



Crl.A.No.920 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on : 02..01..2023

Judgement Pronounced on : 04..01..2023

Coram

The Honourable Mr. Justice **P.N.PRAKASH**

and

The Honourable Mr. Justice **N.ANAND VENKATESH**

Criminal Appeal No.920 of 2019

&

Crl.M.P.No.19926 of 2022

Krishnan

..... Appellant

-Versus-

The State,
Rep. by The Inspector of Police,
Tiruchengode Town Police Station,
Namakkal District.
[Crime No.113 of 2015]

.... Respondents

Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973 against the judgement and order dated 30.08.2019 passed by the Sessions (Fast Track Mahila) Judge, Namakkal, in S.C.No.32 of 2016 convicting the appellant for offences u/s 498-A and 302 of IPC and sentencing him to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.1,000/- for offence u/s 498-A of IPC and in default of payment of fine to undergo rigorous imprisonment for a further period of 3 months; and to undergo imprisonment for life and to pay a fine of Rs.1,000/- for offence



Crl.A.No.920 of 2019

u/s 302 of IPC and in default of payment of fine to undergo rigorous imprisonment for a further period of 6 months.

For Appellant : Mr.B.Vasudevan

*For Respondent : Mr.M.Babu Muthumeeran,
Additional Public Prosecutor*

ORDER

N.ANAND VENKATESH.J.,

This Criminal Appeal has been filed against the judgement and order dated 30.08.2019 passed by the Sessions Judge (Fast Track Mahila), Namakkal in S.C.No.32 of 2016 convicting and sentencing the appellant in the following manner:-

Sl.No.	Convicted for offence under	Sentenced to undergo
1	Section 498-A of IPC	Rigorous Imprisonment for two years and to pay a fine of Rs.1,000/- in default of payment of fine to undergo rigorous imprisonment for a further period of 3 months
2	Section 302 of IPC	Imprisonment for Life and to pay a fine of Rs.1,000/- in default of payment of fine to undergo rigorous imprisonment for a further period of 6 months.
Both the sentences were ordered to run concurrently.		

2. The case of the prosecution is that the deceased Mallika married the



Crl.A.No.920 of 2019

appellant and through the wedlock, they had two sons. The deceased Mallika was doing flower business and the appellant was a plumber. Further case of the prosecution is that the appellant became addicted to alcohol and was not going for work regularly and he used to pick up quarrel with the deceased Mallika, demanding for money for consuming alcohol. Thereby the deceased was subjected to cruelty. On 16.03.2015 at about 06.00 p.m., the appellant demanded money from Mallika and Mallika refused to part with any money. The appellant was enraged and he caught hold of the neck of the deceased Mallika and banged the head of the deceased against the wall forcibly and pushed down the deceased. Thereafter, the appellant is said to have attacked the deceased with a jumper bit (M.O.1). Initially, the deceased was rushed to Tiruchengode Government Hospital for treatment and after first aid, she was shifted to Salem Government Hospital for specialized treatment where she succumbed to injuries on 18.03.2015 at about 09.15 p.m.

3. P.W.1 – Manickam is the father of the deceased. He was informed about the incident by P.W.2-Susila and immediately, P.W.1 rushed to



Crl.A.No.920 of 2019

Mallika's house and found her lying in the floor with injuries on her head and all over her body. P.W.1 took Mallika to Tiruchengode Government Hospital in an ambulance and thereafter, the deceased was shifted to Salem Government Hospital. When the deceased was treated in Salem Government Hospital, an information was conveyed to the Tiruchengode Town Police Station and a statement was recorded from P.W.1 regarding the incident and the same was reduced into a complaint (Ex.P1) on 17.03.2015 at about 16.00 hours. An FIR (Ex.P9) was registered in Crime No.113 of 2015 for offence u/s 307 of IPC. On the demise of Mallika, an alteration report (Ex.P11) was filed before the Judicial Magistrate, Tiruchengode and the offence was altered to Sections 498-A and 302 of IPC. P.W.12 the Spl. Sub-Inspector of Police, received the information when he was at Tiruchengode Town Police Station and he was the one who recorded the complaint given by P.W.1. P.W.13 took up the investigation and he went to the scene of crime on 17.03.2015 at about 04.30 p.m. He prepared an observation mahazar (Ex.P3) in the presence of P.W.5-Vijayakumar and another witness viz., Karthikeyan (not examined). In the course of investigation, he arrested the appellant on 17.03.2015 at 06.15 p.m. and the appellant was remanded to



judicial custody.

