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CrI.A.(MD)No.239 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.09.2024

PRONOUNCED ON : 22.10.2024

CORAM

THE HON'BLE MR.JUSTICE **C.V.KARTHIKEYAN**
AND
THE HON'BLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

CrI.A(MD)No.239 of 2021

Bose @ Bosemani

... Appellant

VS

The State represented by
The Inspector of Police,
Mathur Police Station,
Pudukottai District.
(in Cr.No.7 of 2015)

...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 (Mahila Court), Pudukottai in Special S.C.No.30 of 20174 dated 09.12.2020 and acquit the appellant of the

For Appellant : Mr.S.Sivasubramanian
For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor



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JUDGMENT

(Judgment of this Court was delivered by **C.V.KARTHIKEYAN, J.**)

The sole accused in S.C.No.30 of 2017 aggrieved by the judgment of the Mahalir Neethimandarn, Pudukottai dated 09.12.2020 by which judgment, the accused had been convicted for offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay fine of Rs.20,000/- in default to undergo one year rigorous imprisonment and also convicted for offence punishable under Section 506(ii) IPC and sentenced to undergo three years rigorous imprisonment, has filed the present Criminal Appeal.

2.It is the case of the prosecution that the accused and the deceased were spouses living at MGR Nagar, Saplamthoppu, T.Nallur Post Office, Kulathur Taluk at Pudukottai District. They had three children, two daughters and one son. It is the further case of the prosecution that the accused, who was working as a cooli, had the habit of consuming alcohol and fought with his wife, the deceased, seeking money to purchase liquor.



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There were occasions when the neighbours had to intervene and settle the issues between the accused and the deceased.

3.On 11.01.2015 in the evening at around 06.00 pm, the accused had once again quarrelled with the deceased seeking money to purchase liquor. The neighbours, Sasikumar, Valliammai, Perumal, Vijaya, Anjalai, Kaliasammal and Poornam had intervened in the quarrel and had sent the accused out of the house. The accused while going out had threatened his wife, the deceased, by stating that *“by this night, I will bring a conclusion to you.”*

4.It is the further case of the prosecution that on the same night, 11.01.2015 at around 11.00 pm, when the neighbours, Sasikumar, Valliammai, Mani, Vijaya, Perumal, Murugesan, Mookkan, Marimuthu and Manivel were talking among themselves discussing about the upcoming Pongal festivities sitting outside the opposite house of the accused and the deceased, they heard a big cry from inside the house of the accused and saw the three children of the accused and the deceased running outside. Immediately, everybody went inside the house of the accused and the



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deceased and it is stated that they saw the deceased lying on a mat with blood oozing from her head portion and the accused standing with an *aralaikkal* (big stone) in his hand. He threatened them that he would throw the stone at them. He then threw the stone outside the house and ran away.

5.In connection with this occurrence, the mother-in-law of the deceased/mother of the accused had then taken the deceased to the Government Hospital at Trichy, where she was admitted as an inpatient on 12.01.2015 at around 05.30 am. She did not respond to the treatment and died at around 04.50 am on 13.01.2015.

6.The complaint in this connection was lodged by Sasi Kumar (PW-1) on 12.01.2015 at 08.00 am. The FIR in Cr.No.7 of 2015 was registered by the respondent Police/Mathur Police Station at Pudukottai District for offence punishable under Section 307 IPC. The FIR was received by the Judicial Magistrate at 07.30 pm on 12.01.2015. After the death of the wife of the accused, an alteration report was filed on 13.01.2015 to alter the offence from Section 307 IPC to Section 302 IPC.



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7. On completing the investigation, a final report was filed before the Judicial Magistrate at Keeranur and taken cognizance as P.R.C. No.18 of 2015. The case was then committed to the Court of Sessions, since the offence under Section 302 IPC was triable exclusively by a Court of Sessions. The trial took place before the Mahila Court at Pudukottai. The accused was charged with commission of offences punishable under Sections 302 and 506(ii) IPC. The accused denied the charges. The prosecution was then called upon to prove the charges.

