



Crl.A.No.270 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM

THE HONOURABLE **MR. JUSTICE N.ANAND VENKATESH**

Crl.A.No.270 of 2016

1.Ranganathan

2.Nandakumar

3.Kannan

.. Petitioners/ Appellants/Accused 1 to 3

.VS.

State Rep.by
Inspector of Police
Rathinapuri Police Station
Coimbatore.

.. Respondent/Complainant

Cr.No.273 of 2012

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, to set aside the judgment and order of conviction passed in S.C.No.6 of 2014 dated 14.03.2016 on the file of the learned IV Additional District and Sessions Judge, Coimbatore.

For Appellants

Mrs.T.Suriya
for Mr.V.Purushothaman

For Respondent

Mr.L.Baskaran
Government Advocate (Crl Side)



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JUDGMENT

This Criminal Appeal has been filed against the judgment and order passed by the IV Additional District and Sessions Judge, Coimbatore made in S.C.No.6 of 2014, dated 14.03.2016, convicting and sentencing the appellants u/s.304 (ii) IPC to undergo rigorous imprisonment for a period of two years and to pay compensation of a sum of Rs.50,000/- each [total Rs.1,50,000/-], to the family of the deceased, and in default, to undergo six months simple imprisonment.

2.The case of the prosecution is that on 08.07.2012 at about 10.45 pm, the deceased Ponnaiyan was sitting inside an Omni Van and consuming alcohol. Thereafter, the deceased Ponnaiyan called PW-1, who is his niece and asked her to throw the empty liquor bottle into a dustbin. PW.1 took the empty liquor bottle and had throwed it adjacent to the dustbin. This was questioned by A.1 and he asked PW.1 to put the empty liquor bottle into a dustbin. This was seen by the deceased Ponnaiyan and he had questioned A.1 and the other two accused persons regarding the same and there was a wordy quarrel and the accused persons are said to have attacked the deceased with hands in his cheeks and chest.

3.The further case of the prosecution is that this incident was witnessed by PW.1, who is the niece of the deceased and PW.2, who is the wife of the deceased. The deceased fell down after he was attacked and the accused persons fled away from the scene. Thereafter, the deceased was taken inside the house and he started sinking due to the injuries sustained by him. PW.1 immediately called Harshini, who is the



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daughter of the deceased and they managed to get an auto in order to take the deceased to a Hospital at Sengottai. The deceased was accompanied by PW.1, PW.2 and the said Harshini and the auto is said to have been driven by PW-4. They had reached the Hospital at about 12.30 am., and the Doctor, who examined the deceased advised that the deceased must be taken to the Government Hospital. Accordingly, the deceased was taken to Kongunadu Hospital. The doctor in that hospital, examined the deceased and declared him as brought dead.

4.PW.1 went along with one Subbaiah (PW.3) to the Police Station and gave a complaint (Ex.P.1) on 09.07.2012 and PW.13 registered an FIR (Ex.P.9) on 09.07.2012 at about 6.30 am in Crime No.273 of 2012 for offence u/s. 302 IPC, as against the three accused persons.

5.The investigation was taken up by PW-16 and he went to the scene of crime and prepared the Observation Mahazar (Signature of PW.5 was marked as Ex.P.3 in the Observation Mahazar) and Rough Sketch (Ex.P.13). The Investigation Officer also conducted the inquest over the dead body of the deceased Ponnaiyan between 8.00 am to 10.00 am in the presence of Panchayatdars. He prepared the inquest report, which was marked as Ex.P.14. The dead body was thereafter sent to the Government Hospital through PW.12 for post-mortem.



6.The post-mortem was conducted by PW.9 and the Post-mortem Certificate was marked as Ex.P.6. The following injuries were noted in the body of the deceased in the Post-mortem Certificate and they are extracted hereunder:

The following ante mortem injuries noted over the body:

- 1)Laceration 0.75x0.5 cm x skin deep noted over tip of left little toe.
- 2)Reddish contusion 10x5x1.5 cm noted over left cheek, 2cm medial to left ear and 4 cm angle of mandible.
- 3)Reddish contusion 7x.6x1.5cm noted over left side of neck, 3 cm below the ear lobe at the level of thyroid cartilage and 8 cm from the mid line of neck.
- 4)Reddish abrasion 1x1 cm, 1x1 cm noted over back of left elbow with surrounding contusion noted.
- 5)Reddish scratch abrasion 6x0.25 cm noted over back of neck.
- 6)Reddish contusion 5x4 cm noted over left ear to be measuring 5x4 cm x cartilage deep.

On dissection of Scalp, Skull and Dura : Both temporalis muscle found contused in reddish in colour. Sub scalpal contusion reddish in colour 9x6 cm noted over left temporo occipital region. Diffuse sub arachnoid hemorrhage 4x3 cm, 4x3 cm noted over both occipital lobe of brain.

On dissection of Neck; Reddish contusion noted over left side neck muscles adjacent to the thyroid cartilage measuring 6x5x2 cm.