WEB COPY

4. P.W.14, the Inspector of Police, took up further investigation and he was the one who received the intimation from Salem Government Hospital about the death of Mallika and prepared an alteration report (Ex.P11). P.W.14 went to Salem Government Hospital and conducted inquest on the body of Malliga at the mortuary at about 11.15 a.m. The inquest report was marked as Ex.P12. Thereafter, the body was sent for postmortem and the postmortem was conducted by P.W.11 Dr.Sangeetha and the postmortem certificate and final opinion were marked through the Doctor (P.W.11) as Ex.P6 and Ex.P7 respectively. The injuries recorded in the postmortem certificate are extracted hereunder:-

“External Examination:

Antemortem injuries

- 1.Dark brown abrasion over centre of forehead M – 1 x 1 cms.
2. Lateral aspect of right isde chest M – 2 x 1 cms.
3. Multiple small abrasion over both sides of nipple



Crl.A.No.920 of 2019

4. Multiple varying sized abrasion over front of upper and middle 3rd of right leg.

5. Grazed abrasion over right knee M – 7 x 7 cms.

Internal Examination:

1. O/D Head:- Sub scalpular contusion over right temporo parieto occipital region M – 13 x 7 cms. Cranial vault-Intact. Brain -Extra dural haemorrhage on the right parieto occipital region M – 60 to 70 cms of blood clot seen. Sub dural and sub arachnoid haemorrhage seen over both cerebral hemisphere. Base of the skull – Intact.

2. O/D Thorax:- Ribs – Intact. Heart – Normal in size. Chambers contain fluid blood valves and coronaries patent. Lungs – C/S congested.

3. O/D Neck:- All neck structures are normal. Hyoid bone – Intact.

4. O/d Abdomen:- Stomach – contains 120 ml of yellow colour fluid with no specific small. Mucosa C/S congested. Liver, Spleen and both Kidneys C/s Congested. Bladder – Empty. Genitalia – Laceration over the right lateral wall of vagina M – 3 x 2 x 1 cms. with surrounding



Crl.A.No.920 of 2019

contusion and left lateral wall of vagina M – 2 x 1 x 1 cms. with surrounding contusion. Uterus – Normal in size, C/s Multiple superficial incisions made all over the body. No underlying contusion seen.”

The final opinion was given by P.W.11 Dr.Sangeetha to the effect that the deceased would appear to have died due to head injuries.

5. The statements of the witnesses were recorded u/s 161(3) of Cr.P.C. and after collecting the forensic report (Ex.P13), final report came to be filed by P.W.14 on 05.06.2015 before the Judicial Magistrate, Tiruchengode and the same was taken on file in PRC No.29 of 2015. The copies were served on the appellant u/s 207 of Cr.P.C. and the case was committed to the Court of Session which, in turn, made over the case to the court below for trial. The court below framed charges against the appellant for offence u/s 498-A and 302 of IPC. The appellant denied the charges. Thereafter, he was put on trial.

6. The prosecution examined P.W.1 to P.W.14 and marked Ex.P.1 to Ex.P13 and identified and marked M.O.1. The incriminating evidence that was collected in the course of trial was put to the appellant when he was



Crl.A.No.920 of 2019

questioned u/s 313(1)(b) of Cr.P.C. and he denied the same as false. The appellant examined D.W.1 as defence witness, however, no documentary evidence was marked on the side of the defence.

7. The court below on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and proceeded to convict and sentence the appellant in the manner stated supra.

8. Heard Mr.B.Vasudevan, learned counsel for the appellant and Mr.M.Babu Muthumeeran, learned counsel for the respondent.

9. The prosecution relied upon the evidence of P.W.2 and P.W.4 as eye-witnesses in order to substantiate their case. P.W.2 is the owner of the house, where the deceased Mallika and the appellant were residing. On going through the evidence of P.W.2, it can be seen that there were repeated quarrels between the deceased and the appellant and on many occasions, she



Crl.A.No.920 of 2019

(P.W.2) had to interfere and pacify them. On the fateful day, P.W.2, on hearing the sound from the house, rushed to the spot and found the deceased Mallika lying in the floor with injuries. P.W.2 also saw the appellant standing near the dead body in an inebriated state. The evidence of P.W.2 is natural and there is nothing to discredit her evidence. Unfortunately, P.W.2 was recalled and cross-examined after nearly 1 year and 7 months and, as expected, she turned hostile and gave a different version. This court can safely discard the version of P.W.2 after she was recalled and cross-examined since this cross-examination had taken place after a long interval and it is quite clear that P.W.2 has been won over and that is the reason why, she turned turtle when she was recalled and cross-examined after 1 year and 7 months. A useful reference can be made to the judgement of this court in **Rasukannu @ Rengasamy v. State of Tamil Nadu [2018 (1) MLJ (Crl) 306]**.

10. The evidence of P.W.4 does not support the case of the prosecution since this witness turned hostile and hence, the only evidence available before this court to speak about the occurrence is the evidence of



Crl.A.No.920 of 2019

WEB COPY

11. P.W.2 after seeing the deceased lying in the floor informed about the same to P.W.1 who is the father of the deceased and P.W.1, in turn, took the deceased in an ambulance to Tiruchengode Government Hospital. P.W.9 was the Doctor who initially attended the deceased and through her the accident register was marked as Ex.P.5. On going through the same, it is clear that the deceased was brought to Tiruchengode Government Hospital on 16.03.2015 at about 09.10 p.m. and on examining the deceased, she was found unconscious and was not able to respond to any of the oral commands given by PW.9 Doctor. The deceased was immediately referred to Salem Government Hospital for being treated by a Neurosurgeon.

