



Crl. A(MD)No.43 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRL.A.(MD)No.43 of 2020

Mohamed Thahir

.. Appellant/Sole Accused

Vs.

The State rep. by

The Inspector of Police,

Thanjavur South Police Station,

Thanjavur.

(Crime No.219/2018)

.. Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, agasint the judgment and order of conviction passed by the learned Principal Sessions Judge, Thanjavur, made in S.C.No.3 of 2019 dated 29.04.2019 convicting the appellant for the alleged offence under



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Section 302 IPC and sentenced him to undergo life imprisonment and imposed a fine of Rs.10,000/- and in default, to undergo one year simple imprisonment.

For Appellant : Mr.E.Somasundaram

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

JUDGMENT

P.N.PRAKASH, J.

This criminal appeal is filed against the judgment and order dated 29.04.2019 made in S.C.No.3 of 2019 on the file of the learned Principal Sessions Judge, Thanjavur,

2.The prosecution story runs thus:

2.1. The deceased Abdul Rahman was the son of the appellant. Apart from Abdul Rahman, the appellant has two sons and two daughters. Of them, Ibrahim (P.W-1), Riyas Samsudeen (P.W-5) and Shabira Banu (P.W-2), the daughter of the appellant were examined in the trial Court. It is



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the case of the prosecution that the appellant was leading a wayward life and was having affair with several women. On account of which, he was neglecting his family. The appellant left his natal home and was staying in Chennai incognito. Since he was in touch with his daughter Shabira Banu(P.W-2), the others found out his whereabouts, went to Chennai and brought him to his natal home a few days prior to the incident. The appellant was kept in confinement by his children in his house so that he does not go astray.

2.2. On 27.09.2018, the appellant's wife and daughters went to the house of their eldest son in Erode leaving the appellant in the custody of his two sons, namely, Abdul Rahman (deceased) and Ibrahim (P.W-1). Since at around 5.30 a.m., on 28.09.2018, while Abdul Rahman was sleeping, the appellant took a grinding stone and thereby, dropped it on the head of Abdul Rahman and caused his death.

2.3. Of course, Ibrahim(P.W-1) was sleeping the side, on hearing the commotion, he got up and he was shocked to see his brother in a pool of blood and his father standing nearby. Thereafter, the appellant fled from the



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place of occurrence leaving Ibrahim(P.W-1) with the injured Abdul Rahman. Thereafter, Ibrahim (P.W-1) sent information to his sister Shabira Banu (P.W-2), who came to the house along with Jainulabdeen (P.W-3), her husband and found Abdul Rahman in a pool of blood.

2.4. On a complaint (Ex.P1), given by P.W-1, Sebastin (P.W-14), special Sub Inspector of Police, Thanjavur South Police Station, registered a case in Crime No.219/2018, under Section 302 IPC on 28.09.2018 at 11.30 a.m. and prepared the printed FIR (Ex.P10), which reached the jurisdictional Magistrate on the same day at 02.10 p.m., as could be seen from the endorsement thereon. Investigation of the case was taken over by Palanisamy (P.W-15), Inspector of Police, who went to the place of occurrence and prepared an observation mahazar (Ex.P3) and a rough sketch (Ex.P11 and Ex.P12).

2.5. From the place of occurrence, the Investigating Officer seized the following items, namely, a bloodstained grinding stone(M.O1), bloodstained tile (M.O2) and tile without bloodstain (M.O3) under the cover of a mahazar (Ex.P2). Inquest was conducted over the body of the deceased and the



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inquest report was marked as Ex.P13. The body of the deceased was sent to the Government Hospital, Thanjavur, where Dr.K.Tamizhmani, (P.W-11) performed autopsy on the body of the deceased and issued the postmortem certificate (Ex.P8). Dr.Tamizhmani, in his evidence as well in the postmortem certificate has noted the following ante mortem injuries:

“1)Abraded contusion of size 11 x 5 cm seen over left side of forehead, 9 x 5 cm over left chest.

