

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.03.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

CRL.A.Nos.23 of 2017 and 139 of 2017

G. Venkatesh . . . A.1/Appellant in Crl.A.No.23/2017

Kannan . . . A.2/Appellant in Crl.A.No.139/2017

Vs

State rep by
The Inspector of Police,
Tirupur South Police Station,
Tirupur
(Crime No.3608/2010)

..... Respondent in both the appeals

Appeals filed u/s.372 (2) Cr.P.C., seeking to set aside the judgment passed in S.C.No.12/2011 on the file of Additional District and Sessions Judge/Fast Track Court No.IV, Coimbatore at Tirupur dated 20.09.2011.

For Appellant in
C.A.No.23/2017 : Mr.T. Muruganantham

For Appellant in : Mr.S. Mohamed Ansar
C.A.No.139/2017

For Respondent : Mr.P. Govindarajan
Addl. Public Prosecutor

COMMON JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellants are the accused 1 and 2 in S.C.No.12/2011 on the file of Additional District and Sessions Judge/Fast Track Court No.IV, Coimbatore at Tirupur. They stood charged for the offence under Sec.302 IPC, in addition A.2 stood charged for the offence under Sec.324 IPC. By Judgment dated 20.09.2011, the trial Court convicted both the accused and sentenced A.1 to undergo imprisonment for life and no fine was imposed for the offence under Sec.302 IPC. The trial Court sentenced A.2 to undergo imprisonment for life for the offence under Sec.302 IPC (no fine imposed) and was sentenced to undergo rigorous imprisonment for one year for the offence under Sec.324 IPC. Challenging the said conviction and sentence, both the accused have come up with this appeal.

2. The case of the prosecution in brief, is as follows:-

(a) These two accused hail from Ramnad District. They are poor people. They had gone to Tirupur to secure employment in a Canteen run by a private person at Tirupur. The deceased was also working in the same canteen. It is alleged that the accused 1 and 2 along with the deceased used to consume liquor. This came to the knowledge of the proprietor of the canteen. The accused felt that the deceased had informed about their drinking habit to the owner of the canteen, which resulted in a quarrel between them. This is stated to be the motive for the occurrence.

(b) It is alleged that on 16.05.2010 around 9.30 p.m, both the accused along with the deceased had gone to a TASMAC Shop at Perichipalayam and all the three consumed liquor. Then all of them returned in a inebriated condition. While so, early morning at 1.30 a.m, on 17.05.2010, when the accused questioned the deceased as to why he informed the drinking habit to the proprietor, there arose quarrel between them. It is alleged that the said quarrel went upon for half an hour. In the said quarrel, it is further alleged that A.1 took out a grinding stone from the canteen and dropped the same on the head of the deceased. A.2 dropped a stone on the head of the deceased. The deceased died on the spot. This has been witnessed by P.W.3 Nagaraj, who is also staying in the same canteen. He, on noticing the above occurrence, shouted. A.2 attacked P.W.3 with wooden log. Then both the accused ran away from the scene of occurrence. P.W.3 shouted and on hearing the

noise, P.W.5 came out and P.W.3 informed everything to P.W.5. Then P.W.3 and P.W.5 went and informed P.W.1 Loganathan, the proprietor of the canteen, who in turn informed P.W.6 Anandan, who was the Manager of the canteen about the occurrence. Immediately, all of them rushed to the scene of occurrence. They found the deceased lying dead. Thereafter, P.W.1, the proprietor of the canteen went to Thirupur South Police Station and made a complaint at 4.00 a.m on 17.05.2010. Ex.P.1 is the complaint. On the basis of the complaint, a case was registered in Cr.No.4608 of 2010 for the offence under Secs.302 and 324 IPC. Ex.P.14 is the first information report. Both the documents were sent to Court, which were received by the learned Magistrate at 5.15 a.m on 17.05.2010.

© The case was taken up by P.W.16 Inspector of Police. He went to the scene of occurrence; prepared an observation Mahazar and a Rough Sketch in the presence of witnesses. He recovered blood stained earth and sample earth from the place of occurrence. He conducted inquest on the dead body of the deceased and forwarded the same for post mortem.

(d) Dr.Valavan (P.W.10) attached to Government Hospital at Tirupur conducted autopsy on the body of the deceased on 17.05.2010. He found the following injuries:

"External Injuries:

1. Right side of frontal, occipital and left parietal bones fed and separated from skull. Brain matter found outside the skull.
2. Abrasion over this 2 x 2 cm. Thorax & Automen. Ribs - Infant. Heart & lungs - Pale Hyoid intact Stomach contains 100gms of liquid. Liner, spleen & kidneys - pale intestines digested gas. Brain-pale.

