



BAIL SLIP

The Appellant/Accused namely Selvakumar @ Selvam, S/o.Paneerselvam was directed to be released on bail as per order of this Court dated 19.12.2018 in CrI.MP.16036 of 2018 in CrI.A.No.777 of 2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.02.2022

DELIVERED ON: 18.02.2022

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRL.A.NO.777 OF 2018

Selvakumar @ Selvam

.. Appellant/Accused

Vs.

State rep. by
The Inspector of Police
Tiruppur Rural Police Station
Tiruppur
Cr.No.806/17

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. to set aside the conviction and sentence imposed on the appellant in the judgment dated 09.11.2018 made in S.C.No.20 of 2018 by the Principal District and Sessions Judge, Tiruppur by allowing this Criminal appeal.

For Appellant : Mr.Parthasarathy
for Mr.K.Sudhakar

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public
Prosecutor



J U D G M E N T

P.N.PRAKASH, J.

WEB COPY

Challenging the judgment of conviction and sentence dated 09.11.2018 passed by the Principal District and Sessions Judge, Tiruppur, in S.C.No.20 of 2018, the accused has preferred this appeal.

2. The prosecution story is as under :

2.1. One Kathiravan (P.W.5) is the owner of Mahalakshmi Bakery (for brevity "the bakery"), which is located in Raakiapalayam intersection in Tiruppur District. The bakery also sells fresh beverages like coffee and tea.

2.2. Muthusamy (deceased) hailed from Sivaganga District and was working as a tea master in the bakery. He was living with his wife Bakkiyam (P.W.8) and younger son Karthik (P.W.1) in Raakiapalayam, whereas, his elder son Kathirvel (P.W.9) was residing somewhere at the time of the incident.

2.3. Selvakumar (appellant herein/accused) was an auto driver and he used to park his auto in the stand near the bakery and thus, he was acquainted with the owner and staff of the bakery.

2.4. It appears that on 30.09.2017, around 10.45 p.m., Selvakumar came drunk, quarreled with Muthusamy and asked him as to why, he is coming to the bakery. Selvakumar is said to have informed Sadasivam (P.W.4), an auto driver of the same auto stand and Sadasivam (P.W.4) in turn, informed Kathiravan (P.W.5) about the quarrel. Kathiravan (P.W.5) instructed Sadasivam (P.W.4) to tell Muthusamy, not to come for work till he (P.W.5) returns. After the quarrel, Muthusamy went home and told about this quarrel to his wife Bakkiyam (P.W.8) and his younger son Karthik (P.W.1). To fill up the vacancy, Kathiravan (P.W.5) appointed Shankar (P.W.2), as tea master in the bakery.

2.5. While that being so, on 05.10.2017, around 08.30 p.m., while Karthik (P.W.1) and Shankar (P.W.2) were in the bakery, Selvakumar was in the auto stand and was talking to his friends. At that time, Muthusamy came to the bakery. On seeing Muthusamy, Selvakumar is said to have questioned him, as to why he is coming again and again to the bakery, when he has been asked not to come. Saying, "unless you are killed, you will not stop coming", Selvakumar hit Muthusamy on his back. Muthusamy fell down and sustained injuries on his right forehead and right eye. Karthik (P.W.1) and others carried Muthusamy to the



Government Hospital, Tiruppur, where, on examination by the doctors, Muthusamy was declared "brought dead".

2.6. On a written complaint (Ex.P1) given by Karthik (P.W.1), Vijayamohan (P.W.12), Sub-Inspector of Police, Tiruppur Rural Police Station, registered a case in Tiruppur Rural P.S. Crime No.806/2017 under Section 302 IPC on 05.10.2017 at 22.15 hrs. and the FIR reached the jurisdictional Magistrate in the early hours on 06.10.2017, as could be seen from the endorsement thereon.

2.7. Investigation of the case was initially done by Nelson (P.W.13), Inspector of Police (i/c), Tiruppur Rural Police Station (for brevity "the in charge I.O.") who went to the place of occurrence and prepared an observation mahazar (Ex.P2), rough sketch (Ex.P6), in the presence of witnesses viz., Mohamed Yunus (P.W.6) and Loganathan (P.W.7). He went to the Government Hospital, Tiruppur, and conducted inquest over the body of Muthusamy and the inquest report was marked as Ex.P7. Thereafter, the body of Muthusamy was sent for post-mortem.

2.8. Dr.Muthuvel (P.W.10) performed autopsy on the body of Muthusamy and issued the post-mortem certificate (Ex.P3). In his evidence as well in the post-mortem certificate (Ex.P3), Dr.Muthuvel (P.W.10) has stated that he observed the following external injuries :

- i. Laceration 2x2x1cm above right eyebrow
- ii. Contusion 6x6cm right eye and right eyebrow
- iii. An abrasion 5x5x0.2cm over right side of the right eye
- iv. An abrasion 2x2x0.6cm above injury i.

