

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.A.No.549 of 2016

A.Raja @ Rajkumar

..Appellant / Accused

Vs.

The State

rep. By its Inspector of Police,
B-5, Singanallur Police Station,
Coimbatore District
(Crime No.288 of 2014)

..Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the Judgment passed by the Learned I Additional District and Sessions Judge at Coimbatore in S.C.No.140 of 2014 dated 25.04.2016 for convicting the Appellant for offence under Section 304(ii) of IPC and sentencing him to undergo 5 years RI and to pay a fine of Rs.500/- in default to undergo S.I. for one month.

For Appellant : Mr.R.Rajarajan

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

J U D G M E N T

The Appellant / Accused has preferred the instant Criminal Appeal before this Court as against the Judgment dated 25.04.2016 in S.C.No.140 of 2014 passed by the Learned First Additional District and Sessions Judge, Coimbatore.

Preface

2. The Learned First Additional District and Sessions Judge, Coimbatore, in the Impugned Judgment in S.C.No.140 of 2014 dated 25.04.2016 at Paragraph No.10 had interalia observed to the effect that ".....As per the evidence of P.W.2 and P.W.3, there was a wordy quarrel between the deceased and the accused at 4.00 p.m and suddenly the accused took reaper from the opposite shop and hit the deceased on his head. As per the evidence available, the occurrence has took place on a sudden provocation. The evidence of P.W.1 to P.W.3, has not stated

there is a previous enmity between the deceased and the accused. The deceased and the accused said to have taken drinks in the morning jointly. If any previous enmity or vengeance between them there might not have taken the drinks alcohol in a open place and in front of public. So, this case would clearly comes under the exception to Section 300 Cr.P.C. Hence, the accused could not be punished under Section 302 IPC but the offence would covered under Section 304(2) IPC. Accordingly the accused was held guilty of the offence u/s 304(2) IPC for the death of Nagaraj by causing injury on his head on 14.04.2014 which resulted in the death." and convicted the Appellant / Accused in respect of an offence under Section 304(2) of IPC and sentenced him to undergo Rigorous Imprisonment for a period of five years and also imposed a fine of Rs.500/-, in default of payment of fine, the Appellant (Accused) was directed to undergo further one month Simple Imprisonment. Further, the period of detention already undergone by the Appellant / Accused was directed to be set off under Section 428 of Cr.P.C.,

Appellant's Submissions

3. Challenging the correctness, validity and legality of the Impugned Judgment dated 25.04.2016 in S.C.No.140 of 2014 on the file of trial court, the Appellant / Accused has preferred the present Criminal Appeal before this Court contending that the trial court had failed to consider the value of 'Hearsay Evidence' tendered by P.W.2.

4. It is represented on behalf of the Appellant that the Impugned Judgment of the trial court in S.C.No.140 of 2014 is an illegal one, and also unconditional because of the reason that there is non-application of judicial mind.

5. The Learned Counsel for the Appellant projects a legal plea that there are number of contradictions between the statement of witness recorded by the police and the deposition recorded by the Learned Trial Judge. If really the said contradictions were taken into account by the trial court in a proper and real perspective, then, it would have established the non-involvement of the Appellant / Accused in respect of the offence in question and in reality, the 'Benefit of Doubt' ought to have been in his favour.

6. The Learned Counsel for the Appellant takes a stand that P.W.1 (the Complainant - Wife of the deceased, Nagaraj) in her evidence (in cross-examination) had deposed that she lodged a complaint after her husband's death. But in her statement in Ex.P.1, she had stated that she came to the house at about 6.00 p.m., in the evening on 16.04.2014 and at that point of time, one Shanmugam son of Pachiyappan known to her husband came and informed that near Varadharajapuram Medu one Raja son of

Aruchamy stopped / way laid Nagaraj, who was coming near Venkatesa Theatre and asked him as to why he is creating trouble with him after coming from one village to another and when demanded about the money given to him, why you are informing that he would not pay the money and also scolded him in vulgar language and took a wooden log (wooden reaper) and by so saying about her husband you get yourself finished dog and gave a blow in head and as a result of which, the said Nagaraj fell down immediately. Moreover the said Raja beat Nagaraj, her husband with reaper and wooden log alternatively and immediately, he (Shanmugam) along with Samraj and Mathiyalagan were there, stopped Raja, but Raja later ran away with the wooden reaper.

7. The Learned Counsel for the Appellant / Accused also brings it to the notice of this Court that in Ex.P.1, Complaint / Statement, (P.W.1 (Prema)-Defacto complainant) Shanmugam had proceeded to state to her that blood came out in the hands of Nagaraj (P.W.1's Husband) and he gave information to the 108 Ambulance and because of another urgent work, he went away.

