



Crl. A(MD)No.318 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 06.07.2022

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mrs. JUSTICE R.HEMALATHA

Crl. A. (MD)No.318 of 2019

Antony Thangadurai : Appellant

Vs.

State represented by
The Inspector of Police
Thattarmadam Police Station
Thoothukudi District
Crime No.259/2015 : Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the judgment and order dated 21.02.2019 in S.C.No.16/2017 on the file of the 1st Additional Sessions Judge, Thoothukudi.

For Appellant : Mr.T.J.Ebenezer Charles
For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



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JUDGMENT

P.N.PRAKASH, J.

This criminal appeal is filed against the judgment and order dated 21.02.2019 in S.C.No.16/2017 on the file of the I Additional District and Sessions Judge, Thoothukudi.

2.The prosecution story runs thus:

2.1. The deceased Francisco Mary [D-1] was a 61 year old widow with five children, namely, three daughters and two sons. She was residing in D.No.5/13 North Street, Chettivilai, within Thattarmadam police limits. Jansi Rani [D-2] was her eldest daughter. Jansi Rani was given in marriage to Siluvaiprakasam [P.W.-5] and the injured witness Arockiya Jenifer [P.W.-1] is the eldest daughter of Jansi Rani [D-2]. Jansi Rani [D-2] was residing around 50 feet away from the house of Francisco Mary [D-1] in D.No.17/15 North Street, Chettivilai. The appellant is the younger brother of Jansi Rani [D-2] and he was married to one Sasikala [not examined]. The appellant has a younger brother Lourdhuraj [not examined].



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2.2. According to the appellant, his brother Lourdhuraj and he purchased three cents of land each in Chettivilai North Street, in which, a house was built, but, in the name of his mother Francisco Mary [D-1]. It is the grievance of the appellant that his mother was asking him to leave the house and was intending to settle the property in the name of Jansi Rani [D-2]. There were frequent quarrels between the appellant and his mother in this connection and one such quarrel is said to have taken place on 19.09.2015, in which, the appellant is said to have assaulted his mother and sisters. In this connection, on a complaint given by the appellant, a petition enquiry in CSR No.572/2015 [Ex.P-35] was registered by Head Constable Ravichandran [P.W.-13] in Thattarmadam Police Station and an enquiry was conducted by Narayanan [P.W.-17], Special Sub Inspector of Police. The appellant and his mother were called to the police station and after getting an undertaking from them that they would not quarrel any further, they were sent away. The undertaking letter given by the appellant and his mother have been marked as part of Ex.P-35.

2.3. While so, it is alleged that at 6 a.m., on 21.09.2015, the appellant



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came to his mother's [D-1's] house armed with a billhook, knocked the door and when Arockiya Jenifer [P.W.-1] opened the door, the appellant barged inside and belabored his mother [D-1] and inflicted injuries on her.

2.4. Arockiya Jenifer [P.W.-1], who, normally sleeps in the house of her grandmother [D-1], made a hue and cry, but could do nothing, as she had completed only 17 years then. However, she rushed to her house and informed her mother Jansi Rani [D-2] of the incident. A little thereafter, the appellant carried the body of his mother on his shoulders, came to the house of Jansi Rani [D-2] and dropped the body. When Jansi Rani [D-2] came out of the house, he [appellant] attacked her [D-2] also. In the melee, when Arockiya Jenifer [P.W.-1] tried to intervene to save her mother [D-2], Arockiya Jenifer [P.W.-1] also sustained injuries. Jansi Rani [D-2] and Arockiya Jenifer [P.W.-1] were immediately rushed by an ambulance to the Government Hospital, Sathankulam, where Dr.Atthikumar [P.W.-8] examined Arockiya Jenifer [P.W.-1] at 7.45 a.m., on 21.09.2015 and noted a cut injury in her left forearm measuring 8x2x2 cms, which was bleeding. The copy of the Accident Register was marked as Ex.P-10. Intimation in AR



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copy was sent to the police. Jansi Rani [D-2], who was alive then, was also examined by the doctor there at 7.30 a.m. on 21.09.2015 and the copy of the Accident Register was marked as Ex.P-42 through the Investigating Officer. Both of them were referred to the Government Hospital, Tirunelveli, from where Jansi Rani [D-2] was admitted as inpatient in Annai Velankanni Nursing Home, Palayamkottai, where she died on 26.09.2015.

