



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2021

DELIVERED ON : 19.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRL.A.NO.714 OF 2018

Gandhi @ Gandhivel

... Appellant

.Vs.

The State Rep. by
The Inspector of Police,
Saibaba Colony Police Station,
Coimbatore District.
(Crime No.239 of 2016)

... Respondent

PRAYER:-

Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973 praying to set aside the judgment made in S.C.No.144 of 2017, dated 31.10.2017, on the file of the Sessions Judge, Special Court for Bomb Blasts cases, Coimbatore.

For Appellant : Ms.R.Shase
For Mr.M.Guruprasad

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

J U D G M E N T

(Delivered by R.HEMALATHA, J.)

The Present appeal is filed against the conviction and sentence passed by the Sessions Judge, Special Court for bomb blasts cases, Coimbatore, dated 31.10.2017, in S.C. No.144 of 2017, as detailed hereunder.



WEB COPY

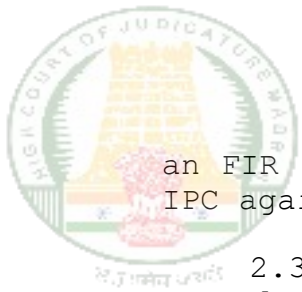
S.No.	Conviction	Sentence
1.	U/s. 302 IPC	Life Imprisonment and pay a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for 3 months.
2.	U/s. 307 IPC	10 years Rigorous Imprisonment and pay a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for 3 months.

The learned Sessions Judge also ordered that both the sentences shall run concurrently.

2. Going to the facts of the case of the prosecution, it is seen that Nandakumar (P.W.1) and the deceased Sankar were employed in Prism Casting Company at Maniyakarampalayam under a contractor. While P.W.1 belonged to Appanaickanpalayam, Thudiyalur, Coimbatore, the deceased victim hailed from Vadavalli.

2.1. On 21.05.2016, both of them had gone to meet their employer, viz., contractor Rajni to get their wages and came to the bus-stand, Saibaba Colony, to board a bus. Since it was midnight, both of them went to a nearby tea stall, when the appellant Gandhi @ Gandhivel also came there. The deceased victim asked for ganja from the appellant, who in turn refused to give it. Both of them started verbally abusing each other when P.W.1 had to intervene to pacify them. The appellant who left the scene challenging them verbally, came back with a knife (M.O.1) at about 12.45 a.m and stabbed the victim Sankar on his abdomen and when P.W.1 tried to prevent it, he was also stabbed on his collarbone and the appellant immediately fled from the scene. On hearing their cries, a few persons came to help them and finding the condition of the victim more serious with his intestine protruding out, he was rushed to the Government Hospital, Coimbatore, in an auto driven by Haridass (P.W.4) without waiting for the 108 ambulance, which was already summoned by one of them. P.W.1 was reportedly shifted to Government Hospital, Coimbatore in the 108 Ambulance subsequently.

2.2. The Government Hospital, Coimbatore, sent an intimation to the police outpost, Government Hospital, who in turn informed Thiru. Daniel (P.W.13), Sub Inspector of Police, Saibaba Colony Police Station. He recorded the Statement (Ex.P1) of P.W.1 in the hospital in the early morning of 22.05.2016 and registered



an FIR (Ex.P18) at about 5 a.m. for an offence under Section 307 IPC against the appellant.

2.3. Both P.W.1 and the deceased victim were admitted in casualty and attended to by Dr.Lakshmi (P.W.11). Subsequently, both of them were admitted as inpatients. Copies of the Accident Register and admission slips for both the deceased and P.W.1 were marked as Ex.P10 to Ex.P13. According to P.W.11, P.W.1 sustained a cut injury 2 cm x 2 cm on his collarbone and the deceased Sankar had a cut injury 4 cm x 2 cm x 2 cm on his abdomen with his intestine protruding out. The injury sustained by P.W.1 was certified as grievous in Ex.P12 (on the reverse).

2.4. On 22.05.2016, Thiru.Kamaleshan (P.W.15), the Inspector of Police, Saibaba Colony Police Station, took up investigation and went to the scene of offence at about 6 a.m. and prepared an Observation Mahazar (Ex.P2) and a Rough Sketch (Ex.P19) in the presence of the witnesses Veerasamy (P.W.5) and Murugan (not examined) and later, he went to the Government Hospital, Coimbatore, at 9 a.m. and took the blood stained shirt (M.O.2) worn by P.W.1 and a cement colour pant (M.O.3) worn by the victim Sankar, from victim's brother Sekar (P.W.6) under the cover of a mahazar Ex.P3. P.W.15 arrested the appellant at about 12 noon on the same day and recorded his police confessional statement, based on which, he seized a knife (M.O.1) and one blood stained shirt (M.O.4) hidden by the appellant behind a toilet near M.G.R Market under the cover of a mahazar Ex.P21. He sent all the material objects to the Court under Form 91 (Ex.P25 and Ex.P26). P.W.15 produced the appellant before the concerned court for judicial remand.

