



Crl.A(MD)No.327 of 2021

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.08.2022

DELIVERED ON : 17.08.2022

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A(MD)No.327 of 2021

Ayyasamy

... Appellant/Accused

Vs.

State represented by,
The Inspector of Police,
Orathanadu Police Station,
Thanjavur District.
(Crime No.508/2015)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, against the judgment and order dated 26.11.2018 made in S.C.No.219 of 2017 on the file of the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, Thanjavur District.



Crl.A(MD)No.327 of 2021

WEB COPY

For Appellant : Mrs.N.Juliet Latha

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **R.HEMALATHA, J.**]

This criminal appeal has been filed against the judgment and order dated 26.11.2018 made in S.C.No.219 of 2017 passed by the Sessions Judge, Fast Track Mahila Court, Thanjavur, Thanjavur District, in and by which, the appellant was convicted for an offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and also to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one year. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The facts of the case of the prosecution in brief is as follows:

- i. Malarkodi (deceased) and her husband Ayyasamy (the appellant) were husband and wife residing in Mela Ulur



WEB COPY



CrL.A(MD)No.327 of 2021

Village of Orathanadu Taluk, Thanjavur District. Manavaalan (P.W-1) and Arivaalan (P.W-2) were their sons and both of them working in Trichy and Chennai respectively had come down to their parents home to celebrate Deepavali.

- ii. According to Manavaalan (P.W-1), the elder son aged 26 years, who is also the defacto complainant, his father had a habit of drinking for which, his parents used to quarrel frequently and whenever they used to quarrel, his mother went to her mother's place in Vaduvur. On every such occasion, there used to be a compromise arrived at, and his mother would return home. As per P.W-1's version on 16.11.2015 midnight P.W-1 and Arivaalan (P.W-2) his younger brother were at home, their father came home and picked up a quarrel, with his wife, the victim. The wordy duel later escalated in which the appellant had beaten his



WEB COPY



Crl.A(MD)No.327 of 2021

wife (victim) on her head, on her eyebrow and legs with an iron rod (M.O1) causing grievous injuries. Thereafter the appellant fled the scene with M.O1.

iii. While both the sons screamed for help for which their neighbours, namely, Anand (not examined), Hariharan (P.W-3), Sivabala Murugan(not examined) and Rani (not examined) came for helping the victim to be shifted to Thanjavur Medical College Hospital. However, the victim succumbed to injuries early in the morning at 5.30 a.m., on the next day, ie., 17.11.2015.

iv. P.W-1 went to Orathanadu Police Station along with his brother (P.W-2) and gave a written complaint (Ex.P1) based on which Tmt.C.Madhavi (P.W-10) Sub Inspector of Police, registered an FIR(Ex.P7) at about 10.00 a.m., on the same day, in Orathanadu Police Station Crime No.508 of 2015



WEB COPY



Crl.A(MD)No.327 of 2021

against the appellant for an offence punishable under Section 302 IPC. She sent the express FIR to the learned District Munsif-cum-Judicial Magistrate, Orathanadu and placed the records before the Inspector of Police(P.W-15), Orathanadu Police Station, for further investigation. The FIR reached the Court at 02.40 p.m. on 17.11.2015 as is seen from the endorsement by the Judicial Magistrate in the FIR and the complaint.

- v. Thiru.Jagadheeswaran (P.W.15), the Inspector of Police took up investigation in Crime No.508 of 2015, went to the scene of occurrence and prepared an observation mahazar (Ex.P15) and a rough sketch (Ex.P16) in the presence of Jagannathan (P.W.5) and Balakrishnan (not examined). He recovered blood stained cement mortar (M.O6) and ordinary cement mortar (M.O7) from the scene of occurrence under the cover of a Mahazar Ex.P17 in the presence of the same



WEB COPY

Crl.A(MD)No.327 of 2021

witnesses. Thereafter, he went to the mortuary of Government Hospital, Thanjavur and conducted autopsy (Ex.P18) on the body of the deceased and sent the body for post-mortem through Saravanan(P.W.9), Head Constable of Police.

vi. Dr.Thamizhmani (P.W.12) conducted autopsy on the body of the deceased at about 3.20 p.m., on the same day and found the following injuries:

“ 1. sutured laceration of size 5 x 1cm x bone depth noted over left eye brow.

