



Bail Slip

The Appellant/Accused viz B.Anandhan S/o.Balu, was released on bail as per the order of this Court dated 10.11.2017 made in Crl MP(MD)No.9366/2017 in Crl.A.(MD)No.409 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
16.10.2019

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

Crl.A.(MD)No.409 of 2017

B.Anandhan : Appellant/Sole Accused

Vs.

State Represented by
the Inspector of Police
Viruveedu Police Station
Dindigul District
Crime No.97/2013

: Respondent /Complainant

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment dated 06.07.2017 in S.C.No.45 of 2016 on the file of the Principal Sessions Judge, Dindigul District.

For Appellant : Mr.K.Samidurai
For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

JUDGMENT

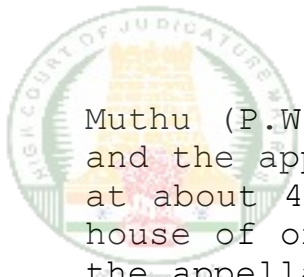
S.VAIDYANATHAN, J.
AND
N.ANAND VENKATESH, J.

The sole accused, aggrieved by the judgment of the learned Principal Sessions Judge, Dindigul made in S.C.No.45/2016 dated 06.07.2017, has filed this appeal before this Court.

2.The trial Court convicted the appellant for an offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one year.

Brief Facts of the case of the prosecution:

3.The deceased Murugan is the son of the de-facto complainant



Muthu (P.W.-1). There was a previous enmity between the deceased and the appellant due to the death of one Mayandi. On 16.09.2013, at about 4.30 p.m., when the deceased Murugan was coming near the house of one Singaraj at Post Office North Street, Theppathupatti, the appellant is said to have developed a wordy quarrel and lifted the deceased and dropped him upside down resulting in the deceased sustaining head injury and he started bleeding from his nostrils and ear. The deceased was immediately taken to the Government Hospital at Batlagundu and from there, he was referred to the Government Rajaji Hospital, Madurai, for further treatment. The deceased ultimately succumbed to the injuries on 20.09.2013 at about 8.25 a.m.

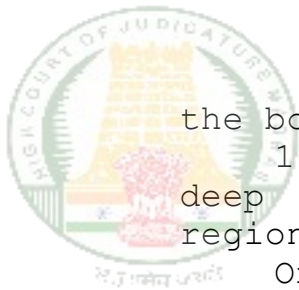
Complaint and the materials collected during the course of investigation:

4. The father of the deceased (P.W.-1) gave a complaint (Ex.P-1) before the Sub Inspector of Police (P.W.-17) on 16.09.2013 at about 22.30 hours. On receipt of the complaint, P.W.-17 registered an FIR in Crime No.96/2013 for an offence under Section 307 IPC. After the death of the deceased on 20.09.2013, the FIR was altered for an offence under Section 302 IPC and the express FIR was taken by the Head Constable (P.W.-16) to the Judicial Magistrate, Nilakottai at about 12.45 p.m.

5. The investigation was taken up by the Inspector of Police (P.W.20) on 17.09.2013 and he went to the scene of occurrence at about 6.00 a.m. and in the presence of the witnesses (P.W.-12 and P.W.-13), he prepared the observation mahazar (Ex.P-7) and the rough sketch (Ex.P-13). He also recovered the material objects from the scene of occurrence (M.O.-1 and M.O.-2). The Investigating Officer proceeded to arrest the appellant on 17.09.2013 at about 12 noon. The appellant voluntarily gave a confession statement and the same was recorded in the presence of witnesses (P.W.-15 and P.W.-19). Thereafter, the appellant was produced before the Judicial Magistrate Court and he was remanded to judicial custody.

6. The Investigating Officer proceeded to record the statement of the witnesses under Section 161(3) Cr.P.C. He received the information regarding the death of Murugan and the FIR was altered, which has been marked as Ex.P-14 and the investigation proceeded for the offence under Section 302 IPC. The body of the deceased was handed over to the Head Constable (P.W.-18) with a requisition for conducting postmortem and to hand over the body to the relatives after the completion of the postmortem. The postmortem was conducted by P.W.-10 and he prepared the postmortem certificate (Ex.P-6). The injuries as found in the postmortem certificate is extracted hereunder:

"The following ante mortem injuries are noted on



the body:

1.Subscalpal contusion of 33 cm x 5 cm x bone deep noted over the right fronto parieto temporal region.

On dissection: 8 burr holes noted.

2.Skull bone of 72 cm x 11 cm surgically removed and packed with gel foam material.

3.Fracture noted on the middle of the anterior cranial fossa.

