



WEB COPY



Crl.A.(MD).No.140 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

Crl.A.(MD).No.140 of 2023
and
Crl.M.P.(MD).No.1965 of 2024

Balaji

..Appellant/Sole Accused

Vs.

State through
The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.
(Crime No.77 of 2019)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the entire records connected to the judgment in S.C.No.163 of 2019 on the file of the Hon'ble Fast Track Mahila Court, Srivilliputhur dated 27.08.2022 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.RMS.Sethuraman
Additional Public Prosecutor



Crl.A.(MD).No.140 of 2023

JUDGMENT

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

The Criminal Appeal is filed against the conviction and sentence rendered by the Fast Track Mahila Court, Srivilliputhur, in S.C.No.163 of 2019 vide judgment dated 27.08.2022.

2. The appellant/sole accused is found guilty for the offence under Section 302 IPC and he was sentenced to undergo life imprisonment and to pay a fine of Rs.3000/-, in default, to undergo three months rigorous imprisonment.

3. The case of the prosecution is that on 06.03.2019 at about 4.00 PM, when the accused was in his house, his wife came to the house and when the accused questioned her where she was roaming so long, his wife, instead of answering him, made a gesture by placing her hand on her mouth and had shown a sign to keep quiet. Thereafter, she has gone to bed. But provoked by her gesture and knowing that his wife is very intimate with one Mahalakshmi and frequently visiting her house, the accused lifted a



grinding stone and hit the head of his wife causing instant death. The matter was reported to the Police by the son of the deceased, who was pursuing 12th standard at the relevant point of time. The son of the deceased is not a witness to the occurrence, but he has seen his father leaving the house when he entered the house after attending school. The door of the house was latched from outside and when he entered the house, he saw his mother bleeding and her head crushed. Based on his complaint, which was marked as Ex.P1, a case was registered in Crime No.77 of 2019 and after completion of investigation, final report was filed.

4. The prosecution has relied upon the circumstantial evidence, particularly, the evidence of P.W.1, who is none other than the son of the accused and the evidence of P.W.3, Mahalakshmi, whose acquaintance, the accused disliked and she is the person, who saw the dead body of the deceased after P.W.1. The medical records like Ex.P6, Accident Register and Ex.P4, postmortem certificate are the other evidence relied upon by the prosecution to incriminate the appellant/accused. In the course of investigation, the accused was arrested and remanded to judicial custody on 08.06.2019.



Crl.A.(MD).No.140 of 2023

5. The Trial Court, relying upon the prosecution evidence, namely, the witnesses P.W.1 to P.W.24, the documents Ex.P1 to Ex.P10 and material objects M.O.1 to M.O.7, had convicted the appellant holding that he had intentionally caused the death of his wife by throwing the grinding stone on her head and sentenced him to undergo life imprisonment as stated above. Being aggrieved by the conviction and sentence, the appellant/sole accused has preferred the present Criminal Appeal.

6. The learned counsel appearing for the appellant would submit that it is a case of circumstantial evidence and there is no direct witness to the occurrence. P.W.1, the son of the accused, cannot be taken as an independent witness, since he admits that he used to warn his father for consuming alcohol and he had some grudge against his own father. Further, there is no evidence to show that the appellant is a drunkard and due to that, there was some dispute between him and his wife and also with his son. The learned counsel also submitted that the variation in the time of receiving the complaint and lifting the body of the deceased creates doubt in the prosecution case.

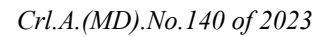


Crl.A.(MD).No.140 of 2023

WEB COPY

7. The learned counsel for the appellant further submitted that it is the case of the prosecution that while P.W.1 entered the house, the accused left the house. If that is so, on seeing the dead body of his mother, he should have immediately raised alarm, tried to apprehend his father or enquired his father as to what has happened, which he has not done, which is unusual and contrary to the natural conduct of any person. The learned counsel also in alternate submitted that in any event, it is an act of provocation caused due to the disrespectful gesture of the wife. Hence, he prayed to set aside the judgment of the Trial Court.

8. The learned Additional Public Prosecutor appearing for the respondent submitted that it is a clear case of intentional murder by the accused by hitting a grinding stone on the head of his wife. Only the accused and the deceased were in the house at the relevant point of time. The exit of the accused from the house has also been witnessed by his own son and the son has reported the matter to the Police when he found his mother dead lying in a pool of blood. The learned Additional Public Prosecutor further submitted that since the accused failed to explain how his



9. Heard the learned counsels and perused the judgment of the Trial holding the accused guilty as well as the other judgments of the High relied upon by the learned counsels in the light of the facts of this

Page 6 of 9



Crl.A.(MD).No.140 of 2023

leaving the house and P.W.3 Mahalakshmi, who had also seen the accused near the house, there is no direct evidence for the occurrence.

11. Even according to the prosecution, the accused was not happy with his wife being very close to P.W.3, Mahalakshmi and therefore, as contended by the learned counsel for the appellant, the testimony of P.W.3 has to be viewed carefully. However, there is no reason to disbelieve the evidence of P.W.1, the son of the accused. At the same time, from the charge framed, it is clear that the provocation caused by the deceased soon before the occurrence has led to this incident.

12. Therefore, this Court holds that it is a case of culpable homicide not amounting to murder, which was done due to sudden provocation caused by the deceased. The act of the accused falls within exception 4 under Section 300 IPC and hence, punishable under Section 304 Part 1 of IPC.

13. In view of the above findings, the conviction and sentence rendered by the Trial Court is modified and the appellant is sentenced to



Crl.A.(MD).No.140 of 2023

undergo rigorous imprisonment for a period of five (5) years and to pay a fine of Rs.3000/-, in default to undergo three (3) months simple imprisonment. The period of imprisonment already undergone by the appellant shall be set off under Section 428 Cr.P.C.

14. Accordingly, the Criminal Appeal is partly allowed. Consequently, connected miscellaneous petition stands closed.

(G.J.,J.) (C.K.,J.)
12.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

1.The Fast Track Mahila Court,
Srivilliputhur.

2.The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.

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



WEB COPY



Crl.A.(MD).No.140 of 2023

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

Lm

Crl.A.(MD).No.140 of 2023

12.03.2024