8. The Learned Counsel for the Appellant refers to the evidence of P.W.1 (Ex.P.1- Complaint) that in fact, P.W.1 had stated (in her chief examination) that on 14.04.2014 night she went to the Singanallur Police Station for the purpose of lodging a complaint and since she could not read and write, she orally informed the police and in the police station her complaint was written in the form of statement and also the contents of her statements were read over to her and since the said statement was as per her version, she affixed her signature in the complaint and Ex.P.1 is the complaint. Further, she was examined by the Police on 16.04.2014, in this connection, the Learned Counsel for the Appellant refers to Ex.P.10, FIR, wherein the date of occurrence was mentioned as 14.04.2014 and that the date of information received at the police station was stated as 16.04.2014 at 21.30 hrs. Also in Ex.P.10, FIR, the information was given by means of complaint statement. Moreover, the Learned counsel for the Appellant brings it to the notice of this Court that in Ex.P.10- FIR, it was mentioned that based on the complaint statement of Prema (Ex.P.1) a case was registered at B5, Singanallur Police station in Crime No.288 of 2014 under Section 75(1) (c) of Tamilnadu City Police Act and under Sections 341, 323, 307 of Indian Penal Code by the Sub-Inspector of Police (P.W.11).

9. The Learned Counsel for the Appellant / Accused refers to the evidence of P.W.2 (Shanmugam), who had deposed in his evidence (in Chief Examination) that he knows the Appellant / Accused, who is residing nearby his residence and he also knows the deceased, Nagaraj and the deceased, Nagaraj also resided near his house and that P.W.1 is the wife of deceased, Nagaraj.

10. Moreover, the Learned Counsel for the Appellant by bringing to the notice of this Court the evidence of P.W.2, he had deposed that on 14.04.2014 at about 10.30 a.m., in the morning near Venkateswara Theatre, he came to Darshini Tea stall for taking tea and at that time, the Appellant / Accused and the deceased, Nagaraj near Venkateswara Theatre were shouting against each other and he, along with another person (who runs a Finance company) and also with other person, Samraj went there and separated the oral quarrel that erupted between the Appellant / Accused and the said Nagaraj. Apart from that, P.W.2 had also stated in his evidence that although the Appellant / Accused and Nagaraj were in drunken stage and later the Appellant (Accused) and Nagaraj went from the place and subsequently he went to his house and slept there.

11. The Learned Counsel for the Appellant invites the attention of this Court to the evidence of P.W.2 in Chief Examination that about 4.30 p.m. in the evening, to the effect that he came to the Darshini Tea shop for taking tea and when he came out after taking tea at about 4.45 p.m., he found that the Appellant and Nagaraj at a distance of 150 feet that they were of quarrelling with each other and at that time, the Appellant / Accused took a wooden reaper from nearby and beat Nagaraj heavily on his head and immediately the said Nagaraj fell down and he went and saw near him with palpitation but he saw Nagaraj with face downwards and when he saw Nagaraj after turning him over he found that there was an injury on the left side forehead and face was found with fully blood and he lifted Nagaraj and made him to sit and also he phoned up to 108 Ambulance for taking him to hospital, since he found injury on his head etc.,

12. The Learned Counsel for the Appellant categorically points out to the evidence of P.W.2 (in cross-examination) to the effect that 108 Ambulance had not arrived at spot after information being provided by him and that some one had informed the 108 Ambulance, as such, there is a variance to the evidence of P.W.2, viz., that originally in chief examination, P.W.2 had interalia stated that because of the injury on the head of Nagaraj, he phoned up to 108 Ambulance to take him to hospital but now in the cross-examination he had stated that 108 Ambulance had not come based on his information and this variation / discrepancies in the evidence of P.W.2 affects the case of the prosecution.

13. Apart from the above, the Learned Counsel for the Appellant refers to Section 161 (3) Cr.P.C., statement of Shanmugam (P.W.2) to the effect that he had stated before the police he phone up to 108 ambulance. In effect, the core contention advanced on behalf of the Appellant is that the evidence of P.W.2 in regard to the aspect of phoning up to 108 Ambulance could not be relied upon by this Court.

14. The Learned Counsel for the Appellant brings it to the notice of this Court that P.W.2 (in his Section 161(3) Statement) before the Police had stated that after phoning up to 108 Ambulance he went to Gandhipuram Bus Depo for the purpose of calling the relative. However, in his chief examination, P.W.2 had stated that before the arrival of 108 Ambulance, he went to Nagaraj's House with a view to provide information to him.

