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Crl.A.No.116 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.02.2024

PRONOUNCED ON : 09.02.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.116 of 2019

Siva ... Appellant/Sole Accused

v.

State by Inspector of Police
Katpadi Police Station,
Vellore District.
(Crime No.231/2014)

... 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.82 of 2015 dated 28.06.2017, on the file of the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Vellore and set aside the conviction and sentence imposed in judgment dated 28.06.2017 and acquit the appellant.

For Appellant : Mr.V.C.Janardhanam
for Mr.C.Prabakaran



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Crl.A.No.116 of 2017

For Respondent : Mr.Babu Muthu Meeran
Additional Public Prosecutor

JUDGMENT

(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 28.06.2017 in S.C.No.82 of 2015 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore.

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 is the son-in-law of the deceased; that the appellant, his wife, and the deceased were living jointly along with the children of the appellant and deceased; that the appellant was aggrieved by the fact that the deceased was spreading false rumours about her own daughter, i.e., his wife; that on 18.07.2014 at about 10.00 p.m., when the deceased and her daughter PW1 were fighting with each other, the appellant stabbed the deceased with a knife and further cautioned the deceased that if she created further problems, he would kill



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(ii) It is the case of the prosecution that PW1 gave a complaint (Ex.P13) to the Sub Inspector of Police (PW10), who registered an FIR (Ex.P14) for the offences under Sections 294(b), 324, and 506(ii) of the IPC. The deceased was taken to the hospital and PW11 treated her and made entries in the accident register, which was marked as Ex.P18. PW11 had noted as follows:

“laceration wound in epigastric region appearing a evisceration wound
5x1x3cm”

Thereafter, on 19.07.2014, the deceased died at 09.00 a.m., and the FIR was altered to Section 302 IPC by alteration report [Ex.P17].

(iii) PW12 took up the investigation, conducted an inquest on 20.07.2014 between 9.00 and 11.00 a.m., and prepared the inquest report [Ex.P19]. PW12 sent the body of the deceased for a postmortem. PW3-doctor conducted a postmortem and issued a postmortem certificate (Ex.P3). PW12 thereafter examined the postmortem doctor.

(iv) PW13, the Inspector of Police, who took over the investigation,



had formed a special team to apprehend the accused. PW14 continued the investigation and arrested the appellant on 02.12.2014 at about 3.30 p.m., and on his confession, the admissible portion of which was marked as Ex.P6, he seized the knife M.O.1 under Seizure Mahazar [Ex.P7]. PW15 conducted further investigation, and, after examining the other witnesses filed a final report on 25.02.2015 against the appellant for the offence under Section 302 IPC before the learned Judicial Magistrate, Katpadi.

(v) 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.82 of 2015 and was made over to the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore, for trial. The trial Court framed charges u/s.302 of the IPC as against the appellant, and when questioned, the appellant pleaded 'not guilty.

(vi) To prove the case, the prosecution examined 15 witnesses as P.W.1 to P.W.15 and marked 19 exhibits as Exs.P1 to P19, and marked one Material Object, viz., M.O.1. 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 neither examined any witnesses, nor marked any documents.

(vii) 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 offences under Section 302 of the IPC, and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for two months. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

4. Heard, Mr.V.C.Janardhanan, learned counsel appearing for the appellant/accused, and Mr.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

5. (i) The learned counsel for the appellant submitted that PW1 and PW2, who were examined as eyewitnesses turned hostile; that there is absolutely no evidence to connect the appellant with the offence; that the trial Court had erroneously treated the entries in the accident register as



dying declaration and convicted the appellant on the said basis of the dying declaration.

(ii) The learned counsel further submitted that in any case, the injuries sustained by the deceased would show that the appellant had no intention to cause the death of the deceased and that the appellant would only be liable for the offence of culpable homicide not amounting to murder. Therefore, he prayed for a lesser sentence.

6. The learned Additional Public Prosecutor *per contra* submitted that though the eyewitnesses had turned hostile, the entries made in the Accident Register [Ex.P18] rightly was treated as dying declaration by the trial Court, and it satisfied the conditions under Section 32 of the Indian Evidence Act, and therefore, the judgment of the trial Court need not be interfered with. Hence, he prayed for dismissal of the appeal.

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



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8. The entries made in the Accident Register [Ex.P18] which were extracted earlier show that the deceased sustained a stab injury. PW3 the postmortem doctor found the following injuries:

“Surgical suture seen center of the abdomen.

On removal of sutures: Peritoneal cavity contains 200ml of sero-sanguinous fluid.

Evidence of peritonitis noted. Sutured incised wound right lobe of liver. Sutured (tear) incised wound anterior wall of stomach to a length of 4 cm x entire wall thickness.”

and ultimately, opined that,

“the deceased would appear to have died of peritonitis a complication of injury to abdominal visceral organs.”

The defence have not elicited anything in the cross examination of PW3 to suggest that his opinion is erroneous. Thus, it is seen that the prosecution has established that the deceased sustained an injury due to the homicidal violence.

