



Crl.A(MD)No.83 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 24.01.2023

Pronounced on : 30.01.2023

CORAM

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

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Arjunanan

....Appellant/ 1st Accused

VS.

State, through
The Inspector of Police,
Uchipuli Police Station,
Ramanathapuram.
In Crime No.103/2017.

....Respondent / Complainant

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code to call for the records in S.C.No.128 of 2018 on the file of the learned Principal District and Sessions Judge, Ramanathapuram District and set aside the conviction and sentence dated 17.07.2020, imposed on the appellant.



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For Appellant : Mr.N.Ananthapadmanabhan
Senior Counsel
for M/s.APN Law Associates

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

JUDGMENT

SUNDER MOHAN, J.

The appellant, who was tried as A1 in S.C.No.128 of 2018, has challenged the judgment convicting him for the offences under Section 302 and 324 IPC. He was sentenced to one year simple imprisonment for the offence under Section 324 IPC and to pay a fine of Rs.1000/-, in default to suffer three months simple imprisonment and sentenced to life imprisonment for the offence under Section 302 IPC and to pay a fine of Rs.10000/-, in default to suffer one year simple imprisonment.

2. The case of the prosecution is that the appellant is the son of the deceased; On 24.03.2017 at about 2.30 PM, the appellant along with his wife Vijaya Bharathi and his father-in-law, Ramamoorthy, went to the house where his parents, namely, the deceased and P.W.1 lived; he abused the



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deceased in filthy language; he took an iron pipe and attempted to attack the deceased and when P.W.1 prevented, the blow fell on the head of P.W.1; that the appellant further attacked the deceased with the said iron pipe and the deceased succumbed to the said injuries four days later. The other accused, namely, the wife of the appellant and his father-in-law, who were charged for the offences under Section 302 r/w 114 IPC, were acquitted.

3. It is further the case of the prosecution that after the incident, P.W.1, the wife of the victim and the mother of the appellant gave a complaint to the respondent Police, marked as Ex.P1. The said complaint was taken on file and an FIR came to be registered for the offences under Section 307, 324, 294(b) and 109 IPC, marked as Ex.P9. The deceased was treated by P.W.9, Doctor. The accident register, Ex.P6 shows that the deceased was unconscious when he was admitted and was attacked by using a kambi (fk;gp). Three injuries were found on the head of the deceased.

- a) a laceration measuring 3x1x1 on the right parietal region.
- b) a laceration measuring 3x1x1 on the left parietal region.
- c) a laceration measuring 3x1x1 on the occipital region.



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Likewise, P.W.1 also was treated by P.W.9 and a laceration measuring 4x1x1 was found on the right parietal region. The accident register for P.W.1 was marked as Ex.P7. The deceased died on 27.03.2017. P.W.12, Doctor, conducted postmortem and issued postmortem certificate, Ex.P10. He opined that the deceased died of head injury. The Investigating Officer, P.W.15 conducted investigation and filed a final report against the three accused.

4. Before the Trial Court, the prosecution examined 15 witnesses and marked Exhibits P1 to P16 besides M.O.1. The Trial Court acquitted A2 and A3 and convicted the appellant for the offences as stated earlier.

5. Mr.N.Ananthapadmanabhan, learned Senior Counsel for the appellant submitted that the prosecution case cannot be relied upon. The very fact that A2 and A3 were implicated would show that there was a tendency of prosecution witnesses to exaggerate the manner in which the occurrence had taken place. The learned Senior Counsel fairly submitted that P.W.1, wife of the victim and the mother of the appellant, if believed,



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the appellant would not be entitled to acquittal, but his acts would only amount to culpable homicide and not murder. According to the learned Senior Counsel, the appellant is only stated to have given a single blow with the kambi (iron pipe) that was found lying in the house and there was no intention to cause the death of his father. The injuries also would suggest that the appellant did not have intention to cause the death of his father. Further the very fact that his father died four days later is also indicative of the fact that there was no intention to cause death. The prosecution has also not produced any record to show the treatment given to the deceased between the date of occurrence and the date of his death. The learned Senior Counsel for the appellant further took us through the evidence of P.W.12, the Doctor, who conducted postmortem, to show that the deceased had catheter fixed on both sides of his chest. Further, the deceased did not suffer from any depressed fracture in the skull and his brain matter was intact. In the cross-examination, questions were put suggesting that the deceased could have died because of improper treatment and the fact that he had catheter on either side of his chest. Therefore, for the above reasons, the learned Senior Counsel prayed that the appellant has not committed the



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offence of murder and at best, it would amount to a culpable homicide not amounting to murder.

6. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor would submit that the prosecution has established the offence of murder through the evidence of P.W.1, the mother of the appellant and the wife of the victim. P.W.1's evidence has not been shaken and nothing has been elicited in the cross-examination to disbelieve her version. P.W.1 was in an unenviable situation, wherein, she had to depose against her own son for an offence committed by him where her husband is a victim. Therefore, there was no reason for her to depose falsely against the appellant. The learned Additional Public Prosecutor further submitted that the accident register, Ex.P6 and the postmortem report, Ex.P10, would show that the deceased suffered three injuries on the head. Therefore, it cannot be said to be a single blow as contended by the learned Senior Counsel for the appellant. The learned Additional Public Prosecutor therefore submitted that the impugned judgment does not call for any interference and prayed for dismissal of the appeal.



