



BSIL SLIP

The Petitioners / Accused Viz., (1)Rajasekar, S/o.Appadurai, (2)Suresh, S/o.Appadurai were released on bail as per Order of this Court dated 18.11.2020 in Crl.M.P.No.5110/2020 in Crl.A.NO.336 of 2020 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.03.2022
PRONOUNCED ON : 12.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.A.NO.336 OF 2020

1.Rajasekar

2.Suresh

...Appellants / Accused 1 & 2

Vs.

State Rep. by the Inspector of Police,
Nagarasampatti Police Station,
Krishnagiri District
(Cr.No.134 of 2018)

...Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the judgment of conviction and sentence imposed upon the appellants by the learned Additional Sessions Judge, Krishnagiri, Krishnagiri District, in S.C.No.75 of 2019 dated 18.08.2020.

For Appellants : Mr.V.Karthic,
Senior Advocate
for Mr.E.Kannadasan

For Respondent : Mr.Leonard Arul Joseph Selvam,
Government Advocate(crl.side)

J U D G M E N T

The present appeal has been filed by the appellants / accused 1 & 2 against the judgment of conviction and sentence imposed upon them by the learned Additional Sessions Judge, Krishnagiri, Krishnagiri District, in S.C.No.75 of 2019 dated 18.08.2020.

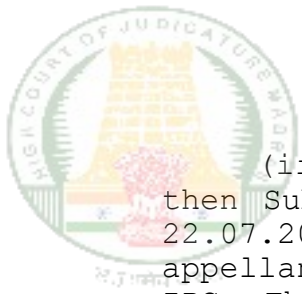


2. The appellants herein are arrayed as accused No.1 & 2 respectively in the above referred sessions case. They stood charged for the offence punishable under Section 302 r/w 34 of IPC. After a full fledged trial, the learned Additional Sessions Judge, Krishnagiri found the appellants / accused 1 & 2 guilty under Section 304 (ii) r/w 34 of IPC. Accordingly, they were convicted and sentenced to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.25,000/- each, in default to undergo 6 months simple imprisonment, further ordered to return the fine amount to the wife of the deceased as compensation under Section 357(1) of Cr.P.C.

3. Challenging the said conviction and sentence, the accused 1 & 2 are before this Court with the present criminal appeal.

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

(i) On 22.07.2018 at about 11.15 a.m., when at the time P.W.3-Palani and the deceased Chakkravarthi while going near Kollapuri Mariamman Temple, both of them were conversing with each other. During such time, at Thirumurthy coconut grove, the workers were peeling off the coconut with the help of crowbar and at the same time, the accused-Rajasekar(A1) was digging up the soil from the land of Appadurai. The said Appadurai is none other than the younger brother of the deceased Chakkravarthi and the accused Rajasekar and Suresh are the sons of the said Appadurai. On seeing the same, the deceased told to A1 that there was some dispute in respect to the land wherein the first accused dug the soil. After hearing the same, the first accused got angry and scolded Chakkravarthi in filthy language, further called his brother Suresh(A2) over phone and later both the accused have beaten the Chakkravarthi with coconut bat (nj';fha; kl;il) and they chased him. While at the time the deceased got afraid by the act of the accused, he attempted to run to the land of Thirumurthy-P.W.4. In this occasion, both the accused chased the deceased and pushed him on the crowbar. After seeing the same that the deceased was fallen on the crowbar, the first accused requested the P.W.5 to bring his tata sumo car and later they lifted the deceased from the crowbar and boarded him on the tata sumo car. Thereafter all of them took the deceased to the hospital, wherein P.W.3-Palani intimated the incident to the wife of the deceased and P.W.7-Arunadevi, who is the daughter of the deceased. In the meantime, P.W.1-Prabu came there, he also saw the occurrence and thereafter he along with P.W.3 followed the tata sumo car in a two wheeler. Afterwards, the deceased was admitted in TCR hospital and later referred to Government Hospital, Krishnagiri, wherein the deceased was declared dead. Thereafter, P.W.1 lodged a complaint under Ex.P1 before the respondent police.



(ii) On receipt of the complaint, P.W.16-Govindharajan, the then Sub Inspector of Police, Nagarasampatti Police Station, on 22.07.2018 at 15.00 hrs, registered a case as against the appellants/accused in crime No.134 of 2018 under Section 302 of IPC. The printed F.I.R. is marked as Ex.P10. After registering the case, he forwarded the copy of the F.I.R. to the Inspector of Police for investigation.

