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Crl.A.No.121 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.121 of 2021

J.Natarajan

... Appellant/sole accused

vs.

State rep. By
The Inspector of Police,
Kadambathur Police Station,
Thiruvallur District.
(Crime No.578 of 2017)

...Respondent/complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in S.C. No.113 of 2018 dated 27.02.2019, on the file of the learned Principal Sessions Judge, Tiruvallur and set aside the conviction and sentence imposed in judgment dated 27.02.2019 and acquit the appellant.

For Appellant : Mr.V.Perarasu

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

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(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 27.02.2019 in S.C.No.113 of 2018 on the file of the learned Principal Sessions Judge, Tiruvallur.

2. For the sake of convenience, the accused is hereinafter referred to as 'appellant'.

3(i) It is the case of the prosecution that the appellant and the deceased were husband and wife; that the appellant was a drunkard and was in the habit of harassing the deceased; that the deceased was selling food in a hand-cart near her house; that on 23.11.2017 when the deceased was preparing food, the appellant demanded money from the deceased, and when she refused to give money, the appellant took a vegetable knife and stabbed the deceased on her back and above the hip on both the left and right sides repeatedly; and that the deceased succumbed to the injuries



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sustained by her, on the next day in the hospital.

(ii) It is the further case of the prosecution that PW1, son of the deceased, on his mother's cry for help, came out of the house and saw the deceased running away, and he took his mother initially to the Government Hospital, Thiruvallur, in an autorickshaw and thereafter, to a private hospital at Thandalam, where she died. After the death of his mother, PW1 lodged a complaint on 24.11.2017 [Ex.P1] at 9.00 a.m., and PW19, the Sub Inspector of Police, registered the FIR [Ex.P12] in Cr.No.578 of 2017 against the accused for the offence under Section 302 of the IPC.

(iii) PW21, the investigating officer took up the investigation, went to the scene of the occurrence, and prepared the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P14). He seized the bloodstained earth [M.O.2] and the earth that was not bloodstained [M.O.3] under the seizure Mahazar [Ex.P3]. He examined the neighbours of the deceased and other witnesses. Thereafter, he went to the hospital, and conducted an inquest in the presence of Panchayatars, and prepared an inquest report Ex.P15. He sent the body of the deceased to Thiruvallur Government Hospital for a postmortem,



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which was conducted by PW13.

(iv) PW13 issued a postmortem certificate [Ex.P7] and had opined that the deceased died due to a vital organ injury [both kidneys lacerated], hemorrhage and shock due to a stab injury to both loins.

(v) PW21 thereafter arrested the appellant on 25.11.2017 at about 10.00 a.m., and on his confession, seized the bloodstained shirt [M.O.4] and bloodstained lungi [M.O.5] worn by him at the time of occurrence under Seizure Mahazar [Ex.P17]. The admissible portion of the confession was marked as Ex.P16. Thereafter he filed a final report on 06.03.2018 against the appellant for the offence under Section 302 of the IPC before the learned Judicial Magistrate No.II, Tiruvallur.

4. On the 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 in S.C.No.113 of 2018 and was made over to the learned Principal Sessions Judge, Tiruvallur, for trial. The trial Court framed



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charges u/s.302 of the IPC as against the appellant, and when questioned, the appellant pleaded 'not guilty.

5. To prove the case, the prosecution examined 21 witnesses as P.W.1 to P.W.21, marked 17 exhibits as Exs.P1 to P17, and marked 5 Material Objects as M.O.1 to M.O.5. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant/accused examined himself as DW1, however, did not mark any documents.

6. On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the accused guilty of the offence under Section 302 of the IPC, and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for six months. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.



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7. Heard, Mr.V.Perarasu, learned counsel appearing for the appellant/accused, and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

8. (i) The learned counsel for the appellant submitted that the evidence of the witnesses accusing the appellant is an afterthought and that the earliest information given to the doctor and which was recorded in the Accident Register [Ex.P4] states that the deceased fell due to giddiness and sustained injury in the lower abdomen. The learned counsel therefore submitted that the allegation that the appellant stabbed the deceased with a knife is false.

(ii) The learned counsel further submitted that in any case, the act of the appellant would show that he had no intention to cause the death of the deceased, and the injury caused by him was not sufficient in the ordinary course of nature to cause the death and thus, the appellant would only be liable for culpable homicide, not amounting to murder. Therefore, he prayed for a lesser punishment.



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9. The learned Additional Public Prosecutor *per contra* submitted that PW1, the son of the deceased, PW4 and PW15, the neighbours, have all deposed about the incident. PW1 and PW15 are eyewitnesses to the occurrence. PW4, is also a neighbour who came to the occurrence after hearing the noise and the deceased told her about the attack made by the appellant. The evidence of the witnesses has not been discredited by the defence and the trial Court has rightly convicted the appellant and hence, prayed for dismissal of the appeal.

10. We have carefully considered the rival submissions and perused the materials on record.

11. PW1, is the son of the deceased and an eyewitness to the occurrence; PW2 is the neighbour, who came to know that the deceased fell down and sustained injuries; PW3 is an auto driver who took the deceased to the Government Hospital and thereafter to the private hospital; PW4 is a neighbour to whom the deceased had made a statement regarding the



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occurrence; PW5 is the daughter of the deceased who is a hearsay witness; PW6 is the elder sister of the deceased who is also a hearsay witness; PW7 and PW8 are brothers of the deceased who had signed as witnesses in the inquest report; PW9 and PW10 are the relatives and hearsay witnesses; PW11 and PW12 are the doctors at the private hospital, who treated the deceased; PW13 is the postmortem doctor, who issued the postmortem certificate[Ex.P7]; PW14 is the Scientific Officer in the Forensic Science department, who had given the report-Ex.P8; PW15 as stated earlier, is an eyewitness to the occurrence; PW16 is the corpse constable; PW17 is the Scientific Officer who issued Ex.P9-Report; PW18 is the witness to the confession of the appellant and seizure; PW19 is the Sub Inspector of Police, who registered the FIR; PW20 is the Scientific Expert who issued Ex.P13-Report; and PW21 is the investigating officer, who filed the final report.

