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Crl.A.No.678 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.678 of 2021

Muthusamy

... Appellant/Sole Accused

v.

The State rep. by
Inspector of Police
Kondalampatty Police Station,
Salem District.
(Crime No.344/2019)

... 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.40 of 2020 dated 05.10.2021, on the file of the learned I Additional District and Sessions Judge, Salem.

For Appellant : Mr.B.Vasudevan

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor



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JUDGMENT

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

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 05.10.2021 in S.C.No.40 of 2020 on the file of the learned I Additional District and Sessions Judge, Salem.

2. It is the case of the prosecution that the deceased and the appellant were close friends and that they were in the habit of consuming liquor frequently; that on 28.06.2019 at about 1.30pm, while they were consuming liquor in a wine shop, there was a wordy quarrel between the appellant and the deceased and that they had continued the quarrel even after coming out of the wine shop; that the deceased fell down because he was in an inebriated condition and the appellant thereafter attacked him with wooden slab, which was meant for construction purposes, on the head of the



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deceased, as a result of which, the deceased died on the spot.

3. It is the further case of the prosecution that P.W.1, father of the deceased gave a complaint Ex.P.1, which was recorded by P.W.17 Sub Inspector of Police in Cr.No.344 of 2019 for the offence punishable under Sections 294-b and 302 IPC. First Information Report was marked as Ex.P.7.

4. After registration of the complaint, P.W.19 Inspector of Police took up the investigation and went to the scene of occurrence at 5.30 p.m and prepared observation mahazar Exs.P.5 and P.6 and the rough sketch Ex.P.13. She seized blood stained earth and the earth which was not blood stained M.Os.4 and 5 respectively. She thereafter examined witness and on 29.06.2019 between 6.00 a.m and 8.30 a.m, she conducted inquest on the body of the deceased and prepared Inquest Report Ex.P.14. Thereafter, she sent the body for post-mortem.

5. P.W.18 conducted post-mortem and issued Post-mortem certificate



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Ex.P.10 and final opinion Ex.P.12.

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6. On 29.06.2019 P.W.19 arrested the appellant on 29.06.2019 at about 16.40 hrs. in the presence of Village Administrative Officer P.W.1. While in custody, the appellant is said to have given a voluntary confession, in which, he is said to have disclosed the place where he had hidden the blood stained clothes and wooden slab. In pursuance of the same, he took the police and witnesses to the place of hide out and produced the blood stained clothes and wooden slab. P.W.19 recovered the same under a mahazar and forwarded to Court and then sent for chemical analysis. The report revealed that there were human blood stains on the material objects. After collecting the report from Forensic Science Laboratory and examining the other witnesses in the case, P.W.19 filed final report on 26.09.2019 before Judicial Magistrate No.V, Salem for the offence punishable under Sections 294-b and 302 IPC.

7. On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of



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Sessions in S.C.No.40 of 2020 and was made over to the learned I Additional District and Sessions Judge, Salem for trial. The trial Court framed charges u/s.302 of the IPC as against the appellant, and when questioned, the appellant pleaded not guilty.

8. To prove the case, the prosecution examined 19 witnesses as P.W.1 to P.W.19 and marked 18 exhibits as Exs.P1 to P18, and marked 8 Material Objects as M.O.1 to M.O.8. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant/accused neither examined any witness, nor marked any documents.

9. On appreciation of oral and documentary evidence, the trial Court acquitted the appellant for the offence punishable under Section 294-b IPC and convicted the appellant for the offence punishable under Section 302 of the IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5000/- in default, to undergo simple imprisonment for six months. Challenging the said conviction and sentence, the



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accused/appellant has preferred the appeal.

10. Heard Mr.B.Vasudevan, learned counsel appearing for the appellant/accused, and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

11. The learned counsel for the appellant submitted that the prosecution had examined P.Ws.1 to 5 as eyewitnesses to the occurrence and there are several contradictions in their evidence and therefore, the trial Court had erroneously believed their evidence to hold the appellant guilty; that P.W.1 the father of the deceased admitted in his evidence that he went to the scene of occurrence after coming to know of the quarrel between the appellant and the accused and therefore, he could not have been an eyewitness. In any case, the evidence and witness would only suggest that the appellant could be convicted only for the offence of culpable homicide not amounting to murder and not for the offence under Section 302 IPC.



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12. Per contra, learned Additional Public Prosecutor submits that P.Ws.1 to 5 are natural witnesses. P.Ws 2 to 5 are independent witnesses, who owned shops near the scene of occurrence. Nothing has been elicited in the cross examination to disbelieve their evidence. The trial Court rightly convicted the appellant and that there is no reason to interfere with the judgment of the trial Court.

13. We have carefully considered the rival contentions and perused the records.

14. It is the prosecution case that the appellant and the deceased were close friends. There is no dispute with regard to the said fact. It is also not in dispute that the appellant and the deceased were in the habit of consuming liquor frequently. On the date of occurrence, they had been to a wine shop and the prosecution has established that the appellant and the deceased had a wordy quarrel in the wine shop while they were consuming liquor.

15. P.W.14 and P.W.15, who are the employees of the said bar, have



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stated about the wordy quarrel between the appellant and the deceased that took place in the bar and to the fact that they advised both the appellant and the deceased to leave the bar.

16. P.W.1 is the father of the deceased, who came to know that the appellant and the deceased were fighting with each other and went to the scene of occurrence along with his grandson. According to him, he witnessed the appellant chasing the deceased and attacking him with wooden slab and that inspite of his request, the appellant attacked him on the head which caused the death of his son.

