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CrI.A.No.16 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI.A.No.16 of 2019

1.K.Boobalan

2.M.Praveen

... Appellants

Versus

State rep.by
Inspector of Police,
Annamalai Police Station,
Coimbatore.
Cr.No.365 of 2015

... Respondent

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the Judgment and Order of conviction passed in S.C.No.133 of 2016 dated 19.12.2018 on the file of the learned Third Additional District and Sessions Judge, Coimbatore and pray for setting aside the same.

For Appellants : Mr.B.Kumarasamy
for Mr.Balakrishnan



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For Respondent : Mr.S.Vinoth Kumar
Government Advocate (Crl.Side)

JUDGMENT

This appeal is filed aggrieved by the judgment of the III Additional District and Sessions Judge, Coimbatore in S.C.No.133 of 2016 dated 19.12.2018.

2. The case of the prosecution is that on 10.11.2015, when PW12, Maheswari, Sub-Inspector of Police was on the duty, at Anaimalai Police Station, PW1 came to the police station and lodged a complaint to the effect that he along with his friends namely, the deceased Murugan @Muruganandam and the injured witnesses, on the eve of Deepavali went to the place near Uppar River at Ondivelampalayam, near Vettaikaranpudur, Velandurai for drinking liquor, where the accused persons were already having liquor by sitting in another place and when the motorcycle belonging to them fell on the motorcycle belonging to the accused, they picked up a quarrel and they hit them by stones and coconut reef and caused injuries. The said Murugan who went along with them lay unconscious and was taken to hospital, but, however, was



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pronounced dead. On the strength of the said allegation, a case in crime No.366 of 2015 was registered for the alleged offences under Sections 294(b), 324, 307 and 302 of IPC. PW15, thereafter, completed the investigation and filed charge sheet before the learned Judicial Magistrate-I, Pollachi, who took the case in P.R.C.No.18 of 2016. As contemplated as per Section 207 of Cr.P.C., copies were furnished to the accused and the case was committed to the case of sessions, Coimbatore. Thereafter, the case was taken on file in S.C.No.133 of 2016 and was made over to the trial Court.

3. Upon considering the materials available on record, the trial Court framed the charges under Section 294(b), 307 r/w.34 IPC and 302 of IPC against the 1st accused and against the 2nd accused charges were framed under Sections 307 IPC, 302 r/w. 34 IPC. Upon being questioned the accused, denied the charges and stood trial.

4. The prosecution thereafter examined PW1 to PW15 to bring out the charges and marked Exs.P1 to P8 and also produced M.Os.1 to 10. Upon being questioned about the evidence on record and the



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incriminating circumstances under Section 313 of Cr.P.C., the accused denied the same as false. Thereafter, no evidence was let in on behalf of the defence and the trial Court therefore, proceeded to hear the learned Additional Public Prosecutor for the prosecution and the learned counsel for the accused and by the judgment dated 19.12.2018, found the 1st accused guilty for the offence under Section 304(ii) r/w. Section 34 of IPC and imposed a sentence of R.I., for a period of 5 years and to pay a compensation of Rs.50,000/- and for the offence under Section 324 r/w. 34 IPC, imposed a sentence for a period of one year and to pay a fine of Rs.1,000/-, in default to undergo S.I., for one month and for the offence under Section 294(b) of IPC, to pay a fine of Rs.500/- in default, to undergo S.I., for 1 month.

5. The 2nd accused was also convicted for the offence under Section 304(ii) r/w. Section 34 of IPC and imposed a sentence of R.I., for a period of 5 years and to pay a compensation of Rs.50,000/- and also convicted for the offence under Section 324 r/w. 34 IPC and was directed to undergo S.I., for a period of one year and to pay a fine of Rs.1,000/- and in default to undergo S.I., for a period of 1 month.



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Aggrieved by the same, the present appeal is filed before this Court.

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6. Heard the learned counsel for the appellants and the learned Government Advocate (Crl.Side) for the respondent and perused the materials available on record.

7. According to the learned counsel for the appellants, even though as per the case of the prosecution, the occurrence had taken place in a drunken condition, neither the accused submitted any medical examination nor viscera of the deceased was examined and therefore, the prosecution even though, had opportunity to prove the case, had omitted to investigate and prove its own allegations and therefore, the prosecution even failed to discharge its primary onus.

8. The learned counsel for the appellants/accused 1 and 2 also submit that M.Os., which are produced and the manner in which it is said to have been recovered are absolutely artificial as recovered objects did not contain blood stains. The evidence of recovery witnesses are contradictory and therefore, the entire M.Os., produced by the



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prosecution in the nature of the stone and coconut reef etc., are absolutely artificial and unbelievable.