2.5. On 24.05.2016, the victim Sankar, unfortunately, succumbed to injuries and the same was intimated to the police vide intimation Ex.P9 by Dr.Veerannan (P.W.9). P.W.15 altered the Section of law to 302 & 307 IPC and sent the alteration report (Ex.P22) to the court. He went to the mortuary where the body of the deceased was kept and conducted inquest (Ex.P23) in the presence of panchayatdhars. Thereafter, P.W.15 sent the body for postmortem through Thiru.Meyyazhagan (P.W.7), Head Constable of Police, Saibaba Colony Police Station.

2.6. Dr.Peranandam (P.W.8) conducted autopsy and found the following injuries on the body of the deceased.

- 1) Vertical surgically stapled sutured wound 25 x 0.5cm x peritoneal cavity deep noted over front of abdomen extending from 4 cm below xiphi sternum upto 6 cm from pubic symphysis. On removal the suture, Peritoneal cavity contains about 1000 ml



WEB COPY

of pus with fecal material. The inner wall of abdomen found muddy.

- 2) Vertical oblique sutured stab wound 3.5 x 0.5 cm x peritoneal cavity deep noted over right ileac fossa, 4 cm from right anterior superior ileac spine. On removal of the suture, the wound passes inwards, backwards enter into peritoneal cavity and ileum found sutured in four places each measuring about 1 x 1 cm, distance from 20 cm, 30 cm, 40 cm, 50 cm from illeo ceacal junction and mesentery found sutured measuring about 1 x 1 cm, 30 cm from ileac ceacal junction. On opening the suture the margins are regular.
- 3) Surgical drain wound with tube in situ noted over both lumbar region."

He sent the visceral organs and the blood sample of the deceased for further analysis to the Forensic Science Laboratory, Coimbatore and Chennai. As per Viscera report (Ex.P7), no poison or alcohol was detected in any of the visceral organs. In the opinion of P.W.8, the death was due to a stab injury on the abdomen and its complications.

2.7. P.W.15 examined the Assistant Engineer, Tamil Nadu Electricity Board and obtained a certificate (Ex.P24) which stated that there was no power cut or disruption of power from 6 p.m on 21.05.2016 to 6 a.m. on 22.05.2016 in Mettupalayam Road, new bus stand area coming under the jurisdiction of Saibaba colony. P.W.15 recorded the statement of all the witnesses and P.W.10, Head Constable of police, Saibaba Police Station assisted him.

2.8. Thiru.Venkateshwaran (P.W.12), Junior Scientific Officer, Coimbatore, who examined M.O.1 to M.O.4, detected human blood in all the material objects. For the grouping of the blood, M.O.1 to M.O.4 were sent to serological department, Forensic Science Laboratory, Chennai, and the report Ex.P16 showed that the blood on the shirt worn by P.W.1 and that on the knife (M.O.1) used in the crime were of the same blood group i.e. 'B'. Ex.P17 is the report of the blood grouping of the blood samples drawn from the deceased and this also turned out to be 'B' group.

2.9. Thiru.Saravanan (P.W.16), Inspector of Police, took up further investigation subsequent to the transfer of P.W.15 and after verifying the records, filed a final report before the Judicial Magistrate No.7, Coimbatore in PRC No.XXII/16, who in



turn committed the case to the Court of Sessions after furnishing copies of documents to the appellant under Section 207 of the Code of Criminal Procedure.

2.10. The learned Sessions Judge, Special Court for bomb blasts casts (I/c) framed charges under Sections 307 and 302 IPC against the appellant and tried the case.

2.11. In order to bring home the guilt of the accused, the prosecution examined 16 Witnesses and marked 27 Exhibits and also 4 material objects.

2.12. When the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313(1)(b) of Cr.PC, he simply denied of having committed any offence and he did not also examine any witness on his side.

3. Heard Ms.R.Shase, learned counsel for the appellant and Mr.S.Babu Muthu Meeran, learned Additional Public Prosecutor, for the respondent/state.

4. This is a case where the victim and his friend (P.W.1) met the appellant in the wee hours of 22.05.2016 in a bus-stand and what started as a wordy duel ended up in both of them getting attacked with a knife by the appellant. It is observed from the deposition of P.W.1 that all the three of them used to consume ganja and liquor also. On that fateful night the deceased victim was the one who knew the appellant and asked for ganja from him. When the appellant refused to give, it ended up in violence. The appellant who left the scene immediately came back with a knife (M.O.1) and attacked the victim and also P.W.1 who tried to intervene.

