



Crl.A.(MD)No.195 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
23.02.2024	08.03.2024

CORAM:

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

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Saravanakumar, S/o.Sivasamy

... Appellant/Sole Accused

vs.

State Rep. by
The Inspector of Police,
Inamkulathur Police Station,
Tiruchirappalli District.
(Crime No.47 / 2017)

... Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374 (2) of Cr.P.C., to call for the records in S.C.No.23 of 2018, dated 28.02.2020, on the file of the III Additional District and Sessions Court, Tiruchirappalli and set aside the same.

For Appellant : Mr.Karunanidhi
for Mr.M.Jagadeesh Pandian

For Respondent : Mr.S.Ravi
Additional Public Prosecutor



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JUDGMENT

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

This appeal is preferred by the appellant / sole accused against the conviction and sentence imposed on him vide judgment, dated 28.02.2018, in S.C.No.23 of 2018, on the file of the III Additional District and Sessions Court, Tiruchirappalli.

2. The appellant was convicted and sentenced to undergo life imprisonment under Section 302 I.P.C and to pay a fine of Rs.500/-, in default, to undergo six months rigorous imprisonment. The trial Court framed charges against the appellant for the offences under Sections 294(b) and 302 I.P.C. in connection with the homicidal death of one Radha, who is none other than the maternal aunt of the appellant.

3. The case of the prosecution as unfurled during the investigation is that, the family of the deceased had substantial immovable property and the same was maintained by the deceased. The deceased and the appellant's mother married with one Sivasamy, who was the father of the appellant. The appellant / accused,



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who is the sister's son of the deceased, used to demand his share from the deceased, for which, the deceased was not willing. In this connection, on 20.06.2017 at about 08.30 a.m. in the morning, the accused went to the house of the deceased and demanded money. When the deceased refused, there was a wordy quarrel between them. The accused left the house of the deceased after throwing a life threat. Again, on the same day evening, the accused came back to the house of the deceased, abused her in filthy language and demanded money. When she refused, he took bill hook concealed behind his back and attacked the deceased on her head, neck and hand. The injured / deceased was taken to Neuro One Hospital, Tiruchirappalli. She died in the hospital on 01.07.2017 at about 20.30 hours. Hence, the charge for the offences under Sections 294(b) and 302 I.P.C. was framed against the accused and tried.

4. To prove the charges, the prosecution has examined 18 witnesses and marked 23 exhibits. On the side of the defence, the agreement between the family members to apportion the family property was marked as Ex.D1. That apart, three material objects were marked and one among them is M.O.3, the weapon alleged to have been used by the accused to assault the deceased.



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5. P.W.1 and P.W.4 are the sisters of the accused. P.W.2 and P.W.3 are grandchildren of the deceased. P.W.1 to P.W.3, who were the family members, were present in the house of the deceased at the time of occurrence and they have deposed how the incident took place and their evidence is clearly incriminating the appellant/accused. Since they are all related to both the deceased and the accused, the trial Court has believed their evidence.

6. The postmortem doctor (P.W.13) had opined in his report (Ex.P11) that the deceased would appear to have died of combined effects of head and cervical spine injuries. The following antemortem injuries were found on her body to give the above opinion:-

"1) 6cm Oblique sutured wound with 7 intact sutures on occipital region of the scalp; The left end of the wound was directed upwards towards left ear lobe, slightly lower on the right side; 12 cm above posterior hairline of the neck; The right end of the wound was 10 cm from right mastoid process; The left end of the wound was 10 cm from left mastoid process.

On removal of the sutures, the margins of the wound were well adherent with each other; On further dissection of the wound, 7 cm x 1 cm x bone deep cut injury on the centre of the occipital region of the



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scalp; On reflection of the Scalp, Scalp and Cranial Vault: Intact; On removal of the calvarium, 8 x 6 cm thin layer of dark red subdural haemorrhage on parieto-occipital lobe of left cerebral hemisphere with 4 x 2 cm thin layer of dark red subarachnoid hemorrhage over the occipital lobe of left cerebral hemisphere; Base of skull: Intact.

2) Cut injury of 2.5 cm x 0.5 cm x muscle deep on back of the neck.

3) 1 cm sutured wound with 1 intact suture on outer aspect of right shoulder.

4) 1 cm sutured wound with 1 intact suture on back of right shoulder.

On removal of the above 3rd and 4th sutures, the wound margins were well adherent with each other.

5) 2 cm surgically sutured wound with 3 intact sutures on front of lower part of the neck;

On removal of the sutures, 2 x 1 cm x cavity deep Surgically incised wound in front of lower part of the neck for tracheostomy tube.

6. On dissection of the neck.

Irregular complete fracture of the C₆ cervical vertebra with surrounding soft tissue bruising, extravasation of blood and underlying cord compression.