The following are preserved fro chemical analysis. 1. The stomach contents 2. The intestines (nc) - sample of liver, one 4.kidney,5. Preservative 6.bladder

The post mortem conducted at 3.45 p.m pm 17.05.2010. The deceased should appear to have died about 13

to 17 hours prior to autopsy.

Ex.P.8 is the Post Mortem Certificate. He gave opinion that the injuries on the body of the deceased would have been caused by dropping of stones on the head of the deceased. He further opined that the death of the deceased was due to shock and haemorrhage due to head injuries.

(e) Dr.Suresh Kumar (P.W.11) examined P.W.3 on 17.05.2010 at Government Hospital at Thirupur and he found the following injuries:

1. Contused abrasion @ thumb
2. Contusion @ thigh
3. C/o headache

Ex.P.10 is the Wound Certificate. According to him, the injuries found on P.W.3 would have been caused by a weapon like M.O.2 - Wooden log.

(f) P.W.16 Inspector of Police, during investigation, recovered blood stained clothes from the body of the deceased and forwarded the same to Court. On 18.05.2010 at 6.00 a.m he arrested A.1 in the presence of witnesses. While in custody, A.1 gave a voluntary confession, in which, he disclosed the place where he had hidden the blood stained shirt. In pursuance of the same, he took the police and witnesses to the place of hide out and produced the blood stained shirt. P.W.16 recovered the same under mahazar. On 19.05.2010 at 5.00 p.m, he arrested A.2 in the presence of witnesses. and forwarded the same under mahazar. While in custody, A.2 gave a voluntary confession, in which, he disclosed the place, where he had hidden the blood stained full hand shirt. In pursuance, he took the police and the witnesses to the place of hide out and produced the blood stained full hand shirt. He recovered the same under mahazar. On returning to the police station he forwarded the accused to Court for judicial remand and handed over the material objects to Court. The Investigating Officer caused photographs to be taken of the body of the deceased. At his request, the material objects were sent for chemical examination. The report revealed that there were human blood stains on the material objects. On completing investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court

framed charges as detailed in the first paragraph of the judgment. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 17 documents and 9 material objects were also marked.

4. Out of the said witnesses, P.W.1, the proprietor of the canteen has stated that both the accused and the deceased were employed in the canteen and they used to stay in the night hours in the canteen itself. He reprimanded the accused for the drinking habit. He also stated that on the night intervening 16.05.2010 and 17.05.2010 around 2.00 a.m, P.W.3 Nagaraj and P.W.2 Selvakumar came to his house and informed about that occurrence. At that time, P.W.3 was found with injuries. Then he went to the place of occurrence and thereafter, went to Tirupur South Police Station and made a complaint.

5. P.W.2 is working as a Security guard in a Banian Company. In the night intervening 16.05.2010 and 17.05.2010, according to P.W.2, around 1.15 a.m., he was on the duty. He heard an alarm raised by some one. Immediately, he rushed to the Canteen, where, he found the deceased dead. He did not witness the occurrence.

6. P.W.3 has spoken about the entire occurrence. P.W.4 yet another eyewitness has spoken about the same facts. P.W.5 the brother of the deceased has spoken about the motive. P.W.6 Anandan, Manager of the Company, has stated that around 1.45 pm., on 17.05.2010, P.W.1 informed over phone about the occurrence. P.W.6, in turn, informed the Manager and went to the scene of occurrence and found the body of the deceased.

7. P.W.7 has spoken about the preparation of observation mahazar, rough sketch and recovery of material objects. P.W.8 has spoken about the arrest of A.1 and the confession made by him and the consequential recoveries of the materials objects. P.W.9 has spoken about the arrest of A.2 and the confession made by him and the consequential recoveries of the material objects. P.W.10 has spoken about the post mortem conducted and final opinion regarding cause of death. P.W.11 has spoken about the treatment given to P.W.3 and his opinion regarding such injuries. P.W.12 has spoken about the photographs taken at the place of occurrence as instructed by P.W.16. P.W.13 Head Clerk of the Magistrate Court has stated that he forwarded the material objects to Forensic Lab for chemical

examination as directed by the learned Magistrate. P.W.14 a Constable has stated that he handed over the dead body for post mortem. P.W.15 has spoken about the registration of the case. P.W.16 has spoken about the investigation done and the final report filed.

8. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor mark any document on his side. Having considered all the above, the Trial Court convicted both the accused and that is how, the accused have come up with these appeals.