12. The information regarding the incident reaches P.W.12 on 17.03.2015 and he goes to Salem Government Hospital and records the complaint given by P.W.1 and the FIR was registered in Crime No.113 of 2015 for offence u/s 307 of IPC. Subsequently, on the death of Mallika, an alteration report (Ex.P11) was prepared and the offence was altered from



Crl.A.No.920 of 2019

u/s 307 of IPC to one u/s 498-A and 302 of IPC.

WEB COPY

13. The sequence of events in this case clearly establishes the case of the prosecution. It is clear from the evidence of P.W.2 that she rushed to the scene of crime on hearing the cries of the deceased and she found the deceased lying in the floor with injuries and the appellant standing near her in an inebriated state. It is clear from the sketch marked as Ex.P.10 that the incident had taken place inside the house and except the appellant, there was nobody else present in the said house. The attempt made by the appellant to create a defence by examining his mother as D.W.1 to project the case, as if somebody had attacked the deceased, and taken away her jewellery, falls flat and it is clear from the evidence of D.W.1 that the mother has desperately tried to save her son (appellant). Since the appellant was not able to give any satisfactory answer as to what really happened in the scene of crime, which is exclusively within his knowledge, Section 106 of The Evidence Act, comes into play and the appellant has failed to discharge his burden of proof.

14. P.W.2, on seeing the deceased lying in the floor unconsciously, informs to P.W.1, who is the father of the deceased, and P.W.1, in turn, takes



Crl.A.No.920 of 2019

the deceased in an ambulance to Tiruchengode Government Hospital.

P.W.9, who gave first aid to the deceased, clearly states in her evidence that it was P.W.1 who brought the deceased to the hospital. After the deceased was referred to Salem Government Hospital, an information was received by PW.12 and FIR came to be registered. This FIR reached the court on 17.03.2015 at about 08.45 p.m. The offence was also altered after the deceased died on 19.03.2015.

15. The injuries as spoken to by P.W.1 read along with postmortem certificate and the final opinion clearly establishes homicide and the finger points only to the appellant and none other.

16. The above sequence of events and the evidence available on record clearly establishes the case of the prosecution beyond reasonable doubts and the cause of death is homicide caused by the appellant. To this extent, we find that the court below has properly appreciated the evidence available on record and has come to a correct conclusion.



Crl.A.No.920 of 2019

17. The next issue to be gone into is as to whether the facts of the present case falls under any one of the Exceptions to Section 300 of IPC. It is clear from the evidence available on record that the strained relationship between the appellant and the deceased was getting worse by passage of time. There were repeated quarrels between the couple when the appellant was demanding for money from the deceased to consume alcohol. Hence, it is clear that the deceased was subjected to physical and mental cruelty by the appellant on many occasions. Even on the fateful day, the appellant is said to have demanded money from the deceased which resulted in a quarrel and ultimately, the appellant pushed the deceased down and attacked her with M.O.1. Admittedly, the appellant is a plumber and hence, he possessing the jumper bit (M.O.1) is not unnatural. We do not find that the appellant had planned and executed murder and the entire incident had taken place in the heat of the moment. The appellant pushed down the deceased forcibly, due to which, the head of the deceased hit against the wall resulting in the head injury on the temporo parieto occipital region. This is stated to be the cause of death by Doctor (P.W.11). On a over all reading of the facts and circumstances of the case, it is clear that the entire incident had taken place



Crl.A.No.920 of 2019

due to grave and sudden provocation and hence, the facts of the case can be brought within Exception (1) to Section 300 of IPC. As a consequence, the appellant can be punished u/s 304 Part-I IPC instead of Section 302 of IPC. To that extent we are inclined to interfere with the sentence imposed by the trial court.

18. Insofar as the conviction and sentence imposed on the appellant for offence u/s 498-A of IPC, we do not find any ground to interfere with the same and hence, the same is hereby sustained.

19. Accordingly, the conviction and sentence imposed by the court below for the offence u/s 498-A of IPC is confirmed, while the conviction and sentence imposed by the court below for the offence u/s 302 of IPC is set aside and instead, the appellant is convicted for the offence of 'culpable homicide not amounting to murder by bringing the case under Exception (1) to Section 300 of IPC and he is sentenced to undergo rigorous imprisonment for 10 (Ten) years and to pay a fine of Rs.1,000/- (Rupees One Thousand only) in default of payment of fine, he shall undergo rigorous imprisonment



WEB COPY



Crl.A.No.920 of 2019

P.N.PRAKASH.J.,
AND
N.ANAND VENKATESH.J.,

kmk

Pre Delivery Judgement
in
Crl.A.No.920 of 2019

Judgement Pronounced on
04..01..2023