8. The prosecution examined as witnesses, PW-1 to PW-10 and marked Ex-P1 to Ex-P11 documents. They also produced MO-1 to MO-3 material objects. On the side of the accused, his mother was examined as DW-1. On conclusion of trial, the incriminating portion of the evidence were put to the accused and his statements were recorded. By judgment dated 09.12.2020, the learned Sessions Judge/Mahila Court, Pudukottai convicted the accused for commission of offence punishable under Section 302 IPC and sentenced him to undergo life imprisonment and to pay fine of Rs.20,000/- in default to undergo one year rigorous imprisonment and also convicted him for offence punishable under Section 506(ii) IPC and



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sentenced him to undergo three years rigorous imprisonment. The sentences were directed to run concurrently. The learned Trial Judge also directed the District Legal Services Authority to pay compensation to the children of the deceased after deciding the compensation in according with the Tamil Nadu State Compensation Scheme. The period of detention already undergone by the accused was also directed to be set off under Section 428 IPC. The present Criminal Appeal had been filed against the said judgment.

9.The accused, Bose @ Bosemani and the deceased Amudha had three children, two daughters and one son aged between 7 and 10 years. They all resided in a small hamlet at MGR Nagar, Saplamthoppu, T.Nallur Post Office, Kulathur Taluk, Pudukottai District. It is the case of the prosecution that the accused had acquired the habit of consuming liquor. He was working as a cooli. His wife Amudha was also working as a cooli in a construction site. The accused often demanded money from his wife to purchase liquor. There were frequent quarrels between two of them in this regard. The neighbours often intervened in the quarrel to settle the issues.



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10. On 11.01.2015, once again the accused had picked up a quarrel with his wife in the evening at 06.00 pm seeking money to purchase liquor. This was witnessed by Sasikumar (PW-1), Valliammai (PW-2), Perumal, Vijaya, Anajalai, Kaliammal and Poornam (all not examined). They intervened in the quarrel and sent the accused out of the house. It is the further case of the prosecution that while leaving the house, the accused threatened his wife by stating that “இன்று ராத்திருக்குள் உனக்கு ஒரு முடிவு கட்டுகிறேன்”, (by this night, I will bring a conclusion to you).

11. It is stated that later in the same night at around 11.00 pm., the accused is said to have told her “இத்தோடு ஒழிந்து போ நீ” (with this, go away) and had smashed her head using *aralaikkal* (big stone) (MO-1). It is the further case of the prosecution that around that time, Sasikumar (PW-1) Valliammai (PW-2), Mani, Vijaya, Perumal, Murugesan, Mookkan, Marimuthu and Manivel (all not examined) were discussing about the upcoming Pongal festivities sitting outside the opposite house of the accused and the deceased. They heard a big cry coming from inside the house of the accused and saw the children running outside in panic. When all of them went inside the house, they saw Amudha lying on the mat



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(MO-2) with blood oozing from her blood. The accused was standing nearby with MO-1 and threatened them that he would throw the stone at them. He then threw the stone outside the house and ran away.

12.It is in evidence that the witnesses named above did not know what to do and finally after about three hours at 02.00 am, they telephoned 108, the ambulance number. The ambulance came around 03.00 am. Amudha was then taken to Government Hospital at Trichy. The accident report was written down at 05.30 am on 12.01.2015. It was noted that she was assaulted at 11.00 pm on 11.01.2015 by a known person with a stone. Her name was given as Amudha wife of Bosemani and her address was also given. The accused/husband, Bosemani was not mentioned as the person who had committed the offence. She was admitted by her mother-in-law, Mookkayee.

13.In this connection, a complaint (Ex-P1) was lodged by Sasikumar PW-1 at 08.00 am on 12.01.2015.

14.Later, Amudha died the next day, 13.01.2015 at 04.50 am.



15.In the postmortem report (EX-P6), the following injuries had been noted:

- “1.Intravenous injection marks on back of right hand, and outer aspect of right elbow. (Therapeutic)*
- 2.Irregular Dark brown abrasions*
 - a.7x1-0.5 cm on right side of fore head and adjoining right side of frontal region of scalp;*
 - b.x21 cm on outer aspect of right eyebrow;*
 - c.6x2 cm on left side of upper part of face between left eye and left ear;*
 - d.2.5x1 cm on right eye.*
- 3.Subconjunctival hemorrhage on right eye.*
- 4.Suture wound 1 cm on outer aspect of upper left ear.*
- 5.Sutured laceration 3 x 1 x 0.5 cm with intact sutures on left side of lower part of occipital region of scalp 3 cm behind left ear with surrounding marginal abrasion 1 -0.5 cm; dark red contusion 11x9x0.5 cm on right fronto parieto temporal region of scalp; dark red contusions on both temporarlis muscles; inverted 'L' shaped fissured fracture with irregular edges 16 cm, with five pieces present on right fronto parieto temporal region left temporal region, right anterior, cranial fossa and both the middle cranial fossae; dark red contusion 9x6x0.5 cm on left temporal region of brain; thin diffuse dark red subdural and subarachnoid hemorrhage on all over the brain.”*

