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Crl.A.No.330 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2022

PRONOUNCED ON: 30.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **P.N.PRAKASH**

AND

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

Crl.A.No.330 of 2019

Sabesan

.. Appellant/sole accused

Vs.

The State

Rep. By the Inspector of Police,
Puduchatiram Police Station
(Crime No.159 of 2017)

.. Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Criminal Procedure Code, praying to set aside the judgment of conviction and sentence awarded by the learned Mahila Judge, Cuddalore, in S.C.No.395 of 2017 dated 14.06.2018.

For Appellant : Mr.S.Pushpakaran

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor



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JUDGMENT

RMT.TEEKAA RAMAN, J.

Convicted sole accused is the appellant herein.

2. The appellant/accused challenges the conviction and sentence imposed by the learned Sessions Judge, Mahila Court, Cuddalore, made in S.C.No.395 of 2017 dated 14.06.2018, convicting him under Section 302 I.P.C. and sentencing him to undergo imprisonment for life and ordered to pay fine of Rs.50,000/- in default to undergo two years simple imprisonment.

3. Brief facts of the case leading to the filing of the appeal :

(i) One Dhanalakshmi [PW1], wife of Chakravarthy, who is the resident of Meikaval Street in Chidambaram had three daughters. The eldest daughter is Kanimozhi [PW2], the deceased Deepika is her second daughter and the third daughter is Subathra. PW1 was eking her livelihood by selling flowers near Chidambaram Bus Stand. The second daughter of PW1 viz., Deepika was given in marriage to Sabesan [accused], son of Neelakandan, two years prior to the incident. Due to



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matrimonial discord between the said Deepika with her husband Sabesan, she returned to her mother's home and begotten a female child.

(ii) The criminal law was set into motion by PW1 by lodging Ex.P1-Complaint on 28.06.2017 at 2.03am hours before the Puduchatiram Police Station, alleging that since her daughter, who had estranged relationship with her husband was living with her, on a compromise made by the elders and on invitation of the son-in-law Sabesan (the accused) on 26.06.2017 over phone, she went along with her daughter Deepika and the baby and left her in the matrimonial home. However, since on the very next day, her daughter complained about the ill treatment, on 28.06.2017, PW1 along with her third daughter Subathra, went to see Deepika (deceased) around 2.00pm, and at that time, the house was locked inside and Sabesan (accused) was having a fight with his wife/Deepika (deceased) and inspite of PW1 knocking the doors, they have not opened it. Therefore, on seeing this through the window, PW1 found that her daughter was subjected to physical cruelty by the accused and as she was crying, people started coming near the house and at that time the accused had a wooden plank in his hand and attacked the deceased on the head several times and Deepika fell down



and on arrival of multiple people in the nearby area, the accused ran away from the scene of the crime, by dropping the wooden plank in the area.

So is Ex.P1-complaint and Ex.P8-FIR was registered and sent to the Court and the same was received by the jurisdictional Magistrate at about 16.00 hours [Ex.P8].

(iii) Mala, Sub Inspector of Police (PW6) received Ex.P1-complaint and registered Ex.P8-FIR and handed over to the learned Judicial Magistrate and we find that it was an express FIR which has reached the Court within a reasonable time.

(iv) Mohan, Inspector of Police (PW7), has taken up the investigation and went to the scene of the occurrence and prepared Ex.P2, observation Mahazar and in the presence of one Anandaraj (PW3), has seized M.O.2 to M.O.4, under a seizure Mahazar (Ex.P3). He prepared Ex.P9, Rough Sketch (Inside the house) and Ex.P10, another Rough Sketch (Outside the house) and conducted an inquest with Village Panchayatars. The inquest report is Ex.P11. Thereafter, PW7 arrested the accused on 28.06.2017 at 7.00pm in the presence of witnesses, VAO-Anandan and his Assistant Jayalaksmi and based upon the admissible



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portion of the confession statement Ex.P4, he has recovered and seized the M.O.1 wooden plank and dresses under M.O.5 and M.O.6 and sent the same for the chemical analysis report. Thereafter, PW7 sent the body for postmortem and PW5-Dr.Aswini had conducted the postmortem and issued Ex.P6 and Ex.P7 i.e., the Expert opinion of Hyoid bone and Postmortem report of Deepika, respectively.