(iii) On receipt of the copy of the F.I.R. from P.W.16, P.W.18-Kabilan, the then Inspector of Police took the same for investigation. On the same day around 5.00 p.m., he went to the place of occurrence and in the presence of P.W.11-Suresh and one, Madhan-P.W.9, he prepared an observation mahazar under Ex.P3. He drawn rough sketch under Ex.P11. He made arrangements for taking photographs in the occurrence place by utilising the service of P.W.10-Manikandan. Five photographs taken at different angles were marked as M.O.2 series and C.D. pertains to the said photos was marked as M.O.3. In the presence of the same witnesses, P.W.18 recovered a blood stained cloth and sample soil from the occurrence place and marked the same as M.O.4 and M.O.5. Further he recovered five dry raw coconut with blood stains under the cover of seizure mahazar (Ex.P4).

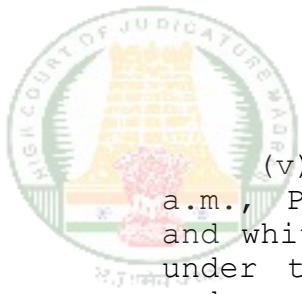
(iv) In continuation of the investigation, on 23.07.2018 at 7.15 a.m., P.W.18 went to the Krishnagiri Government Hospital and conducted inquest on the body of the Chakkravarthi and prepared inquest report under Ex.P12. After completing the process of inquest, he sent the dead body for postmortem through Head Constable-P.W.17 with Ex.P5-requisition letter for postmortem. Thereafter, on the said day around 11.30 a.m., after receipt of the requisition letter given by P.W.18, P.W.12-Dr.Prasanth attached with Krishnagiri Government Hospital conducted postmortem over the dead body of the deceased Chakkravarthi and found the following injuries:

1) Laceration in left side of chest 3x1x18 cm in between left 9th and 10th rib. 3cm medial to the anterior axillary line.

2) Depth of wound is 18 cm

Lung laceration in the left lower lobe size 3x3x3 cm through and through laceration. 9th rib fractured. 500 ml clotted blood in thoracic cavity.

During postmortem, he collected visceral particles and forwarded the same for chemical analysis. In the chemical analysis, it was found that there was no alcohol or other poisonous substance in the body of the deceased. Therefore after receiving the visceral report, P.W.18 issued a final report saying that the deceased would have died due to haemorrhage shock and due to the penetrated injury / solid viscera injury (heart / lung / ribs). The postmortem certificate along with the final opinion issued by the doctor was marked as Ex.P7.



(v) On continuation of investigation on 23.07.2018 at 10.45 a.m., P.W.18 recovered the half sleeve shirt with blue, green and white cross stripes with blood stains from Thirumurthy-P.W.4 under the cover of mahazar(Ex.P13). He examined the witnesses and recorded their statements. On the same day in Velampatty-Kaveripattanam road near Thalipathy Thenpennai river bridge, he arrested both the accused and on enquiry, they admitted the commission of offence. The said confession statement given by the accused was recorded by P.W.18 in the presence of P.W.13-Boopathi and his assistant Kannan. The admitted portion of the confession statement given by both the accused is marked as Ex.P14. Ultimately, both the accused brought the investigation team to the residence of A2 and produced the blood stained shirt, lungi and crowbar which were hidden in the cow shed. In the presence of same witnesses, P.W.18 recovered those material objects under the cover of mahazar Ex.P9. Further the properties recovered were marked as M.O.7 to M.O.14. After recovering the material objects as above, the investigation officer made arrangements for sending the accused to the judicial custody. Further, the blood stained dress worn by the deceased has also been recovered by the investigation officer under the cover of mahazar Ex.P18. After collecting those material objects, he forwarded the same to the jurisdictional court and submitted an application for sending the same for chemical examination. After receipt of chemical examination reports and serology report under Ex.P22 to Ex.P24, he examined the chemical examiner and recorded his statement. In fine, after completing the investigation, he came to the positive conclusion that both the accused are liable to be convicted under Section 302 r/w 34 of IPC and filed a final report accordingly.

5. Based on the above materials, the trial Court framed the charges under Section 302 r/w 34 of IPC and the accused denied the same as false and further they pleaded as not guilty. Hence, in order to prove their case, on the side of the prosecution, 18 witnesses have been examined as P.W.1 to P.W.18 and 24 documents were exhibited as Ex.P.1 to Ex.P.24, besides 14 Material Objects, which were marked as M.O.1 to M.O.14.

