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Crl.A.No.59 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 05.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A.No.59 of 2020

and

Crl.M.P.No.1134 of 2020

Vijayakumar

... Appellant

vs.

The State represented by
Inspector of Police,
Attayampatti Police Station,
Salem District.
(Crime No.207 of 2015)

... Respondent

Prayer: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to set aside the conviction and sentence imposed in S.C.No.238 of 2015 dated 29.06.2018 passed by the I Additional District and Sessions Judge, Salem.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.R.Murthi
Government Advocate (Crl. Side)



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JUDGMENT

This Criminal Appeal is filed against the judgment of conviction and sentence imposed in S.C.No.238 of 2015 dated 29.06.2018 passed by the I Additional District and Sessions Judge, Salem.

2. The respondent Police registered a case against the appellant in Crime No.207 of 2015 for the offence under Section 302 I.P.C. After investigation they laid a charge sheet against the appellant before the learned Judicial Magistrate No.IV, Salem. The learned Judicial Magistrate had taken cognizance of the charge sheet in P.R.C.No.20 of 2015 and after completing the formalities under Section 207 Cr.P.C., he made over the case to the Principal District and Sessions Judge, Salem, since the offence in the above case is exclusively triable by Court of Session. The learned Principal District and Sessions Judge taken the case on file in S.C.No.238 of 2015 and made over the case to the I Additional District and Sessions Judge, Salem. The



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learned I Additional District and Sessions Judge, Salem after completing the formalities, framed the charge against the appellant for the offence punishable under Section 302 I.P.C.

3. During the trial, in order to substantiate the charge against the appellant on the side of the prosecution as many as 19 witnesses were examined as P.W.1 to P.W.19 and marked 23 documents as Ex.P1 to Ex.P23. Besides, 7 material objects were exhibited as M.O.1 to M.O.7.

4. After examining entire prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put to the accused by questioning under Section 313 Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, one witness was examined as D.W.1. No document was marked and no material object was exhibited.



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5. On conclusion of trial, hearing of arguments advanced on either side and considering the material facts, the trial Court found that the appellant was not guilty for the offence punishable under Section 302 I.P.C., however, he found guilty for the offence under Section 304(ii) I.P.C. and convicted and sentenced him to undergo 7 years Rigorous Imprisonment for the offence under Section 304(ii) I.P.C.

6. Aggrieved over the said judgment of conviction and sentence, the appellant/accused has filed the present appeal before this Court.

7. Learned counsel for the appellant would submit that there is no previous motive against the deceased and the appellant did not attack the deceased with an intention to murder him and he did not use the deadly weapon. The appellant and de-facto complainant/Muthukumar are neighbours. Muthukumar stopped talking to the appellant. When the



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appellant questioned the same, Muthukumar told that the appellant had spread the rumour in the village that Muthukumar had an intimacy with the wife of the appellant. Therefore, a wordy quarrel arose between the appellant and Muthukumar. The appellant beaten Muthukumar on his back. Thereafter, Muthukumar informed the same to his friend, namely, Sekar @ Gunasekaran. On 03.05.2015 at about 3.30 p.m. the said Gunasekaran went to the house of the appellant and questioned about the quarrel. At that time, the appellant took the Neem wooden log nearby and attacked Gunasekaran on his head. The Gunasekaran fell down and sustained injury and he was subsequently taken to the hospital, where the Doctor declared that he already brought dead.

8. Learned counsel for the appellant would submit that the deceased was taken to the hospital belatedly, due to which, he died, further, the appellant did not attack the deceased with deadly weapon. Further, he would submit that the appellant made only one blow and even in the post-



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mortem report, the Doctor has clearly stated that there was one injury on the head and no other external injuries. Further, he submitted that even as per the prosecution, the appellant beat Muthukumar and the deceased only went to the house of the appellant and questioned the same. The deceased is the aggressor and therefore the appellant has not committed any offence under Section 302 I.P.C.

9. Further it is submitted that though the trial Court has rightly appreciated that there was no guilty intention to murder the deceased and rightly acquitted the appellant for the offence under Section 302 I.P.C., however, the trial Court failed to appreciate that the deceased is the aggressor and the appellant without any intention only took the Neem wooden log nearby the occurrence place and hit him. Therefore, the occurrence had happened due to sudden provocation and without any pre-plan or pre-motive. The appellant has not committed the offence even under Section 304(ii)



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I.P.C. At the most, the appellant could be convicted under Section 325 I.P.C. and not under Section 304(ii) I.P.C. Further, the appellant is not the cause for the death of the deceased and also the deceased was brought to the hospital very belatedly and if he was taken to the hospital immediately soon after the occurrence he might not have died. The trial Court should not have convicted under Section 304(ii) I.P.C. The appellant is undergoing imprisonment for more than 4 ½ years. Therefore, considering the facts and circumstances, the conviction and sentence of imprisonment are ordered to be set aside and the appellant to be set at liberty and the appeal to be allowed. Further, he would submit that there is a delay in filing the complaint, registering the case and sending the F.I.R. and documents to the Court, which are fatal to the case of the prosecution and there is no eyewitness in this case and therefore, the appeal to be allowed.

