



WEB COPY



Crl.A.No.720 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2023

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.A.No.720 of 2016

Suresh Alias Suresh Kumar

...Appellant

Versus

The Inspector of Police,
Annur, Police Station,
Coimbatore.

...Respondent

Prayer: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, to set aside order of conviction and sentence passed by the learned I-Additional District and Sessions Judge, Coimbatore, made in S.C.No.162 of 2015, dated 28.09.2016.

For Appellant : Mr. A.E. Ravi Chandram

For Respondent : Mr. J. Subbiah,
Government Advocate (Crl.Side)

JUDGMENT

On 28.02.2014, when **P.W.10**, *Senthil Kumar* was on duty at Annur Police Station, Coimbatore, **P.W.1** appeared before him and lodged a complaint to the effect that the day before the complaint i.e., on 27.02.2014, during the night, himself and **P.W.1**, *Sampath Kumar*, and the Victim/one



Crl.A.No.720 of 2016

WEB C

Mani Gounder @ Palanisamy were sitting and consuming liquor outside *KSR Maligai Shop* along with the Accused /*Suresh*. During that time, a dispute as to giving way to *Suresh's* lands by the deceased cropped up and the deceased asserted that he will not give way. There was a wordy quarrel. Thereafter, the deceased started for home by getting onto his TVS 50 Moped. When he sat on it, the enraged accused shouted at him as to how he will not give him way and picked up a stone near the Moped and hit him on his head, resulting in serious bleeding injury. **P.W.1 & P.W.2** immediately tried to lift him to send him to hospital. But, the deceased was not conscious. They immediately shouted at the accused for he caused the death of the deceased and thereupon the accused hastily left the scene in his bike.

2. On the strength of this complaint, a case in Crime No.87 of 2014 was registered for the offence punishable under Section 302 of the Indian Penal Code. Thereafter, P.W.11 initially took up and thereafter P.W.12 completed the investigation and laid a charge sheet proposing that the accused committed an offence under Section 302 of IPC. The same was taken on file as P.R.C.No.17 of 2015, on the file of the learned District-cum-Judicial Magistrate, Mettupalayam. Upon appearance of the accused and furnishing of copies, the case was committed to the learned District and Sessions Judge,



Coimbatore, wherein the case was taken on file as S.C.No.162 of 2015 and was made over to the learned First Additional District and Sessions Judge, Coimbatore.

2.1. After considering the materials on record and submissions made on either side, on 29.09.2015, a charge under Section 302 of IPC., was framed by the Trial Court. Upon being questioned, the accused denied the charge and stood trial.

2.2. So as to bring home the charge, the prosecution examined One *Rajagopal*, the first informant and the eye-witness to the incident as **P.W.1**. The other eye-witness to the case, namely, One *Sampath Kumar* was examined as **P.W.2**. The owner of the nearby shop, who immediately came to the spot, namely, *Shanmugasundaram* was examined as **P.W.3**. The daughter of the deceased, *Sangeetha*, was examined as **P.W.4**. One *Dharmalingam*, who was witness to the Observation Mahazar was examined as **P.W.5**. One *Murugasen* who witnessed the confession statement leading to the recovery of the bike used by the accused was examined as **P.W.6**. The Doctor, who conducted the Postmortem, was examined as **P.W.7**. One *K.Venkateswaran*, the Forensic Analyst, who examined the material objects and the bloodstains over it, was



examined as **P.W.8**. One *Baskaran*, who handed over the body of the deceased to the relatives was examined as **P.W.9**. *Senthil Kumar*, the Sub-Inspector of Police, who registered the First Information Report, was examined as **P.W.10**. One *Sekaran*, the Inspector of Police, who initially conducted the investigation, was examined as **P.W.11**. *Anandh @ Arokiyaraj*, the Inspector of Police, who completed the investigation and laid the charge sheet, was examined as **P.W.12**.

