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Crl.A(MD)No.367 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	28/10/2024
Date of Pronounced	28/01/2025

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THE HONOURABLE MR. JUSTICE G.ILANGO VAN

Crl.A(MD)No.367 of 2019

M.Chinnasamy : Appellant/Sole Accused

Vs.

State rep. by
Inspector of Police,
Pasupathipalayam Police Station,
Karur District.

(Crime No.432 of 2017) : Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of the Criminal Procedure Code, to set aside the judgment, dated 26/07/2019 passed in SC No.30 of 2018 on the file of the Principal Sessions Court, Karur.

For Appellant : Mrs.S.Devasena

For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

J U D G M E N T

This Criminal Appeal is filed against the judgment, dated 26/07/2019 passed in SC No.30 of 2018 on the file of the Principal Sessions Court, Karur.



2.The case of the prosecution in brief:-

On 07/06/2007 at about 03.45 am, when the de-facto complainant Ravichadran and his wife were going on separate two wheelers to supply milk pockets, the accused said to have restrained the deceased Ravichandran abused him in filthy language as to why he gave the complaint against him, fisted him repeatedly on the face and nose and pushed him down. Due which, the de-facto complainant fell down, taken to Appolo Hospital, but was declared dead. As such on the complaint of the deceased's wife/Kamalavathi, a case in Crime No.432 of 2017 was registered by the respondent police for the offences under sections 341, 294(b), 506(i) and 302 IPC. After completion of the investigation, final report was filed. It was taken on file in SC No.30 of 2018 by the Principal Sessions Judge, Karur. After completing 207 Cr.P.C proceedings, it framed the following charges:-

(i)On 07/06/2017 when the de-facto complainant and her husband Ravichandran went to distribute milk pockets in separate two vehicles near Alagappa Nagar, the accused came in a two wheeler, waylaid the deceased Ravichadnran and thereby the accused committed an offence punishable under section 341 IPC;



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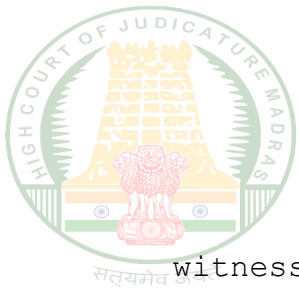
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(ii) In continuation of the above said occurrence, the accused abused the deceased Ravichandran in filthy language why he lodged the complaint against him and thereby, the accused committed an offence punishable under section 294(b) IPC;

(iii) In the above said occurrence the accused assaulted the deceased Ravichandran on his nose, mouth and chest, due to which, he fell down and got injuries in his head and thereafter, he died in the Apollo Hospital, Karur and thereby the accused committed an offence punishable under section 302 IPC;

(iv) In the above said occurrence, when the witness Kamalaveni asked the accused why he assaulted his husband, the accused threatened her with dire consequences and thereby, committed an offence of 506(i) IPC.

4. To that charges, the accused pleaded not guilty and claimed to be tried.



4. During trial, on the side of the prosecution, 18 witnesses were examined and 23 documents marked. Apart from that, 4 material objects were marked. On the side of the accused, no oral evidence was adduced, but 2 documents were marked.

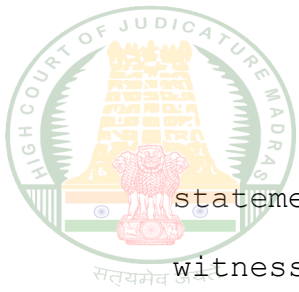
5. **PW1** is running a Tea Shop in Pasupathipalayam. Her deceased husband was doing milk vending business. To help him, PW1 was also used to go along with him. Some three years prior to the date of trial, the accused was working under her husband. They came to know that he misappropriated the business money. So, her husband stopped the accused from the work. Later the accused was doing his own business. Because of that, her husband gave a complaint against the accused in Pasupathipalayam police station stating that the accused is interfering in the business by supplying milk to his customers. In the enquiry, the accused gave an undertaking that he will not supply milk to her husband's customers. After that, on 07/06/2017, they went to the work as usual. Near Alagapuri at about 03.45 am, the accused intercepted them, picked up quarrel as to why her husband gave the complaint, caused assault with hands. Because of the repeated assault, her husband sustained bleeding in the nose and mouth. Her husband fell down and sustained injury on the back side of the head. When PW1 raised alarm, neighbours gathered, the



accused fled away from that place. At that time, he made criminal intimidation to her. The husband was shifted to the hospital. The Doctors, after examination, declared him dead. In this aspect, she lodged a complaint under Ex.P3.

