



Crl.A. No. 333 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 21.06.2022

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THE HON'BLE MR. JUSTICE D. BHARATHA CHAKRAVARTHY

Crl.A. No. 333 of 2019

Magudamurthi

..Appellant

Vs.

The State represented by
The Inspector of Police,
Virudhachalam Police Station,
Cuddalore District.
(Crime No. 745 of 2015)

..Respondent

Prayer: Criminal Appeal as against the judgment dated 21.02.2019
passed in S.C. No.1 of 2016 by the Court of Sessions, Cuddalore Division,
Cuddalore.

For Appellant :: Mr.V. Parthiban

For Respondent :: Mr.S. Vinoth Kumar,
Govt. Advocate (Crl.Side)



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J U D G M E N T

This criminal appeal is filed aggrieved by the judgment dated

21.02.2019 passed in S.C. No. 1 of 2016 by the Court of Sessions, Cuddalore Division, Cuddalore by which, the learned Sessions Judge, while acquitting the accused/appellant of the offences under Sections 294(b) and 449 IPC, convicted him under Section 304(II) IPC and sentenced him to undergo rigorous imprisonment for a period of 10 years with a fine of Rs.1000/-, in default to undergo rigorous imprisonment for one year.

2. On 17.09.2015, when P.W.11 was on duty, at Vridhachalam Police station, P.W.1 came to the Police Station and lodged a complaint to the effect that the appellant/accused, who is the sister's son of her husband, on the date of occurrence, came home and picked up a quarrel with him by abusing him in unparliamentary language and since he was admonished by the family members and others present at the scene, he went away and thereafter, when her husband was sitting outside the house in the courtyard, he again came back, picked up a quarrel and attacked him with a wooden log/firewood, which was stacked in front of the house and hit him on the head on account of which her husband sustained fatal injuries and was taken



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to the hospital in Tata Ace Vehicle and the Doctor, who examined him, declared him as having been brought dead. On the complaint given, a case in Crime No. 745 of 2015 was registered for offences punishable under Sections 449, 294(b) and 302 IPC.

3. P.W.13 took up the case for investigation and completed the investigation and laid the final report, which was taken on file as PRC No. 19 of 2015 by the learned Judicial Magistrate No.I, Vridhachalam proposing the accused guilty of the offences under Sections 449, 294(b) and 302 IPC. Upon being questioned, the appellant/accused denied the charges and stood trial.

4. To bring home the charges, the prosecution examined the wife of the deceased/victim, namely, Kayalvizhi as P.W.1; Elaiyaraja, son of P.W.1 and the deceased as P.W.2; Ramkumar, another son of P.W.1 and the deceased as P.W.3; one Chinndurai, a neighbour, who witnessed the incident as P.W.4; Sivalingam, who is also a neighbour as P.W.5; one Ramamurthy was examined as P.W.6; Murugesan, who was a witness to the



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Observation Mahazar was examined as P.W.7; the Village Administrative Officer, by name, Sampathkumar, before whom the confession statement is alleged to have been given was examined as P.W.8; Rajeev, Scientific Officer, who had conducted chemical analysis of viscera of the deceased was examined as P.W.9; Govindamurugan, Doctor attached to Government Hospital, Vridhachalam, who conducted postmortem, was examined as P.W.10; Ravikumar, Special Sub Inspector of Police, who registered the First Information Report, was examined as P.W.11; Bakkiyaraj, Police Constable, who handed over the dead body for postmortem and the viscera for chemical analysis was examined as P.W.12 and Senthilkumar, Inspector of Police, who conducted investigation and filed the final report was examined as P.W.13.

5. On behalf of the prosecution, the complaint lodged by P.W.1 was marked as Ex.P1; the Observation Mahazar was marked as Ex.P2; the signature of P.W.8 Sampathkumar in the confession statement given by the accused was marked as Ex.P3; the seizure mahazar was marked as Ex.P4; the viscera report was marked as Ex.P5; the Accident Register of the deceased



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Palanivel as Ex.P6; the postmortem report as Ex.P7; the First Information Report as Ex.P8; the rough sketch as Ex.P9; the Inquest Report as Ex.P10; the disclosure statement of the accused as Ex.P11; Form 95 as Ex.P12 and Alteration Report as Ex.P13. The prosecution also produced the wooden log/firewood alleged to have been used by the accused as M.O.1.

6. Upon being questioned under Section 313 Cr.P.C. about the evidence on record and the incriminating circumstances appearing against him, the accused denied the same as false. Neither documentary nor oral evidence was let in on behalf of the accused. Therefore, the Trial Court proceeded to hear the learned Public Prosecutor for the State and the learned counsel for the accused and by judgment dated 21.02.2019, found the accused not guilty under Sections 294(b) and 449 IPC. As regards the charge under Section 302 IPC is concerned, the Trial Court, finding that the act was done in a sudden fit of rage and during a quarrel, convicted the accused under Section 304(II) IPC and sentenced him to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.1000/- carrying a default sentence of one year rigorous imprisonment. Aggrieved



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by the said conviction and sentence, the present appeal is laid before this Court.