2) Laceration of size 5 x 1 cm over left eyebrow.

3) Laceration of size 3 x 1 cm over left side of forehead.

4) Abrasion seen on the following areas:

5x3 cm over right knee, 3 x 1 cm over dorsum of right foot, 6x2 cm over front of right thigh, 3x3 cm over right elbow.

ON DISSECTION OF HEAD:

Diffuse scalp contusion noted over entire scalp. Marked subdural and subarachnoid hemorrhage noted over entire surface of cerebrum and cerebellum. Subdural clots noted over base of brain. Brain found edematous. Left frontal, temporal bone left side of anterior cranial fossa middle cranial fossa and right side of posterior cranial fossa found fractured of length 19 cm noted.”



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2.6. After receiving the viscera report, he has given a final opinion to the cause of death, which reads as under:

“The deceased would appear to have died complications of head injuries due to injuries over vital structures of brain.”

2.7. The appellant was arrested by the police on 01.10.2018 and was remanded in judicial custody. After examining various witnesses and collecting the reports of experts, the investigating officer completed the investigation and filed a final report in PRC.No.46/2018 in the Court of Judicial Magistrate No.I, Thanjavur, under Section 302 IPC against the appellant.

3. On appearance of the appellant, the provisions of Section 207 Cr.P.C were complied with and the case was committed to the Court of Sessions, Thanjavur, in S.C.No.3/2018 and was made over to the Principal Sessions Judge, Thanjavur, for trial.

4. The trial Court framed charges under Sections 302 and 504(i) IPC against the appellant and when questioned, the appellant pleaded not guilty.



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5. To prove the case, the prosecution examined 15 witnesses, marked 17 exhibits and 7 material objects. When the appellant was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the appellant nor any document marked. After considering the evidence on record and on hearing either side, the trial Court, by judgment and order, dated 29.04.2019, in S.C.No.3 of 2018, acquitted the appellant of the offence under Section 506(i) IPC, but has convicted him for the offence under Section 302 IPC and sentenced him to undergo Life Imprisonment and a fine of Rs.10,000/-, in default, to undergo one year simple imprisonment. Aggrieved by the above, the appellant is before this Court.

6. Heard Mr.E.Somasundaram, learned counsel appearing for the appellant and Mr.T.Senthil Kumar, learned Additional Public Prosecutor appearing for the State.

7. The prosecution has proved the following facts beyond a cavil.

The appellant is the father of the deceased Abdul Rahman, Ibrahim (P.W-1), Shabira Banu (P.W-2), Riyas Samsudeen (P.W-5); the deceased



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was found dead in the house at Door No.6/2015, 15th Street, Anna Nagar, Barma Colony, Thanjavur; the death of the deceased was on account of homicide.

8. The short point is whether the appellant was the perpetrator of the offence. We had the evidence of Ibrahim (P.W-1), Shabira Banu (P.W-2), Furkath Nisha (P.W-4)-wife of the appellant and Riyas Samsudeen (P.W-5), who are the close relatives of the appellant, who have stated about the waywardness of the appellant. They have all stated that the appellant was a womanizer and was having affair with many women and that he left the house, went to Chennai from where he was secured and forcibly brought to Thanjavur and kept in their natal home, the address of which is given above. These witnesses have also stated that on 27.09.2018, the wife of the appellant left home along with her daughter to the house of the eldest son of the appellant in Erode leaving behind the appellant with his other two sons, viz. Abdul Rahman and Ibrahim (P.W-1). Being the solitary evidence, P.W-1, who, in his evidence stated that on the night of 27.09.2018, all three of them, namely, the appellant, Abdul Rahman and himself were as usual sleeping in their house and on the next day morning, around 5.30 a.m, he



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heard a hue and cry and when he got up, he saw the appellant carrying the grinding stone from the kitchen and attacking his brother Abudl Rahman and causing his death. He has also stated that the appellant criminally intimidated him and took his clothes and went away from the house.

