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Crl.A.No.205 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.A.No.205 of 2020

Iyappan

... Appellant

Vs.

State represented by,
The Inspector of Police,
J-3, Guindy Law and Order Police Station,
Chennai.

... Respondent

Prayer:Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment passed in S.C.No.339 of 2015 dated 30.04.2019 passed by the III Additional Sessions Judge, Chennai and allow the Criminal Appeal.

For Appellant : Mr.G.Mani Prabhu

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

JUDGEMENT

This Criminal Appeal has been filed against the judgment dated 30.04.2019 passed in S.C.No.339 of 2015 on the file of the III Additional Sessions Judge, Chennai.



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2. The respondent police registered a case against the appellant in Crime No.2309 of 2015 on the file of the respondent police for the offences under Sections 294(b), 302 and 506(ii) IPC. After investigation, laid a charge sheet before the learned IX Metropolitan Magistrate, Saidapet, Chennai. The learned Magistrate has taken the charge sheet on file in P.R.C.No.133 of 2015. After completing the formalities under Sections 207 and 209 Cr.P.C., committed the case to the learned Principal Sessions Judge, Chennai, since the offences are exclusively triable by the Court of Session. The learned Principal Sessions Judge has taken the case on file in S.C.No.339 of 2015 and made over the same to the III Additional and Sessions Judge, Chennai. The learned III Additional and Sessions Judge, after framing the charges for the abovesaid offences, not found the accused guilty for the offence under Section 294(b) and 506(ii) IPC and acquitted the appellant for the abovesaid charges. The learned Judge found the accused guilty for the offence under Section 304(ii) IPC. The accused was convicted for the offence under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.2,000/- in default to undergo rigorous imprisonment for two months. Challenging the said judgment



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there is a possibility of sustaining injuries. The trial court failed to appreciate the same. No witness has stated that the appellant is the one who attacked the deceased with iron rod and due to that, the deceased sustained injury which leads to cause of death. P.W.3 and P.W.4 Confession and Mahazar witnesses have not supported the case of the prosecution. The weapon said to have used for attack was not recovered by the prosecution. Further he would submit that the offence was stated to have occurred on 24.06.2015 between 6.00 am and 7.00 am in the morning whereas, the deceased was brought to the hospital and he was declared as dead by 7.50 am. P.W.1 lodged a complaint before the respondent police and the F.I.R was registered at 8.30 am. There was delay in sending the F.I.R to the Court. The Trial Court failed to appreciate the evidence and erroneously convicted the appellant which warrants interference.

4. Learned Additional Public Prosecutor has submitted that the appellant was the driver of the vehicle which was used to transport various articles to hotel Ganesh Bhavan, where the deceased Shankar was working as Security Guard. There used to be frequent petty quarrels between the appellant and Shankar during delivery of the articles at Ganesh Bhavan. On 24.06.2015,



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around 5.30 pm, while the appellant was delivering idly batter, a quarrel ensued, in which the the appellant had assaulted the deceased Shankar with a iron rod. Due to the same, the deceased sustained injury on his head and he succumbed to death. P.W.1 and P.W.2 are the eye witnesses had deposed about the manner of assault by the appellant upon the deceased on the date of incident. Evidence of P.W.7 corroborated with the evidence of P.Ws.1 and 2. Medical evidences P.W.10 and P.W.14 had deposed about the injury sustained by the deceased. The doctor evidence has clearly shows that the deceased died due to blend force injury on his head and also he was suffering from fits due to attack. Therefore, from the oral and documentary evidence, it is proved that the appellant caused injury to the deceased. The prosecution has proved its case beyond reasonable doubt through eye witnesses and medical witnesses. The trial court also rightly appreciated the evidence and convicted the appellant for the charged offence. There is no merit in the appeal and the same is liable to be dismissed.

5. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.



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6. Specific case of the prosecution is that the defacto complainant and the deceased were working as security at Ganesh Bhavan Hotel, Ambika Nagar, Ekkatuthangal and the appellant is the driver of Mahindra Load Jeep who used to bring necessary articles to the said hotel and in connection with unloading of the things, there were frequent petty quarrels arose between the appellant and the deceased Shankar. On 24.06.2015 at about 5.30 p.m., the appellant accompanied by the Supervisor Swaminathan had brought the idly batter and other articles in the load jeep. The Supervisor Swaminathan had instructed the appellant and the deceased to unload the things and had gone to the kitchen. The appellant had handed over the idly batter vessel to the deceased Shankar and there was a quarrel arose between them. The appellant had snatched an iron rod from the jeep by scolding the deceased by filthy language had blew over his left head. Due to the same, the deceased sustained injury on his head.

