

BAIL SLIP

The Appellant/Accused,namely AmoshSundar Singh, Aged 27 years S/o.Charles was directed to be released on bail as per order dated 12.06.2018 in CRL MP.NO.4472/18 IN CRL A.No.617 of 2017 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
08.12.2020	23.12.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR
Criminal Appeal No.617 of 2017

AmoshSundar Singh .. Appellant

Vs

State rep. By
The Inspector of Police,
Manglaam Police Station,
Tiruppur District.
(Cr.No.185 of 2015) .. Respondent

Prayer:- Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment dated 18.08.2017, made in S.C.No.189 of 2015 on the file of the learned I Additional District and Sessions Judge, Tiruppur to set aside the conviction and sentence of life imprisonment and fine of Rs. 10,000/- in default to undergo S.I. for 6 months imposed against accused for the offence punishable under Sec.302 of I.P.C.

For Appellant : Mr.V.AjoyKhose

For Respondent : Mr.K.Prabhakar,
Addl.Public Prosecutor

JUDGMENT

[Judgment of the Court was made by D.KRISHNAKUMAR, J.]

The Appellant in S.C.No.189 of 2015 on the file of the learned I Additional District and Sessions Judge, Tiruppur wherein accused was convicted for the offence punishable under Section 302 of I.P.C and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for another six months. Challenging the said conviction and sentence, the appellant is before this Court.

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

P.W.1 Kathiresan is the son of deceased and the deceased is the Cousin of P.W.2 Jeganathan. P.W.1 was talking with his friend Stanly in an Auto stand near Pallapalayam Bus stop on 02.03.2015. The accused came down from the Bus and asked P.W.1 to take auto. P.W.1 replied that he do not have auto that led to wordy quarrel. Then P.W.1 and his friend Stanly went near CovaiBackery shop and the accused followed them and attacked PW1. At that time his father deceased Ganesan and his uncle PW2 came near them. Then the accused quarrelled with PW1's father i.e., deceased Ganesan. Subsequently the accused took wooden stick and struck on his neck and Ganesan died due to cumulative effect of skull fracture and brain injury. ThiruSivasami, Special Sub-Inspector of Police, Manglaam Police Station received the complaint on 02.03.2015 at 10 p.m. and registered a case in Cr.No.185 of 2015 for the offence under Sec. 302 I.P.C and filed final report before the concerned Judicial Magistrate.

3. The learned Judicial Magistrate took cognizance of the offence and the accused was furnished with the copies of relevant documents under Sec 207 Cr.P.C and committed the case to the Court of I Additional District and Sessions Judge, Tiruppur.

4. Based on the materials available on record, the trial Court framed charges as against the accused for the offence under Sec 302 IPC and the same was read over and explained to the accused. The accused pleaded not guilty. In order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined and exhibits P1 to P19 were marked, besides 8 Material Object.

5. Based on the incriminating materials, the appellant was examined in the form of questionnaire under Sec.313(1)(b) of Cr.P.C., so as to enable him to personally explain the same and the accused denied the same as false. On the side of appellants, no witness was examined and no document was marked.

6. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant is before this Court with this Criminal Appeal.

7. The learned counsel for the appellant submitted that the PW1 defacto complainant has stated in his evidence that the deceased Ganesan was attacked by wooden log -MO1 on his head of the deceased and caused head injury. The complaint was lodged by PW1 02.03.2015 at about 22hrs, wherein the occurrence had happened on 02.03.2013. Based on the evidences of PW1, PW2, PW5 and PW9 and MO 1, Sessions Court has convicted the appellant. The learned counsel for the appellant submitted that the Court below did not appreciated the case of the appellant by considering the relevant materials. He has further submitted that the evidence of PW1 did not corroborated with the evidence of PW2. According to the evidence of PW11-doctor, the accused/appellant attacked the deceased and caused injury on the above mid eyebrow on the left forehead and deceased died due to the head injury. But PW1 and PW2 in their evidence have stated that the accused attacked the deceased with the wooden stick-MO1 at the neck. Therefore, the evidence of PW1 & PW2 have not corroborated with the PW-11 to establish that the appellant had committed murder of the deceased Ganesan.