9. The learned counsel for the appellants would further submit that the time of arrest and the manner of the arrest of the accused are doubtful. The evidence of the Investigating Officer and concerned Mahazar witnesses are contradictory. Further, the evidence of PW1 informant and other injured witnesses are in contradiction in respect of of the material particulars as to the exact scene of occurrence. Therefore, the prosecution case is doubtful. The prosecution in this case did not conduct any test identification parade and since the defacto complainant as well as injured witnesses have agreed in the cross-examination that they did not know the address or other particulars of the accused and this would clearly show that defence has demonstrated that PWs., did not know both the accused prior to the occurrence and therefore, in the absence of any identification parade, merely based on the identification before the Court, the accused cannot be convicted.

10. Per contra, the learned Government Advocate (Crl.Side) would



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submit that this is a case where the prosecution has proved the charges to the hilt. PW1 and the two injured witnesses PW2 and PW4 have clearly and categorically spoken about the incident. The case of the prosecution is corroborated by the other evidence available on record. The post-mortem certificate in respect of the deceased person and the wound certificate in respect of the other accused are before this Court.

11. The evidence of the prosecution right from the complaint being given soon after the incident clearly and categorically prove the case. When the case rests on clear eye witnesses and when the defence not elicited in the cross-examination of the eye witnesses or injured witnesses any answer favourable to them or there is absolutely no ground to interfere with the findings of the trial Court.

12. A consideration of the various arguments made by the learned counsel for the appellants, I am of the view that those are in the nature of finding fault with the investigation process and the minor contradictions and inconsistency in the case of the prosecution. It is a settled law that merely because there are minor discrepancies and defects in the



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investigation, the same are not points for acquittal. In this case, the trial Court after taking into consideration that the victim and the accused drinking alcohol, even though the accused were charged for the offence under Sections 302 and 307 rightly convicted the accused for the offence under Sections 304(ii) and 324 of IPC, considering the drunken brawl.

13. The trial Court had considered the evidence of PW1, PW2 and PW4 and has rightly come to a conclusion that the appellants are guilty of the offences. Therefore, I am of the view that the arguments of the learned counsel for the appellants that non-production of viscera report and contradiction in the evidence regarding production of M.Os., and the minor contradictions in the manner of arrest etc., will not come to the aid of the appellants in turning the finding of guilty as one of acquittal.

14. As far as the identification parade is concerned, the evidence of PW1, PW2 and PW4 is clearly and categorically that they knew the accused and both groups have been playing cricket. It is only natural for the said witnesses, considering the age, the accused as well as victim would have know each other by their names alone while not knowing



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other particulars, as they used to play cricket. Therefore, I reject the submissions made by the learned counsel for the appellants.

15. Now, considering the sentence, the trial Court considering the nature and circumstances of the case, imposed a maximum sentence of 5 years R.I. In this regard, the learned counsel for the appellants would submit that admittedly, in this case, the accused and his friends and the defacto complainant including the deceased and his friends are youngsters playing cricket. Admittedly, both groups were drinking alcohol on the eve of Deepavali. Even as per the case of the prosecution, the sudden quarrel arose in drunken state of affairs of both sides, on account of the vehicle of the accused being pulled down by the complainant's side. There were three accused, in the case of which, one is juvenile and therefore, the case was split-up and sent under the Juvenile Justice Act. As far as the present appellants are concerned, they were aged 21 and 22 years respectively, at the time of occurrence. Since after the occurrence in the year 2016, the appellants have no other antecedents. They have proper avocation as both are working as School Bus drivers and are law abiding citizens. Pending investigation, they



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were arrested and they were in jail about 60 days and post conviction, they were in jail for about 7 months. Therefore, the learned counsel for the appellants relied upon the two judgments of this Court. In a judgment in Crl.A.No.260 of 2002 dated 08.02.2010 in the case of ***Munusamy v. State by Inspector of Police***, in which, the learned Judge of this Court after considering the judgment of the Hon'ble Supreme Court of India in this regard, considered the fact that when the young offenders are involved in the offences, sending them to prison to few years would only spoil them and has considered releasing them on good conduct as otherwise the young offenders will become professional criminals and thereafter, menace to the society. Therefore, ordered the accused to be released under the provisions of Probation of Offenders Act, for a similar offence under Section 304(ii) IPC, which again on a sudden provocation, the accused stabbed the deceased. It is useful to extract the paragraph Nos.15 to 21 of the said judgment.

