



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.04.2022

DELIVERED ON : 21.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.A.(MD)No.17 of 2022

Deepak

... Appellant / Sole Accused

-Vs-

State rep by,
The Inspector of Police,
Sessions Court Police Station,
Tiruchirapalli.
(In Crime No.774 of 2017)

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to call for records and set aside the conviction and sentence imposed by the I-Additional District and Sessions Judge (PCR), Tiruchirapalli in S.C.No.120 of 2018 on 28.05.2019 as against the appellant / sole accused.

For Appellant : Mr.M.R.Sreenivasan
For Respondent : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor.

JUDGMENT

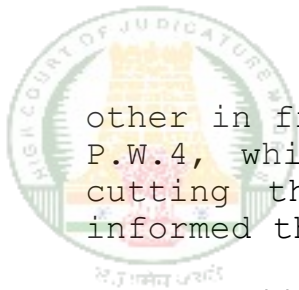
R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

This Criminal Appeal has been filed by the appellant / sole accused, aggrieved over the conviction and sentence, dated 28.05.2019, made in S.C.No.120 of 2018, by the learned I-Additional District and Sessions Judge (PCR), Tiruchirapalli.

2.The brief facts of the prosecution case are as follows:-

(i)The accused and the deceased are cousin brothers. P.W.2 is the uncle of both the accused and the deceased. The accused and deceased were working as Goorkhas. On the date of occurrence i.e., on 16.10.2017, the accused, the deceased and P.W.2 consumed alcohol. After consuming alcohol, altercation started between the accused and the deceased. Immediately P.W.2 left the place. However, on the next day morning, he came to know that the deceased was murdered.

(ii)P.W.4 was working in Naganathar Tiffin Stall, which is situated opposite to the place of occurrence. On the date of occurrence the accused and the deceased were quarreling with each



other in front of his shop and P.W.4 and others have separated them. P.W.4, while leaving, after completing his work, saw the accused cutting the deceased. However, out of fear, he ran away and informed the same to his owner on the next day morning.

(iii) P.W.5 has also seen the accused coming with the weapon, after cutting the deceased. P.W.6 has also seen the deceased and the accused frequently taking liquor and quarrelling. P.W.7 has also seen when the accused and the deceased were quarreling with each other at 08.00 p.m., on 16.10.2017. Even after 9.00 p.m., they were quarreling in the place of occurrence. P.W.8 is the uncle of the accused.

(iv) P.W.1 Village Administrative Officer has lodged a complaint Ex.P.1 with P.W.12. P.W.12 registered First Information Report (Ex.P.11) in Crime No.774 of 2017 and forwarded the same to the Court through P.W.15 Head Constable.

(v) P.W.20 Investigation Officer took up the case for investigation, went to the place of occurrence, prepared observation mahazar Ex.P.2 in the presence of witnesses, drew rough sketch Ex.P.14 and also collected M.O.2 and M.O.3, i.e., blood stained soil and ordinary soil under Ex.P.3. He also conducted inquest over the dead body, prepared inquest report Ex.P.15 and forwarded the dead body for autopsy with requisition letter to the Medical Officer.

(vi) P.W.10 Medical Officer, at the request of the Investigation Officer, conducted autopsy over the dead body and issued Ex.P.5 Postmortem Certificate and also opined that the deceased died due to the cut injuries, shock and hemorrhage.

(vii) P.W.16 Head Constable collected the viscera and dresses of the deceased and handed over the same to the police. P.W.17 is photographer, who took the photos.

(viii) P.W.11 Scientific Officer examined the material objects and issued Serology report (Ex.P.9) and opined that the blood found in the material objects belongs to the human A Group.

(ix) P.W.20 Investigation Officer, in continuation of the investigation, has arrested the accused on the same day and recorded his confession. Admissible portion of the confession of the accused is marked as Ex.P.16. In pursuant to the same, he seized blood stained shirts and other material objects. Finally, after completing the investigation, he has laid the final report against the accused.

3. Before the trial Court, on the side of the prosecution, P.W.1 to P.W.20 were examined, Exs.P1 to P.19 and M.O.1 to M.O.12 were marked. On the side of the appellant, two witnesses were examined, D.W.1 and D.W.2 and one document was marked as Ex.X.1.



On questioning under Section 313 of Cr.P.C., the accused denied charges.

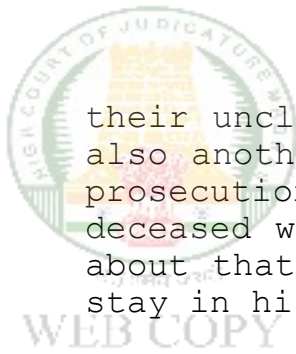
4. Based on the evidence and materials, the trial Court had found the accused guilty, convicted him for the offence punishable under Section 302 of IPC and sentenced him to undergo life imprisonment and to pay fine amount of Rs.2000/-, in default to undergo three months simple imprisonment.

