



Crl.A(MD)No.383 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.07.2022

DELIVERED ON : 10.08.2022

CORAM :

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

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Vijayakumar

... Appellant/
Single Accused

Vs.

State represented by
The Inspector of Police
Rajakkamangalam Circle,
Kanyakumari District.
(Crime No.72 of 2014)

... Respondent/
Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, against the judgment and order dated 03.06.2019 in S.C.No.177 of 2014 passed by the learned Additional District and Sessions Judge, (Fast Track), Kanyakumari at Nagercoil.

For Appellant : Mr.Niranjan S.Kumar

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



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JUDGMENT

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

This criminal appeal has been filed against the judgment and order dated 03.06.2019 in S.C.No.177/2014 passed by the learned Additional District and Sessions Judge (Fast Track), Kanyakumari at Nagercoii, in and by which, the Appellant was convicted for the offence punishable under Sections 448, 435 and 302 IPC and sentenced as under:

Section of Law	Sentence of imprisonment	Fine amount
448 IPC	Rigourous Imprisonment for one year.	Rs.1000/- in default, to undergo simple imprisonment for one month.
435 IPC	Rigorous Imprisonment for seven years.	Rs.5000/- in default, to undergo simple imprisonment for six months
302 IPC	Life Imprisonment	Rs.10,000/- in default, to undergo simple imprisonment for one year.

The sentences were ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up in this Criminal Appeal.



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2. The prosecution theory runs as follows:-

- i. The deceased Ponniah was a retired employee of Tamil Nadu State Transport Corporation and had two sons and three daughters. The younger of the two sons is the appellant in this case. Ponniah was living with his two daughters in Kumaranditharuvai Village. The appellant was employed in a TASMACH retail shop. The deceased Ponniah had properties in the form of house and land in Vazhukkampaarai, though he was living in a rented house in the present address. It is alleged that Vijayakumar (the appellant) used to pick up quarrel with one of his sisters Sukumari (since deceased) and also his father regarding partitioning of the properties. On an earlier occasion in 2012, he reportedly assaulted his father for the same reason of dispute over the properties. On 19.03.2014 at about 11.00 p.m., the appellant came to his father's house and started abusing his father and sister Sukumari and in a fit of rage took out all the clothes of his father and sister and burnt them in the



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house. Thereafter, he pushed his father into the fire abusing him verbally and threatening him that it would be disastrous the next time. Sukumari, the sister of the appellant, screamed for help looking at the plight of her father, who was pushed on fire by her brother and needed help to come out of it. The appellant had left the scene immediately after threatening his father. Her uncle Thiru.Rajappan [P.W-15] and cousin brother [P.W-1] rushed to rescue Ponniah and he was taken to Nagercoil Punnainagar M.L.Hospital for treatment.

ii. Dr.Radhakrishnan (P.W-11) examined Vijayakumar on 20.03.2014 at about 2.15 a.m., and found that he had sustained 60% burn injuries on his body. He admitted him as an inpatient in M.L.Hospital and also gave intimation to the police. A copy of the Accident Register was marked as Ex.P9.

iii. Subsequently, on 21.03.2014 at about 8.00 a.m., Sukumari gave



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a written complaint [Ex.P18] to the police, based on which FIR [Ex.P19] was registered by V.L.Lawrence [P.W-17], Special Sub Inspector of Police of Eathamozhi Police Station in Crime No.72/14 against the appellant for the offences punishable under Sections 294(b), 323, 324 and 506(i) IPC.

iv. Thiru.Sivaji Chelliah (P.W-14), Judicial Magistrate (Fast Track Court), Nagercoil, visited M.L.Hospital, on receiving an intimation from the medical officer at about 1.30 p.m., Tmt.G.Gayathri, the duty Doctor certified that the patient Ponniah was conscious and oriented and fit to give a statement. P.W-14 after satisfying himself, recorded the statement of the victim (Ex.P16). The victim died on 30.03.2014. The death intimation was marked as Ex.P-7. Therefore, the statement of the victim got elevated to dying declaration under Section 32 of the Indian Evidence Act. In the dying declaration, the victim had stated that his younger son Vijayakumar came over to his



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house and assaulted him and also burnt his clothes and his daughters' clothes. He had also stated that when he questioned his son about this, he pushed him down on the fire and thus, he sustained burn injuries.

