



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

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CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.369 of 2016

Thangaraj

...Appellant

Versus

State Rep by,
Inspector of Police,
Bhavani Sagar Police Station,
Erode District.
(Crime No.24 of 2014)

...Respondent

Prayer: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to set aside the conviction of 4 years Imprisonment for the offence under Section 304 (ii) and a fine of Rs.1,000/- (Rupees One Thousand only) for the offence under Section 323 in default 3 months simple imprisonment in S.C.111 of 2014 by the III Additional District and Session Judge, Erode at Gopichettipalayam on 20th April 2016. Acquit the appellant.

For Appellant : Mr.S.N.Arun Kumar
For Mr.C.Ramkumar

For Respondent : Mr.R.Kishore Kumar,
Government Advocate (Crl.Side)

JUDGMENT

The accused in S.C.No.111 of 2014 has filed this Criminal Appeal challenging the Judgment dated 20.04.2016 passed by the learned III Additional District and Session Judge, *Erode* at *Gopichettipalayam* convicting him for the



offence under Section 304 (II) of I.P.C., and sentencing him to undergo Rigorous Imprisonment for a period of four years; convicting him for the offence under Section 323 of I.P.C., and to pay a fine of Rs.1,000/- in default to undergo Simple Imprisonment for a period of three months.

2.The case of the prosecution is that on 26.01.2014, when **P.W.16** was on duty at Bhavani Sagar Police Station, **P.W.1** came to the Police Station and lodged a complaint to the effect that there were disputes between himself and his cousin brother regarding cultivation of an extent of land given to his father and his brother and on 26.01.2014 at about 10:00 A.M., when he went to one *Chinnamani's* tea shop to have tea, the accused was there. He picked up a quarrel with him and hit him. Since his father was sitting nearby pillaiyar temple came to his rescue, questioning the accused as to why he is hitting **P.W.1**. Enraged by this, the accused slapped him and he fell down and was unconscious. An ambulance was called. He was taken to the hospital, but was declared as brought dead.

3.On the said complaint, the case in Crime No.24 of 2014, for the offences under Sections 323 and 302 of I.P.C., was registered and was taken up for investigation by **P.W.17**. After completing the investigation, he filed the



charge sheet which was taken on file as P.R.C.No.19 of 2014 on the file of learned Judicial Magistrate, *Sathyamangalam*. After furnishing copies as per Section 207 of Criminal Procedure, the case was committed to the Court of Sessions and was taken on file as S.C.No.111 of 2014 and was made over to the Trial Court. The Trial Court framed charges under Section 323 & 302 of I.P.C. The accused denied the charges and stood trial.

4.The prosecution examined **P.W.1** to **P.W.17** to bring home the charges and marked **Exs.P-1 to P-18** and **M.Os.1 to 4** were also produced. Upon being questioned about the material evidence and the incriminating circumstances on record as per Section 313 of Code of Criminal Procedure, the accused denied the same as false. No evidence was let in on behalf of the defence. Hence, the Trial Court proceeded to hear the learned Public Prosecutor on behalf of the prosecution and the learned counsel for the accused and by the Judgment dated 20.04.2016 found that the evidence of **P.W.1** coupled with the medical evidence proves the case of the prosecution that the accused had actually slapped the victim and also **P.W.1**. However, the trial Court found that there wasn't any pre-meditated intention to prove the charge under Section 302 IPC and therefore convicted him for the offence under Section 304 (II) IPC and sentenced to undergo 4 years Rigorous Imprisonment for a period of 4 years, the accused

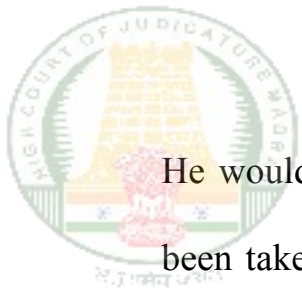


was also convicted for the offence under Section 323 of Cr.P.C., and imposed a fine of Rs.1000/-. Hence, this appeal.