10. Learned Government Advocate (Crl. Side) appearing for the respondent-Police would submit that on 03.05.2015 at about 1.30 p.m. nearby



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the TASMAR shop, the appellant tried to talk with one Muthukumar and at that time, Muthukumar told that the appellant used to say in a public that Muthukumar had intimacy with his wife. Therefore, he avoided to talk with the appellant and hence, the appellant had beaten Muthukumar on his back. Muthukumar informed the same to his friend one Sekar @ Gunasekaran, who is the deceased in this case. The deceased came to the appellant's house at about 3.30 p.m. and nearby the house of the appellant he questioned about the quarrel between the appellant and Muthukumar. The appellant questioned the deceased "who are you to question me?" and took the Neem wooden log and attacked the deceased on his head. The deceased sustained injury and died even before admitted in the hospital.

11. Initially, the case was registered under Section 302 I.P.C. The said Muthukumar, who is the friend of the deceased, with whom the appellant had a quarrel, was examined as P.W.1. and he deposed about the incident. He



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is the eyewitness in this case. There is a dispute between the appellant and the said Muthukumar, however specifying the same, the deceased approached the appellant. At that time, the appellant all of a sudden, with provocation attacked the deceased with Neem wooden log. Thereafter, the deceased was brought to the hospital and the Doctor declared that he was brought dead. Thereafter, the Autopsy of the deceased body was conducted and the Doctor, who conducted the post-mortem also gave opinion that the death was due to the head injury and admittedly head injury was caused by the appellant.

12. P.W.2 and P.W.3, who are the eyewitnesses in this case, have categorically stated that the appellant had attacked the deceased with wooden log. Since the appellant was ferocious and attacked the deceased forcibly, no one was approached the appellant to prevent him. From the evidence of eyewitnesses, namely, P.W.1 to P.W.3, Doctor's evidence and post-mortem certificate, the prosecution has clearly proved its case. The statement of



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P.W.1 was recorded under Section 164 Cr.P.C. during investigation before the Judicial Magistrate. In the said statement also P.W.1 has clearly stated that the appellant has caused injuries to the deceased by attacking him with Neem wooden log on his head, therefore, the deceased sustained head injury and died even before reaching the hospital, i.e. on the way to the hospital. The medical evidence also corroborated the same.

13. The wife of Muthukumar was examined as P.W.2 and she was also produced before the Judicial Magistrate for recording the statement under Section 164 Cr.P.C. One Palanivel/P.W.3, who is also an eyewitness to the incident. The wife of P.W.3, one Selvi/P.W.4 was also produced before the Judicial Magistrate for recording statement under Section 164 Cr.P.C. She also stated that she has seen the incident. Therefore, from the evidence of P.W.1 to P.W.4, the prosecution has proved its case beyond all reasonable doubt that the appellant had attacked the deceased with Neem wooden log



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and hence, the deceased sustained injury and subsequently died even before reaching the hospital. The trial Court had rightly appreciated that the incident had happened due to sudden provocation, there is no pre-motive or pre-plan and found that the appellant was not guilty for the offence punishable under Section 302 I.P.C., however, he was found guilty for the offence under Section 304(ii) I.P.C and sentenced him to undergo 7 years Rigorous Imprisonment. There is no mitigating circumstances to reduce the sentence.

14. Heard the learned counsel for the appellant as well as the learned Government Advocate (Crl. Side) appearing for the respondent-Police and perused the materials available on record and also carefully perused the judgment of the trial Court.

15. The specific charge framed against the appellant was offence under Section 302 I.P.C., however, the appellant was convicted under Section



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304(ii) I.P.C. From the reading of the entire materials, it is seen that on
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03.05.2015, there was a wordy quarrel between the appellant and the de-facto complainant/Muthukumar. During the quarrel, the appellant had beaten Muthukumar, therefore he informed the same to his friend, namely, Sekar @ Gunasekaran, the deceased herein. In fact, the deceased went to the appellant's house, at that time, the appellant attacked the deceased with Neem wooden log on his head. Therefore, the deceased sustained injury and subsequently died. In order to substantiate the case of the prosecution on the side of the prosecution, totally 19 witnesses were examined and 23 documents were marked. Besides, 7 material objects were exhibited. Out of 19 witnesses, P.W.1 to P.W.4 are the eyewitnesses.

16. The incident took place on 03.05.2015. P.W.1 is the person, who had a wordy quarrel with the appellant and due to that only the deceased approached the appellant on the same day and questioned about the same. At



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that time, with sudden provocation, the appellant attacked the deceased.