7. In order to prove the case of the prosecution, 19 witnesses were examined as P.W.1 to P.W.19 and 18 documents were marked as Ex.P1 to P.18. Besides six material objects were exhibited.



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8. In this case, P.W.1 is the defacto-complainant, who is none other than the co-worker of the deceased and he was working as Security at Ganesh Bhavan Hotel. P.Ws.1 and 2 are the eye witnesses, have categorically stated about the occurrence. Medical evidence also corroborated the same. Though the learned counsel for the appellant submitted that the defacto-complainant is not an eye witness and also he does not know Tamil and hence the complaint given by the defacto-complainant is doubtful, but during the evidence, P.W.1 clearly stated that he is coming from other State and he signed in the complaint and in deposition in Hindi, however he has stated that he knows Tamil very well and he can understand Tamil language, but he could not write. He was working in Chennai for more than two years. In his evidence, he has clearly stated that he has given the complaint to the police by narrating the entire incident and after reduced into writing, the contents of the complaint were read over to him and also he ascertained that the complaint was written as stated by him. It was not established by the defence that the defacto complainant was not working in the hotel and he was not present at the time of occurrence. The complainant need not be an eye witness. The person who knows the occurrence or incident, or any other unlawful activity or criminal offence, can set the law



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into motion. Therefore, contention of the learned counsel for the appellant is not acceptable.

9. P.Ws.1 and 2 are eye witnesses in this case. Though P.W.2 has stated in his cross examination that at the time of occurrence, the defacto-complainant was not present at the place of occurrence, however, he has stated that he has seen the occurrence. Further, he has stated in his chief examination that he and defacto-complainant tried to prevent the appellant from further attack. Therefore, presence of defacto complainant at the time of occurrence was confirmed by the witness P.W.2. The medical evidence also corroborated the evidence of P.W.2. Recovery of the weapon was also proved in this case. The learned counsel for the appellant has submitted that the deceased was suffering from fits, however, from the evidence of P.W.2, it is found that the appellant attacked the victim and due to that, he sustained injury and immediately the deceased was taken to hospital. Therefore, from the evidence of P.Ws.1 and 2 and the medical evidence, the prosecution has proved its case beyond all reasonable doubt. Though the accused was charged for commission of offence under Section 302 IPC., but the evidence on record clearly shows that



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both the appellant and the deceased had entered into dispute while unloading the kitchen articles and due to sudden provocation, the appellant snatching the iron rod, had assaulted the deceased. But, he had no intention to cause death of the deceased. Though case was registered for the offence under Section 302 IPC, however after trial, the trial court found the appellant not guilty for the offence under Section 302 IPC, by considering the fact that the occurrence is an un-intentional one, found the appellant guilty for the offence under Section 304(ii) IPC.

10. The appellate court is the fact finding court, it has to re-appreciate and revisit the entire evidence and give independent finding. Considering the facts and circumstances of the case, the prosecution has proved its case beyond reasonable doubt. This Court does not find any perversity or any reason to interfere with the judgment of the trial court and there is no merit in the appeal and the appeal is liable to be dismissed. However considering the mitigating circumstances of the case and also the age of the appellant, sentence of imprisonment alone is hereby reduced from ten years rigorous imprisonment to seven years rigorous imprisonment for the offence under Section 304(ii) IPC which would meet the ends of justice.



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WEB COPY 11. With the abovesaid modification, Criminal Appeal is partly allowed.

Consequently, connected miscellaneous petition, if any, is closed. Since the accused is on bail, the trial court is directed to take steps to secure the custody of the accused to undergo the remaining period of sentence, if any. The period of sentence already undergone by the accused shall stand set off under Section 428 Cr.P.C.,

23.01.2023

mfa

Index:yes/No

Internet:yes/No

To

1. The III Additional Sessions Judge, Chennai.
2. The Inspector of Police,
J-3, Guindy Law and Order Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

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P.VELMURUGAN, J.

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