



Crl.A(MD)No.604 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.01.2023

CORAM

**THE HON'BLE DR JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN**

Crl.A(MD)No.604 of 2019

Alagarsamy

.. Appellant/Sole Accused

Vs.

**1.The State, rep by
The Inspector of Police,
Keelavalavu Police Station,
Melur,
Madurai District
(in Crime No.98 of 2012)**

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, calling for the records pertaining to the conviction and sentence passed in S.C.No.306 of 2016, dated 3.1.2018, on the file of the Ist Additional Sessions and District Judge, Madurai.

For Appellant :Mr.J.Gunaseelan Muthiah

**For Respondent :Mr.A.Thiruvadikumar
Additional Public Prosecutor**



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JUDGMENT

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

This Criminal Appeal is filed by the life convict, who was found guilty and charged under Section 302 IPC by the trial Court.

2.According to the prosecution, the deceased and the accused are neighbours. They have the persistent dispute regarding pathway. On the day of the event, after attending a funeral, both were returning home and due to previous enmity, quarrel erupted in between them on the way to home and ended in accused murdering the deceased by hitting the deceased with a grinding stone on the fore-head.

3.The Criminal Law was set in motion by the deceased, who was at the relevant point of time inside the house and came out of the house on hearing the alarming noise, she saw the accused sitting on her husband and causing injury with stone on the head. Two other witnesses who were neighbours also came out hearing the noise. Seeing them, the accused has



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flew away from the scene of occurrence. Hoping that the injured husband is alive, P.W.1 has arranged for ambulance, but the ambulance people on examining the deceased, informed her that he is dead. Narrating the same complaint – Ex.P1 was lodged by P.W.1 and the same was taken up for investigation. On completion of investigation, the accused was found committed for the offence under Section 302 IPC, charges framed by the trial Court and accordingly, the accused was tried.

4.To prove the charges, prosecution has examined 16 witnesses, marked 17 exhibits and 7 material objects through them. On behalf of the defense, neither witnesses were examined nor documents were marked.

5.The trial Court, considering the cumulative evidence of P.W.1, P.W. 2 and PW.3, who are the witnesses to the occurrence, who came to the scene of occurrence on hearing the alarming noise of the deceased saw the accused sitting upon the deceased and hitting him with the grinding stone, which is marked as MO.1. P.W.4, witness who has attested the complaint Ex.P1 held that offence of culpable homicide committed by the accused is proved through the eye-witnesses.



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6.The Post-mortem Certificate is marked as Ex.P2, which discloses the nature of injuries sustained by the deceased, which was fatal. The Doctor who has conducted the autopsy has opined that those injuries might have been caused by using MO1 Grinding Stone. At the time of arrest, blood-stained clothes of the accused were collected and the same was sent to Serology Test. The blood-stain found in the grinding stone, lungi and shirt of the accused confirmed to be human blood. However, the group of the blood was not conclusive as per Ex.P11.

7.The Trial Court, after considering the evidence at length, has imposed life sentence with fine of Rs.5000/-, in default, to undergo one year rigorous imprisonment for the proved offence under Section 302 IPC.

8.Aggrieved by the conviction and sentence imposed by the trial Court, the present Criminal Appeal is filed on the ground that there is considerable delay in registering the FIR and forwarding the same to the Judicial Magistrate Court concerned. While the occurrence took place on 14.6.2012 at about 9.15 p.m., the complaint was lodged with a delay of 2 hours and 15 minutes and the FIR was forwarded to the Judicial Magistrate



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only on the next day. The delay was not properly explained by the prosecution.

9.The learned counsel for the appellant submit that the prosecution has failed to prove the motive regarding pathway not proved. The previous enmity between the deceased and the accused. The evidence of P.W.1, P.W.2 and P.W.3 are unnatural and even according to them, they did not see the deceased being attacked by the accused directly. They came out from the house only on hearing the noise and saw the accused sitting on the deceased. The learned counsel would submit that the scene of occurrence has not been properly identified and there is discrepancy in evidence of the witnesses regarding the exact place of occurrence. The learned counsel further submits that the evidence let in by the prosecution also give room to infer that there was sudden quarrel between the accused and the deceased which has lead to the occurrence and who had provoked for the alleged quarrel has not been established by the prosecution. Hence the benefit must be extended to the accused.

10.The learned Additional Public Prosecutor appearing for the



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respondent/State would submit that it is a clear case of eyewitness where the accused was found in company with the deceased at the time of occurrence and the witnesses have consistently spoken that the accused was sitting upon the deceased and hitting him with grinding stone MO1. Blood stain on the cloth of the deceased, fracture on the rib of the deceased, the injuries on the right and left eye-brow and the injury in the nose all indicates and corresponds to the stone used as weapon, as a cause for the injury. The accused has not explained how his wearing apparel stained with human blood. Since he has failed to explain the presence of the blood in his cloth and the unimpeachable evidence of P.W.1, P.W.2 and P.W.3 corresponding to the injuries found in the post-mortem report Ex.P2 would clearly show that the deceased was brutally attacked by the accused without any provocation or due to previous enmity regarding pathway.

11.Heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent/State.

12.The occurrence, according to the prosecution, happened on 14.6.2012 at about 9.15 p.m.. Ex.P1 is the complaint given by the wife of



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the deceased. The said complaint was received by the respondent Police at 23.30 hours and forwarded to the learned Judicial Magistrate on the next day ie., on 15.6.2012 at 6.10. a.m. The First Information Report was sent through the Constable Karthikeyan who was examined as P.W.10. The records and the evidence indicates that as soon as the receipt of the complaint, the First Information Report has been registered and forwarded to the Judicial Magistrate concerned within a reasonable time and few hours taken to forward the FIR to the Magistrate Court does not indicate any scope of manipulation. Therefore, the ground raised by the appellant regarding the delay in registering the complaint and forwarding the FIR is unsustainable.