"15. Regarding the sentence imposed on the appellants-accused, learned counsel for the appellants-accused would focus mainly upon the fact that A.1 is 65 years old and A.2 is married and having children and since there was no pre-plan and the occurrence has taken



place out of sudden provocation in respect of a petty quarrel with regard to theft of cock/hen, the period of sentence already undergone by the appellants-A.1 and A.2 is sufficient. He relied on the decision of a Gauhati High Court reported in 2007 Cri.L.J. (NOC) 863 (GAU.) (Manir Ali Vs. State of Assam), wherein, it was held as follows:

" Accused found guilty of offence under S.304, Part II-- Accused an young person of 35 years at time of commission of offence and he is the only earning member of his poor family-- Accused has already served his sentence more than 2-1/2 years and was also in confinement as under-trial prisoner for more than six months--On facts and circumstances, sentence of 5 years imposed upon him commuted to period already undergone."

16. In the said case (2007 Cri.L.J. (NOC) 863 (GAU.)), the Court has awarded five years' imprisonment and the accused has already undergone 2-1/2 years and considering the age of the accused, the High Court of Gauhati, came to the conclusion that the period of imprisonment already undergone by the accused is sufficient. It is seen that on the date when the judgment of conviction was passed, initially A.1 was arrested and remanded on 27.9.1999 and enlarged on bail on 2.11.1999. Likewise, A.2 was arrested on 4.8.1999 and enlarged on bail on 26.10.1999. So, A.1 and A.2 have not even completed six months' imprisonment. In the circumstances, the above decision is not applicable to the



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facts of the present case.

17. Learned counsel for the appellants-accused also relied upon the decision of the Supreme Court reported in 1999 S.C.C. (Cri) 1046 (State of Karnataka Vs. Muddappa), in which it was held as follows:

"2. The learned counsel for the appellant is not in a position to assail the acquittal of the accused under Section 302 IPC, but he vehemently contends that the Court did not bear in mind germane considerations for releasing the accused on probation after convicting him under Section 304 Part II IPC. Whether the benefit of the Probation of Offenders Act could be extended in any particular case depends upon the circumstances of that case. Admittedly, there is no statutory bar for application of the Act to an offence under Section 304 Part II where the maximum punishment is neither death nor imprisonment for life. In that view of the matter and on examining the impugned judgment of the High Court, we find that the Court did consider the relevant material and then came to the conclusion that the accused should be released on probation by applying the provisions of Section 4 of the Probation of Offenders Act. We see no infirmity with that order to be interfered with by this Court after this length of time, more so when nothing has been pointed out as to whether the accused has, in any way, violated the terms and conditions of allowing him on probation."

18. Relying on the said decision (1999 S.C.C. (Cri) 1046), learned counsel for the appellants-accused submitted that the benefit of Section 4 of the Probation of Offenders Act could be extended in any particular case depending upon the facts and circumstances of that case.

19. Learned counsel for the appellants-accused also relied upon the decision of the Supreme Court



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reported in 1976 Cri.L.J. 1987(1) (Musakhan and others Vs. State of Maharashtra), wherein, it was held as follows:

"7. The Probation of Offenders Act is a social legislation which is meant to reform juvenile offenders so as to prevent them from becoming hardened criminals by providing an educative and reformative treatment to them by the Government. Unfortunately, though the provisions of Section 6 of the Probation of Offenders Act are mandatory, the Courts do not appear to make wise use of these provisions which is necessary to protect our younger generation from becoming professional criminals, and, therefore, a menace to the society."

20. Relying on the said decision (1976 Cri.L.J. 1987(1)), learned counsel for the appellants-accused submits that the Probation of Offenders Act is a social legislation which is meant to reform the offenders so as to prevent them from becoming hardened criminals by providing reformative treatment to them by the Government.

21. While considering the circumstances of the present case, due to petty quarrel in respect of theft of cock/hen, out of sudden provocation, the occurrence has taken place. There is no bad antecedent against the appellants-accused and even after they have been convicted for the offences and enlarged on bail, there is no complaint of any offence. In such circumstances, I am of the opinion that the appellants/A.1 and A.2 are entitled



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to be given the benefit of Section 4 of the Probation of Offenders Act."

16. The learned counsel for the appellants again relied upon the judgment of another learned Judge of this Court in Crl.A.No.607 of 2011 dated 20.07.2018 in the case of ***Murugan @ Murugavel vs. The State by the Inspector of Police***, in which, again the very same judgments were relied upon and in respect of the offence under Section 304 (ii) IPC, under similar circumstances, the learned Judge released the appellant under the Probation of Offenders Act.

17. Per contra, the learned Government Advocate (Crl.Side) relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***State of Rajasthan vs. Banwari Lal and Another*** reported in ***2022 SCC OnLine SC 428***, in which, the Hon'ble Supreme Court had deprecated the practice of the High Courts reducing the punishment as per the period undergone.