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7.After the receipt of the viscera report (Ex.P.5) a final opinion was given (Ex.P.7) to the effect that the deceased would appear to have died due to the injury to the head and neck.

8.PW.16 arrested the accused persons on 09.07.2012 at about 6.00 pm, near the new bus stand at Mettupalayam, in the presence of the witnesses and their confession was recorded. Thereafter, they were produced in the Court and were remanded to judicial custody. The investigation officer also recorded the statement of the witnesses u/s. 161(3) Cr.PC. That apart, PW.16 also made arrangements for recording the statements of PW.1 and PW.2 u/s. 164 Cr.PC., and the same was marked as Ex.P.11 and Ex.P.12 respectively. PW.16 was transferred and hence the investigation was taken up by PW.17. He completed all the other formalities and ultimately laid the final report before the Judicial Magistrate II, Coimbatore.

9.The learned Judicial Magistrate, served the copies to the accused persons u/s.207 Cr.PC., and committed the case u/s.209 Cr.PC., and it was made over to the IV Additional District and Sessions Judge, Coimbatore.

10.The Trial Court framed charges against the accused persons for offence u/s. 302 IPC. When the charge was put to the accused persons, they denied the same.



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11.The prosecution examined PW.1 to PW.17 and marked exhibits P.1 to P.14 and identified and marked MO.1 and MO.2. The incriminating evidence that was collected during the course of trial was put to the accused persons when they were questioned u/s. 313(1)(b) Cr.PC., and they denied the same as false.

12.The Trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, has come to a conclusion that the prosecution has proved the case beyond reasonable doubts for offence u/s. 304(ii) IPC and accordingly, the accused persons were convicted and sentenced as stated supra. Aggrieved by the same, this criminal appeal has been filed before this Court.

13.Heard Mrs.T.Suriya, learned counsel for the appellants and Mr.L.Baskaran, learned Government (Crl.side) for the respondent/State.

14.The learned counsel for the appellants submitted that PW.1 and PW.2 could not have witnessed the occurrence and in order to substantiate the same, the learned counsel pointed out to the various contradictions in their evidence. It was further submitted by the learned counsel for the appellants that the prosecution has concealed the very genesis of the case since according to the prosecution, the deceased had consumed alcohol just before the incident took place and whereas the medical evidence of the doctor shows that there were no traces of alcohol found in the body of the deceased. Therefore, it was contended that the manner in which the case has been



projected completely fails in the light of the medical evidence. The learned counsel for the appellants further pointed out to the various discrepancies with respect to the body of the deceased being taken to the hospital at Sengottai and Kongunadu for which, there was absolutely no evidence. The learned counsel also pointed out to the fact that PW.1 and PW.2 did not know about the identity of the accused persons before the incident and inspite of the same, no test identification parade was conducted and even in the Court, PW.1 and PW.2 had identified only A1 and other two accused persons are not even identified.

15.The learned counsel for the appellants further contended that even if the eye witness account is found to be true, the offence of culpable homicide not amounting to murder is not made out in this case. The learned counsel submitted that it is an admitted fact on the side of the prosecution that the deceased was slapped in his cheeks and beaten in his neck with hands. The said act, at the best can only result in voluntarily causing hurt to the deceased and by no stretch, it can be considered as a culpable homicide not amounting to murder. Therefore, the learned counsel questioned the very conviction and sentence imposed by the Trial Court. On all these grounds, the learned counsel sought for the acquittal of the accused persons from all the charges.

16.Per contra, the learned Government Advocate (Crl.side) appearing on behalf of the respondent/State submitted that the eye witness account of PW.1 and PW.2 has not been discredited. That apart, the contradictions and embellishments in the evidence of PW.1 and PW.2, does not go the root of the matter and it does not vitiate



the case of the prosecution. Therefore, the learned Government Advocate submitted that the Court below was perfectly right in acting upon the eye witness account. The learned Government Advocate further contended that the Court below had analysed the evidence and had come to a conclusion that the ingredients of Section 300 IPC has not been satisfied and that is the reason why the Court below had punished the appellants for culpable homicide not amounting to murder. Accordingly, the learned Government Advocate sought for the dismissal of this criminal appeal.

17.This Court has carefully considered the submissions made on either side and the materials available on record.

18.The evidence of PW.1 and PW.2 who are the eye witnesses in this case, in categorical terms, projects the case of the prosecution as if the deceased was consuming alcohol by sitting inside an Omni Van and after he completed consuming alcohol, he called PW.1 and asked her to throw the empty alcohol bottle into a dustbin. PW.1 is said to have thrown the empty bottle near the dustbin and this was questioned by A.1 and ultimately, it ended in a wordy quarrel between the accused persons and the deceased and he was attacked with hands by the accused persons in his cheeks and in his neck, it resulted in the death of the deceased Ponnaiyan.

19.The learned counsel for the appellants by pointing out to certain contradictions, submitted that PW.1 and PW.2 did not witness the incident and they were made as eye witnesses since they are the niece and the wife of the deceased,



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respectively.