16.The opinion for the cause of death as given by Dr.S.Saravanan (PW-7), who had conducted the postmortem, was *“died due to effect of head injury”*. Thereafter, the FIR which had been registered for the offence punishable under Section 307 IPC was altered to offence punishable under Section 302 IPC. The Investigation Officer filed the alteration report (Ex-



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P10) on 13.01.2015.

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17.The investigation was taken over by Alavudeen, Circle Inspector of Mathur Police Station. In his evidence, he stated that he went over to the scene of crime on 12.01.2015 at 09.00 am and prepared observation mahazar (Ex-P2) and rough sketch (Ex-P9) in the presence of witnesses, Senthil Kumar (PW-5) and Kulanthaivel (not examined). He then seized the blood stained *aralaikkal* (MO-1) and blood stained plastic mat (MO-2) in the presence of the same witnesses. He also recorded their statements. He then recorded the statements of Sasi Kumar (PW-1), Valliammai (PW-2), Perumal, Murugesan, Mookkan, Marimuthu and Manivel (all not examined).

18.He then arrested the accused on the same day at 03.00 pm in the presence of witnesses, Krishnamoorthy (not examined) and Chelliah (PW-6). He also recorded the confession of the accused and also recovered the blood stained t-shirt (MO-3). He then forwarded the seized objects under Form-95 to the Court. On hearing the death of Amudha, he filed an alteration report (Ex-P10) on 13.01.2015 before the jurisdictional



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Magistrate Court. He also conducted inquest over the the dead body of Amudha at Government Hospital, Trichy. The inquest report was marked as Ex-P11.

19.He also recorded the further statements of the witnesses, Sasi Kumar (PW-1), Valliammai (PW-2), Perumal, Murugesan, Mookkan, Marimuthu and Manivel (all not examined) on 15.01.2015. He also recorded the statement of Mookkayee, who was the mother of the accused and mother-in-law of the deceased and who had admitted the deceased to the Hospital. He then recorded the statement of Dr.S.Saravanan (PW-7) and obtained the postmortem certificate (Ex-P6). He also examined Albert (PW-8), Special Sub Inspector of Police, who had received the complaint and registered the FIR in Cr.No.7 of 2015 on 12.01.2015. The Investigation Officer finally concluded the investigation on 01.03.2015 and filed final report before the Judicial Magistrate Court at Keeranur.

20.The final report was taken cognizance as P.R.C.No.18 of 2015. As stated above, the case was committed to the Court of Sessions/Mahila Court, Pudukottai and taken on file as S.C.No.30 of 2017. The Court then



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framed charges against the accused for commission of offences punishable under Sections 302 and 506(ii) IPC. The accused denied the charges and claimed to be tried. On conclusion of trial, the accused was questioned under Section 313 (i)(b) Cr.P.C., with respect to the incriminating portion of evidence against him. His statements were recorded. He was however convicted and sentenced for offences punishable under Sections 302 and 506(ii) IPC. This appeal has been filed questioning the said conviction and the sentence imposed.

21.PW-1, Sasi Kumar, in his evidence stated that he was present when there was a quarrel between the accused and his wife, Amudha, the deceased at 06.00 pm on 11.01.2015. Later, he was talking with several other persons including PW-2, Valliammai sitting outside the opposite house of the accused at 11.00 pm on 11.01.2015. They were discussing about the upcoming Pongal festivities. At that time, they heard a big cry from inside the house of the deceased and saw the children running out in panic. PW-1, PW-2 and the others went inside the house and found Amudha lying on the mat with blood oozing from her head. The accused was standing nearby with an *aralaikkal* (big stone) (MO-1). He threatened



that he would throw the stone at them also. He then threw the stone outside the house and ran away. The witness identified the complaint, Ex-P1. Very significantly, PW-1 was not an eye witness to the actual occurrence.

