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CrI.A.No.32 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.11.2022

PRONOUNCED ON: 02.12.2022

CORAM

THE HONOURABLE MR. JUSTICE **P.N.PRAKASH**

AND

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

CrI.A.No.32 of 2020
and CrI.M.P.No.15035 of 2022

Anand

.. Appellant/sole accused

Vs.

The State Rep. By
The Inspector of Police,
K-10, Koyambedu Police Station,
Chennai.
(Crime No.1053 of 2016)

.. Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, praying to set aside the judgment of conviction and sentence awarded by the learned XVIII Additional Sessions Judge, Chennai, in S.C.No.217 of 2017 dated 29.11.2019.

For Appellant : Mr.K.Thenrajan

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor

JUDGMENT



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WEB CO **RMT.TEEKAA RAMAN, J.**

The convicted sole accused is the appellant herein.

2. This appeal is filed against the judgment dated 29.11.2019 passed in S.C.No.217 of 2017 on the file of the learned XVIII Additional Sessions Judge, Chennai, wherein the appellant/accused was convicted for the offence punishable under Section 302 of IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo one year rigorous imprisonment.

3. Short facts leading to the filing of the appeal, are as follows:

(i) The deceased Kannan and PW1-Kaliamurthy, are brothers staying in Koyembedu market and working as Coolie for the past 20 years. The deceased Kannan and his friends, who were working as coolie in the Koyambedu market were in the habit of teasing the accused regularly which developed enmity between the accused and deceased Kannan.



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(ii) The criminal law was set into motion on 06.10.2016 when the said Kaliyamurthy [PW1] came and lodged Ex.P1-complaint alleging that somebody has stabbed his brother Kannan (deceased) in his neck with the empty beer bottle near Shop No.95 in the Koyambedu Market.

(iii) PW12-V.Sampath, the Investigation Officer, received the complaint and registered the FIR in Cr.No.1053 of 2016 [Ex.P13] for the offence under Section 302 of IPC. Thereafter, on 06.10.2016 night at 23.45 hours, he went to the scene of occurrence and prepared Observation Mahazar [Ex.P2] and Rough sketch [Ex.P14] in the presence of witnesses Selvaraj and PW4-Ilaiya Perumal and at 00.20 hours on 07.10.2016 recovered broken liquor bottle four pieces and blood stained sharp edged broken bottle piece under the cover of mahazar [Ex.P4] in the presence of same witnesses and thereafter at about 00.40 hours, he recovered Kadapa stone piece without blood stain and with blood stain under cover of mahazar [Ex.P3] in the presence of same witnesses and also examined the witnesses viz., PW1-Kaliyamurthy, PW2-Palaniyandi, Manivel, PW3-Murugesan@Justin, Selvaraj, PW4-Ilaiyaperumal and recorded their statements separately and prepared the inquest report [Ex.P15] before the panchayatdars viz., Manikandan, Veeramani, Guna,



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Ramachandran, Pachaimuthu and arrested the accused under the bridge of Padi Mullai Nagar on 07.10.2016 at about 12.30 hours and took the accused to the Stanley Medical College for treating the injury in his leg, brought him to the station and remanded him to judicial custody and recorded the voluntary confession statement of the accused in the presence of PW5-Paramasivam and PW6-Selvaraj. The witnesses PW1-Kaliyamurthy and PW2-Palaniandi identified the accused in the police station and thereafter, PW12 examined the said witnesses and recorded their statements.

(iv) Meanwhile, PW12 the investigation officer also sent the dead body of the deceased Kannan with requisition through SI Sundaram [PW7] for postmortem and after postmortem, handed over the body of the deceased to his wife Selvi, recovered the clothes from the dead body under Form-95 [Ex.P16] and sent the clothes for chemical analysis.

(v) Later PW12, sent the case properties under Form 95 [Ex.P17] to Court and thereafter sent the Material Objects Kadapa stones with blood stain and without blood stain M.O.3 and M.O.4, respectively under Form 95 [Ex.P18] to the Court and the broken liquor bottle pieces (4 nos)



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and the broken liquor blood stained bottle with front sharp edged is

M.O.1 and thereafter examined the Special Sub Inspector and recorded his statement and further examined Dr.Manikandaraj [PW8] and recorded his statement and received the postmortem report Ex.P9 and examined the chemical analysis expert and received the reports which were already marked as Ex.P10 and Ex.P11. Thereafter, on his transfer to K7 Police Station, PW12 had placed the case records before his successor PW13-Azhagu, for further investigation.

(vi) Further PW13-Azhagu, had taken the case relating to K10 Koyambedu Police under Crl.No.1053/2017 for further investigation and the above case was already investigated by P.W.12 and he had perused the case records and since the serology report was sent to the V Metropolitan Magistrate by the Forensic Science Department, had made a requisition to the V Metropolitan Magistrate and the serology reports sent to the Court is Ex.P22 and Ex.P23 and the covering letter of V Metropolitan Magistrate is Ex.P21 and filed the final report against the accused under Section 302 I.P.C and the chemical analysis reports viz., Ex.P19 and Ex.P20 were received by the Court directly.

