



Crl.A.No.199 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.04.2024

PRONOUNCED ON: 08.04.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.199 of 2021

Perumal

... Appellant/A1

vs.

State rep. By
The Inspector of Police,
T-12 Poonamallee Police Station,
Chennai City.
(Crime No.464 of 2018)

...Respondent/complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in S.C. No.116 of 2018 dated 08.04.2021, on the file of the learned III Additional District and Sessions Judge, Thiruvallur @ Poonamallee and set aside the conviction and sentence imposed in judgment dated 08.04.2021 and acquit the appellant.

For Appellant : Mr.D.Baskar



Crl.A.No.199 of 2021

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

(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by accused No.1, challenging the conviction and sentence imposed upon him vide judgment dated 08.04.2021 in S.C.No.116 of 2018 on the file of the learned III Additional District and Sessions Judge, Thiruvallur @ Poonamallee.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3(i) It is the case of the prosecution that on 18.04.2018 at about 10.45 p.m. the deceased along with PW2 to PW5 were standing near Poonamallee Government Hospital; that the accused came in a two-wheeler and that when the deceased did not give way to the two-wheeler, the A1-Perumal (appellant herein) abused the deceased in filthy language and called A2 and A3 to his aid and thereafter all three accused attacked the deceased on his face with hands; that A1 took a stone and attacked on the backside head of the



Crl.A.No.199 of 2021

WEB COPY

deceased; that the deceased fell down and got *fits* and thereafter, admitted to the Government Hospital, Poonamallee and subsequently shifted to Rajiv Gandhi Government General Hospital, Chennai for further treatment; and that despite treatment, he died on 25.04.2018 at about 3.20 a.m.

(ii) It is the further case of the prosecution that PW1, the brother of the deceased on coming to know of the occurrence went to the hospital and thereafter shifted the deceased to Rajiv Gandhi Government General Hospital; that he lodged a complaint [Ex.P1] on 19.04.2018 at about 7.00 a.m., to the Sub Inspector of Police [PW16], who registered an FIR [Ex.P8] in Cr.No.464 of 2018 against the accused for the offence under Sections 294(b), 323, 324 and 307 of the IPC.

(iii) PW16 the Inspector of Police, commenced the investigation and went to the scene of the occurrence at 7.45 a.m., and prepared the Observation Mahazar [Ex.P9] and Rough Sketch [Ex.P10]. He examined the eyewitnesses and on 19.04.2018 at about 2.00 p.m., arrested A1 (the appellant herein) and on his confession, the admissible portion of which is



Crl.A.No.199 of 2021

marked as Ex.P11, seized the stone [M.O.2] under Seizure Mahazar (Ex.P12) and a two-wheeler viz., a Honda Activa bearing Regn.No.TN-12-K-5411 [M.O.1] used by A1 under Seizure Mahazar (Ex.P13). He thereafter handed over the investigation to PW17.

(iv) After the death of the deceased, PW17, altered the offence to Sections 294(b), 323, 324 and 302 of the IPC and sent the alteration report (Ex.P14) to the learned Magistrate. He conducted an inquest on 25.04.2018 between 10 a.m., and 12.00 noon, in the presence of the panchayathars and prepared the inquest report [Ex.P15]. He made a request for conducting the postmortem, which was conducted by PW14-Doctor, who issued a postmortem certificate [Ex.P6]. On 26.04.2018, he arrested the other accused viz., A2 and A3. Thereafter, he examined the other witnesses and filed the final report before the learned Judicial Magistrate No.II, Poonamallee against the accused for the offences under Sections 294(b), 302 r/w 34 of the IPC.

(v). On the appearance of the accused, the provisions of Section 207



Crl.A.No.199 of 2021

WEB COPY

Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.116 of 2018 and was made over to the learned III Additional District and Sessions Judge, Thiruvallur @ Poonamallee for trial. The trial Court framed a charge under Sections 294(b), 302 r/w 34 of the IPC against the accused, and when questioned, the accused pleaded 'not guilty'.

(vi). To prove the case, the prosecution examined 17 witnesses as P.W.1 to P.W.17, marked 16 exhibits as Exs.P1 to P16, and marked 2 Material Objects as M.O.1 and M.O.2. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witnesses, nor marked any documents.

