



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.02.2022

DELIVERED ON : 28.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.A.(MD)No.104 of 2019

WEB COPY

Murugan

... Appellant / Sole Accused

Vs.

State through,
The Inspector of Police,
Alwarkurichi Police Station,
Tirunelveli District.
(Crime No.236 of 2017)

... Respondent / complainant.

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the judgment of conviction and sentence passed by the learned Principal District & Sessions Judge, Tirunelveli made in S.C.No.174 of 2018 dated 20.11.2018.

For Appellant : Mr.R.Alagumani

For Respondent: Mr.A.Thiruvadikumar,
Additional Public Prosecutor.

JUDGMENT

R.SUBRAMANIAN, J.

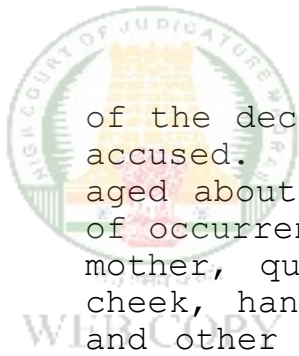
AND

N.SATHISH KUMAR, J.

Aggrieved over the life sentence imposed by the Principal District and Sessions Court, Tirunelveli, under Section 302 of the Indian Penal Code, by Judgment dated 20.11.2018 in S.C.No.174 of 2018, the present appeal came to be filed by the appellant.

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

(i) The accused is the son of the deceased Eswari. P.W.1 is the son of first husband of the deceased. After death of the first husband, the deceased married the father of the accused and had two daughters and one son viz., the accused. The accused separated from his wife and living in the house of the deceased along with his children. The accused demanded money from his mother and beat-up the deceased with stick. After knowing the same, P.W.1 came there and advised the accused not to attack his mother. P.W.2 is the sister of the deceased. She also witnessed the accused beating the mother with stick. The accused has collected money from P.W.3 and also demanded money from the deceased. P.W.6 and P.W.7 are the sons



of the deceased. They are staying with the deceased along with the accused. At the relevant point of time, P.W.6 and P.W.7 both were aged about 14 and 13 years respectively. The accused, on the date of occurrence at about 8.00 p.m. demanded Rs.20,000/- money from his mother, quarreled with her and beat her with stick on her thigh, cheek, hands and hip. After knowing about the same, P.W.1, P.W.2 and other villagers came there. On seeing them, the accused went away from the place of the occurrence. They gave some water to the deceased and thereafter, they left from the place. Next day, the deceased was found dead in the bed. Immediately, P.W.1 lodged a complaint-Ex.P1 before the respondent police. After receiving Ex.P1, P.W.16 registered a case in Crime No.236 of 2017 under Section 174 of Cr.P.C. under Ex.P.4-FIR.

(ii) P.W.18-Investigating Officer took up the case for investigation, went to the place of occurrence and prepared Observation Mahazar-Ex.P2. He drew a rough sketch under Ex.P14 and conducted the inquest over the dead body and prepared inquest report Ex.P5 and forwarded the dead body to autopsy with requisition and P.W.17-Doctor conducted the autopsy and found the following injuries:

*"1.Reddish blue colour patterned contusions.
(Tram line type) seen over following areas:*

10 X 2 cm over outer aspect of left thigh, 8 x 2 cm over front and outer aspect of left hip, 8 x 2 cm over outer aspect of left hip and 6 x 2 cm over back of middle of left side chest.

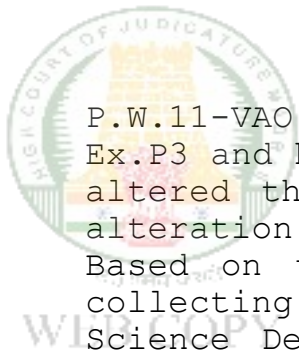
2) Reddish blue contusions seen over following areas:

2 x 2 cm over left seek, 8 x 5 cm over front of middle of upper part of chest and 3 x 2 cm over front of right side chest.

On dissection of Chest & Abdomen: 2 to 5 ribs over right side found fractured in their front with surrounding bruise. 2 to 4 ribs over left side found fractured in their front with surrounding bruise. Thoracic vertebra No.7 found fractured with laceration of underlying spinal cord noted.

On dissection of Scalp, Skull & Dura: contusion of scalp of size 4 x 3 cm seen over back of head (Occipital region) and 3 x 2 cm over left parietal region. Diffuse subdural and subarachnoid hemorrhages seen over entire aspects of both lobes of cerebrum and cerebellum more over both frontal lobes."

