



CRL.A.No.414 of 2021 &
CrI.MP.No.19395 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.01.2023

PRONOUNCED ON : 09.01.2023

CORAM

THE HONOURABLE Mr. JUSTICE P.N. PRAKASH
AND
THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

CRL.A.No.414 of 2021
and
CrI.MP.No.19395 of 2022

1.Manickam

2.Marimuthu

.. Appellants/

Accused No.1 & 2

Vs.

State rep. by
The Inspector of Police
Tiruppur Central Police Station
Tiruppur.
(Cr.No.310 of 2017)

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. , to set aside the conviction imposed in judgment dated 22.07.2021 made in S.C.No.111 of 2017, on the file of II Additional District & Sessions Judge, Tiruppur by allowing this Criminal Appeal.



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For Appellants M/s.N.Ponraj

For Respondent Mr.Babu Muthumeeran
Additional Public Prosecutor

J U D G M E N T

N. ANAND VENKATESH, J.

This Criminal Appeal has been filed against the judgement and order passed by the II Additional District and Sessions Judge, Tiruppur in S.C.No.111 of 2017, dated 22.07.2021, convicting the appellants for offence under Section 302 IPC and sentencing each of them to undergo life imprisonment and to pay a fine of Rs.5,000/- each and in default to undergo six months rigorous imprisonment.

2.The case of the prosecution is that the deceased George and one Idli Pandey were doing a small scale business and in the said business, Idli Pandey owed a sum of Rs.1500/- to the deceased George. Both of them were also known to the first appellant (A.1). On 05.05.2017 at about 10.00 pm., the deceased is said to have pestered the first appellant (A.1) to insist the said



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Idli Pandey, to pay back the money which he owed to the deceased. The first appellant (A.1) refused to take any steps and as a result, there was a wordy quarrel between the deceased and A.1. When this incident was happening, the second appellant (A.2), who is the cousin of A.1 questioned the deceased and the deceased is said to have abused A.2 and slapped him on his cheek. A.1 questioned the deceased and the deceased attacked A.1 and pushed him down and also bit him on the thigh. Enraged by the act of the deceased, A.2 caught hold of the deceased and A.1 attacked the deceased with a hammer (MO.1) on his head and his chest. As a result, the deceased died on the spot.

3. PW1, who was one of the witness in this case, immediately called 108 ambulance and the doctor examined the deceased and declared him dead. Thereafter, PW.1 went to the Police Station and gave a written complaint (Ex.P.1) to the Sub-Inspector Of Police (PW.10) at about 23.00 hours. First Information Report (Ex.P.10) came to be registered in Crime No. 310 of 2017.



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4. The investigation was taken up by PW.13 and he went to the scene of crime at 00.15 hours on 06.05.2017 and prepared an Observation Mahazar (Ex.P.2) and a Rough Sketch (Ex.P.15). The Investigation Officer recovered the material objects (MO.2, MO.3, and MO.4) under Ex.P.3 recovery Mahazar. Thereafter, the dead body was sent to the Government Hospital, Tiruppur and inquest was conducted on the dead body on 06.05.2015 between 9.00 am., to 12.00 noon, in the presence of Panchayatdars and Inquest Report (Ex.P.17) was prepared.

5. The body of the deceased was sent for Post Mortem and the Post Mortem was conducted by PW.8. The Post Mortem report (Ex.P.8) was prepared by PW.8 and the following injures were noted:

1. முன் தலையின் வெளிப்புறத்தில் சுமார் 6x3x2 செ.மீ. அளவுடைய நீண்ட கிழிந்த வெட்டு காயம்.
2. மேற்படி காயத்தின் அடிப்பகுதியில் இருந்த கபால எலும்பு உடைந்திருந்தது.
3. முனையின் வெளிப்புற மற்றும் உள்புற ஜவ்வுகள் கிழிந்து, முனையில் இரத்த கசிவுகள் மற்றும் இரத்த கட்டிகள் காணப்பட்டன.



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4. இடது பக்க மார்பில் சிராய்ப்பு காயங்கள் இருந்தன.
5. இடது பக்க மார்வில் இரண்டு முதல் ஐந்து வரையிலான விலா எலும்புகள் பல்வேறு அளவுகளில் உடைந்திருந்தன.
6. மார்பு சட்டத்தில் இரத்தம் உறைந்து காணப்பட்டது.
7. இடது பக்க நுரையீரல் கிழிந்து காணப்பட்டது.
8. அனைத்து உள்நுறுப்புகளும் வெளிரிய நிலையில் இருந்தன.

