



Crl.A(MD)No.298 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 10.02.2023

CORAM

THE HONOURABLE MR. JUSTICE **G.ILANGO VAN**

Crl.A(MD)No.298 of 2020

S.Samarasam

... Appellant/Accused

Vs.

State represented by
Inspector of Police,
Aranthangi Police Station,
In Crime No.374/2015

... Respondent/Complainant

Prayer: Criminal Appeal has filed under 374(2) of the Criminal Procedure Code, to set aside the conviction and sentence imposed against the accused under Section 304 part ii IPC passed in S.C.No.93 of 2016, on 20.08.2019 on the file of the Court of the Sessions Judge, Mahila Court, Pudukottai.

For Appellant : Mr.Haja Mohideen

For Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor



Crl.A(MD)No.298 of 2020

WEB COPY

JUDGMENT

This Criminal Appeal is preferred against the judgment of conviction and sentenced passed by the Sessions Judge, Mahila Court, Pudukkottai, in S.C.No.93 of 2016, dated 20.08.2019, by which, the appellant was convicted and sentenced to undergo 10 years of Rigorous Imprisonment for the offence punishable under Section 302 altered to 304 (ii) IPC and the period already undergone by the accused is ordered to be set off under Section 428 Cr.P.C.

2.The case of the prosecution:-

The deceased is the mother of the accused. The defacto complainant is his sister. Due to the property dispute, on 09.09.2015 at about 11.00 p.m., when the deceased was sitting in the house near stove in the entrance of her house, the accused person entered into the house, abused her in filthy language and assaulted her with stick and a blower causing severe injuries on her head and she died on the spot. Based upon the above said occurrence and complaint was registered by the police and after completing the formalities of the investigation, final report was filed



Crl.A(MD)No.298 of 2020

charging the accused under Sections 302, 294(b) and 506(ii) IPC before the committal Court and the same was taken cognizance in S.C.No.93 of 2016 and the following charges were framed against the accused.

3.Charge against the accused person:-

(i)Due to the property dispute, on 09.09.2015 at about 11.00 p.m., when the deceased was sitting in the house near stove in the entrance of her house, the accused person entered into the house, abused her in filthy language, thereby, he committed the offence punishable under Section 294(b) IPC.

(ii) In consequence to the above said occurrence, he made assault upon her with stick and a blower causing severe injuries on her head and she died on the spot, thereby, he committed the offence punishable under Section 302 IPC and

(iii) In consequence to the above said occurrence, when the P.W.1 and other witnesses questioned about the assault made upon his mother, he threatened them and criminally intimidated them, thereby, he committed the offence punishable under Section 506(ii) IPC.



Crl.A(MD)No.298 of 2020

WEB COPY

The accused namely, the appellant herein denied the charges and claim to be tried.

4.In pursuance of the above said plea, the prosecution has examined 13 witnesses and marked 15 documents, apart from 11 Material Objects. On the side of the accused, none was examined and no document was also marked.

5.The case of the prosecution as narrated through the evidence:-

P.W.1 is the defacto complainant, who is the sister of the accused. The parents have four children, among which, two sisters were married and the accused was also married and he residing separately in neighboring house. The mother was living separately with her grandson namely Kamaraj, who taking care of her. One year prior to the occurrence, their father died. Even during the life time of his father, the accused picked up quarrel demanding the properties. Because of the above said quarrel, the father himself divided the properties and allotted



Crl.A(MD)No.298 of 2020

WEB COPY

share to accused and another son namely Meiyathan. Meiyathan purchased a property in his name, since he was working in Singapore. In that property also the accused demanded share. Stating that it is Meiyathan's private property, the mother was refusing to give any share. But, however, the accused persisted the above said demand. The quarrel continued. On the date of occurrence namely, on 09.09.2015 at about 11.00 p.m., P.W.1 went to see her mother, the deceased, along with her husband Balachandran. When they were talking with each other, the accused came there, picked up quarrel stating that only if she dies, he can get property, he assaulted her mother with stick on her head and later caused assault with blower on her head. She fell down and the accused started threatening others also. On hearing the above said occurrence Natarajan, who is the husband of her sister came there, assaulted the accused. Later the accused ran away from that place. But, returned after short time and at that time he was found with self inflicted injuries and also started threatening all the persons. The deceased was taken to the Aranthangi Government Hospital, where she was declared to be dead. In the hospital, statement of P.W.1 was recorded, which is marked as Ex.P1.



