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Crl.A.No.410 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.A.No.410 of 2019
and Crl.M.P.No.10292 of 2024

Surat @ Ram Surat

...Appellant

Vs.

State by,
The Inspector of Police,
Bagalur Police Station.

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the conviction passed by the learned Sessions Judge, Fast Track Mahalir Court, Krishnagiri in S.C.No.125 of 2016, dated 25.10.2018.

For Appellant : Mr.M.G.Udayashankar
for Ms.S.Shanthakumari

For Respondent : Mr.A.Gokulakrishnan,
Additional Public Prosecutor



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JUDGMENT

(Judgment of the Court was made by M.S.RAMESH, J.)

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For the sake of convenience, the parties in the appeal are addressed according to their ranks before the trial Court.

2. The brief case of the prosecution, as per the final report, is that the accused, namely Surat @ Ram Surat, who hails from the State of Uttar Pradesh and P.W.1, namely Ganesh, who hails from the State of Assam, were jointly working in a rose garden belonging to one Narayana Reddy (P.W.2). Since P.W.1 had complained to P.W.2 that the accused was not attending to his work properly, owing to which, P.W.2 had dismissed the accused from the job, there was an enmity between them. On 07.11.2015 at about 07.00 P.M., the accused, in order to take revenge against P.W.1, tried to attack him with an iron rod and when P.W.1 ran away from the scene, he attacked his wife Sukkiramani (P.W.9) and his 3 year old daughter Myna. Owing to the attack, while P.W.9 suffered grievous injuries, her daughter died on the spot. On completion of the investigation, the accused was charged of having committed the offences under Sections 302, 307 and 506(ii) of Indian Penal Code (IPC).



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3. In order to prove the charges before the trial Court, the prosecution had examined 20 witnesses P.W.1 to P.W.20, apart from marking 21 documentary evidences Ex.P.1 to Ex.P.21 and 1 material object M.O.1. On the side of the accused, no oral or documentary evidences were let in.

4. The trial Court, on the strength of the evidences before it, had found the accused guilty of having committed the offence under Section 302 IPC and sentenced him to undergo life imprisonment. For the offence under Section 307, the accused was sentenced to undergo 10 years of rigorous imprisonment. The trial Court had also found that the accused did not have sufficient means to pay any fine and that he was defended by a Legal Aid Counsel and therefore did not impose any fine. For the offence under Section 506(ii) IPC, the accused was found as 'not guilty' and acquitted from the charge.

5. This judgment of the Fast Track Mahila Court, Krishnagiri, made in S.C.No.125/2016 dated 25.10.2018 is under challenge in the present appeal.



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6.1. The evidences, that were let in by the prosecution before the trial Court, are as follows:-

6.2. P.W.1 is the father of the deceased child and husband of P.W.9, who speaks about the motive of the accused, owing to his complaint about the accused to his employer and his retaliation in connection with such a complaint. He would also state that when the accused had attempted to assault P.W.1 with an iron rod, he ran away from the scene and thereafter, when he came back, he found that the accused had brutally attacked his wife (P.W.9) and his child, who succumbed on the spot, to the injuries. He also speaks about the injuries suffered by P.W.9 in her left head, ears, face and about taking her to Bangalore hospital for first aid and thereafter to Hosur Government hospital, where she was admitted as an in-patient. He then testifies about the Police obtaining a complaint from him at Hosur Government hospital, at which point of time, his employer P.W.2, who was present there, had translated his statement made in Hindi, to the Police. The complaint given by him was marked as Ex.P.1 and the signature of P.W.2 was marked as Ex.P.2 and the iron rod, which was used by the accused during the assault, was identified by him and marked as M.O.1.

6.3. P.W.2 is the employer of P.W.1 and the accused and who is in



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the business of selling roses from his garden. In his oral evidence, he speaks about the conduct of the accused, who used to be intoxicated during work hours and the several warnings he gave to the accused to refrain from indulging in fights. He also speaks about the frequent quarrels between the accused and his wife.

6.4. P.W.3 to P.W.5 are the persons, who had accompanied P.W.9 and P.W.1 to the hospital.

6.5. P.W.6 is the mahazar witness before whom the observation mahazar (Ex.P.3) was prepared, where he had signed as a witness.