8. The learned counsel for the appellant further submitted that PW7 has not stated anywhere in his evidence that the accused was arrested by the police and gave confession statement in police custody. There was a quarrel between the appellant and PW1 near Covai Bakery and the deceased Ganesan tried to reconcile both of them, near the church the appellant assaulted the deceased Ganesan. When the deceased received first blow and ran away 20 feet. When he gave second blow, he fell down. The PW1/son of the deceased was watching the entire episode at a distance of 10 feet from the incident. According to the learned counsel for the appellant there is no attempt made by the PW1 to prevent the occurrence. It is also argued by the learned counsel for the appellant that the appellant was also attacked at the place of the occurrence and the counter complaint was also made by the appellant. The said fact was also not considered by the trial Court. Further, it is argued by the learned counsel for the appellant that on considering the fact that the evidence of PW1, PW2 and PW11 are not corroborated each other and further the PW1-defacto complainant, who was present at the place of occurrence, had not prevented the incident, therefore it is clear that the entire story of the prosecution is absolutely imaginary and the judgment passed by the trial Court is liable to be set aside.

9. The learned Additional Public Prosecutor appearing for

the respondent submitted there was a quarrel between the PW1 and the deceased Ganesan while asking PW1 to take Auto, as the same was refused, the appellant chased the deceased and attacked and caused injury, due to which the deceased fell down and died. Further PW1 has also clearly stated in his evidence that the appellant had attacked the deceased Ganesan with wooden log at the neck and caused bodily injury, due to the said injury the deceased fell down and died. The said statement is also reflected in PW11 medical report. The trial Court has also gave its findings that the due to the injury on the neck of the deceased Ganesan, he fell down and caused injury on his forehead and he died. Therefore, it is clearly proved that the appellant had committed murder and the trial Court has also rightly considered the prosecution witnesses and material objects and convicted the appellant for the offences punishable under Section 302 IPC.

10. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and perused the records carefully.

11. A perusal of records would clearly reveal that PW1 to PW5 and PW13 to PW15 are the witnesses to the occurrence. PW1 and PW2 are relative of the deceased. PW3 to PW5 came to the scene of the occurrence only after they heard sound from the said occurrence place. The incident happened when PW1 was talking with his friend namely Stanley near Pallipalayam bus stop, the accused came to the Auto stand and asked PW1 to take auto and drop him at Anna Nagar, that was refused by the PW1, which leads quarrel among PW1 and the accused. Thereafter, the deceased Ganesan came to the occurrence place and pacified both of them and left the place of occurrence. The appellant followed the deceased ganesan and attacked with a wooded log on the neck of the deceased, the deceased fell down and he was taken to the hospital, where he declared dead.

12. Further, as per the case of prosecution, PW1 and PW2 are the eyewitnesses of the entire incident. PW1 and PW2 were examined before the trial Court. The evidence of PW1 would show that there was a quarrel between the appellant and the accused and the deceased Ganesan who came to the occurrence place had tried to pacify and reconcile them. The incident occurred on 02.03.2015 at about 9.00pm, the complaint was lodged at 10.00pm and the same reached to the concerned Judicial Magistrate at 11.00pm, therefore there is no inordinate delay in lodging FIR and appearance before the concerned Judicial Magistrate.