12. The postmortem doctor PW13 found two stab injuries, viz., one over left loin measuring 2x2x7cm, 4cm below the 10th rib and the other on the right loin measuring 2x2x7 cm. He had opined that the deceased died



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due to injuries to the vital organs and stab injuries to both loins. This opinion of the doctor has not been disputed by the defence. The prosecution, from the evidence of PW13, the postmortem certificate [Ex.P7] and through other evidence on record, has thus established that the deceased sustained injuries due to homicidal violence.

13. PW1 is the son of the deceased. He is an eyewitness to the occurrence and had stated about the quarrel between his appellant/father and mother on that fateful day. He had also witnessed the appellant stabbing his mother in the hip region. Further, he took the deceased to the hospital in an auto-rickshaw belonging to PW3. Nothing has been elicited by the defence to discredit his evidence.

14. PW15 is a neighbour of the deceased and the appellant and witnessed the quarrel between the appellant and the deceased. Though in the cross examination she would state that she had not witnessed the



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stabbing by the appellant, she saw the accused running from the scene of the occurrence.

15. Be that as it may, PW4 is a neighbour, who saw the deceased immediately after the occurrence. The deceased had informed her that since she did not give money to the appellant for consuming liquor, he had stabbed her. The defence has not challenged her evidence except for making a few suggestions, which have been denied by the witness. Therefore, we are of the considered view that from the medical evidence and the evidence of PW1, PW4 and PW15, it is established that the appellant had inflicted the injuries on the deceased. PW2 would state that the deceased sustained injuries due to a fall. However, this evidence is contrary to the medical evidence that the deceased sustained cut injuries. Hence, we are not inclined to believe the evidence of PW2.

16. However, the next question is whether the appellant had the intention to cause the death of the deceased. From the nature and seat of injuries and the weapon used, one can infer the intention. It is the evidence



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of PW1 that the appellant stabbed the deceased on her back. PW4, also would state that the back of the deceased was bleeding. PW1 and PW3 would state that they first took the deceased to the Government Hospital, Thiruvallur. However, the prosecution has not produced any document to show the entries made in the Accident Register at Thiruvallur Government Hospital. In the entries made in the Accident Register [Ex.P4] of the private hospital, where the deceased was subsequently admitted, there is nothing to indicate that it was a medico-legal case. The entries made in the Accident Register [Ex.P4] reveal that the deceased sustained an injury to the lower abdomen, due to a fall. PW1, in his evidence, would state that his mother requested him not to complain about his father/appellant.

17. There is no mention of a cut injury in the Accident Register [Ex.P4]. However, the doctor, PW11 would state that there was a sutured wound when she first examined the deceased and the size was 1 cm. However, in the postmortem report [Ex.P7] as stated earlier, two stab injuries have been noted. Further in the Death Summary [Ex.P6] issued by the private hospital, it is stated that the deceased was admitted to the



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hospital after she was taken to the local hospital and a laceration over bilateral loin was sutured. The relevant portion reads as follows:

“Patient was taken to the local hospital and
laceration over bilateral loin sutured”

18. As stated earlier, the prosecution has not produced the Accident Register of the Government Hospital, Thiruvallur, wherein according to PW1 and PW3, the deceased was initially admitted. The deceased died one day later. Considering the seat of the injury, the entries made in the Accident Register [Ex.P4] and all other circumstances of the case, we are of the view that the appellant did not cause the injury which is sufficient in the ordinary course of nature to cause death. The appellant intended to cause an injury which is likely to cause death. The difference between the language employed in these two provisions has been reiterated in several pronouncements of the Hon'ble Supreme Court and this Court need not elaborate further on this.

19. In these circumstances, we are of the view that the intention was



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to cause an injury that is likely to cause death and therefore, the act of the appellant is punishable under Section 304 (I) of the IPC.

20. The learned counsel for the appellant and the learned Additional Public Prosecutor on instructions submitted that the appellant is in custody from 25.11.2017. The learned Principal Sessions Judge, Tiruvallur, has also recorded the said fact. The appellant is in custody for a period of 6 years and 2 ½ months.

21. Therefore, we are of the view that the interest of justice would be served if the appellant is sentenced to a period already undergone and to pay a fine of Rs.1000/- in default to undergo one month of simple imprisonment for the offence under Section 304 (I) of the IPC. If the appellant has already paid the said amount, he is directed to be set at liberty forthwith.

22. Accordingly, the Criminal Appeal is partly allowed.

[M.S.R.,J.] [S.M.,J.]



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Index : yes/no

Neutral citation : yes/no

Speaking/Non-speaking order



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M.S.RAMESH,J.

and

SUNDER MOHAN,J.

ars

To

1.The Principal Sessions Judge,
Tiruvallur.

2.The Inspector of Police,
Kadambathur Police Station,
Thiruvallur District.

3. The Superintendent of Prisons,
Central Prison, Puzhal, Chennai.

3.The Public Prosecutor,
High Court, Madras.

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