

Bail Slip.

Suresh

The above said Appellant/Accused was directed to be released on bail as per order of this court dated 11.12.2012 made in M.P. 2/2012 in CrI.A.No.326 of 2012 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2019

PRONOUNCED ON : 26.02.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.326 of 2012

Suresh

..Appellant

Vs

State rep. By
Inspector of Police,
K3, Aminjikarai Police Station,
Chennai
Crime No.1273/2010

..Respondent

Prayer:- This Criminal Appeal is filed under Section 374(2) Cr.P.C., against the judgment passed by the learned IV Additional Sessions Judge, Chennai in S.C.No.193/2011 dated 24.01.2012.

For Appellant : Mr.S.N.Arunkumar

For Respondent : Ms.Kritika Kamal.P
Government Advocate (crl.side)

JUDGMENT

The appellant aggrieved by the conviction and sentence, imposed by the trial Court, for offence under Section 304(i) I.P.C., has preferred the present Criminal Appeal, challenging the legality of the trial Court judgment.

2.The brief facts of the case against this appellant, as

seen from the final report is that, on 14.10.2010, at about 9.00 pm, while the appellant was in his house, the deceased Balu had come to his house and requested him to help him to sought out his family dispute. The appellant himself who was in a distress mood due to his wife separation, has refused to help the deceased Balu. Unfortunately, the deceased could not note the reason for his refusal but, pestered him to mediate his family dispute and compelled him to accompany him to liquor shop to consume alcohol. Infuriated by the pestering, the accused has caught hold neck of Balu, hit him on the wall, thrashed him with his hands and legs.

3.Balu died due to the injuries sustained. Immediately, the accused has gone to the local Councilor office, confessed his guilt to P.W.1 - Elumalai. At that time, P.W.2 - Murugan, the aid of P.W.1 was also present since, few hours earlier there was complaint from the local people about the power failure and he had called the electricity board officials for restoration of the power supply.

4.Elumalai - P.W.1, after recording the confession statement of the accused. Handed over the accused along with his statement to the respondent Police. Pursuant to this, the respondent Police has registered a case and taken up the matter for investigation. The Police visited the house of the accused, found the dead body of the Balu lying in a pool of blood. Recovered the body and sent for post mortem. After conducting inquest and after recording the statements of the witnesses, the Investigating officer - Mr.Anantharaman, the Inspector of Police has laid the final report.

5.The trial Court, has framed a charge under Section 302 I.P.C., and tried the accused. To prove the charge, the prosecution has examined 15 witnesses, marked 15 exhibits and 6 material objects. In support of the accused, one Saravanan - Auto driver was examined as defence witness.

6.The trial Court, after perusal of the deposition of the witnesses accepted the case of the prosecution that pursuant to the extra judicial confession made by the accused, P.W.1 has handed over the accused to the Police. The witnesses who have seen the dead body of the victim in the house of the accused coupled with the confession statement of the accused which is corroborated by the evidence of P.Ws.1 2, has proved the guilt of the accused beyond a reasonable doubt.

7.At the same time, the trial Court has also appreciated the fact that the incident has taken place only on the sudden provocation. The accused has lost his self control and without the predetermined mind has committed the murder of his friend

Balu. Hence, the accused was found guilty for the offence under Section 304(i) I.P.C., sentencing him to undergo 10 years rigorous imprisonment and fine of Rs.5,000/- in default three months rigorous imprisonment.

8.The learned counsel for the appellant would submit that the manner in which the alleged extra judicial confession recorded by P.W.1 is doubtful. The injuries found on the body of the deceased could have occurred due to sudden fall on the ground, by a person under the influence of alcohol. Except the so called extra judicial confession given by the accused to P.W.1 in the presence of P.W.2, there is no other incriminating evidence to corroborate the prosecution case.

9.The witnesses to project the 'last seen alive theory' have turned hostile. The evidence of D.W.1 who deposed that he saw the dead body of the victim on the road at about 10.30 pm, throw doubt on the prosecution case that the dead body of the deceased was recovered by the Police from the residence of the accused.

10.Pointing out these contradictions, the learned counsel for the appellant would pray that even according to the prosecution, there was no weapon used by the accused to cause the injury and no intention to cause death. Few blows by hands and legs will not attribute intention to the accused that, he has caused the injury with the intention that it is sufficient to cause death.

11.Contrarily, the learned Government Advocate (Crl.side) appearing for the State would submit that P.W.1 - the Councilor of that area, P.W.2 - the aide of P.W.1, have deposed about the statement given by the accused voluntarily to them that he had fight with deceased Balu in his house. PW.1 being the Councilor of that locality, the conduct of the accused to approach P.W.1 is natural and no need to suspect the same. As far as the voluntary confession is concerned, the accused who had fatally injured his friend, has come to P.W.1 out of remorse and reported the fact. When the confession is voluntary and true, even on that sole evidence, the conviction can be given. Further, the dead body of the deceased Balu was recovered from the house of the accused which read to a presumption against the accused which any ordinary prudent man could infer.

12.The mahazar witness - P.W.3, the witness to the inquest - P.W.8, witness to the observation mahazar - P.W.7, go to show that the accused who has fatally injured his friend Balu, has gone to the office of P.W.1 and then, to the police station. His blood stained clothes were recovered and sent to serology test. P.W.9-the scientific expert was examined to substantiate the fact. The evidence of post mortem Doctor pointing out the

external and internal injuries, correlation with the narration of the accused about the incident in his confession statement. Therefore, the learned Government Advocate (crl.side) would submit that the trial Court has taken note of the fact that though the accused has caused the death of Balu, which has occurred due to the sudden provocation, it fall under the first exception to Section 300 I.P.C., the culpable homicide not amounting to murder, the trial Court has convicted the accused under Section 304(i) I.P.C., therefore, contended that there is no error in the trial Court judgment which warrants interference.