(v) During the course of investigation, he also recorded the statement of Neelakandan (father of the accused) and Paranjothi (younger brother of the accused) under Ex.P13 and Ex.P14.

(vi) In the postmortem report, PW5-Dr.Aswini has rendered a final finding that a lacerated injury measuring 3 x 0.25 x 0.25cm was found on the left ear. Upon examination of skull and left side of the head blood clots were found. The left side of the skull bone was found fractured. Another bone fracture was found below the left eye. The left side brain was found damaged (இடதுபக்க முளை சிதைந்த நிலையில் காணப்பட்டது)



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(vii) As per the report, it was found that the viscera did not contain any alcohol or poison. The Hyoid bone was found intact. The Hyoid bone report was marked as Ex.P6. The doctor had opined that the deceased would appear to have died due to the severe head injury and blood loss therefrom. The doctor had further stated that M.O.1 could have caused the injuries found on the body of the deceased Deepika.

(viii) The chemical examiner under Ex.P15 gave the opinion that the blood stains found on the shirt was that of human blood and the grouping test was inconclusive. The blood stains on the cement plaster were disintegrated. It was found that the blood stains in Lungi, wooden plank, chudidhar top and chudidhar pant were found to be of human origin and it belong to 'O' group.

(ix) After conclusion of the investigation and recording of statement under 161 Cr.P.C from the private prosecution witnesses and official witnesses, medical evidences and medical records, the investigation officer has laid the charge sheet and the same is taken as PRC No.22 of 2017 and on committal numbered as S.C.No.395 of 2017.



(x) The learned Sessions Judge has framed the charge under

Section 302 IPC and the same was explained to the accused in Tamil. As he denied the charges and claims for trial, during the trial, the prosecution had examined PW1 to PW7 and marked Ex.P1 to Ex.P15, besides material objects M.O.1 to M.O.6.

(xi) Thereafter, after completion of the examination of the prosecution witnesses, the accused was questioned under Section 313 (1)(b) of the Cr.P.C. regarding the incriminating circumstances found in the prosecuting witnesses.

(a) During questioning under Section 313 Cr.P.C., the lower Court records reveals that the accused admitted the complaint given by him before the All Women Police Station for reunion and also admitted that he took Deepika (deceased) to his house on 26.06.2017. However, he denied that the witnesses, PW1 and PW2 had seen the alleged attack and the attack itself is also denied.

(b) The lower Court records further reveals that for the question



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No.44, under Section 313 Cr.P.C., he answered that he killed his wife due to anger. On the side of the defense/accused, no witness have been examined and no documents have been marked.

(xii) Considering the oral and documentary evidence of the prosecution, the learned Sessions Judge, Mahila Court has held that the charges under Section 302 of IPC is proved and laid the conviction and sentence as stated supra.

(xiii) Challenging the finding of the trial Court as well as the conviction and sentence thereon, the convicted accused has preferred this appeal.

4. Heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor, appearing for the respondent police and perused the materials available on record.

5. The learned counsel for the appellant/accused could contend that the trial Court has not appreciated the statement of the father of the accused and brother of the accused, given under Section 164 of the



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Cr.P.C, before the learned Magistrate that are marked as Ex.P13 and Ex.P14, through Investigation Officer, PW7.

6. The prosecution has recorded the statement of the father and younger brother of the accused before the learned Judicial Magistrate Neelakandan and Paranjothi under Section 164 of the Cr.P.C. and the said document has been rightly marked by the Investigation Officer, PW7 as Ex.P13 and Ex.P14. The sum and substance of the document is to the effect that the accused ran away from the house, after throwing out the wooden plank there itself.

7. The learned counsel for the appellant/accused would draw my attention to the said statement and the contention therein. Unfortunately, the defence has not confronted the above said statement said to have been given by those two persons viz., Neelakandan and Paranjothi (Ex.P13 and Ex.P14) to the Investigation Officer, assumes significance.

8. The statement recorded under Section 164 Cr.P.C., can be only of a persuasive value either for corroboration or contradiction. In the absence of any cross examination on the above lines with the respective



prosecution witnesses, we have no hesitation to reject the said contention.

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9. Even going by the statement so recorded said to have been made by Neelakandan and Paranjothi, relatives of the accused, it goes only to show that the accused ran away from the scene of crime after seeing the neighbours and he dropped the blood stained wooden plank. We find that it is a piece of evidence only to support the case of the prosecution and not the defense.

