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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.11.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Appeal (MD)No.98 of 2018

and

Crl.M.P(MD)No.1270 of 2018

Rajkumar

... Appellant/Sole Accused

Vs.

The State through
The Inspector of Police,
B2, Bajar Police Station,
Ramanathapuram,
Ramanathapuram District.
[Cr.No.241 of 2014]

... Respondent/ Complainant

Prayer : Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment dated 03.08.2017 passed in S.C.No.101 of 2017 by the learned Additional District and Sessions Judge, Ramanathapuram.

For Appellant : Mr.P.Andiraj

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

* * * * *

JUDGMENT

S.VAIDYANATHAN, J.

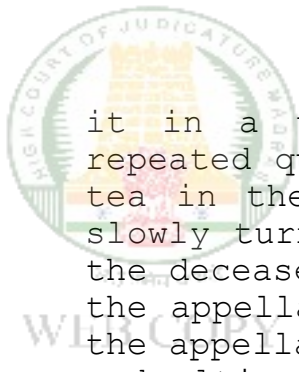
AND

N.ANAND VENKATESH, J.

The sole accused, aggrieved by the judgment of the learned Additional District and Sessions Judge, Ramanathapuram, made in S.C.No.101 of 2017, dated 03.08.2017, convicting him for an offence under Section 302 I.P.C., and sentencing him to undergo life imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only), in default, to undergo simple imprisonment for two years, has filed the present appeal before this Court.

Facts of the case in brief:

2. The brief case of the prosecution is that the deceased and the tea vendors and they used to sell tea by carrying



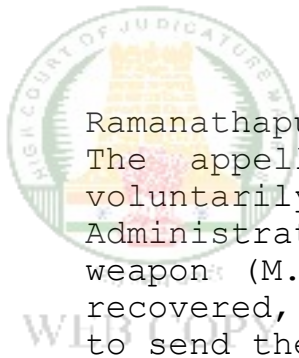
it in a teakettle in their cycles. Both of them used to have repeated quarrels when any attempt was made by both of them to sell tea in the same area since there was a business rivalry and this slowly turned into enmity. On 19.09.2014, at about 10.40 a.m., when the deceased was selling tea near Asian Glass House Electronic Shop, the appellant also went there in his cycle and a quarrel ensued and the appellant is said to have abused the deceased with obscene words and ultimately, the appellant is said to have taken a knife from a bag that was kept in the cycle and the deceased was stabbed on his back in the rib area. The deceased sustained injuries and he was taken to Government Hospital, Ramanathapuram. He was given first aid by the Doctor (P.W.13) at about 11.00 a.m., on 19.09.2014 and since the Doctor found the injury to be serious, the deceased was referred to the Government Rajaji Hospital, Madurai and was admitted in the Emergency Ward and was treated by P.W.15. The deceased ultimately died on 25.09.2014 at about 04.00 p.m.

Complaint and the materials collected in the course of investigation:

3. The admission of the deceased in the Government Hospital, Ramanathapuram, was intimated to the concerned Police Station and the Special Sub Inspector of Police (P.W.16) came to the hospital and recorded the statement of the deceased. This was reduced into writing and made as a complaint (Ex.P.8). Based on this complaint, an F.I.R., (Ex.P.9) was registered in Cr.No.241 of 2014 for the offences under Sections 294(b), 324 and 506(ii) I.P.C. He, thereafter, proceeded to the scene of crime at about 02.00 p.m., and in the presence of witness (P.W.9), he prepared the Observation Mahazar (Ex.P.3) and also Rough Sketch (Ex.P.10). He also recorded the statements of the witnesses under Section 161(3) Cr.P.C. Thereafter, he received the information from the Government Rajaji Hospital, Madurai, to the effect that the deceased died on 25.09.2014 at about 04.00 p.m., and therefore, he handed over the investigation to the Inspector of Police (P.W.18).

4. The Inspector of Police (P.W.18) prepared the Alteration Report (Ex.P.12) and added the offence under Section 302 I.P.C. This was sent through the Head Constable (P.W.11) to the Judicial Magistrate No.I, Ramanathapuram.

5. The Investigation Officer proceeded further with the investigation and went to the Government Rajaji Hospital, Madurai and conducted the inquest over the body of the deceased between 07.00 a.m., and 10.00 a.m., on 26.09.2014 in the presence of Panchayatdars. He prepared the inquest report (Ex.P.13). He, thereafter, handed over the body to the Police Constable (P.W.12) with a requisition to conduct post-mortem and thereafter, to hand it over to his relatives. The post-mortem was conducted by P.W.17 and he prepared the post-mortem certificate (Ex.P.11). In the meantime, the appellant surrendered before the Judicial Magistrate No.I,



Ramanathapuram, on 26.09.2014 and this was informed to the police. The appellant was taken on police custody on 01.10.2014. He voluntarily gave his confession and in the presence of Village Administrative Officer (P.W.8), the material objects, namely, the weapon (M.O.2) was recovered. All the material objects that were recovered, were sent to the Court under Form 95 with a requisition to send the same to the Forensic Department.