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Irregular complete fracture of the Transverse process of C₄ Cervical vertebra on the left side with surrounding soft tissue bruising, extravasation blood and with transection of the left vertebral artery.

7) 10 x 10 cm roughly square shaped patterned dark red abrasion on centre of the chest with intervening areas of normal skin due to cardiac defibrillator application;

8) Irregular dried scab on

a. 7 x 0.5 cm on back of left shoulder.

b. 3 x 0.5 cm on centre of the back."

7. P.W.18 Mohamed Ithrees is the Investigating Officer in this case. On 02.07.2017, he visited the scene of crime, compared the Rough Sketch already prepared by Muthukumarasamy, Sub Inspector of Police [P.W.17]. Thereafter, conducted inquest and prepared inquest report [Ex.P21]. The soil with blood stain and soil without blood stain were collected. The blood stain blouse and saree of the deceased and the bill hook were sent for serological test through requisition letter [Ex.P13] from the learned Judicial Magistrate No.V, Tiruchirappalli. The serology report disclosed the presence of human blood 'A' Group in the blouse



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and saree from the communication of the Forensic Department vide Ref.No. 9789/2017 SER/TRI-173/2017, dated 03.01.2018. The accused in his confession statement as well as in his answer for 313 Cr.P.C. questioning, had contended that he was provoked by the deceased by her abusive words and therefore, in a fit of anger, he attacked her, but, he had no intention to cause the death of Radha [the deceased].

8. Further, it was contended that the death had occurred 10 days after the occurrence. Therefore, the injuries are not the cause for the death. There is no proximity and link between the injury and the cause of death. The injured after treatment, had improved and she was shifted from ICU to general ward. Thereafter, due to other reasons, she died. The injuries caused by the appellant / accused were not reason for her death. Therefore, even on this score, the appellant / accused cannot be punished under Section 302 I.P.C.

9. P.W.10 and P.W.11, who are the witnesses to the confession statement of the appellant / accused and recovery, had turned hostile and not supported the case of prosecution. Therefore, it was contended that the recovery of bill hook



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[M.O.3] based on the confession statement given by the appellant / accused, has to be rejected in toto. The case of the prosecution suffers from infirmity from registration of the F.I.R., which was alleged to have been recorded based on the statement given by the victim [deceased] in the hospital. The said statement been recorded by Muthukumarasamy, Sub Inspector of Police [P.W.17]. In this statement, the thumb impression of the victim Radha is found. The F.I.R. was registered on 21.06.2017 at 10.00 a.m. in Crime No.47 of 2017. In the F.I.R., it is stated that on receipt of the intimation from the hospital, P.W.17 went to the hospital on 21.06.2017 at 08.00 a.m. and recorded the statement of the victim. There is no medical certificate regarding the fit state of mind of the victim and it is stated in the cross-examination of P.W.17 that the statement of the victim was written by Kala, Woman Head Police Constable, who was present in the hospital. Whereas, the said Kala, who was examined as P.W.16, had not whispered anything about her presence in the hospital on 21.06.2017. Further, the victim was first taken to the Government Hospital by P.W.4. She had deposed that on 20.06.2017 at 08.00 p.m., the Police from Inamkulathur Police Station came and enquired the injured and the thumb impression of the injured was obtained after recording her statement. Therefore, the learned counsel for the appellant



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submitted that the first statement recorded by the Police on 20.06.2017 at 08.00 p.m. been burked. The subsequent statement implicating the appellant/accused been prepared by the Police with the help of Kala [P.W.16] on the blank paper on which, the thumb impression of the injured lady been tainted.

10. The learned counsel again relying upon the evidence of P.W.4, contended that, the victim was shifted from Government Hospital to private hospital namely, Neuro One by 21.06.2017 at about 01.30 p.m. and her health condition improved on 30.06.2017. Hence, she was shifted from ICU to general ward. Thereafter, she was taken to ICU when her pulse rate suddenly came down. However, she died by 08.00 p.m. on the same day. Therefore, the learned counsel for the appellant contended that the cause of death cannot be attributed to the alleged injury caused by the appellant.

11. Heard the learned counsels and perused the records.

12. It is a case of homicidal death. The assault by the appellant / accused been witnessed by P.W.1 Vasanthi, the sister of the appellant / accused and P.W.2,



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sister's daughter of the appellant / accused. At the time of occurrence, P.W.2 was 9 years old. When she gave evidence, she was 11 years old. P.W.3 is the sister's son of the appellant/accused. P.W.2 and P.W.3 are twins. All the three witnesses deposed the quarrel between the appellant / accused and the deceased on the date of occurrence. According to their evidence, the appellant / accused demanded money and a gold ring. When the deceased refused to give money, the appellant / accused broke the window glass and showcase glass and thereafter, attacked the deceased on the head, neck and hand. The bill hook [M.O.3] was carried by the appellant / accused, which was concealed behind his back when he came to meet the deceased.

