P.W.1. Further the appellant and P.W.1 are s, P.W.2 and P.W.3 are daughter and son of P.W.1. They stated about the occurrence as during the relevant point, the accused by putting his leg on the chest of the d had committed the offence. On going through the tion mahazar and rough sketch, it is not in dispute that eged occurrence had happened inside the house of P.W.1. the occurrence house is a small house and it is a row- Therefore, it cannot be said that the alleged occurrence easily seen by others. In the said circumstances, only of the reason that the eye-witnesses examined on the the prosecution are close relatives, their evidence be discarded. In other wise, it is settled law that the mination of independent evidence cannot be the sole for acquittal.



13. The second submission made by the learned counsel appearing for the appellant is that the appellant is a psychotic patient and also he is an alcoholic addict. Therefore, the nature of the act committed by him would not amount to the offence. Hence, it cannot be said that the accused herein had committed the offence.

14. Now on going through the said submission with the relevant records, it is the case of the prosecution that during the relevant point of time, without any intention to commit an offence of murder, the accused put his leg on the chest of the deceased and as a result of which, she died. Further the charge under Section 304 Part II of IPC alone has been framed as against the accused. Therefore, it is not necessary to see whether the appellant has intention to kill the deceased or not. Of course, in respect of mental ability of the accused, the trial Court after observing all the formalities, which are required under the provisions of Criminal Procedure Code, and only after satisfaction, put the accused for trial and concluded the trial.

15. The entire evidence given by P.W.1 to P.W.4 would reveal the fact that during the relevant point of time in a drunken mood, the accused came to the house and ate the non vegetarian food, which was found in the house and when at the time, the deceased questioned about the same, the accused committed the offence. Further, during the relevant point of time, he attacked all the family members who are all present in P.W.1's house. In otherwise the evidence given by P.W.1 to P.W.4 in their cross-examination is not in the form of impeaching the credibility of the evidence given in their chief examination. After knowing the consequences, the accused attempted to run away from the scene of occurrence and at that time, he fell down on the railway track and sustained injury and the same has been proved by producing the relevant evidence as Ex.P.9.

16. More than that, the time and events lead to the occurrence would show that the accused did not have any intention to kill his mother. In otherwise, the manner of attack made by him would go to show that the same would likely to cause death of the deceased.

17. Therefore, the evidence given by the witnesses and the medical records and surrounding circumstances would clearly prove that the accused had killed his mother in a sudden provocation. He had attacked his mother in such a dangerous



manner which he would know in ordinary circumstances that such kind of attack would cause death to his mother.

18. Therefore, it was concluded that the alleged occurrence had happened in the light of angry without any predetermination and therefore, conviction for the offence under Section 304 part II of IPC is not an erroneous finding. Accordingly, the appeal filed by the appellant stands dismissed.

19. In respect of the quantum of sentence, the learned counsel appearing for the appellant would submit that from the date of judgment onwards, the appellant is in custody and he has become sick and therefore, some leniency should be shown to the accused.

20. Now on considering the said submission with the relevant records, it is not in dispute that before the occurrence, the accused was addicted to alcohol. Further, he is not having any family and now the age of the accused is 35 years. Being the reason that the alleged offence has been committed without any predetermination, this Court decideds to show some leniency in the manner of punishment.

21. Accordingly, this Criminal Appeal is partly allowed and the judgment of conviction and sentence, dated 06.09.2018 made in S.C.No.96 of 2018 on the file of the learned Sessions Judge, Mahila Court, Chennai, convicting and sentencing the appellant for the offence under Section 304 Part II of I.P.C is modified as the appellant is found guilty and convicted under Section 304 Part II of IPC and is sentenced to undergo four years rigorous imprisonment and further, the period of remand already undergone by the accused if any, is ordered to be set off against the sentences imposed. The fine amount, if any paid, to be adjusted against the sentence imposed now.

22. If the period of remand already undergone by the appellant/ accused is four years, he is directed to be set at liberty forthwith unless his custody is required in connection with any other case. The bail bond, if any executed by the accused, shall stand cancelled.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



To

1. The Sessions Judge,
Mahila Court (Mahalir Needhimandram)
Chennai.
 2. Do Thro The Principal Sessions Judge, Chennai
 3. The XV Metropolitan Magistrate, Chennai
 4. Do Thro The Chief Metropolitan Magistrate
Egmore, Chennai
 5. The Inspector of Police
(Law & Order),
H-1, Washermanpet Police Station,
Chennai - 600 021.
 6. The Superintendent,
Central Prison,
Puzhal-I, Chennai.
 7. The Public Prosecutor,
Madras High Court,
Chennai.
- +1 CC to Mr.S.Panneerselvam, Advocate sr 18616.

Crl.A.No.386 of 2019

PL(CO)
SP(28/04/2022)