6. The Investigation Officer after recording the statements of all the witnesses and after collecting the Biological Report (Ex.P.5), Serological Report (Ex.P.6) and the post-mortem certificate (Ex.P.11), completed the investigation and filed a final report before the Judicial Magistrate No.I, Ramanathapuram.

7. The case was committed to the file of the learned Additional District and Sessions Judge, Ramanathapuram and the charges were framed against the appellant for the offences under Sections 294(b) and 302 I.P.C. The prosecution examined P.W.1 to P.W.18 and marked Exs.P.1 to P.15 and exhibited M.O.1 and M.O.2.

8. The incriminating materials that were collected in the course of the trial were put to the appellant by way of questioning him under Section 313(i)(b) Cr.P.C., and the appellant denied the same as false.

9. The trial Court on considering the facts and circumstances of the case and on assessing the oral and documentary evidence, came to a categorical conclusion that the prosecution has proved the case beyond reasonable doubts and proceeded to convict and sentence the appellant in the manner mentioned supra and acquitted the appellant for the charge under Section 294(b) I.P.C.

Submissions:

10. Mr.P.Andiraj, learned Counsel appearing on behalf of the appellant made the following submissions:

- The prosecution had examined P.W.4, P.W.5 and P.W.10 as eyewitnesses in this case and all these witnesses turned hostile and did not support the case of the prosecution.
- The evidence of P.W.1 to P.W.3, P.W.6 and P.W.7 was relied upon by the prosecution in order to prove the motive in this case. However, the manner in which the incident has been explained by the prosecution, clearly shows that the incident happened in a spur of the moment and there was no previous motive behind the incident.
- The only evidence that is available is that of the statement given by the deceased while he was in the hospital to P.W.16 and there is no other material available against the appellant.
- In the alternative, even if the case of the prosecution is taken to be proved, no case has been made out under Section 300 I.P.C., since there was no premeditation and the incident



happened in a spur of the moment and it is a case of single blow and that too, on the back rib of the deceased and at the best, the case will fall under the Exception 4 to Section 300 I.P.C., and the appellant would be liable for punishment only under Section 304 - Part II I.P.C.

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11. Per contra, Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing on behalf of the prosecution submitted that the statement given by the deceased before P.W.16 will have to be relied upon as a dying declaration under Section 32 of the Indian Evidence Act, 1872 and therefore, even if eyewitnesses, namely, P.W.4, P.W.5 and P.W.10 have turned hostile, that does not in any way impact the statement given by the deceased and it could be solely relied upon for convicting and sentencing the appellant. The learned Additional Public Prosecutor further submitted that the post-mortem Doctor who was examined as P.W.17 and through whom the post-mortem certificate (Ex.P.11) was marked, has clearly opined that the death was caused only due to the complications that arose out of the injury sustained by the deceased and therefore, the death of the deceased was as a result of the direct consequences of the attack made by the appellant on the deceased with M.O.2. The learned Additional Public Prosecutor further submitted that the investigation has proceeded in this case in a cogent manner and there is absolutely no delay at any stage. That apart, the evidence of P.W.1 to P.W.3 and P.W.6 and P.W.7 clearly establishes the fact that there was a motive behind the crime and there was a previous enmity between the appellant and the deceased due to business rivalry. The learned Additional Public Prosecutor concluded his arguments by submitting that the prosecution has proved the case beyond reasonable doubts and this case cannot be brought within any Exception under Section 300 I.P.C., and therefore, the conviction and sentence must be sustained and this Criminal Appeal must be dismissed.

Discussion:

12. This Court has carefully considered the submissions made on either side and we have also carefully assessed the oral and documentary evidence that are available before us.

13. The evidence of P.W.16 who is the Special Sub Inspector of Police clearly shows that he went to the Government Hospital, Ramanathapuram, on 19.09.2014 at about 02.00 p.m., based on the information received by the Police Station to the effect that the deceased has been admitted in the hospital as an inpatient. After reaching the hospital, P.W.16 proceeded to record the statement of the deceased and the same was reduced into writing and was made a complaint (Ex.P.8). This complaint was the basis for the registration of the F.I.R., (Ex.P.9) in Cr.No.241 of 2014. Subsequent to this, the deceased had expired on 25.09.2014 at about 04.00 p.m., at Government Rajaji Hospital, Madurai.



14. The statement that was given by the deceased to P.W.16 clearly falls within the requirements of Section 32 of the Indian Evidence Act, 1872. A reading of the statement clearly shows that the deceased has clearly explained the circumstances which resulted in his death. The law on this point is no longer *res integra* and useful reference can be made to the judgment of the Honourable Supreme Court in ***Paras Yadav v. State of Bihar*** reported in (1999) 2 ***Supreme Court Cases*** 126.

15. There is one other judgment which could be relied upon, in ***Tejram Patil v. State of Maharashtra*** reported in 2015 (2) ***MWN (Cr.)*** 363 (SC).

