



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRIMINAL APPEAL NO.635 OF 2019

AND

CRL.M.P.NO.13609 OF 2019

Kumar

... Appellant/
Accused

..Vs..

State by
The Inspector of Police,
Maramda Halli Police Station,
Crime No.2 of 2015.
Dharmapuri.

... Respondent/
Complainant

PRAYER:

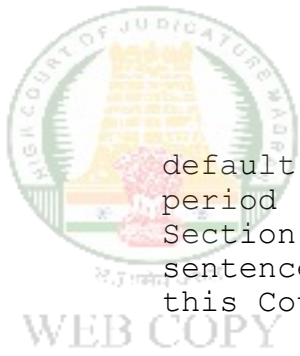
Criminal Appeal filed under Section 374 cl.(2) of Criminal Procedure Code against the Judgment passed in S.C.No. 45 of 2015 dated 16.09.2016 by the learned Principal Sessions Judge, Dharmapuri convicting him under Section 304 Part II IPC and sentenced to undergo 10 years R.I and also imposed fine of Rs.1000/- i/d to undergo 2 years R.I.

For Appellant	:	Mr.M.G.Udayashankar
For Respondent	:	Mr.S.Sugendran
		Government Advocate (Crl. Side)

O R D E R

The Appeal is filed challenging the Judgment of conviction and Sentence dated 16.09.2016 passed by the learned Principal Sessions Judge, Dharmapuri.

2. By the Judgment dated 16.09.2016, the Trial Court found that the appellant was guilty for the offence under Section 304 (2) I.P.C and convicted and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- and in



default to undergo R.I for 2 years and directed to reduce the period of sentence already undergone by the appellant under Section 428 of Cr.P.C. Challenging the said conviction and sentence, the appellant has filed the present appeal before this Court.

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

(i) The appellant is the resident of Munusami Kotai, Palacode Taluk.. The deceased Muniyappan is the father of the appellant. The appellant was working as a Cleaner in lorry. He got addicted to liquor and he used to quarrel in the family in order to harass them, due to which, the mother Pachaiyammal and the brother of the appellant Devraj had left the home and they were doing Coolie work. The deceased was living alone in the house with the appellant. The appellant used to have wordy quarrel with his father and harass him, whenever the appellant returned home.

(ii) On 31.12.2014, after the completion of his work, the appellant came back to his home at around 8.30 p.m. and burst crackers in front of his house. At that time, the deceased Muniyappan had warned him not to burst the crackers in front of his house, due to which, there was a quarrel between them and during the quarrel, due to sudden provocation, the appellant had taken up a Neem Stick and attacked his father Muniyappan on his head, face and hands. Thereafter, the deceased Muniyappan ran over to the field of one Sadhasivam. Later, the deceased succumbed to the injuries.

(iii) P.W.1 Mathesh, who is the Village Administrative Officer in Nallur village, had given a complaint to the PW12 Sub Inspector of Police.

(iv) Based on the complaint given by PW1, on the next day on 01.01.2015 at 12.45 a.m, PW12 Sub Inspector of Police registered an F.I.R-Ex.P12 in Crime No.2 of 2015 under Section 302 of I.P.C and he had sent the original F.I.R to the Judicial Magistrate and the copies to the higher officials.

(v) PW13, Inspector of Police took up the investigation and during the course of investigation, he proceeded to the scene of occurrence at 14.13 hrs and in the presence of one Vadivel and PW8 Raja, had prepared an Observation Mahazar-Ex.P9 and Rough Sketch-Ex.P14. Thereafter, he had conducted inquest in the presence of panchayathars and handed over the body to PW11 Head Constable along with the requisition letter-Ex.P16 and sent the body for autopsy .

(vi) PW10, the Doctor, on receipt of requisition letter,



Ex.P16 had conducted the autopsy and issued post mortem certificate Ex.PP10 opining that the deceased would appear to have died of heady injury.