4.Diffused subdural hemorrhage & subarachnoid hemorrhage noted over both the cerebral hemispheres.

....

Opinion : "The deceased would appear to have died of head injury, 6 - 10 hours prior to autopsy."

The postmortem Doctor gave a final opinion to the effect that the deceased died due to head injury.

7. The investigating officer thereafter proceeded to record the statement under Section 161 Cr.P.C. of the other witnesses including the Doctors and collected the postmortem certificate. The material objects that were seized were sent to the Court under Form 95 under Ex.P-16.

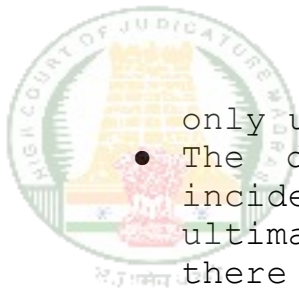
8. The investigation was completed and a final report was filed on 03.12.2013 before the concerned Court.

9. The case was committed to the file of the Principal District and Sessions Court, Dindigul and the trial Court framed charges for an offence under Section 302 IPC. The prosecution examined P.W.-1 to P.W.-20 and marked Ex.P-1 to Ex.P-16 and M.O.-1 and M.O.-2. The trial Court questioned the appellant under Section 313 (1)(b) of the Code of Criminal Procedure by putting all the incriminating materials to him and the appellant denied the same as false. The trial Court on consideration of the facts and circumstances of the case and after assessing the oral and documentary evidence proceeded to convict and sentence the appellant in the manner stated supra.

Submissions:

10. Mr.K.Samidurai, learned counsel for the appellant, made the following submissions:

- The father of the deceased P.W.-1 has categorically stated in the complaint (Ex.P-1) that both the deceased and the appellant were in a drunken state at the time when the incident took place and this was conveniently concealed at the time when P.W.-1 tendered evidence before the trial Court.
- Even if the case of the prosecution is taken as it is, the present case can at the best only be categorized as a culpable homicide not amounting to murder and the same is punishable



only under Section 304(ii) IPC.

- The deceased was alive for nearly four days, after the incident and he was getting treatment in the hospital and he ultimately died out of head injury. At the time of incident, there was absolutely no intention for the appellant to cause the death of the deceased and no weapon was used in this case. Therefore, the Court below went wrong in convicting the appellant for an offence under Section 302 IPC.

11. Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing on behalf of the State, submitted that

- the prosecution had examined P.W.-1 to P.W.-4 and P.W.-11 as eyewitnesses in this case and all of them have cogently explained the manner in which, the incident had taken place. Their statements have not been discredited in the cross-examination.
- Immediately after the incident, the FIR came to be registered at about 22.30 hrs. for an offence under Section 307 IPC and after the death of the deceased, the same was altered for an offence under Section 302 IPC. The express FIR also reached the Court on 20.09.2013 at about 12.45 p.m. and there is absolutely no delay at any stage in the investigation.
- The appellant had lifted the deceased and had dropped him upside down in a cement floor resulting in serious head injuries sustained by the deceased. Therefore, even though no weapon was used in this case, the act of the appellant will clearly fall under the fourth limb of Section 300 IPC.
- The trial Court has considered the entire facts and circumstances of the case and has rightly convicted the appellant for an offence under Section 302 IPC and there are absolutely no ground to interfere with the same and the criminal appeal is liable to be dismissed.

Discussion:

12. This Court has carefully considered the submissions made on either side and assessed the oral and documentary evidence.

13. The evidence of the father and mother of the deceased (P.W.-1 and P.W.-2) shows that there was prior enmity between the deceased and the appellant regarding the death of one Mayandi. It is clear from the complaint marked as Ex.P-1 that on the date of incident, ie., on 16.09.2013, at about 4.15 p.m., both the appellant and the deceased were under the influence of alcohol and there was a wordy quarrel before the incident. The manner in which, the incident had taken place has been clearly spoken to by P.W.-1 to P.W.-4 and also P.W.-11. There is nothing in the cross-examination to discredit the evidence of these witnesses and



therefore, this Court is of the view that the incident has been sufficiently established by the prosecution.

14. Immediately after the incident, the deceased was taken to the Batlagundu Government Hospital at about 5.45 p.m. and this has been spoken to by the Doctor - P.W.-8 and the same is corroborated by the Accident Register marked as Ex.P-2. The deceased was thereafter shifted to the Government Rajaji Hospital immediately and he was treated by the Doctor (P.W.-9) till 20.09.2013. This has been spoken to by P.W.-9 and Ex.P-4, which is the Accident Register issued by the Rajaji Hospital, corroborates the same.