(vii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution clearly proved the charges levelled against A1 and accordingly, convicted him for the offence under Sections 294(b), 302 r/w 34 of the IPC. The trial Court further held that the prosecution has not



Crl.A.No.199 of 2021

proved the charges levelled against A2-Immanuel Sathiskumar and A3-Subash Kanna and accordingly, acquitted A2. Since, A3-Subash Kanna died on 06.11.2018, during the pendency of the trial, charges levelled against him have abated. The sentences imposed upon A1 are as follows:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1	294(b) IPC	To undergo RI for three months and to pay a fine of Rs.1,000/- in default to undergo RI for two weeks.
	302 r/w 34 IPC	To undergo life imprisonment and to pay a fine of Rs.5000/-, in default to undergo RI for six months
The above sentences were ordered to run concurrently.		

Hence, the accused/A1 has preferred the appeal challenging the said conviction and sentence.

5. Heard, Mr.D.Baskar, learned counsel appearing for the appellant/A1, and Mr.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent/State.

6. (i) Mr.D.Baskar, the learned counsel appearing for the appellant/A1 submitted that the earliest version in the accident report, which is spoken to by PW15 would say that three persons attacked the deceased with hands;



Crl.A.No.199 of 2021

WEB COPY

that the FIR which was lodged belatedly is an afterthought wherein an *overt act* is attributed to the appellant stating that he had used a stone to attack the deceased; and that the falsity in the prosecution case would be further strengthened by the fact that the recovery and observation mahazar witnesses turned hostile.

(ii) The learned counsel also pointed out that PW4, one of the eyewitnesses, admitted the presence of police at the hospital even on the date of the occurrence and that the police had taken statements from the witnesses and this complaint has been suppressed by the prosecution.

(iii) The learned counsel further submitted that none of the witnesses knew the name of the accused and hence, the complaint containing the name of the appellant/A1 shows that it was after deliberation and given at the instance of the police. The learned counsel submitted that in any case, the earliest version only reveals that the accused attacked the deceased with hands and A2 has been acquitted by the trial Court.



Crl.A.No.199 of 2021

WEB COPY

7. The learned Additional Public Prosecutor per contra submitted that the evidence of eyewitnesses PW2 to PW5 is reliable; that though PW2 had given a contrary version and was treated hostile, on cross examination, he admitted that he made statements to the police, which are consistent with the prosecution case; that the evidence of eyewitnesses cannot be disbelieved and nothing has been elicited to discredit their testimony and hence, he prayed for dismissal of the appeal.

8. We have carefully considered the rival submissions and perused the materials on record.

9. PW1 is the brother of the deceased; PW2 to PW5 are the friends of the deceased and eyewitnesses to the occurrence; PW6 and PW7 are related to the deceased and hearsay witnesses; PW8 to PW10 are observation Mahazars; PW11 is the hearsay witness; PW12 and PW13 are Mahazar witnesses; PW14 is the postmortem doctor, who issued the postmortem certificate[Ex.6]; PW15 is the Doctor who made entries in the Accident Register [Ex.P7]; PW16 is the Sub-Inspector of Police, who registered the



Crl.A.No.199 of 2021

WEB COPY

FIR; and PW17 is the investigating officer, who filed the final report.

10. PW14, the postmortem doctor, had found the following two external injuries.

“1. Laceration 2 x 0.5 x 0.5 cm noted over middle of lower lip, margins are irregular with gaping.

2. On Dissection of Head:

SCALP: Inverted 'L' shaped surgical wound noted over back of head over the midline to right side of head. On removal of sutures margins are clean cut and gaping, on reflection scalp contusion 10 x 9 cm x scalp deep dark red in color seen over occipital region of scalp. VAULT: Skull bone surgically removed over right base of occipital bone containing 4 burr holes and placed with a gel like material and fissure fracture 7 cm noted over base of left occipital bone.

MEMBRANES: Extradural hemorrhage 10 x 06 x 0.5cm containing dark color clotted blood 70 grams noted over occipital region. BRAIN: edematous C/S-Normal. Contusion hemorrhage noted over the undersurface of frontal and temporal region on both sides, Inter ventricular hemorrhage noted over lateral and IV ventricles on both sides. BRAIN STEM: Multiple dark red pin-point petechial hemorrhages noted over the mid-brain of brain stem. BASE OF SKULL: Fissure fracture 7 cm noted over base and midline of occipital bone.”

and had opined that the deceased died due to effects of blunt injury to head.

However, the question is whether the accused was responsible for the said injury.



Crl.A.No.199 of 2021

WEB COPY

11. PW2 turned hostile, since he deposed that he did not witness the occurrence and had no personal knowledge. The relevant portion reads as follows:

“எனக்கு இந்த வழக்கு சம்பந்தமாக நேரடியாக எதுவும் தெரியாது என்று சொன்னால் சரிதான். வழக்கு சம்பவத்தை நான் நேரடியாக எதுவும் பார்க்கவில்லை என்றால் சரிதான்.”