2.3. On behalf of the prosecution, the complaint lodged by **P.W.1** was marked as **Ex.P-1**. The Seizure Mahazar leading to the seizure of the stones and the sample of earth taken from the place of occurrence was marked as **Ex.P-2**. The Seizure Mahazar leading to the seizure of the chappal and TVS-50 Moped belonging to the accused was marked as **Ex.P-3**. The Observation Mahazar was marked as **Ex.P-4**. The Seizure Mahazar leading to the seizure of the motorbike, pursuant to the confession of the accused was marked as **Ex.P-5** and the admissible portion of the confession was marked as **Ex.P-6**. The requisition given for conducting Postmortem was marked as **Ex.P-7**. The Postmortem Certificate was marked as **Ex.P-8**. The Viscera Report was marked as **Ex.P-9** and the final opinion of P.W.7 was marked as **Ex.P-10**. The reports which were given by the Forensic Department by examining the M.Os



and the earth, were marked as **Exs.P-11 & P-12** respectively. The report of P.W.9 about handing over the body and the belongings to the relatives of the deceased was marked as **Ex.P-13**. The printed First Information Report was marked as **Ex.P-14**. The Rough Sketch was marked as **Ex.P-15**. The Inquest Report was marked as **Ex.P-16**.

2.4. This apart, the large stone and the small stone, which were used for the commission of the offence were produced as **M.O.1 & M.O.2**. The Chappals, TVS 50 Moped, Bloodstained soil, other soil, Shirt, Baniyan, Dhoti and Underwear, were produced as **M.Os.3 to 10**.

2.5. Upon being questioned about the material evidence on record and the incriminating circumstances, under Section 313 of Cr.P.C., the accused denied the same as false and made a statement that he was not at all in the place of occurrence and went as tourist driver and came to his Village on the next day morning. There was no evidence let in on behalf of the defence.

2.6. Thereafter, the Trial Court proceeded to hear the learned Additional Public Prosecutor on behalf of the State and the learned Counsel for the accused, and by a Judgment dated 28.09.2016 found that the prosecution



Crl.A.No.720 of 2016

though proved the incident, did not prove any premeditated intention therefore, held that the accused got angry due to the wordy quarrel committed the offence and therefore, found the accused of the offence punishable under Section 304(II) of IPC., and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- and in default, to undergo Simple Imprisonment for further period of 3 months. Aggrieved by the same, the present appeal is filed before this Court.

3. Heard *Mr. A.E. Ravi Chandram*, learned Counsel for the appellant and *Mr. J. Subbiah*, learned Government Advocate (Crl.side) appearing for the respondent.

4. *Mr. A.E. Ravi Chandram*, learned Counsel for the appellant taking this Court through the evidence on record, would submit that the entire case of the prosecution is fraught with so many contradictions and inconsistencies. Finding of the guilt cannot be recorded and on a cumulative reading of the entire evidence on record and the Trial Court ought not to have convicted the accused. He would submit that even though only one stone was said to have used by the accused for the commission of the offence, two stones were produced and out of the two stones produced, only one stone was sent for



Forensic examination. The stones were not properly marked through the Observation Mahazar witness. Even the witnesses also not spoke about the use of the other stone. Therefore, there is grave doubt as to the very **M.O.1** and **M.O.2**, which were produced by the prosecution and the same appear to be artificial. Secondly, he would contend that the version of the alleged eye-witnesses, namely, **P.W.1 & P.W.2** are grossly inconsistent with the medical evidence on record. On a perusal of **Ex.P-8** /Postmortem Certificate, it would be clear that as many as 11 injuries throughout the face are alleged to have been found on the body of the victim, while as per the eye witnesses there was only one throw of the stone.

5. This apart, the evidence of **P.W.7** is to the effect that the skull itself has been fractured and the injury is on the rear side also. Therefore, such kinds of injuries could not have happened in the manner as narrated by **P.W.1**. Therefore, the very case of the prosecution is suspicious. He would further contend that the alleged stones were not shown to the Doctor at the earliest point of time, so as to get his opinion. Apart from that, it can be seen that the version of **P.W.1** itself is contrary to the original complaint given by him, which says, as if the accused was already present from the beginning, but, in the chief-examination, he deposed as if the accused came later. Admittedly,



there were injuries on the person of the accused, which were not at all explained by the prosecution. Further, in this case, even though **P.W.1** and **P.W.2** are said to have been sitting together with the victim/deceased, the very fact that they did not do anything to save the deceased from the attack of the accused to itself would throw suspicion as to whether they were actually present in the scene of occurrence or not. The prosecution could not examine any independent witness as **P.W.1** and **P.W.2** happened to be relatives of the deceased/victim. **M.O.1 & M.O.2** were also not shown to **P.W.5** who was the Mahazar witness in whose presence the said M.O's were seized.