13.As far as the scene of occurrence is concerned, it has occurred in between the house of the accused and the deceased. The occurrence took place in the night hours and few feet difference, as spoken by the rustic witness does not make any significant difference to suspect the evidence regarding the scene of occurrence. As far as the reason for the attack, there is some point for consideration in this appeal, since the prosecution was not able to establish that the accused attacked the deceased with an intention to



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cause death or the injuries sufficient and cause death or it was a pre-meditative evidence. As per the prosecution, there was previous enmity between the accused and the deceased regarding the pathway. But on the date of occurrence, they both have attended a funeral in the village and were returning back to home. As per P.W.2, Muthu Kannan, at about 9.15 p.m., they both were seriously engaged in verbal fight. For sometime, he was able to hear the voice of the accused alone and therefore, he came out and saw the deceased lying on his back and the accused sitting on the deceased and hitting with grinding stone. This part of evidence substantially had been corroborated by P.W.1 and P.W.3. In the cross examination, the defense is able to elicit from P.W.3 that P.W.1 suffers hearing impairment and she who informed by P.W.1 about the incident. Thereafter, she came out from the house. This evidence is contrary to P.W.1 version, who is the first informant and had stated in Ex.P1-Complaint that she had on her own come out from the house hearing noise and saw the incident.

14.Be that as it may, the prosecution has proved through witnesses that the accused had caused the injury found on the deceased and the



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weapon used is MO1 Grinding Stone. Whether it has occurred based on any provocation or occurred in heat of passion during sudden quarrel is to be considered for determining whether it is culpable homicide amounting to murder or not amounting to murder.

15.This Court from the evidence finds that this has happened while both the deceased and the accused returning home after attending the funeral. They both were not carrying any weapon or had any intention to fight. Suddenly quarrel had erupted in between them. There is no evidence to know the immediate cause for the quarrel. The deceased was aged 50 years, attacked by the accused, who was 30 years old. Naturally, being young, had the power to overcome the deceased and had attacked him with the available stone found near the scene of occurrence in the heat of passion upon a sudden quarrel and without taking undue advantage or acted in a cruel or unusual manner.

16.P.W.1-Wife of the deceased, in the cross-examination admits that her husband was not well and used to take medicine for his illness. This has been her response when she was posed with the question in the cross



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examination that whether her husband had drunk at the time of occurrence.

Also, she admits that her husband and the accused attended the funeral and were returning back to home. She has denied the knowledge whether there was any quarrel between them in the grave-yard. On cumulative assessment of all these facts indicates that the said occurrence has probably occurred without any premeditation in a sudden fight in the heat of passion on the quarrel in which the accused has not taken any undue advantage except the age difference.

17.Taking note of all these things, this Court holds that the act of the accused falls within the exemption(IV) under section 300 IPC being culpable homicide not amounting to murder and hence the punishment under Section 302 is not sustainable. The accused liable to be punished only for offence under Section 304(1) of IPC.

18.Regarding the question of sentence, the accused who is the appellant herein, at the time of occurrence was about 30 years and has committed the above said offence in the heat of passion and therefore, it is appropriate to modify the sentence and accordingly, the sentence is



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modified to the effect that the appellant/accused is directed to undergo five years rigorous imprisonment and to pay a fine of Rs.5000/-, in default, further to undergo rigorous imprisonment for one year.

19. With these modifications, the Criminal Appeal is partly allowed. The respondent Police is directed to secure the appellant/accused and confine him to prison to undergo the remaining period of sentence. The suspension of sentence already granted by this Court on 27.09.2021 is hereby cancelled and the bail bond, if any, already executed stands cancelled.

(G.J.,J.) (S.M.,J.)
02.01.2023

Index: Yes/No
Internet: Yes/No
NCC : Yes/No
vsn

To

1. The I Addl. Sessions and District Judge,
Madurai.
2. The Sub-Inspector of Police,
Keelavalavu,



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Melur,
Madurai District.

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

Copy to:

The Superintendent,
Central Prison,
Madurai.



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

JUDGMENT MADE IN
Crl.A(MD)No.604 of 2019

02.01.2023



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**G.JAYACHANDRAN, J.
AND
SUNDER MOHAN, J.**

This Court, after hearing the counsels, passed a final order in Crl.A(MD)No.604 of 2019 on 02.01.2023, modifying the sentence imposed on the sole appellant/accused by the trial Court.

2.Due to inadvertence, the benefit of Section 428 Cr.P.C., to set off the period of imprisonment during the trial is not being mentioned, though the trial Court has extended the benefit to the accused. Therefore, the learned counsel appearing for the appellant sought to amend the order dated 02.01.2023 by including the benefit of Section 428 Cr.P.C., to set off the period of imprisonment already undergone.

3.On verifying the records, this Court finds that the trial Court has extended the benefit of Section 428 Cr.P.C., and set off the period of imprisonment already undergone by the accused. Hence, the error of omission is hereby rectified by including the following line at the end of



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Paragraph No.18 of the judgment, dated 02.01.2023:

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“The period of imprisonment already undergone by the appellant/accused shall be set off under Section 482 Cr.P.C.”

4.Registry is directed to carry out the aforesaid corrections and issue fresh judgment copy to all the parties.

(G.J.,J.) (S.M.,J.)
27.01.2023

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**G.JAYACHANDRAN, J.
AND
SUNDER MOHAN, J.**

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