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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.A. No.891 of 2019

Kuyilan @ David Lawrance,
S/o. Irudhayasamy

... Appellant

-Vs-

The State by
Inspector of Police,
Bhavanisagar Police Station,
Erode Dt.
(Crime No. 11 of 2017)

... Respondent

Prayer : Criminal Appeal filed under Section 374 of Criminal Procedure Code, praying to set aside the conviction and sentence imposed on the appellant by the judgment dated 12.12.2019 passed in S.C.No.46 of 2019 on the file of Third Additional District and Sessions Court, Gobichettipalayam, Erode District.

For Appellant : Mr.I.C.Vasudevan

For Respondent : Mr.S.Sugendran,
Government Advocate (Crl. Side)

O R D E R

(This case has been heard through video conference)

This Criminal Appeal is filed against the Judgment of conviction and sentence passed by the learned III Additional District and Sessions Judge, Gobichettipalayam, Erode District dated 12.12.2019 in S.C.No.46 of 2019.

2. The respondent police registered the case against the appellant in Crime No.11 of 2017 for the offence under Section 304 (ii) I.P.C. After investigation, the respondent police laid the charge sheet before the Judicial Magistrate, Sathyamangalam, and the learned Judicial Magistrate taken the charge sheet on file in P.R.C.No.07 of 2018. After completing formalities, the



learned Judicial Magistrate committed the case to Principal District and Sessions Judge, Erode, since the offence is exclusively triable by court of session. The learned Principal District and Sessions Judge taken the case on file in S.C.No.46 of 2019 and made over the case to the III Addl. District and Sessions Judge, Erode at Gobichettipalayam for disposal in accordance with law.

3. After completing the formalities, the learned III Additional District and Sessions Judge taken the case on file and framed the charges against the appellant for the offence under Sec.304 (ii) I.P.C. After framing charges, during the trial, in order to prove the case of the prosecution, on the side of the prosecution, as many as 21 witnesses were examined as P.Ws.1 to 21, 17 documents were marked as Ex.P.1 to Ex.P.17. But no material object was exhibited. After completion of the prosecution side evidence, the incriminating circumstances culled out from the evidence of prosecution witnesses were put forth against the appellant/accused by questioning under Section 313 of Cr.P.C and he denied all the incriminating circumstances as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

4. On completion of trial and hearing the arguments advanced on either side, and on perusal of the materials placed before the trial court, the Trial Court found the guilt of appellant for an offence under Sec. 304(ii) I.P.C. and sentenced to undergo five years Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo six months simple imprisonment. Challenging the said judgment of conviction and sentence, the accused has filed the present appeal before this Court.

5. The learned counsel for the appellant would submit that the prosecution failed to prove the motive, knowledge of the appellant about submersion of coracle into the water suddenly, which is nothing but an act of God. The P.W.1 and 2 said to have been examined as eye-witnesses and P.W.1 is the complainant, who has lodged the complaint and P.W.2 stated about the manner of the occurrence and also there is a delay in filing the complaint and also delay in sending the prosecution records including the statement recorded under Section 161 of Cr.P.C., which makes the prosecution case highly unreliable. The Trial Court failed to appreciate that even during the inquest, the alleged prosecution witnesses P.W.1 and 2 were not examined by the Investigating Officer. Therefore, it creates a doubt on the evidence of P.W.1 and 2, who were introduced for the purpose of this case and it



is very doubtful whether they were present at the time of occurrence. The Trial Court failed to note that the evidence of P.W.1 and 2 would show that the appellant had the knowledge about the submersal of the coracle into the river, which is nothing, but act of God and the same cannot be a ground for convicting the appellant for the offence under Sec.304(ii) I.P.C. P.W.1 and 2 are not reliable witnesses and their evidences are contradictory. The learned counsel for appellant would further submit that the appellant no way connected with this case and he has no knowledge and nothing to do with the same. If at all, the appellant committed any offence, neither the offence raised under Section 304-A I.P.C. for the negligent act committed by the appellant nor the offence raised under Section 304(ii) I.P.C. The learned Trial Judge failed to appreciate that the evidence of P.W.1, he himself has stated that even before entering into the coracle, they saw that there was some holes in the coracle, in which water started to come inside the coracle and they questioned the same. According to P.W.2, the appellant has stated that nothing would be happened. Therefore, they can go a ride and even prior occupying the coracle, they all noted that the coracle is damaged one and because the appellant had stated that nothing would happen, they have entered into coracle. Further, P.W.2 has stated that after moving the coracle to some extent, water entered into the coracle, at that time, the appellant jumped into the river and tried to pull them into the bank of river, but all of sudden, coracle was submersed into water. Therefore, it would clearly shows that it is not intentional, it is only accidental. Hence, the offence was raised under Sec.304(ii) I.P.C. at the worst, on suspicion, they can say that the occurrence taken place due to negligence on the part of appellant. Therefore, the judgment of trial court is liable to be set aside and this appeal to be allowed.