5.1. In support of his submissions, the learned Counsel relied upon the Judgment of this Court, in **Dasarathan Vs. State**¹, more specifically paragraph No.11 to contend that when the prosecution has not explained the injuries of the person of the accused, then the same would enure to the benefit of the accused and the accused should be acquitted. The learned Counsel also relied upon the Judgment of the Hon'ble Supreme Court of India, in **Rahul Vs. State of Delhi, Ministry of Home Affairs and Others**², for the proposition that when the prosecution has not discharged its onus in bringing the guilt by adducing proper and appropriate evidence, merely on the moral grounds as if what will

¹ Crl.A.No.210 of 2018, dated 19.10.2022

² (2023) 1 SCC 83



be the view of the victim's family or the societal condemnation should not be factors for this Court to render a finding of guilt, rather the Court should always follow the principles of proof beyond doubt while rendering the finding of the guilt. The learned Counsel further relied upon the Judgment of the Hon'ble Supreme Court of India, in *Amar Singh Vs. State (NCT of Delhi)*³, more specifically for the proposition that if the medical evidence is inconsistent with the version of the eye-witness, that will throw a suspicion as to the very presence of the eye-witness. Further, the failure of the Investigation Officer in not showing the weapon used by the accused to the Doctor who conducted the Postmortem and gave the opinion, would also be a serious lapse raising the doubt as to the veracity of the case of the prosecution. Summarizing his submissions, the learned Counsel would also submit that everything in this case, including the time and occurrence of the death, no alcohol being present in the Viscera and the contradictory version of *P.W.1, P.W.2 & P.W.3* would render the case of the prosecution doubtful. Therefore, the appeal is liable to be allowed.

6. Per contra, Mr. J.Subbiah, learned Government Advocate (Criminal side) appearing for the respondent would submit that in this case the prosecution has proved the offence to the hilt by examining *P.W.1 & P.W.2*



who are the eye-witness. In spite of the cross-examination the defence was not able to extract any favourable answer from the eye-witnesses, who were natural witnesses on the spot and there is no iota of doubt whatsoever as to their presence in the spot. This apart, the medical evidence would only confirm the version and is not opposed to the oral evidence on record. From the type of stone used for the commission of the offence, it can be seen that it will break into two with the kind of force which the accused used on the deceased. The stone is very abrasive, uneven and coarse and hence all the injuries which are mentioned in the Postmortem Certificate are possible on account of the act of the accused. As a matter of fact, the Doctor/**P.W.7**, had categorically deposed that the injuries could happen by the type of act done by the accused. This apart, the said stone was also sent for the Forensic examination and the report was also filed. Therefore, when it is a clear and categorical case of the prosecution that in the presence of eye-witnesses of **P.W.1 & P.W.2**, the accused hit the victim and caused his death, no exception whatsoever can be taken for the finding by the Trial Court, therefore, the appeal should be dismissed.

7. I have considered the rival submissions made on either side and perused the material records of the case. In this case, even though the learned



Counsel for the appellant laboured much to takes this Court to the alleged inconsistencies in the evidence, in my view, none of the alleged inconsistencies are material in nature and at best are minor discrepancies. Therefore, the argument about cumulative reading of the evidence showing discrepancies/inconsistencies is liable to be rejected. From the photographs of the Material Objects send by the Trial Court upon specific request by this Court, I am of the view that though the word 'stone' used in the First Information Report as well as in the Judgment of the Trial Court, what is produced as **M.O.1 & M.O.2** which is used by the accused is a loose sediment which is called in Tamil “கட்டி” or “ஓடைக்கல்” in the slang of the instant area. A perusal of both the stones would clearly be intandem with the answer elicited by the Court itself from **P.W.1** that when the accused used stone, it was a single stone and on account of throwing and hitting, it broke into two pieces. The nature of the said stone is also very uneven and abrasive, therefore, it could have resulted in the injuries as listed in the Postmortem Report.