22.The prosecution also examined Valliammai (PW-2). She also stated about the quarrel at 06.00 pm on 11.01.2015 between the accused and the deceased. She later stated that she along with others were discussing about the upcoming Pongal festivities at around 11.00 pm. At that time, they heard a loud noise from inside the house of the deceased. Thereafter, the three children ran out crying. The witness, PW-2 and others went into the house of the accused and found the deceased lying down on the mat with blood oozing. They also saw the accused with a stone in his hands. He threatened them that he would throw it at them. He then threw it outside the house and ran away.

23.The prosecution also examined Marimuthu as PW-3, who mirrored the evidence of PW-1 and PW-2. He also did not witness the occurrence at 11.00 pm at 11.01.2015. He went inside the house after the occurrence had happened along with PW-1 and PW-2.



24.The prosecution further examined Manivel as PW-4. In his chief examination, he gave a different statement. He stated that at 11.00 pm on 11.01.2015, they heard the cry of the children. He stated that he and the other witnesses went inside the house and saw the accused throwing a stone on the head of the deceased. He further stated that the accused then picked up the same stone and threatened all of them and later threw the stone outside and ran away.

25.The prosecution then examined Senthil Kumar as PW-5, the owner of the house, where, the accused and the deceased resided. He was one of the witnesses to the observation mahazar, Ex-P2 and seizure mahazar, Ex-P3 under which MO-1 and MO-2 were seized. He came to the place only on hearing about the incident. He admitted during the cross examination that in Ex-P3, there were deletions by using whitener and there were further writings. He also stated that in the same document, Ex-P3, the date was also corrected by using a whitener.

26.The prosecution further examined Chelliah, PW-6, who was one of the witnesses to the recovery of a black-white striped t-shirt, MO-3 under



seizure mahazar, Ex-P5.

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27.The prosecution also examined Dr.S.Saravanan, who conducted the postmortem, as PW-7. The postmortem certificate was marked as Ex-P6.

28.The prosecution further examined Albert, PW-8, Special Sub Inspector of Police, who had received the complaint (Ex-P1) and registered the FIR in Cr.No.7 of 2015 on 12.01.2015, which was marked as Ex-P7. In his cross examination, he stated that the occurrence had happened at 11.00 pm on 11.01.2015, but the complaint was lodged at 08.00 am on 12.01.2015. He admitted that he had not recorded the time when he had received the complaint. He had only noted the time of registration of the FIR, which was at 08.00 am on 12.01.2015. He also stated that he did not know whether any information had been received from the Government Hospital at Trichy to the Police Station. He further stated that it was customary that in medico-legal cases, a message would be immediately sent from the hospital to the jurisdictional Police Station. He denied that similar information was received and had been suppressed by him.



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29.The prosecution also examined Dr.Sumathi Ravikumar, as PW-9

She identified the writings of Dr.Archana, who had admitted the deceased to the hospital on 12.01.2015 at 05.30 am. The records show that Amudha was admitted to the hospital by her mother-in-law, Mookkayee. The accident report was marked as Ex-P8. During cross examination, PW-9 admitted that for the first injury on right side of the fore head adjoining the right side frontal region of scalp, the measurement was not initially given. She further stated during her cross examination that in the case sheet, the measurement was subsequently entered.

30.The prosecution finally examined PW-10, Alavudeen, the Investigating Officer. The nature of his investigation had been referred above.

31.After conclusion of trial, the incriminating portion of the evidence were put to the accused and his statements were recorded. Finally, by judgment dated 09.12.2020, the learned trial Judge convicted the accused for offences punishable under Sections 302 and 506(ii) IPC and sentenced him accordingly. The present Criminal Appeal had been filed questioning



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the said conviction and sentence in the said judgment.

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32. Heard arguments advanced by Mr.Sivasubramanian, learned Counsel appearing for the appellant and Mr.T.Senthil Kumar, learned Additional Public Prosecutor appearing for the respondent.

33. Mr.S.Sivasubramanian, learned Counsel for the appellant pointed out the sequence of events and stated that though the prosecution had claimed that PW-1 to PW-4 were eye witnesses, during their evidence before the Court, PW-1, PW-2 and PW-3 had uniformly stated that they went inside the house of the accused on hearing a loud cry and the children running and when they entered, they saw the accused standing with a stone, MO-1 and the deceased lying on the mat with blood oozing from the side of her head. PW-4 alone had stated that when they all rushed into the house, he saw the accused throwing a stone on the deceased. The learned Counsel stated that this stray statement by PW-4 is inconsistent with the evidence of PW-1 to PW-3. It was therefore contended by the learned Counsel for the appellant that there were no eye witnesses for the occurrence.



