



Crl.A(MD)No.374 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.03.2025

Pronounced on : 03.04.2025

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

Crl.A(MD)No.374 of 2021

Karnan

.. Appellant/Sole accused

Vs.

State rep by
The Inspector of Police,
Mamsapuram Police Station,
Virudhunagar District.
(Crime No.304 of 2019)

...Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment and sentence dated 20.01.2021 passed in S.C.No.45 of 2010 by the Fast Track Mahila Court, Virudhunagar District, at Srivilliputhur.

For Appellant : Mr.J.Jeyakumaran
For Respondent :Mr.S.Ravi,
Additional Public Prosecutor



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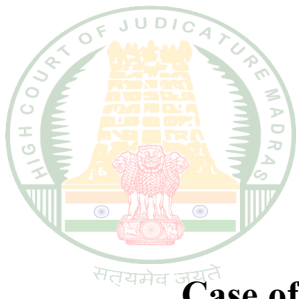
JUDGMENT

Dr.G.JAYACHANDRAN, J.
and
R.POORNIMA, J.

The appellant is the husband of Muthulakshmi (the deceased). He was charged for offence under Section 302 IPC for intentionally causing the death of his wife on 19.09.2009 at about 8.00 am by hitting on her head with a wooden log.

2.The prosecution to substantiate the charge, examined 20 witnesses. Marked 12 documents and 4 material objects. In defence, there was no evidence marked.

3.The Sessions Court at Srivillipudur, on considering the evidence placed and its evidenciary value, held that the accused/appellant guilty of offence under section 302 IPC and convicted him to undergo life imprisonment and pay a fine of Rs 5000/- in default to undergo 6 months Simple Imprisonment.

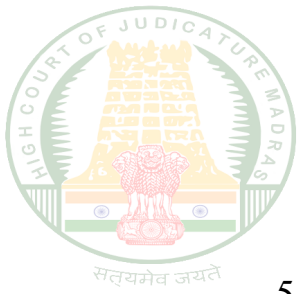


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Case of the prosecution:-

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4.Mayakrishnan(PW-1) in his complaint-Ex.P.1 dated 19.09.2009, had informed to the Sub-Inspector of Police, Mamsapuram that his daughter Muthulakshmi married to one Karnan nine years ago and they have two sons and one daughter. He after developing illicit intimacy with a lady by name Muniammal, his son-in-law started torturing his daughter. A month ago, his daughter unbearable of the torture came to the parent home and stayed with them. 10 days ago, he, his wife and relatives advised Muthulakshmi and sent her back to her husband house. On 19.09.2009 at about 9.30 a.m., from Lakhshmanan he heard that Karnan had assaulted his daughter with wooden log and she had been taken to the Hospital at Srivillipudur. Immediately, he came to Othampatti Village and enquired his grand son Marrieswaran and others in the village. From them, he came to know that, Karnan and Muthulakshmi had quarrelled over the illegal affair and during the quarrel, Karnan hit Muthulakshmi with the wooden log saying, “till you are alive, you will be an hinderance. So get lost”.



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5. Based on the above information, in Cr.No:304 of 2009 registered against Karnan for offence under section 302 IPC and taken up for investigation. Nagarathinam(PW-19), Inspector of Police had examined the witnesses and recorded their statements. Conducted inquest and sent the Muthulakshmi body for postmortem through Head Constable Perumal. He arrested the accused Karnan at 17.30 hours near the Ramakrishna Madam bus stop. In the presence of Bramanayagam, Village Administrative Officer and his Assistant as witnesses, recorded the confession of the accused. Based on the disclosure, the blood stained shirt of the accused(M.O.1) and the blood stained wooden log (M.O.2) were recovered. The blood stained saree and blouse of the deceased were collected from the mortuary (M.O.3 and M.O.4). PW-19 on his transfer, handed over the investigation to Muthukumar (PW-20), Inspector of Police, who continued the investigation. After collecting the serology report and recording the statement of the scientific officer, PW-20 filed the final report.

6. PW-1 in his chief examination had reiterated his complaint. He had denied the suggestion that due to previous enmity with the accused, he is giving false evidence. PW.2-the minor son of the deceased, who was about 4



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years old at the time of occurrence and 13 years old at the time of examining him in chief recorded on 21.02.2018, contrary to his previous statement, had deposed that, he and his mother went to the house under construction for watering the wall. At that time his, mother accidentally fell from the scaffold and sustained head injury. His paternal uncle Arjunan took her in a vehicle to the Hospital. He came to know his mother died in the hospital. Later, this witness was recalled and cross examined by the prosecution on 30.09.2020. After declaring him as hostile witness, he was confronted with leading questions. In the course of cross examination, this witness had implicated his father / the accused and also deposed that earlier he was tutored by his father to depose falsely.