6. The learned Government Advocate [Criminal Side] would submit that the appellant is a local man, and the deceased and family members of complainant went for feast the appellant took them to the riverside, wherein he has shown a old coracle to them and asked them to have a visit on travelling it inside the river. After seeing the coracle, P.W.1 told it seems to be very old and he thought that it is not fit to travel in it. The appellant replied that there will be no issue, they can proceed. Accordingly, P.W.1 stood in the bank of river, the appellant brought P.W.2 and other persons in the coracle and operated the same inside the river. All of sudden, water came into the coracle through the holes, during the time, deceased persons shouted and simultaneously, the coracle was submersed into the river. On seeing it, P.W.1 jumped into the river and saved P.W.2. At the time of incident, the appellant jumped from the



coracle swam and reached the bank other side of river. However, the coracle submersed into water and due to that, all fell down into water. The appellant knowing the same, he escaped even without trying to secure family members of complainant and due to that, they were submersed into the water and died. The appellant has called them for a ride inside the river and the appellant knowingly well that the coracle was not used for a long time and at the time occurrence, it was not fit to travel in it. Therefore, he is knowingly well that the coracle was not put in use, there is possibility of endanger life of people, who are using the coracle, he has committed the offence under Section 304 (ii) I.P.C. P.W.1 and 2 are the eye-witnesses. P.W. 1, who had spoken about the manner of accident and he has only safeguarded P.W.2. P.W.2 is the eye-witness of entire occurrence and he has spoken about the conversation between the appellant and family members of P.W.1 before using the coracle into the river water. Therefore, the prosecution proved this case beyond reasonable doubt, and the act committed by the appellant falls under the offence under Section 304(ii) I.P.C. The Trial Court rightly framed the charges and found the guilt of appellant for the offence under Section 304(ii) I.P.C., however, taken the case very leniently and imposed lesser punishment of 5 years Rigorous imprisonment. Hence, there is no merit in the appeal and the same is liable to be set aside.

7. Heard both sides and perused the records.

8. The case of the prosecution is that on 15.01.2017, on the invitation of one Devasagayam for the feast of newly wedded couple, P.W.1 Rajan and his family members went to Nerunjipettai and at about 03.00 p.m. the accused, who is relative of P.W.1 visited the house of Devasagayam and asked them to visit Bhavani river. On his invitation, P.W.1 and his family members went to the riverside with the appellant, wherein the appellant shown a old coracle to them and asked them to have a ride on it inside the river. After seeing the coracle, P.W. 1 told, it seems to be very old and he thought that it was not fit to travel in it. The appellant replied that there will be no issue, they can proceed. Accordingly, P.W.1 stood in the bank of river, the appellant brought P.W.2 and other family members in the coracle and operated the same inside the river. After moving the coracle to some extent, water entered into the coracle through the holes. At that time, they have shouted and simultaneously, the coracle submersed into the river. On seeing the same, P.W.1 jumped into the river and saved P.W.2. During the time, the appellant jumped from the coracle swam and reached the other side of river. Subsequently, on hearing hue and cry of P.W.1, neighbours rushed to the river and taken the dead bodies of the deceased persons. Accordingly, P.W. 1 has lodged the complaint before the



respondent police.