Crl.A(MD)No.298 of 2020

WEB COPY

6.The further events were spoken by P.W.11, the Sub Inspector of Police. On 10.09.2015, when he was working as Sub Inspector of Police, Aranthangi Police Station at about 2 O' clock in the early morning, he received a complaint from P.W.1 and registered a case in Crime No.374 of 2015 for the offences punishable under Sections 294(b), 302, 506(ii) IPC. He despatched the original FIR to the concerned Court and the copies to the Higher Officials as per the procedure.

7.P.W.13 was working as Inspector of Police, during the relevant time and he took up the investigation at about 3.30 a.m. and visited the place of occurrence and in the presence of all the witnesses, he prepared a Mahazar, sketch and also conducted the inquest. The report is marked as Ex.P.14. The body was sent for postmortem. Then he recovered the blood stained sand and the weapons from the place of occurrence at about 4.30 a.m. and recorded the statement of witnesses on the same day itself.



Crl.A(MD)No.298 of 2020

8.The body, which was sent by P.W.13, was examined by the Doctor P.W.10 on 10.09.2015 and commenced the postmortem at about 10.30 a.m. During the postmortem the following injuries were found.

*“1.Lacerated wound on left forehead 2 x 2 x 1 cm
2.Lacerated wound on right forehead 2 x 2 x 2 cm
3.Lacerated wound on left parietal region 5 x 3 x 2 cm
4.Lacerated wound on left occipital bone 5 x 3 x 2 cm
eyes closed, mouth closed, tongue inside oral cavity, neck normal, no external injury. No external injuries on Chest, stomach, both upper limb and lower limb.*

On internal examination,

Head and Skull: On opening skull, meninges intact, Blood clot around 500 ml in the anterior middle and posterior cranial fossa and occipital bone left side and frontal bone fracture present.

C/s. Brain pale

Face, mouth, cheek normal, No rib fracture. Both side Pleura intact. Both lungs normal. C/s. Pale.

On opening Abdomen Peritoneum intact; Stomach empty

C/s pale. Intestine normal, empty C/s Pale.

Liver, spleen, kidneys, pancreas normal.

No long bone fracture in the body.”



Crl.A(MD)No.298 of 2020

WEB COPY

9.P.W.13 continuing his evidence to say that he despatched the dress materials, which were produced before him after the postmortem along with the jewels to the concerned Court. On 24.09.2015 at about 12.30 in the noon, he arrested the accused and the accused came forward to give confession statement and that was also recorded in the presence of witnesses and in the course of the statement, he stated that he can identify the place and the weapon that was used by him for committing the murder. In pursuance of the above said disclosure statement at about 2.15 p.m., he recovered the blood stained blower from the adjacent area of the deceased's house. The above said material objects were also sent to the Court and further he recorded the statement of witnesses and after completing the investigating process and after obtaining the postmortem certificate from the Doctor, he filed the final report charging the accused that he has committed the offence under Sections 294(b), 302, 506(ii) IPC.

10.P.W.2 is the husband of P.W.1. He corroborated the evidence of P.W.1 with regard to the assault and previous motive and the complaint



Crl.A(MD)No.298 of 2020

given by P.W.1. P.W.3 is the grandson of the deceased. He also corroborated P.W.1 with regard to the above said occurrence, criminal intimidation made by the accused, bringing Natarajan to the place of occurrence, etc., facts. P.W.4 is the neighbour and has also corroborated P.W.1 to P.W.3 over the occurrence and as well as the previous motive and the issue between the mother and the accused. P.W.5 went to the deceased's house on hearing the above said occurrence. P.W.6 was present when the Investigating Officer visited the place, recovering the blood stained sand and the stick. P.W.8 was working as Office Assistant in Avudayar Kovil Taluk Office. He is the witness to the confession and recovery of material objects from the place, which were identified and shown by the accused. P.W.12 is the Scientific Assistant attached to the Forensic Laboratory, Trichy and he examined the material objects, which were submitted through the Court for chemical examination and during the course of examination, he found that on the basis of the serological report, the samples 1 to 4 were found to contain human blood and samples 2 to 4 were identified as 'O' group. But in respect of the sample number 1, it could not be identified.



Crl.A(MD)No.298 of 2020

WEB COPY

11.At the conclusion of the prosecution evidence the accused was put on questioning as per Section 313 Cr.P.C.. He denied the facts narrated by the witnesses. On his side none was examined.

