



WEB COPY

CrI.A.No.(MD)330 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.11.2021

Delivered on : 02.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.A.(MD)No.330 of 2021

and CrI.M.P.(MD)No.5432 of 2021

Nilakaran @ Selvam

... Appellant / A1

-vs-

State rep. by
The Inspector of Police,
Pasupathipalayam Police Station,
Karur District.
[Crime No.572 of 2012]

... Respondent/Complainant

Prayer:- Appeal filed under Section 374 (2) of Cr.P.C., to set aside the judgment and conviction dated 08.01.2016, passed in S.C.No.34 of 2014, by the learned Sessions Judge, Fast Track Mahila Court, Karur.

For Appellant	:	Mr.D.Rameshkumar
For Respondent	:	Mr.A.Thiruvadikumar
		Additional Public Prosecutor

JUDGMENT

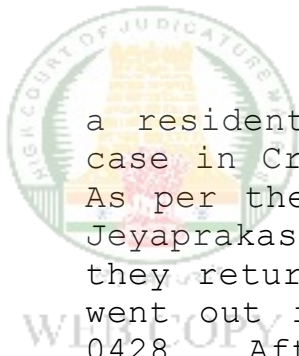
S.VAIDYANATHAN, J.
and
G.JAYACHANDRAN, J.

This Appeal by the first accused being aggrieved by the judgment of conviction and sentence passed by the learned Sessions Judge, Fast Track Mahila Court, Karur, in S.C.No.34 of 2014, dated 08.01.2016.

2.The appellant herein was sentenced to undergo life imprisonment for the offence under Section 302 of I.P.C. and pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment and also sentenced to undergo one year simple imprisonment and pay a fine of Rs.500/-, in default, to undergo two weeks simple imprisonment for the offence under Section 324 of I.P.C.

3.The case of the prosecution is that on 05.11.2012 at 21.00 hours, the Sub-Inspector of Police, Pasupathipalayam Police Station, Karur, recorded the statement of one Tamil Selvan, S/o.Ramasamy,

<https://hcservices.eprints.gov.in/hcservices>



a resident of Srilankan Refugee Camp, Rayanoor and registered a case in Crime No.572 of 2012 under Sections 307 and 302 of I.P.C. As per the statement of Tamil Selvan [P.W.1], he and his brother Jeyaprakash [deceased] are painters by profession. On 05.11.2012 they returned to home after their work. His brother Jeyaprakash went out in his Pulsar motorcycle bearing Registration No.TN-47-0428. After sometime, he returned to home with bleeding in his head. When enquired, he informed that one Suthakaran [A2], the brother of the appellant herein [A1] intercepted him near the Camp Gate and punched his head with key. To enquire about this, Tamil Selvan and his brother Jeyaprakash went to the Camp Gate, at that time, the appellant herein stabbed Tamil Selvan on his left thigh near the hip. When his brother Jeyaprakash tried to prevent the appellant causing further injury, the appellant stabbed Jeya Prakash near his private part, just above the left side thigh. On seeing this, persons who were nearby rushed and shifted them to the Hospital. Subsequently, he came to know that his brother Jeya Prakash died in the Hospital.

3.1.The investigation of the case was taken up by Rajasekaran [P.W.18]. After recording the statement of the witnesses and Observation Mahazar, he went to Karur Head Quarters Government Hospital, conducted inquest and arranged for postmortem of the deceased Jeya Prakash and arrested the appellant on 06.11.2012 at 11.00 a.m. Based on his confession statement, he recovered a knife, marked as M.O.1 under the Seizure Mahazar Ex.P.19. The appellant was remanded to judicial custody. The apparels of the appellant were seized and sent for serology test. Since the investigation also pointed out the role of Suthakaran [A2] in the said crime, on 10.11.2012 at 13.00 hours, he arrested the second accused Suthakaran and recorded his confession statement. Thereafter, the second accused was remanded to judicial custody on the same day. On completion of investigation, final report was filed against A1 and A2. The trial Court on perusal of the statements and other documents, framed the following charges against the accused persons:

Nilakaran @ Selvam [A1]:-

- (a) Under Section 307 of I.P.C. for attempt to cause death of Tamil Selvan.
- (b) Under Section 302 of I.P.C. for causing death of Jeyaprakash.