7. Heard *Mr.V. Parthiban*, learned counsel for the appellant and *Mr.S. Vinothkumar*, learned Government Advocate (Criminal Side) for the respondent.

8. Learned counsel for the appellant taking this Court through the evidence of P.W.1 to 5 would submit that on a complete and careful reading of the evidence, it would be clear that the family members, namely, P.W.s 1 to 3 were inside the house and actually, they did not witness the incident. As far as P.W.s 4 & 5 are concerned, there are a number of inconsistencies in their evidence regarding the material fact as to whether the accused hit the deceased with a wooden log/firewood or with hand and also the place and manner of attack. Therefore, he would submit that eventhough there are 5 witnesses in this case, none of them are believable and therefore, in the absence of any other independent witness, the accused is entitled to benefit of doubt and consequently, the Trial Court should have acquitted the



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accused. He would further submit that the recovery in this case is artificial and doubtful inasmuch as P.W.4 has admitted in the cross-examination that the accused had thrown away the wooden log/firewood and ran away from the scene of occurrence. Therefore, the entire evidence adduced on behalf of the prosecution as well as the recovery made pursuant to the confession of the accused, on the face of it, appears to be artificial and should not be accepted. Finally, the learned counsel for the appellant would contend that in this case, M.O.1 is a firewood. The doctor, namely, P.W.10, who conducted postmortem has conclusively and categorically admitted that it is an incised wound. Therefore, if it is an incised wound, it would not have been caused by the attack of M.O.1. Even assuming for argument sake that the said wooden log/firewood could create such an incised wound upon being hit, then in that case, there would have been bloodstains on the wooden log/firewood. However, in the present case, no such bloodstains have been found on the wooden log/firewood and therefore, the version of the prosecution about the manner in which the occurrence had taken place itself is doubtful, the benefit of which must be given to the appellant.

9. This apart, the learned counsel for the appellant would also



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contend that the prosecution in this case has miserably failed to collect the bloodstained earth or even bloodstained clothes of the deceased to further or support or corroborate the evidence of the witnesses, namely, P.W.s 1 to 5. Therefore, in the absence of any other corroborative material and when there is enough doubt as to whether P.W.s 1 to 5 witnessed the incident, the appellant has to be given the benefit of doubt and has to be acquitted.

10. Per contra, learned Government Advocate (Criminal Side) appearing on behalf of the prosecution would submit that it is a case where the prosecution has proved the charge to the hilt through the evidence of P.W.s 1 to 5, who are eye-witnesses to the occurrence. This is a case where the accused had picked up a quarrel some time prior to the incident and therefore, the family members were in the house talking about him. At that time, once again, the accused had re-appeared and in a fit of anger, had picked up a wooden log/firewood and hit his uncle/deceased and the blow proved to be fatal and therefore, it is possible that the deceased might have suffered an incised wound on account of the said blow and when the eye-witnesses have clearly spoken about the appellant hitting the deceased with



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a wooden log/firewood, the charge is held to be proved. Considering the nature of occurrence, ie,. the occurrence had taken place in a sudden fit of anger and pursuant to a quarrel, the Trial Court, instead of convicting the appellant for the offence under Section 302 IPC has rightly convicted him for the offence under Section 304(II) IPC. The learned Government Advocate (Criminal Side) would therefore submit that there is no merit in the appeal and the same deserves to be dismissed.

11. I have considered the rival submissions made on behalf of both sides and perused the material records of the case.

12. In this case, admittedly, there was no premeditation on the part of the appellant to kill the victim and therefore, the Trial Court has not convicted the appellant for the offence under Section 302 IPC. To prove that the appellant was involved in a quarrel with his uncle and relatives, the evidence of P.W.s 1 to 3 is available before the Trial Court and therefore, it could be safely concluded that there was a wordy quarrel between the deceased and the accused over his drinking habit and the deceased had



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refused to give money to the accused.

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13. Now, to prove the incriminating act, i.e, hitting the deceased/victim with a wooden log/firewood, the prosecution relies upon firstly, the copy of Accident Register, the earliest report with regard to the occurrence proper, wherein it has been mentioned that the victim was hit by wooden log/firewood and with hand and thereafter, the testimony of the eye-witnesses namely, P.W.s 1 to 5 corroborated by medical evidence and marking of wooden log/firewood.

14. The learned counsel for the appellant, as stated above, would contend that the variation in the statements of P.W.s 1 to 3 as regards the manner of attack and the place of occurrence and whether there was blood on the floor or not creates a doubt as to their very presence at the scene of occurrence itself.