6.The complaint was received by **PW17** who was working as Sub Inspector of Police, Karur Town Police station on 07/06/2017 at about 08.00 am, registered a case in Crime No.432 of 2020 under section 302 IPC. He submitted the original records to the court and copies to the higher authorities.

7.**PW18** was working as Inspector of Police, Pasupathipalayam Police Station, Karur Town during the relevant time, took up the investigation and on 07/06/2017 visited the place of occurrence at about 08.45 am, in the presence of the witnesses, prepared the observation mahazar, rough sketch and recovered blood stained tar portion and pure tar portion from that place under proper recovery mahazar, recorded the statement of the witnesses, conducted inquest on the body of the deceased on the very same day at about 10.00 am and prepared the report under Ex.P22, sent the body for postmortem. At about 05.30 pm, he arrested the accused. In the presence of the witnesses, he enquired him; the accused gave voluntary confession



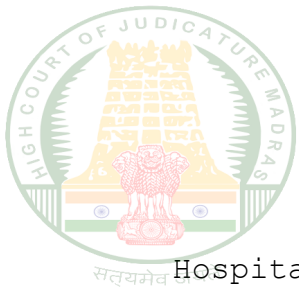
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statement which was recorded in the presence of the witnesses. In pursuance of the disclosure statement he produced the two wheeler bearing registration No.TN-47-AB-3634. He recovered the vehicle under proper mahazar in the presence of the witnesses. Further, he identified the shirt that was recovered. Later, he recorded the statement of the Medical Officers, recorded the statement of the Sub Inspector of Police, who enquired CSR No.240 of 2017, submitted the material objects to the court. Recovered objects were sent to FSL for examination and after obtaining the report he filed a final report charge sheeting the accused for the offence under sections 341, 294(b), 506(i) and 302 IPC.

8.**PW6 and PW11** are the eye witnesses to the occurrence. They were chance witnesses corroborated PW1 about the assault, etc. facts.

9.**PW2** is the daughter of the deceased. She corroborated PW1 regarding the previous enmity between the deceased and the accused.

10.**PW8** has spoken about the employment of the accused with the deceased, misappropriation of money and stopping the accused from the work.

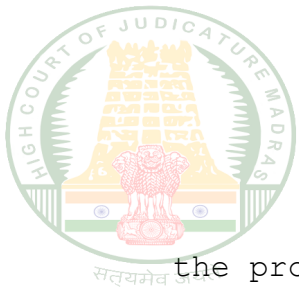


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11.**PW2** was working as Medical Officer in Apollo Hospital, Karur. On 07/06/2017 at about 04.45 am, the deceased was admitted by PW1. After examination, he found that he was already dead. Accident Register is marked as Ex.P11. Postmortem was conducted by PW10 on 07/06/2017 at about 03.15 am at the request made by the Investigating Officer. On his examination, he found bleeding in the mouth and nose region; a contusion measuring about 3 cm on the right forehead region and an abrasion measuring about 1 x 1 cm on the left knee portion. On the internal examination, he found scalp broken, hemorrhage. Viscera was taken and sent for chemical examination. As per his opinion, the death would have occurred between 6 to 24 hours prior to the postmortem because of the shock and hemorrhage due to the head injury. Postmortem report is marked as Ex.P14.

12.**PW12** was present when the Investigating Officer visited the occurrence place, recorded the statement, recovered the material objects.

13.**PW15** has spoken about the enquiry made on the complaint given by the deceased against the accused.



14.Others are not material witnesses. With that,
the prosecution side evidence was closed.

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15.The accused was questioned under section 313(1)
(b) of the Code of Criminal Procedure Code about the
incriminating circumstances against him. He denied the
evidence of the witnesses as false and stated that a false
case has been foisted. No witness was examined on the
defence side.