10. The lower Court has rightly observed that for the question No.44 under Section 313 (1)(b) Cr.P.C., the accused has answered that he killed his wife due to anger. The trial Court has independently dealt with the evidence of PW1 and PW2 as discussed supra and come to the independent conclusion that the version of PW1 and PW2, the defacto complainant and the sister of the deceased, respectively are natural and merely because they happened to be the relatives of the deceased, the same cannot be the sole reason to reject their testimonial when the other attending circumstances duly support the presence of PW1 and PW2.

11. We have taken into consideration of the fact that the accused



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has already doubted the chastity of the deceased wife and also questioned the paternity of the new born baby and he only gave the complaint to the police for reunion and on the advise of the well wishers and police people, he took Deepika to his house on 26.06.2017 and on the phone call received from her daughter (Deepika), PW1 along with PW2 had went to the matrimonial home on 28.06.2017 and they have said to have witnessed the assault by the accused on the deceased with M.O.1, wooden reaper from the window.

12. (a) A bare perusal of the Ex.P9 and Ex.P10, the rough sketch inside the house and rough sketch outside the house, respectively duly corroborates the evidence of PW1 and PW2 that there is a window through which they could very well see what is happening inside the house. So is the evidence of the PW3, attestor of the Mahazar and hence, the presence of PW1 and PW2 cannot be doubted and the trial Court has recorded reasoning for accepting the evidence of PW1 and PW2 as reliable and trustworthy and in the absence of any contradiction being elicited in the cross examination of PW1 and PW2, the said finding

rendered by the trial Court does not warrant any interference at this



appellate stage.

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(b) The PW1 and PW2 have been projected as an eyewitness. Their version is clear and cogent and hence mainly they are related to the accused that cannot be a reason to disbelieve their evidence. The presence of PW1 and PW2 at the scene of the crime could not be doubted. Ex.P1 complaint was lodged immediately and FIR was also promptly registered and reached the Magisterial Court on time and hence, the criminal law set into motion by the PW1-mother of the deceased inspires the confidence of this Court that the investigation has been properly done and her evidence remains impeccable inspite of cross examination.

13. The cause of the death as shown by the PW5-Dr.Aswini under Ex.P7 goes to show that the accused has used M.O.1 wooden plank and further attacked on her head till she fell down and hence the trial Court has rightly come to the conclusion that it is a homicidal amounting to murder and from the evidence of PW1 and PW2, observed that the act of the accused in closing the doors and not allowing the other witnesses to intervene and save the life of the deceased during his repeated attack till



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her brain spilled out shows that the accused had intention to kill the deceased and hence, it is a culpable homicide clubbed with intention and therefore, held that the act of the accused on the body of the deceased falls under the second limb of Section 300 of IPC and not by sudden provocation as stated by the accused in the questioning under Section 313 Cr.P.C and rightly laid the conviction under Section 302 of IPC. Therefore, we find that there is no valid reason to interfere with the well considered finding of the learned Sessions Judge, Mahila Court, Cuddalore and also the quantum of punishment prescribed therefor.

14. In view of the above discussion, the judgment passed by the trial Court, does not warrant any interference. Accordingly the finding of the learned Sessions Judge, with regard to the offence under Section 302 of IPC and the conviction and laid down under Section 302 of IPC, is just and proper and the quantum of sentence awarded cannot be termed as excessive, as the same is found to be inconsonance with the proved charges and hence all the contentions raised by the learned counsel for the appellant/accused stands negatived and this appeal is devoid of merits. Accordingly, we reject the appeal, by confirming the conviction and sentence.



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WEB COPY 15. The Criminal Appeal stands dismissed. The judgment of conviction and sentence dated 14.06.2018 made in S.C.No.395 of 2017 on the file of the learned Mahila Judge, Cuddalore, is hereby confirmed.

(P.N.P.,J.) (TKRJ)
30.11.2022

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1. The Sessions Judge,
Mahila Court, Cuddalore.
2. Inspector of Police,
Puduchatiram Police Station.
3. The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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P.N.PRAKASH, J.

and

RMT.TEEKAA RAMAN, J.

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Pre-delivery Judgment made in
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