

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2016

(Judgment reserved on 05.08.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

CrI.A.No.770 of 2015

M.Muruganandham

... Appellant/Accused

Vs.

State:

Inspector of Police,
B-10 Selvapuram (L & O) Police Station,
Coimbatore District.

Crime No.1336 of 2013. ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment, dated 27.10.2015 in S.C.No.167 of 2014 on the file of the Third Additional District and Sessions Court, Coimbatore.

For appellant : Mr.S.Silambu Selvan

For respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

This Criminal Appeal is filed against the judgment dated 27.10.2015 in S.C.No.167 of 2014 on the file of the Third Additional District and Sessions Court, Coimbatore, by which, the appellant/accused was convicted for the offence under Section 304 (Part-1) IPC and sentenced to undergo rigorous imprisonment for five years with fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for two months.

2. The case of the prosecution leading to conviction of the appellant/accused, in brief, is as follows:

The appellant/accused/Muruganandham and the deceased Jayaseelan were labourers under P.W.1 who was a painting contractor. At the relevant point of time, the deceased and the accused frequently indulged in quarrel. The deceased and P.W.1 belong to the same native place, due to which, taking advantage of his close proximity with the employer (P.W.1), the deceased was commanding the other workers in the work-spot. On

20.12.2013, when they were working in a site at Avarampalayam, at about 11 a.m., there was confrontation between the deceased and accused with regard to picking up of a paint box and at that time, when the accused questioned the act of the deceased in not bringing the painting box, the deceased commented upon the accused that if he disobeys him, he would lose his job, without which, he may beg for food. Annoyed over the same, the accused threatened the deceased with dire consequences warning about such deviant behaviour towards him. On 22.12.2013 at about 4.30 p.m., the accused came to the house of the deceased and took him for checking the availability of a rented house at Selvapuram. Subsequently, both of them had their food in an open place near P.W.2's house and were deliberating with each other about their family matters. Out of sudden harshness that prevailed between them, the deceased commented offensively on the accused, again by stating that without this job, he would beg for the food, due to which, there was a war of words between them, resulting in the accused taking a wooden log (M.O.1) and attacking the deceased on his head, due to which, the deceased fainted and fell down. Thereafter, upon information, P.W.1 reached the place of occurrence and sent the injured-deceased to the Government Hospital at Coimbatore with the help of an ambulance. Despite the treatment given to him, at about 10.30 p.m., the deceased succumbed to the injuries. On receipt of the complaint (Ex.P-1) given by P.W.1., P.W.13 Sub-Inspector of Police prepared Ex.P-18 FIR for the offence under Section 307 IPC. Thereafter, P.W.14 investigating officer, completed all formalities by visiting the place of occurrence, recording the statement of the witnesses, preparing the observation mahazar (Ex.P-2) and drawing the rough sketch (Ex.P-19). Based on information, the accused was arrested near a TASMACHOP shop, on his voluntary confession before the witnesses and was remanded to judicial custody. Since the deceased-Jayaseelan died, the offence was altered to Section 302 IPC. After completion of investigation, P.W.15 investigating officer who was subsequent in-charge of the jurisdictional Police Station, conducted inquest over the body of the deceased and prepared Ex.P-21 inquest report. Thereafter, the body of the deceased was sent for post-mortem. After completing the investigation, P.W.15 filed the charge sheet against the appellant/accused for the offence under Section 302 IPC. The case was taken on file by the trial Court in S.C.No.167 of 2014. During the course of trial, on the side of prosecution, P.Ws.1 to 15 were examined, Exs.P-1 to P-21 were marked and M.Os.1 to 5 were produced. When the appellant/accused was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. He neither examined any witness nor marked any document. Upon hearing the submissions of both sides and considering the oral and documentary evidence available on record, the appellant/accused was convicted by the trial Court as stated above. Challenging the said conviction and sentence, the appellant/accused has filed this appeal.

3. The only submission made by learned counsel for the appellant/accused is that he is not arguing the appeal on the merits, but prayed for showing leniency by reducing the period of sentence imposed on the appellant/accused, as the fact remains that the accused and deceased did not have any long-standing grudge or enmity between them and only due to sudden provocation, the incident occurred, which unfortunately lead to the death of the deceased, thereby he has been charged for murder, though the trial Court convicted him only for the offence under Section 304 (Part-1) IPC and awarded five years rigorous imprisonment with fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for two months. He further submitted that in a fit of rage due to disagreement with the utterance of the words of the deceased that the accused may beg for food if he loses job, the accused attacked the deceased. Hence, he prayed for showing leniency on the appellant/accused by reducing the period of sentence of imprisonment imposed on him.

4. Per contra, learned Additional Public Prosecutor appearing for the respondent/Police submitted that the prosecution has proved its case beyond reasonable doubt by convincing and cogent evidence and no leniency is warranted in a case of this nature and he prayed for dismissing the appeal.

5. Heard both sides and perused the materials available on record.

6. Though learned counsel for the appellant/accused harped on the same string only on the question of quantum of sentence, the only issue that has to be considered in this case is as to whether, in the given facts and circumstances of the case, the findings recorded by the learned trial Judge could be brushed aside lightly by reducing the sentence awarded to the accused.

