

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.49 OF 2022

JUDGMENT:

1. Aggrieved by the conviction under Section 304-II of IPC and being sentenced to undergo Rigorous Imprisonment for a period of ten years and to pay fine, the present appeal is filed.

2. Briefly stated, the case of the prosecution is that on 23.05.2019, the appellant stabbed his own elder brother with a vegetable knife in his stomach with an intention to kill him when the deceased interfering in the quarrel between the appellant and his mother. Subsequent to the attack, the deceased collapsed and the appellant himself inflicted knife injury on his left hand wrist.

3. P.W.1 is the elder brother of the deceased and the appellant, P.W.2 is another brother, P.W.3 is the wife of P.W.1. P.Ws.1 to 3, family members deposed that fight ensued between the appellant and his mother for the purpose of giving money and when the deceased interfered with, the appellant stabbed his elder brother and also cut his left hand wrist.

4. Initially, the case was registered on 23.5.2019 under Section 307 of IPC and later on the death of the deceased on 28.05.2019, the section of law was altered to Section 302 of IPC.

5. As seen from the injuries caused, the medical officer-P.W.11 at the time of PME found three sutured injury wounds and one contusion. During the course of trial, P.Ws.1 and 2, who are the brothers of the appellant deposed that they were not present at the time of the alleged incident and declared hostile and cross examined. Further P.W.3 deposed that she was cooking meals in the kitchen and did not support the case of the prosecution. However P.W.3 stated that when she came into the room, she noticed knife had fallen to the ground with blood and deceased sustained injuries on the stomach and the appellant had injury over his left hand wrist. In the present facts and circumstances, though the witnesses turned hostile to the prosecution case, apart from the deceased and the appellant, there was no one else in the room and the case projected by the prosecution that the appellant inflicted injuries on his brother and repenting the assault, tried to kill himself by cutting his left hand wrist. It is not the case of the

defence that a third person had entered into the room, inflicted injuries on the deceased and the appellant. For the said reason, on the basis of the evidence on record, it can be concluded that it was the appellant who inflicted those injuries and repenting causing said injuries to his brother, immediately cut himself to commit suicide.

6. The trial Court has rightly drawn the conclusion that the appellant was the person who inflicted those injuries on the basis of the circumstantial evidence. Further, the court invoked provision under Section 106 of the Evidence Act and for the reason of failure on the part of the appellant to convince the court as to what transpired in the said room, the trial Court found the appellant guilty.

7. As seen from the evidence on record, there was a fight in the family and in the said enraged atmosphere, the appellant attacked the deceased. However, he immediately realized that what he did had seriously injured his brother and for the said reason of inflicting injuries on the deceased, he cut himself to punish himself. It appears that he was in a disturbed state of mind or temporarily

insane, unable to realize the result of his acts. The mental state of the appellant can be derived from the circumstances that it was a case where there was no premeditated act and for the moment acted in a dastardly manner, however realizing that he had stabbed his own brother cut his left wrist to punish himself. In these peculiar facts and circumstances, the punishment can be reduced to the period already undergone.

8. In the said circumstances, the conviction under Section 304-II of IPC is confirmed. However, the sentence of imprisonment is reduced to the period already undergone. He is set at liberty forthwith.

Accordingly, the appeal is disposed of. As a sequel thereto, miscellaneous petitions, if any, pending, shall stand closed. Bail bonds if any stand discharged.

Date:29.04.2022
kvs

K.SURENDER, J

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