



Crl.A.No. 826 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

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Raja

... Appellant

Vs.

The State Represented by
The Inspector of Police,
Sulur Police Station,
Coimbatore District.
(Crime No.625 of 2015)

....Respondent

PRAYER: Criminal Appeal filed under Section 374(2) Criminal Procedure Code, 1973 to set aside the judgment and orders passed in S.C.No.279 of 2015 dated 04.11.2016 by the I Additional District and Sessions Court, Coimbatore.

For Appellant : Mr. G. Pugazenth

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor

JUDGMENT



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This criminal appeal is filed against the judgment and orders passed in S.C.No.279 of 2015 dated 04.11.2016 by the learned I Additional District and Sessions Judge, Coimbatore.

2. The appellant is the accused in S.C.No.279/2015 and is convicted and sentenced by the learned I Additional District and Sessions Judge, Coimbatore, as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
304 (ii) IPC	Rigorous Imprisonment for five years and a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for three months.
The period of sentence already undergone has been directed to be set off under Section 428 Cr.P.C.	

3. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

3.1. The victim Karupayee was married to the appellant Raja for



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more than 10 years. She was residing with her husband and her two children in Kuvalai thottam, Peedampalli village, near Sulur, Coimbatore District. Krishnammal (P.W.5) is the mother of the deceased victim and, Iyer (P.W.2) and Periya Karuppan (P.W.6) are her brothers. Susila (P.W.1) is the wife of P.W.2.

3.2. The evidence of P.W.1 was that the appellant Raja used to suspect the fidelity of his wife (the deceased), who was working in a private concern "Sri Karthik Poly Bags". On 09.09.2015 at about 10.30 p.m the appellant had returned back home after attending a condolence. Since he did not find his wife at home, he went to his brother-in-law Iyer's (P.W.2) house which is near his house and enquired Susila (P.W.1), wife of Iyer (P.W.2). P.W.1 in turn informed the appellant that the deceased would be only at home and also accompanied the appellant to his house. The victim by then was found entering the house from the backyard of her house and on seeing this the appellant hurled abuses at her and behaved violently. He attacked her by pulling her hair and hitting her against the pillar causing serious injuries to her head and face. She was also punched and kicked by



the appellant on her abdomen. P.W.1 could not intervene and subsequently, she, with the help of her neighbours, took the victim to her house. The victim was lying unconscious. P.W.1 informed her husband Iyer (P.W.2) who was out of station for attending his official work. P.W.2 told P.W.1 that he would be coming back soon. The appellant called up his mother-in-law Krishnammal (P.W.5) and told her that his wife had not changed her behaviour and therefore he attacked her and if they were interested in her, they can take her back home. Since P.W.1 was all alone at her home with her 1½ year old child, she could not take the victim immediately to the hospital and her husband Iyer (P.W.2) had also requested her to wait till he reaches home.

3.3. On 10.09.2015, at about 3 a.m, P.W.2 came back home. By that time, P.W.5 and P.W.6 left their residence and reached Peedampalli Village by about 6 a.m. in the morning. They straight away went to the house of the appellant and searched for the victim. The appellant informed them that the victim was in the house of P.W.2. On seeing the serious condition of the victim, P.W.5 and P.W.6 took her in the same car to Coimbatore Medical



College & Hospital, Coimbatore, for treatment. The appellant who had visited P.W.1's house before she was shifted to the hospital, once again assaulted her exclaiming that she deserves the treatment as she was an immodest woman cheating her husband. The victim was admitted in the Coimbatore Medical College & Hospital, in Intensive Care Unit and did not respond to the treatment. Subsequently, she succumbed to injuries at about 7.45 p.m. on the same day.

3.4. Thiru. Ponraj (P.W.13), the then Sub Inspector of Police, Sulurpet, police station, on receipt of information from Coimbatore Medical College & Hospital went to the hospital and found the victim in an unconscious state and since the relatives of the victim were very busy he came back to the police station without getting any formal complaint from them. Subsequently, he received another intimation from the hospital that the victim was dead, he once again proceeded to the hospital and received the complaint (Ex.P1) given by Suseela (P.W.1) and came down to the Police Station and registered an FIR (Ex.P8) in Crime No.625/2015 against the appellant for an offence punishable under Section 302 IPC. He then



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placed the records before Rameshkannan (P.W.14), the then Inspector of Police, Sulur Police Station.