- v. In the meanwhile, on 21.03.2014, Thiru.Syed Hussain(P.W-18), Special Sub Inspector of Police, took up investigation in Crime No.72/2014 of Ethamozi Police Station, went to the scene of occurrence and prepared an observation mahazar (Ex.P-20) and a rough sketch (Ex.P-21) in the presence of witnesses Chandran (P.W-7) and Rajapalam (not examined). He recovered burnt dresses (M.O-2) and (M.O-4) and a match box (M.O-3) from the place of occurrence under the cover of a mahazar (Ex.P-22). He then placed the records before Thiru.Anbu Prakash (P.W-19), Inspector of Police, for further investigation.

- vi. Thiru.Anbu Prakash (P.W-19) took up investigation and



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arrested the appellant on 26.03.2014 near the Vazukkamparai junction and recorded his confessional statement. Since the appellant had suffered burn injuries on his hands, he took him to Government Hospital, Asaripallam, where Doctor Thiru.Raju(P.W-9) examined the appellant and found a superficial burn injuries on his left thumb and right ring finger. A copy of the Accident Register was marked as Ex.P5. Thereafter, P.W-19 produced the appellant before the jurisdictional Magistrate for judicial custody.

vii.Since Ponniah died on 30.03.2014, he altered the Sections of law to 294(b), 323, 302 and 506(ii) IPC and sent the alteration report (Ex.P24) to the Judicial Magistrate Court. He then, went to M.L.Hospital on 30.03.2014 at about 9.45 p.m. and conducted inquest (P.W-25) on the body of the deceased. Thereafter, he sent the body of the deceased for postmortem through Thiru.Ramachandran, Head Constable of Police to the



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Government Hospital, Asaripallam.

viii. Dr.Velmurugan (P.W-12) conducted autopsy on the body of the deceased and found the following injuries:

- i. 3x2 cm healing abrasion seen over the front of right shoulder.
- ii. 5x3 cm healing abrasion seen over the back of right shoulder.
- iii. 7x3 cm healing abrasion seen over the front of right elbow.
- iv. 4x2 cm healing abrasion seen over the front of right wrist.
- v. 2x2 cm healing abrasion seen over the front of right knuckle.
- vi. 5x2 cm contusion seen over the front of upper half of right thigh.
- vii. 3X2 cm healing abrasion seen over the outer aspect of upper half of left leg.

The postmortem certificate was marked as Ex.P10. P.W-12 sent the visceral organs to Forensic Lab for analysis. The following observations were made in the viscera report (Ex.P11):

“1.Stomach and contents:Detected five hundred and thirty five (535.0) milligrams of ethyl alcohol and not other poison.



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following clarifications (Ex.P14):.

“1.As the concentration of ethyl alcohol in the blood is 75 mgs % as per the chemical analysis report, if the deceased could have consumed 60 ml of 100 mgs % ethyl alcohol, it is possible that he could have consumed 2 to 3 hours prior to his death.

2. There were no evidence of external violence and more over examination of hyoid bone was also intact.

3. The quantity of ethyl alcohol mentioned in the chemical analysis report is not sufficient enough to cause death.”

xi. After recording the statements of witnesses and after collecting opinion of the experts, P.W-19 filed the final report against the appellant on 15.09.2014 under Sections 294(b), 324, 448, 435 and 302 IPC before the learned Judicial Magistrate No.III, Nagercoil, in P.R.C.No.37 of 2014, who after furnishing copies of records to the appellant under Section 207 of the Code of Criminal Procedure, committed the case to the Court of Sessions. It was taken on file in S.C.No.177 of 2014 by the



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Principal District and Sessions Judge and was made over to the learned Additional District and Sessions Judge (Fast Track Court), Nagercoil. To the charges framed under Sections 448, 294(b), 435 and 302 IPC against the appellant, the appellant pleaded not guilty. Hence the case was posted for trial.

xii. In order to establish the guilt of the accused, the prosecution examined nineteen witnesses and marked twenty five exhibits and three Material Objects.

xiii. The appellant was questioned with regard to the incriminating circumstances appearing in evidence against him under Section 313 of the Code of Criminal Procedure, for which the accused simply denied of having committed any offence. However, no witness was examined on his side. He marked the medical records of his father Ponniah as Ex.D1.



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xiv. The learned Additional District and Sessions Judge(Fast Track Court), Nagercoil, after analysing the oral and documentary evidence adduced on both sides, held that the prosecution had established the guilt of the appellant beyond reasonable doubts and convicted the appellant for the offences under Sections 448, 435 and 302 IPC and sentenced him as stated in paragraph No.1 supra. Challenging the same, present appeal is filed by the appellant.