5. Assailing the same, the present Criminal Appeal has been filed by the sole accused.

6. The learned counsel appearing for the appellant submitted that the evidence of the so-called eye witnesses is highly unbelievable and P.Ws.2, 3, 6 and 7 turned hostile and the evidence of P.W.4 and P.W.5 is attached with artificiality. It is his further contention that the observation mahazar has not been prepared at the place of occurrence. The First Information Report also reached to the Court with inordinate delay. P.Ws.2, 4, 5 and 7 would not have seen the occurrence. They are all stock witnesses of the police. Hence, he submitted that the entire prosecution is highly doubtful and the statement of witnesses also sent to the Court with inordinate delay and investigation has not been conducted in fair manner and hence, submitted that the accused is entitled for benefit of doubt.

7. The learned Additional Public Prosecutor appearing for the respondent would fairly submit that though some of the witnesses turned hostile, the evidence of P.W.2, who is none other than the uncle of the deceased as well as the accused, clearly shows that on the date of occurrence all of them consumed alcohol and there was a quarrel between the deceased and the accused. P.W.4 has seen the accused and the deceased quarreling prior to the occurrence. Though they have been separated, the quarrel continued after some time. P.W.4 has seen the accused causing cut injury on the deceased. P.W.5 and P.W.7 have also spoken about the same. Hence, it is his contention that these witnesses have no motive whatsoever to implicate the accused unnecessarily. Though P.W.8 turned hostile, his evidence shows that the accused and the deceased are working as Goorkha and they used to consume alcohol, which resulted in quarrel, as a result, the deceased was murdered. Though motive for the crime has not been established, the fact remains that death was caused as a result of cut injury caused by the accused. Hence, he submitted that the prosecution has proved the guilt of the accused beyond all reasonable doubt. He also fairly submitted that if the offence under Section 302 of IPC is not attracted, certainly, the accused is liable to be punished under Section 304 of IPC.

8. We have given anxious consideration. The relationship between the accused and the deceased is not disputed and they are brothers, working as Goorkha in Trichy. P.W.2 is



their uncle, who was also working in the same vicinity and P.W.8 is also another uncle of the accused. Though he has not supported the prosecution, his evidence clearly indicates that the accused and the deceased were working in the same vicinity. P.W.13 has also spoken about that the accused was working as Goorkha and he was allowed to stay in his house.

9.P.W.2 in his evidence stated that on the date of occurrence all the three had consumed alcohol. Thereafter, the quarrel arose between the accused and the deceased. However, P.W.2 left the place due to fear. Though he has turned hostile and not spoken about the alleged attack, his evidence clearly indicates that on the next day morning, the deceased found dead. On previous day, all of them consumed alcohol and they quarrelled.

10.P.W.4 was working in Naganathar Tiffen Stall situated opposite to the place of occurrence. In his evidence, he has stated that there was quarrel between the accused and the deceased and they were separated by P.W.4 and others. Thereafter, again at 11.00 p.m., while P.W.4 was leaving the shop after the days work, he saw the accused causing cut injury. However, P.W.4 due to fear ran away from the place and informed the same to his employer on the next day morning. P.W.5 is also running a puncture shop in the same vicinity. He in his evidence has stated that the accused came with billhook from the place of occurrence. On seeing the same, P.W.5 ran away from the place.

11.P.W.6 Watchman, who was engaged in the Vodafone office, near to the Court complex, has stated that the accused and the deceased used to assemble at the place frequently and quarrel with each other after consuming alcohol.

12.P.W.7 in his evidence stated that on the date of occurrence, there was altercation between the deceased and the accused at 08.00 p.m., onwards. All of them were under influence of alcohol. Even that quarrel was continued after 09.00 p.m. However, P.W.7 left the place. He saw the accused and the deceased were creating problem after consuming alcohol.

13.From the evidence of P.Ws.2, 4, 5 and 7, it is seen that they have no motive to implicate the accused unnecessarily. Their evidence appears to be natural and does not suffer from any artificiality. Their evidence clearly proves the fact that the occurrence took place in an inebriated condition. The accused, the deceased and P.W.2 were in inebriated condition. The Viscera report also established the fact that the deceased was in an inebriated condition at the time of death. Therefore, we have no reason to disbelieve the evidence of P.Ws.2, 4, 5 and 7.