9. Mr.E.Somasundaram, learned counsel for the appellant vehemently attacked the evidence of P.W-1 by contending that while P.W-1 was sleeping, he could not have witnessed the appellant bringing the grinding stone from the kitchen and assaulting the deceased. He also stated that the evidence of P.W-1 that his father left the house with his clothes is an improvement as the same was not stated either in the complaint or in the police statement recorded under Section 161 Cr.P.C.

10. We carefully analyzed the evidence of P.W-1, we are satisfied with the evidence adduced by the prosecution that on 27.09.2018, except the appellant, Abdul Rahman and Ibrahim (P.W-1), the other members had left the home and had gone to Erode to visit one of the sons of the appellant, who was residing there. The incident is said to have taken place at 5.30 a.m, in the morning in the house of the appellant. It may be true that Abdul



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Rahman would have been sleeping at the time and would not have himself witnessed the appellant bringing the grinding stone from the kitchen and attacking the deceased. Nevertheless, from a broad perspective, if we analyze the evidence of P.W-1, we are unable to disbelieve his version that the death of his brother Abdul Rahman was caused by throwing the grinding stone on his head. The appellant has suggested to P.W-1 that it was he, who had committed the murder of his brother, which has been, of course, denied by P.W-1.

11. From the evidence of P.W-1, we are able to see that he was 19 years old when he was testified before the trial Court and was studying B.B.A., course in a college. Thus, there were three persons in the house namely, Abdul Rahman, the appellant and Ibrahim (P.W-1). We find no good reasons to murder his elder brother because there were apparently no motive for him against his elder brother. On the contrary, Mr.E.Somasundaram, contended that the appellant was not in the house at the relevant point of time and was sleeping outside his provision shop in the market. In other words, Mr.E.Somasundaram, urging the plea of *Alibi* which is a fact that has to be established by the accused under Section 106 of the



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Evidence Act. Mere suggestions cannot take the place of proof of an act. The fact remains that after the incident, the appellant became scary and was secured by the police only on 01.09.2018. It is a conduct which is relevant under Section 18 of the Evidence Act.

12. After the arrest of the appellant, his bloodstained clothes were recovered by the police from a dust bin and it is relevant to Section 27 of the Evidence Act. The bloodstained apparel of the appellant was sent through jurisdictional Magistrate to the chemical examiner and the report Ex.P6 shows that the same is of human origin. Mr.E.Somasundaram contended that in the absence of grouping, mere presence of human blood may not be sufficient. We do not want to go into this aspect, especially, in the light of the fact that we have no good reasons to disbelieve Ibrahim (P.W-1) coupled with the conduct of the appellant in not taking his son to the hospital after the incident. However, we find that the appellant was wanting his freedom, but his family members were keeping him in confinement in his house, against his will. All these must have irked him and out of frustration, he must have attacked his elder son to gain freedom, with the grinding stone. Thus, we are not able to sustain the appellant under



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Section 302 IPC, therefore conviction under Section 304(I) IPC and sentenced to undergo eight years Rigorous Imprisonment.

13. In the result, the criminal appeal is partly allowed and the conviction of the appellant under Section 302 IPC is set aside and instead, he is convicted under Section 304 (I) IPC and sentenced to undergo eight years rigorous imprisonment. The respondent police is directed to secure the accused and produce before the trial Court. On such production, the trial Court is directed to commit the accused to the prison to undergo the remaining period of sentence. The period of sentence already undergone by the accused/appellant is ordered to be set off under Section 428 Cr.P.C.

[P.N.P., J.] & [G.J., J.]

06.01.2023

Index : Yes/No

Internet : Yes

PJL



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To

1.The Principal Sessions Judge,
Thanjavur.

2.The Inspector of Police,
Thanjavur South Police Station,
Thanjavur.

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

DR.G.JAYACHANDRAN, J.

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JUDGMENT MADE IN

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