(vii) The final report was taken on file as PRC No.27 of 2017 and



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on committal, numbered as S.C.No.217 of 2017. Charge was framed under Section 302 of IPC against the accused and he denied the charge and claims to be tried and accordingly, during the trial, the prosecution examined PW1 to PW13 and marked Ex.P1 to Ex.P23 besides material objects M.O.1 to M.O.8. No witness was examined from the side of the accused nor any document marked.

(viii) The learned XVIII Additional Sessions Judge, Chennai on consideration has held that charges are proved and laid the conviction as stated in paragraph No.2 of the judgment and hence, the appeal.

4. The learned counsel for the appellant/accused would contend that the evidence of PW1 is not a trustworthy. The projected eyewitness PW3 is not an eye witness and no identification parade was conducted in the manner known to law and sought for acquittal.

5. Heard the learned Additional Public Prosecutor, appearing on behalf of the respondent police and perused the materials available on record.



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6. The case of the prosecution was that the deceased Kannan and others in Koyambedu Market used to tease the appellant/accused and on 06.10.2016 at about 21.30 hours, the deceased Kannan teased the appellant/accused and due to sudden provocation, the appellant/accused took empty liquor bottle from the road and broke the same and stabbed the deceased Kannan in his neck, who sustained grievous injury and died. Based on the complaint given by the brother of the deceased Kaliamurthy [P.W.1], the respondent police registered a case in Crime No.1053 of 2016 for the offence under Section 302 I.P.C.

7. The case of the defence is one of total denial. PW1 is the defacto complainant and PW2 is the occurrence witness. PW3 is the direct eyewitness and has identified the accused. The evidence of PW3 regarding the attack of the appellant/accused with the M.O.1, is clear and cogent and duly corroborated by the medical evidence, with regard to time, place and date of occurrence and the manner in which the occurrence had taken place. Though the confession statement has been recorded, in view of the direct eye witnesses PW2 and PW3, the same need not be gone into.



8. Ex.P4 and Ex.P3 are seizure mahazars for the recovery of M.O.1 broken bottle, M.O.2, bottle pieces without blood stain, M.O.3, Kadappa stone without blood, M.O.4, Kadappa stone with blood, collected from the scene of crime, while M.O.5 to M.O.8 are the clothes collected from the body of the deceased. Based upon the requisition made by the police, PW8-Dr.Manikandaraj has conducted the post mortem and issued Ex.P9-Postmortem certificate.

9. The postmortem certificate of the deceased [Ex.P9] discloses ante-mortem injury on the body of the deceased Kannan and the injuries are as follows:-

i) Reddish Brown abrasion of 1cmx1cm over the front of upper 1/3 of the chin.

ii) incised wound of 1.5cmx0.5cmxskin deep, horizontally placed over the front of centre of upper 1/3 of the neck.

iii) Incised wound of 1.5cmx0.5cmxskin deep, obliquely placed over the lower 1/3 of right side of the neck.

iv) stab wound of 4.5cmx2cmxcavity deep. obliquely placed over the lower 1/3 of left side of the neck, cutting across the left jugular vein, left side sterno cleido mastoid muscle and the intima (Horizontal tear) of the left carotid artery. The upper border is 8cm to the left ramus of the mandible. The lower border is 3 cm to the middle 1/3 of left clavicle. Right border is 3 cm to the midline and the left border is 4 cm to the lateral end of left clavicle.



v) Stab wound of 6cmx3cmxcavity deep (Penetrating into the lumen of the trachea) over the front of centre of lower 1/3 of the neck. Pinkish frothy fluid oozing out from the open stab wound. The upper border is 6 cm to the chin (Psymphysis Menti). The lower border is 5cm to the supra sternal notch. The right border is 8cm to the middle 1/3 of right clavicle and left border is 8cm to the middle 1/3 of left clavicle.

vi) stab wounds of 1.5cmx0.5cmxskin deep, 1cmx0.5cmxskin deep placed horizontally over the middle 1/3 of left side of the neck close to the midline.

10. From the postmortem certificate, it could be seen that the deceased has sustained incised wound and stab wound on the neck which were skin deep and cavity deep and the same had damaged the left jugular vein and sterno cleido mastoid muscle and the intima (Horizontal tear) of the left carotid artery resulting in the death of the deceased. The prosecution case is that the deceased was stabbed by the accused using a empty broken liquor bottle on the neck.

11. M.O.1 is the empty broken liquor bottle with blood stains marked through P.W.1 and identified by the seizure mahazar witnesses. The injury and the object corroborated with each other.