6.6. P.W.7 and P.W.8 are the customers of P.W.2, who happen to be at the scene of occurrence when the crime had taken place and who had witnessed the entire occurrence. According to their testimonies, both of them had come there for purchasing roses, when the accused had attacked P.W.8 and the deceased child with M.O.1. They also testified that after the incident, P.W.1 came running back along with this brother, who had called P.W.2 and informed him about the incident.

6.7. P.W.9, wife of P.W.1, is the star witness in the prosecution's case. In her testimony, she states that on 07.11.2015 at about 07.00 P.M., when she was in her house, the accused had come there with an iron rod and attacked her indiscriminately, as well as her three years old daughter.



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Immediately after the attack, she had fainted and therefore, she was taken to the Hosur Government hospital, where she regained consciousness.

She also testifies that due to the attack of the accused, her child had died on the spot.

6.8. P.W.10 is the doctor, who had conducted the postmortem on the body of the child and the postmortem report (Ex.P.4) was marked through her. As per the report, the following external injuries were found on the body of the deceased child:-

“1) Contusion 6x5 cm over right side forehead with deformity over right side skull and forehead with mobility over skull bones – Depressed fracture over right side frontal temporal and parietal bone.

2) Abrasion 2x2 cm over right side forehead.”

6.9. P.W.11, Village Administrative Officer, is the witness to the arrest and confession of the accused. According to him, on the request of the Investigating Officer, he had gone to Kudichetti bus stop, where the Investigating Officer had arrested the accused, who gave a voluntary statement. The admissible portion of the confession statement was marked as Ex.P.5. He had also witnessed the accused handing over the iron rod (M.O.1) from the garden of P.W.2 to the Investigating Officer. The seizure mahazar was marked as Ex.P.6.



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6.10. P.W.12 is another witness to the observation mahazar (Ex.P.3).

6.11. The ambulance driver, who had taken the child and P.W.9 to the hospital, was examined as P.W.13. However, he did not support the prosecution's case and hence was treated as an hostile witness.

6.12. P.W.14 is the translator of the confession statement made by the accused in Hindi.

6.13. The doctor of the Government hospital, Hosur, who had treated P.W.9, was marked as P.W.15 and through him, the CT Scan of facial bone (Ex.P.8), CT Scan of brain (Ex.P.9) and the wound certificate (Ex.P.10) of P.W.9 were marked. As per Ex.P.10, P.W.9 had suffered deep lacerated wounds in the scalp, fractures in the facial bone, undisplaced right nasal bone, temporal and medial wall of orbit and thin SDH frontal lobe. In the wound certificate, he had recorded that P.W.9 was admitted as an in-patient between 08.11.2015 and 13.11.2015 and that all the injuries suffered by her are grievous in nature.

6.14. P.W.16 is the Head Constable, who had accompanied the corpse to the doctor for conducting postmortem.

6.15. P.W.17 is the Sub-Inspector of Police, who had registered the F.I.R (Ex.P.11) in Crime No.580/2015.



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6.16. P.W.20, Inspector of Police, Bagalur Police Station, is the Investigating Officer and since he was on other duty at the time of incident, P.W.18, Inspector of Police, Hosur Police Station, had conducted the initial investigation. According to P.W.18, on registration of the F.I.R, he had proceeded to the scene of occurrence and prepared the observation mahazar (Ex.P.3) and rough sketch (Ex.P.12). He then conducted an inquest over the body of the deceased and filed the inquest report (Ex.P.13). Thereafter, he made arrangements for sending the body of the deceased child for postmortem, through a requisition letter (Ex.P.14).

6.17. P.W.19 is the District Munsif cum Judicial Magistrate, Thenkanikottai, who had recorded the statements of P.W.1 and P.W.9 under Section 164 Cr.P.C. The requisition letter to record that statement was marked as Ex.P.15. The statements of P.W.1, P.W.9 and P.W.2, recorded under Section 164 Cr.P.C., were marked as Ex.P.16 to Ex.P.18 respectively. She had also recorded the statement of one Lakkan, which was marked as Ex.P.19. She then forwarded the statements to the District Munsif cum Judicial Magistrate No.I, Hosur, through a report (Ex.P.20).