7.PW.3-Mariamammal neighboring resident, PW.4-Santhi, who resident behind the house of the deceased, PW.8-Oyyammal, the owner of the house where the incident occurred are eye witnesses. They all have consistently deposed that on that fateful day, the deceased Muthulakshmi and Karnan were quarrelling. They saw Karnan hitting Muthulakshmi with a wooden log on her head. Among the prosecution witnesses to speak about the occurrence, PW-7 alone had turned hostile to prosecution. PW-2 who turned



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hostile, but deposed in support of the prosecution in the cross examination.

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8.The recovery of blood stain cloth and the wooden log based on the confession of the accused is spoken by Bramhanayagam (PW-10). As per Ex.P.5-the serology report, the blood of the deceased is 'B' Group. Same group blood found in the shirt of the accused and in the wooden log marked as M.O-1 and M.O-2 respectively.

9.Muniammal with whom the accused alleged to have developed intimacy and was caused for the dispute between the accused and the deceased was examined as PW-17. Though she had deposed that she is not aware how Muthulakshmi died, she had admitted that after her death, the accused had married her and she is having two children through him. Same fact is found admitted by PW-2 in the cross examination.

10.The trial Court based on the above evidence convicted the accused and sentenced him to undergo life imprisonment and to pay fine of Rs 5000/-. The said judgment is challenged on the following grounds:-

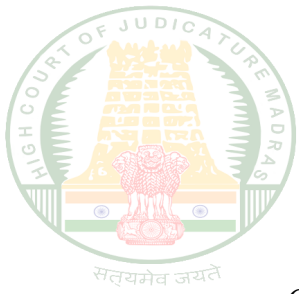


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“(a)The trial Court failed to appreciate the eye witnesses (P.W.2) in proper perspective. P.W.2 after adhering the legal requirement of examination of child witness. He was subjected to Chief Examination on 21.02.2018 where he categorically stated that deceased fell down from the hight of the building, while sprinkling water. She was immedicately taken to the hospital by one Arjunan, who is senior father of P.W.2. That Arjunan has not been examined as witness for the reasons best known to the prosecution. The prosecution recalled P.W.2 on 30.09.2020, belatedly and made him hostile by subjecting him in to the cross examination. The attempt of recall made by a prosecution belatedly after lapse of 2 years is unknown to criminal law.

(b)The Trial Court failed to consider the evidence of doctor(P.W.14), who treated the deceased while she was alike clearly stated that he was informed at accident fall. The AR entry Ex.P.6 reflected the same. Further, P.W.14 did not speak of the exact cause of death of the deceased. Admittedly, the deceased sustain two head injuries. No explanation as to which injury is the fatal injury.

(c)The prosecution failed to obtain the opinion from postmortem doctor as to the cause of death by showing the alleged wooden log. Further the doctor-P.W.14 clearly admitted that the injuries of the deceased could have been



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caused due to the accident fall from hight of building. The defense version has been only probabilsed, but also proved by the evidence of P.W.2 and P.W.14.

(d)The trial Court failed to consider evidence of P.W. 3 who is one of the eye witnesses admitted in cross examination that the belatedly reached the scene of occurrence and she did not enter into the house if the deceased, where the occurrence took place.

(e)The complaint-Ex.P.1 is highly doubtful and belated one, since according to the prosecution case, P.W.1 lodged complaint which came to be marked as Ex.P.1, per contra P.W.6 deposed that the complaint was dictated by police and he wrote the same. So the complaint written by P.W.6 has not been produced by the prosecution.

(f)The trial Court failed to consider that the occurrence resulted out of sudden wordy quarrel and admittedly the weapon of the offence was available there in the scene of crime itslef, by any stretch imagination. The offence of murder will never be made out rather than culpable homicide not amounting to murder.

(g)The trial Court failed to consider that the none of the eye witnesses and also doctor did not identify the weapon of crime as it has been cited in the commission of crime.



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(h)The trial Court failed to note that the prosecution had not proved the offences against the appellant without any reasonable dobt and the benefit of doubt was not granted in favour of the accused.”