12.The deceased is the mother of the accused. Including the accused person 4 children were born to their parents, 2 daughters and two sons. The appellant herein is one of the sons and another son was working in Singapore during the relevant period. There was a partition in the family, by which, the father himself divided the share and gave the same to the above said two sons. But later, it came to know that another son namely Meiyathan sending money from Singapore. Out of the above said money, property measuring about 50 Kuzhi was purchased. Now according to the prosecution in that property also, the appellant demanded the share. Over which, frequent trouble has arisen. With regard to the above said trouble P.W.1 to P.W.3 have corroborated each other.

13.In this circumstances, the mother was living along with his

10/20



Crl.A(MD)No.298 of 2020

grandson, who was examined as P.W.3 and he would say that he was living along with his grandmother and attending the school and this appellant was having a neighboring house. So this is the factual background. With regard to the above said issue of demanding of property, no argument was advanced by the appellant. Even during the course of cross examination, nothing was suggested by him. According to him, motive was only with regard to, not giving share to the daughters and he was objecting to get the marriage performed between Meiyathan and daughter of P.W.1. So according to him, this was the enmity and background, over which, the deceased was killed by P.W.1 and her husband. But regarding the above said issue, except the cross examination, no other material has been brought on record with regard to the above said issue. Per contra, as mentioned above, prosecution has let evidence to show the issue.

14.Next point is that in the above said occurrence itself, the appellant also got severe injury. As mentioned above in the preamble portion, it is the evidence of P.W.1 that it was a self inflicted injuries by

11/20



Crl.A(MD)No.298 of 2020

the appellant. But according to the appellant, in the above said attack that was made by P.W.1 and her husband to the mother, the appellant intervening and in that above said process only he was also severely assaulted. But P.W.1 to P.W.3 were very cogent in their evidence to the effect that only this appellant demanded share of the property and caused assault on the mother first with stick and then with blower. This fact also been corroborated by the neighbour namely P.W.5. She would say that on 09.09.2015 at about 11.00 in the night on hearing the noise, she went to the house of the deceased and at that time, the deceased was lying with blood. But at that time, the accused was not present in the place of occurrence. So the occurrence itself has been established by the prosecution through the independent witnesses and if really P.W.1 and her husband caused assault to the deceased they would not have been present in the place of occurrence, when P.W.5 visiting the house. Another witness namely P.W.4 is also neighbour. He also stated that only this appellant has picked up quarrel demanding share in the property. On the date of occurrence on hearing the noise, she went to the deceased's house and found the deceased lying with blood and in that place P.W.1 and her



Crl.A(MD)No.298 of 2020

husband were present and the neighbours chased the accused. From her evidence also, the issue with regard to the demand of share in the property and assault has been established by the prosecution. Absolutely, I find no reason to disbelieve the evidence of P.W.1 to P.W.4 and P.W.5 also to some extend.

15.Regarding the injuries, which was suffered by the accused absolutely, the prosecution has not brought on record proper particulars. Not even the wound certificate of the appellant has been produced. When accused also suffered serious injuries, it is the duty of the prosecution to explain as to how the above said injuries were suffered by the accused. In this aspect now let us to go the evidence of the Investigating Officer. He would say that in Crime No.375 of 2015 case was registered in respect of the injuries suffered by the accused, on the basis of his complaint. At first he was admitted in the Aranthangi Government Hospital and for further treatment he was shifted to Government Medical College Hospital, Thanjavur and he was taking treatment as in patient from 09.09.2015 to 23.09.2015 and no information was also furnished by

13/20



Crl.A(MD)No.298 of 2020

WEB COPY

the prosecution in this matter about the counter complaint. But later, the above said complaint was closed as mistake of fact. Even though the allegation that he was severely assaulted by P.W.1 and her husband, P.W. 2, absolutely it is without any material. This is another point, which has to be taken into account.

16. With regard to the occurrence of causing assault, P.W.1 to P.W.3 were cogent in their evidence. As I mentioned earlier, absolutely, there is nothing on record to disbelieve them. But, however, the appellant would submit that one Natarajan was not examined, who was the accused in the counter case filed by the appellant and no neighbour was also examined; P.W.4 was not in the place of occurrence during the relevant time. But, however, as I mentioned earlier, due to the provocation and sudden loss of balance, it appears that the accused caused assault with stick and blower. The non examination of other neighbours is not fatal to the prosecution. So on no ground the above said assault event can be disbelieved. So this was also properly appreciated by the trial Court and recorded finding on this aspect. I find no reason to differ from the above

14/20



Crl.A(MD)No.298 of 2020

said view.

