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Criminal Appeal No.1149 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2022

CORAM

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN**

**Criminal Appeal No.1149 of 2022
and
CrI.M.P.No.16334 of 2022**

Ananthan
S/o.Palaniyappan

.. Appellant

Vs.

The State represented by
The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
Crime No.151 of 2018

.. Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order dated 08.11.2019 passed in S.C.No.21 of 2019 on the file of Principal Sessions Court, Namakkal.

For Appellant : Mr.B.Shruthan

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor



JUDGMENT

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[Judgment of the Court was delivered by **P.N.PRAKASH, J**]

This criminal appeal is directed against the judgment of conviction and sentence dated 08.11.2019 passed by the Principal Sessions Court, Namakkal, in S.C.No.21 of 2019.

2. The prosecution story runs thus:

2.1. Raju [deceased] and the appellant were from Pallipalayam Village and were known to each other. The appellant was having a pet dog, which littered puppies. The appellant found Raju coming to his house and feeding the puppies. The appellant objected to it. On account of which, there was a quarrel between the appellant and Raju. On 11.03.2018, around 02.00 in the afternoon, when the appellant was not at home, Raju went to the house of the appellant and took a puppy from there and brought it to his house. On coming to know of this, the appellant quarrelled with Raju and is said to have attacked Raju with an iron pipe [MO-1], on account of which, Raju sustained injuries. Raju was taken to the Government hospital, Pallipalayam,



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where he was admitted as an inpatient *vide* Accident Register [Ex.P9]. From there, Raju was referred to the Government hospital, Erode, where he succumbed to injuries at 05.50 a.m.

2.2. On 12.03.2018, on a complaint given by Babu [PW-1], the son of Raju, the police registered a case in Pallipalayam P.S. Crime No.151 of 2018 on 12.03.2018 u/s.302 IPC against the appellant. The appellant was arrested on 13.03.2018 and pursuant to his police confession, iron pipe [MO-1] was recovered under the cover of a mahazar [Ex.P6]. Inquest was conducted on the body of Raju and the inquest report was marked as Ex.P16.

2.3. Abinaya, Doctor [PW-6], performed autopsy on the body of Raju and issued the postmortem certificate [Ex.P11], wherein, she has noted the injuries. The viscera report [Ex.P12] showed that Raju was under the influence of alcohol. Abinaya, Doctor [PW-6], gave her final opinion stating that the death was on account of head injury and skull fracture leading to hemorrhage and shock *vide* postmortem report [Ex.P11].



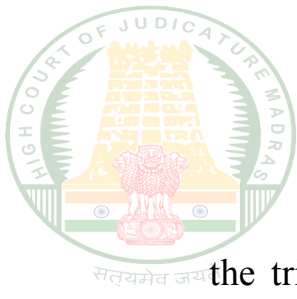
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2.4. After examining the witnesses and collecting the various reports of the experts, the Investigating Officer [PW-11] completed the investigation and filed a final report in P.R.C.No.37 of 2018 in the Court of Judicial Magistrate, Tiruchengode, for the offence u/s.302 IPC against the appellant.

2.5. On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.21/2019 and was made over to the Principal Sessions Court, Namakkal, for trial. The trial Court framed a charge u/s.302 IPC against the accused and when questioned, the accused pleaded 'not guilty'.

2.6. To prove the case, the prosecution examined 11 witnesses and marked 26 exhibits and 7 material objects. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined from the side of the appellant nor any document marked.

2.7. After considering the evidence on record and hearing either side,



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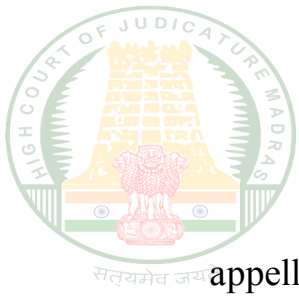
the trial Court, by judgment and order dated 08.11.2019 in S.C.No.21 of 2019, convicted the appellant for the offence u/s.302 IPC and sentenced him as follows :

| <i>Provision under which convicted</i> | <i>Sentence</i> |
|---|--|
| Section 302 IPC | Life imprisonment and fine of Rs.1,000/-, in default, to undergo four years simple imprisonment. |

3. Challenging the conviction and sentence, the appellant has filed the present appeal.

4. Heard Mr.B.Shruthan, learned counsel for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

5. The case of the prosecution hinges on the testimony of Venkatesan [PW-2], eye-witness. Before advertng to the evidence of Venkatesan [PW-2], it may be relevant to discuss the evidence of Babu [PW-1]. Babu [PW-1], in his evidence, *inter alia* stated that he is the son of Raju; he knows the



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appellant; both of them are from the same village; the appellant was having a dog, which littered in his house; his father used to feed the puppies, which was objected to by the appellant; on 11.03.2018, his father took one puppy from the house of the appellant when the appellant was not available and brought it to his house; thereafter, he was informed by Venkatesan [PW-2] that the appellant had attacked his father.

6. Venkatesan [PW-2], in his evidence, has *inter alia* stated that he knows the appellant and Raju; on 11.03.2018, around 3.00 in the afternoon, while he was proceeding near Alampalayam Milk Society, he saw the appellant and Raju quarrelling in front of one vathiyar house. At that time, the appellant was having an iron pipe in his hand, with which, he attacked Raju; thereafter, the appellant ran away; Raju was immediately taken by an ambulance to the hospital by the local villagers; thereafter, he came to know that Raju passed away.

7. We carefully perused the testimony of other witnesses. Apart from

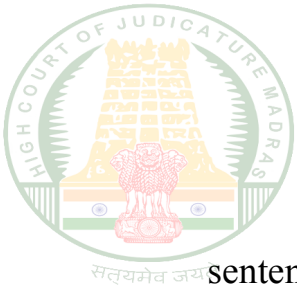


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the evidence of Venkatesan [PW-2], there is no other eye witness in this case. From the evidence on record, we are able to discern that the appellant was objecting to Raju feeding his puppies and on the fateful day, Raju is said to have taken one of the puppies from the house of the appellant while the latter was away. On coming to know of it, the appellant had gone to the house of Raju and in the quarrel, the appellant is said to have attacked Raju with an iron pipe. It is also seen that this is not a premeditated murder or the appellant had the intention to commit the murder of Raju. The appellant was 50 years old and Raju was 60 years old at the time of the occurrence.

8. Learned counsel for the appellant and learned Additional Public Prosecutor submitted that the appellant was arrested on 13.03.2018 and since then he continues to be in the prison till date.

9. On a careful consideration of the evidence on record, we are of the opinion that the conviction and sentence u/s.302 IPC cannot be sustained, instead, the appellant is convicted of the offence u/s.304(II) IPC and



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sentenced to undergo 5 years rigorous imprisonment. The fine imposed by the trial Court is confirmed, but, the default sentence is reduced to one month simple imprisonment.

With the above modification, this Criminal Appeal is disposed of. Consequently, the connected miscellaneous petition is closed.

[PNP., J] [TKR., J]
01.12.2022

Index: Yes/No
gm

To

- 1.The Principal Sessions Court,
Namakkal.
- 2.The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
- 3.The Public Prosecutor,
High Court, Madras.

P.N.PRAKASH, J
and



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RMT. TEEKAA RAMAN, J

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