18. I have considered the rival submissions made by both sides. As



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far as the judgment of the Hon'ble Supreme Court is concerned, it is relating to the quantum of sentence imposed, which only holds that the High Court cannot mechanically reduce the sentence to the period undergone and it does not relate to applying the Probation of Offenders Act.

19. On the other hand, I am of the view that the above two judgments of this Court, produced by the learned counsel for the appellants, deal with the question of releasing the appellants under the Probation of Offenders Act. In the said two judgments, this Court considered the age of the accused and was also concerned with the very same offence under Section 304(ii) IPC and that there was no previous enmity between the parties and the entire sequence of events arising out on the conduct of both sides and escalating and thereby leading to the occurrence and in such cases, while the similarity of offences are also taken into account, the other factor namely keeping the young offender, who is otherwise leading a livelihood by proper profession, in prison for a period of 5 years etc., would also result in spoiling the young offender into professional criminal.



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20. Therefore, in this case, I have considered the following factors:

i) The appellants have no other case, this is the first and only occurrence as against them.

ii) The incident happened because of both sides consumed alcohol and the accused were aged 21 and 22 years respectively.

iii) Both the accused are working as School Bus drivers and are making proper livelihood by proper profession. The trial Court has ordered to pay a compensation of Rs.50,000/- each to the family of the deceased and they have already paid the same and before this Court, they have also undertaken to pay a further compensation of Rs.1,50,000/- each which can be paid to the family of the deceased.

21. Considering all the above circumstances, I am of the view that while upholding the conviction, the appellants can be released under Section 4 of the Probation of Offenders Act.

22. Therefore, I uphold the judgment of the learned III Additional District and Sessions Judge, Coimbatore, dated 19.12.2018 in S.C.No.133 of 2016, inasmuch as it relates to the conviction of the



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appellants/accused 1 and 2 for the offence under Sections 294(b), 304(ii) and 324 of IPC.

23. Instead of sentencing, the appellants/A.1 and A.2 are released on probation of good conduct for a period of two years and in the meantime, they shall maintain peace, be of good behaviour and shall appear and receive sentence if they violate the bond during such period. The appellants/A.1 and A.2 each shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties each for a likesum to the satisfaction of the trial Court. Both the accused shall also deposit a sum of Rs.1,50,000/- each, within a period of 8 weeks from the date of receipt of a copy of this judgment. Already a sum of Rs.1,00,000/- was paid before the trial Court, another sum of Rs.3,00,000/- will be deposited by the appellants/accused 1 and 2 totally.

24. The entire sum of Rs.4,00,000/- shall be paid out as compensation to the family of the deceased victim by the trial Court after due verification within a period of four weeks from the date of deposit.



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25. It is also made clear that no further extension of time will be granted for depositing the amounts and if the appellants/accused 1 and 2 failed to deposit the said amount within time, as stated above, the respondent/police is directed to bring the matter to the notice of this Court upon which, this Court will again reconsider the question of sentence.

26. In fine,

(a) the Criminal Appeal is partly allowed;

(b) The conviction of the 1st appellant/A1 for the offence under Sections 304(ii) r/w. Section 34 IPC, 324 r/w. Section 34 IPC and 294(b) of IPC are confirmed;

(c) The conviction of the 2nd appellant/A2 for the offence under Sections 304(ii) r/w. Section 34 IPC, 324 r/w. Section 34 IPC are confirmed;

(d) As the appellants/A.1 and A.2 are entitled to be given the benefit of Section 4 of the Probation of Offenders Act, the sentence imposed on the first appellant/A.1 for the offence under Sections 304(ii) r/w. 34 IPC and 324 r/w.34 IPC and 294(b) IPC and the sentence imposed on the second appellant/A.2 for the offence under Sections



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304(ii) r/w. 34 IPC and 324 r/w.34 IPC are set aside;

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(e) the appellants shall execute a bond before the trial Court undertaking that they will not involve in any other offence whatsoever for a period of two years and further undertaking that they will appear before this Court to take the sentence if they violate the bond;

(f) the accused shall deposit a sum of Rs.1,50,000/- each within a period of 8 weeks from the date of receipt of a copy of the order;

(g) on such deposit, the said sum of Rs.3,00,000/- and the sum of Rs.1,00,000/- already deposited in all totalling to Rs.4,00,000/- shall be paid to the family member(s) of the deceased victim Murugan, by the Trial Court.

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Index : Yes / No

Speaking Order : Yes / No

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D.BHARATHA CHAKRAVARTHY, J.,

ssn

To

1. The III Additional District and Sessions Judge,
Coimbatore.
2. The Inspector of Police,
Annamalai Police Station,
Coimbatore.
3. The Public Prosecutor,
High Court of Madras.

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