15. Advancing his arguments, the Learned counsel for the Appellant refers to the evidence of P.W.1 (Complainant - Prema) to the effect that she had deposed (in her chief examination) before the trial court that on 14.04.2014 at about 5.00 p.m., in the evening approximately, her husband went outside of his house and informed him that he would return back and that at about 5.30 p.m., she received an information that near Venkateswara Theatre, her husband was in an unconscious stage.

16. At this stage, the Learned Counsel for the Appellant by referring to Ex.P.1, complaint submits that P.W.1, in the complaint had stated that on 14.04.2014 at about approximately 4.00 'o clock when she was in her house, her husband informed her that he would go outside and return back and that about 5.30 p.m., approximately, the persons nearby her area informed her that her husband was found in an unconscious stage near Venkateswara Theater after sustaining injury.

17. It is the submission of the Learned Counsel for the Appellant that although P.W.1 (Complainant) was informed about the occurrence by P.W.2 on 14.04.2014 itself, she had not thought fit to lodge a complaint on 14.04.2014 itself, and that there is a delay in lodging of the First Information Report, which affects the credibility of the case of the prosecution.

18. Expatiating his contention, the Learned Counsel for the Appellant refers to the evidence of P.W.12 (I.O.), who had stated in his (cross-examination) to the effect that from 14.04.2014 till 16.04.2014 in regard to the present incident no one had lodged a complaint and therefore it is coming into existence of Ex.P.1, Complaint dated 16.04.2014 is highly doubtful.

19. Nextly, it is projected on the side of the Appellant that M.O.1, Wooden Reaper was purportedly recovered based on the Ex.P.3, Confession Statement of the Appellant / Accused dated 17.04.2014. Furthermore, for the M.O.1 purportedly seized from bush near the Neelakonampalayam Cemetery, either the owner or employee of the Saw Factory was not examined. As such, M.O.1 recovery is not free from any Iota of doubt.

20. The Learned Counsel for the Appellant contends that P.W.3 (Purported Eye Witness) who owns a pawn shop in his

evidence had stated that in his shop there was a CCTV camera and that the occurrence as narrated by the prosecution had purportedly taken place in front of his shop. But the non-recovery of CCTV camera by the Respondent / Complainant goes to the root of the matter in the instant case, which aspect was not taken note of by the trial court at the time of passing the Impugned Judgment.

21. The Learned Counsel for the Appellant vehemently submits that P.W.6, (Doctor) in his cross-examination had stated that based on the nature of injury that sustained by the deceased, the same would have been occurred approximately 10 days before the death of the deceased.

22. The Learned Counsel for the Appellant cites the decision of Hon'ble Supreme Court (2009) 3 Supreme Court Cases 391 at Special Page 397 between Jarnail Singh V. State of Punjab wherein at Paragraph No.30 it is held as follows:-

"30. The entire story sought to be put forth by the prosecution and by P.W.7 particularly appears to be doubtful and full of contradictions. It will be unsafe to convict a person on the basis of such unreliable and untrustworthy evidence particularly when such statements are full of embellishment and contradictions, without corroboration in material particulars by reliable testimony, direct or circumstantial. Consequently, we set aside the order of conviction and sentence passed against the appellant and given him benefit of doubt. He stands acquitting of the charges. He shall be set free immediately, unless required in any other matter."

23. He also relies on the decision of Hon'ble Supreme Court in (1994) 5 Supreme Court Cases at Page 188 and at Special Page 189 (Meharaj Singh (L/Nk.) V. State of U.P) wherein it is observed as under :

"FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version of exaggerated story. With a view to determine whether the FIR was lodged at the

time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local magistrate. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr.P.C., is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it the colour of a promptly lodged FIR"

Respondent Side Contentions

24. Per contra, the Learned Government Advocate (Crl.Side) contents that even though there are contradictions in regard to the evidences of P.W.1 and P.W. 2, yet they are not so grave, which affects credibility of the story of the prosecution case. Further it is represented on behalf of the Respondent / Complainant that the evidence of P.W.1 (before the trial court) was categorical to the effect that she saw her husband (Nagaraj, later deceased) in an unconscious stage at the occurrence place till his death and that apart since her husband (injured) was not able to open his mouth and to speak, she could not lodge a complaint and this aspect of the matter was very much appreciated by the trial court in favour of the Respondent / Complainant / State.

