



Criminal Appeal No.339 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Criminal Appeal No.339 of 2016

1.Ramamoorthy
S/o.Kaliyan

2.Kasi
S/o.Masaalai

3.Thangavel
S/o.Pallan @ Subburayan

... Appellants/Accused

Vs.

State by
Inspector of Police,
Thirunavalur Police Station,
Thirunavalur,
Villupuram District.
Crime No.213 of 2012

... Respondent/Complainant

Prayer : Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment passed by III Additional District and Sessions Judge, Kallkurichi, in S.C.No.77 of 2013 dated 30.03.2016.

For Appellants : Mr.C.Munusamy

For Respondent : Mr.L.Baskaran

Government Advocate [Crl.side]



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JUDGMENT

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This criminal appeal has been filed against the judgment and order passed by the III Additional District and Sessions Judge, Kallakurichi, in S.C.No.77/2013, dated 30.03.2016, convicting the appellants for offence u/s.304(i) IPC and sentencing each of them to undergo 7 years rigorous imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo 3 months simple imprisonment.

2. The case of the prosecution is that the deceased Thirunavukarusu was travelling in a mini bus on 14.03.2012 at about 08.45 p.m. The appellants were also travelling in the very same bus and it is alleged that they were using filthy language and were causing disturbance to other passengers and that they were under the influence of alcohol. When this was questioned by the deceased, the appellants are said to have abused him in filthy language and beaten with hands and banged his head in the iron pole inside the bus. The deceased became unconscious. Immediately, 108 ambulance was called and when they examined the appellant, they declared him as dead.

3. PW-1, who is the paternal uncle of deceased Thiunavukarasu went



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to Thirunavalur Police Station and gave the complaint [Ex.P1] at about 09.45 p.m. on 14.03.2012. PW-12, who is the Sub-Inspector of Police, on receipt of the complaint, registered the First Information Report [Ex.P5] in Crime No.213 of 2012 for offences u/s.294(b), 323 and 302 IPC.

4. The investigation was taken up by PW-16 and he went to the scene of occurrence on 14.03.2012 at about 22.45 hours and prepared the observation mahazar marked as Ex.P2 and rough sketch marked as Ex.P3 in the presence of witnesses. He also recorded the statement of witnesses u/s.161(3) Cr.P.C. PW-16 also conducted inquest on the dead body of the deceased and prepared the inquest report marked as Ex.P9. The dead body was sent for postmortem to the Government Hospital, Villupuram and postmortem was conducted by PW-13. The following injuries were mentioned in postmortem certificate, which was marked as Ex.P6:

"I External Examination:

1. Left eye swollen, Adhoc contusion of size 3 cm x 1 cm x 0.5 cm seen over the left upper eyelid. Conjuncture congested.
2. Contusion of size 2 cm x 2 cm x 0.5 cm over the vertex area of the head.



WEB COPY II On opening of the Head:

Scalp contused in the under surface over the vertex over an area of 2 cm x 2 cm x 0.5 cm. Bones of the enamel vaneb and membranes intact. Brain: Subdural hemorrhage seen over the frontal area & vertex area. This layer of subarachnoid hemorrhage seen all over the left side. Cut section: congested. Base of skull: intact.

III On opening of the thorax: Rib cage intact. Heart: Normal in size. Cut section : great vessels, valves and coronaries intact. Chamber : Force of partially clotted blood. Both lungs : appear normal in size. Cut section : Congested.

IV On opening of the Abdomen: Stomach: 300 gm of semisolid greenish yellow partially digested food seen. Mucosa - congested. Liver; spleen and both kidneys - appear normal in size and shape. Cut section : congested. Bladder : empty.

V Pelvis and spinal column intact.

VI On opening of the neck: Skin, subcutaneous tissues and muscles intact. Larynx and Trachea intact. Hyoid Bone and Thyroid cartilage intact."

5. A final opinion, which was marked as Ex.P7 shows that the deceased would appear to have died due to head injuries with evidence of alcohol consumption.

6. PW-16 arrested the accused persons on 15.03.2012 at about 01.00



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p.m. near the Ulundurpet Bus Stand and their confession was recorded in the presence of the witnesses. PW-16 recorded the statement of the other witnesses and also collected all the relevant records and ultimately, filed the final report before the Judicial Magistrate II, Ulundurpet, which was taken on file in PRC No.32 of 2012.