6.18. P.W.20 is the Investigating Officer, who had continued the investigation after P.W.18. As per his statement, he had arrested the



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accused on 09.11.2015 at about 06.30 P.M. in the presence of P.W.11 and one Adhiparasakthi. After arrest, the accused had voluntarily given a confession, admitting of having committed the crime and offering to produce the iron rod (M.O.1) he had used for the assault. The admissible portion of the confession statement was marked as Ex.P.5. He had then seized the iron rod, through a seizure mahazar (Ex.P.6) and after recording the statements of the witnesses, he had forwarded M.O.1 under Form-95 (Ex.P.21). On completion of the investigation, he had filed the final report.

7. On the strength of the oral and documentary evidences before it, the trial Court had found the accused guilty of having committed the offence and had sentenced him to imprisonment, as stated hereinbefore.

8. The learned counsel appearing for the accused submitted that the motive to the occurrence has not been clearly established by the prosecution. According to him, there are discrepancies between the evidences of P.W.7 and P.W.8, who are the alleged eye witnesses, with that of the statement of P.W.9. He further submitted that the injuries found during the course of postmortem did not match with the injuries



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alleged to have been caused to P.W.9, as well as the deceased. By placing reliance on Ex.P.15, he claims that while the accident register points out that P.W.9 was brought to the hospital by a relative, P.W.1 claims to have taken P.W.9 to the Bangalore hospital and thereafter to Hosur Government hospital, which statements are contrary. In view of the discrepancies and contradictions in the oral evidences of these witnesses, he sought for the acquittal of the accused.

9. On the other hand, the learned Additional Public Prosecutor submitted that this is a case which rests on the statements of the three eye witnesses, namely P.W.7 to P.W.9, wherein the evidence of P.W.9 would stand on a higher pedestal, since she is an injured eye witness. By placing reliance on the evidence of P.W.9, as well as the medical evidences, he submitted that the injuries sustained by her, due to the assault by the accused, fairly substantiates the prosecution's case and the defence could not discredit her statements at all. From the narration of the incident by P.W.9 and the other two witnesses, P.W.7 and P.W.8, read along with the evidence of P.W.1, who had also witnessed the accused coming to the scene of occurrence with an iron rod, he submitted that the case of the prosecution has been well established before the trial Court and



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therefore, the trial Court cannot be found fault with for having found the accused guilty.

10. We have given our anxious consideration to the submissions made.

11. The key witness in this case is P.W.9, who is the wife of P.W.1 and an injured eye witness, apart from P.W.7 and P.W.8, who are the customers present at the scene of occurrence when the assault took place. P.W.1 also happened to be at the scene of occurrence and when he saw the accused coming there with an iron rod, he ran away from the scene. According to P.W.9, on the date of occurrence, when she was cooking at her house, the accused had come there with the iron rod (M.O.1) and attacked her and her deceased child and thereafter fled away from the scene. While her child died on the spot, she had fainted. She was then taken to the Bangalore hospital and Hosur Government hospital, where the Police had recorded her statement. During the course of cross examination, the defence could not extract even a single fact to contradict her original statement made.



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12. Both P.W.7 and P.W.8 had come to the rose garden of P.W.1 to buy roses when the incident took place. Both of them had harmoniously testified of having seen the accused assault P.W.9 and the deceased with an iron rod and about P.W.1 running away from the scene and returning back a little later. Even their statements could not be discredited by the defence in any manner.

13. In a case where oral testimony is rendered by an injured eye witness, the same has a greater evidential value than that of the regular eye witnesses. In the case of **Jarnail Singh Vs. State of Punjab** reported in (2009) 9 SCC 719, the Hon'ble Supreme Court had placed reliance on **Shivalingappa Kallayanappa Vs. State of Karnataka** reported in (1994) SCC (Cri.) 1694 and held that the deposition of the injured witness, should be relied upon, unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established, in case it is proved that he suffered the injury during the said incident.

14. Likewise, in the case of State of **Uttar Pradesh Vs Kishan Chand** reported in (2004) 7 SCC 629, a similar view was taken by



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holding that the witness, who sustained injury at the time and place of occurrence, lends support to his testimony that he was present during the occurrence and unless nothing can be elucidated to discard his testimony, it should be relied upon.