2.Both eye found contused.

3.Abrasion seen on the following areas:-

3 x 1cm over middle of upper part of chest, 5 x 3cm over right breast. Multiple varying size of small abrasion noted over chest.

On Dissection of Head:

Diffuse scalp contusion of size 15 x 12 cm noted over left side of frontal, parietal, temporal and occipital region. Left temporalis muscle found contused. Diffuse subdural and subarachnoid hemorrhage seen over entire surface of



WEB COPY



CrL.A(MD)No.327 of 2021

cerebrum and cerebellum. Subdural clots noted over base of brain. Brain found edematous. Left temporal lobe found contused. Orbital bone found contused and cribriform plate found fractured.

On Dissection of Chest:

Diffuse contusion noted over outer aspect of inner part of right side of chest-wall. Right ribs no 2-6 found fracture with surrounding bruise.

Other Findings:

Heart: Normal. Coronary Vessels: Patent. Hyoid Bone: Intact. Stomach: Contain 100 ml of dark brown colour fluid, no specific smell, mucosa-normal. Lungs: Lungs normal, c/s-congested. Liver, Spleen & Kidneys: Normal, c/s-congested. Small Intestine: 20 ml of bile stained fluid, no specific smell, mucosa-normal. Bladder: Contain 10 ml of urine. Uterus: Normal, c/s-empty, Brain; As Described...Spinal Column: Intact".

In the opinion of Dr.Thamizhmani (P.W.12),

“the deceased would appear to have died due to the complications of head injury and due to injuries over the vital organ of brain.” The final opinion was marked as Ex.P.11.



WEB COPY



Crl.A(MD)No.327 of 2021

The Postmortem certificate was marked as
Ex.P10.

vii.P.W.9 handed over the dresses (M.O3 to M.O5) worn by the deceased to P.W.15, who in turn sent the same to forensic lab for analysis through Court. On 19.11.2015, P.W.15 arrested the appellant at about 07.00 a.m. near Mela Uloor bus stop and recorded his police confession (admissible portion of which was marked as Ex.P4), based on which, he recovered a metal rod (M.O1) and his blood stained shirt(M.O2) which were hidden by him in a bush behind his house under a seizure mahazar (Ex.P20). Thereafter, P.W.15 produced the appellant before the jurisdictional Magistrate for judicial custody.

viii. Thereafter P.W-15 examined the witnesses, doctor and experts and recorded their statements and also collected various reports from experts. After completing investigation, he filed a final report against the accused for an offence



WEB COPY



CrL.A(MD)No.327 of 2021

under Section 302 of IPC before the District Munsif cum Judicial Magistrate, Orathanadu, in P.R.C.No.35 of 2015, who in turn, committed the case to the Court of Sessions after furnishing copies of documents to the appellant under Section 207 of the Code of Criminal Procedure. The learned Sessions Judge, Fast Track Mahila Court, Thanjavur, Thanjavur District, took up the case on file in S.C.No.219 of 2017. To the charge framed for the offence under 302 IPC, the appellant pleaded not guilty. Hence, the case was posted for trial.

- ix. In order to establish the guilt of the appellant, the prosecution examined 15 witnesses and marked 23 documents and 7 material objects.
- x. When the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313 of the Code of Criminal Procedure, he denied of having committed any offence. However, he did not



WEB COPY

Crl.A(MD)No.327 of 2021

examine any witnesses on his side.

xi. The learned Sessions Judge, Fast Track Mahila Court, Thanjavur, Thanjavur District after analyzing the oral and documentary evidence adduced on both sides found the appellant guilty of an offence under Section 302 IPC, and convicted and sentenced to undergo life imprisonment and also to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one year. Challenging the same, the appeal in Crl.A(MD)No.327 of 2022 is filed by the appellant along with a petition to condone the delay of 801 days under Section 5 of the Limitation Act in Crl.M.P(MD)No.5069 of 2021. The said petition was allowed on 26.07.2021.

3. Heard Mrs.N.Juliet Latha, learned counsel for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor for the respondent.