7. Learned Magistrate served the copies to the accused persons u/s.207 Cr.P.C. and committed the case u/s.209 Cr.P.C. and the case was made over to the III Additional District and Sessions Judge, Kallakurichi.

8. The trial Court framed charges against the appellants for offences u/s.294(b) and 302 IPC. Insofar A1 is concerned, an additional charge u/s.302 IPC r/w 34 IPC was also framed. When the charges were put to the appellants, they denied the same.

9. The prosecution examined PWs.1 to 16 and marked Exs.P1 to P9.



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The incriminating evidence that was gathered during the course of trial was put to the appellants when they were questioned u/s.313(1)(b) Cr.P.C. and they denied the same as false.

10. The trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts for offence u/s.304(i) IPC and accordingly, convicted and sentenced the appellants. Aggrieved by the same, the present criminal appeal has been filed before this Court.

11. Heard Mr.C.Munusamy, learned counsel for appellants and Mr.L.Baskaran, learned Government Advocate [Crl.side], appearing for the respondent State.

12. PW-1, PW-2, PW-7 and PW-9 have been examined as eye



witnesses in this case. On carefully going through the evidence of PW-1, PW-2 and PW-9, it can be seen that they have explained the incident in a cogent manner and they have clearly stated that the appellants were using filthy language in the bus and it was questioned by the deceased and as a result, the deceased was attacked and his head was banged in the iron pole inside the bus. The evidence of these three witnesses has not been discredited and there is nothing to discard the evidence of these three witnesses. Insofar as PW-7 is concerned, there is some doubt with regard to his presence in the bus and hence, his evidence is not relied upon.

13. The evidence of the postmortem doctor read along with the postmortem certificate, clearly shows that the appellant had sustained head injuries and it corroborates the evidence of eye witnesses. It is also clear from the evidence that both the appellants as well as the deceased were under the influence of alcohol and probably that had led to a quarrel between them and the deceased being attacked by appellants.

14. In the light of the above discussion, it is clear that the incident



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had taken place in the mini bus and the deceased was attacked by the appellants and as a result, the deceased sustained injuries. To this extent, the finding of the trial Court does not warrant interference of this Court.

15. The Court below has convicted and sentenced the appellants for offence u/s.304(i) IPC. In the considered view of this Court, the facts of the present case does not even satisfy the requirement of a culpable homicide as defined u/s.299 IPC. The entire incident had taken place in a heat of the moment and there is neither any intention nor knowledge on the part of the appellants to cause the death of the deceased.

16. The act of the appellants will clearly fall under eighthly u/s.320 IPC. The act of the appellants, has certainly caused hurt to the deceased endangering his life. Probably, the consumption of alcohol by the deceased, had expedited his death after the incident. In view of the same, the appellants are liable to be convicted and sentenced u/s.325 IPC. Accordingly, the conviction and sentence imposed by the trial Court is liable



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to be modified by this Court.

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17. The judgment and order passed by III Additional District and Sessions Judge, Kallakurichi, in S.C.No.77/2013, dated 30.03.2016, is modified and the appellants are convicted for offence u/s.325 IPC and their imprisonment is confined to the period already undergone by them and each of them shall pay fine amount of Rs.10,000/-, in default, to undergo three months simple imprisonment. It is seen from records that the appellants had deposited the fine amount and the same has been recorded by this Court while enlarging the appellants on bail in CrI.M.P.No.5208 of 2016 dated 29.04.2016. The fine amount that has already been deposited by the appellants shall be paid as compensation to PW-3, mother of the deceased u/s.357(1) Cr.P.C.

In the result, this Criminal Appeal is partly allowed to the extent indicated above.



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Index : Yes/No
Speaking Order / Non Speaking Order
Neutral Citation: Yes/No
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To

- 1.The III Additional District and Sessions Judge,
Kallkurichi.
- 2.The Inspector of Police,
Thirunavalur Police Station,
Thirunavalur,
Villupuram District.
Crime No.213 of 2012
- 3.The Public Prosecutor,
High Court, Madras.

N. ANAND VENKATESH, J

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