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7. Heard the learned Senior Counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the oral and documentary evidence available on record.

8. The evidence of P.W.1, the mother of the appellant and the wife of the deceased is clear and unimpeached. We see no reason to disbelieve her evidence as regards the fact of the appellant attacking the deceased with M.O.1, iron pipe. There was no reason for P.W.1 to make a false accusation as against her own son. The accident register, Ex.P6, suggests that there were three injuries on the head of the deceased. The Doctor who conducted postmortem had given the following opinion in Ex.P10, postmortem report:

“The deceased would appear to have died of head injury”

P.W.5, who is the daughter of the deceased, states about seeing her father and mother lying in the house and taking them to Ramanathapuram Government Hospital. P.W.7 speaks about recovery of M.O.1, iron pipe, on the confession of the appellant. Therefore, we have no hesitation to



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conclude that the deceased died due to the overt act of the appellant in the occurrence that took place on 24.03.2017.

9. The next question would be as to what is the offence committed by the appellant from the evidence let in by the prosecution. Admittedly, the deceased was aged 64 years. He was suffering from an ailment for which he had catheter fixed on either side of his chest for draining liquid from his chest. He died four days after the occurrence. The prosecution has not let in any evidence as to the nature of treatment given from 24.03.2017 to 27.03.2017. It is the case of P.W.1, as found in Ex.P1 complaint, that the appellant picked up an iron pipe and attacked them. However, in her deposition before Court, she would state that the appellant concealed the iron pipe and came and attacked. This version in our view is an improvement from her earlier version. Therefore, it is clear that it is not a premeditated attack. The nature of injuries and the manner in which the occurrence took place would show that the appellant had no intention to cause the death of the victim. However, the act committed by him suggests that he had intention to cause bodily injury that is likely to cause death



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falling within second part of the definition of Section 299 IPC. If this intention is to cause bodily injury, it would constitute the offence of murder only if it falls within clause 'secondly' and 'thirdly' of Section 300 IPC.

(i) Clause 'secondly' of Section 300 of IPC reads as follows:

“300. Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—”

Clause 'secondly' deals with an intention of causing bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused. Illustration (b) to Section 300 IPC would show that if A knows that Z is labouring under a disease and causes a blow knowing that such blow is likely to cause death, then A is guilty of murder if Z dies. There is nothing in the evidence to suggest that the deceased was suffering from any particular disease and the appellant knew about the disease and thereafter intended to cause a bodily injury knowing that injury is likely to



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cause death. Therefore, clause 'secondly' of Section 300 IPC is not applicable to the facts of the instant case.

(ii) Clause 'thirdly' of Section 300 IPC reads as follows:

“(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—”

This clause would apply only if the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. The nature of injuries suffered by the deceased would show that they are not such bodily injuries which are sufficient in the ordinary course of nature to cause death. As rightly pointed out by the learned Senior Counsel for the appellant, there was no depressed fracture on the head of the deceased and his brain matter was also intact, as confirmed by P.W.12, Doctor. He had suffered lacerated injuries as seen from Ex.P6, accident register. Thus, the cumulative circumstances would show that clauses 'secondly' and 'thirdly' of Section 300 IPC are not applicable to the facts of the instant case.



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(iii) The difference between second part of Section 299 IPC and clauses 'secondly' and 'thirdly' of Section 300 IPC, which deal with intention to cause bodily injury which has caused death is with regard to degree of probability of death. In the second part of Section 299 IPC, 'likely' connotes that the death is probable as a result of the injury, whereas, the language employed in clauses 'secondly' and 'thirdly' in Section 300 IPC indicates that the death is 'most probable' as a result of the injury. This fine distinction has been dealt with by the Hon'ble Supreme Court in the case of **Thangaiya Vs. State of T.N.** reported in **(2005) 9 SCC 650**. The Hon'ble Supreme Court had held as follows:

“11. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the “intention to cause death” is not an essential requirement of clause (2). Only the intention of



causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

12. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words “likely to cause death” occurring in the corresponding clause (b) of Section 299, the words “sufficient in the ordinary course of nature” have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine



but real and if overlooked, may result in miscarriage of justice.

The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word “likely” in clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words “bodily injury ... sufficient in the ordinary course of nature to cause death” mean that death will be the “most probable” result of the injury, having regard to the ordinary course of nature.”

10. In the instant case, we find that the injury is of such a nature that death is 'probable' and not most probable and hence the appellant's acts will fall under the second part of Section 299 IPC, which is punishable under Section 304(I) IPC. Therefore, the appellant is found guilty for the offence under Section 304(I) IPC. In the facts and circumstances of the case, we deem it appropriate to impose a sentence of ten years on the appellant for the said offence and to pay a fine of Rs.10000/-, in default to undergo one year simple imprisonment. As regards hurt caused to P.W.1, which is an



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offence under Section 324 IPC, we see no reason to interfere with the finding of the Trial Court. Hence, the conviction and sentence imposed by the Trial Court under Section 324 IPC is confirmed.

11. With the above modification, the Criminal Appeal is partly allowed.

[G.J.,J.] [S.M.,J]
30.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Principal District and Sessions Judge,
Principal District and Sessions Court,
Ramanathapuram District.
- 2.The Inspector of Police,
Uchipuli Police Station,
Ramanathapuram.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

Lm

Judgment made in
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