



Crl. A(MD)No.103 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 06.01.2023

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

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Umapathi, S/o.Thangavel

: Appellant

Vs.

State through:-

The Inspector of Police,
Paramakudi Town Police Station,
Ramanathapuram District.
(Crime No.280/2016)

: Respondent

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the judgment dated 12.02.2020, in S.C.No. 86/2017, on the file of the Additional District and Sessions Court, Paramakudi.

For Appellant

: Mr.M.Subash Babu

For Respondent

: Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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JUDGMENT

P.N.PRAKASH, J.

This Criminal Appeal is filed against the judgment and order dated 12.02.2020 in S.C.No.86 of 2017, on the file of the Additional District and Sessions Judge, Paramakudi. By the said Judgment, the trial Court convicted and sentenced the appellant/accused to undergo life imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo simple imprisonment for one year for the offence under Section 302 I.P.C. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The prosecution case runs thus:

2.1. The appellant is the brother of Jeeva [P.W.-1], who is the wife of the deceased Rajkumar. Rajkumar married Jeeva some six years back and on account of marital discord, they got estranged. It was alleged that Rajkumar was addicted to liquor and was a nuisance in the family. He was also allegedly having an affair with one Ranya [P.W.-17]. It was also alleged that Rajkumar was lodging complaints against the appellant and his sister [Rajkumar's wife – P.W.-1] to various authorities



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stating that the appellant has encroached into Government lands and therefore, his house should be demolished. Thus, apparently, there was a running feud between the appellant and the deceased Rajkumar. The appellant was riled over the fact that Rajkumar had abandoned his sister [P.W.-1] and was having an affair with Ranya [P.W.-17].

2.2. In this background, it is alleged that on 25.06.2016, around 09.30 p.m., while the deceased was coming by his motorcycle, the appellant saw him near the railway gate and quarrel erupted. Rajkumar is said to have slapped the appellant. The appellant is said to have attacked Rajkumar with an Aruval [M.O.2] and caused his death.

2.3. This incident was witnessed by Murugan [P.W.-2], who informed the same to Jeeva [P.W.-1]. Jeeva [P.W.-1] came to the place of occurrence and found the body of her husband and based on the information provided by Murugan [P.W.-2], she gave a written complaint [Ex.P.1], based on which, Chandrasekaran [P.W.-12] Sub-Inspector of Police, registered a case in Paramakudi Town Police Station, in Crime No.280 of 2016 on 25.06.2016 at 23.00 hours and prepared the printed F.I.R. [Ex.P.1], which reached the jurisdictional Magistrate at 03.15 a.m. on 26.06.2016.



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2.4. Investigation of the case was taken over by Ramakrishnan [P.W.-15], who went to the place of occurrence and prepared an Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.17]. From the place of occurrence, the Investigating Officer seized soil with bloodstain [M.O.7], soil without bloodstain [M.O.8] and a Splendor Motorcycle bearing Registration No.TN-65-U-6544 [M.O.1]. The Investigating Officer conducted inquest over the body of the deceased and the inquest report was marked as Ex.P.19. The body was sent to the Government Hospital, Paramakudi, where Dr.Gangadevi [P.W.-13] performed autopsy on the body of the deceased and issued the Postmortem Certificate [Ex.P.13]. Samples of visceral organs were sent for chemical analysis and the chemical analysis report disclosed the presence of Ethyl Alcohol in the samples of visceral organs.

2.5. Dr.Gangadevi [P.W.-13] gave final opinion with regard to the cause of death as "the deceased could appear to have died of Hemorrhage shock due to multiple injury and Injury No.1 will be the major cause of death."



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2.6. The appellant surrendered before Naganathan, Village Administrative Officer [P.W.-5] on 26.06.2016 at 09.00 a.m. and gave an extra judicial confession. Strangely, the same was not taken down in writing. Instead, the Village Administrative Officer [P.W.-5] prepared a report [Ex.P.4] addressed to the Inspector of Police, in which, the statement of the appellant has been incorporated with a further request that he [V.A.O.] is producing the appellant before the Police for recording his statement.

2.7. Thereafter, the Investigating Officer placed the appellant under arrest at 01.00 p.m. on 26.06.2016 and recorded his Police confession [Ex.P.5]. Based on the information provided by the appellant, the Investigating Officer is said to have seized the Aruval [M.O.2] and an Auto Rickshaw, bearing Registration No.TN-63-E-5100 [M.O.6] belonging to the appellant.

2.8. After examining various witnesses and collecting the reports of the experts, the Investigating Officer completed the investigation and filed a final report in P.R.C.No.2 of 2017 in the Court of the Judicial Magistrate, Paramakudi, under Section 302 of I.P.C. against the appellant.



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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 Session, Paramakudi, in S.C.No.86 of 2017 and was made over to the Additional District and Sessions Court, Paramakudi, for trial.

4. The trial Court framed a charge under Section 302 IPC against the appellant and when questioned, the appellant pleaded not guilty.

5. To prove the case, the prosecution examined 17 witnesses and marked 22 exhibits and 8 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 from the side of the appellant nor any document marked.