2.5. To continue the narration, while Jansi Rani [D-2] and Arockiya Jenifer [P.W.-1] were taking treatment at the Government Hospital, Sathankulam, the statement of Jansi Rani [D-2] [Ex.P-1) was recorded by Samadurai [P.W-16] Head Constable of Sathankulam Police Station and based on her statement, he registered a case in Thattarmadam Police Station Crime No.259/2015 under Sections 294(b), 449, 302, 307 and 324 IPC against the appellant. Section 302 IPC was included in the FIR, since the complaint disclosed about the attack and the death of Francisco Mary [D-1].

2.6. Investigation of the case was taken over by the Inspector of Police, Robinson [P.W.-18], who came to the place of occurrence and



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prepared the observation mahazars and rough sketches. The dead body of Francisco Mary [D-1] was found at the entrance of the house of Jansi Rani [D-2], where inquest was conducted and the inquest report was marked as Ex.P-38. Thereafter, the body of Francisco Mary [D-1] was despatched for postmortem to the Government Hospital, Tirunelveli, where Dr.Atthikumar [P.W.-8] performed autopsy on her body and issued the postmortem certificate [Ex.P-12]. In his evidence as well in the postmortem certificate [Ex.P-12], he has referred to three cut injuries that were found around the neck portion of Francisco Mary [D-1]. In the final opinion as to the cause of death, Dr.Atthikumar [P.W.-8] has stated in the postmortem certificate [Ex.P-12] as follows:

“The deceased would appear to have died of shock due to injury to vital organs and blood loss due to injuries sustained by her.”

2.7. The appellant was arrested on 21.09.2015 and based on his police confession, a bill hook [M.O.-1] was recovered under the cover of mahazar [Ex.P-8]. On receiving intimation of the death of Jansi Rani [D-2], the



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Investigating Officer conducted inquest over the body of Jansi Rani [D-2] and the inquest report was marked as Ex.P41. Dr.Selvamurugan [P.W.-10] performed autopsy on the body of Jansi Rani [D-2] and issued the postmortem certificate [Ex.P-16], wherein, he has noted eight antemortem injuries and as regards the cause of the death, he has stated as follows:

“Final Opinion: the deceased would appear to have died of complications of multiple cut injuries.”

2.8. After the death of Jansi Rani [D-2], the case was altered vide alteration report [Ex.P43]. After examining the various witnesses and collecting reports of the experts, the Investigating Officer completed the investigation and filed a final report in P.R.C.No.7/2016 in the Court of the Judicial Magistrate, Sathankulam for the offences under Sections 449 (2 counts), 294(b), 326 and 302 (2 counts) IPC against the appellant.

3. On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in SC No.16/2017 and was made over to the I Additional District



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and Sessions Court, Tuticorin, for trial. The trial Court framed charges under Sections 302 (2 counts), 326, 449 (2 counts) and 294(b) IPC against the appellant. When questioned, the appellant pleaded “not guilty”.

4. To prove the case, the prosecution examined 18 witnesses and marked 43 exhibits and 12 material objects. When the appellant was questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document was marked from the side of the appellant. After hearing either side, the trial Court, by judgment and order, dated 21.02.2019 in S.C.No.16/2017, has convicted the appellant as follows:

Sl.No.	Section of Law	Sentence of imprisonment	Fine amount
1	302(2 counts) IPC	To undergo imprisonment for life each	Rs.1000/-, in default to undergo simple imprisonment for six months each.
2	307 IPC	To undergo rigorous imprisonment for ten years	Rs.750/-, in default to undergo four months simple imprisonment
3	449 IPC	To undergo imprisonment for life	Rs.1,000/- in default to undergo simple imprisonment for six months.



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The aforesaid sentences were ordered to run concurrently. Challenging the same, the appellant is before this Court.

5. Heard Mr.T.J.Ebenezer Charles, learned counsel for the appellant and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor for the respondent.

6. The prosecution has proved the following facts beyond a cavil:

(i) Francisco Mary [D-1] was the mother of Jansi Rani [D-2] and the appellant;

(ii) Francisco Mary [D-1] was residing in D.No.5/13 North Street, Chettivilai;

(iii) The appellant was married to Sasikala;

(iv) Jansi Rani [D-2] was residing 50 feet away from the house of Francisco Mary [D-1] in D.No.17/15 North Street, Chettivilai;

(v) Arockiya Jenifer [P.W.-1] is the daughter of Jansi Rani [D-2];

(vi) The death of Francisco Mary [D-1] and Jansi Rani [D-2] was homicide;



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7. The short question that emerges for consideration of this Court is whether the appellant was the perpetrator of the offences charged against him.