13. Further, PW1 and PW2 have deposed that the appellant had attacked the deceased Ganesan at his neck and due to the said injury, the deceased fell down and caused injury at his

forehead. Therefore the said evidence of PW1 & PW2 would clearly prove that the only cause of the said injury was due to the said attack by the appellant, the deceased died. PW11-Doctor, who conducted autopsy and submitted postmortem certificate Ex.P11, had deposed that when a person was attacked with wooden log, there is probability to cause injury leading to death and no other reason was stated by PW11-doctor for cause of death. The evidence of PW1 & PW2 are corroborated with PW11, therefore, this Court accepts the case of the prosecution that the death occurred due to the attack by the appellant with the wooden log. In view of the above and based on the material evidence as well as statement of witnesses, we are satisfied with the case of prosecution and the findings of the Court below only to the extent that the appellant had committed murder.

14. The principle issue to be considered in this appeal is as to whether the said offence committed by the appellant/accused is a murder punishable under Section 302 IPC as awarded by the Court below or culpable homicide not amounting to murder punishable under Section 304 of IPC.

15. Sections 299 and 300 of the Code deal with the definition of culpable homicide and murder, respectively. In terms of Section 299, culpable homicide is described as an act of causing death (i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death, or (iii) with the knowledge that such an act is likely to cause death. As is clear from a reading of this provision, the former part of it, emphasises on the expression intention while the latter upon knowledge. Both these are positive mental attitudes, however, of different degrees. The mental element in culpable homicide, that is, the mental attitude towards the consequences of conduct is one of intention and knowledge. Once an offence is caused in any of the three stated manners noted above, it would be culpable homicide. Section 300, however, deals with murder although there is no clear definition of murder in Section 300 of the Code. As has been repeatedly held by this Court, culpable homicide is the genus and murder is its species and all murders are culpable homicides but all culpable homicides are not murders.

16. Another classification that emerges from this discussion is culpable homicide not amounting to murder, punishable under Section 304 of the Code. There is again a very fine line of distinction between the cases falling under Section 304, Part I and Part II. To discuss in detail, it is useful to rely upon the decision of the Hon'ble Supreme Court held in the case of STATE OF ANDHRA PRADESH VS. RAYAVARAPU PUNAYYA & ANOTHER, reported in 1976 (4) SCC 382, wherein it has been elaborately

elucidated the distinction between the 'murder' and 'culpable homicide not amounting to murder' which reads as under:

Now let us consider the problem before us in the light of the above enunciation. It is not disputed that the death of the deceased was caused by the accused, there being a direct causal connection between the beating administered by A-1 and A-2 to the deceased and his death. The accused confined the beating to the legs and arms of the deceased, and therefore, it can be said that they perhaps had no "intention to cause death" within the contemplation clause (a) of s. 299 or cl. (1) of s. 300. It is nobody's case that the instant case falls within cl. (4) of s. 300. This clause, as already noticed, is designed for that class of cases where the act of the offender is not directed against any particular individual but there is in his act that recklessness and risk of imminent danger, knowingly and unjustifiably incurred, which is directed against the man in general, and places the lives of many in jeopardy. Indeed, in all fairness, Counsel for the appellant has not contended that the case would fall under cl. (4) of s. 300. His sole contention is that even if the accused had no intention to cause death, the facts established fully bring the case within the purview of cl. (3) of s. 300 and as such the offence committed is murder and nothing less. In support of this contention reference has been made to *Andhra v. State of Rajasthan*(1) and *Rajwant Singh v. State of Kerala* (supra). As against this, Counsel for the respondent submits that since the accused selected only non-vital parts of the body of the deceased, for (1) A.I.R. 1966 S.C. 148. inflicting the injuries, they could not be attributed the mens rea requisite for bringing the case under clause (3) of s. 300; at the most, it could be said that they had knowledge that the injuries inflicted by them were likely to cause death and as such the case falls within the third clause of s. 299, and the offence committed was only "culpable homicide not amounting to murder", punishable under s.304, Part 11. Counsel has thus tried to support the reasoning of the High Court. The trial Court, 'as 'already noticed, had