CrI.A(MD)No.327 of 2021

WEB COPY

4. This is a case of murder of wife by her husband. The appellant's husband used to consume alcohol frequently as could be understood from the versions of the eyewitnesses, namely, his own sons P.W-1 and P.W-2. It is also their case that such frequent quarrels used to force the victim to go to her mother's place till a patch up was done by the couple induced by their relatives. P.W-1 and P.W-2 are two eyewitnesses who were present at the scene of occurrence when the occurrence took place. They narrated the incident which led to the death of the victim without any discrepancy. Hariharan (P.W-3), who is also a relative of the appellant, however, turned hostile to the prosecution. Pandiyaraj(P.W-4) was not an eyewitness but was in a position to corroborate the versions of P.W-1 and P.W-2 regarding two aspects of the character of the appellant. One was the drinking habit of the appellant and the second was the frequent quarrels mainly arising out of suspicion on the fidelity of his wife. Suspicion was due to the frequent visits of the victim to her mother's place in Vaduvur.



Crl.A(MD)No.327 of 2021

WEB COPY

5.Mrs.N.Juliet Latha, learned counsel for the appellant had pointed out certain inconsistencies in the depositions of the two eyewitnesses P.W-1 and P.W-2. According to her both the eyewitnesses P.W-1 and P.W-2 were not present in the scene of occurrence and the prosecution version that they had come down to their mother's place for Deepavali is only a figment of imagination. This is so because, according to her, the Accident Register (Ex.P12) mentioned the name of Rani who had accompanied the victim, but not the names of P.W-1 and P.W-2. Though the said Rani was not examined, it is clear from the depositions of both P.W-1 and P.W-2 that Rani had also come to the scene of occurrence immediately after the incident and merely by stating that only her name is found in the Accident Register does not imply that P.W-1 and P.W-2 were not present in the hospital. Besides this aspect, the learned counsel for the appellant has pointed out that both P.W-1 and P.W-2 did not mention the time of admission of their mother in the hospital which again leads to the doubt whether they were present in their house at the time of the occurrence.



CrL.A(MD)No.327 of 2021

WEB COPY

6. It is to be understood that for any child both father and mother are equally important and as per P.W-2's version whenever their parents quarrelled, it was either P.W-1 or P.W-2 who intervened to pacify them. Therefore there was no need for either P.W-1 or P.W-2 to have falsely implicated their father. It can also be seen that no other earlier physical violence has been reported by both P.W-1 and P.W-2. The appellant was also in the habit of consuming alcohol. Therefore, the children P.W-1 and P.W-2 would not have thought that the wordy duel between their parents would end up in physical assault. Both P.W-1 and P.W-2 were in their early twenties, and their evidence, as already observed is corroborative in all material particulars and the defects pointed by the learned counsel for the appellant in their evidence are all minor in nature. The defence could not make any dent in their versions.

7. The learned counsel for the appellant submitted that the serious altercations between the couple never ended in any physical violence



Crl.A(MD)No.327 of 2021

WEB COPY

earlier and it was only the sudden provocation which caused the appellant to act in such a manner. This aspect has also been deposed by P.W-2. His evidence is that the quarrel between his parents was something which he has been witnessing since his childhood and even in this incident his father was unarmed. This goes to show that there was no intention on the part of the appellant to murder his wife and it was only at the spur of the moment, the incident had happened. However, he had the knowledge that this act is likely to cause death. Thus the facts of this case fit into the definition of Section 304 part II IPC.

8. In the result,

(i) This Criminal Appeal is partly allowed.

(ii) The conviction under Section 302 IPC passed by the learned Sessions Judge, Fast Track Mahila Court, Thanjavur, Thanjavur District, dated 26.11.2018, in S.C.No.219 of 2017 is modified as under:

“The accused is convicted under Section 304 part II IPC and sentenced to undergo Rigorous Imprisonment for 7 years without remission



Crl.A(MD)No.327 of 2021

WEB COPY

benefits and to pay a fine of Rs.1,000/-, and in default to pay the fine amount, to undergo Simple Imprisonment for one year.”

[P.N.P., J.] & [R.H., J.]

17.08.2022

Index : Yes/No
Internet : Yes/No
PJJ

To

1. The Sessions Judge,
Fast Track Mahila Court,
Thanjavur, Thanjavur District.

2. The Inspector of Police,
Orathanadu Police Station,
Thanjavur District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A(MD)No.327 of 2021

**P.N.PRAKASH, J
AND
R.HEMALATHA, J**

PJL

**Judgment made in
Crl.A.(MD)No.327 of 2021**

17.08.2022