(i) Out of the said witnesses, P.W.1-Prabu is the defacto complainant, also he is the son of the deceased. He spoke about the occurrence as on 22.07.2018 around 10.30 a.m., when at the time he went into his agricultural field, around 11.17 a.m. received a phone call from the deceased wherein the deceased informed the P.W.1 as the first accused has assaulted him. Immediately after receipt of the said information, by using two wheeler, he rushed to the occurrence place. During such time, P.W.3-Palani, P.W.4-Thirumurthy and one, Selvam boarded his father in tata sumo vehicle which belongs to the first accused. In the hospital, his father was declared dead and thereafter, he lodged a complaint before the police.



(ii) P.W.2-Ramachandran is a coolie under P.W.9-Madhan. He spoke about the occurrence as during the relevant point of time, he and four others went into the P.W.9's coconut grove and started the work of peeling coconut. During such time, there was a hue and cry from the place which was situated 50 feet away from the place, where he was working. At that time, an unknown person came there and negligently fallen on the crowbar which was planted there. After seeing the same, two persons came there and spoke to each other as that his uncle has fallen on the crowbar and thereafter they lifted the injured to the tata sumo car and brought the injured to the hospital.

(iii) P.W.3-Palani who is the friend of the deceased had spoken about the occurrence as before 20 days from the date of occurrence, there was a dispute between the deceased and his brother in digging the 'sau du sand' (rt[L kz;]). In this regard, he advised the deceased to compromise the issue through mediation. He spoke further that during the relevant point of time, the second accused herein attacked the deceased with a coconut bat. After seeing the same, the deceased got afraid and at the same time, both the accused pushed the deceased on the crow bar which was planted for peeling coconut.

(iv) P.W.4-Thirumoorthi is a resident of the same village. During the relevant point of time, he came to know that the deceased fell on the crowbar and thereafter the accused and others lifted the deceased to the tata sumo car and brought him to the TCR hospital. Ultimately, the deceased was brought to the Government Hospital, wherein he was declared as dead.

(v) P.W.5-Prabakaran is the driver of tata sumo car, spoken about the occurrence as after the occurrence, the first accused-Rajasekar instructed him to bring the tata sumo car.

(vi) P.W.6-Samundeeshwari is the wife of the deceased-Chakravarthi. She speaks about the occurrence as during the relevant point of time, she came to the knowledge that the accused both herein attacked her husband.

(vii) P.W.7-Arunadevi is the daughter of the deceased. She had spoken about the occurrence as her father is having dispute with his brother Appadurai in respect to digging of 'sau du sand'. She has further stated before the trial court as during the relevant point of time, after hearing the news, she went to the Government Hospital, wherein her father was declared dead.

(viii) P.W.8 and P.W.9-Chinnasamy and Madhan are the alleged witnesses for the recovery of blood stained shirt from the first accused, they have not given any evidence in support of the case of the prosecution. Hence, they were treated as hostile witness.



(ix) P.W.10-Manikandan is the photographer, speaks about the taking of photographs in the occurrence place.

(x) P.W.11-Suresh, Village Administrative Officer gave evidence as the investigation officer in this case prepared an observation mahazar in his presence. Further, he speaks about the recovery of M.O.4 to M.O.6 under the cover of mahazar Ex.P4.

(xi) P.W.12-Dr.Prasanth is the doctor attached with Government Hospital, Krishnagiri spoken about the process of postmortem and about the issuance of final report in respect to the cause of death.

(xii) P.W.13-Boopathi is the then Village Administrative Officer, spoken about the arrest of both the accused, recording the confession statement and about the recovery of M.O.7 to M.O.11 under the cover of mahazar.

(xiii) P.W.14-Sathiaseelan is the Head Constable attached with Nagarasampatti Police Station speaks about the despatching of F.I.R. to various officers.

(xiv) P.W.16-Govindharajan, the then Sub Inspector of Police speaks about the receipt of complaint and about the registration of the case.

(xv) P.W.17-Sureshkumar has stated in respect to the entrustment of the dead body for postmortem. Further, he has stated about the recovery of blood stained cloth worn by the deceased Chakkavarathi.

(xvi) P.W.18-Kabilan, the then Inspector of Police spoken about the details of investigation and about the filing of final report.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., both the accused denied the same as false. However, in order to prove their case, none examined on their side as defence witness.