17. P.W.2 to P.W.5 are independent witnesses, who own shops near the scene of occurrence. They were not known to the appellant or the deceased. All witnesses have supported the case of the prosecution and their versions are consistent with each other. It may be useful to extract the evidence of P.W.2 which reads as follows:-

“ அப்போது ரோட்டில் குடிபோதையில் இரண்டு
நபர்கள் மாறி மாறி திட்டிக்கொண்டு வந்தார்கள்.



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இருவரும் ஓயின்ஷாப் பக்கமிருந்து வந்தார்கள்.
இருவரும் அடித்துக்கொண்டார்கள். அதில் ஒருவர்
அடித்ததில் மற்றொருவர் கீழே விழுந்துவிட்டார்.
அப்போது எனது கடைக்கு எதிர்த்தாற்போல் புதியதாக
கட்டப்பட்டுக்கொண்டிருந்த கட்டிடவேலையில் கிடந்த
ஒரு சென்ட்ரிங் மரப்பலகையை எடுத்து வந்த ஒருநபர்
எதையோ சொல்லிக்கொண்டு அப்போது கீழே கிடந்த
நபரின் தலையில் அடித்தார்.”

18. Nothing has been elicited in the cross examination of P.W.2 to P.W.5 to disbelieve their versions. Thus, it can be seen from the evidence of P.W.2 to P.W.5 and P.W.14 and P.W.15 that the appellant and the deceased were fighting with each other from the time they went into the 'Bar' around noon and even after they came out of the Bar. There is no reason to disbelieve the evidence of the above witnesses. However, we find that P.W.1's version is slightly different from the versions of the other witnesses. P.W.1 would state that the appellant has chased the deceased and had acted in a cruel manner. Admittedly, we find that P.W.1 came to the scene of occurrence only after he heard about the fight between the appellant and the deceased. P.W.1's version, in our view, appears to be an exaggerated



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version of the incident, wherein, he does not speak about the quarrel between the appellant and the deceased. Therefore, we are not inclined to accept P.W.1's version that the appellant chased the deceased and had caused the death of the deceased by acting in a cruel manner. Though P.W.3 would state that the appellant shouted at the deceased and attacked him by saying 'இதோடு செத்து ஒழிடா', the other eyewitnesses have not stated so.

19. The other witnesses examined by the prosecution are either hearsay witnesses or assisted the Investigating Officer in the investigation of the case. Therefore, the entire case rests on the evidence of P.W.1 to P.W.5 as stated earlier.

20. P.W.18 Doctor, who conducted post-mortem, had found the following injuries on the body of the deceased:-

“ 1. *Dark Reddish Abrasion over Left Side of Forehead M-3X1 cms.*



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2. *Laceration over Right Side of Forehead M-4X1.5 cmsXBone deep with surrounding Abrasion M-5X3 cms exposing underlying compound comminuted fracture of forehead bones with extravastion of blood into surrounding tissues”.*

21. ExP.10 is the post-mortem report. In his final opinion, marked as Ex.P.12, he has stated as follows:-

“ The deceased would appear to have died of Shock and Haemorrhage due to head injuries with evidence of consumption of Ethyl Alcohol.”

22. Thus, the medical opinion also confirms that the deceased was in an inebriated condition. The nature of injuries which is extracted above would suggest that the deceased sustained an abrasion and a laceration injury. It is also the version of the witnesses that the appellant inflicted a single blow with the wooden slab which was meant for construction purposes and found lying on the road. It is not the case of the prosecution that there was a pre-meditation on the part of the appellant to cause the death of the deceased. The evidence of P.W.2 to P.W.5 established that



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there was a fight and in a heat of passion upon a sudden quarrel, the appellant inflicted a single blow on the deceased. The facts therefore reveals that the case would fall under Exception IV to Section 300 IPC as there is nothing to suggest that the appellant had taken undue advantage or acted in a cruel or unusual manner. The appellant and the deceased were close friends. There was no motive for the appellant to cause the death of the deceased. There is no evidence to show that the appellant intended to cause the death of the deceased. However, the act of the appellant would suggest that he had the knowledge that his act was likely to cause the death of the deceased which would fall under Section 304 part II IPC. Hence we are of the view that the appellant is guilty and liable to be punished for the offence under Section 304 (II) IPC.

23. Considering the facts and circumstances of the case, we are of the view that interest of justice would be met if the appellant is sentenced to undergo 5 (five) years rigorous imprisonment and directed to pay fine of Rs.5,000-. It is also submitted that the appellant has already paid the fine amount of Rs.5,000- before challenging the judgment of conviction before



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this Court.

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24. In the result,

(i) the appeal is partly allowed and the conviction and sentence imposed by the learned I Additional District Sessions Court, Salem in S.C.No.40 of 2020 are set aside and instead, the appellant is convicted for the offence punishable under Sec.304 Part II IPC and sentenced to undergo rigorous imprisonment for five years.

(ii) It is directed that the period of sentence already undergone by the appellant shall be set off under Section 428 Cr.P.C.

(M.S.R.,J.) (S.M.,J.)

23.01.2024

Index : yes

Neutral citation : yes

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To

1. The I Additional District and Sessions Judge,
Salem.
2. The Inspector of Police
Kondalampatty Police Station,
Salem District.
(Crime No.344/2019)
3. The Superintendent,
Central Prison, Salem.
4. The Public Prosecutor,
High Court, Madras



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**M.S.RAMESH,J.
AND
SUNDER MOHAN,J.**

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