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5. Heard *Mr.S.N.Arunkumar*, learned counsel for the appellant and *Mr.R.Kishore Kumar*, learned Government Advocate(Crl.Side) on behalf of the prosecution.

6.The learned counsel for the appellant taking this Court through the evidence of **P.W.1** and the accident register and the FIR, would submit that in this case except **P.W.1**, there is no other eyewitness. The other eyewitnesses who sought to be examined have all turned hostile. **P.W.1** had given different versions at different point of time. In the accident register, he had informed to Doctor that four persons attacked him with wooden rods. Whereas, in the complaint he has stated that the accused had assaulted him with hands. Similarly, in the First Information Report, he had stated that the accused had slapped him and also slapped his father when he came in support of him. However in this evidence, he had stated that the accused had hit his father and pulled him down. Therefore, the evidence of **P.W.1** is totally unreliable, which is the sole piece of evidence based on which the appellant was convicted and therefore, he would submit that the finding of conviction requires interference.



He would further submit that in this case a clear and categorical defence has been taken during the course of the trial that upon seeing the scuffle between **P.W.1** and the accused, the victim on his own try to come near the spot. Since he was fully drunk, on his own tripped and fell down near the speed breaker causing head injuries to himself and died. **P.W.1** has been cross examined to that effect and Doctor was also cross examined about the said fact. The evidence let in by the prosecution does not rule out the said possibility and hence the accused is entitled for benefit of doubt. He would further submit that **P.W.1** would even state in the cross examination that there were bleeding injuries to his father, whereas the Doctor had denied that there were bleeding injuries. These contradictions have been brought forth in the trial.

7. *Mr.S.N.Arunkumar*, learned counsel would further take this Court to the Viscera Report of the victim and would submit that it can be seen that there is a huge amount of alcohol present in his stomach as well as in the liver and would submit that the same probablises the defence. In any event, he would submit that the victim was eighty (80) years of the age and the same was not at all taken into account by the trial Court.



8. Per *contra*, Mr. R. Kishore Kumar, learned Government Advocate (Crl. Side) for the respondent would submit that in this case, admittedly even as per the defence that there was a wordy quarrel and scuffle. The accused was the aggressor. **P.W.1** merely came to the spot to have tea and it is the accused who picked up quarrel. Instead of filing Civil Suit if he had right in the land, he unnecessarily picked up quarrel and the victim only came in support of his son upon the accused attacking **P.W.1**. The accused had attacked the victim with hands and because of the age, he fell down and on account of the same, he suffered head injury leading to his death. The occurrence took place at 10:00 AM in the morning and the complaint was given at 1:00 P.M without any delay. The investigation has been thorough and proper. Even though the other residents of the village/eye witnesses had turned hostile, **P.W.1** has clearly deposed and the evidence by **P.W.1** coupled with medical evidence clearly proves the case of the prosecution. The trial Court has already taken a lenient view, considering the age and manner of occurrence and have only convicted the accused only u/s. 304 (II) IPC imposing punishment of four years and therefore the same does require any interference by this Court.

9. I have considered the rival submissions made on either side and perused the material records of the case. At the outset, the trial Court itself had



clearly found there was no pre-meditated intention and therefore has found that it is not a case for conviction under Section 302 of I.P.C. Now coming to 304 (II) IPC, in order to make out an offence under Section 304(II) of I.P.C., the accused should have committed the act with the knowledge that his act is likely to cause death. In the instant case, even as per the prosecution, the accused was confronting the **P.W.1** and a quarrel arose and when the victim came in support of **P.W.1**, the accused in a fit of rage slapped him. Therefore, it cannot be said that he has done the act of slapping with the knowledge that it is likely to cause the death. Therefore, I am unable to accept the finding of the trial Court that the accused liable to punish under Section 304 (II) of IPC. However, the accused is liable to be punished for the lesser offense for voluntarily causing grievous hurt upon sudden provocation, punishable under Section 335 of IPC, as the action of slapping resulted in the head injury which caused the death, as per medical evidence and as such is a grievous injury within the meaning of Section 320 of I.P.C. In this regard, useful reference can be made to the judgment of this court, dated 28.07.2022 in **Anbu @ Anbalagan Vs. State**¹ which is as hereunder:-