13.Heard the learned counsel for the appellant and the learned Government Advocate (crl.side) appearing for the State.

14.As per the prosecution evidence, the dead body of the deceased Balu was recovered from the house of the accused. The inquest report is marked as Ex.P.13. The post mortem report of deceased Balu is marked as Ex. P.10. The following injuries were found on the body of the deceased:-

"Injuries: Abrasions:

- 1)3cm x 2 cm on right temple region
- 2)5 cm x 1cm on left temple region
- 3)12 cm x 5-2 cm on right side neck
- 4)11 cm x 3 cm on left cheek.

O/D: 1)Diffuse Sub scalpal contusion. Irregular fracture of vault skull bones and transverse fracture of base of skull. Membranes intact. Diffuse sub dural hemorrhage, widespread sub arachnoid hemorrhage and intracerebral hemorrhage of both cerebra present.

2.Diffuse contusion of lower neck and upper chest

3.fracture ribs on left side from 3rd to 10th anteriorly with surrounding soft tissue bruising and extravasation of blood. Diffuse contusion of anterior surface of left lung, c/s congested. Thoracic cavity contained 200 ml of fluid and clotted blood.

4.Fracture mandible with surrounding soft tissue bruising and extravasation of blood there were no other external or internal injuries anywhere on the body."

15.The post mortem Doctor has opined that Balu died due to shock and hemorrhage caused due to the injuries on his head and chest. Through D.W.1, the accused has attempted to establish that the deceased was found injured near Periyakoodal Housing

Board road with an intention to dislodge the version of the prosecution that the accused was found dead in the accused house. However, when D.W.1 was subjected to cross examination, he could not sustain his version made in the chief examination. He has expressed his ignorance about the exact place where he found Balu lying injured. He was not aware whether Balu was alive or dead at that time when he saw him. Though, he claims to be the friend of Balu as well as accused and went to Periyakoodal Housing Board road on hearing that Balu had sustained injury, admittedly, he did not take him to the hospital. Therefore, his claim that he saw Balu at 10.30 pm lying in a pool of blood on the Periyakoodal Housing Board road is only a lie to save the accused.

16. The prosecution has examined P.Ws. 4, 5 & 6 to establish the fact that on the fateful day, the accused and the deceased Balu were found together near the accused house. However, these witnesses have turned hostile but, it is not fatal to the prosecution case. Since, the other evidence let in by the prosecution throws suspicion only towards the accused and none other. When there is no direct eye witness to the occurrence, it is the circumstantial evidence which has to be relied upon.

17. The blood stained clothes which were recovered from the accused under mahazar (Ex.P.3) has been corroborated by the recovery mahazar witness P.W.3. The presence of the dead body of Balu in the house of the accused also one of the clinching circumstantial evidence against the accused who is bound to explain these two incriminating evidence against him. As far as the accused is concerned, through D.W.1, he wants to disprove the fact that the dead body of Balu was not found in his house. But, the overwhelming evidence placed by the prosecution disproves the contention of DW.3.

18. In the said circumstances, the extra judicial confession given by the accused to P.W.1 and the evidence of P.Ws. 1 and 2, are cogent and natural. The chain of evidence without any iota of doubt, leads to the guilt of the accused. Therefore, this Court finds that the appellant herein has committed culpable homicide not amounting to murder. The accused due to sudden provocation, caused by the deceased, in the fit of anger, has indiscriminately hit the deceased.

19. 'Whether the accused had any intention to cause death ?' is now to be looked at. The trial Court has held that, the accused has attacked the deceased with intention of causing death. For that purpose, this Court finds no evidence. The assault by the accused had caused the death. Whether a normal prudent man will ordinarily have the knowledge that such injuries will cause death. Unless, the mens rea to cause death is proved, either directly or, through inferential facts

conviction under Section 304(i) I.P.C., cannot be imposed. One of the reason for this Court to hold so, in this case is that, if a person really had the intention to cause death, he would not have immediately gone to the local Councilor and reported about the incident. In fact, from the extra judicial confession of the accused which has been narrated in the complaint, the accused immediately after the incident had reported the matter to P.W.1. He was not even sure 'whether his friend Balu assaulted by him was alive or not'. Therefore, the act committed by the appellant/accused will only fall under Section 304(ii) I.P.C.

20. In the said circumstances, the Criminal Appeal is allowed in part. The conviction and sentence imposed by the trial Court for offence under Section 304(i) I.P.C is set aside. Instead, the accused is convicted for offence under Section 304(ii) I.P.C., and he is sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- (Rupees one thousand only) in default to undergo one month simple imprisonment. The period of imprisonment already undergone by the appellant shall be set off as provided under Section 428 Cr.P.C.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

jbm
To

1. The IV Additional Sessions Judge, Chennai.
2. The Inspector of Police,
K3, Aminjikarai Police Station,
Chennai
3. The Superintendent
Central Prison, Puzhal, Chennai.
4. The Public Prosecutor, High Court, Madras.

Cr1.A.No.326 of 2012

KS (CO)
SP(01/04/2019)