11.The learned Additional Public Prosecutor submitted that, the evidence of PW-2 was 4 years old child at the time of occurrence. When he was 13 years old, came to the Court to depose about the occurrence. At that time, he was under the care and custody of the accused and his paternal grand parents. Therefore, he was tutored by the accused to depose falsely, Two and half years later, after the witness was removed from the influence of the accused, he had truly deposed about the occurrence. Though there was about 2 ½ years gap between the chief examination and cross examination, the evidence given by the child witness after removing the influence is more reliable, since the evidence given by him in the cross examination is consistent to his previous statement to the police as well the evidence of PW-2 to PW-4 and PW-8.



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12.The Learned Additional Public Prosecutor further submitted that, the overt act of the accused causing head injury to his wife and the cause for his irritation and frustration is proved through the witnesses to the occurrence. These witnesses are residents nearby and natural witnesses. The admission of PW-17 that she, after the death of Muthulakshmi, had married the accused and the evidence of PW-2 to PW-4 and PW-8 that the husband and wife used to quarrel over the relationship of the accused with PW-17 is proof for motive. Hence, the learned Additional Public Prosecutor submitted that minor contradictions, if any are not of much significance to disprove the case of the prosecution.

13.Heard the rival submissions placed by the Learned Counsel for the appellant/accused and the Learned Additional Public Prosecutor for the State.

14.The prosecution case is that Muthulakshmi was done to death by her husband Karnan, by hitting her on the head with wooden log-M.O.2. The attack was the consequence of quarrel between them with respect of the



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illicit relationship between the accused and PW-17. The incident occurred at about 8.00 am, reported to the police at about 11.00 am by PW-1, who is the father of the deceased. Ex.P-6 is the Accident Register maintained at Srivilliputhur Government Hospital. The entry in the Accident Register reveals that the said Muthulakshmi was brought to the hospital by one Arjunan (brother-in-law of the patient). He had informed the duty doctor that the said Muthulakshmi sustained injury when she fell from the scaffold of the building under construction. At that time of admission into the hospital, she was alive but, not conscious. She died around 9.55 am. The post mortem report reveals that she had sustained two lacerated injuries on her scalp each 10.2 x 5 x 2.5 cm bone depth. Aberration on the right cheek and contusion over the right wrist also noted. The copy of the FIR had reached the Judicial Magistrate on 20.09.2009 at 1.10 pm.

15.As a defence, to create doubt about the prosecution case of homicidal death, the suggestion put to the post mortem doctor that if a person fall accidentally from a elevated place, may sustain the above injuries and the entry in AR made based on the information given by Arjunan, the brother of the accused are relied. In addition the evidence of PW-2, in his



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chief examination deposed in favour the accused also relied.

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16. Even if the evidence of PW.2-a child witness is kept aside, this Court finds the evidence of PW-2 to PW-4 and PW-8 are consistent and overwhelming. Nothing to doubt about their credibility is available on record. These witnesses are neighboring residents and natural witnesses. The occurrence had happened at about 8.00 am. The father of the deceased was at that time working in his field. He was informed about the incident through Lakshmanan(PW-6) the neighboring land owner. PW-6 had affixed his signature in the complaint-Ex.P-1. The observation mahazar-Ex.P8 and the rough sketch-Ex P-10 are prepared by PW-19. In the observation mahazar, the place of occurrence is mentioned as the house of the accused and it is a thatched house. In the rough sketch, there is nothing to indicate there is any building under construction or piling of wooden logs on the ground. No suggestion in the cross examination of PW-19 about the existence of a building under construction put, so as to probablise the defence theory of accident fall.



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17.The credibility of the entry in Ex.P-6 made on the information of Arjunan, the brother of the accused and the contradictory evidence of the minor witness PW-2, who had later admitted that he was tutored by the accused cannot stand before the evidence of other eye witnesses PW-3, PW-4 and PW-8, the confession and recovery witness PW-10 and the serology report Ex P-5 which proves the guilt of the accused / appellant beyond any reasonable doubt.

18.Therefore, we find that the grounds raised in the appeal are not sustainable to interfere the finding of the trial Court. Hence, the Criminal Appeal stands dismissed. The respondent police is directed to secure the appellant/accused forthwith and confined him in the prison to undergo the remaining period of sentence. The bail bond if any, shall stand cancelled.

[G.J.,J] & [R.P., J]
03.04.2025

Index : Yes/No
NCC : Yes/No
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**DR.G.JAYACHANDRAN, J.
AND
R.POORNIMA, J.**

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To

- 1.The Fast Track Mahila Court,
Virudhunagar District,
at Srivilliputhur.
- 2.The Inspector of Police,
Mamsapuram Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Predelivery Judgement made in
Crl.A(MD)No.374 of 2021**

03.04.2025