15. Following the aforesaid decisions, in ***Abdul Sayeed Vs. State of Madhya Pradesh*** reported in ***(2010) 10 SCC 259***, the Hon'ble Supreme Court had held that the testimony of an injured witness should be placed in a higher pedestal. The relevant portion reads as follows:-

“30.The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”



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16. In a very recent judgment of the Hon'ble Supreme Court in the case of ***Balu Sudam Khalde and another Vs. The State of Maharashtra*** reported in ***2023 SCC OnLine SC 355***, the aforesaid principles were summed up in the following manner:-

“26. When the evidence of an injured eye-witness is to be appreciated, the undernoted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured



witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

17. In the light of the above decisions and by taking into account that the oral testimonies of P.W.9, read with P.W.7 and P.W.8, fairly substantiates the occurrence and points out the culpability of the crime on the accused, no other evidence may be required to dislodge the case of the prosecution in having charged the accused of having committed the offence.

18. The motive attributed for commission of the crime in this case is the previous enmity between P.W.1 and the accused. According to P.W.1, he had reported about the fact that the accused was not working properly in P.W.2's business, which had enraged him. P.W.2, in his oral statement, had also ratified that the accused was in the habit of being intoxicated at work and not attending to his work properly and that he



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was picking frequent quarrels with his wife. P.W.2 also speaks about the severe warning which he had given to the accused with regard to the conduct and attitude and had also asked him to leave the job, if he indulges in such quarrels and fights. These specific statements of P.W.1 and P.W.2 clearly points out to the grudge the accused would have carried against P.W.1. On the day of occurrence, the accused had armed himself with M.O.1 and had come there to assault P.W.1 only and when P.W.1 ran away from the scene, he had then attacked P.W.9 and her child. The attack on both of them was with a deadly weapon, aimed at the susceptible parts of the body, more particularly on the head. When these evidences are co-jointly analysed, we have no difficulty in coming to the conclusion that there was a motive for the accused to cause the assault and his intention was not to merely to cause injuries to P.W.9 and her child, but to finish them off, once for and all.

19. In the light of these findings, we have no hesitation in holding that the prosecution has also established the motive for the crime in this case beyond reasonable doubt.

20. The medical evidence found in the postmortem report (Ex.P.4),



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as well as from the evidence of postmortem doctor (P.W.10), clearly reveals the brutal manner in which the accused had attacked a three year old child with a heavy iron rod on the head and therefore, the commission of the offence of Section 302 has been substantially proved by the prosecution.

21. Insofar as the charge for the offence under Section 307 is concerned, P.W.9, as well as P.W.7 and P.W.8, had spoken about the assault by the accused on her with an iron rod. P.W.9 had fainted in the scene of occurrence itself and she was taken to Hosur Government hospital and NIMHANS Bangalore, as evidenced in Ex.P.10. The wound certificate, as well as the evidence of P.W.15, would reveal that the injuries caused to P.W.9 were grievous in nature and she was also admitted as in-patient and treated for the period between 08.11.2015 and 13.11.2015. From the evidence of P.W.11, it is seen that even after two years, P.W.9 had not recovered fully from the injuries sustained by her. As stated earlier, the accused had landed the blows on P.W.9 with a heavy iron rod on base parts of her head, which in normal course may have caused her death. The oral evidence of P.W.15 with regard to the injuries has been well established and in the absence of any retraction during the



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course of her cross examination, we are of the affirmed view that the accused had attempted to commit the murder of P.W.9 also, apart from the deceased child. Therefore, the trial Court had rightly convicted him for the offence under Section 307 IPC and sentenced him to imprisonment.

22. All our above discussions were fully discussed by the trial Court on proper appreciation of the facts of the case, based on the evidences available before it. Thus, we do not find any illegality in such findings.

23. In the result, there are no merits in this Criminal Appeal and hence, the same stands dismissed. No costs. Connected Crl.M.P is closed.

[M.S.R., J] [M.J.R., J]
17.10.2024

Index:Yes/No
Neutral Citation:Yes/No
Speaking/Non-speaking order

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To

- 1.The Sessions Judge,
Fast Track Mahalir Court,
Krishnagiri.
- 2.The The Inspector of Police,
Bagalur Police Station.
- 3.The Public Prosecutor,
High Court of Madras.



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