25. The Learned Government Advocate (Crl.Side) proceeds to take a stand that the evidence of P.W.1, (complainant), P.W.11, (who registered Ex.P.10, FIR) and P.W.12 (I.O. evidence) are cogent, coherent and convincing about the manner in which the Ex.P.10, FIR came into existence and only because of the reason that P.W.1 (complainant) that her husband Nagaraj, when he was in the hospital taking treatment was not in a position to open his mouth, she could not lodge complaint and as such, there is no delay in lodging the FIR.

26. In short, the Learned Government Advocate (Crl.Side) for the Respondent / Complainant submits that before the trial court, on behalf of the prosecution witness, P.W.1 to P.W.12 were examined and Ex.P.1 to P.14 were marked and that no one was examined on the side of the Appellant / Accused. Indeed, the trial court, on an appreciation of entire oral and documentary evidence available on record had come to a resultant conclusion that the Appellant / Accused act of taking the reaper from nearby shop and hitting deceased Nagaraj on his head would not attract Section 302 of IPC but would attract Section 304(2) of IPC. Therefore, the Appellant / Accused found guilty under Section 304(2) of IPC for causing an injury on the Nagaraj's head on 14.04.2014, which ultimately resulted in his death. As a result thereof, the Appellant was convicted by the trial court and sentenced to undergo Rigorous Imprisonment for a period of five years and a fine of Rs.500/- was also imposed on the Appellant, in default of payment of fine, the Appellant (Accused) was directed to further undergo one month Simple Imprisonment and the same may not be dislarded by this Court sitting in Appellant Jurisdiction.

Narration of Evidence of Prosecution Witnesses

27. At the outset, this Court points out that it is true that (P.W.1, (deceased, Nagaraj's wife, who gave Ex.P.1, complaint) in her evidence had deposed that (in Chief Examination) she lodged a complaint on 16.04.2014. However, she had stated in her cross-examination that the complaint was lodged after the death of her husband. Also that P.W.2 had stated in his evidence that he informed P.W.1 about the occurrence however, P.W.1 had spoken differently in her evidence in this regard. Moreover P.W.2 had uttered in his evidence that he called 108 Ambulance but the same was contradicted by P.W.2 and also by P.W.1. These contradictions / discrepancies are variance in the evidence of P.W.1 and P.W.2. Even though they are available on record, but the same would not affect the credibility of the prosecution, in the considered opinion of this Court.

28. Coming to the evidence of P.W.6, Doctor, who had deposed in his evidence that the injury found on Nagaraj's body were ten days old, it is to be pointed that Doctor had only opined that the injuries found on Nagaraj's body would have been there before ten days of his death. His evidence in this regard is not a conclusive one and he had only given his tentative opinion in this regard and in any event, the P.W.6, Doctor's evidence that the injuries sustained by the deceased would have occurred to him ten days before would not in any way heighten the case of the Appellant / Accused, as opined by this Court.

29. At this juncture, it is to be remembered that P.W.6 (Doctor) in his evidence had deposed that he had conducted the

post-mortem on the body of the deceased, Nagaraj (male) and commenced the same at 2.15 p.m. in the afternoon and infact the deceased Nagaraj's body aged about 38 years was received from requisition from B5, Inspector of Police, Singanallur (P.W.12) in Crime No.288 of 2014 and after he issued the post-mortem certificate Ex.P.6 and that the requisite for the post-mortem was Ex.P.5 and he had also opined that based on M.O.1, Wooden reaper, if a person was attacked, the injuries found on the head of the deceased would occur and in fact M.O.1 was shown to him.

30. P.W.3 in his evidence had stated that the Appellant / Accused and deceased, Nagaraj were looking after paint job and only in that manner he knew them and that on 14.04.2014 at about 11.00 a.m., in the morning at the distance of 25 meter from his shop, the Appellant / Accused and Nagaraj (deceased) were sitting on the side of a wall and they were consuming liquor and quarrelling with each other.

31. Further, it is the evidence of P.W.3 that near the place where the Appellant / Accused and Nagaraj were quarrelling, he had parked his Yamaha Motor Cycle and he was in his shop and in front of this shop, both the Appellant / Accused and Nagaraj by consuming liquor were quarrelling with each other and since he was afraid with both of them that their quarrelling would fall his motor cycle, he along with Samraj and Shanmugam separated the Appellant / Accused and Nagaraj in not quarrelling themselves.