Suthakaran [A2]:-

- (a) Under Section 307 read with Section 109 of I.P.C. for abetting to cause bodily injury in his attempt to cause death of Tamil Selvan.
- (b) Under Section 302 read with Section 109 of I.P.C., for abetting A1 to cause death of Jeyaprakash.



4. When the charges were read over, the accused persons pleaded not guilty and sought for trial. Accordingly, the prosecution has marshalled 19 witnesses, marked 21 exhibits and 8 material objects. On the side of the accused persons, no witness examined.

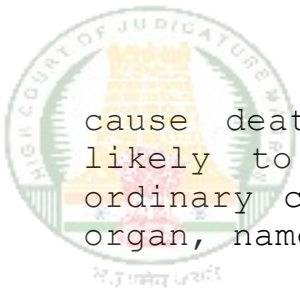
WEB COPY

5. The trial Court on appreciation of evidence found the first accused guilty of offence under Section 302 of I.P.C. for intentionally causing death of Jeyaprakash and imposed life sentence with fine of Rs.1,000/-, in default, to undergo one month simple imprisonment and altered the charge under Section 307 of I.P.C. into the offence under Section 324 of I.P.C., for causing simple injury to P.W.1, and sentenced him to undergo one year simple imprisonment and fine of Rs.500/-, in default, to undergo two weeks simple imprisonment. However, acquitted the second accused from the charges on the ground that the prosecution has failed to prove the guilt of the second accused beyond reasonable doubt. The State has not preferred any appeal against the acquittal of the second accused.

6. In the appeal filed by the first accused it is contended that the alleged motive between the accused and the victim has not been properly established by the prosecution during the course of trial. The trial Court failed to appreciate the evidence and the self-defence plea taken by the accused. In this regard, it was submitted that the trial Court ignored the fact that it was the deceased and his brother P.W.1, who are the aggressors, came to the Camp Gate, where the accused was standing and cause injury to the first accused. The injury found on the anterior left hand of the first accused has not been taken note of by the trial Court. The witnesses for the prosecution were all interested witnesses, known to P.W.1 and the deceased. Though the alleged occurrence has taken place on the Public Road, the prosecution has failed to examine independent witnesses.

7. The learned counsel for the appellant would further submit that there is discrepancies in the case of the prosecution, regarding the place and time of receiving the complaint. The alleged confession statements bristles with several infirmities. Therefore, the portion of confession leading to recover of M.O.1 has to be ignored.

8. Per contra, the learned Additional Public Prosecutor would submit that it is a case of direct evidence against the appellant, which has been spoken by the injured witness P.W.1. The injury sustained by P.W.1 as found in the wound certificate Ex.P.21 and the injury found in the body of the deceased as noted in the Postmortem Certificate Ex.P.10 are sufficient enough to hold that the appellant herein had caused the injuries with intention to



cause death and had enough knowledge that the said injury is likely to cause death and sufficient to cause death in the ordinary course of nature, since the injury was caused on vital organ, namely, near the private part.

9.The learned Additional Public Prosecutor would particularly point out the seats of injury found on the body of the deceased Jeyaprakash speaks for itself. Likewise, the injury on P.W.1 though certified as simple injury by the Doctor, the seats of injury disclose the intention of the accused that he wants to cause death of the person. The evidence of injured witness is corroborated by P.W.2 - Prakash, P.W.3 - Tamil Selvan @ Nishanthan and P.W.6 - Selvakumar, who are all inmates of the Refugee Camp and their presence at the scene of occurrence during the evening hours is natural.

