



Crl.A.No.1 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Jugement Reserved on : 11..10..2022

Judgement Pronounced on : 19..10..2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **RMT.TEEKAA RAMAN**

Criminal Appeal No.1 of 2021
and
Crl.M.P.No.14594 of 2022

Babu @ Chalukkiya Raj

.... Appellant / Sole Accused

-Versus-

State Rep. by its Inspector of Police,
Mangalam Police Station,
Tiruppur District.
[Crime No.264 of 2015]

.... Respondent / Complainant

Appeal filed under Section 374(2) Cr.P.C. praying to set aside the judgement and order of conviction and sentence dated 16.12.2019 made in S.C.No.188 of 2015 on the file of the Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, by allowing the criminal appeal in its entirety and acquit the appellant/accused from the charge.

For Appellant : Mr.B.M.Subash

*For Respondent : Mr.M.Babu Muthumeeran
Addl. Public Prosecutor*



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JUDGEMENT

WEB COPY The appellant was convicted and sentenced as under by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, by judgement and order dated 16.12.2019 made in S.C.No.188 of 2015:-

Provision under which convicted	Substantive Sentence and Fine imposed
Under Section 302 IPC	Sentenced to Imprisonment for Life and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) and in default of payment of fine to undergo Rigorous Imprisonment for a further period of 1 (one) year.
The trial court has ordered for set off under Section 428 Cr.P.C.	

Challenging the same, the sole accused has preferred the present Criminal Appeal.

2. The prosecution story runs thus:- The deceased Sandhya was the wife of the accused. They were living in the quarters of BKS Mills since the



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accused was working as a Fitter in the said Mills. The accused and Sandhya used to quarrel very frequently and during the quarrel, the accused used to beat her mercilessly.

3. While so, on 31.03.2015, a quarrel ensued between the accused and his wife in their house in which, the accused is said to have thrashed Sandhya. Silambarasan (P.W.1), who is a colleague of the accused and lived in the next, door took Sandhya to St. Anns Hospital nearby where Sandhya was given first aid by Lilly Paul (P.W.2), a Staff Nurse who referred Sandhya to the Government Hospital, Tiruppur.

4. After getting first aid at St. Anns Hospital, Sandhya returned home and once again, a quarrel took place between the accused and Sandhya in the night at 23:00 hours in which the accused is said to have assaulted Sandhya with a lid of a cooker and caused injuries to her. This was witnessed by Silambarasan (P.W.1) and Dheenadhayalan (P.W.8). Silambarasan (P.W.1) and Dheenadhayalan (P.W.8) informed Krishna Kumar (P.W.7), the owner of the Mill, who in turn came to the place of



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occurrence, called an ambulance and took Sandhya to Revathi Medical Center, Valayankadu Road, Kumar Nagar, Tiruppur, where Sandhya was examined by Dr.Renuga Devi (P.W.3). In the copy of Accident Register (Ex.P2), it is stated as follows:-

“Alleged H/O assault by her husband around 11 p.m. on 31.03.2015 in resident place in BKS Mills.”

5. After giving some initial treatment, Sandhya was further referred to the Government Hospital, Tiruppur. Accordingly, Sandhya was admitted at 06.15 p.m. on 02.04.2015 as inpatient in the Government Hospital, Tiruppur where she was examined by Dr.Shanmughavadivu (P.W.4). At that time, Sandhya was unconscious.

6. In the mean time, a written complaint (Ex.P1) was given by Silambarasan (P.W.1) scribed by Dheenadhayalan (P.W.8) and upon receipt of the complaint (Ex.P.1), Shanmughavel (P.W.10), Special Sub-Inspector of Police registered a case in Mangalam P.S. Cr.No.264 of 2015 on 01.04.2015 at 13.00 Hours u/s 294(b), 324 and 506(ii) IPC r/w Section 4 of



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The Tamil Nadu Prohibition of Harassment of Women Act and prepared the printed FIR (Ex.P8) which reached the jurisdictional Magistrate on the same day at 08.15 p.m. as could be seen from the endorsement thereon.

7. Shanmughavel (P.W.10) went to the place of occurrence, examined the witnesses, prepared an observation mahazar (Ex.P6) and rough sketch (Ex.P.9). From the place of occurrence, he seized a blood stained cooker lid (M.O.1) under the cover of a mahazar (Ex.P.7) in the presence of Azhagar (Not examined) and Muthu (P.W.9). The accused was arrested at 07.15 hours on 01.04.2015 and he was sent in judicial custody. In the mean while, Sandhya was shifted from the Government Hospital, Tiruppur to the Government Hospital, Coimbatore where she died on 10.04.2015. On getting information from the hospital, the case was altered and Section 302 IPC was added to the FIR and an alteration report (Ex.P10) was filed. Thereafter, investigation was taken over by Kaliannan (P.W.11), Inspector of Police who went to the hospital and conducted inquest over the body of Sandhya and prepared an inquest report (Ex.P.11). Dr.Jayasingh (P.W.6) performed autopsy on the body of the deceased and issued postmortem



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certificate (Ex.P4) wherein, the doctor opined as under:-

“Opinion: The deceased would appear to have died of HEAD INJURY and its complications.”

8. The lid of the pressure cooker (M.O.1) was sent to the Tamil Nadu Forensic Sciences Department through the jurisdictional Magistrate for examination and the serology report (Ex.P5) showed that human blood of “A” Group was detected on the Lid of the Pressure Cooker (M.O.1).