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34. Thereafter, it is alleged that the accused had threatened PW-1 to PW-4 that he would throw the stone at them and then threw the stone outside house and ran away.

35. The learned Counsel pointed out that there had been a quarrel that very evening at around 06.00 pm and the accused was in an agitated state of mind. The learned Counsel further pointed out that though the incident happened at around 11.00 am, the first effort to call for an ambulance was only around 02.00 am and the ambulance came at 03.00 am and the deceased was admitted in the hospital only at around 05.30 am. The learned Counsel stated that this delay was serious and has not been explained. The statements of PW-1 to PW-4 that they did not know what to do cannot be held against the accused.

36. It was further pointed out by the learned Counsel that there had been a correction in the accident register by changing the date. He also pointed out the recovery mahazar with respect to the stone, MO-1 and pointed out that the entry has been erased by whitener and overwritten. The learned Counsel therefore stated that the said document should not be



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considered into by the Court. He also pointed out that the material objects were not sent for forensic evidence. The learned Counsel further pointed out the delay even in registering the FIR. The complaint was lodged only at 08.00 am. Thereafter, it had been received by the Magistrate only at 07.30 pm on 12.01.2015. The delays at each stage has not been explained by the prosecution.

37.The learned Counsel stated that since the recovery of MO-1 itself is doubtful, the Court should set aside the judgment of the trial Court and allow the appeal. He further pointed out that PW-1 to PW-3 are interested witnesses and had tendered evidence in a mechanical manner. In view of all these reasons, the learned Counsel stated that the Criminal Appeal must be allowed.

38.Mr.T.Senthil Kumar, learned Additional Public Prosecutor however contended and disputed the contentions of the learned Counsel for the appellant. According to the learned Additional Public Prosecutor, the accused was found by PW-1 to PW-3 standing with a stone in his hands and at the same time, his wife was lying on the mat with blood oozing from her



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head. The learned Additional Public Prosecutor therefore stated that it was the accused who was in the room, who should explain as to how the injury happened.

39.The learned Additional Public Prosecutor relied on Section 106 of the Indian Evidence Act and stated that this is a fact known exclusively only to the accused and he alone will have to explain the manner in which the injury was caused to his wife. The learned Additional Public Prosecutor further pointed out that when PW-1 to PW-4 had entered into the house, the accused had run away from the house and therefore, argued that his conduct establishes the guilt of the accused.

40.The learned Additional Public Prosecutor stated that usage of whitener in the seizure mahazar would not affect the case of the prosecution, since MO-1 had been identified before the Court and therefore, no advantage would come to the prosecution by erasing certain writings in the seizure mahazar. With respect to the alteration of the date in the accident register, the learned Additional Public Prosecutor stated that it was a genuine mistake which had been corrected. He urged that this Court should



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dismiss the Criminal Appeal and confirm the judgment of the learned trial Judge.

41.We have carefully considered the arguments advanced and perused the material records.

42.The accused, Bose @ Bosemani and the deceased, Amudha were spouses. They were both working as cooli workers. They had three children, two young girls and a small boy. They were all living together. It was a crowded hamlet. PW-1, Sasi Kumar, PW-2, Vallaimmai, PW-3, Marimuthu and PW-4, Manivel, were also local residents. The house owner was PW-5, Senthil Kumar. He was not living in that area, but was working as Computer Assistant in Bharathidasan University.

43.It has been the consistent evidence of PW-1 to PW-4 that the accused was in the habit of consuming liquor. He often demanded money to purchase liquor from his wife, the deceased. He raised a similar demand once again on 11.01.2015. This was at around 06.00 pm. This demand led a quarrel between him and his wife. She refused to give him money. It is in



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the evidence of PW-1 to PW-4 that they had pacified the accused and the deceased, when they had the initial quarrel at 06.00 pm. The accused then stormed out of the house. When he went, it is the case of the prosecution that he uttered the words, “இன்று ராத்திருக்குள் உனக்கு ஒரு முடிவு கட்டுகிறேன்”. A rough translation would mean that by that night, he would bring a conclusion to the deceased. In other terms, he would ensure that she does not see the day light.

44.PW-1 to PW-4 and others were then sitting outside the opposite house of the deceased discussing about the upcoming Pongal festivities. They stated that the light was burning in the house of the deceased. At 11.00 pm, they heard a sudden noise. The children then ran out crying. PW-1 to PW-4 rushed into the house. They found the deceased lying on a mat with blood oozing from the side of her head. The accused was standing nearby with a stone in his hands. That stone had been subsequently produced during the trial as MO-1. When he saw the witnesses, he threatened them with dire consequences. He then threw the stone outside the house and ran away.