5. In the instant case, P.W.1 is the only direct eye witness to the attack though there are other witnesses like Karthick (P.W.2), the call taxi driver, Ponnusamy (P.W.3), the checking Inspector Tamil Nadu State Transport Corporation and Haridas (P.W.4), auto driver, who took the victim in his auto to the Government Hospital, Coimbatore. All these witnesses were present in the vicinity of the scene of occurrence. According to P.W.1, there were other eye witnesses to the incident whom he can identify. Sekar (P.W.6), the brother of the victim was informed of the attack and was with the victim in the hospital from 1.30 a.m. on 22.05.2016. P.W.1 in the complaint (Ex.P1) had claimed that he knew the appellant even before the incident. P.W.2, the call taxi driver, had deposed that he saw two persons near the time keeper's office in the new bus stand, out of whom one was with tonsured head. According to him, the appellant stabbed the other one who did not have tonsured head and that the other person with tonsured head was also stabbed as he



intervened. While P.W.3 turned hostile, P.W.4 who had taken the victim Sankar to the hospital was the one who saw the victim in close quarters immediately after the incident. P.W.1, P.W.2 and P.W.4 have categorically stated that the stab injury on the victim was pretty serious with the intestine protruding out. This has also been confirmed by Dr.Lakshmi (P.W.11) who attended the victim in the casualty ward, Government Hospital, Coimbatore.

6. The learned counsel for the appellant had tried to counter the theory of the prosecution by pointing out not only the contradictions in P.W.1's deposition but also on the failure on the part of the prosecution in not lifting the finger prints from the knife used by the appellant, delay in sending FIR to the Court, and also the non examination of the contractor Rajni with whom the victim and P.W.1 were employed. The learned counsel's another contention is that the statement of the deceased though obtained, was suppressed by the prosecution, may be, to shield the real accused. It is also her contention that P.W.1 before the doctor (P.W.11) stated that he was attacked by two known persons whereas the complaint was only against the appellant.

7. At this juncture, it is pertinent to discuss the evidentiary value of the statement made to a doctor. In the decision in P.Babu and others vs. State of Andhra Pradesh [(1994) 1 Supreme Court Cases 388], it has been held thus:

"It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and the inquiry would be confined as to how he received the injuries namely the weapons used etc."

Similarly, in the decision in B.Bhadriah and others Vs. State of Andhrapradesh (1995 Supp(1) Supreme Court Cases 262), it has been held that the injured witness is not expected to give a detailed report to the doctor and that the casual way of filling up the column in the medical certificate, would not, in any manner, amount to recording the statement of the injured witness. That apart, the entry in the Accident Register (Ex.P10) is only a previous statement of the victim and such a previous statement is not a substantive piece of evidence. It could be only used to corroborate under Section 157 or contradict under Section 145 of the Indian Evidence Act. If the victim is to be contradicted on such previous statements, he/she should have to



be confronted with it in the cross examination as mandated under Section 145 of the Indian Evidence Act. That has not been done in the instant case. Therefore, this argument fizzles out.

8. Similarly, non examination of the contractor Rajni is not fatal to the case of the prosecution as contended by the learned counsel for the appellant as he was not present in or near the scene of occurrence. There is also no suppression of the statement of the victim by the prosecution. In fact the Investigation Officer had recorded his statement under Section 162 of the Code of Criminal Procedure and it is very much available in the bundle. The prosecution had failed to mark this particular document treating the same as dying declaration of the victim. A perusal of Section 162 Cr.P.C and Section 32 of the Indian Evidence Act reveals that a statement of a person recorded under Section 162 Cr.P.C would be treated as a dying declaration after his death. In the decision in Sri Bhagwan vs. State of U.P. [2013 12 SCC 137], the Apex Court held thus:

"21. As far as the implication of 162(2) of Cr.P.C. is concerned, as a proposition of law,, unlike the excepted circumstances under which 161 statement could be relied upon, as rightly contended by learned senior counsel for the respondent, once the said statement though recorded under Section 161 Cr.P.C. assumes the character of dying declaration falling within the four corners of Section 32(1) of Evidence Act, then whatever credence that would apply to a declaration governed by Section 32(1) should automatically deemed to apply in all force to such a statement though was once recorded under Section 161 Cr.P.C. The above statement of law would result in a position that a purported recorded statement under Section 161 of a victim having regard to the subsequent event of the death of the person making the statement who was a victim would enable the prosecuting authority to rely upon the said statement having regard to the nature and content of the said statement as one of dying declaration as deeming it and falling under Section 32(1) of Evidence Act and thereby commend all the credence that would be applicable to a dying declaration recorded and claimed as such."