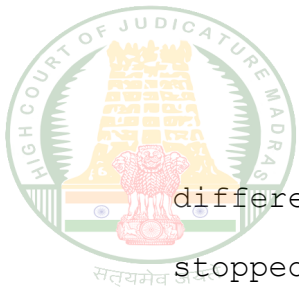
16.At the conclusion of the trial process, the
trial court found the accused guilty for the offence under
section **304(ii) IPC and sentenced him to undergo 3 year
Rigorous Imprisonment** and imposed a fine of Rs.5,000/- in
default to undergo three months simple imprisonment.

17.Against the judgment of conviction and sentence,
this criminal appeal is preferred by the accused.

18.Heard both sides.

19.First we will take up the motive issue.

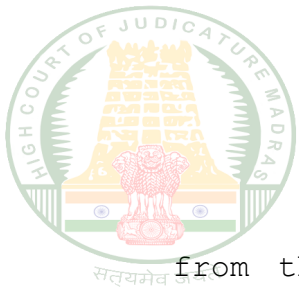
20.It is not in dispute that the accused was
previously working under the deceased. Later some sort of



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difference of opinion arose between them. The accused was stopped from the employment. Later the accused started his own milk vending business. But problem arose when the accused started supplying milk to the customers of the deceased. This is the enmity evident from the oral evidence of PW1, daughter, PW7 and PW8. The enquiry was conducted by PW15 as mentioned above. According to him, as per CSR No. 240 of 2017, enquiry was conducted by him. In the enquiry, the deceased Ravichandran and the accused were present. In the enquiry, the accused gave an undertaking letter that he will not supply milk to the deceased customers. Because of the undertaking given by the accused, enquiry was closed. The date of enquiry and closure is dated 02/06/2017. From the above said document and evidence, it is seen that there was enmity between the accused and the deceased over milk vending business. Even though the matter was compromised between them, enmity did not stop with that.

21.Now coming to the occurrence, PW1 says that on 07/06/2017 at about 03.45 am, again trouble was created by the accused, caused assault, the deceased fell down with bleeding injuries in mouth and nose, suffered injury on the back side of the head. Her evidence is supported or corroborated by the evidence of PW6 and PW11. Both were chance witnesses, they were not known either to the accused or deceased prior to the occurrence.



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22.PW6 has stated that he returned to his house from the Government Hospital, Karur, when he was nearing the place of occurrence, he found two persons indulging in quarrel. At that time, PW11 came there, both tried to separate the deceased and the accused. But the deceased took the key of the two wheeler of the accused. So, again quarrel started between them indulged in attacking each other. At that time, PW11 came to that place. He told that when the deceased took away the key, the accused started assaulting the deceased. Later, both of them indulged in assaulting each other. He immediately informed the police booth. After informing the police, he went. At that time, Ambulance came, he found the deceased lying in the road.

23.PW11 has stated that he was doing textile business. On the particular date of the occurrence, he was coming to Karur. At that time, he happened to see the occurrence, the accused assaulted the deceased pushing him down. In that place, another person was also available. He tried to separate the deceased and the accused. Later, he informed the Ambulance. The deceased was shifted to the hospital.

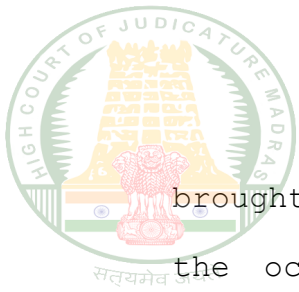
24. There is some contradiction between the evidence of PW1 and PW11.



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25.PW1 says that along with the deceased, she was going to the business, at that time, the occurrence took place. PW6 says that only in the middle of the occurrence, PW1 came to that spot. PW11 says that when he reached the place PW1, deceased, accused and other persons were seen by him, immediately Ambulance came to that place. But PW6 says that he informed the police, police came to the place, later only Ambulance came to the spot. This was projected by the appellant at the time of argument that PW11 and PW6 would not have been present in the place of occurrence. But from the minor contradiction, their credibility cannot be questioned. As mentioned above, they are only chance witnesses and they have no interest either in the accused or the deceased.