9. This Court, as an appellate court and as a fact finding court, it has to re-appreciate the entire evidence and to give an independent finding. In this case, the prosecution laid a charge sheet against the appellant before the learned Judicial Magistrate Court and after completion of formalities, the trial court had framed the charge under Sec.304(ii) I.P.C. In order to prove the above said charge on the side of prosecution and in order to substantiate the charge framed as above, the trial court had examined totally 21 witnesses. Out of which, P.W.1, who has spoken about the occurrence and also the complaint given before the respondent police. P.W.2 is the occurrence witness and she is one of the eye witnesses, has spoken about the occurrence. Though the other witnesses clearly spoken about the manner of occurrence and the evidence of doctor clearly shows that due to drowning into the water, deceased died. In this case, it is not in dispute that the deceased and other relatives travelled and they used the coracle, which is kept in the bank of river. According to the prosecution, the appellant is the local man and he only misguided them to use the old coracle, knowing the same that it is not in regular use and which is also damaged one. If the coracle was damaged, it would endanger to the life of person, who is using the coracle. Further, the deceased and family members, who are relatives refused to enter into the coracle, but the appellant only advised that nothing would happen and they have been advised to enter into coracle. Due to his ill-advise, they have entered into coracle. According to the defence, it is only an accident and the same due to the act of God and not by mistake of a man, especially, the appellant. Therefore, due to the water entered into the coracle, all of sudden, coracle submersed into water. Therefore, the occurrence happened due to the unexpected incident and due to the act of God and not on the act of appellant. P.W.1 said to have stated about the manner of accident. The reading of evidence of P.W.1 would show that the family members went to brother's house for the feast, since their daughter has got recently married. During the visit of brother's house, son, daughter and son-in-law went to the river side along with the appellant, wherein the appellant had shown a coracle to them and asked them to have ride on it inside the river. When they have noticed that the water is entering through hole in the coracle, shouted for help, subsequently the coracle submersed into the river. P.W.1 jumped into the river and he is able to secure only P.W.2, however, son-in-law and two of his sons submersed into the water and they died. The appellant though knowing the fact that the coracle submersed, without trying to safeguard, any person whose struggled in the river water he step down into the water and he escaped from there, swam and went to the other side



of river. P.W.2, who has stated that after they went to the river side, the appellant had shown a coracle, and while the coracle was thrown in the river little bit of water entered into the coracle, on noticing the same, they were refused to enter into the coracle. The appellant told them that nothing would happen and they can use coracle. The deceased are relatives and they were not aware of the damage of coracle. However, the appellant is a local man and who knows about the fact that the coracle was damaged one and it was not fit to travel. In view of the ill-advice, the deceased and the relatives entered into the coracle. Further, there is no intention and even the deceased and prosecution witness have also seen the coracle before enter into the same. Therefore, a reading of entire evidence, especially from the evidence of P.W.1 and 2, the offence committed by the appellant would not fall under Section 304(ii) I.P.C. However, it falls only under Sec.304-A. This Court finds that the appellant is a local man and after knowing that, the coracle was not in regular use for some time and it is damaged one, with a negligent manner, the appellant advised the deceased and her relatives to use coracle. Therefore, considering the facts and circumstances and the reading of charge itself clearly shows that the act committed by the appellant falls under Sec.304-A not under Section 304(ii) I.P.C. Therefore, as an appellate court, as a fact finding court, found not guilty of offence under Section 304(ii) I.P.C. However, this Court finds that the appellant has committed the offence under Section 304-A I.P.C. Hence, this court finds that the appellant is found not guilty for offence under Sec.304(ii) I.P.C. Therefore, sentence of five years rigorous imprisonment has been modified into two years.

10. Though the charge framed for the offence under Section 304(ii) I.P.C. and the trial court convicted the appellant and sentenced to undergo 5 years rigorous imprisonment and to pay fine of Rs.1000/-, in default, to undergo six months simple imprisonment, this Court finds from the materials on record that there is no ingredients of Section 300 I.P.C. made out and also which is punishable under Section 304 I.P.C. However, from the evidence of P.W.4, this Court finds that the appellant/accused has committed offence under Sec.304-A, since it is an accident due to negligence on the part of appellant and totally four persons died. Therefore, conviction for the offence under Sec.304(ii) is altered into Section 304-A and sentence is reduced from five years to two years under Section 304-A.

11. Since four persons died, conviction is for four counts and he is sentenced to undergo two years for each count and the said sentence of imprisonment shall run consecutively one after



another, since the appellant is found guilty, the period of imprisonment already undergone shall be set off.

12. With the above modification, this Criminal Appeal is partly allowed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

rpp

To

1. The III Addl. District and Sessions Judge,
Gobichettipalayam,
Erode District.
2. The Public Prosecutor,
High Court, Madras.
3. The Judicial Magistrate,
Sathyamangalam.
4. The Principal District & Sessions Judge,
Erode.
5. The Central Prison,
Coimbatore.
6. The Judicial Magistrate-II,
Gobichettipalayam.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.I.C.Vasudevan, Advocate, S.R.No.40200

Cr1.A. No.891 of 2019

SSV(CO)
SU(10/02/2022)