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45. There had been only one statement from PW-4, who stated that he saw the accused throwing the stone on the deceased. But that particular statement is inconsistent with the evidence of PW-1 to PW-3, who all uniformly stated that they only saw the accused standing with a stone in his hand.

46. The subsequent sequence of events appear quite strange. All of them including PW-1 to PW-4 sat near the deceased and it is on evidence that they did not know what to do. It was only around 02.00 am that they had called the ambulance which arrived at 03.00 am. Thereafter, the deceased, who was still alive, was admitted to the Government Hospital at Trichy only at 05.30 am. It is thus seen that there has been considerable delay in taking any steps whatsoever by PW-1 to PW-4, who were present at that place.

47. The accident report had been marked as Ex-P8. The Doctor, who noted down the injuries on the deceased, Dr. Archana had not been examined as a witness. PW-10 however gave an explanation stating that she was not available and therefore, PW-9, Dr. Sumathi Ravikumar, was



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examined. Even otherwise, in Ex-P8, the name of the injured person at the time of admission had been given and she had been described as wife of Bosemani and her address had also been given. But, however, in the nature of injury and the treatment, it had been stated that she had been assaulted by *a known person* with stone in her house at 11.00 pm, the previous night. She had been brought to the hospital by her mother-in-law, Mookkayee. It is thus seen that even in the accident register, the name of the accused was not given.

48.Mookkayee was examined as DW-1. In her evidence, she stated that the injury happened owing to a free fall in the entrance steps. The learned trial Judge had however noted the statement of the accused when examined under Section 313(1)(b) Cr.P.C., that the deceased had fallen on the cement road and suffered injuries and therefore, rejected the evidence of DW-1.

49.The one common factor among all the versions is that there had been a quarrel before the incident. No explanation had been given by the prosecution as to why Mookkayye, who had taken the deceased to the



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hospital, was not examined as a witness for the prosecution, since she was the first person, who informed about the manner in which the injury happened.

50.The complaint had been lodged by PW-1 only around 08.00 am on 12.01.2015. Though the incident had happened the previous night at 11.00 pm, PW-1 to PW-4 had called for the ambulance only at 02.00 am. The deceased had been admitted to the Government Hospital at Trichy only at 05.30 am. There is no record available to show that information had been forwarded by the Government Hospital, Trichy to the jurisdictional Police Station, even though it was a medico-legal case, as even in Ex-P8, it had been very clearly stated that the injury was caused by *assault by a known person with a stone*.

51.When re-appraising the evidence available, it is seen that there are no eye witnesses for the entire incident. All the witnesses have however stated about the continuous quarrel between the accused and the deceased with the deceased demanding money to purchase liquor and the deceased often refusing to give him the money. They were both cooli workers. They



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also have three young children. We hold that the entire incident arose only owing to a quarrel which had shaken the normal thinking of the accused. He had stormed out of the house after the initial quarrel at 06.00 pm and had come back and had once again picked up the quarrel. He must also have to be under the influence of alcohol. There cannot be any opinion given whether he was under control of his senses at the time when the entire offence occurred.

52.The fact that the deceased died owing to MO-1 being thrown on her head establishes that her death is a homicidal death. The further fact that the accused was seen with a stone immediately thereafter by PW-1 to PW-4 further establishes that he was culpable for the said throwing of the stone and causing the death of his own wife/deceased. The only issue which will now have to be examined is whether the offence would come under any of the Exceptions to 300 IPC.

53.Exception 4 to Section 300 IPC is as follows:

“Section 300: Murder:

.....

Exception 4.—Culpable homicide is not murder



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if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.”

54.The factors which are stated are that the sudden quarrel should be to such an extent that it should disturb the mental status of the accused. He must then, in the heat of passion, react in a manner violently, but without knowledge that his action would cause death and with or without intention, cause death.