9. We have heard the learned Counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

10. The learned counsel for the appellants would submit that there is an inordinate delay in making the complaint to the police as well as forwarding the same to Court, which creates doubt in the case of prosecution. Though attractive, we are not persuaded by such argument. The delay in making the complaint has been duly explained by P.Ws.1 to 3. According to them, P.W.3, after sustaining injuries at the place of occurrence, rushed to the house of P.W.2 and informed about the occurrence. P.W.2, in turn, informed the same to P.W.1. Then, all the three went to the place of occurrence, found the dead body and then only they went to police station. This has taken enough time. In view of the same, we hold that there was no delay in making the complaint to police Station. Of course, there is a delay in forwarding the First Information Report to Court. Simple because there is a delay, we cannot reject the evidence of P.Ws.3 and 4, since their evidence inspires the confidence of the Court. At the most, the delay can only create some doubt in the case of prosecution but the said doubt does not have the force of overthrowing the evidence of eyewitness. In this case the delay in forwarding the complaint, in our considered view, would not cause a dent in the case of prosecution so as to discredit the evidence of P.Ws.1 to 4.

11. P.W.3 is the injured witnesses. He sustained injuries, which has been spoken by P.W.11 Dr.Sureshkumar. P.W.3 has witnessed the entire occurrence which was inside the canteen. P.W.4 also witnessed the entire occurrence. He has also spoken about the same facts.

12. It is also evident that these two accused along with the deceased used to stay together. Though these two witnesses have been cross examined at large, we find nothing on record so as to create even slight doubt in their evidence. Their evidence duly corroborates by the evidence of P.Ws.1 and 2, who have stated that P.W.3 came to P.W.2 and informed about the occurrence and then P.W.2 informed the same to P.W.1. This conduct of P.W.3 in going over to the house of P.W.2 and P.W.1 is consistent with the case of the prosecution which would tend to corroborate the evidence of P.Ws.3 and 4. The medical evidence duly corroborates the evidence of these eyewitnesses. From these evidences we are of the view that the prosecution has proved beyond reasonable doubt that these two accused who dropped stones on the head of the deceased and caused his death. Similarly, A.2 has caused injury on P.W.3.

13. Thus, having come to the said conclusion, now we have to examine as to what was the offence committed by the accused by causing the death of the deceased.

14. Admittedly, both the accused as well as the deceased were in drunken stage. When these two accused questioned the deceased as to why he had informed P.W.1 about the drinking habit, there arose a quarrel. According to P.W.3, quarrel went on for half an hour. Until the deceased was attacked by these two accused nothing happened except wordy quarrel. This would go to show that there was no pre-meditation and there was no motive also which is evident from the fact that the deceased and the accused had gone together to the TASMACH Shop to have liquor. All the three returned in an inebriated condition and these two accused dropped a stone on the head of the deceased. Thus, though the act of the accused would fall within the third limb of Section 300 of IPC, the same would fall Exception IV to Section 300 IPC and therefore, the both the accused are liable to be punished for the offence punishable under Sec.304 Part I IPC for having caused the death of the deceased. A.2 is liable to punished under Sec.324 IPC. Unfortunately, there has been no charge framed as against A.1 for the offence under Sec.324 IPC.

15. Now turning to the quantum of punishment, the learned counsel appearing for both the accused submitted that the accused are married and they have got a big family to take care of. The learned counsels also submitted that the accused had come all the way from Ramnad to Thirupur only as coolies. There was no pre-meditation and there was no bad antecedents. It was out of sudden quarrel, they had taken the stone lying there and dropped on the head of the deceased. From the date of conviction, they have been in jail for the more than six years. Having regard to the mitigating and aggregating circumstances, we are of the view that sentencing them to undergo rigorous imprisonment for seven years and directing him to pay a sum of Rs.500/- each for 304 Part-I IPC would meet ends of justice. So far A.2 is concerned, the conviction and sentenced imposed on him for the offence under Sec.324 IPC is confirmed.

16. In the result,

(i) the appeals are partly allowed and the conviction and sentence imposed on both the accused for the offence under Sec.302 IPC are set aside and instead, both the accused are convicted for the offence punishable under Sec.304 Part I IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.500/- (Rupees five hundred) each in default, to undergo rigorous imprisonment for one week.

(ii) the conviction and sentence imposed on A.2 for the offence under Sec.324 IPC are confirmed;

(iii) the sentences imposed on A.2 are directed to run concurrently;

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

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

sr

To

1. The Inspector of Police,
Tirupur South Police Station,
Tirupur
2. The Additional District and Sessions Judge/
Fast Track Court No.IV, Coimbatore at Tirupur
3. The Public Prosecutor, High Court, Chennai
- 4.The Superintendent, Central Prison, Coimbatore.
- 5.The District Collector, Coimbatore
- 6.The Director General of Police, Mylapore, Chennai.
- 7.The Principal District and Sessions Judge, Coimbatore.
- 8.The Judicial Magistrate II, Thiruppur.
- 9.The Superintendent of Police, Tiruppur
- 10.The Section Officer, Criminal Section, High Court, Madras

+1cc to Mr.T.Muruganantham, Advocate sr.15583

+1cc to Mr.S.Mohamed Ansar, Advocate sr.15587

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pa(co)
ss(7/4/2017)