32. P.W.3 adds further in his evidence that at that time, the Appellant / Accused on seeing Nagaraj stated that " See what I would do for you within today" and left the place and on the evening on that day at about 5.00 p.m., the deceased, Nagaraj from his house was going through the street and when he was going at the distance of 25 meter from his shop, the Appellant on seeing Nagaraj uttered "Enda coming from village to village and eking out livelihood and that not in a position to pay back the money received from him" and used obscene language and scolded him and near that place, one Achari Saw Shop was there and from that shop, the Appellant / Accused took the wooden reaper and hit Nagaraj on the back of his head by uttering "with this you get finished" and he along with others by shouting came running but the Appellant / Accused run away with the Reaper in his hands and subsequently P.W.2, Shanmugam and others had phoned up to 108 Ambulance and that 108 Ambulance came there and also Nagaraj's wife (P.W.1) came there and through the said Ambulance, Nagaraj was taken to C.M.C.H. Hospital and when he enquired about the health of Nagaraj, he was informed that Nagaraj was in unconscious, coma stage and he came to know that on 17.04.2014 at the hospital, Nagaraj died inspite of medical assistance given to him and that he was examined by the police.

33. P.W.3 had deposed in his evidence by identifying the M.O.1, Wooden reaper that only with the same, the Appellant had attacked Nagaraj.

34. P.W.4 in his evidence had stated that on 17.04.2014 when he was in shop about 10.00 'o clock in the morning, opposite to the shop, people were standing in large numbers and that the police men and others related to the Police Department had arrived there and he along with Selvaraj (Owner of the Darshini Bakery) went there to see what was happening and the Singanallur Police were drawing a sketch on seeing the place and they obtained his signature and the tea shop owner, Selvaraj's signature and in Ex.P.2, Observation Mahajar, he had affixed his signature along with Darshini tea shop's owner, Selvaraj. The first signature seen therein belong to him and the second signature belong to Selvaraj.

35. P.W.5 in his evidence had deposed that he and the Appellant / Accused are residing in one Area / Portion and on 17.04.2014, he came to the house at about 6.30 p.m., in the evening after finishing his work and came to Varadharajapuram to see his friends, at that time, near the salt water tank, the people were assembled in large numbers and the Police people were also seen there and he went there to see why there was such a crowd and at that time, the Appellant / Accused was kept by the Police and they were enquiring about the Appellan,t at that time he along with Palanisamy came to that place and the Inspector of Police requested him and Palanisamy to remain as witness ,for which they had agreed and at that time at about 7.15 p.m., during night time, the Appellant / Accused gave a confession statement and in the said confessional statement, the Appellant / Accused had stated that if he was taken to the opposite of Karuparayam Temple in Neelakonampalayam, then, he would produce a hidden object from the burial ground and the admitted portion of the confessional statement was Ex.P.3, in which he had affixed his signature along with Palanisamy and that he along with Palanisamy, Appellant, Inspector, P.W.12 and other policemen came to the Neelakonampalayam burial ground and that the Appellant / Accused from the thorny bush took out a wooden reaper, which was approximately three feet and painted in green colour and M.O.1 was the wooden reaper and in the said recovery in the Seizure Mahajar, Ex.P.4, he along with Palanisamy had affixed the signature.

36. P.W.6, Doctor in his evidence (in cross-examination) had stated that it was correct to state that he had not mentioned in his Post-mortem Report, Ex.P.6 as to the number of days prior to that the injury had taken place and he had also uttered in his evidence that the deceased (Nagaraj) would have died due to the injury sustained by him on the head and also as a result of the consequences arisen thereto.

37. P.W.7 (Head Constable) in his evidence had stated that while he was working as Head Constable at B5 Singanallur Police station on 16.04.2014, he received the Original Express FIR registered under Section 75 of the Tamilnadu City Police Act and under Sections 341, 323 and 307 of IPC in Crime No.288 of 2014 from the Inspector of Police and handed over the same to the Learned Judicial Magistrate No.III, Coimbatore at 22.00 hrs and also transmitted the copies of FIR to the concerned higher officials.

38. In fact, P.W.7 (in his cross-examination) had stated that the Inspector of Police (P.W.12) had given him the FIR on 16.04.2014 at 11.50 p.m.

39. P.W.8 in his evidence had stated that while he was serving as a II Grade (Constable, Law and Order) at B5 Singanallur Police Station, on 17.04.2014, he was deputed for the post-mortem work pertaining to deceased, Nagaraj S/o Ganesh aged about 38 in Crime No.288 of 2014 and after receiving the passport (receipt) he proceeded to Coimbatore C.M.C. Hospital and after receiving the deceased body, he identified the same to the Doctor for the purpose of carrying the post-mortem and the post-mortem began at 2.45 p.m., in the afternoon and ended at 3.30 p.m.