He issued Ex.P12-Postmortem certificate opining that the deceased would appear to have died of multiple injuries and its complications. In the meanwhile, on 16.11.2017 at about 3.00 p.m., the accused appeared before P.W.11-V.A.O and confessed to the crime.



P.W.11-VAO recorded the confession statement of the accused under Ex.P3 and handed over the accused to the police. Thereafter, P.W.18, altered the crime under Sections 294(b) and 302 IPC under Ex.P6-alteration report, arrested the accused and recorded his confession. Based on the confession, seized the stick under M.O.1 and after collecting all the material objects sent the same to the Forensic Science Department for examination. P.W.14-Scientific Officer of the Regional Forensic Science Laboratory, Tirunelveli examined the Viscera report and gave an opinion that no poison was deducted. P.W.18 after concluding the investigation, laid a final report.

(iii) The prosecution, in order to bring home the guilt of the accused examined as many as 18 witnesses as P.W.1 to P.W.18, marked 16 documents as Ex.P1 to Ex.P16 and 4 material objects as M.O.1 to M.O.4. After analyzing the oral and documentary evidence, the trial Court has found the accused guilty under Section 302 IPC. Assailing the same, the present appeal is filed.

3. Learned counsel appearing for the appellant would submit that the evidence of P.W.2 is totally unreliable. Having witnessed the occurrence, she has not made any attempt to save her mother and therefore, her evidence is highly improbable and further the evidence of P.W.6 and P.W.7, who are the sons of the accused, also cannot be given much importance and their evidence is also inconsistent with the medical evidence. It is the further contention of the learned counsel appearing for the appellant that the deceased has already suffered injuries in a road accident and died due to the old age. The accused was falsely implicated due to family dispute. He further submits that the prosecution has not proved the case beyond all reasonable doubt. It is his further contention that the offence under Section 302 IPC is not made out and at the most the accused's act will come under Section 304(ii) IPC.

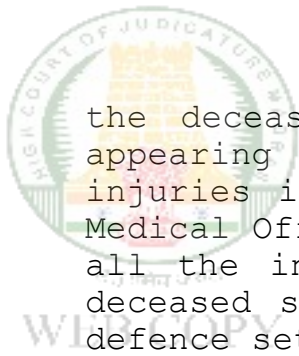
4. Learned Additional Public Prosecutor submitted that the deceased and accused were staying in the same house along with P.W.6 and P.W.7. The children of the accused viz., P.W.6 and P.W.7, though aged about 14 and 13 respectively at the relevant point of time, there was no reason for them to implicate their own father. Their evidence is natural and the same proves the fact that the accused only caused injuries which has been clearly substantiated by the medical evidence. Hence, the learned Additional Public Prosecutor submitted that the accused beating the aged mother and causing such injuries clearly attracted the offence under Section 302 IPC. Hence, he prays for dismissal of the appeal.

5. We have given our anxious consideration to the submissions made by the learned counsel on either side and perused the materials.



6. The law was set in motion on the basis of Ex.P1 given by P.W.1. P.W.1 is the step brother of the deceased. P.W.2, is the sister of the accused. In her evidence, she has stated that the accused used to demand money from her mother, as he separated from his wife and on the date of occurrence, he beat-up the deceased with stick M.O.-1. P.W.1 is also residing near by the house of the accused and on hearing the said occurrence, rushed to the spot and questioned the accused. Hence, accused left the place. P.W.6 and P.W.7 children of the accused, have clearly spoken about the beating of the deceased by the accused with stick. There was no reason for the young children to implicate their father. P.W.6 and P.W.7 were residing with their father along with the deceased. The above evidence makes it clear that the accused in fact beaten the deceased, while demanding money in a quarrel. The deceased is an aged woman. From the evidence of P.W.1, P.W.2, P.W.3, P.W.6 and P.W.7, it is clearly established that there was some quarrel over the money demanded by the accused. As a result, the accused beat-up his own mother with M.O.1 and left the place. Though P.W.1 and P.W.2 visited the spot, they scolded the accused, thereafter they did not take it seriously and only in the next day morning they found that their mother had died. The evidence of P.W.1, P.W.2 and others shows that they did not take it seriously and therefore, it cannot be said that no such incident happened. It is normal in the village, if any quarrel take place, the same will not be viewed seriously.