2.9. Samples of the visceral organs were sent for chemical examination and the viscera report disclosed the presence of ethyl alcohol in all the specimens. After obtaining the viscera report, Dr.Muthuvel (P.W.10), in his evidence as well in the post-mortem certificate and final opinion (Ex.P3), has opined as follows :

"OPINION : The deceased would appear to have died of shock and haemorrhage due to head injury about 11-15 hrs. prior to autopsy."

2.10. The in charge I.O. arrested Selvakumar at 02.00 p.m. on 06.10.2017 and sent him in judicial custody. At this stage, the investigation was taken over by Danasekaran (P.W.14), the regular Inspector of Police, Tiruppur Rural Police Station, who completed the investigation and filed a final report in P.R.C.No.41/2017 in the Court of the Judicial Magistrate No.IV, Tiruppur, against Selvakumar for the offence under Section 302



2.11. On appearance of Selvakumar, after complying with the provisions of Section 207 Cr.P.C., the case was committed to the Court of Session, Tiruppur, in S.C.No.20 of 2018 and was made over to the I Additional District and Sessions Court, Tiruppur, for trial. The trial Court framed a charge against Selvakumar under Section 302 IPC and when he was questioned, he pleaded "not guilty".

2.12. To prove the case, the prosecution examined 14 witnesses and marked 7 exhibits.

2.13. When Selvakumar was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined from the side of Selvakumar nor any document marked.

2.14. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 09.11.2018, in S.C.No.20 of 2018, convicted Selvakumar of the offence under Section 302 IPC and sentenced him to imprisonment for life and fine of Rs.5,000/-, in default to undergo six months rigorous imprisonment. Challenging the said conviction and sentence, Selvakumar has preferred this appeal.

3. Heard Mr.Parthasarathy, learned counsel representing Mr.K.Sudhakar, learned counsel on record for Selvakumar/appellant and Mr.Babu Muthu Meeran, learned Additional Public Prosecutor appearing for the respondent State.

4. The prosecution has proved beyond cavil the following facts :

- a) Kathiravan (P.W.5) was the owner of the bakery.
- b) Muthusamy was working as a tea master in the bakery.
- c) Bakkiyam (P.W.8) is the wife of Muthusamy and Karthik (P.W.1) and Kathirvel (P.W.9) are his two sons.
- d) Muthusamy died on 05.10.2017 and his death was a homicide.

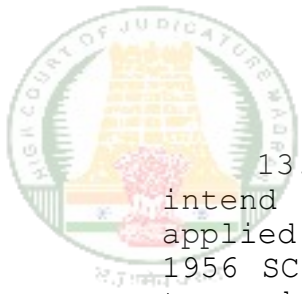


at that time, his father (Muthusamy) came there and on seeing him, Selvakumar said, "You have been asked not to come to the bakery. Why you are coming again and again? I will kill you"; saying so, Selvakumar hit his father (Muthusamy) on his back forcefully, his father (Muthusamy) fell down on the steps of the bakery and sustained injuries on his forehead; then, his father (Muthusamy) was carried to the hospital by an ambulance where, he was declared brought dead.

10. Shankar (P.W.2), in his evidence, has stated that, on 05.10.2017 around 08.30 p.m., while he was on work in the bakery, Karthik (P.W.1) came there; soon, Muthusamy also came there and was talking to Selvakumar; Selvakumar hit Muthusamy on his back, due to which, Muthusamy lost his balance and fell down on a stone; Karthik (P.W.1) went and lifted him. However, in the chief-examination, Shankar (P.W.2) has further stated that Muthusamy was pushed by two other persons. We are not giving much importance to this piece of evidence, as it appears to be a little incongruous and incompatible with his subsequent statements.

11. Thus, from the testimony of Karthik (P.W.1) and Shankar (P.W.2), we have no hesitation in inferring that a quarrel took place around 08.30 p.m. on 05.10.2017 in the bakery between Muthusamy and Selvakumar, in which, Selvakumar had hit Muthusamy on his back. We are not convinced with the statement of Karthik (P.W.1) that before hitting Muthusamy on his back, Selvakumar had stated as, "You have been asked not to come to the bakery. Why you are coming again and again? I will kill you". Admittedly, Selvakumar was not the owner of the bakery for him to object to Muthusamy coming there. Selvakumar was only an auto driver, who used to park his auto in the auto stand near the bakery. Therefore, the theory proffered by the prosecution for the quarrel, defies credulity. Thus, there are no satisfactory materials to show that there was a strong motive for Selvakumar to get rid of Muthusamy.

12. The fact remains that Selvakumar had not used any weapon and he had merely slapped Muthusamy only on his back, perhaps, with undue force. There is no material to show that Selvakumar was aware that Muthusamy was drunk. Had the prosecution adduced evidence to show that Selvakumar knew that Muthusamy was drunk, then, one may, perhaps, infer that Selvakumar could have anticipated that his act of slapping on the back of a drunkard, may result in the latter losing his balance, falling and getting injured.