40. P.W.9 (Doctor) in his evidence had stated that he is serving as a Assistant Doctor at Government Medical College Hospital and on 14.04.2014 at about 6.00 p.m., when he was on duty, Nagaraj aged 38 was brought by his wife, Prema and she informed that her husband was lying in an unconscious stage with injury found at Venkateswara Theatre at Neelakonampalayam and he was admitted into the hospital and on examination he found him unconscious and found a lacerated injury on his left cheek at the measurement of 2cm X0.5cm X0.5cm and below the left hand elbow there was torn injury at the measurement of 10cm X1cm X0.5cm and he provided first aid to him and later admitted him into the Emergency Ward as an inpatient and Ex.P.7, the Accident Register copy was given by him.

41. P.W.10 in his evidence (Judicial Officer) had deposed that on 22.04.2014 when he was serving as a Learned Judicial Magistrate No.IV, Coimbatore he was requested by the Learned Chief Judicial Magistrate to record a Statement under Section 164 Cr.P.C., in Crime No.288 of 2014 at B5, Singanallur Police Station of A.Raja @ Rajkumar (Appellant / Accused) and based on that C.M.P.No.1135 of 2014 was taken on the file of the Learned Judicial Magistrate No.IV and since the accused was in Central Prison, the letter was sent to produce him on 12.05.2014 and accordingly he was produced on 12.05.2014 at about 11.35 a.m., and at about 11.40 a.m., questions were asked under Section 164 of Cr.P.C., to the Accused and since he expressed his desire to

give a statement, one day time was granted and he was required to be produced on the next day before the Court and accordingly from the Central Prison, he was produced on 13.05.2014 at about 12.20 in the afternoon, questions were asked under Section 164 Cr.P.C., with the Accused (Appellant) and when he was asked whether he is furnishing any statement, then, he had stated that there was nothing to be stated and accordingly he was sent to the Central Prison and accordingly, the C.M.P. was closed and that the proceedings of the Learned Chief Judicial Magistrate, Coimbatore dated 22.04.2014 was Ex.P.8 and Section 164 Cr.P.C., Report was Ex.P.9.

42. It is the evidence of P.W.11 that when he was serving as Special Inspector of Police (Law and Order) at B5, Singanallur Police Station on 16.04.2014 at about 21.30 hrs, when he was in the Station as incharge, Prema, Wife of Nagaraj came to the station and he recorded her statement and registered a case in B5, Singanallur Police Station in Crime No. 288 of 2014 under Section 75(1) of T.N.C.P. Act under Sections 341, 323 and 307 of IPC and sent the same to the Learned Judicial Magistrate No.III, Coimbatore and also sent a copy to the Inspector of Police for the purpose of investigation and also sent the other copies through Express Thapal to the officials and the printed FIR recorded by him (Inspector of Police) is Ex.P.10.

43. P.W.12 (Inspector of Police), in his evidence had stated that while he was serving as Inspector of Police, Singanallur Police Station in the year 2014, he took up the investigation on 16.04.2014 at about 22.00 hrs in Crime No.288 of 2014 under Section 75(1) of T.N.C.P. Act and under Sections 343, 323, 307 of IPC and enquired Prema, who gave a complaint statement and recorded the same and on 17.04.2014, he went to the scene of occurrence at about 6.15 in the evening at Neelakonampalayam near Venkateswara Theatre and in the presence of witness, Kumaravel, Selvaraj he prepared a Rough Sketch, Ex.P.11. He enquired eye witnesses Shanmugam, Samraj and Mathiyalagan and the witnesses of observation mahajar, viz., Kumaravel, Selvaraj and separately recorded a statement. Further he had deposed in his evidence that on the same day, he came to know that the injured Nagaraj died at the C.M.C. Hospital, Coimbatore at 10.00 a.m., and the Death Intimation Report was Ex.P.12 and he altered the Section from 307 IPC to 302 IPC and submitted the Alteration report, Ex.P.13 to the Learned Judicial Magistrate on the same day and conducted an inquest in the presence of Panchayadars over the Nagaraj's body at CMC Mortuary (between 12.00 and 14.00 hrs) and prepared Ex.P.14 Inquest Report and gave a requisition to the Doctor through constable 700 Pratapchandran for carrying out the post-mortem and based on the informants identification of the Appellant / Accused, he was caught near water tank, Singanallur,

Varadharajapuram and on enquiry he admitted his guilt and arrested him at 19.00 hrs and also informed his relatives about his arrest and recorded his statement in the presence of witness and obtained the witness signatures thereto.