16. It is clear from the above that even in the absence of any other evidence in this case, the statement made by the deceased to P.W.16 will clearly fall within the requirements of a dying declaration under Section 32 of the Indian Evidence Act, 1872 and reliance can be placed on the said statement if it inspires the confidence of this Court. Certainly, in this case, the statement made by the deceased to P.W.16 which was reduced into a complaint inspires the confidence of this Court.

17. It is true that P.W.4, P.W.5 and P.W.10 who were examined as eyewitnesses did not support the case of the prosecution. That does not in any way take away the evidentiary value of the statement made by the deceased to P.W.16 as mentioned hereinabove.

18. The evidence of P.W.1 who is the wife of the deceased, P.W.2 who is the son of the deceased and P.W.3 who is the brother of the deceased clearly shows that there was a previous dispute between the appellant and the deceased due to the business rivalry and there used to be regular verbal quarrels between both of them in this regard. The evidence of P.W.6 and P.W.7 also establishes the fact that there used to be regular verbal fights between the appellant and the deceased due to the business rivalry. The prosecution has clearly established the fact that there was a previous enmity between the deceased and the appellant.

19. On the fateful day, the deceased was selling tea near Asian Glass House Electronic Shop and the appellant also came to the same place and on finding the deceased, there was a wordy quarrel and the appellant is said to have taken a knife (M.O.2) from a bag that was kept in the cycle and stabbed the deceased on his back in the rib area. It will be relevant to take note of the injuries as recorded in the post-mortem certificate (Ex.P.11) and the same is extracted hereunder:

"The following ante mortem injuries are noted on the body:

- 1. Stab injury measuring 3 cm x 1 cm x cavity deep noted on back of left side chest, 10 cm below to angle of left scapula.*



has also examined P.W.13 who was the Doctor who gave first aid treatment to the deceased at Government Hospital, Ramanathapuram and P.W.15 - Doctor who gave treatment to the deceased at Government Rajaji Hospital, Madurai.

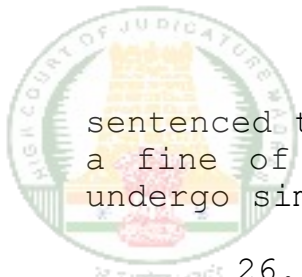
22. In the considered view of this Court, the prosecution has clearly made out a case against the appellant beyond reasonable doubts and we have absolutely no hesitation to coming to a conclusion that it was only the appellant who had attacked the deceased, which ultimately resulted in his death.

23. The last issue that requires consideration is as to whether the present case can be brought within any of the Exceptions under Section 300 I.P.C. It is clear from the evidence of P.W.1 to P.W.3 and P.W.6 and P.W.7 and also the statement given by the deceased to P.W.16 that there was a continuous fight between the deceased and the appellant due to business rivalry and there used to regular verbal quarrels. On the fateful day, usual quarrel started and unfortunately, the same got aggravated and in a spur of the moment, the appellant had taken a knife from the bag that was kept in his cycle and stabbed at the back rib of the deceased. A cumulative reading of the evidence of witnesses and also the nature of injury that has been sustained by the deceased, clearly brings this case within Exception 4 to Section 300 I.P.C. The entire incident had happened due to a sudden fight without any premeditation and in a heat of passion and there was only a single blow with a knife on the back rib of the deceased and therefore, it does not in any way show any undue advantage or cruelty or unusual manner in which the appellant had acted. This case clearly falls under Exception 4 to Section 300 I.P.C.

24. The next question is as to the provision under which the appellant will have to be sentenced. The deceased was not attacked in any vital part and he was attacked on the back rib. The incident had taken place on 19.09.2014 and the deceased ultimately died only on 25.09.2014. This itself shows that the present case will fall under the third limb of Section 299 I.P.C. The cumulative reading of the evidence shows that the appellant could have had only a knowledge that his act is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death. Having come to such a conclusion, the sentence that has to be imposed against the appellant will be under Section 304 - Part II I.P.C.

Conclusion:

25. Accordingly, the conviction and sentence passed by the Court below is modified and the appellant is convicted for the offence of 'culpable homicide not amounting to murder' by bringing the case under Exception 4 to Section 300 I.P.C., and he is



sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only), in default, to undergo simple imprisonment for a period of six months.

26. In the result, this Criminal Appeal is partly allowed to the extent indicated hereinabove. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Additional District and Sessions Judge,
Ramanathapuram.
- 2.The Judicial Magistrate No.I, Ramanathapuram.
3. -Do- Thro The Chief Judicial Magistrate, Ramanathapuram.
4. The Superintendent, Central Prison, Madurai.
5. The Inspector of Police,
B2, Bajar Police Station,
Ramanathapuram,
Ramanathapuram District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer, (2 copies)
Criminal Section, (Records)
Madurai Bench of Madras High Court,
Madurai.

Criminal Appeal (MD)No.98 of 2018

and

Cr1.M.P(MD)No.1270 of 2018

05.11.2019

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