(vii) Thereafter, PW13 had examined the witness and recorded their submissions. On information, he had arrested the accused at Palacode. The accused had voluntarily confessed and based on his confession, Neem Stick (M.O) was recovered and thereafter, the accused was remanded and sent to judicial custody. Subsequently, PW13 has examined the other witnesses and sent the internal organs for chemical analysis. The Viscera Report is Ex.P11. Thereafter, PW13 gave request to the Magistrate and recorded the submissions from the witnesses under Section 164 Cr.P.C. On 27.03.2015, he had examined PW7 and PW11 and on the same day, he had also examined PW10 Doctor, who conducted the Autopsy. On 27.03.2015, PW13 had filed the final report before the Judicial Magistrate, Palacode for the offence under Section 302 IPC against the accused.

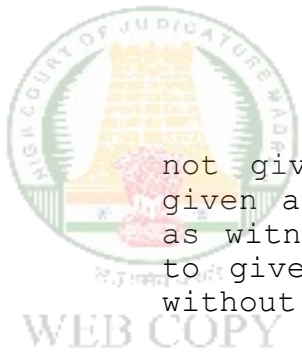
(viii) The case was taken up in P.R.C.No.7 of 2015 and after furnishing copies under Section 207 Cr.P.C, the case was taken up in S.C.No.45 of 2015. The Trial Judge, after perusing the records, framed charges against the accused under Section 302 I.P.C. When the accused were question, he had denied the charges and sought to be tried.

(ix) The Trial Court, having found the accused guilty for the offence under Section 304(2) of IPC and convicted and sentenced him as stated above, aggrieved against which, the present Appeal has been filed by the accused.

4. The sum and substance of the submissions made by the counsel appearing for the appellant is as under:

(i) It is the case of patricide, even as per the prosecution, the alleged occurrence is said to have taken place during night hours and in a quarrel between the appellant and his father. It is the case of the prosecution that the appellant was in an inebriated condition and that when he had burst crackers in front of his house, his father had scolded him not to burst the crackers in front of his house and a quarrel arose between them, during which, the appellant is said to have taken a Neem Stick and assaulted his father, due to which, his father had sustained injuries and ran over the field of Sadhasivam and on the next day, he was found dead on the field.

(ii) The incident had taken place in front of the appellant's house in the village where the other houses were also there, however, nobody has given complaint against the appellant. Even PW2, who is the brother of the appellant, had



not given a complaint and the other villagers have also not given a complaint. Though the close relatives had been examined as witnesses, it is strange that none of them took initiation to give a complaint to the police, however, the Trial Court, without taking into consideration, had convicted the accused.

(iii) Though several witnesses have spoken as if they had seen the quarrel between the father and the son, none of them had given complaint and it was given only by the Village Administrative Officer, who had found the body of the deceased lying in a corn field. The Village Administrative Officer, who is not a witness to the occurrence and even the quarrel, a hearsay witness, has given a complaint as if the death of the victim was on account of an assault by the appellant. Though several witnesses have been examined by the prosecution to show that they had witnessed the quarrel between the accused and the deceased, none of them had given any information or intimation with regard to the same. There are several anomalies and infirmities in this case.

(iv) There are several other lacunae in this case. The appellant is an unmarried young man, aged about 29 years at the time of occurrence. Even as per the prosecution, he was in an inebriated condition and the incident had happened during the quarrel between the appellant and father. The appellant had no intention to murder his father. Right from 11.12.2015, the appellant is in custody and he had undergone almost 6 years of sentence and the Superintendent of Central Prison, Vellore had also issued certificate dated 11.12.2021 stating that he had completed almost 6 years and that his character in the jail was found to be good. There is chance of reformation and taking into consideration the aggravating and mitigating circumstances, a balance could be done and the sentence of imprisonment may be reduced to the period of sentence already undergone by the appellant.

5. Though several points have been argued by the learned counsel for the appellant, ultimately, the learned counsel had urged only on the question of sentence. He also submitted that taking into consideration the aggravating and mitigating circumstances and that the incident had occurred during a quarrel between the father and son while the son was in inebriated condition and there was no intention for the son, the appellant to murder his father, the sentence imposed by the Trial Court may be reduced taking into consideration the mitigating and aggravating circumstances in this case.

