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Crl.A.No.638 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.638 of 2019

Nithya @ Nithyanantham

....

Appellant

Vs

State rep by
Inspector of Police,
E-3, Teynampet Police Station,
Chennai – 600 018.

....

Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to allow the appeal and set aside the conviction passed in S.C.No.49 of 2015 on the file of the VII Additional Sessions Judge at Chennai on 25.06.2019 an order fine amount of Rs.2,000/-.

For Appellant : Mr.R.Sankarasubbu
for Mr.P.Anbazhagan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.side)

JUDGMENT

This Criminal Appeal is directed as against the Judgment dated 25.06.2019 passed in S.C.No.49 of 2015 on the file of the VII



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Additional Sessions Judge, Chennai, thereby convicted the appellant for the offence punishable under Section 304 (ii) of IPC.

2. The case of the prosecution is that on 12.03.2014, evening hours, mother, grandmother and brother-in-law of the deceased went to their relative betrothal function at Madipakkam, Chennai. At that juncture, the deceased, after returning to his house, parked his vehicle in front of his house and went to take bath. At that time, the mother and sister of the accused picked up quarrel with the son of the victim in respect of parking the two wheeler in front of their house. They also abused him with obscene words. The son of the victim went to his mother's relative function and informed about the incident. On the same day at about 10.30 p.m. after returning from the betrothal function, the victim went to the house of the accused and questioned about the quarrel. The sister and mother of the accused picked up quarrel with the victim. There was a melee, in which, the sister of the accused fell down and sustained injuries on her left forehead. When the mother of the accused was about to go to police station to lodge a complaint, the accused came with a knife from his house and abused the victim and assaulted him with



the knife on his left abdomen and left chest. Therefore, he sustained grievous injuries. Immediately, he was taken to Royapettah Hospital for treatment and he was given first aid and then he was referred to Rajiv Gandhi Government Hospital for further treatment. After two days, i.e., on 14.03.2014, he died. On the statement recorded from P.W.1, the respondent registered an FIR in Crime No.423 of 2014 for the offences under Sections 294(b), 341 and 302 of IPC.

3. After completion of investigation, the respondent filed final report and the same has been taken cognizance, for the offences under Sections 294(b), 341 and 302 of IPC, by the Trial Court in S.C.No.49 of 2015. In order to bring home the charges, the prosecution has examined P.Ws.1 to 18 and marked Exs.P1 to P18. The prosecution has also produced M.Os.1 to 6. On the side of the accused, D.W.1 was examined and no document was marked.

4. On perusal of the oral and documentary evidence, the Trial Court found the appellant guilty for the offence punishable under Section 304(ii) of IPC and he was sentenced to undergo seven years rigorous



imprisonment and to pay a fine of Rs.2,000/- in default to undergo one year simple imprisonment. Aggrieved by the same, the present appeal.

5. The learned counsel appearing for the appellant would submit that the occurrence took place in front of the house of the accused. The deceased only came to the house of the accused and picked up a quarrel. He also attacked the mother and sister of the accused. Therefore, due to sudden provocation the accused stabbed the deceased. Therefore, according to the learned counsel for the appellant, the accused had no intention to murder the victim. In fact, the victim was admitted in the hospital and only after two days he died. Therefore, the death was not caused due to the injuries sustained in the occurrence. Therefore, at the worst, the appellant can be convicted only under Section 304(ii) of IPC.

6. He further submitted that the mother and sister of the accused sustained injuries. However, their complaint was not taken for consideration and only due to injuries sustained by them, the occurrence had taken place. The knife, which was allegedly used by the accused, was produced as M.O.1. According to the Investigation Officer, on the



confession statement of the accused, he was taken to the community hall and thereafter it was recovered and handed over to the Investigation Officer. Whereas, P.W.7 deposed that M.O.1 was recovered from the house of the accused. Further M.O.1 was not a weapon, which was allegedly used by the accused and only for the purpose of the trial, the investigation officer produced the knife, as if the knife was recovered from the community hall. P.W.7 categorically deposed that the knife, which was used in the crime, was recovered from the house of the accused. Therefore, according to the learned counsel for the appellant, the prosecution miserably failed to prove its case. The statement was recorded from P.W.1 at about 1.30 a.m. on 13.03.2014 in the Rajiv Gandhi Government Hospital, Chennai. After registration of the FIR, it reached the Court only at 10.30 p.m. Therefore, he prayed for acquittal.

7. Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that the deceased went to the house of the accused on 12.03.2014 at about 10.30 p.m., and questioned about the quarrel between his son and P.Ws.1 & 2. At that time, the deceased was also under influence of alcohol and picked up quarrel with the mother and sister of the accused. At that juncture, there was push



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and pull between them and due to which, the sister of the accused fell down and sustained injuries on her forehead. Therefore, the accused had picked knife from his house and stabbed the deceased. Hence, the Trial Court rightly convicted the appellant for the offence punishable under Section 304(ii) of IPC, though the respondent charged the appellant for the offence under Section 302 of IPC. Immediately after the occurrence, the deceased was taken to Royapettah Government Hospital. He was given first aid. Thereafter, he was referred for further treatment to the Rajiv Gandhi Government Hospital. In the Royapettah Government Hospital, the accident register was recorded and the same was marked as Ex.P10. The post mortem report was marked as Ex.P7 and it shows that the death had occurred only due to the injuries caused by the accused. Therefore, the prosecution categorically proved its case beyond any doubt and the Trial Court rightly convicted the appellant and it does not warrant any interference by this Court.