13. In criminal law, the rule that a man is presumed to intend the natural and probable consequences of his act can be applied in certain cases [See *Basdev vs. State of Pepsu* (AIR 1956 SC 488)]. However, the British Courts had taken this rule to such an illogical extent that the British Parliament had to bring in a legislation to rein it. At this juncture, it is noteworthy that there is an interesting discussion in Glanville Williams' Textbook of Criminal Law (IV Edition) by Dennis J. Baker, which is worth extracting:

"Change in the law came at last as a reaction to the decision of the House of Lords in *D.P.P. vs. Smith*, one of the most criticised judgments ever to be delivered by an English Court. The Lords there applied the probable consequence maxim even to the crime of murder. They held that not merely could intent be inferred from the probability of the consequence but that the presumption of intent in such circumstances was irrebuttable. In other words, the judge could say to the jury:

"Members of the jury, in deciding whether the defendant intended this consequence you merely have to consider whether a reasonable person would have foreseen it as probable. Do not enquire whether the defendant foresaw it, or whether he intended it. You can find that he intended it although you are sure he did not."

This preposterous rule was overthrown by Section 8 of the Criminal Justice Act, 1967, but the change of law has been blatantly disregarded by the Courts in many cases. Section 8 provides:

"A Court or jury, in determining whether a person has committed an offence,--

(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reasons only of its being a natural and probable consequence of those actions; but

(b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances."



14. Further, a Division Bench of the Kerala High Court, in *Sanku Sridharan Kottukallil Veetttil Konathadi Kara vs. State of Kerala* (AIR 1970 Kerala 98), has given a lucid expatiation of this rule in the context of the Indian Penal Code, which is felicitously extracted below:

"20. Perhaps, in Indian law, the objective test of the maxim would cover every degree of mens rea from negligence to intention, depending on the degree of probability of the consequences. If the effect caused by an act is a natural and probable consequence of that act it would, we think, be right to infer that the actor caused that effect voluntarily as that word is defined in S. 39 of the Code. If the degree of probability is so low, so that the effect cannot be described as a natural and probable consequence, the inference to be drawn might only be of negligence or rashness; a little higher it might be that the actor had reason to believe that he was likely to cause the effect; still higher it would be reasonable to infer that he knew that he was likely to cause it; and if the degree of probability is so high that the effect may be described not merely as a probable but as a natural, natural in the sense ordinary, result of the act it would be reasonable to infer that he intended to cause it. It might be noted that it is on the high degree of probability of the effect of death that the intention or knowledge (to be inferred from, among other things, the natural and probable consequences of the act) of clauses secondly, thirdly and fourthly of S. 300 are equated with intention to cause death of the first clause."

15. A slap on the back of a person resulting in his death, can, in a given circumstance, amount to a murder. For instance, two persons are standing on the edge of the terrace of a high-rise building, which does not have parapet walls. One of them slaps the other on his back, owing to which, the latter falls down and dies. The argument that the aggressor did not intend the natural consequences of his act can hold no water in such a case. In the case at hand, the fact situation is not such that we could press into service the said rule to sustain the conviction of the appellant under Section 302 IPC.

16. Ergo, in the opinion of this Court, in the heat of the quarrel, Selvakumar would have hit Muthusamy on his back, without anticipating that this act of his, would result in a chain of events leading to the latter's death. From the post-mortem report, it is clear that Muthusamy was drunk, as ethyl



alcohol was detected in all the samples of the visceral organs.

17. When neither intention nor knowledge, as stated above, could be attributed to Selvakumar, for causing the death of Muthusamy, we are afraid that this case may not even fall within the four corners of Section 299 IPC to qualify either as "murder" or "culpable homicide not amounting to murder". It was not only the slap that would have pushed Muthusamy to the ground, but also the inebriated state in which Muthusamy was, would have attributed to his loss of balance, falling down and getting hit in the steps of the bakery. Though it is an unfortunate incident, where a man has lost his life, yet, the facts cannot be demonised, in order to bring it within the net of Sections 299 and 302 IPC, so as to impose an unconscionable punishment on Selvakumar. On the proved facts, Selvakumar, at the most, can be convicted of the offence under Section 323 IPC and nothing more.

For all the foregoing reasons, this Criminal Appeal is partly allowed and the conviction and sentence imposed on Selvakumar under Section 302 IPC is set aside. Selvakumar is convicted of the offence under Section 323 IPC and sentenced to undergo one year rigorous imprisonment. He would be entitled to set off under Section 428 Cr.P.C. The trial Court is directed to secure him and commit him to prison to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

1. The Principal District and Sessions Judge,
Tiruppur.
2. The Inspector of Police,
Tiruppur Rural Police Station,
Tiruppur.



3 The Superintendent,
Central Prison,
Coimbatore.

4 The Judicial Magistrate Court No.IV,
Tiruppur.

5. The Public Prosecutor,
High Court, Madras.

6 The Chief Judicial Magistrate,
Tiruppur (For information).

Copy To

The Section Officer,
Criminal Section, High Court,
Madras.

Crl.A.No.777 of 2018

SRA (CO)
PM/02/03/2022