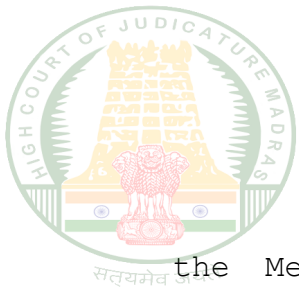
26.So their evidence remains unshakable. The finding of the trial court that their evidence are natural and trustworthy requires no interference at all. From this fact, it has been established that on the particular occurrence, due to the previous enmity there was scuffle between the accused and the deceased assaulting each other. But when the assault was made to the deceased, he fell down in the road and sustained injury on the back side of the head. He was brought dead to the Appolo Hospital, Karur, as deposed by PW2 Medical Officer attached to Appolo Hospital. So, it stands established that the deceased was



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brought dead and probably the death would have caused in the occurrence. Again, this point is disputed by the appellant stating that Ex.P1 complaint was given on the same day of the occurrence and there is contradiction in Ex.P1 complaint and the complaint given above under Ex.P3. But this is not correct on record. Because Ex.P1 complaint was given on 01/06/2017. CSR was issued on 02/06/2017. But enquiry was conducted on 06/06/2017 as indicated above. On 7th March 2017 this occurrence said to have been taken place.

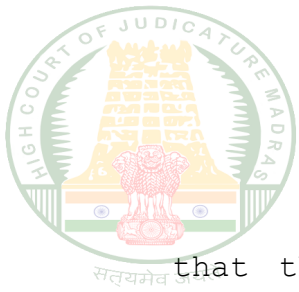
27.No doubt that in Ex.P1, it has been stated by the deceased Ravichandran that he stopped the accused from work on 27/05/2017. Due to that motive, on 01/06/2017 at about 05.15 am, near Armed Reserved Police station he was assaulted by the accused and his son. After the assault, he admitted himself in the Government Hospital, Karur. Now it has been argued by the accused that Ex.P1 was created after the death of the deceased cannot be accepted for the simple reason that CSR No.240 of 2017 was issued on 21/06/2017. More-over, there is no reason for the police authorities to fabricate this document to suit the prosecution case. So, this argument is not well founded and absolutely has no merits.



28.The next aspect is the cause of death. PW3 was the Medical Officer attached to the Government Medical College Hospital, Karur. On 07/06/2017 at about 05.45 am, the deceased was brought by his wife in Ambulance. She examined him and found dead. At that time, she found bleeding on the nose and abrasion injury measuring about 1-1/2 cm on the left knee portion. He registered the same in the Accident Register under Ex.P6.

29.From the medical evidence, it stands established that as mentioned above, bleeding were noted in the nose, except the abrasion and bleeding, there is no internal injury at the time of admission. But during the postmortem by PW10, apart from the abrasion on the left leg region, he found contusion measuring about 3 x 4 cm on the right forehead region as noted above. According to him, the death would occurred due to head inflicted injury.

30.On this point, the learned counsel appearing for the appellant would submit that no injury was noted in the postmortem report. But the evidence of PW10 fully corroborated the postmortem report. In the postmortem report, there is indication about the contusion on the right parietal region. Similarly the fracture in the scalp region was noticed. So, this contention is also not correct on record.



31.From the evidence of PW10 it stands established that the death occurred due to the injuries suffered by deceased in the head region.

32.Now the important aspect, as to whether the accused ever intended to murder the deceased. As noticed above, there was some business motive between the deceased and the accused. The accused at one time was the employee of the deceased. The complaint was given by the deceased against the accused regarding the business issue. So, even though, there was motive between them, it appears that the enmity or the motive, as the case may be was not strong to entertain ill-feeling to cause murder. As noted above from the evidence of the independent witness PW6 ad PW11, it stands established that there was scuffle between them and in that process, due to the assault made by the accused the deceased fell down and sustained injury on the head region.

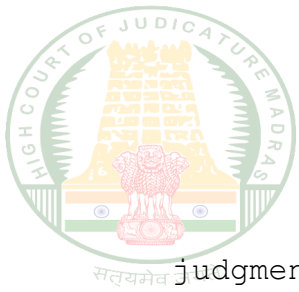
33.In this context, the learned counsel appearing for the appellant would submit that the appellant also sustained injuries and there is no explanation by the prosecution on that; Right of private defence was available to the appellant. But that was not the stand taken by the appellant during the trial. For the first time, such a plea has been taken before the appellate court. More-over, such a plea is not available to the appellant herein for



the simple reason that as per the evidence of the eye witnesses, only the accused was repeatedly beating the deceased. So, the question of private defence does not arise at all.