3.5. On 10.09.2015, P.W.14 took up investigation in Crime No.625/2015, went to the scene of occurrence on 11.09.2015, prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P9) in the presence of the witnesses Kanagaraj (P.W.8) and Rajendiran (not examined). He examined the witnesses and recorded their statements individually under Section 161(3) Cr.P.C. He then proceeded to mortuary of the Coimbatore Medical College & Hospital where the dead body of the deceased was kept and conducted inquest (Ex.P10) in the presence of panchayatdhars. He then handed over the body of the deceased for postmortem through Thiru.Jeyarraj (P.W.12), Head constable of police attached to Sulur Police Station.

3.6. Dr. Peranandham (P.W.9) conducted an autopsy on the body of the deceased on 11.09.2015 and found the following injuries.

1) Dark reddish abrasion 3x1 cm noted over left parotid region, 3 cm in front of left ear, 3x2 cm noted over left zygomatic region, 2x0.5 cm noted over left side nose, 0.5x0.5 cm noted over left



cheek just below eye, 0.5x0.5 cm, 0.5x0.5 cm noted over left cheek, 4x1 cm noted over right cheek, 4x3 cm noted over back of left elbow, 3x2 cm noted over outer aspect of left elbow and 4x3 cm noted over back of right forearm in its upper 3rd.

2) Laceration 1x1 cm x soft tissue deep noted over middle of upper lip, and 1x0.5 cm x soft tissue deep noted over inner aspect of right lower lip.

On dissection of Thorax and Abdomen: Left side pleural cavity contains about 200 ml of blood stained fluid. Bluish contusion 8x5 cm x muscle deep noted over outer aspect of lower lobe of left lung and 10x4 cm seen over anterior surface of spleen. Left side ribs 2nd to 6th found fractured in its posterior aspect with surrounding tissue contusion bluish in colour.

On dissection of Scalp, Skull and Dura. Sub scalp contusion bluish in colour 12x8 cm noted over left fronto temporo occipital region, 6x5 cm noted over right temporal region, 3x2 cm noted over mid frontal region and 6x3 cm noted over right occipital region. Left temporalis muscle found contused bluish in colour. Diffuse sub dural hemorrhage seen over left cerebral hemispheres. Diffuse sub arachnoid hemorrhage seen over both fronto temporo parietal lobe.



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On dissection of Neck: Bluish contusion 3x2 cm noted over right side neck muscle at the level of hyoid bone. Hyoid bone: Intact

In the opinion of the doctor "the deceased would appear to have died of multiple injuries and its complications". The postmortem certificate was marked as Ex.P4.

3.7. Thiru. Karthik Shanmuganathan (P.W.11) was the employer of the victim. He was the owner of "Sri Karthik Poly Bags". His evidence was that there was a panchayat on the alleged illicit relationship between the victim and one Deva which was conducted a few days before her death. According to P.W.1, the panchayat was attended by Eswaran, Deva, the victim, the appellant, P.W.1 and P.W.2, in which P.W.2 had assured that he would take the responsibility of victim's future good conduct. Tmt.Rajamani (P.W.3) and Ramasamy (P.W.4), neighbours of the appellant did not support the case of the prosecution and therefore, they were treated hostile.

3.8. P.W.14, after completing investigation, laid a final report before the Judicial Magistrate No.VII, Coimbatore in P.R.C. No.29/2015 against the appellant for an offence punishable under Section 302 IPC.



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3.9. The learned Judicial Magistrate, after furnishing copies of records to the accused under Section 207 Cr.P.C, committed the case to the Court of Session, Coimbatore. The Principal District and Sessions Judge, Coimbatore, took the case on file in S.C.No.279/2015 and made over the same to the I Additional District and Sessions Judge, Coimbatore.

3.10. The learned I Additional District and Sessions Judge, framed charges under Section 302 IPC against the appellant and the appellant pleaded not guilty.

3.11. In order to bring home the guilt of the accused the prosecution examined 14 witnesses, marked 10 documents and 2 Material Objects.