9. After examining various witnesses and collecting the reports of the experts, Kaliannan (P.W.11), the investigating officer completed the investigation and filed a final report in PRC No.30 of 2015 in the court of the Judicial Magistrate -II, Tiruppur, against the accused.

10. On appearance of the accused, the provisions of Section 207 of Cr.P.C. were complied with and the case was committed to the Court of Session, Villupuram, in S.C.No.188 of 2015 and thereafter, it was made over to the Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, for



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trial.

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11. The trial court framed a charge under Section 302 IPC against the accused and when questioned, the accused pleaded not guilty. To prove the case, the prosecution examined 11 witnesses, marked 11 documents and 1 material object. When the accused was questioned under section 313 of Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. However, no explanation whatsoever was offered by him. No witness was examined from the side of the accused nor any document marked.

12. After considering the evidence brought on record, the trial court, by judgement dated 16.12.2019, convicted the accused as stated in the first paragraph of this judgement. Challenging the conviction and sentence imposed on him by the trial court, the present appeal has been filed by the sole accused.

13. Heard Mr.B.M.Subash, learned for the appellant/accused and



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Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor for the
respondent/State.

14. Mr.B.M.Subash, learned counsel for the appellant/accused contended that the accused and his wife were kept as bonded labourers in BKS Mills by Krishna Kumar (P.W.7) and when they wanted to leave the job and join elsewhere, they were prevented and assaulted by Krishna Kumar (P.W.7) and the other mill workers. We are afraid that this defence cannot be countenanced for the simple reason that the accused himself had not stated this in his examination under Section 313 Cr.P.C. Of course, such a suggestion has been put only to Dheenadhayalan (P.W.8) which he has denied.

15. Mr.B.M.Subash, the learned counsel for the appellant/accused further contended that in the complaint (Ex.P1), there is no reference to the incident that had taken place at 08.30 p.m. at all and that medical records of St. Anns Hospital was not marked. It is true that the incident that took place



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at 08.30 p.m. does not find a place in the complaint (Ex.P1). But, nevertheless, complaint (Ex.P.1) was given after the appellant/accused hit his wife with the lid of the pressure cooker at 11.00 p.m. As regards the treatment given to Sandhya at St. Anns Hospital, the prosecution examined Lilly Paul (P.W.2), who in her evidence has stated that there was no doctor available at St. Anns Dispensary when Sandhya was brought for treatment at 08.30 p.m. on 31.03.2015 and, therefore, she gave Sandhya some first aid and referred her to the Government Hospital, Tiruppur. In the cross examination of P.W.2, only one question has been asked viz., whether Sandhya was conscious for which, the witness has stated in the affirmative. No other suggestion was put to P.W.2.

16. Coming to the eye-witnesses account of Silambarasan (P.W.1) and Dheenadhayalan (P.W.8), the learned counsel contended that there is a discrepancy with regard to the place of occurrence because, at one place they have stated that incident had taken place in front of the house of the accused and at another place, they have stated that it occurred in front of the office of the mill.



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17. We find from the evidence of Dheenadhayalan (P.W.8) that Mill's Office was hardly 40 feet away from the house of the accused. Dheenadhayalan (P.W.8) has stated that while he was in the Office, he was able to hear the quarrel that was happening in the house of the accused and out of curiosity, he came to the accused's house where he saw the accused hitting his wife Sandhya with a lid of the cooker. The evidence of Silambarasan (P.W.1) is also to the same effect. In that, he has stated that the accused asked Sandhya to speak to his friends and when Sandhya refused to do it, he (accused) hit her with the lid of the cooker. Though Sandhya was conscious, she was not in a position to speak. This is clear from the evidence of Lilly Paul (P.W.2). In fact, both Silambarasan (P.W.1) and Dheenadhayalan (P.W.8) reside in the quarters of the mill and were neighbours of the accused.

18. The defence was not able to make any serious dent in the testimony of the two eye-witnesses viz., Silambarasan (P.W.1) and Dheenadhayalan (P.W.8). Further, we find from the evidence of these two



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witnesses that the accused and Sandhya were quarreling and amidst the quarrel, the accused is said to have hit his wife with the lid of the cooker.

The death of Sandhya did not occur immediately and the injuries proved fatal 10 days later. We find that the accused did not have any serious intention to cause the death of his wife. In the facts and circumstances of the case, we are of the view that the conviction and sentence of the accused under Section 302 IPC cannot be sustained and at the most he could be convicted only under Section 304(ii) IPC.

19. For the foregoing discussions, we are of the view that the appeal succeeds in part and the conviction of the appellant/accused for the offence under Section 302 IPC is set aside and instead, he is convicted for the offence under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for 7 (seven) years and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) in default of payment of fine, he should undergo rigorous imprisonment for a further period of 1 (one) year. The fine amount, if any, already paid, by the appellant/accused for the sentence of fine imposed by the trial court for the offence under Section 302 IPC shall



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be adjusted towards the fine imposed by this court hereinabove for the offence under Section 304(ii) IPC.

In the result, this Criminal Appeal is partly allowed with the above modifications. Consequently, connected MP is closed.

[P.N.P., J.] [TKR., J.]
19..10..2022

Index: yes/no
kmk

- 1.The Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, Tiruppur District.
- 2.The Inspector of Police, Mangalam Police Station, Tiruppur District, Tiruppur District.
- 3.The Public Prosecutor, High Court, Madras.
- 4.The Superintendent, Central Prison, Coimbatore.



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P.N.PRAKASH.J.,
AND
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