9. PW1, the wife of the deceased, who had lodged the complaint, had disowned her complaint. However, she would admit her signature alone in the complaint. She turned hostile. PW2, the son of PW1 and grandson of the deceased also turned hostile. Thus, there is no ocular evidence to prove the occurrence. The other witnesses are either Mahazar witnesses, doctors,



or the investigating officers. The appellant was arrested, and on his confession, a knife [M.O.1] said to have been used for the occurrence was seized by the investigating officer, as stated earlier. Seizure Mahazar-Ex.P7 would show that the knife was a butcher's knife (மாடு அறுக்கும் கத்தி) with a total length of 26½ cm, measuring 15½ cm of iron knife and 11 cms of iron handle.

10. It is also the prosecution case that the appellant was a butcher. The only piece of evidence that is placed by the prosecution is the entries made in the Accident Register [Ex.P18] by PW11, which were extracted earlier. When PW11 examined the deceased, she was conscious and oriented. She had informed PW11 that she sustained a stab injury which was caused by *'her son-in-law with a knife in her residence'*. This statement of the deceased to PW11 has to be treated as dying declaration as it satisfies all the conditions under Section 32 of the Indian Evidence Act. It is well settled that a dying declaration, if found to be truthful and voluntary, can be the sole basis for conviction. This position of law is well settled and is reiterated by the Hon'ble Supreme Court in *Harendra Rai Vs. State of Bihar and Others*, reported in **2023 SCC OnLine SC 1023**. The relevant



observations are extracted hereunder.

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"92. Now further issue crops up about the treatment of the FIR/Bayan Tahriri as dying declaration and in this respect various earlier pronouncements of this Court have clarified the position of law that the statement by an injured person recorded as FIR can be treated as a dying declaration and such a statement is admissible under Section 32 of the Indian Evidence Act. It was also held that the dying declaration must not cover the whole incident or narrate the case history. Corroboration is not necessary for this situation; a dying declaration can be the sole basis for conviction.

Therefore, there cannot be any doubt that the entries in the accident register which is based on the information given by the deceased himself can be treated as a dying declaration. The medical records viz., portmortem certificate also confirms that there was an injury in the abdomen and the deceased died of peritonitis as stated earlier. Except for a suggestion made by the defence that the arrest and recovery is false, nothing has been elicited to disbelieve the arrest and recovery of the knife. The arrest and recovery of



a butcher's knife from the accused has been established by the prosecution.

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11. Therefore, we are of the view that the appellant was responsible for inflicting a stab injury on the deceased, which ultimately resulted in her death. The question is whether the act of the accused would constitute an offence of murder within the meaning of Section 300 of the IPC. There is no evidence either on the side of the prosecution or on the side of the defence to understand as to the circumstances under which the occurrence took place, though originally it was the prosecution case that the appellant caused injury since the deceased spread false rumours about her own daughter (appellant's wife). From the entries in the accident register and the nature of the injury, we cannot safely conclude that the appellant intended to cause an injury of such a nature, which in all probability would cause the death of the deceased, or commit the said act with the knowledge that it was so imminently dangerous and that it would in all probability cause the death of the deceased.

12. The injury as found in the Accident Register [Ex.P18] shows that the deceased sustained a laceration wound measuring 5x1x3cm in the



epigastric region. The nature of the injury is an indicator of the intention or knowledge of the accused. The victim died of peritonitis, a complication of injury to abdominal visceral organs, as per PW3, the postmortem doctor. Even as per the prosecution case, the accused did not intend to cause death and threatened the deceased with dire consequences if she continued to insult his wife. Therefore, we can only infer the appellant's knowledge that his act is likely to cause death, amounting to an offence of culpable homicide. Hence, we are of the view that the appellant is guilty and liable to be punished for the offence under Section 304 (II) of the IPC.

13. The learned Additional Public Prosecutor, on instructions, submits that from the date of conviction, i.e., on 28.06.2017 till the date on which this Court suspended the sentence, i.e., on 18.03.2021, the appellant was in prison.

14. Therefore, considering the fact that the ocular witnesses have turned hostile and the prosecution has failed to prove the motive for the offence, the nature of injury caused by the appellant, and the nature of evidence relied upon by the prosecution, we are of the view that the interest



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of justice would be served if the appellant was sentenced to imprisonment for a period already undergone by him and to pay a fine of Rs.5,000/-, and in default to undergo two months of simple imprisonment.

15. Accordingly, the Criminal Appeal is partly allowed. The judgment of conviction and sentence imposed upon the appellant on 28.06.2017 by the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Vellore, for the offence under Section 302 of the IPC is modified to that one of under Section 304 (II) of the IPC, and the appellant/accused is sentenced to imprisonment for a period already undergone by him and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for two months.

(M.S.R.,J.) (S.M.,J.)
09.02.2024

Index : yes/no
Neutral citation : yes/no
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To

1. The Sessions Judge,
Mahalir Neethi Mandram (Fast Track Mahila Court),
Vellore.

2. The Inspector of Police,
Katpadi Police Station,
Vellore District.

3. The Superintendent,
Central Prison, Vellore.

4. The Public Prosecutor,
High Court, Madras



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M.S.RAMESH,J.
AND
SUNDER MOHAN,J.
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Pre-delivery Judgment in
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