3.12. The accused, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence against him, he denied of having committed any offence. He examined his daughter Deepa as D.W.1 on his side.

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WEB COPY 3.13. The learned I Additional District and Sessions Judge, Coimbatore, after analysing the oral and documentary evidence on record, found the appellant guilty only under Section 304 part (ii) IPC and not under Section 302 IPC and convicted and sentenced him as stated in paragraph No.2.

3.14. Aggrieved over the judgment and orders passed by the trial Court, the appellant/accused has preferred the present appeal.

4. Heard Mr. G. Pugazenthi, learned counsel for the appellant and Mr.S.Rajakumar. learned Additional Public Prosecutor appearing for the respondent State.

5. Mr. G. Pugazenthi, learned counsel for the appellant took several pleas in order to discredit the prosecution version and case. According to



him, P.W.1 was an interested witness especially in the light of the deposition of D.W.1, Deepa, daughter of the victim who is just 10 years old. She had blamed P.W.2 for the killing of her mother. His further contention was that the child witness had entirely held P.W.2 accountable for the fatal injuries on the person of the victim and that his violence was due to the fact that the victim by her bad behaviour had brought disrepute to the family. According to D.W.1, her father who returned home on the night of 09.09.2015 did not find the victim at home and thereafter took the victim and her along with her brother to P.W.1's house after informing P.W.6 about the character of their mother. While she was asleep in P.W.1's house she woke up hearing her mother weeping. She found her maternal uncle (P.W.2) physically assaulting her mother by banging her head on the wall. He (P.W.2) reportedly exclaimed that the victim was a blot to their family prestige and she deserves to be punished.

6. It was argued by the learned counsel for the appellant that the interest shown by P.W.1 in being the defacto complainant clearly proves the fact that she was bent upon shielding the actual culprit, P.W.2., her



husband. It was also pointed out that assuming that the fatal attack on the victim was carried out at about 11 p.m by the appellant there was no valid reason for leaving the victim unattended till 6 a.m in the next day morning. It can be seen that the victim was not even taken to a nearby hospital for first aid which ought to have been the immediate reaction of anyone related/unrelated to the victim. His further contention was that though P.W.2 had stated that he was in Salem at the time of incident he did not adduce any documentary evidence to substantiate his claim. It was also pointed out that P.W.3 and P.W.4 turning hostile and with P.W.1 having vested interest in protecting her husband, reliance on the version of the child of the victim ought to have been placed by the trial court. The deposition of Ponraj (P.W.13), Sub Inspector of Police who visited the hospital assumes significance as he found no one to give police complaint on the incident and had to return to the station empty handed. He visited the hospital again in the evening after the demise of the victim and that was when P.W.1 came forward to give the complaint. According to the learned counsel for the appellant this act of P.W.1 also arouses suspicion as to the reason for such a belated act. It was argued by him that the present complaint was not the



first complaint. It was also pointed out that Ramesh Kannan (P.W.14) neither produced the copy of the Accident Register nor examined the doctor who initially treated the victim thereby causing serious dent to the prosecution case. Lastly, it was also contended that the children of the victim were not called to attend the final rites of their mother (victim) again causing doubt as to why they were kept away. According to the counsel for the appellant, all these factors have to be corroborated along with the deposition of the child D.W.1 and any prudent person can easily conclude that the appellant did not cause the death of the victim.

7. Per contra, Mr.S. Raja Kumar, learned Additional Public Prosecutor would contend that the trial court had, after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.

8. The alleged incident of barbaric assault on the victim by the appellant is said to have taken place at about 11 p.m on 09.09.2015. It was