55.The Hon'ble Supreme Court in the judgment reported in **(2009) 16 SCC 361, Felix Ambrose D'souza -vs- State of Karnataka**, while dealing with the plea of mitigation and conversion of conviction from offence punishable under Section 302 IPC to offence punishable under Section 304 part II IPC had held as follows:-

7. The learned counsel for the appellant in the alternative has made a submission that, at any rate, the facts even held proved, could not be considered to be just and sufficient to warrant a conviction under Section 302 IPC and if at all conviction under Section 304 part II IPC alone could have been rendered



possible. Though the learned counsel for the respondent - state strongly insisted that keeping in view the gravity of the offence and the brutal manner in which it has been committed with the background of animosity and ill-will there was no need for altering the nature of offence and that the finding of the High Court in this regard may not call for any interference. As noticed earlier and having regard to the materials and the evidence on record as spoken to even by the prosecution witnesses there does not appear to be any premeditated plan or intention to either put an end to the life of the deceased or cause any injury with the intention of causing his death or causing such bodily injury which within the knowledge of the accused was likely to cause his death even in the ordinary course of nature. Irrespective of the silent nature ill-feelings which existed between the parties, it appears to have surfaced with a violent turn on the fateful day due to sudden quarrel which even according to the prosecution witnesses, commenced with an altercation and attempts to break open the lock which was said to have been placed on the door of the store room by the appellant in addition to the one part by the father and the deceased. In the tussle and altercation and an attempt to break the lock by the deceased with an hammer in his hand and attempts made by the appellant to physically prevent the deceased from so doing, and physical use of force in the process, passions seem to have flared up beyond proportion all of a sudden, perhaps neither anticipated nor intended by either of them. The prosecution version itself lends credence and support to the plea of sudden provocation on the spur of moment. Therefore, we are of the view that the High Court was not right in arriving at the conclusion to convict the appellant under Section 302 IPC. In our considered view, on the proved facts the only offence that could reasonably be said to have been made out and for which the appellant could be convicted would be under Section 304 part II IPC and to this extent we partly allow the



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appeal and set aside the order of conviction under Section 302 IPC and instead convict him under Section 304 part II IPC.”

56.In (2016) 10 SCC 519 (*Jose @ Pappachan vs the Sub Inspector of Police*), the Hon'ble Supreme Court had held as follows:

“56.It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge cannot afford to lodge its case in the realm of “may be true” but has to essentially elevate it to the grade of “must be true”. In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and in a situation where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent but as entertainable by an impartial, prudent and analytical mind, judged on the touchstone of reason and common sense. It is also a primary postulation in criminal jurisprudence that if two views are possible on the evidence available, one pointing to the guilt of the accused and the other to his innocence, the one favourable to the accused ought to be adopted.”

57.It is clear from the narration of the facts that though the accused is culpable for the death of the deceased, still he was hardly in his senses, when the offence had taken place. The continuous quarrels had left an indelible mark on him.



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58. There is one further factor which had been pointed out by the learned Counsel for the appellant, namely about the usage of whitener in the seizure mahazar of MO-1 and the description of MO-1. We would put that down to naivety rather than to deliberate screening of any material writing.

59. We would however hold that the conviction of the accused for offence punishable under Section 302 IPC has to be set aside and we set aside the same and instead convict the accused for offence punishable under Section 304 part II IPC. We would maintain the fine and also the conviction under Section 506(ii) IPC and the sentence imposed therein. We would also uphold the direction of the learned trial Judge for compensation under Section 357-A(2) of Cr.P.C.

60. In the result, the Criminal Appeal is partly allowed setting aside the conviction for offence punishable under Section 302 IPC, but convicting the accused for offence punishable under Section 304 part-II IPC and sentencing him to undergo the imprisonment for four years rigorous imprisonment and retaining the fine portion of the judgment, namely, Rs.20,000/- and in default, to undergo one year simple imprisonment and



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retain the conviction under Section 506(ii) IPC and the sentence of three years rigorous imprisonment. Both the sentences should run concurrently.

The period of imprisonment undergone at the time of remand and after the judgment of the trial Court are directed to be set off as provided under Section 428 Cr.P.C. We further direct the trial Court to take the accused into custody to serve the remaining period of sentence.

[C.V.K., J.] & [J.S.N.P., J.]
22.10.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No
cmr

To

1.The Sessions Judge (Mahila Court), Pudukottai.

2.The Superintendent, Central Prison, Trichy.

3.The Inspector of Police,
Mathur Police Station,
Pudukottai District.

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

5.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court, Madurai.

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C.V.KARTHIKEYAN, J.

AND

J.SATHYA NARAYANA PRASAD. J.

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Pre-delivery Judgment made in
Crl.A(MD)No.239 of 2021

22.10.2024