3.According to the prosecution, this is a case of murder as a result of a property dispute in which the father was murdered by his own son. The prime prosecution witnesses, who were younger relatives or neighbours of the deceased except for P.W-6, P.W-1 to P.W-5 as well as P.W-15 turned hostile. P.W-6 who was the brother of the deceased Ponniah was only a hearsay witness and he stated in his deposition whatever information he gathered from his niece Sukumari (who died during the pendency of trial). Out of the six witnesses P.W-1 to P.W-5



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and P.W-15, P.W-1 and P.W-5 were reportedly direct eye witnesses but turned hostile, claiming that they were totally ignorant of what happened on the fateful night of 19.03.2014. The Victim Ponniah, who suffered 60% burn injuries succumbed to the injuries on 30.03.2014 at 8.50 p.m. Before his death on 30.03.2014, and immediately after admission in M.L.Hospital, on 20.03.2014 at 2.15 a.m., he gave a dying declaration [Ex.P16] on 21.03.2014, in which it is stated that he along with his daughter Sukumari were at home, when his younger son Vijayakumar came home and assaulted him. Thereafter, his son took out his clothes and his daughter Sukumari's clothes and burnt them and when he questioned his son as to why he was setting their clothes on fire, his son pushed him into the fire due to which he suffered burn injuries. To a question as to who caused the burn injuries, he categorically stated that it was his son Vijayakumar. Dr.G.Gayathri, duty doctor had certified that Ponniah was conscious and oriented for giving dying declaration. Thiru.Sivaji Chellaiah [P.W-14], Judicial Magistrate No.I, Nagercoil, recorded the dying declaration of Ponniah after satisfying himself that



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Ponniah was conscious and fit to give dying declaration. The contents of the complaint [Ex.P18] matches with that of the contents of dying declaration.

4.The victim Ponniah had a huge responsibility of taking care of his two daughters (3rd one was married) out of which Vasanthi was mentally challenged and Sukumari was a spinster, and they were totally dependent on their father. Both his sons (including the appellant) were married and were living separately and the younger one Vijayakumar was the one, who was desperate in getting his father's property by hook or crook. According to Kumaresan [P.W-6], the younger son of the deceased, the appellant Vijayakumar used to consume alcohol and beat his sister Sukumari and his father. He used to always pester his father for an early partition. It could be easily understood that as a father he was worried more about his two daughters, who were totally dependent on him.



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5. It is pertinent to mention that in the postmortem certificate [Ex.P10], Dr.Velmurgan [P.W-12] gave an opinion as to the cause of death as 'burn injuries and its complications'. It was also mentioned that he had consumed alcohol prior to his death. The entire medical records [Ex.D1] show that from the date of admission till the date of his death, medicines to heal his injuries and recover him from the effect of burn injuries were administered regularly and despite the treatment, the victim breathed his last on 30.03.2014.

6.Mr.Niranjan S.Kumar, learned counsel for the appellant has highlighted the fact that as many as six prosecution witnesses turned hostile and the only witness on whom the prosecution can rely upon was not present in the scene of occurrence and could only narrate about the incident from what he had heard from Sukumari, the daughter of the deceased. It was also contended that the process of registering the FIR and sending the same to Court were all delayed for no plausible reason, arousing suspicion. The charge alteration report [Ex.P23] was also sent



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belatedly and there seems to be no explanation for the same. It was also contended that the appellant also suffered burn injuries, while trying to save his father as could be found in the Accident Register [Ex.P5] which has not been taken into consideration by the Trial Court. Another contention was that the victim was in an inebriated condition while giving dying declaration, since alcohol was found in his system as per the postmortem certificate. In this context, it is relevant to mention that P.W-6 his brother had deposed that the victim did not have the habit of drinking alcohol.

7. We have perused the documentary and oral evidence on behalf of the prosecution and that of the defence. As regards registering FIR, there appears to be a delay as the complaint (Ex.P18) was given only on 21.03.2014 by the daughter of the deceased Sukumari and it was registered on the same day. The incident took place on 19.03.2014 at about 11.30 p.m., and as per the Accident Register [Ex.P9], the patient was admitted at 2.15 a.m., on 20.03.2014 in the hospital at Nagercoil.



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There is literally no explanation on the side of the prosecution with regard to the delay in lodging the complaint.

8. Moreover, it can be seen from the postmortem certificate and viscera report that ethyl alcohol was present in his (deceased's) system which means that prior to death, the victim had consumed alcohol. Though the postmortem report (Ex.P12) does not say that the death was due to consumption of alcohol, but nevertheless the consumption of alcohol by a 72 year old man, who was under treatment for burns would have also contributed for his death though that by itself would not be sufficient to cause death.