WEB COPY

17.Regarding the arrest also some doubt has arise for the reason being that P.W.13, who is the Investigating Officer has stated that on 24.09.2015 at about 12.30 a.m., he arrested the accused, when he was standing near Kalapakadu bus stand and statement was recorded in the presence of the Village Administrative Officer and the Village Assistant. In pursuance of the disclosure statement, a blower, which was used by this appellant was recovered. He himself admits that from 09.09.2015 till 23.09.2015, as I mentioned earlier, he was admitted in the hospital. On the next day of the discharge, he has been arrested. No effort was made by the Investigating Officer to arrest the appellant, when he was admitted in the hospital, since the counter case was also registered in Crime No. 375 of 2015. In the above said factual circumstances, P.W.7, who was working as Village Administrative Officer turned hostile with regard to the recovery issue. But, however, P.W.8, who was working as Office Assistant in Avudayar Kovil Taluk Office admitted the recovery of the blower. He accept that in pursuance of the above said disclosure

15/20



Crl.A(MD)No.298 of 2020

WEB COPY

statement a blower was recovered, the above said blower was identified by P.W.1. The above said blower was also sent for Expert Examination. Ex.P.11 is the report, wherein, we find that it contains blood. But the grouping test was inconclusive, perhaps due to lapse of time. But however, it is seen that from the evidence of P.W.1, the above said blower was used by this appellant for causing assault.

18. Similarly, the stick which was used by the appellant were also found in the place of occurrence itself, recovered by the Investigating Officer, it was also sent to the chemical examination and it also found that it contained blood stains. So the weapons have also been recovered, which were used by the appellant. Absolutely, I find no reason to differ from the finding of the trial Court with regard to the above said points also.

19. Now coming to the nature of injury that was suffered by the deceased. The postmortem report reveals that there is severe injuries on the head region. Four injuries were found on the head. From the medical



Crl.A(MD)No.298 of 2020

examination, it is seen that because of the above said head injuries only death occurred. So the cause of death is only due to the injuries that has been made by the appellant. The learned Additional Public Prosecutor would submit that even though the trial Court has recorded a finding that there was no intention on the part of the appellant to cause murder, the severe injury that has been made by the appellant shows his intention to cause death. He would also refer to the evidence of P.W.1 on this aspect. But no counter appeal has been filed by the state seeking enhancement or for alteration of conviction of the offence. In the light of the above, let us go to the finding of the trial Court on this aspect. It has been decided that only on coming to know about the arrival of P.W.1 and P.W.2, the accused came to that place for making quarrel. At that time, he was not having any weapon. So this shows that there was no premeditation on his part. The weapon that has been used by the appellant are only sticks and blowers. On that ground the trial Court recorded a finding that the above said assault was made knowing fully that causing assault on the head region will likely to cause death. But there was no intention to cause death or fatal injury. So it though it fit to bring the offence under Section



Crl.A(MD)No.298 of 2020

WEB COPY

304(ii). In the light of the above said finding, we look into the injuries suffered by the accused, we can infer that some sort of scuffle would have been arisen between the parties, in which, this accused was also severely assaulted and who assaulted him is not clear on record, since the counter case has been closed as mistake of fact. In view of the above said, I am also of the view that absolutely there was no intention to cause death. Out of the sudden quarrel and provocation the above said assault has been made.

20. So regarding the conviction, I find no reason to differ. But so far as the sentence is concerned, he has imposed 10 years rigorous imprisonment. Since this appellant also suffered grievous injuries and in the light of the above said facts and circumstances of the case, I am of the considered view that ends of justice will be served if the sentence is reduced to 5 years rigorous imprisonment.

21. This Criminal Appeal is partly allowed. Conviction sustained. The sentence imposed upon the appellant by the learned Sessions Judge,

18/20



Crl.A(MD)No.298 of 2020

WEB COPY

Mahila Court, Pudukkottai, is modified to the effect that the appellant shall undergo 5 years rigorous imprisonment.

10.02.2023

NCC: Yes/No

Index: Yes/No

Internet: Yes/No

TM

To

1.The Sessions Judge, Mahila Court, Pudukkottai.

2.The Inspector of Police,
Aranthangi Police Station

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN,J.,

TM

19/20



WEB COPY



Crl.A(MD)No.298 of 2020

Crl.A(MD)No.298 of 2020

10.02.2023