7. The learned Additional Sessions Judge, Krishnagiri, after perusing all the above materials and on considering the arguments advanced by either side convicted and sentenced the appellants as stated in paragraph 2 of the judgment. Aggrieved over the said conviction and sentence, both the appellants are before this Court with this criminal appeal.

8. I have heard Mr.V.Karthic, learned Senior Advocate appearing on behalf of Mr.E.Kannadasan, the learned counsel for



the appellants and Mr. Leonard Arul Joseph Selvam, learned Government Advocate(crl.side) appearing for the respondent State.

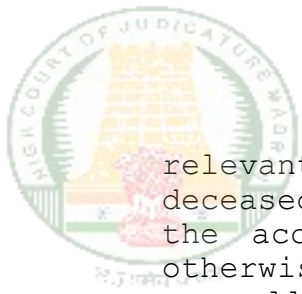
9. The learned counsel for the appellants would contend that the evidence given by the prosecution witnesses will prove that the alleged occurrence is nothing but an accident, whereas the respondent police without any iota of evidence for homicide, filed a final report against the accused which is purely erroneous one. He would further submit that if the first appellant / accused was having the intention to kill the deceased, it would not be necessary for him to bring the injured to the hospital. According to him, none of the witnesses examined on the side of the prosecution gave evidence as the accused / appellants herein with an intention to kill the deceased attacked him with crowbar and thereby they had caused death to the deceased. Ultimately, he prayed to allow this appeal by setting aside the conviction and sentence.

10. The learned Government Advocate(crl.side) appearing for the respondent police would submit that in the alleged occurrence, with the knowledge that the person who fall on the standing crowbar, would likely suffer bodily injury and result in death, both the accused pushed the deceased on the crowbar and accordingly committed the offence of culpable homicide not amount to murder. The evidence given by the prosecution witnesses would be sufficient to accept the case of the prosecution as both the appellants / accused committed the offence as above. Accordingly, he prayed for dismissing this appeal.

11. Now the submissions made by the counsels on either side are considered.

12. Here it is a case, the doctor who conducted postmortem gave opinion as to the cause of the death, as the deceased would have died due to the shock and haemorrhage and due to the deep penetrated injury, which extends to heart/lung/ribs. Now it is the case of the appellants that the said injury is sustained since the deceased had fallen on the standing crowbar. On the other hand, it is the case of the prosecution that both the accused pushed the deceased on the standing crowbar.

13. In this regard, in respect to the occurrence, on the side of the prosecution, P.W.2-Ramachandran, P.W.3-Palani are examined as eyewitnesses to the occurrence. Now, on going through the evidence given by them, it is the evidence given by P.W.2 that during the relevant point of time, the deceased negligently placed his foot on the coconut and at the same time, after got slip, he fell on the crowbar. Per contra, P.W.3 who is another one eyewitness speaks about the occurrence as during the



relevant point of time, the second accused-Suresh attacked the deceased with coconut bat and after attacking him as above, both the accused pushed the deceased on the standing crowbar. In otherwise, the witnesses examined on the side of the prosecution are all stated including P.W.1 that after the occurrence, the first accused in this case brought the deceased to the hospital by using his tata sumo car.

14. Now on comparing the evidence given by P.W.2 and P.W.3, their evidence is having total contradictions as to the manner the alleged attack made by the accused. In this regard, while at the time of examining the investigation officer as P.W.18, in his cross examination, he has stated that P.W.3-Palani did not say as both the accused threatened the deceased at the time of occurrence. Therefore, the said evidence supports the case of the accused. Accordingly, in respect to the attack made by the accused, on the side of the prosecution, two set of evidences are placed before the trial court. No doubt, in respect to the single occurrence, if two set of evidences are let down by the prosecution, the same is nothing but fatal to the prosecution. However here it is a case, it is not in dispute that the deceased and the accused are having previous enmity due to land dispute. Further, the evidence given by P.W.2 and P.W.3 narrate the facts that before the occurrence, there was a wordy quarrel between the accused and the deceased. Only in the said occurrence, the appellants have pushed down the deceased and in otherwise, whether such act committed by the appellants was with an intention to kill the deceased or not, is an issue before this Court.