44. Continuing further, P.W.12 had stated in his evidence by taking the Appellant / Accused to the place of occurrence, he inspected place of occurrence and seized the wooden reaper, which was used by the Appellant to attack the deceased, Nagaraj and the said reaper was seized from Neelakonampalayam burial ground and further arrested the Accused on the same day and sent the case property to the judicial custody and he gave a requisition to the Learned Chief Judicial Magistrate to obtain a statement from the Accused and on 18.04.2014 he examined witnesses, Prema (P.W.1) and Shanmugam P.W.2 and recorded the second statement and also on 25.04.2014 he examined Sub Inspector of police, viz., Anuradha, who registered the FIR and examined police personnel, Krishnaveni, Pratapchandiran and recorded their statements and also enquired Dr.Jaisingh, Dr.Tamilselvan on 05.05.2014 and also examined Dr.Shenbagavalli and recorded their statements and after completion of investigation on 14.05.2014, he filed his final report before the concerned court.

Analysis

45. It may not be out of place for this Court to make a significant mention that when a person hits another with a 'Danda' on vital part of the body with such a force and when that person dies, knowledge has to be attributed on an accused and the case comes within the ambit of Section 304(2) of IPC as per decision of Hon'ble Supreme Court reported in AIR 2000 Supreme Court 1374 (Camilo Vaz V. State of Goa).

47. It is to be remembered First Part of Section 304 applies where there is 'Guilty Intention'. The Second Part applies when there is no such intention, but there is guilty knowledge, in the considered opinion of this Court.

48. As a matter of fact, the term 'Intention and Knowledge' signifies the existence of a positive mental attitude. When and if there is Intent and Knowledge, then, the I Part of Section 304 of IPC squarely applies. If it is only a case of 'Knowledge and no Intention' to cause murder by bodily injury' then II Part of Section 304 of IPC applies.

49. As far as the present case is concerned, there is no second opinion on a vital fact that on 14.04.2014 at 11.00 a.m., the deceased, Nagaraj and the Appellant took drinks and in front of shop of P.W.3, a wordy quarrel ensued between them. Even the evidence of P.W.2 and P.W.3 only point out to the wordy quarrel

that had taken place between the deceased, Nagaraj and the Appellant / Accused at 4.00 p.m., on 14.04.2014 as such, it cannot be said that the occurrence took place either on account of any premeditation. One can safely arrive at a conclusion that the present occurrence took place only because of sudden provocation and that too eruption of quarrel between the Appellant / Accused and the deceased and at that time, they have consumed liquor.

50. Although much emphasis was laid in regard to the contradictions between the evidences of P.W.1, P.W.2 and that of P.W.12, in regard to the coming into existence of Ex.P.1, complaint and Ex.P.10- FIR, this Court is of the considered view that the said discrepancies had not affected the case of the prosecution by any means. Although an endeavour was made on the side of the Appellant / Accused to point out that there was an inordinate delay in lodging the complaint by P.W.1, the contradictions obtained by the Appellant / Defence side are of trivial nature, considering the fact that P.W.1 (Complainant) being an illiterate does not know to 'Read and Write'.

51. Apart from that, M.O.1, (Wooden Reaper) was very much identified by P.W.5 and also by P.W.2 and P.W.3 although P.W.6 had stated that the injuries found on the body of Nagaraj would have occurred ten days prior to his death and indeed there was a possibility to that effect, yet this Court is of the firm view that P.W.6, Doctor, who conducted post-mortem had clearly mentioned that Injury no.2 (Doctor Evidence) might be caused by M.O.1.

52. It may not be out of place for this Court to make a significant mention that only because of the fact that the injured Nagaraj (husband of the complainant) was not in a position to open his mouth, it is the evidence of P.W.1 (his wife) that she could not lodge a complaint also that because of other reason that P.W.1's husband was in an unconscious stage, when she had seen him at the occurrence place till his demise.

53. Insofar as the evidence of P.W.2 was concerned, he had mentioned that he thought that the injury to the deceased was minor and he would recover soon and that was the reason why he had not informed P.W.1 about the incident on 14.04.2014. Therefore, in the instant case, it cannot be said that there was a delay in lodging complaint two days after the date of occurrence of 14.04.2014 because of the latent and patent reason that the same was explained by the Respondent / Prosecuting Agency to the substantive satisfaction of this Court.

54. In the present case, the Respondent / Prosecution had performed his part by proving the case that the Appellant / Accused had inflicted injury on the head of the deceased

(Nagaraj) (P.W.1's husband) and infact P.W.1's husband, Nagaraj died later and therefore, the act of Appellant / Accused in hitting the deceased, Nagaraj with the said M.O.1, Wooden reaper comes squarely within the exception of Section 300 of Cr.P.C.,

55. It transpires that the Deceased, Nagaraj was a painter and also that the deceased Nagaraj, Appellant / Accused and P.W.2 being friends used to consume liquor.

