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Crl.A.No.878 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2022

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.878 of 2019

MGR @ Ramamoorthy

... Appellant

Vs.

The State
Represented by
The Inspector of Police,
Srimushnam Police Station,
Srimushnam, Cuddalore District.

... Respondent

PRAYER: Criminal Appeal is filed under Section 374 (2) of Cr.P.C. to set aside the conviction judgment in S.C.No.199 of 2018, dated 29.11.2019, by the III Addl., District and Sessions Judge, Cuddalore at Vridhachalam and acquit the appellant.

For Appellant : Mr.R.Sethuvarayar

For Respondent : Mr.S.Sugendran
Addl Public Prosecutor



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J U D G M E N T

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This Criminal Appeal has been filed against the judgment of Conviction dated 29.11.2019 made in S.C.No.199 of 2018, on the file of the III Addl., District and Sessions Court, Cuddalore at Vridhachalam.

2. The respondent-Police registered a case against the appellant and A2 in Crime No.245 of 2016, on the file of the Srimushnam, Police Station, Cuddalore District for the offence punishable under Sections 294(b), 323, 341, 304II of IPC and after completing the investigation, laid a charge sheet before the learned Judicial Magistrate No.2, Virudhachalam. The learned Judicial Magistrate took the charge sheet on file in PRC No.30 of 2017 and after completing the formalities, committed the case to the Court of session, since the offences are exclusively triable by Court of session and the same was taken on file in S.C.No.199 of 2018, on the file of the Principal District and Session Court and made over to III Addl., District and Sessions Court, Cuddalore at Vridhachalam, as the offence is against a woman.



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3. The Special Court has taken the case and after completing the formalities framed the charges against the appellant for the offences punishable under Sections 294(b), 323, 341 and 304 IPC and against the second accused for the offences punishable under Sections 341, 294(b) and 304(ii) IPC.

4. The specific case of the prosecution is that on 22.12.2016 at about 5.30pm, the appellant/accused and his wife A2 picked up a quarrel with the deceased wife for not providing tea in a funeral ceremonies and used filthy language against her, while questioning the same by the deceased, the appellant/accused attacked the deceased with hand and pushed down on the floor and hence the deceased got unconscious and subsequently, he was brought to the hospital, later he died. Therefore, a case was registered against the appellant/accused and his wife/A2 for the offences as stated above.

5. In order to substantiate the case of the prosecution, on the side of the prosecution during the trial as many as nine witnesses were examined as



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PW-1 to PW-9 and seven documents were marked as Ex.P1 to Ex.P7 and no material object was exhibited. After completion of the examination of the prosecution witnesses, when the incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant/accused by questioning under Section 313 Cr.P.C., wherein he denied the same as false and on the side of the defence, no oral and documentary evidence was let in.

6. The learned III Additional District and Sessions Judge, after hearing the arguments advanced on either side and considering all the materials placed on record, found the appellant guilty and convicted and imposed sentence to undergo one year simple imprisonment for the offence under Section 323 and imposed fine amount of Rs.500/- for the offence under Section 294(b) in default in payment of fine, simple imprisonment for 2 weeks and imposed fine amount of Rs.200/- for the offence under Section 341 IPC in default to pay fine sentence to undergo 1 week simple imprisonment. The total fine amount is Rs.700/- for the appellant and the



same was paid and Rs.200/- for A2, was also paid. The appellant/accused and A2 were acquitted under Section 304(ii) of IPC.

7. Challenging the said judgment of conviction and sentence, the first accused/appellant has preferred the present appeal.

8. The learned counsel appearing for the appellant/accused would submit that there was no external injury to the deceased and the evidence of Doctor/PW-6, also stated that no external injury on the deceased. Further, the learned counsel appearing for the appellant/accused would submit that the evidence of PW-1 to PW3 did not corroborate with the evidence of Doctor/PW-6, when there was no external injury caused by the appellant/accused, Section 323 Cr.P.C., would not attract and there was an unexplained delay of 18 hours in sending the FIR to the Court and there was no independent witness to corroborate the evidence of PW-1 to PW3 and PW-1 to PW3 are the interested witnesses and there was a contradiction in the evidence of PW-1 and the Doctor/PW-6 and therefore, prosecution has



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not proved the case beyond reasonable doubt as against the appellant/accused. The learned counsel appearing for the appellant/accused further would submit that even assuming there was a quarrel between them, no weapon was used in this case and no brutal attack was happened and therefore, the Trial Court rightly acquitted the appellant/accused for the offence under Section 304 (ii) IPC, but however, from the very same evidence and materials, the Trial Court wrongly convicted the appellant/accused for the offence under Section 323 in the absence of any external injury on the deceased and therefore, the judgment of the Trial Court is liable to be set aside and the appellant/accused is liable to be acquitted.