9.The burn injury on the fingers of the accused was treated on 26.03.2014, i.e., a week after his father was pushed into the fire by him. It was also found to be a simple burn injury. In fact, Ex.P4, which is the Attendance Register for the month of March 2014 shows that the appellant was attending duty till he got arrested on 26.03.2014. Thus it is



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clear that the appellant did not abscond. Moreover, the dying declaration of the deceased did not show that the appellant poured kerosene on him and set him ablaze. On the other hand, the deceased had clearly stated that there was an altercation between him and his son and the appellant burnt his clothes as well as his daughter's clothes and pushed him into the fire. It is also seen from the evidence of Dr.Raju(P.W-9) that the appellant sustained burn injuries on his fingers. As already observed, the burn injuries of the appellant was treated on 26.03.2014, that is, a week after his father was pushed into the fire by him. It is also a simple burn injury.

10. P.W-6 though has not become hostile has not helped the prosecution in any manner. In the cross-examination, it is revealed that he did not visit the brother either in the hospital or accompanied his niece Sukumari or he met the police till the date of the death of his brother. Unfortunately, the sole eyewitness Sukumari, who had given the complaint (Ex.P18) reportedly committed suicide during the course of



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trial. As already mentioned earlier the contents of her complaint and the dying declaration of the deceased were in consonance with each other and there cannot be an iota of doubt as to the act of the appellant.

11. Now the one aspect which has to be looked into is whether the act of the appellant falls under Section 302 IPC or it can be scaled down to one under Section 304 (i) IPC. However, the fact that he had not planned to murder his father could be made out from his utterance “இன்று தம்பி விட்டாய் உன் சாவு என் கைமில் தான்” meaning that the “you have escaped today but you would be killed by me”.

12. It is a single act of the appellant in the heat of anger. Such moments generally blind the sobriety of men, in general, and urge them to deeds which they would not otherwise do. There was no previous deliberation or determination to fight. In fact the deceased was in the hospital under treatment for ten days and thereafter, succumbed to injuries. It can be easily inferred that the death in the instant case was



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caused

- i. without any premeditation.
- ii. in a fit of rage.
- iii. the appellant was not armed with a deadly weapon
- iv. the fight was with the deceased victim.
- v. the victim died after 10 days of the occurrence.
- vi. Alcohol was detected in the visceral organ.

However, the appellant had an intention to cause bodily injury to the deceased victim.

13. Appropriate sentencing is a very vital function and obligation of the Court and in the facts and circumstances of the present case, it is difficult to maintain the conviction of the appellant under Section 302 IPC. Hence, the conviction under Section 302 IPC by the trial judge is liable to be set aside and the appellant is convicted under Section 304 Part I IPC and sentenced to undergo 10 years rigorous imprisonment without remission benefits and to pay a fine of Rs.10,000/- in default, to



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undergo simple imprisonment for one year.

14. In the result,

(i) This Criminal Appeal is partly allowed.

(ii) The conviction under Section 302 IPC passed by the learned Additional District and Sessions Judge, (Fast Track), Kanyakumari at Nagercoil. dated 03.06.2019, in S.C.No.177 of 2014, is modified as under :

“The accused is convicted under Section 304 part I IPC and sentenced to undergo Rigorous Imprisonment for 10 years without remission benefits and to pay a fine of Rs.10,000/-, and in default to pay the fine amount, to undergo Simple Imprisonment for one year.”

(iii) The conviction and sentence passed by the learned Additional District and Sessions Judge, for the offences punishable under Sections 448 and 435 IPC are confirmed.

(iv) All the sentences shall run concurrently.



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(v) The Reckoning order of Solitary Confinement for a period of three months in the total period of sentence stands set aside.

(vi) Since the appellant is convicted for culpable homicide not amounting to murder, the trial Court's judgment and order, which states that the appellant would not be entitled to inherit the properties of the deceased is hereby set aside.

[P.N.P., J.] & [R.H., J.]
10.08.2022

Index : Yes/No
Internet : Yes/No

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To

- 1.The Additional District and Sessions Judge, (Fast Track),
Kanyakumari at Nagercoil.
- 2.The Inspector of Police,
Rajakkamangalam Circle,
Kanniyakumari District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



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

PJL

**Pre-delivery Judgment made in
Crl.A.(MD)No.383 of 2019**

10.08.2022