56. In the light of afore stated detailed discussions and on consideration of entire oral and documentary evidence available on record and also this Court taking note of the surrounding circumstances of the instant case in an integral manner comes to an inevitable conclusion that the trial court rightly had found the Appellant / Accused guilty in respect of an offence under Section 304(2) of IPC. However, this Court is of the considered view that the imposition of Rigorous Imprisonment for a period of five years upon the Appellant/ Accused by the trial court is marginally on the higher side.

57. Considering the facts and circumstances of the case viz., on the date of occurrence on 14.04.2014 both the Appellant / Accused and the deceased had consumed liquor in front of P.W.3's shop and a wordy quarrel had erupted between them. In as much as the incident had not taken place because of any previous enmity or on account wreaking vengeance, this Court opines that the imposition of punishment of 3 ½ years Rigorous Imprisonment for an offence under Section 304(2) would meet the ends of justice, as a reasonable and justifiable one. Viewed in that perspective, this Court awards a punishment of 3 ½ Rigorous Imprisonment to the Appellant / Accused. However, the imposition of Rs.500/- by the trial court on the Appellant / Accused and the same being paid by the Appellant / Accused before the trial court itself is not displaced by this Court. Accordingly, the Criminal Appeal succeeds in Part.

In fine the Criminal Appeal is partly allowed in above terms.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

ssd

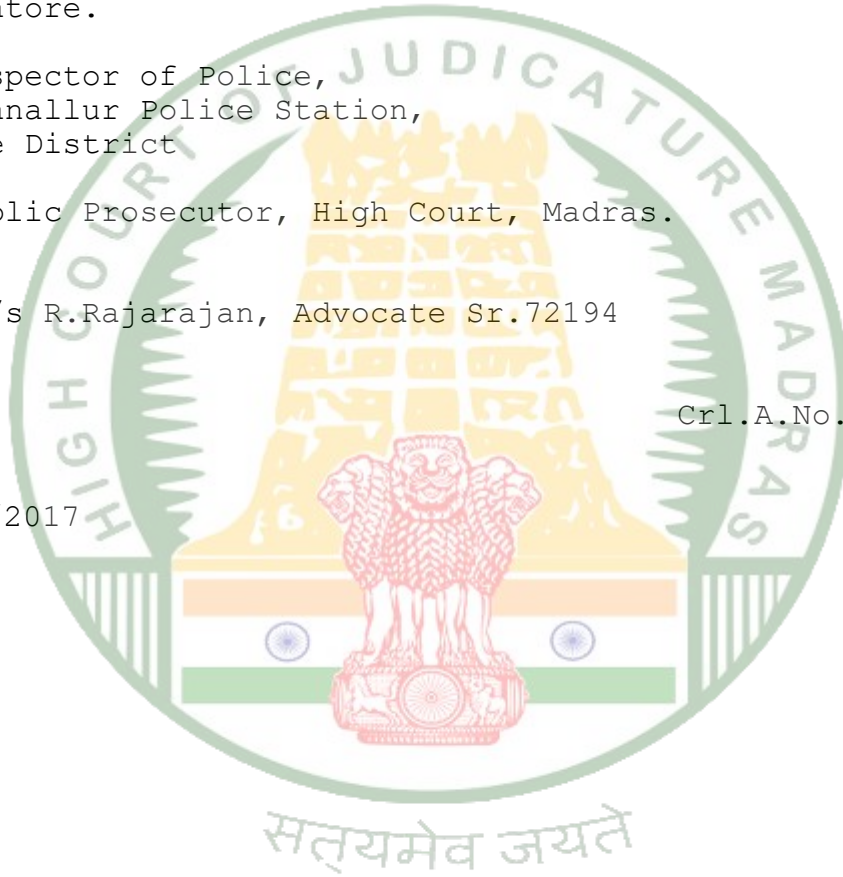
To

1. Learned I Additional District and Sessions Judge
Coimbatore
2. The Judicial Magistrate No.IIi,
Coimbatore.
3. The Chief Judicial Magistrate,
Coimbatore.
4. The Superintendent Central Prison,
Coimbatore.
5. The Inspector of Police,
B-5, Singanallur Police Station,
Coimbatore District
6. The Public Prosecutor, High Court, Madras.

+1cc to M/s R.Rajarajan, Advocate Sr.72194

CrI.A.No.549 of 2016

NM(CO)
RVR 20/01/2017



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