Section 32 of the Indian Evidence Act expresses statements are relevant whether the person who made them was or was not, at the time when they were made under expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into operation. Section 162(2) Cr.P.C. reads as under:



WEB COPY

"(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act. Explanation.- An omission to state a fact or circumstance in the statement referred to in sub- section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact."

In the decision in Laxman Vs. State of Maharashtra [2002 6 SCC 710], the Constitution Bench of the Apex Court had considered the question of nature of medical certification regarding fitness of victim to make a dying declaration. In the instant case, the statement of the victim under Section 162 Cr.P.C. was recorded on 22.05.2016 by the Investigating Officer. In any event, this statement of the victim had not been used by the prosecution to prove the guilt of the accused.

9. Yet another contention of the learned counsel for the appellant is that there is delay in sending the FIR to the Court. The FIR in the instant case was sent to the concerned Judicial Magistrate at 4 p.m. on the same day of occurrence. However, mere delay in forwarding the FIR to the Magistrate, by itself, is not a ground to acquit the accused and in the present case, the prosecution is able to establish the guilt of the accused through oral and documentary evidence.

10. It is true that no motive for the murder has been attributed except that offensive language was used by the victim to the appellant. It is also pertinent to point out that P.W.1, during the course of cross examination, admitted that he along with the deceased had consumed alcohol on the fateful day. It appears that the appellant too got easily provoked by the foul language used by the victim and left the scene of crime to come back with a knife. P.W.1 and the victim were definitely caught unawares because they were unarmed and were also under the influence of alcohol. What followed after the stabbing has already been described in earlier paragraphs.

11. In the instant case, there is a direct evidence of eyewitness (P.W.1) to the occurrence and he was also injured in the attack. The injury was grievous. Moreover, except for a few minor inconsistencies in the deposition of P.W.1, which are inconsequential too, P.W.1 has come through very clearly on the sequence of events and the role of the accused. There can also be no reason for P.W.1 to implicate the appellant had the real



assailant been someone else. The sample blood drawn from the deceased and that found in the knife (M.O.1) were found to be matching i.e. 'B' group. In a sheer coincidence, the blood stained shirt of P.W.1 also was shown to be of 'B'.

WEB COPY

12. P.W.2's evidence has become vital as he is in no way connected to P.W.1 or the victim but helped in shifting the victim with bleeding injury to the hospital.

13. It's a single act of the appellant in the heat of anger. Such moments generally blind the sobriety of men, in general, and urge them to deeds which they would not otherwise do. There was no previous deliberation or determination to fight. In the instant case, the fight took place suddenly for which both the parties are to be blamed,. However, the assailant did not suffer any injury and it was only the deceased victim and P.W.1 who bore the brunt of the attack. In fact the deceased was in the hospital under treatment for three days and thereafter, succumbed to injuries. It can be easily inferred that the death in the instant case was caused

- i. without any premeditation.
- ii. in a sudden fight.
- iii. without the appellant taking any undue advantage of acting in a cruel manner.
- iv. the fight was with the deceased victim.
- v. The victim died after 3 days of the occurrence.

However, the appellant had an intention to cause bodily injury to P.W.1 and the victim.

14. Appropriate sentencing is a very vital function and obligation of the Court and in the facts and circumstances of the present case, it is difficult to maintain the conviction of the appellant under Section 302 IPC. Hence, the conviction under Section 302 IPC by the trial judge is liable to be set aside and the appellant is convicted under Section 304 Part I IPC and sentenced to undergo 10 years rigorous imprisonment without remission benefits and to pay a fine of Rs.1,000/- in default, to undergo simple imprisonment for three months.

15. In the result,

- (i) This Criminal Appeal is partly allowed.



(ii) The conviction under Section 302 IPC passed by the Sessions Judge, Special Court for bomb blasts cases, Coimbatore, dated 31.10.2017, in S.C. No.144 of 2017, is modified as under :

The accused is convicted under Section 304 part I IPC and sentenced to undergo Rigorous Imprisonment for 10 years without remission benefits and to pay a fine of Rs.1,000/-, in default to pay the fine amount, to undergo Simple Imprisonment for three months.

(iii) The conviction and sentence passed by the Sessions Judge, for the offence under Section 307 IPC is confirmed.

(iv) Both the sentences shall run concurrently.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bga

To

1. The Inspector of Police,
Saibaba Colony Police Station,
Coimbatore District.
(Crime No.239 of 2016)
2. The Sessions Judge,
The Special Court for Bomb Blasts cases,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.
4. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.3175

CRL.A.NO.714 OF 2018

PL(CO)
PBS/15/02/2022