13. P.W.4 is the another sister of the appellant / accused. Soon after the incident, P.W.4 was informed over phone. Hence, she rushed to the house and saw the deceased in a pool of blood. The deceased was taken to the hospital in 108 Ambulance. Considering the relationship between the appellant / accused, the deceased and the witnesses, the witnesses cannot be termed as interested witnesses, because the relationship is more closer towards the appellant / accused rather than the deceased. There is no reason for them to depose falsely against

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their own brother. A Memorandum of Understanding entered between the appellant / accused, P.W.1 and P.W.4 is relied on by the appellant / accused before the trial Court and the same was marked as Ex.D1. This document indicates that the vacant site owned by their mother Nallammal been divided among these three persons after the demise of their mother. This deed is dated 27.05.2016, about one year before the incident. This document does not throw any information in favour of the appellant / accused except to understand that the property left by the mother of the appellant / accused been divided among him and his two sisters.

14. According to the prosecution case, the appellant / accused was demanding money and share from the deceased, who is his maternal aunt *qua* step mother. The learned counsel for the appellant fervently argued that even assuming that the appellant has injured his step mother, it was only in a fit of anger and on provocation of being abused by the deceased.

15. The defence projected by the appellant / accused by way of reply to Section 313 Cr.P.C., is contrary to the ocular evidence of P.W.1, P.W.2 and P.W.3. According to these witnesses, it was the appellant / accused, who has gone to the



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house of the deceased, picked up quarrel and thereafter, attacked her with deadly weapon on the vital part of the body. Carrying knife with him and the seat of attack together clearly reveal his intention to cause death. The other contention that the death caused after 10 days of the occurrence could have been a point for consideration, if the proximity between the injury and the death is severed. Whereas, in this case, soon after the attack, the injured was taken to the hospital and till her death, she was in the hospital under intensive care. A brief interval of shifting her from ICU to General Ward has no consequence in the medical point of view.

16. The hostility of the Recovery Mahazar witnesses renders the prosecution theory suspicion about the recovery of the knife. Even eschewing a portion of recovery and failure of identifying the weapon by the eyewitnesses, it does not take away the stream of the prosecution in proving the guilt of the appellant / accused in the light of the evidence given by the eyewitnesses and the own admission of the appellant / accused in 313 Cr.P.C. questioning. Likewise, the discrepancy regarding the time of recording the statement of the injured marked as Ex.P14 is very insignificant, since the earliest document regarding the

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incident is the Accident Register [Ex.P8] recorded at the Mahatma Gandhi Memorial Government Hospital, Trichy, on 20.06.2017 at 05.15 p.m. Dr.Niraimozhi [P.W.12] had examined the injured Radha and admitted her as inpatient. She has recorded the following injuries noticed on her body:-

- (i) A laceration of size 5 x 1 x 0.5 cm on the right head and another laceration of the same size on the back of the neck
- (ii) A laceration of size 6 x 0.5 cm on the neck
- (iii) A laceration of size 2 x 1 x 0.5 cm on the right hand

P.W.12 doctor has recorded that the patient was conscious. P.W.4 has deposed that after injury, Radha walked up to the Amulance and boarded it. The contention that there is no certificate by doctor about the fit state of mind of the deceased at the time of recording statement by Muthukumarasamy, Sub-Inspector of Police [P.W.17] pales into insignificance, as the deceased was admittedly conscious according to P.W.12 doctor and from P.W.4's evidence. Therefore, the absence of certificate by the doctor in Ex.P14 complaint, may be an omission, but not fatal to the case of the prosecution. Further, on the death of the deceased, Ex.P14 complaint metamorphosed as dying declaration of the deceased and it becomes relevant to know the cause of death.



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17. The learned counsel for the appellant while making his submissions, also submitted that the deceased Radha had provoked the accused by calling him a vagabond, useless and he was born to his mother through illegal relationship. This sudden provocation has forced him to attack Radha in a fit of anger and that there was no premeditation or intention to cause death. Therefore, the learned counsel pleaded that, even if the guilt is proved, the appellant should be punished for the offence under Part – II of Section 304 I.P.C., but not under Section 302 I.P.C.

18. In this regard, it is profitable to refer the judgment of the Hon'ble Supreme Court rendered in **Pulicherla Nagaraju @ Nagaraja Reddy vs. State of Andhra Pradesh** reported in **(2006) 11 SCC 444**. The relevant portion in the said judgment reads as under:-

"29. Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance,



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may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances:

- (i) nature of the weapon used;*
- (ii) whether the weapon was carried by the accused or was picked up from the spot;*
- (iii) whether the blow is aimed at a vital part of the body;*
- (iv) the amount of force employed in causing injury;*
- (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight;*
- (vi) whether the incident occurs by chance or whether there was any premeditation;*
- (vii) whether there was any prior enmity or whether the deceased was a stranger;*



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(viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation;

(ix) whether it was in the heat of passion;

(x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner;

(xi) whether the accused dealt a single blow or several blows.