6.PW.8 gave a final opinion to the effect that the deceased would appear to have died of shock and haemorrhage due to multiple vital organ injuries including head injuries.

7. The blood soaked dress of the deceased (MO.6 - MO.8) was recovered and it was sent for obtaining a scientific report after getting the permission of the Court.

8. The Investigation Officer recorded the statements of the witnesses under Section 161(3) of Cr.PC., and also collected the scientific reports (Exs.P.11 - P.14).



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9. The accused persons were arrested on 06.05.2017 at about 14.45 hours and based on the admissible portion of the confession, marked as Exs.P.7 and P.5 respectively, MO.1 and MO.5 were recovered under Exs.P.6 and P.4 respectively.

10. On completion of the investigation, the Final Report was laid before the Judicial Magistrate No.II, Tiruppur, which was taken on file in PRC No. 13 of 2017. The copies were served on the accused persons under Section 207 of Cr.PC., and the case was committed to the Court of Session under Section 209 of Cr.PC. The case was made over to the II Additional District and Sessions Judge.

11. The trial Court framed charges against the accused persons for offence under Section 302 IPC. The prosecution examined PW.1 to PW.13 and marked Exs.P.1 to P.21 and identified and marked MO.1 to MO.8. The incriminating evidence gathered during the course of the trial were put to the accused persons and they denied the same as false.



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12. The Court below on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and proceeded to convict and sentence the appellants for offence under Section 302 IPC.

13. Heard Mr.N.Ponraj, learned counsel for the appellants and Mr.Babu Muthumeeran, learned Additional Public Prosecutor appearing on behalf of the respondent.

14. The entire case of the prosecution hinges upon the eye witness account of PW.1 and PW.2. On carefully going through the complaint marked as Ex.P.1, it can be seen that one Ganesan was also an eyewitness, but, however, this witness has not been examined by the prosecution.

15. PW.1 was running a workshop and he had acquaintance both with the deceased as well as the accused persons. PW.1 has stated in his evidence



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that on 05.05.2017, he completed his work and left by 9.00 pm., to his house. After reaching his house, he received a phone call from PW.2, who is the sister-in-law of PW.1 and PW.2 informed PW.1 that the accused persons and the deceased are fighting with each other and requested PW.1 to immediately rush to the spot. PW.1 reached the spot at about 10.00 pm. In his evidence, PW.1 has stated that the accused persons and the deceased were involved in a fight and that the deceased pushed down A.1 and had bit on his right thigh. Thereafter, A.2 pushed down the deceased and the deceased got up and slapped A.2 on his cheek. A.2 thereafter, pushed down the deceased and A.1 attacked the deceased with hammer (MO.1) on his head and chest. The complaint Ex.P.1 was marked through PW.1 and this complaint was given at about 23.00 hours i.e., within one hour from the alleged incident. Even in the complaint, PW.1 has described the incident in a similar fashion except the overt act attributed against A.2. In the complaint, PW.1 has stated as if, A.2 caught hold of the deceased and A.1 attacked the deceased with the hammer. Whereas during deposition, PW.1 has not stated that A.2 caught hold of the deceased.



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16.The evidence of PW.2 who was yet another eye witness, is almost on the same lines. The evidence of PW.1 and PW.2 has not been discredited during cross examination and in fact, their evidence gets even clearer during cross examination.

17.The next relevant evidence to be taken into consideration is the evidence of the post-mortem doctor examined as PW.8. The doctor has explained the injuries sustained by the deceased with the help of the Post-Mortem Certificate marked as Ex.P.8. The post-mortem doctor also confirms that the injuries sustained by the deceased are capable of being inflicted with the hammer MO.1. The evidence of PW.8 perfectly corroborates the eyewitness account of PW.1 and PW.2.

18.The learned counsel for the appellants questioned the delay in the FIR reaching the Court by pointing out to the evidence of PW.10 and PW.11. In the considered view of this Court, the delay by itself will not vitiate the case of the prosecution since the eyewitness account of PW.1 and



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PW.2 has not been discredited and the same has also been corroborated by the evidence of the post-mortem doctor PW.8.

19.The learned counsel for the appellants also attempted to raise suspicion on the version projected by the prosecution by pointing out to the evidence of PW.5. It was submitted that PW.5, is the son of Idly Pandey and PW.5 in his evidence has stated that his father was taken away by the police on suspicion. It is true that the cause for the entire incident was Idly Pandey. However that by itself cannot take away the credibility of the evidence tendered by PW.1 and PW.2. Once this Court is satisfied on the credibility of the evidence of PW.1 and PW.2, the same cannot be disregarded based on some suspicion raised on the basis of the evidence of PW.5.