6. In support of his contention, the learned counsel for the appellant would rely on the judgment of a Division Bench of this court in Criminal Appeal No.317 of 2016, dated 22.8.2016



(Neelakandan vs. State), wherein in a similar circumstances and facts, had sentenced the appellant to undergo rigorous imprisonment for five years. In respect of considering the mitigating and aggravating circumstances for reduction of sentence, the learned counsel would rely on the judgment of the Apex Court in State of M.P. vs. Suresh ((2019) 14 SCC 151).

7. Mr.S.Sugendran, learned Government Advocate (Crl. Side) would submit that from the date of arrest, the appellant has been in custody and the Superintendent of Central Prison, Vellore had given a certificate stating that the appellant had completed the sentence for a period of 5 years 11 months and 12 days as on 11.12.2021 and as per the Certificate, the conduct of the appellant is also good and he had also no bad antecedents.

8. Heard the learned counsel appearing for the parties.

9. A Division Bench of this court, in similar circumstances in Criminal Appeal No.317 of 2016, dated 22.8.2016 (Neelakandan vs. State), has held as under:-

"20. Now turning to the quantum of punishment, the accused is a poor man. He has no bad antecedent and out of sudden provocation and heat of passion, he lost his mental balance. While 11 consuming alcohol, there was a sudden quarrel between the accused and the deceased and due to sudden provocation only, he dashed the deceased against the wall without any intention to murder him. He is also an young man. Considering the mitigating as well as aggravating circumstances, sentencing him to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for four weeks would meets the ends of justice."

10. Further, in several other cases, the Hon'ble Apex Court and our High Court, in similar circumstances, taking into considering the mitigating and aggravating circumstances, have reduced the sentence and awarded lesser punishment for offence punishable under Section 304(ii) IPC.

11. In State of M.P. vs. Suresh ((2019) 14 SCC 151), the Apex Court, relying on the decision in Alister Anthony Pareira v. State of Maharashtra, (2012) 2 SCC 648, has held as under:-

"12. In Alister Anthony Pareira v. State of Maharashtra, the allegations against the appellant had been that while driving a car in drunken condition, he ran over the pavement, killing 7 persons and causing



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injuries to 8. He was charged for the offences under Sections 304 Part II and 338 IPC; was ultimately convicted [State of Maharashtra v. Alister Anthony Pereira, 2007 SCC OnLine Bom 1490] by the High Court under Sections 304 Part II, 338 and 337 IPC; and was sentenced to 3 years' rigorous imprisonment with a fine of Rs 5 lakhs for the offence under Section 304 Part II IPC and to rigorous imprisonment for 1 year and for 6 months respectively for the offences under Sections 338 and 337 IPC. Apart from other contentions, one of the pleas before this Court was that in view of fine and compensation already paid and willingness to make further payment as also his age and family circumstances, the appellant may be released on probation or his sentence may be reduced to that already undergone. As regards this plea for modification of sentence, this Court traversed through the principles of penology, as enunciated in several of the past decisions [This Court referred, amongst others, to the decisions in State of Karnataka v. Krishnappa, (2000) 4 SCC 75 : 2000 SCC (Cri) 755; Dalbir Singh v. State of Haryana, (2000) 5 SCC 82 : 2004 SCC (Cri) 1208; State of M.P. v. Saleem, (2005) 5 SCC 554 : 2005 SCC (Cri) 1329; Ravji v. State of Rajasthan, (1996) 2 SCC 175 : 1996 SCC (Cri) 225; State of M.P. v. Ghanshyam Singh, (2003) 8 SCC 13 : 2003 SCC (Cri) 1935] and, while observing that the facts and circumstances of the case show "a despicable aggravated offence warranting punishment proportionate to the crime", this Court found no justification for extending the benefit of probation or for reduction of sentence. On the question of sentencing, this Court re-emphasised as follows: (Alister Anthony Pereira case [Alister Anthony Pereira v. State of Maharashtra, (2012) 2 SCC 648 : (2012) 1 SCC (Civ) 848 : (2012) 1 SCC (Cri) 953] , SCC p. 674, paras 84-85)

"84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the



gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

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85. The principle of proportionality in sentencing a crime-

doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence."