convicted the respondent of the offence of murder. It applied the rule in Virsa Singh's case (supra). and the ratio of Anda v. State and held that the case was clearly covered by clause Thirdly of s. 300. The High Court has disagreed with the trial Court and held that the offence was not murder but one under s. 304, Pt. II. The High Court reached this conclusion on the following reasoning: (a) "There was no premeditation in the attack. It was almost an impulsive act". (b) "Though there were 21 injuries, they were all on the arms and legs and not on the head or other vital parts the body." (c) "There was no compound fracture to result in heavy haemorrhage; there must have been some bleeding". (which) "according to PWI might have stopped with in about half an hour to one hour." (d) "Death that had occurred 21 hours later, could have been only due to shock and not due to hemorrhage also, as stated

by PW 12... who conducted the autopsy. This reference is strengthened by the evidence of PW 26 who says that the patient was under shock and he was treating him for shock by sending fluids through his vein. From the injuries inflicted the accused therefore could not have intended to cause death." (e) "A1 and A2 had beaten the deceased with heavy sticks. These beatings had resulted in fracture of the right radius, right femur, right tibia, right fibula, right patalla and left tibia and dislocation of , therefore considerable force must have been used while inflicting the blows. Accused 1 and 2 should have therefore inflicted these injuries with the knowledge that they are likely, by so beating, to cause the death of the deceased, though they might not have had the knowledge that they were so imminently dangerous that in all probability their acts would result in such injuries as are likely to cause the death. The offence is therefore culpable homicide falling under sec. 299, I.P.C. punishable under s. 304 Part II and not murder."

17. On the facts of the case on hand, the appellant came

down from the bus and approached PW1 to take auto and drop him at his destination place. Since the PW1 refused to take Auto, quarrel started between them. It is clear from the statement of witnesses that there was heated exchange of words between the PW1 and the appellant and the provocation was initiated by the deceased and thereafter the appellant had assaulted the deceased with wooden log at the back side of the neck and caused bodily injury and ultimately resulted in his death. It is not a case of previous animosity and nothing was there to show that the relationship between the appellant and the deceased was not cordial. Due to the sudden quarrel, the alleged occurrence took place. Further in the chief examination it is clearly stated that PW2 to PW5 had also beaten the appellant, due to which a counter complaint was also made by the appellant and there was no allegation of the prosecution that before the occurrence, the appellant had premeditated the crime of murder.

18. Therefore, it is clear that the act of the appellant was due to grave and sudden provocation, which was not sought or voluntarily provoked by offender himself. Therefore, as discussed in the foregoing paragraphs and decisions cited supra, the act of the appellant will not come under murder punishable under Section 302 IPC, but it comes under exception clause of 304(I) of IPC.

19. Thus, on the available evidence examined in its entirety shows that without any premeditation the appellant committed the offence. The same was done with the intent to cause a bodily injury which could result in death of the deceased. Thus, as held by the citations referred above, in our opinion, the offence committed by the Appellant was only culpable homicide not amounting to murder. Under these circumstances, we are inclined to bring down the offence from first degree murder to culpable homicide not amounting to murder, punishable under the first part of Section 304 IPC.

20. We partly allow this appeal and alter the offence that the appellant has been guilty of, from that under Section 302 of the Code to the one under Section 304 Part I of the Code. Therefore, the appellant is deserved to be punished under Sec.304 Part I of I.P.C. Therefore, the punishment awarded by the Court below for the offence under Sec.302 I.P.C. is altered to that of offence punishable under Section 304 Part I of I.P.C. and consequently, we award a sentence of two years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month. The detention period already undergone by the appellant is set off under Sec.428 of Cr.P.C. The judgment under appeal is modified in the above terms.

Accordingly, the Criminal appeal is partly allowed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District and Sessions Judge,
Tiruppur

2.The Inspector of Police,
Manglaam Police Station,
Tiruppur District.

3.The Superintendent,
Central Prison, Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section, High Court, Madras.

+2ccs to Mr.V.AjoyKhose , Advocate SR.No. 42868

Cr1.A. No.617 of 2017

A.SK(29.12.2020)

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