The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

19. The above said judgment of the Hon'ble Supreme Court guides us how the intention to cause death can be gathered from the evidence available. In the case in hand, the appellant has gone to the house of the victim carrying weapon with him. Whereas, the victim was an unarmed old lady. P.W.1 had consistently deposed that the appellant used to quarrel with the deceased and demanded money. The Postmortem certificate reveals that the attack was on the vital organ of the body and also multiple injuries were caused on the victim. Except to consider the point that the deceased died after 10 days of the incident, there is no other ground to consider conversion of the offence punishable under Section 304 Part – I or Part – II.

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20. Again, taking guidance of the decision rendered by the Hon'ble Supreme Court in **State of Madhya Pradesh vs. Ram Prasad** reported in **1968 (2) SCR 522**, we find that while analysing Section 300 I.P.C., the Hon'ble Supreme Court has observed that, setting fire after pouring kerosene needs no special knowledge to a person to know that the act may likely to cause death. Therefore, the perpetrator of the crime was running the risk of causing bodily injury likely to cause death. Therefore, the Hon'ble Supreme Court held that the offence will fall under Clause 4 of Section 300 I.P.C.

21. Further, the Hon'ble Supreme Court in **Santosh, S/o.Shankar Pawar vs. State of Maharashtra** reported in **(2015) 7 SCC 641**, has held as below:-

"13. Even assuming that the accused had no intention to cause the death of the deceased, the act of the accused falls under clause Fourthly of Section 300 IPC that is the act of causing injury so imminently dangerous where it will in all probability cause death. Any person of average intelligence would have the knowledge that pouring of kerosene and setting her on fire by throwing a lighted matchstick is so imminently dangerous that in all probability such an act would cause injuries causing death."



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22. Therefore, in the present case in hand, the death after 10 days of injury will not take away the offence from Clause (2) or Clause (4) of Section 300 I.P.C. to Part – I or Part – II of Section 304 I.P.C. In this connection, it is also pertinent to refer the recent judgment of the Hon'ble Supreme Court in **Prasad Pradhan and another vs. The State of Chhattisgarh** reported in **2023 SCC OnLine SC 81 : 2023 SAR (Cri) 352**, wherein the Hon'ble Supreme Court has observed as below:-

"29. There can be no stereotypical assumption or formula that where death occurs after a lapse of some time, the injuries (which might have caused the death), the offence is one of culpable homicide. Every case has its unique fact situation. However, what is important is the nature of injury, and whether it is sufficient in the ordinary course to lead to death. The adequacy or otherwise of medical attention is not a relevant factor in this case, because the doctor who conducted the postmortem clearly deposed that death was caused due to cardio respiratory failures, as a result of the injuries inflicted upon the deceased. Thus, the injuries and the death were closely and directly linked."



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23. Further, as pointed out by the trial Court, if at all there was any dispute regarding the property, the appellant / accused should have resorted to the legal remedy and he cannot take the law in his own hands. The accused had gone to the house of the deceased, armed with weapon. When the deceased refused to give money or share in the property, he has attacked the unarmed old lady in the presence of minor children P.W.2 and P.W.3. Carrying weapon to the house of the deceased, causing injury over her head and neck is a clear proof that the appellant / accused had an intention to kill Radha. A continuous medical treatment for nearly 10 days to Radha had not yielded desired result. The multiple injuries sustained by the deceased over the head and neck was sufficient to cause death, despite medical attention.

24. Looking at the facts from any angles, this Court is of the view that the unprovoked act of aggression leashed against unarmed lady by the appellant just because she refused to part away money and property squarely falls within the scope of Clause (2) of Section 300 I.P.C. Therefore, the grounds raised in the appeal not sustainable. Hence, this Criminal Appeal stands dismissed.



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25. In view of dismissal of this appeal, the bail bond executed by the appellant shall stand cancelled. The appellant shall surrender before the trial Court within 15 days from today, to undergo the remaining period of sentence. Failing which, the respondent Police shall secure him and commit him to prison to undergo the remaining period of sentence.

Index : Yes
NCC : Yes / No
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[G.J., J.] & [C.K., J.]
08.03.2024

To

- 1.The III Additional District Sessions Judge,
Tiruchirappalli.
- 2.The Inspector of Police,
Inamkulathur Police Station,
Tiruchirappalli District.
- 3.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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PRE-DELIVERY JUDGMENT MADE IN
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08.03.2024

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