15. On the date of incident, ie., on 16.09.2013, P.W.-17 had received the complaint and he registered an FIR in Crime No.97/2013 for an offence under Section 307 IPC. The investigation was immediately taken up by the Inspector of Police (P.W.-20) on the same day and he has visited the scene of crime on the same day and prepared the observation mahazar, rough sketch and also recovered the material objects. After the deceased died on 20.09.2013, the FIR was altered and the express FIR was taken by P.W.-16 and submitted to the Judicial Magistrate, Nilakottai, at about 12.45 p.m. Therefore, at no stage, there is any delay on the part of the prosecution and the investigation has taken place in a proper manner.

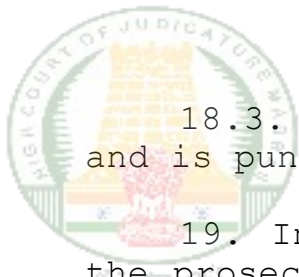
16. It is clear from the evidence of P.W.-10, who is the postmortem Doctor, who had categorically stated that the deceased died only due to the head injury. The postmortem certificate (Ex.P-6) clearly corroborates the statement of the Doctor. Therefore, there is absolutely no doubt that the death of the deceased was caused only due to the head injuries sustained due to the above said incident.

17. The only issue that requires to be considered at this stage is whether the act of the appellant will fall under Section 300 IPC or whether it will fall under the exception to Section 300 IPC and the same should be treated as a culpable homicide not amounting to murder.

18. The Indian Penal Code recognizes three degrees of culpable homicide.

18.1 The first is the culpable homicide of the first degree, which is the gravest form and it is defined as murder in Section 300 IPC.

18.2. The second is the culpable homicide of the second degree punishable under part (i) of Section 304 IPC.



18.3. The third is the culpable homicide of the third degree and is punishable under the second part of Section 304 IPC.

19. In the present case, even if the facts, as projected by the prosecution, are taken as it is, this Court does not find the case to fall under any of the four limbs under Section 300 IPC.

20. In the present case, there was a previous enmity and the complaint shows that the appellant and the deceased were under the influence of alcohol and there was a wordy quarrel between both of them before the incident. The appellant is said to have lifted the deceased and dropped him upside down resulting in a head injury to the deceased. The deceased had died nearly four days after the incident.

21. The present case will squarely fall under exception 4 to Section 300 IPC. The facts of the case shows that,

- (a) there was a sudden fight;
- (b) there was no premeditation to murder the deceased;
- (c) the appellant has not taken any undue advantage of the situation, and
- (d) the appellant has not acted in a cruel or unusual manner.

Therefore, this Court has no hesitation in bringing the facts of the present case under Exception 4 to Section 300 IPC.

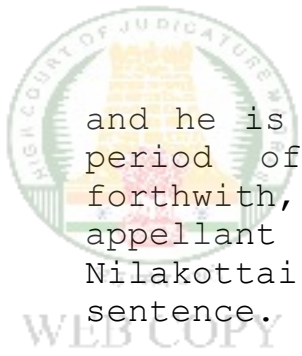
22. The next issue that arises for consideration is regarding the punishment to be imposed to the appellant. The facts of this case shows that the appellant should have had the knowledge that his act is likely to cause the death, since the deceased was dropped upside down in a cement floor. However, this was done without any intention to cause death or to cause such bodily injury as is likely to cause death. Therefore, on the facts of the present case, this Court is of the considered view that the appellant has to be punished under part II of Section 304 IPC.

Conclusion:

23. In view of the above discussion, the judgment of the Court below requires modification as under:

The appellant is punished under part II of Section 304 IPC and he is directed to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.5,000/- and in default to undergo rigorous imprisonment for six months. The period of detention already undergone by the appellant is ordered to be set off under Section 428 Cr.P.C.

24. In the result, this criminal appeal is allowed in part to the extent indicated hereinabove and the appellant is directed to surrender before the Judicial Magistrate, Nilakottai, forthwith



and he is directed to be sent to prison to undergo the remaining period of sentence. If the appellant does not surrender forthwith, the respondent police is directed to secure the appellant and produce him before the Judicial Magistrate, Nilakottai, in order to make him undergo the remaining period of sentence.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

RR

To

- 1.The Principal Sessions Judge,
Dindigul District
- 2.The Judicial Magistrate
Nilakottai
- 3.Do Thro
The Chief Judicial Magistrate
Dindigul District
- 4.The Superintendent
Central Prison, Madurai
- 5.The Inspector of Police
Viruveedu Police Station
Dindigul 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.

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-92668[F] dated
17/10/2019)

Judgment made in
Crl.A. (MD)No.409 of 2017
16.10.2019