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Therefore, the presence of P.W.1 is probable and P.W.1 has clearly stated that he has seen the occurrence. P.W.1 was produced before the Judicial Magistrate to record the statement under Section 164 Cr.P.C. on 12.05.2015 and the statement recorded by the learned Judicial Magistrate from the P.W.1 was marked as Ex.P12. He has categorically stated that on 03.05.2015 mid day at 1.30 p.m. nearby Attayampatti 'S' bridge TASMAL shop, the appellant called P.W.1, for which, P.W.1 stated that the appellant had spread the rumour in the public that he had intimacy with the wife of the appellant. Therefore, he refused to talk with the appellant. Then, again and again, the appellant tried to talk with him. Therefore, there was a wordy quarrel arose between them. During the quarrel, the appellant pulled down P.W.1 and left the place. Therefore, P.W.1 informed to his friend, namely, Sekar, who is the deceased in this case and on the same day at about 3.30 p.m., the deceased approached P.W.1 and enquired about the dispute between him and the



appellant. After hearing the same, both went to the house of the appellant and nearby the house of the appellant, the deceased questioned the appellant and the appellant got provocation and he pulled down the deceased, took the wooden log nearby and attacked him forcibly on his head. They could not even prevent the appellant and therefore the appellant ran away from the place. Then they took the deceased to the Attayampatty Ramalinga Hospital in a Mini Auto, where the Doctor declared that he already died.



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P.W.4, who are the eyewitnesses in this case. They have categorically narrated the incident. They also stated that they have seen the occurrence and the appellant only attacked the deceased with Neem wooden log. P.W.5 is the independent witness and also eyewitness to the occurrence. She has also clearly stated that she has seen the occurrence and the appellant is the one, who attacked the deceased with wooden log. P.W.7 also stated that he has seen the wordy quarrel between the appellant and Muthukumar nearby the TASMACH shop. P.W.8, who is the officer from Forensic Science Laboratory, had stated that all the materials sent to the forensic lab and conducted chemical analysis examination. In the chemical analysis report it is stated that the blood stains found in the materials are human blood.

18. P.W.10 is the Village Administrative Officer, who has spoken about the observation Mahazar and recovery and therefore, it clearly shows that the Investigating Officer had investigated the place of occurrence,



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prepared Mahazar and also recovered the material objects. P.W.11 is the learned Judicial Magistrate No.5, Salem, who recorded the statement under Section 164 Cr.P.C. from P.W.1 to P.W.4 and the same were marked as Ex.P12 series. P.W.14 is the Doctor, who conducted the Post-mortem of the body of the deceased and he has spoken about the injury sustained by the deceased. Therefore, from the above said witnesses, the prosecution has proved that due to sudden provocation the appellant had attacked the deceased with wooden log on his head, though there is no previous enmity or previous motive either to kill or attack the deceased. The deceased all of a sudden went to the appellant's house and questioned about the quarrel between the appellant and Muthukumar. Therefore, all of a sudden, the appellant quarrelled with the deceased and also pulled him down, took the neem wooden log and attacked the deceased on his head. Therefore, the deceased sustained injury and died.



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19. Though the learned counsel for the appellant vehemently contended that the death was caused not due to the attack of the appellant, however, the evidence of Doctor and post-mortem report clearly shows that he died due to head injury. From the evidence of P.W.1 to P.W.5, who are the eyewitnesses, it is clearly established that the appellant had attacked the deceased with wooden log. Especially from the evidence of P.W.1 to P.W.4, it was found that there was no pre-plan or previous enmity and only due to sudden provocation, the appellant had attacked the deceased. However, the appellant chosen the place of attack is vital and even though there is no pre-motive or pre-plan, the appellant had attacked the deceased on his head with wooden log. Naturally the result of the act might be known to the appellant. Therefore, the trial Court had rightly appreciated the evidence that there is no previous enmity or prior motive and the appellant was found not guilty for offence under Section 302 I.P.C. Even though the appellant did not use deadly weapons, however, chosen the place is vital part and therefore, the



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trial Court had rightly convicted the appellant for the offence under Section 304(ii) I.P.C.

20. Considering the fact that even with one attack, the deceased died, the post-mortem report clearly shows that due to head injury, the deceased died. Therefore, it cannot be accepted that the appellant had simply made only one blow and caused one injury, therefore, the sentence of imprisonment of 7 years is on the higher side. The deceased died on the way to the hospital on the same day. Therefore, there is no mitigating circumstances to reduce the sentence of imprisonment.

21. This Court, being an appellate Court is a final Court of fact finding in this case and it has to independently re-appreciate the entire evidence. In this case, the eyewitnesses and the medical evidence also corroborated the same that the death was due to the head injury. Though,



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there is no pre-motive or pre-plan, the deceased died due to head injury, which was caused by the appellant.

22. Therefore, this Court does not find any merit in the appeal and further there is no mitigating circumstances to reduce the sentence. The appeal is devoid of merit and liable to be dismissed. Accordingly, the Criminal Appeal is dismissed. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Internet : Yes / No

Speaking Order/Non Speaking Order

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P.VELMURUGAN, J.

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To

1.The I Additional District Judge,
Salem.

2.Inspector of Police,
Attayampatti Police Station,
Salem District.

3.The Public Prosecutor,
High Court, Madras.

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and

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