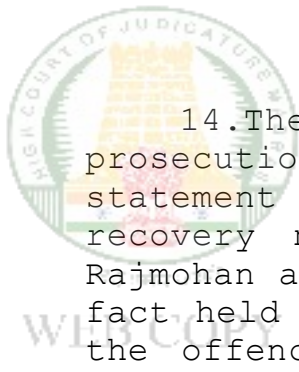
10.The learned Additional Public Prosecutor would also submit that though P.W.4 - Rajinidevi and P.W.5 - Sathyendran were treated as hostile witnesses, their evidence also corroborate the case of prosecution substantially.

11.Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent and perused the materials on record.

12.On re-assessment of the evidence, particularly, P.W.1, who is not only an eyewitness, but also an injured witness and has set the law into motion by giving statement to the respondent Police about the occurrence, we find that he and his deceased brother Jeyaprakash went to the Camp Gate to enquire the brother of the accused why he attacked Jeyaprakash and caused injury on his head. At that time, the appellant/A1 has stabbed P.W.1 first. When Jeyaprakash intervened, the first accused has also stabbed him. The injury caused to P.W.1 was superficial and simple in nature. Whereas the injury caused to the deceased Jeyaprakash was grievous in nature near his private part. The Postmortem Certificate marked as Ex.P.10 reads as below:-

''A wedge shaped stab injury 2 x 1 cm x cavity depth with clean cut margins with one sharp angle and one blunt angle present over the left mid inguinal part, which is directed inwards and medially.''

13.The final opinion of the postmortem doctor is that the deceased would have died of shock and hemorrhage due to the injury to major blood vessels. It is a case of single stab in a vital part leading to death.



14.The weapon used to cause the said injury according to the prosecution is M.O.1, which was recovered based on the confession statement of the accused person. The confession statement and recovery not been supported by the Mahazar witnesses P.W.7 - Rajmohan and P.W.8 - Ravikumar. The trial Court on considering the fact held that except P.W.6, who implicated the second accused in the offence, there is no evidence to show the presence of the second accused at the scene of crime or his instigation to commit the crime by the first accused and has rightly acquitted the second accused for want of evidence.

15.As far as the guilt of the first accused is concerned, this Court finds that in the light of the evidence given by the injured witness P.W.1 and independent witness P.W.2, it is clear that the injuries found on P.W.1 noted in the wound certificate Ex.P.21 as below:-

''cut injury 3 x 2 x 1 on the left waist''

16.The said wound is simple in nature. As per the Accident Register copy [Ex.P.21], P.W.1 was admitted in the Accident Emergency Ward on 05.11.2012 at 07.40 p.m. with the alleged history of being stabbed by two persons. The complaint from P.W.1 was recorded by P.W.17 - Prithiviraj, Sub-Inspector of Police. In the cross-examination of P.W.17, we find that he did not enquire Tamil Selvan [P.W.1] about the discrepancy in his statement to the Police marked as Ex.P.1 and the Accident Register marked as Ex.P.21. Be that as it may, according to the complaint [Ex.P.1] given by P.W.1 and his deposition, the trouble started on that day when Suthakaran intercepted Jeyaprakash while he was going in the two-wheeler. Suthakaran picked up quarrel and caused bleeding injury on his head, surprisingly, the postmortem report of Jeyaprakash does not disclose any injury on the head. The sequence of events as spoken by the witnesses P.W.1, P.W.2 and P.W.3 show that it was the deceased and P.W.1, who came to the Camp Gate to enquire about the incident happened earlier on that day. At that time, the appellant herein took up a knife kept with him and caused simple injury to P.W.1. When the deceased tried to intervene, the appellant herein has stabbed Jeyaprakash [the deceased]. From the evidence, though the injury is found to be on the vital part of the deceased and was sufficient to cause death, this Court is of the view that the sequence of events indicate that the first accused has caused injury due to grave and sudden provocation.