13. Therefore, awarding of just and adequate punishment to the wrongdoer in case of proven crime remains a part of duty of the court. The punishment to be awarded in a case has to be commensurate with the gravity of crime as also with the relevant facts and attending circumstances. Of course, the task is of striking a delicate balance between the mitigating and aggravating circumstances. At the same time, the avowed objects of law, of protection of society and responding to the society's call for justice, need to be kept in mind while taking up the question of sentencing in any given case. In the ultimate analysis, the proportion between the crime and punishment has to be maintained while further balancing the rights of the wrongdoer as also of the victim of the crime and the society at large. No straitjacket formula for sentencing is available but the requirement of taking a holistic view of the matter cannot be forgotten.

14. In the process of sentencing, any one factor, whether of extenuating circumstance or aggravating, cannot, by itself, be decisive of the matter. In the same sequence, we may observe that mere passage of time, by itself, cannot be a clinching factor though, in an appropriate case, it may be of some bearing, along with other relevant factors. Moreover, when certain extenuating or mitigating circumstances are suggested on behalf of the convict, the other factors relating to the nature of crime and its impact on the social order and public interest cannot be lost sight of.

12. In this case, as stated above, the appellant was charged for the offence under Section 302 IPC, however, the court had



found him guilty for the offence under Section 304(ii) IPC and convicted and sentenced him as stated above.

13. It is relevant to refer to Section 304(ii) IPC hereunder:-

"304. Punishment for culpable homicide not amounting to murder.--

Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. "

14. Though Section 304(ii) IPC mandates the sentence of imprisonment, it does not prescribe any minimum sentence. When an accused has been convicted under Section 304(ii) IPC, he could be sentenced to imprisonment for a term which may extend to a period of ten years or with fine or with both.

15. Now, coming to the facts of this case, the appellant is an unmarried man aged about 29 years. The incident had happened on the eve of new year when the appellant was in an inebriated condition and that he had burst crackers and when it was objected by his father, there was a quarrel and out of sudden provocation and heat of passion, in an inebriated condition, the appellant, lost his mental balance and had assaulted his father with a neem stick which was lying close-by.

16. Now, turning to the quantum of punishment, it is seen that the appellant hails from a lower strata of the society. He is an uneducated and poor man. He has no bad antecedents and that he has also undergone imprisonment from the date of arrest till today. As per the Certificate issued by the Superintendent of Central Prison, Vellore, as on 11.12.2021, the appellant has completed the sentence for a period of 5 years 11 months and 12 days. Further, the Superintendent of Central Prison has also certified that the conduct of the appellant is good.

17. Therefore, keeping in view the principles laid down in the above cases and taking into consideration the aggravating and mitigating circumstances of this case, this court is of the opinion that the sentence of rigorous imprisonment for a period of six years would serve the interest of justice. Accordingly, the Criminal Appeal is partly allowed and while confirming the conviction, the sentence is modified to that of six years



rigorous imprisonment with fine of Rs.1000/- in default to undergo simple imprisonment for a period of four weeks. The period of imprisonment already undergone by the appellant shall be set off under Section 428 Cr.P.C. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

shk/ssk.

To

1. The Judicial Magistrate, Palacode.
2. Do thro-The Chief Judicial Magistrate, Dharmapuri.
3. Principal Sessions Judge, Dharmapuri.
4. The Superintendent, Central Prison, Vellore.
5. The Inspector of Police, Maramda Halli Police Station, Dharmapuri.
6. The Director General of Police, Mylapore, Chennai-4.
7. The District Collector, Dharmapuri.
8. The Public Prosecutor (Crl side), High Court, Madras.

Copy To

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

+1cc to M/s.S.Shanthakumari, Advocate, S.R.No.67740

Criminal Appeal No.635 of 2019
and
Crl.M.P.No.13609 of 2019

BP(CO)
PM/28/12/2021