15. I have considered the said submission. A more careful reading of the entire evidence of P.Ws. 1 to 3, even from the perspective of the



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learned counsel for the appellant would, at best, only reduce the chances of them actually witnessing the occurrence, as they immediately, within seconds, rushed out of the house witnessing the accused committing the act, because it is categorically mentioned that there was a wooden log/firewood, which was picked up and on being hit, the victim shouted and therefore, it can be safely presumed that P.W.s 1 to 3 were actually present in the house and on seeing the appellant, within 2 or 3 seconds, dashed out of the house and had seen the entire occurrence. To this extent, their evidence is trustworthy and accordingly, it would be safe to conclude that the accused had picked up a wooden log/firewood and injured the victim.

16. As regards the contention of the learned counsel for the appellant that M.O.1-wooden log/firewood, marked by the prosecution could not be the weapon by which the incised wound had been inflicted on the victim, I am unable to accept the same. In this regard, eventhough P.W.10, Doctor was cross-examined, no such specific suggestion was put to the Doctor. The nature of injury inflicted was an incised wound near the left side ear measuring 5x0.5x0.5cm, which can happen, considering the



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place of injury and since, the attack is by a wooden log/firewood. In this regard, it is useful to refer to Modi's Textbook of Medical Jurisprudence and Toxicology, 26th Edition, by Justice K. Kannan, Chairman, Railway Claims Tribunal, Former Judge of Punjab and Haryana High Court, LexisNexis Publication, 2018, relating to incised looking wound, wherein, it is stated as follows:

"Occasionally, on wounds produced by a blunt weapon or by a fall, the skin splits and may look like incised wounds when inflicted on tense structures covering the bones, such as the scalp, eyebrow, iliac crest, skin and perineum or by a fall on the knee or elbow when the limb is flexed"

I am, therefore, unable to accept the said submission and it cannot also be presumed that in respect of every attack, where an incised wound is inflicted, immediately, the blood will ooze out and stains will be there on the wooden log/firewood. In some cases, it may take some time for the blood to ooze out after the incident. Therefore, I am unable to accept the said submission made on behalf of the learned counsel for the appellant.



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17. Further, the submission made with regard to the inconsistencies in the evidence of P.W.s 4 and 5 are concerned, I am of the view that eventhough there may be inconsistencies in the verison of the eye-witnesses, this Court can read the entire evidence and discard the chaff from the grain. In this regard, the Hon'be Supreme Court in the judgment rendered in *Ugar Ahir V. State of Bihar*¹ has held as follows:

"6. The maxim falsus in uno, falsus in omnibus (false in one thing, false in everything) is neither a sound rule of law nor a rule of practice. Hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. It is, therefore, the duty of the Court to scrutinise the evidence carefully and, in terms of the felicitious metaphor, separate the grain from the chaff. But, it cannot obviously disbelieve the substratum of the prosecution case or the material parts of the evidence and reconstruct a story of its own out of the rest."

In such view of the matter, a cumulative reading of the evidence of P.W.s 1 to 5 would make it clear that the prosecution has established that the accused had returned to the home of the victim at 12.45pm and had

¹ AIR 1965 SC 277



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picked up a quarrel and hit the victim with a wooden log/firewood and therefore, I am unable to accept the contention of the learned counsel for the appellant that the prosecution has not proved the charge under Section 304(II) IPC and I uphold the conviction of the Trial Court.

18. As far as the question of sentence is concerned, the following circumstances of the case need to be taken into consideration:

(i) The accused was aged about 32 years at the time of occurrence. The deceased was his uncle, who was opposed to his drinking habit and even as per the evidence of P.W.1, he was a sick person undergoing treatment and had also given voluntary retirement to his job;

(ii) The deceased was aged about 67 years at the time of occurrence. The occurrence, even as per the conclusion of the Trial Court as well as this Court, happened in a sudden fit of rage and there was only one wound as per the medical report.

(iii) The learned counsel for the appellant also



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pleaded that the appellant developed heart disease pending trial and he had also undergone by-pass surgery when he was in jail.

19. Considering all these circumstances, I am of the view that this is not a fit case where the maximum sentence can be imposed as held by the Trial Court and sentencing the accused to undergo rigorous imprisonment for a period of 5 years will be appropriate punishment taking into account the gravity of offence as well as the mitigating circumstances.

20. In view of the above findings, the *criminal appeal is partly allowed* on the following lines:

"(i) The conviction of the appellant for the offence under Section 304(II) IPC by the learned Sessions Judge, Cuddalore Division, Cuddalore by judgment dated 21.02.2019 in S.C. No. 1 of 2016 is upheld;

(ii) The sentence imposed on the appellant by the Trial Court is modified and reduced to one of 5 years



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rigorous imprisonment together with a fine of Rs.1000/-, in default to undergo rigorous imprisonment for a period of one year;

(iii) The appellant shall surrender within four weeks from the date of this judgment before Judicial Magistrate No.1, Vridhachalam to undergo the remaining period of sentence failing which the Trial Court is at liberty to issue warrant to secure the appellant to undergo the remaining period of sentence."

21.06.2022

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To

1. The Court of Sessions, Cuddalore.
2. The Public Prosecutor, High Court, Madras.

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