15. The trial court after considering the fact that both the accused with knowledge and without any intention to cause death, caused injury by pushing down the deceased on the crowbar. Now in this regard, as already stated, previous to the occurrence, there was a quarrel between the accused and the deceased and as a result of which, all of them moved to the place where the crowbar was erected and only thereafter, deceased was fallen on the crowbar. It shows due to the direct act of the appellants, the deceased came to the place of occurrence, wherein both the accused followed him and ultimately, the entire occurrence had happened. Now it would be necessary to see whether the said act committed by the appellants amounts to homicide or not. In this regard, in the case of Jani Gulab Shaikh Vs. State of Maharashtra reported in 1970 SCC (Cri) 532, our Hon'ble Apex Court has held as follows:

That we are unable to agree with High Court that the accused must be posted with the knowledge that the death was likely to result in the circumstances the injuries were caused by him to the deceased. It is very rarely that if a man is pushed



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and he falls on the road the occipital bone gets fractured. Here, perhaps due to the drunken condition of the deceased, he could not avoid his skull falling on the road. At any rate in our opinion it is difficult to impute knowledge to the accused that death was likely to result by the push he is alleged to have given.

16. Further in a judgment in the case of Pichapillai Vs. State reported in 1996 Online SCC Mad 180, this Court held as follows:

"6..... even according to the prosecution a simple push which made the deceased to fall behind on the stone has caused the fatal injury in the head leading to his death. Except the overt act for the pushing down by the appellant, there was no other incriminating circumstances to find him guilty under Section 304 (II), Indian Penal Code and therefore, the offence would fall only under Section 323, Indian Penal Code, even according to the facts of the case as narrated by the prosecution witnesses."

17. Now, applying the principles already set out by the Hon'ble Apex Court, the evidences given by P.W.2 and P.W.3 in respect to the occurrence would go to show that the offence committed by the accused is nothing but an offence punishable under Section 355 of IPC. In otherwise, the other material contradictions indicated by the appellants' counsel is immaterial to decide the case in favour of the accused. Of course, if the appellants are having the intention to kill the deceased, it would not be necessary for them to bring the deceased immediately after the occurrence, that too by using their own car and admit him in the hospital. Though there was discrepancy found in securing the accused, being the reason that already this Court came to the conclusion that the petitioners are found guilty under Section 355 of IPC, the same is also immaterial to decide the case in favour of the accused.

18. Accordingly, I am of the view that during the time of occurrence, both the accused herein pushed down the deceased and committed the offence under Section 355 of IPC and therefore the appellants are found guilty and are convicted under Section 355 of IPC.

19. In the result, the Criminal Appeal is partly allowed. The conviction and sentence imposed upon the accused by the learned Additional Sessions Judge, Krishnagiri, Krishnagiri District for the offences under Section 304(ii) r/w 34 IPC, vide judgment dated 18.08.2020 in S.C.No.75 of 2019, is modified as hereunder:



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(i) The conviction and sentence imposed by the trial Court for the offence under Section 304(ii) r/w 34 of IPC is set aside.

(ii) The appellants / accused are found guilty and are convicted for the charge under Section 355 of IPC and are sentenced to undergo four months rigorous imprisonment with a fine of Rs.25,000/- (each), in default to undergo further period of six months simple imprisonment. Further ordered to return the fine amount to the wife of the deceased as compensation under Section 357(1) of Cr.P.C. The period of remand already undergone by the accused if any, is ordered to be set off against the sentences imposed.

(iii) If the period of remand already undergone by the accused is four months, they are directed to be set at liberty forthwith unless their custody is required in connection with any other case.

(iv). The bail bond, if any executed by the accused, shall stand cancelled. Since the appellants have already paid Rs.25,000/- (each) as fine before the trial court, the same shall be utilised for awarding compensation to the wife of the deceased.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

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To

- 1.The learned Additional Sessions Judge,
Krishnagiri,
Krishnagiri District
- 2.Inspector of Police,
Nagarasampatti Police Station,
Krishnagiri District
- 3.The Public Prosecutor,
High Court,
Madras.
- 4.The District Munsif cum
Judicial Magistrate,
Pochampalli.



5.The Chief Judicial Magistrate,
Krishnagiri.

6.The Superintendent,
Central Prison,
Vellore.

7.The District Collector,
Krishnagiri.

8.The Director General of Police,
Mylapore,
Chennai.

+1cc to Mr.E.Kannadasan, Advocate Sr.No.25192

Criminal Appeal No.336 of 2020

NRL (CO)
RVM(12/04/2022)