8. Heard, Mr.R.Sankarasubbu, learned counsel appearing for the appellant and Mr.A.Gopinath, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on



record.

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9. Admittedly, the occurrence had occurred in front of the house of the accused. The son of the deceased while parking his vehicle there was a quarrel between the sister and mother of the accused and the son of the deceased, when he attempted to park his vehicle in front of their house. Later it was informed to P.Ws.1 and 2. Thereafter, the deceased went to the house of the accused and questioned about the quarrel. At that juncture, there was push and pull, due to which, the sister of the accused fell down and sustained injuries on her forehead. Therefore, the accused picked knife from his house and stabbed the deceased on his left abdomen and left chest. Therefore, he was sustained grievous injuries and immediately he was taken to Royapettah Government Hospital. Thereafter, he was referred to Rajiv Gandhi Government Hospital for further treatment. However, he died on 14.03.2014 at about 22.45 hours.

10. The wife of the deceased was examined as P.W.1. She deposed that she, along with her daughter, deceased and her son-in-law, went to the relative house at Madipakkam, Chennai, to attend betrothal



function on 12.03.2014. On the same day at about 6.30 p.m. when the son of the deceased came to his house and parked his two wheeler and went to take bath. At that juncture, the mother and sister of the accused scolded him in filthy language and the same was informed to P.W.1 and her family members. Immediately, after reaching their house, the deceased went to the house of the accused and questioned about the same. While they were talking, the mother and sister of the accused attacked P.W.1. The sister of the accused also had bite P.W.1. Therefore, the deceased pushed her, due to which, she fell down and simple injuries on her forehead. Immediately, the accused took knife from his house and stabbed. Due to which, the deceased sustained injuries on his left abdomen and left chest. He was taken to Rayapettah Government Hospital, thereafter, he was taken to Rajiv Gandhi Government Hospital. After two days, the statement was recorded and registered the FIR.

11. The daughter of the deceased was examined as P.W.2. She also reiterated the deposition of P.W.1 and corroborated the same. The son-in-law of the deceased was examined as P.W.3. He also deposed



about the occurrence and corroborated the deposition of P.Ws 1 and 2.

Therefore, the prosecution proved that the accused stabbed the deceased, due to which, he sustained grievous injuries and admitted in the hospital. The Government Doctor at Royapettah Government Hospital, Chennai, recorded the accident register, which was marked as Ex.P.10. It reveals that the deceased was stabbed by one known person by using knife around 10.30 p.m., on 12.03.2014. After recording the statement from P.W.1, the respondent registered an FIR in Crime No.423 of 2014 for the offences under Sections 294(b), 341 and 302 of IPC. After death of the deceased, the respondent altered the offence into one under Section 302 of IPC. The statement of P.W.1 was marked as Ex.P1. The FIR was registered at about 1.30 a.m. on 13.03.2014. It was duly sent to the concerned jurisdictional Magistrate Court at about 5.00 p.m and on the same day, the same was duly received by the learned Judicial Magistrate. Therefore, there was absolutely no delay in sending the FIR to the concerned Court.

12. The learned counsel for the appellant vehemently contended that M.O.1 was not allegedly used by the accused in the occurrence. Since, there was contradiction between the evidence of P.W.7 and



P.W.18 viz., the Investigation Officer. P.W.7 deposed that the said knife was taken from the house of the accused, whereas the investigation officer stated that the knife was recovered from the community hall as per the confession statement of the accused. Though, there was contradiction in respect of the recovery of M.O.1, the investigation officer was not cross-examined on that score. There was no whisper in the cross examination that M.O.1 was not used by the accused and the same was not that of the knife used by the accused. The said minor contradiction would not cause any prejudice to the accused and it would not fatal to the case of the prosecution. There was cogent and trustworthy evidence from P.Ws.1 to 4 and as such, the minor contradiction that too with regards to the recovery of M.O.1 is not fatal to the case of the prosecution. The post mortem report was marked as Ex.P11. It reveals that the injuries sustained by the accused in the occurrence caused his death. Therefore, the prosecution proved its case beyond any doubt and the Trial Court rightly convicted the appellant for the offence under Section 304(ii) of IPC.

13. However, the learned counsel for the appellant would submit



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that the appellant is a newly married person and he has got one child and prayed for reduction of sentence.

14. Considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the appellant, this Court is inclined to reduce the sentence to some extent. Accordingly, the conviction imposed on the appellant for the offence under Section 304(ii) of IPC is hereby confirmed. Insofar as, the sentence is concerned, it is reduced from seven years to five years. The respondent is directed to secure the appellant to serve the remaining period of sentence. It is also directed that the period of sentence already undergone by the appellant, if any, shall be given set off, as required under Section 428 Cr.P.C.

15. In the result, this Criminal Appeal is partly allowed.

23.11.2022

Index : Yes/No
Internet : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J,

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To

1. The VII Additional Sessions Judge,
Chennai.

2. The Inspector of Police,
E-3, Teynampet Police Station,
Chennai – 600 018.

3. The Public Prosecutor,
High Court, Madrs.

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