20.In view of the above, we have no hesitation to hold that the deceased died due to homicide and the prosecution has proved beyond reasonable doubts that the appellants were involved in the crime. To that



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extent, the finding of the Court below does not suffer from any infirmity and it deserves to be sustained.

21.The next issue to be gone into is as to whether the appellants have committed culpable homicide amounting to murder or culpable homicide not amounting to murder or whether the facts of the case will fall within any of the exceptions under Section 300 IPC, warranting modification in the sentence under Section 304 IPC.

22.On carefully going through the evidence of PW.1 and PW.2, it is evident that there was a free fight between the deceased and the accused persons. In fact, it was the deceased who was responsible for aggravating the situation by picking up a fight with A.1. The deceased expected A.1 to help him in recovering the money due and payable by Idly Pandey. When A.1 refused to help the deceased, he picked up a quarrel with A.1 and he pushed down A.1 and bit him on his right thigh. That apart, the deceased also slapped A.2 on his cheek. These facts clearly brings this case under



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exception 4 to Section 300 IPC. There was a sudden fight in the heat of passion and there was exchange of blows and ultimately in the course of same transaction, A.1 picked up the hammer (MO.1) which was available nearby and attacked the deceased on his head and chest. Hence, the overt act that has been attributed against A.1 will bring this case within the category of culpable homicide not amounting to murder and as a result, the sentence has to be modified under Section 304 (II) IPC by sentencing A.1 to undergo seven years rigorous imprisonment.

23.Insofar as A.2 is concerned, the complaint given by PW.1 reads as if, A.2 caught hold of the deceased and A.1 attacked the deceased with MO.1. However, PW.1 in his evidence does not state that A.2 caught hold of the deceased. The only overt act that has been attributed against A.2 is that the deceased slapped A.2 in his cheek and A.2 pushed down the deceased. No doubt, PW.2 toes the line of Ex.P.1 complaint and states as if , A.2 caught hold of the deceased. It is also evident from the deposition of the Investigation Officer (PW.13) that A.2 was a differently abled person.



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On a totality of the evidence available on record, the version given by PW.1 in his chief examination looks more believable regarding the overt act attributed against A2. Even though no specific overt act has been attributed against A.2 with regard to causing the death of the deceased, the Court below has framed a charge against A.2 also under Section 302 IPC. On the face of it, such a charge is unsustainable as against A.2. At the best, the Court below could have framed a charge against A.2 under Section 302 r/w Section 34 IPC and unfortunately, the Court below did not adopt such a course.

24.In view of the above, we are of the considered opinion that the materials available on record as against A.2, at the best makes out an offence under Section 323 IPC. Insofar as the sentence is concerned, the period already undergone by A.2 can be imposed as sentence against A.2.

25.In the result, this Criminal Appeal is partly allowed and the Judgment and Order dated 22.07.2021, passed by the II Additional District



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and Sessions Judge, Tiruppur, in S.C.No.111 of 2017, stands modified as under :

(a) The conviction and sentence imposed against the first appellant (A.1) for offence under Section 302 IPC is hereby set aside and the first appellant (A.1) is convicted for culpable homicide not amounting to murder and sentenced under Section 304 (II) IPC to undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/- and in default to undergo one month simple imprisonment.

(b) The conviction and sentence imposed against the second appellant (A.2) for offence under Section 302 IPC is hereby set aside and the second appellant (A.2) is convicted for the offence under Section 323 IPC and the period of imprisonment already undergone by A.2 is imposed as the sentence.

(c) The period of detention already undergone by first appellant (A.1) shall be set off under Section 428 CrPC.



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(d) Fine amount, if any, already paid by the first appellant (A.1) shall be adjusted towards the modified sentence imposed by this Court and if any excess fine amount has been paid, the same shall be refunded.

(e) The fine amount, if any, deposited by the second appellant (A.2) shall be refunded and the second appellant (A.2) shall be released from the jail forthwith, unless his detention is required in any other case.

26. Consequently, connected miscellaneous petition is closed.

[P.N.P., J.] [N.A.V., J.]

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Internet : Yes/No
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AND
N.ANAND VENKATESH, J.
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To

- 1.II Additional District & Sessions Judge
Tiruppur.
- 2.The Inspector of Police
Tiruppur Central Police Station
Tiruppur.
- 3.The Superintendent
Central Prison, Coimbatore.
- 4.The Public Prosecutor
Madras High Court, Chennai

Judgment in
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