34.More-over from the remand report endorsement made by the Judicial Magistrate, it is seen that the accused sustained injury on the left hand knee. He has stated before the Judicial Magistrate that the deceased caused injury to him. But, as noticed above, only the accused was the aggressor. He was intercepted by the accused and repeatedly causing assault. But the injuries were simple in nature. Because he himself has stated before the Judicial Magistrate that he has taken treatment in a private hospital. But no steps have been taken during the course of the trial to send for the medical report from the private hospital. More-over, as mentioned above the injuries suffered by the deceased are more than that of the injuries suffered by the accused.

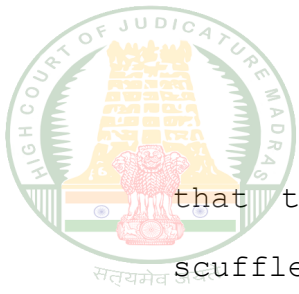
35.So, the question which arises for consideration is whether the finding of the trial court is sustainable in law.



36.In this context, we can profitably refer the judgment of the Hon'ble Supreme Court in **Moinder Singh Vs.**

SPA, (AIR 1986 SC 309), wherein the facts are similar. Over the division of the property, there was trouble between the close relatives. One of the accused persons caused assault to the injured with iron rod on his face and nose. But during the course of investigation, it was found that iron rods were not used. Postmortem reveals that the death occurred due to the external injuries corresponding to the injuries on the forehead region. But there was no corresponding injury on the forehead region of the deceased was found during the course of the postmortem. Originally, the case was convicted for the offence of murder. The High court modified the same to offence one under section 304-II IPC, finding that it is not the case of murder. Since the cause of death was not corresponding to the alleged injury caused by the accused, the Hon'ble Supreme Court modified the same to that one under section 325 IPC.

37.In the light of the above said, we will see the finding recorded by the trial court. The trial court recorded a finding that the offence under section 302 IPC is not made out, then any culpable homicides not amounting to murder, since due to sudden quarrel without any premeditation injury was caused. The trial court has found

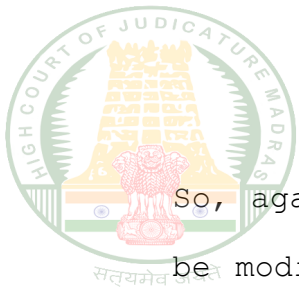


that the accused had knowledge that in the fighting or scuffle injury would cause and then it will lead to death of that person. This finding is unsustainable.

38.As mentioned above, there were exchange of blows between these two persons. The deceased took away the key of the two wheeler belongs to the accused. Again there was exchange of blows between them. The accused assaulted him and in that process, the deceased fell down on his back and sustained injuries. The accused would not have expected that the deceased will fall because of the assault, there will be fatal injury because of the fall on the back and death will be the consequence.

39.No doubt that because of the impact of the injuries or force made by the accused in causing the assault, the fall and corresponding injuries on the back of the head occurred. But this will not indicate the knowledge on the part of the accused that because of the fall, there will be injury on the back head and death will occur. So, this is nothing, but a remote one. So, the finding of the trial court that the accused had knowledge over the ensuing death is not proper and it is liable to be set aside.

40.If at all, the offence under section 325 IPC will alone be made out for causing voluntary grievous hurt.



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So, again the offence under section 304(ii) IPC requires to be modified, but however to one under section 325 IPC and sentence period is liable to be modified as 2 years RI.

41.In the result, this criminal is **allowed in part** modifying the offence to one under section **325 IPC** and accordingly, he is convicted and sentenced to undergo 2 years RI for the offence under section 325 IPC. The fine of Rs.5,000/- is sustained. The period of sentence already undergone by the accused from 07/06/2017 to 07/08/2017 is ordered to be set off under section 428 of Cr.P.C.

28/01/2025

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To,

- 1.The Sessions Judge,
Karur.
- 2.The Inspector of Police,
Pasupathipalayam Police Station,
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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