8. It is true that Jackson Durai [P.W.-2], Latha [P.W.-3] and Rani [P.W.-4], who were eyewitnesses, had turned hostile. Thus, the prosecution case rests on the evidence of Arockiya Jenifer [P.W.-1], the injured eyewitness in this case. Arockiya Jenifer [P.W.-1] was 17 years old, when the incident occurred. She was examined in chief on 22.03.2018.

9. In her examination, she has *interalia* stated that she has studied up to 10th standard; she was living with her father Siluvaiprakasam [P.W.-5] and her mother Jansi Rani [D-2] in D.No.17/15 North Street; her grandmother Francisco Mary [D-1] was residing in the same street; her grandmother [D-1] built a house in six cents of land; her uncle (appellant herein) was demanding a share in the property, for which, her grandmother [D-2] was saying that she has incurred debts for the marriage of her

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daughters and so, she would settle the property, after the debts are cleared; this was not agreeable to her uncle (appellant), on account of which, there were frequent quarrels between the two; her mother [D-2] used to question the appellant as to why he is doing like this; she [P.W.-1] used to sleep in the house of her grandmother every night to give her company; on 19.09.2015, a quarrel ensued between her uncle (appellant) and her grandmother [D-1], in which, her uncle had assaulted her grandmother [D-1] in connection with which, a police case was given; on 21.09.2015, around 6 in the morning, upon the door being knocked, she woke up and came out of the house and saw the appellant standing with a billhook; the appellant barged into the house and attacked her grandmother [D-1] indiscriminately; she raised a hue and cry, but could not do anything; the attack was seen by Jackson Durai [P.W.-2] and other neighbours; she ran to her mother's [D-2's] house on the opposite side and informed her about the attack; however, her uncle [appellant] came with the body of her grandmother [D-1] on his shoulders and dropped the same in front of their house in D.No.17/15 North Street; on seeing this, her mother [D-2] came out and when she questioned the appellant, the appellant attacked her also; when she [P.W.-1] intervened, she



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was also attacked by the appellant and she sustained three injuries; thereafter, the appellant ran away; both her mother and she were carried by an ambulance to the Government Hospital, Sathankulam, where they were treated; while they were under treatment there, the police came there and recorded the statement of her mother [D-2] and also obtained signature from her mother; she [P.W.-1] also signed in the said statement; the said statement was marked as Ex.P-1; thereafter, they were taken to the Government Hospital, Tirunelveli, from where, her mother got admitted in Annai Velankanni Hospital, where she died five days later.

10. The defence did not cross-examine Arockiya Jenifer [P.W.-1] on the same day, though opportunity was given. However, Arockiya Jenifer [P.W.-1] was recalled and was cross-examined exhaustively on 25.01.2019. In the cross-examination, she *inter alia* reiterated the manner in which both the attacks had taken place. It was suggested to her that it was her father Siluvaiprakasam (P.W.-5), who had attacked and murdered her grandmother [D-1] and when her mother [D-2] came to rescue, she was also attacked, which suggestion, she denied.



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11. Mr.T.J.Ebanezer Charles, learned counsel for the appellant, brought to the notice of this Court that Arockiya Jenifer [P.W.-1] has stated that police came immediately after the incident and obtained a statement from her mother, in which, Sasikala was implicated and hence, he contended that the police have suppressed the first complaint and therefore, the evidence of Arockiya Jenifer [P.W.-1] becomes suspect. It is to be pointed out that though, initially, she has stated so, subsequently, in the further cross-examination by the defence, she has clearly stated that the police came only when they were in the Government Hospital, Sathankulam. In our opinion, the statement of Jansi Rani [D-2], Ex.P-1 is a dying declaration relevant under Section 32(1) of the Indian Evidence Act, though it formed the basis for the registration of the FIR in this case. It is true that Jackson Durai [P.W.-2], Latha [P.W.-3] and Rani [P.W.-4], who are neighbours had turned hostile. Nevertheless, the evidence of the injured witness, namely, P.W.-1 cannot be easily rejected.