12. P.W.8 the postmortem doctor was cross examined by the



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defence counsel putting a suggestion that the stab injury and the incised wound could not have been suffered at the same time for which the doctor had stated that it can be answered taking into consideration the object in which the injured is stabbed. On perusal of Ex.P9 the postmortem certificate, it does not reveal any other injuries on the body of the deceased except the injuries found on the chin and neck area.

13. Therefore, based upon the medical evidence of Dr-PW8 and Ex.P9-post mortem certificate issued by him, the trial Court has rightly come to the conclusion that M.O.1 was used as a weapon for crime for stabbing the neck of the deceased and the death of Kannan was due to homicidal violence.

14. Ex.P1-complaint given by PW1 was at about 23.00 hours on 06.10.2016, based upon which Ex.P13-FIR was registered and the express FIR has reached the learned Magistrate on the early hours of 07.10.2016 viz., 7.00 hours, in the residence of the Magistrate.

15. After going through the evidence of defacto complaint [PW1], it is clear that he saw the accused running from the scene of crime and his



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brother Kannan with stabbed injury on his neck covering the same with a towel ran crossing them shouting “குத்தி விட்டார்கள், குத்தி விட்டார்கள்” and sat in front of the Shop No.95, fell down and died. The PW2, who is projected as an occurrence witness has clearly stated that the deceased has stated that one person has stabbed him in the neck and removed the towel around the neck and showed his injury. When he was questioned as to who has stabbed him, they saw the accused running from the scene and the deceased fell down and died.

16. PW3 is the direct eye witness who is doing vegetable business in Shop No.106, Koyambedu Market and also know the PW2. He has clearly narrated that when he was speaking to one Manivel while taking tea, he saw the accused breaking a bottle and stabbing the deceased on his neck and he had witnessed the incident directly. When he tried to restrain the accused, he criminally intimidated him with the broken bottle that he would stab him also and so saying, the accused ran away from the scene. The evidence of PW3 in the cross examination remains unshaken.

17. Thus, in view of the clear and cogent evidence of PW2 and PW3, the trial Court has rightly come to the conclusion that both PW2



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and PW3 are direct eyewitnesses who are all third party not related to the deceased and hence, has relied upon the direct evidence of PW2 and PW3 and held that the charge against the appellant/accused is proved beyond reasonable doubt.

18. Though the learned counsel for the appellant/accused contended that the evidence of PW3 is unreliable, after going through the chief and cross examination of PW2 and PW3, we have no hesitation to negative the said contention. The medical evidence as well as forensic science reports viz., Ex.P10 and Ex.P11, and the evidence of PW3, clearly demonstrate the use of M.O.1 as the weapon of crime. The other aspects of investigation, arrest of the accused, confession statement, and seizure of the material objects viz., M.O.5 to M.O.8 based upon confession statement, are all found to be intact. M.O.1 to M.O.4, clearly corroborates the scene of crime and hence, we are of the considered view that the findings rendered by the trial Court that the prosecution has proved the charges beyond reasonable doubt is well considered and well merited and does not warrant any interference at this appellate stage.

19. The prosecution has proved their case through the eye witnesses and the appellant/accused was seen stabbing the deceased on



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his neck with the empty liquor bottle and the accused fled from the scene of crime and the evidence of occurrence witnesses are clear and cogent which shows that the injured deceased was bleeding without any help. Thus, the motive of the accused is to cause bodily injury knowing that it is likely to cause death and therefore, the sentence awarded by the trial Court of life imprisonment, cannot be said to be exorbitant. Further, as the prosecution has also proved and established the intention behind the accused in terminating the deceased beyond reasonable doubt, the sentence awarded by the trial Court viz., life imprisonment, cannot be termed to be excessive. Accordingly, we hold that the order of conviction and sentence laid by the trial Court is just and proper.

20. In the result, it is ordered as follows:

(i) This Criminal Appeal No.32 of 2020 stands dismissed. The conviction and sentenced awarded by the learned XVIII Additional Sessions Judge, Chennai, in S.C.No.217 of 2017 dated 29.11.2019, is confirmed.

(ii) Since the appellant/accused is on bail, the trial Court shall take steps to secure the appellant/Accused to



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commit him in prison to serve out the remaining period of sentence.

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(iii) The period of sentence already undergone by the appellant/accused, shall be set off under Section 428 of the Code of Criminal Procedure.

(iv) Consequently, the Crl.M.P.No.15035 of 2022 stands closed.

(P.N.P.,J.) (TKRJ)
02.12.2022

Index:Yes/No
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To

1. The XVIII Additional Session Judge,
Chennai.
2. Inspector of Police,
K-10 Koyambedu Police Station, Chennai.
3. The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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P.N.PRAKASH, J.
and

RMT.TEEKAA RAMAN, J.

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Pre-delivery Judgment made in
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02.12.2022