9. The learned Additional Public Prosecutor would submit that prior to the date of occurrence, there was a motive between the appellant/accused and the deceased and there was a wordy quarrel between both the wife of appellant/accused and deceased on the date of occurrence, subsequently, the appellant/accused questioned the same and scolded the wife of the deceased



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in a filthy language and therefore, the deceased questioned the same to the appellant/accused at the time of occurrence, the appellant/accused attacked the deceased and pushed down on the floor and subsequently, admitted in the hospital, later he died and therefore, the learned Additional Public Prosecutor would submit that the death of the deceased is only due to the act committed by the appellant/accused, though he has no intention to kill the deceased and he has not used any weapon to attack the deceased and hence, the Trial Court acquitted the appellant/accused for the offence under Section 304(ii) IPC. But however, the appellant/accused attacked the deceased with his hand and pushed him on the floor, due to which the deceased got unconscious and taken to the hospital and subsequently died and therefore, the learned Additional Public Prosecutor would submit that the Trial Court rightly appreciated the oral and documentary evidence came to the conclusion that the attack of the accused only lead to death of the deceased and hence, there is no merit in this appeal and the appeal is liable to be dismissed.

10. Heard the learned counsel appearing for the parties and perused the materials placed on record.



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11. Since this Court is an Appellate Court and also final Court of fact finding, it has to re-appreciate the entire evidence and come to the conclusion independently.

12. On a perusal of the records, it could be seen that there was a previous quarrel between the wife of the appellant/accused and the wife of the deceased and both of them attended the funeral ceremonies of their relatives, at the time of the occurrence, the wife of the deceased served tea to all the visitors, but she did not serve the tea to the wife of the appellant/accused namely A2 in this case and there was a wordy quarrel between them, the accused scolded the wife of the deceased and used filthy language, while questioning the same by the deceased, the appellant/accused attacked the deceased and pushed down on the floor, due to which the deceased got unconscious and subsequently, he was brought to the hospital, later he died. PW-1 is the wife of the deceased and she is the only eyewitness and she has clearly deposed the entire incidents and also the previous incidents.



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13. Though the case was initially registered under Section 174(1) Cr.P.C., subsequently the case was altered into the offences under Section 294(b), 341, 323 & 304(ii) Cr.P.C. PW-1 is the wife of the deceased and PW-2, is the son of the deceased and PW-3 is the independent witness. The evidence of PW-1 & PW-3, clearly shows that the appellant/accused pushed the deceased on the floor and he fell down and became unconscious, subsequently took him to hospital, later he died. PW-6 is the Doctor, who gave the evidence that the deceased has got coronary artery heart disease and his lungs is also in damaged condition and there is no external injury and therefore, death is not due to attack made by the appellant/accused.

14. Further, considering the evidence of PW-1 to PW-3 and also evidence of PW-6, the Trial Court rightly acquitted the appellant/accused for the offence under Section 304(ii), however, the evidence of the PW-1 would show that the appellant/accused attacked the deceased and pushed him on the floor and the evidence of Doctor/PW-6, this Court is of the view that the prosecution proved the charge for the offence under Section 323 Cr.P.C., but however, the prosecution failed to establish that the appellant/accused



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wrongfully restrained the deceased and his wife and therefore, the judgment of the Trial Court convicting the appellant/accused for the offence under Section 341 is liable to be set aside and accordingly set aside and conviction and sentence passed for the offences under Section 294(b) & 323 are confirmed.

15. In the result, the Criminal Appeal is partly allowed with the above modification.

16. As per order of this Court in Crl.M.P.No.18549 of 2019, dated 18.12.2019, it is seen that the appellant is on bail. Therefore, the learned III Addl., District and Sessions Judge, Cuddalore at Vridhachalam shall take steps to commit the accused to prison to undergo the remaining period of sentence, if any.

19.09.2022

Speaking Order / Non-speaking order
Index : Yes / No
Internet : Yes/No
pbn

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To

1. The III Addl., District and Sessions Court,
Cuddalore at Vridhachalam.
2. The Public Prosecutor,
Madras High Court, Chennai.
3. The Inspector of Police,
Srimushnam Police Station,
Srimushnam, Cuddalore District.



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P.VELMURUGAN, J.

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