“ **19.....In this regard it is useful to extract the paras 13 to 15 of the judgment of the Honourable Supreme Court in **Ramesh Kumar Vs. State of Madhya Pradesh** [(2010) 6 SCC 685] [cited supra] relied upon by the learned counsel for the appellant.**

¹ (2023) 1 MLJ (CrI) 273



“13. We have considered the rival submissions and the submissions made by Mr Dubey commend us. We have extracted in the preceding paragraph of our judgment the injuries sustained by the deceased and from a perusal thereof it is difficult to hold that the appellants intended to cause such bodily injuries which they knew to be likely to cause the death. From that it is also not imperative that the appellants intended to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The injuries found on the person of the deceased also do not indicate that it is so imminently dangerous that it must in all probability cause death or such bodily injury 14 of 22 <https://www.mhc.tn.gov.in/judis> Criminal Appeal No.769 of 2019 as is likely to cause death.

14. It has to be borne in mind that the intention of the accused is gathered from the nature of the weapon used, the part of the body chosen for assault and other attending circumstances. Here in the present case according to the prosecution the weapon used for commission of the crime is “lathi” and “danda” and the part of the body chosen cannot be said to be a vital part of the body. Further the injuries are contusions. It seems that the deceased was not taken to the hospital immediately after the occurrence and he died. Perhaps, his life



could have been saved had he been given the medical aid immediately.

15. In view of what we have observed above the ingredients for the offence of murder is not made out. However, the appellants have caused grievous hurt by dangerous weapon in furtherance of their common intention and as such the facts proved make out the offence under Sections 326/34 of the Penal Code.”

Therefore, taking into account the manner of injury, part of the body attacked and the corresponding medical evidence, I am inclined to modify the conviction as one under Section 326 of IPC.”

10.As a matter of fact, even though there are embellishments in the evidence of P.W.1, there are no material contradictions. When the injured witness embellishes the action of the accused, the Court should only discard the chaff and for that purpose the entire evidence need not be discredited.

11.Therefore, I am of the view that the case of the prosecution that during the course of the scuffle, the accused had slapped the deceased and resulting in the deceased falling down and getting injured on the head, ultimately causing his death is proved beyond doubt on strength of the evidence of **P.W.1**



corroborated with the medical evidence and therefore, I hold the appellant guilty and the offence punishable under Section 335 of IPC.

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12.Coming to the sentence, considering the age of the accused and the fact that he has got no other antecedents, the age of the victim, his inebriated state on the time of occurrence, the factual background of the land dispute and the scuffle between the parties, the loss of a life, the social circumstances and the sentencing policy that commensurate punishment ought to be imposed, I am of the view that imposing punishment of Rigorous Imprisonment for a period of two years and a fine of Rs.20,000 would be appropriate.

13.Out of the fine amount, a sum of Rs.15,000/- (Rupees Fifteen Thousand only) shall be paid for victim's family namely **P.W.1.**

14.In the result, C.A.No.369 of 2016 is partly allowed;

(i) the conviction of the appellant for the offence under Section 304 (II) IPC is modified as to one under 335 of IPC and the appellant is sentenced to undergo Rigorous Imprisonment for a period of 2 years and also to pay a fine of Rs.20,000/- and in default of payment of fine to undergo simple imprisonment for another period of 3 months;



(ii) the conviction and the sentence in respect of the offence under

Section 323 of IPC is confirmed;

(iii) Out of the fine amount, a sum of Rs.15,000/- (Rupees Fifteen

Thousand only) shall be paid as a compensation to **P.W.1**.

03.02.2023

dk

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation :Yes/No

To

1.The III Additional District and Session Judge,
Erode.

2.The Public Prosecutor,
High Court of Madras.

3.The Inspector of Police,
Bhavani Sagar Police Station, Erode District.



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D.BHARATHA CHAKRAVARTHY,J.

dk

Crl.A.No.369 of 2016

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