6. After considering the evidence on record and on hearing either side, the trial Court, by judgment and order dated 30.11.2018, in S.C.No. 86 of 2017, has convicted and sentenced the appellant as stated in the opening paragraph.



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7. Aggrieved by the above, the present appeal has been filed.

8. Heard Mr.M.Subash Babu, learned counsel for the appellant and Mr.E.Antony Sahaya Prabahar, learned Additional Public Prosecutor for the respondent.

9. The prosecution has proved the following facts beyond a shadow of doubt:-

- (a) The appellant is the elder brother of P.W.-1;
- (b) The deceased was the husband of P.W.-1;
- (c) The deceased and P.W.-1 got estranged and were living separately; and
- (d) The death of the deceased was a homicide.

10. The short question is, was the appellant the perpetrator of the offence.

11. We have the evidence of Jeeva [P.W.-1], who has stated that she got married to the deceased; the appellant was addicted to liquor; she got estranged from the deceased some six years back and was living with her



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brother [the appellant herein]; her husband frequently quarrelled with her and her brother and had also filed criminal cases against her brother; her husband, who was an English Teacher in a school, developed intimacy with his own student Ranya [P.W.-17] and was living with her; when this was questioned by her brother, her husband gave a police complaint against her and her brother and also gave a representation to the Municipal authorities to demolish her brother's house alleging that he has built his house in a Poramboke land; while so, she received information from Murugan [P.W.-2] that the appellant had attacked her husband and caused his death; she went to the Police Station, gave a complaint to the Police.

12. Thus, from the evidence of Jeeva [P.W.-1], it is seen that the appellant was questioning the conduct of the deceased for abandoning his sister and having intimacy with Ranya [P.W.-17] and in retaliation, the deceased was causing nuisance to the family of the appellant by giving police complaint against them and representing to the Municipal authorities to demolish the house of the appellant alleging that he has built his house on a Poramboke land.



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13. Then, we have the evidence of Murugan [P.W.-2], who has stated that, he knows the appellant and the deceased; on 25.06.2016 at 09.30 p.m., while he was standing in the road that connects the junction railway gate, he saw the appellant and the deceased quarrelling and the deceased slapping the appellant; thereafter, he saw the appellant attacking the deceased with an Aruval. He has further stated that he informed this to Jeeva [P.W.-1].

14. Mr.M.Subash Babu, learned counsel for the appellant strenuously attacked the evidence of Murugan [P.W.-2] and submitted that his presence at the place of occurrence was not natural. He also stated that if P.W.-2 had seen the incident, he himself would have given the complaint to the Police and there was no necessity for Jeeva [P.W.-1] to give the complaint.

15. We have considered the aforesaid submissions.

16. Though it would have been ideal for Murugan [P.W.-2] to have given a complaint to the Police, but just because, he informed Jeeva



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[P.W.-1] and thereafter, the complaint was given by Jeeva [P.W.-1], that by itself would not make the testimony of Murugan [P.W.-2] suspect. Jeeva [P.W.-1] has candidly stated in the complaint [Ex.P.1] that she received the information about the attack on her husband by her brother from Murugan [P.W.-2]. Thus, there is no suppression in this case and we have no reason to disbelieve the evidence of Murugan [P.W.-2].

17. Murugan [P.W.-2] was examined in-chief on 15.03.2018 and was not cross-examined on the same day as mandated by the Hon'ble Supreme Court in **Vinod Kumar vs. State of Punjab** reported in **2015 (3) SCC 220**. He was re-called by the defence and was subjected to cross-examination on 19.03.2018. The defence was unable to demolish the essence of the testimony of Murugan [P.W.-2].

18. On a conspectus of the proved facts, we find that the deceased, who was married to Jeeva [P.W.-1], had abandoned her, eloped with his student Ranya [P.W.-17] and when this was questioned by the family of Jeeva [P.W.-1], he was giving complaints against her and her brother [appellant] and harassing them. The quarrel between the two reached a



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crecendo on the fateful day when the deceased slapped the appellant when the latter questioned. On the proved facts, we are unable to sustain the conviction of the appellant under Section 302 I.P.C and instead, he is convicted of the offence under Section 304 (II) I.P.C. and sentenced to five years rigorous imprisonment.

19. In the result, the Criminal Appeal is partly allowed and the conviction and sentence of the appellant under Section 302 I.P.C. is set aside and instead, the appellant is convicted under Section 304 (II) I.P.C. and sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo one year simple imprisonment.

20. If the appellant had paid the fine amount, the same shall be adjusted to the fine imposed by us for the offence under Section 304 (II) I.P.C.

21. The respondent Police is directed to secure the appellant and produce him before the trial Court for being committed to the Prison for undergoing the remaining period of sentence. The period of sentence



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already undergone by the accused/appellant is ordered to be set off under
Section 428 Cr.P.C.

NCC : Yes/No
Index : Yes/No
Internet : Yes
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[P.N.P., J.] & [G.J., J.]
06.01.2023

To

- 1.The Additional District and Sessions Judge,
Paramakudi.
- 2.The Inspector of Police,
Paramakudi Town Police Station,
Ramanathapuram District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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Judgment made in

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