17.The case of the prosecution as spoken by P.W.1 is that prior to the occurrence, there was some altercation between the deceased and the second accused and in the said altercation, the second accused attacked the deceased on his head with two-wheeler key. The deceased sustained blood injury. The deceased came to



his house with bleeding injury. On seeing that, P.W.1 and the deceased went to the Refugee Camp Gate to question the second accused. At that time, the second accused instigated the first accused to stab them and kill. Therefore, to accept the prosecution case that there was prior enmity between the accused and the deceased; and the assault on the deceased was pre-meditated one, there must be some evidence to show that $\frac{1}{2}$ hour prior to the incident, there was altercation between the deceased and the second accused and in the said altercation, the deceased sustained injury on his head and there was bleeding.

18.The report of the postmortem doctor, marked as Ex.P.10, does not indicate any injury on the head of the deceased and in fact, it states that skull intact. In addition to this, the case of the prosecution as spoken by P.W.1 and P.W.2 is that the second accused instigated the first accused to attack the deceased. The trial Court after appreciating the evidence, has rightly concluded that the presence of the second accused at the time of occurrence not spoken by any other witnesses except P.W.6 and therefore, had acquitted the second accused.

19.No doubt, the evidence of P.W.1 and P.W.2 sufficiently proves the occurrence and the overt act of the first accused which caused injury on the deceased person, as found in the postmortem report. To attract the punishment under Section 302 of I.P.C., the prosecution has to prove the death of Jayaprakash was caused with an intention to cause death.

20.As far as the evidence available in the instant case, this Court finds that it is a single stab injury in the vital part of the deceased person and there is no evidence to show that it was caused with an intention to cause death, though the accused might have had the knowledge that the injury would likely to cause death.

21.In an identical set of facts, the Hon'ble Supreme Court in **Ramesh Vithalrao Thakre and another Vs. State of Maharashtra** reported in **2009 (17) SCC 438**, has held as under:-

'9. There is no denying the fact that one single injury was caused to the deceased by Ramesh when Rekha intervened to save her brother Ashok from being assaulted. The primary target of Ramesh was Ashok, who got saved when Rekha received the injury on her chest. After causing the single injury to Rekha, it is the prosecution case itself, that Ramesh did not cause any other injury to Rekha nor even to Ashok, PW 1.

10. From the evidence on the record and the established circumstances, it is not possible to say



with certainty that the appellant intended to cause the death of Rekha. Even though the principle contained in Section 301 IPC would be applicable to the case, it appears to us that the appellant can only be clothed with the knowledge that the injury which he was causing was likely to cause the death of Rekha but without any intention to cause her death or to cause such bodily injury as is likely to cause death. The offence, under the circumstances, would be one which would fall under Section 304 Pt. II IPC.''

22. Therefore, this Court holds that the offence committed by the appellant herein falls under the definition of culpable homicide not amounting to murder and punishable under Section 304 (ii) of I.P.C. As a result, the punishment of life imprisonment is set aside, instead, this Court finds the first accused guilty for the offence under Section 304(ii) of I.P.C. and he is sentenced to undergo rigorous imprisonment for a term of seven years with fine of Rs.2,000/-, in default, to undergo four months simple imprisonment. In respect of the finding of the trial Court regarding the charge under Section 307 I.P.C., attempt to commit murder of P.W.1, this Court is of the view that the trial Court has rightly appreciated the evidence available to alter the Section of law from 307 of I.P.C. to 324 of I.P.C. and sentenced to undergo one year simple imprisonment and pay a fine of Rs.500/-, in default, to undergo two weeks simple imprisonment. The said conviction and sentence imposed by the trial Court stands confirmed. The term of sentence shall run concurrently. The period of imprisonment already undergone shall stand set off under Section 428 of Cr.P.C. Accordingly, this Criminal Appeal is partly allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Smn2

To

1. The Sessions Judge,
Fast Track Mahila Court,
Karur.



2.The Judicial Magistrate No.I,
Karur.

3.The Inspector of Police,
Pasupathipalayam Police Station,
Karur District.

4.The Superintendent,
Central Prison,
Puzhal at Chennai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

6.The District Collector,
Karur.

7.The District General of Police,
Mylapur,
Chennai.

Copy to

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

Cr1.A. (MD) No.330 of 2021
02.12.2021

RK(21/12/2021) 8P 10C