20. Neither in the observation mahazar nor in the rough sketch, there is any indication of any dustbin or liquor bottle. That apart, the prosecution did not even seize the Omni Van in which the deceased was sitting and consuming alcohol. Even if all these factors are taken to be lapses on the part of the prosecution, the fundamental fact which requires to be established is that there must be traces of alcohol in the body of the deceased. Only if this fact is proved, the evidence of PW.1 and PW.2 will hold water. While getting into this issue, the evidence of the post-mortem doctor who was examined as PW-9 and the Post-mortem Certificate that was given by him and marked as Ex.P-6 gains a lot of significance.

21. When PW.9 was cross examined as to whether any alcohol traces were found in the body of the deceased, he gives the following answer;

“இரசாயன பரிசோதனை அறிக்கையில் அந்த நபர் மது அருந்தி இருந்ததாக கண்டுபிடிக்கப்படவில்லை. ஒரு நபர் மது அருந்தி இருந்தால் அது பிரேத பரிசோதனையின் போது தெரிந்திருக்கும்”.

22. The above deposition given by PW.9 shows that there were no traces of alcohol in the body of the deceased either in the viscera report or while conducting the post-mortem. If the incident had taken place immediately after the deceased had consumed alcohol, it defies common sense that there were no traces of alcohol found in the body of the deceased. When this issue was discussed by the Trial Court, it was held that there was a mention in Ex.P.6 that in the stomach and small intestine, brown



colour fluid with bad smell was found. This according to the Trial Court proves the existence of alcohol in the body of the deceased.

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23.In the considered view of this Court, the specialist viz., the doctor in no uncertain terms states that there were no alcohol traces in the body of the deceased. Even the viscera report does not speak about any alcohol found in the vital organs of the deceased. If this is the evidence given by the specialist, the Trial Court cannot give a contra finding since the Trial Court is not a specialist to talk about matters which fall within the realm of specialists. Therefore, the finding of the Trial Court in this regard is without any basis and it runs against the opinion/finding given by a qualified doctor.

24.If there are no traces of alcohol in the body of the deceased, the version of PW.1 and PW.2 becomes unreliable. These witnesses have clearly stated that the deceased consumed a bottle of alcohol before the incident. If that is the case, the presence of alcohol in the body of the deceased is the natural consequence. If there are no traces of alcohol in the body of the deceased, then the very genesis/foundation of the case of the prosecution becomes highly questionable.

25.If the evidence of PW.1 and PW.2 is discarded, there is no other witness to show that the accused persons had attacked the deceased which caused his death. The evidence of PW.3 will not help the prosecution in this regard since he had come to the scene of occurrence only after the occurrence. This has been specifically spoken by PW.1 in her evidence. One other important witness viz., PW.10, who is said to have



accompanied the deceased to the hospital, also turned hostile and hence, the evidence of PW.10 does not help the prosecution.

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26. On a demurrer, if the evidence of PW.1 and PW.2 are acted upon, even then this is not a case which satisfies the requirements of a culpable homicide not amounting to murder. Admittedly, the accused persons are said to have used their hands and slapped the deceased in his cheeks and in his neck. If this attack is taken to be true, it will not fall within any of the limbs of Section 300 IPC. It will also not fall within any of the limbs u/s. 299 IPC. The act also does not satisfy the requirements u/s. 320 IPC and hence, it will not fall under the offence of grievous hurt punishable u/s. 325 IPC. At the best, the facts of the present case will fall within the evidence of voluntarily causing hurt. Therefore, even if this Court had acted upon the evidence of PW.1 and PW.2, this Court would have interfered with the conviction and sentence of the accused persons for offence u/s. 304(ii) IPC. In any case, this exercise becomes academic since this Court has already held that the very foundation of the case of the prosecution gets shaken due to the medical evidence which runs contrary to the eye witness account.

27. In the light of the above discussion, this Court holds that the judgment and order passed by the IV Additional District and Sessions Judge, Coimbatore made in S.C.No.6 of 2014, dated 14.03.2016, requires interference and accordingly, the same is set aside. It was brought to the notice of this Court that A.3 died during the pendency of this criminal appeal and hence, this appeal gets abated insofar as **A.3 is concerned**



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u/s. 394 Cr.PC. A1 and A2 are acquitted from the charge.

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28.In the result, this Criminal Appeal stands allowed. The bail bonds executed by the appellants shall stand cancelled and fine amount, if any, paid by them shall be refunded to them.

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KP

Internet : Yes/No

Index : Yes/No

Speaking Order :Yes/No

Neutral Judgment :Yes/No



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To

- 1.IV Additional District and Sessions Judge,
Coimbatore.
- 2.Judicial Magistrate-II,Pollachi.
- 3.Inspector of Police
Rathinapuri Police Station
Coimbatore.
- 4.The Public Prosecutor
High Court, Chennai.



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N.ANAND VENKATESH,J.

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