12. The fact that Arockiya Jenifer [P.W.-1] and Francisco Mary [D-1] suffered injuries has been established through the evidence of



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Dr.Atthikumar (P.W.-8) and the accident registers [Exs.P10 and P42]. In fact, Dr.Atthikumar [P.W.-8] has examined Arockiya Jenifer [P.W.-1] at 7.45 a.m. on 21.09.2015 very soon after the incident. The complaint and FIR in this case have reached the jurisdictional Magistrate at 10.45 a.m. on 21.09.2015 itself and it is pertinent to state that in the FIR, for the attack on Jansi Rani [D-2], Section 307 IPC has been included, which, on her death was altered to Section 302 IPC. The body of Francisco Mary [D-1] was found at the entrance of the house of Jansi Rani [D-2].

13. The learned counsel for the appellant contended that Francisco Mary [D-1] had tortured the appellant to such an extent that he had attacked her due to grave and sudden provocation. We are afraid, this exception under Section 302 IPC cannot be invoked, since it has some riders, namely,

“First – that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly – that the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.



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Thirdly – that the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation – Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.”

14. In this case, the appellant has come to the house of Francisco Mary [D-1] at 6 in the morning armed with a weapon. It is not the case of the prosecution that he picked up a weapon in the house of Francisco Mary [D-1] and attacked her nor was such a defence taken by the appellant in the trial. The appellant had attacked a 61 year old unarmed lady and thereafter, carried her body to the house of his sister [D-2] and dropped it at the entrance of her house and attacked her also. Superadded, a quarrel between the appellant and Francisco Mary [D-1] had taken place on 19.09.2015 and therefore, it cannot be stated that the case of the appellant would fall within the first exception to Section 300 IPC. That apart, if an exception is pleaded, the onus is on the accused under Section 105 of the Evidence Act to establish the same like any other fact. In fact, the accused need not have to prove the same beyond reasonable doubt and could do so by



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15. In this case, the appellant had taken a defence that it was Siluvaiprakasam [P.W.-5], who had murdered his mother [D-1] and sister [D-2] and he has been falsely implicated in this case. It is trite that the evidence of an injured witness has to be kept at a higher pedestal as alluded to in the Supreme Court Judgment in ***Abdul Sayeed vs. State of Madhya Pradesh [(2010) 10 SCC 259]***, wherein in Paragraph No.30, it is held as follows:

“30.The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his



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evidence on the basis of major contradictions and discrepancies therein.” (emphasis supplied)

16. On a conspectus of the facts obtaining in this case, we are unable to hold that the appellant is not guilty of the offence of murder of Francisco Mary [D-1] and Jansi Rani [D-2]. Accordingly, the conviction and sentence of the appellant under Section 302 IPC (2 counts) are confirmed.

17. As regards the conviction of the appellant under Section 307 IPC, we are afraid that it cannot be sustained because the appellant did not have the intention to murder Arockiya Jenifer [P.W.-1]. In fact, no charge under Section 307 IPC appears to have been framed by the trial Court. When Arockiya Jenifer [P.W.-1] intervened, she sustained injuries in her left hand. Hence, the conviction and sentence of the appellant under Section 307 IPC is set aside and instead, he is convicted under Section 324 IPC and is sentenced to undergo three years rigorous imprisonment.

18. As regards the conviction of the appellant under Section 449 IPC



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for trespassing into the house of Francisco Mary [D-1] and committing her murder, he has been sentenced to undergo imprisonment for life. However, in order to subserve the interests of justice, the sentence of imprisonment for life for the offence under Section 449 IPC is reduced to 10 years rigorous imprisonment.

19. To sum up:

(i) the conviction and sentence of the appellant under Section 302 IPC (2 counts) are confirmed;

(ii) the conviction and sentence of the appellant under Section 307 IPC are set aside and instead, he is convicted under Section 324 IPC and sentenced to undergo three years imprisonment; and

(iii) The sentence of rigorous imprisonment slapped on the appellant for the offence under Section 449 IPC is reduced to 10 years rigorous imprisonment.

The aforesaid sentences shall run concurrently.



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20. In the result, the criminal appeal is dismissed with the modifications indicated in Paragraph 19 (ii) & (iii) (supra).

[P.N.P., J.] & [R.H., J.]
06.07.2022

Index : Yes/No

Internet : Yes

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To

1.The I Additional District & Sessions Court,
Thoothukudi.

2.The Inspector of Police
Thattarmadam Police Station
Thoothukudi District

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

4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.



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

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Judgment made in
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