7. The Medical Officer's evidence clearly shows the nature of the injuries sustained by the deceased. He has seen the contusions on the left thigh, left hip, left cheek and also upper part of the chest and right side chest and he has found that injuries on hip caused fracture of hip. Similarly he also found head injury, though P.W.6 and P.W.7 have not spoken about the injury on the head. The mere omission to give exact details about the nature of the injuries, not a ground to discord their evidence as spontaneity is attached to their evidence. The evidence of Medical Officer and Post-mortem certificate clearly proves the fact that the deceased died due to the injuries and its complications. Apart from that P.W.11's evidence when carefully seen that the accused had appeared and gave the confession by admitting his guilt which has been reduced into writing and marked as Ex.P3. The evidence of P.W.11 clearly shows that the accused, afraid of the police action, appeared before the VAO and gave his confession. There is no other circumstances brought in his cross examination to doubt the evidence of P.W.11. On a perusal of Ex.P3-confession statement, it is seen that the accused has confessed the incident which has also been clearly substantiated by the evidence of P.W.6 and P.W.7. Therefore, as there was no other motive to implicate the accused, we are of the view that the accused had beaten the deceased and caused injuries on 14.11.2017, which resulted in homicidal death of the deceased. The prosecution has established the homicidal death of



the deceased. Therefore, the contention of the learned counsel appearing for the appellant that the deceased already suffered such injuries in a road accident also ruled out by the evidence of the Medical Officer. The evidence of Medical Officer clearly shows that all the injuries were caused recently. Therefore, the theory of deceased sustained injury in a road accident is nothing but vague defence set up by the accused without any material.

8. In view of the above, we have to see whether the act of the accused would fall under the ambit of Section 302 IPC, as the prosecution has established homicidal death. From the evidence of the Medical Officer, it can be safely concluded that the death was the direct result of the injuries caused by the accused. Therefore, it is culpable homicide. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely, by such act, to cause the death, such act falls within the ambit of Section 299 of IPC viz., 'culpable homicide'. Unless the act of the accused falls within any of the exceptions provided under Section 300 IPC, this act viz., 'culpable homicide' is a murder. The third limb of Section 299 IPC corresponds to the fourth limb of Section 300 IPC. Therefore, in a given case, whether the accused had an intention or knowledge to cause the death alone is to be seen. The intention is normally can be gathered from seriousness of motive, the nature of the weapon used and the severity of injuries etc., whereas in the given case just in a quarrel, the accused has beaten up the deceased and left the place. This clearly shows that the intention on his part to cause a death or bodily injury as is likely to cause death is certainly absent and he has just beaten the deceased and left the place. However beating of an old woman with a small stick by the accused is with knowledge that such act of beating is likely to cause death.

9. In such view of the fact, we hold that the act of the accused certainly falls within the third limb of Section 299 IPC. Immediately after such incident, all other witnesses came and they saw the accused however, they did not take it seriously, they just scolded the accused and casually left from the place of occurrence. The above evidence clearly shows that the accused was not aware of either the imminent danger to her life or that the bodily injury is likely to cause death of his mother. Only when the accused was aware of the imminent danger to her life or bodily injury which is likely to cause death, the act would be brought under fourth limb of Section 300 IPC. Therefore, mere quarrel demanding money and beating of the aged person with the high decree of the knowledge which is pre-requisite to bring the act within the ambit of fourth limb of Section 300 IPC cannot be inferred.



10. Taking note of over all circumstances viz., the age of the deceased and the conduct of the accused coming back to the house, we are of the view that the accused would have committed such offence as a result of frustration of separation from his wife and money needed to maintain his children. Therefore, the act of the accused would not fall under Section 300 IPC. At the most as discussed above it falls within the ambit of third limb of Section 299 IPC and therefore, he is liable to be punished under Section 304(ii) IPC.

11. In the result, the Criminal Appeal is partly allowed in the following terms:-

- The conviction and sentence imposed by the Trial Court on the appellant/sole accused under Section 302 of the Indian Penal Code is set aside and instead, the appellant/sole accused is convicted under Section 304(ii) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs.1,000/- [Rupees One Thousand only], in default, to undergo simple imprisonment for three months.
- It is further directed that the period of sentence already undergone by the appellant/sole accused shall be set off under Section 428 of the Code of Criminal Procedure and the fine amount already paid shall be adjusted towards the fine amount for the offence under Section 304(ii) IPC.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

28/02/2022

Sub Assistant Registrar(CS)

vsm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

- 1.The Principal District & Sessions Judge,
The Principal District and Sessions Court,
Tirunelveli.
- 2.The Inspector of Police,
Alwarkurichi Police Station,
Tirunelveli District.
- 3.The Superintendent, Central Prison, Palayamkottai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

Judgment in
Crl.A. (MD) No.104 of 2019
28.02.2022

ss (CO)
TR(28.02.2022) 7P 7C