7. At the outset, it has to be kept in mind that the trial Court itself, upon considering the peculiar facts and circumstances of the case, has shown leniency for the accused by awarding only five years rigorous imprisonment, though a term of imprisonment which may extend upto ten years with fine, could be awarded under Section 304 (Part-I) IPC. As rightly observed by the trial Court, the test of grave and sudden provocation is as to whether a reasonable person belonging to the same class of society as that of the accused herein, placed in the situation in which the accused in this case was placed, would be so provoked as to lose his self-control and cause the act that is coming within the purview of first exception to Section 300 IPC and by also taking into consideration the mental background created by the outrageous act of the deceased, the subsequent act resulted in committing the offence by the appellant/accused, which has caused the death of the deceased due to fatal blow

inflicted on him by the accused with M.O.1 wooden log due to sudden provocation consequent to the words uttered by him. Apart from rendering findings as above, the trial Court further took into account the fact that there was oral acrimony between them and came to the conclusion that though the accused had no intention to cause the death of the deceased, the accused attacked the deceased on his head, which resulted in his instantaneous death. It was further observed that the act of the accused was preceded by wordy quarrel between the accused and the deceased and this caused the death of the deceased, which could not be termed as murder, but it amounts to culpable homicide not amounting to murder, thereby attracting the offence under Section 304 (Part-I) IPC. The trial Court further kept in mind while awarding sentence, that it was settled law that if two views are possible, certainly the view in favour of the accused will have to be taken into consideration based on the facts and circumstances of each case, and hence, it was further observed that even a grave suspicion may not amount to proof for murder, as the accused has no culpable mind to destroy the life of the deceased in a heat of passion. Hence, as rightly observed by the trial Court, the penal provision of murder is not getting attracted in this case and legal position has to be taken into account, as the act of the accused may at the most, would amount to culpable homicide not amounting to murder. Therefore, the accused was ultimately found guilty under Section 304 (Part-I) IPC and convicted and sentenced as indicated above, by taking a lenient view.

8. For the above stated reasons, I do not find any valuable reason to show leniency on the appellant/accused with regard to reduction of the period of imprisonment as sentenced by the trial Court, more particularly, when the fact remains that the trial Court itself has shown leniency in awarding only five years rigorous imprisonment inspite of the fact that the statute (IPC) prescribes life imprisonment or a term of imprisonment which may extend to ten years with fine. There is no acceptable evidence produced in this case to show further leniency for reducing the period of imprisonment.

9. At this juncture, it has to be noted that it is the duty of the Court awarding sentence to ensure justice to both the parties and therefore undue leniency in awarding sentence needs to be avoided, because it does not have the necessary effect of being a deterrent for the accused and does not re-assure the society that the offender has been properly dealt with.

10. Further, this Court is of the view that awarding punishment in a criminal case is a serious exercise and the court, while awarding the sentence, is required to take into account various factors and create a balance between the interest of the individual and concern for the society. The

object of punishment in a criminal case is not only punitive but reformative, so that the guilty individual is made to realize his mistake and repent for his actions and also to reform himself to become an useful member of the society.

11. In the above context, it is worthwhile to notice a judgment of the Supreme Court reported in 2001 (9) SCC 161 (Karamjit Singh Vs. State (Delhi Admn.)), wherein, the Apex Court, while dealing with the question of quantum of sentence, inter alia, observed thus:-

"7....Punishment in criminal cases is both punitive and reformative. The purpose is that the person found guilty of committing the offence is made to realize his fault and is deterred from repeating such acts in future. The reformative aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighting the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined."

(emphasis supplied)

12. While keeping in mind the above dictum laid down by the Supreme Court and for all the above stated reasons, it has to be concluded that the prosecution has proved that it was the accused who had caused the death of the deceased. The trial Court by coming to the conclusion that the act of the accused would not attract the penal provisions of murder, has awarded due punishment befitting to the act of the accused and no further leniency could be shown at this stage of appeal. Further, the trial Court has awarded only five years rigorous imprisonment for such an act of the appellant/accused by showing leniency and awarded lesser sentence. Hence, I do not find any infirmity in the impugned judgment of the trial Court in finding him guilty of the offences and there is no reason warranting interference by this Court. There being no scope for showing any further leniency in imposing the sentence of imprisonment for the act of the accused, this Court has no other option except to

confirm the conviction and sentence imposed on the appellant/accused. The appeal is bound to fail and accordingly, the appeal is dismissed, confirming the conviction and sentence imposed on the appellant/accused.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Copy to

1. The Third Additional District and Sessions Judge, Coimbatore.
2. -Do- Thro The Principal Sessions Judge, Coimbatore.
3. The Judicial Magistrate No.V, Coimbatore.
4. -Do- The Chief Judicial Magistrate, Coimbatore.
5. The Inspector of Police, B-10 Selvapuram (L & O) Police Station, Coimbatore District.
(Crime No.1336 of 2013)
6. The Public Prosecutor, High Court, Madras.
7. The Record Keeper, Criminal Section, High Court, Madras.
8. The Superintendent, Central Prison, Coimbatore.

+1cc to Mr.S.Silambuselvan, Advocate Sr.47672

Cr1.A.No.770 of 2015

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srg 16/09/2016