8. The contentions of the learned Counsel that both pieces of the stone should have been sent to the Forensic examination, will also not lead the accused anywhere, because, the bloodstain was found in one piece of the two, which was sent to the Forensic examination, which would be enough and it is



not necessary to send both the pieces. Further, in the instant case, the alleged incident is a single blow and therefore, there was no question of the eye-witnesses trying to stop the accused. The learned Counsel would also point out that in the Mahazar witness states that only one stone which was recovered, but, considering the fact that it was one stone which was broken into two and the very **Ex.P-2**, which clearly shows both the broken stones, again the said contradiction can only be a minor discrepancy and not a material contradiction. But, however, on a cumulative reading of the entire evidence and the perusal of the photographs of **M.O.1 & M.O.2**, it is clear that there was no premeditated intention.

8.1. Secondly, the accused, the deceased and **P.W.1 & P.W.2** all were sitting in a place and were consuming alcohol in the night. It can be seen from the evidence of **P.W.1 & P.W.2** corroborated with the evidence of **P.W.3** where there is arose a drunken brawl and after the wordy quarrel, the deceased started in his TVS-50 Moped to go to his home, while the accused in a sudden fit of rage shouted and instantly picked up the said **M.O.1 & M.O.2** and threw it on the deceased/victim which fell on the head/face of the deceased, resulting in the deceased falling down instantly and being found unconscious, which lead to his death. Therefore, it can be seen from the evidence of the



prosecution itself that there was a grave and sudden provocation which arose due to the drunken brawl.

8.2. Thirdly, on an examination of **M.O.1 & M.O.2**, even together, which is a loose sediment, it cannot be termed as a stone so strong or a dangerous weapon, which was picked up by the accused. Therefore, when the accused picked up **M.O.1 & M.O.2** and hit the deceased, it cannot be said that he did it with the knowledge of that it is likely to cause the death of the victim. Therefore, I am unable to uphold the conviction of the Trial Court for the offence punishable under Section 304(II) of IPC.

8.3. On the other hand, the act of the accused would only amount to the lesser offence of causing grievous hurt out of sudden provocation which is punishable under Section 335 of IPC. In the instant case, hurting was not only dangerous, as the deceased was sitting in the TVS -50 Moped, it actually resulted in death as the victim fell down on account of the blow and suffered head injuries, it can be held that the hurt caused by the accused is grievous in nature and accordingly, I hold that the accused is guilty of the offence punishable under Section 335 of IPC.



9. Now coming to the sentence, considering the age of the victim being 64 years, the age of the accused, which is presently 39 years and the fact that he is living with his family consisting of two children, and considering the manner in which the incident happened after the drunken brawl, I am of the view, that a sentence for a term of Rigorous Imprisonment for a period of two years would be appropriate in the instant case.

10. In the Result :

(i) The conviction and sentence imposed by the learned First Additional District and Sessions Judge, Coimbatore, in S.C.No.162 of 2015 by a Judgment dated 28.09.2016, is set aside, inasmuch as it convicts the appellant to the offence punishable under Section 304(II) of IPC., and the conviction is modified into one under Section 335 of IPC

(ii) The appellant is sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.2,000/-.

(iii) It is needless to mention that the said fine amount can be adjusted from among the sum of Rs.5,000/- already paid by the accused, pursuant to the Judgment of the Trial Court.

(iv) The accused is entitled to set off the period of imprisonment already undergone by him.



Crl.A.No.720 of 2016

(v) The accused shall surrender before the Trial Court within a period of two weeks from today, to undergo the remaining part of the sentence.

25.04.2023

Index:Yes

Speaking order

Neutral Citation : Yes

klt

To

- 1.The I-Additional District and Sessions Judge,
Coimbatore.
- 2.The Inspector of Police,
Annur, Police Station,
Coimbatore.
- 3.The Public Prosecutor,
Madras High Court.



WEB COPY



Crl.A.No.720 of 2016

D.BHARATHA CHAKRAVARTHY, J.

klt

Crl.A.No.720 of 2016

25.04.2023