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the contention of the defence in the trial court that the appellant was infuriated on seeing his wife in a compromising position in the bathroom of his house with one Deva, her colleague. The trial court concluded that the appellant was provoked to that extent that he beat up his wife in a wild manner venting out all his anger and frustration on her. It was also admitted by P.W.2 as well as Karthik Shanmuganathan (P.W.11) employer of the victim that there was a panchayat on the alleged illicit relationship involving the victim and one Deva, her colleague. According to P.W.11, the panchayat was attended by one Eswaran, Deva, the victim, the appellant, P.W.1 and P.W.2 in which P.W.2 had assured that he takes the responsibility of the victim's future good conduct. However, this particular aspect was refuted by P.W.2 during the course of cross examination. He had deposed that he only suggested for a legal separation of his sister (victim) and his brother-in-law (appellant) and never took the responsibility of victim's future conduct. Even assuming that P.W.2 had given an assurance in the panchayat meeting regarding his sister's future conduct, as deposed by P.W.11, it only reinforces the love and affection P.W.2 had for his sister and the theory of the appellant, that P.W.2 was the real culprit is



on a weak premise and cannot be accepted. Had he given more importance for his family's reputation he could have easily boycotted the panchayat meeting and severed his relationship with the victim's family which he did not do. P.W.2 has also stated that he was living with his sister and brother-in-law till he got married and that it was his brother-in-law who got him the present job. So, there was no reason why he should show any hatred either towards his sister or his brother-in-law.

9. In fact the infidelity aspect was accepted by the trial court and the appellant was found guilty only under Section 304 part (ii) IPC and not under Section 302 IPC. Therefore, the entire case of the appellant boils down to the reliability or otherwise of the child witness.

10. It is well settled that even if a child is a competent witness, the evidence has to be carefully examined as a child can be easily tutored. The qualifications of the child witness may sometimes be inconsistent and the statement may be on an imagination. The observation of the trial court on this aspect does not suffer from any infirmity. The statement of the appellant under Section 313 Cr.P.C. has been repeated in verbatim by the child in her deposition. It is also not clear as to why the appellant did not



bother to give a police complaint against P.W.2 if he strongly believed that it was the latter who thrashed the victim mercilessly. The appellant does not seem to have been even slightly perturbed by the serious injuries suffered by his wife, the victim. He did not even come to the hospital. The younger brother (P.W.6) of the victim as well as the mother (P.W.5) have deposed in a manner which corroborated with the depositions of P.W.1 and P.W.2. The reason why P.W.1 gave the police complaint is also convincing as she was the only person who had witnessed the brutal attack on the victim by the appellant. It is also understandable that the quarrels between the victim and her husband, the appellant, were so frequent that the neighbours were used to it and could have dismissed it as a regular one. P.W.1 had a small child and she was literally helpless especially when her husband P.W.2 wanted her to wait till he arrives and who in turn waited for the arrival of his younger brother (P.W.6) and mother (P.W.5). Though it can be argued that ideally medical attention should have been bestowed upon the victim immediately, the real situation and the practicality of such decisions to wait for other kith and kin cannot be interpreted as a wanton act of covering up the offence. Moreover, all the close relatives are illiterates and nothing more



could have been expected from them.

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11. The trial court defence counsel did not also put up any suggestion to the investigation officer during the course of cross examination as to why the angle of involvement of P.W.2 was not probed.

12. The contention that P.W.2 has not adduced any evidence for his being out of town on the date of incident also does not carry much conviction because P.W.2 during the course of cross examination was open for any independent verification of the office records regarding the official duties and the police had also investigated the entire case. Moreover, the appellant did not have any evidence to counter this. The argument that the present complaint (Ex.P1) was only the second complaint does not also have any basis. In fact, the deposition of P.W.13, the Investigation Officer, goes to prove that the situation in the hospital was grim and tense and he had to visit second time to get a formal complaint. It was not also suggested to any of the prosecution witness and therefore remains to be an imaginary allegation against the prosecution. Therefore, the conviction and sentence passed by the trial court is hereby confirmed.

13. In the result,



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- i. The Criminal Appeal is dismissed.
- ii. The conviction and sentence passed by the learned I Additional District and Sessions Judge, Coimbatore, in S.C.No.279 of 2015, dated 04.11.2016, is confirmed.
- iii. The accused is directed to surrender before the trial Court viz., the I Additional District and Sessions Court, Coimbatore, within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the trial Court shall take necessary steps to secure the presence of the accused to serve the remaining period of sentence.

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Index : yes/no
Speaking /Non speaking Order
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To

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1. I Additional District and Sessions Court, Coimbatore

2. The State Represented by
The Inspector of Police,
Sulur Police Station,
Coimbatore District.
(Crime No.625 of 2015)

3. The Section Officer, Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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