12. PW3, PW4 and PW5 all would uniformly state the reason for the occurrence and about all the accused attacking the deceased and about A1 attacking the deceased with the stone. They all would uniformly say that the accused were not known to them and they identified the accused at the police station, after their arrest on 19.04.2018 (A1) and on 26.04.2018 (A2 & A3). They would all admit in the cross examination about the presence of the police even before the FIR was registered the next day on 19.04.2018 at 7.00 a.m., by PW1. However, the investigating officer has not chosen to record the earliest information.



Crl.A.No.199 of 2021

WEB COPY

13. In the complaint, PW1 would state that he came to know from the friends of the deceased that all the accused attacked the deceased on his face with their hands and he would also add that A1 the appellant herein picked up a stone and attacked the deceased. The earliest version given to the doctor who treated the deceased is found in Ex.P7-Accident Register. The Doctor-PW15 who had spoken about the entries in the Accident Register had stated that she was informed that three persons attacked the deceased with hands. The relevant portion reads as follows:

“திரு.வசந்த் அவர்கள் என்னிடம் கூறியபோது, அதே நாள் இரவு சுமார் 10.50 மணியளவில் பூந்தமல்லி அரசு மருத்துவமனையில் எதிரில் உள்ள டிக்கடையில் முகம் தெரியாத 3 நபர்கள் கைகளால் திரு.உறரி அவர்களை தாக்கியதாக கூறினார்.”

She also had opined that the deceased could have sustained the head injury noted by her in the Accident Register, due to a fall.

14. Considering the fact that the earliest entry refers to an attack by the accused with the hands and some of the eyewitnesses have also admitted that the deceased fell down, we are not inclined to accept the prosecution



Crl.A.No.199 of 2021

WEB COPY

case to the extent of attributing the attack of the deceased by the appellant/A1 with stone. However the fact that the deceased was attacked with hands, has been established by the prosecution.

15. Further considering the fact that there were four persons on the side of the deceased and three on the side of the accused, including the appellant herein and that there was a scuffle and the manner in which the occurrence took place, we are of the view that the appellant had no *mens rea* to either attract the offence of murder or culpable homicide. Since neither the offence of murder nor the offence of culpable homicide is made out, the accused can only be found guilty of the offence under Section 325 of the IPC and we are inclined to hold so since, the prosecution has at best established that the appellant/A1 only intended to cause grievous hurt to the deceased. Further, the evidence adduced by the prosecution discloses that there is no infirmity in the judgment of the trial Court with regard to the finding of guilt under Section 294 (b) of the IPC.

16. In the facts and circumstances of the case, we are of the view that



Crl.A.No.199 of 2021

the evidence suggests that the appellant/A1 is liable to be convicted under Section 325 of the IPC instead of Section 302 of the IPC. We are of the view that the interest of justice would be met if the appellant is sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- for the said offence. Further, the appellant/A1 is found guilty of the offence under Section 294(b) of the IPC and hence, the conviction and sentence imposed upon the appellant/A1 by the trial Court for the said offence is confirmed.

17. In the result, the Criminal Appeal is Partly Allowed. The judgment of conviction and sentence dated 08.04.2021 made in S.C.No.116 of 2018 on the file of the learned III Additional District and Sessions Judge, Thiruvallur @ Poonamallee is modified as follows:

(i) The appellant/A1 is convicted under Section 325 of the IPC instead of Section 302 of the IPC and sentenced to undergo three years of rigorous imprisonment and to pay a fine of Rs.5000/- in default to undergo rigorous imprisonment for six months;

(ii). The conviction and sentence imposed upon the appellant/A1 by the trial Court for the offence under Section 294(b)



Crl.A.No.199 of 2021

WEB COPY

of the IPC is confirmed; and

(iii) The sentences awarded for both the offences shall run concurrently.

[M.S.R.,J.] [S.M.,J.]
08.04.2024

Index : yes/no

Neutral citation : yes/no

Speaking/Non-speaking order
ars

Issue order copy by 12.04.2024.



WEB COPY



Crl.A.No.199 of 2021

M.S.RAMESH,J.

and

SUNDER MOHAN,J.

ars

To

1.The III Additional District & Sessions Judge,
Tiruvallur @ Poonamallee.

2.The Inspector of Police,
T-12 Poonamallee Police Station,
Chennai City.

3. The Superintendent of Prisons,
Central Prison, Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

Pre-delivery Judgment in

Crl.A.No.199 of 2021

08.04.2024