14.P.W.2 and others did not inform the occurrence to the police. On seeing the dead body, P.W.1 Village Administrative

Officer has lodged a complaint and in his presence, material objects, viz., blood stained soil and ordinary soil were collected. Thereafter, the accused was arrested by the Investigation Officer and blood stained dresses were seized from the accused. M.O.1 billhook was also collected from the place of occurrence. All the material objects were subjected to forensic examination. The Scientific Officer was examined as P.W.11 in this regard. She has also clearly spoken about the report. The same proves the fact that all the dresses seized from the accused contained A Group of human blood.

15.It is also relevant to note that there is a delay in handing over the First Information Report. P.W.15 Head Constable, who handed over the First Information Report to the Court, has given reasons. His evidence clearly indicates that though he received the First Information Report at 10.15 a.m., on 17.10.2017, as the learned Judicial Magistrate No.2 was on leave on that date, he went to the house of In-charge Magistrate / learned Judicial Magistrate No.6 at 04.00 p.m., and handed over the First Information Report. When there is a proper explanation given, the delay cannot be given much importance. Whereas the evidence of the eyewitnesses clearly proves the complicity of the accused. The evidence of the Medical Officer and Postmortem Certificate Ex.P.5 clearly prove the homicidal death of the deceased.

16.The evidence of the Medical Officer clearly shows that more than one cut injuries have been caused and the deceased died due to shock and hemorrhage and as a result of cut injuries in the throat. Though there is a defect in investigation and discrepancies in the evidence, we are of the view that the same are only minor in nature and will not vitiate the entire prosecution.

17.After analyzing all the evidences, we are of the view that only the accused caused injury in an inebriated condition and there is a quarrel arose between the accused and the deceased for a quite sometime from 08.00 p.m., onwards, which was continued after some time. The same resulted in causing cut injury in an inebriated condition by the accused.

18.The cross-examination of P.W.2 indicates that he himself consumed 3 half bottles of liquor on that day. The evidence of P.W.4 indicates that there was quarrel for quite sometime and the same was continued till 11.00 p.m., The evidence of P.W.6 and P.W.7 also shows that the accused and the deceased were in the habit of drinking regularly. The evidence of Medical Officer also shows that the accused was in an inebriated condition.

19.It is not the case of the accused that he was intoxicated with the liquor without his knowledge or against his will and he was incapable of knowing the nature of the act or what he was doing was wrong or contrary to the law at the time of causing injury. Even assuming that all of them voluntarily got drunk and lost their



nature of the injuries sustained by the accused as spoken by the Medical Officer clearly shows that there were more than one cut injuries.

20.In such view of the matter, this Court is of the view that even assuming that the accused was over drunk, he will not be absolved from the punishment in view of Section 86 of IPC. Even the act of the accused will not fall in any of the category of Clauses 1 to 4 of Section 300 of IPC. Section 86 of IPC would impart necessary guilty knowledge to him. Therefore, he is guilty of culpable homicide not amounting to murder. As the evidence available on record clearly shows that the accused, P.W.2 and the deceased had fully drunk and state of intoxication was such that he was incapable of forming a specific intent.

21.In view of the nature of the drunkenness, the act of the accused would certainly fall within the third limb of Section 299 of IPC. Accordingly, we are of the view that the accused is liable to be punished under Section 304(ii) of IPC.

22.Accordingly, the conviction recorded for the offence under Section 302 of IPC is set aside. However, the accused is convicted for the offence under Section 304(ii) of IPC and sentenced to undergo 5 years rigorous imprisonment and to pay fine amount of Rs.2000/-, in default to undergo three months simple imprisonment.

23.In the result, the Criminal Appeal stands partly allowed and the conviction and sentence imposed on the appellant / accused, by judgment dated 28.05.2019 made in S.C.No.120 of 2018, on the file of the learned I-Additional District and Sessions Judge (PCR), Tiruchirapalli, is modified as stated supra.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The I-Additional District and Sessions Judge (PCR),
Tiruchirapalli.
- 2.The Principal District Judge,Tiruchirapalli.
- 3.The Judicial Magistrate No.II, Tiruchirapalli
- 4.The Chief Judicial Magistrate,Tiruchirapalli
- 5.The Superintendent,Central Prison I, Puzhal.



6.The Inspector of Police,
Sessions Court Police Station,
Tiruchirapalli.

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

8.The District Collector, Tiruchirappalli.

9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer, Criminal (Records),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.R. SREENIVASAN, Advocate (SR-20641[F] dated
22/04/2022)

CRL.A. (MD) No.17 of 2022
21.04.2022

MGJ(27.04.2022) 7P 13C