



Crl.A.No.236 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.236 of 2020

1. Manikandan,
2. Kumar,
3. Durairaj,

... Appellants/Accused (A1 to A3)

/versus/

State By,
Inspector of Police,
Meensuriti Division,
Ariyalur District.
(Crime No.54 of 2019).

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 (2) of Cr.P.C., pleaded to set aside the conviction and sentence passed by the Learned Additional District & Sessions Judge, Ariyalur, in S.C.No.108 of 2019 by judgment dated 06.03.2020 and acquit the appellants herein from the charges.

For Appellants : Mr.K.Balu,

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



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J U D G M E N T

This Criminal Appeal is filed by the three accused persons who were found guilty and convicted for the offence under Section 304(ii) of I.P.C., the trial Court has sentenced them to undergo 5 years R.I and to pay fine of Rs.25,000/- each, in default to undergo 6 months S.I.

2. The case of the prosecution is that, on 02.04.2019, at about 20.00 hours, Jeevagan (P.W.2) and Senthil Murugan (P.W.3) while coming in their two wheeler dashed the two wheeler of 1st accused in which 2nd accused was sitting in the pillion. In this accident, the vehicle of the 1st accused got damaged. After this occurrence, Jeevagan (P.W.2) came back to his home. By 21.00 hours, A1 to A3 came to the house of Jeevagan (P.W.2) and called him to come out. When the father of P.W.2 the deceased came out and tried to pacify the accused persons, they abused him with filthy language and kicked him repeatedly causing internal injury to the lungs. The deceased, who developed chest pain got admitted in the hospital on the next day but died due to clotting of blood at hilar region of the lungs. On intimation from the wife of the deceased, the police registered the case



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in Crime No.54 of 2019 for the offences under Section 294(b), 323 and 302 of I.P.C.

3. On completion of investigation, final report was filed in P.R.C.No.20 of 2019 before the Judicial Magistrate-II, Jayankondam and thereafter, case was committed to Additional District and Sessions Court, Ariyalur and taken on file in S.C.No.108 of 2019. The Learned Appellate Judge framed charges against the accused persons for the offences under Section 294 of I.P.C for using filthy language, Section 323 of I.P.C for causing hurt and Section 302 of I.P.C for causing death.

4. To prove the charges, the prosecution examined 19 witnesses (P.W.1 to P.W.19), marked 17 Exhibits (Ex.P.1 to Ex.P.17) and 3 material objects (M.O.1 to M.O.3).

5. The trial Court, after considering the fact that the accused persons have gone to the house of the deceased called him out from the house, picked



quarrel and attacked him causing internal injury which has led to his death on the next day. The evidences of P.W.1 to P.W.3 who are wife, son and brother-in-law of the deceased, who had witnessed the occurrence and the post-mortem report (Ex.P.11) which indicates that internal injury caused at the joint of hilar region causing blood clot and stoppage of respiration held that, the prosecution has proved that the accused persons gone to the house of the deceased, abused him with filthy language and kicked him over the body causing hurt and one of the injury caused internal damage to the lungs leading to blood clot. The death of the deceased amounts to culpable homicide not amounting to murder and offence punishable under Section 304(ii) of I.P.C.

6. The Learned Counsel appearing for the appellants submitted that it is the continuation of earlier incident which look place in the road where P.W.1 and P.W.3 while travelling in their two wheeler hit the two wheeler of A1 and caused damage to the vehicle. For claiming compensation for the damage caused, the accused persons went to the house of P.W.1 where quarrel picked up leading to exchange of blows. The accused never had intention to cause death or knowledge



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that the injury will cause death. Therefore, the trial Court failed to consider that it is an act of sudden provocation in a fit of anger during the sudden quarrel and not done with intention to cause death or knowledge to cause death. Hence, conviction under Section 304(ii) of I.P.C is erroneous.

7. Per contra, the Learned Government Advocate (Crl.Side) appearing for the respondent, on going through the evidence and the post-mortem report marked as Ex.P.11 and the opinion of Doctor (P.W.12) as explained by P.W.17 submitted that it is clear case of culpable homicide caused with knowledge and therefore, finding of the trial Court and conviction has to be sustained. Further, the evidence of P.W.1 to P.W.3, who are witnesses to the occurrence had clearly proved that it is the accused persons gone to the house of the deceased called him out from the house and picked quarrel. Therefore, it cannot be considered as an uninvited quarrel to hit it under exception to murder. Further, the injury is very fatal and seat of injury is also to be taken note of. These accused persons who are around 25 years old attacked a person at around 47 years old, who has nothing to do with the earlier incident which alleged to have took place in the road. Since



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there was no external injury over the body, the rustic villagers had not taken medical treatment immediately. No doubt, if the injured had taken the treatment immediately, his life would have been saved but that can be only a mitigating circumstances while dealing the accused persons regarding sentence and nothing more.

8. Taking note of the other fact that the prosecution has registered the case immediately, taken up the investigation and collected the evidence which clearly indicates that the overt act of these three accused persons who have joint together and attacked the deceased are liable for conviction.

9. As far as for the offence under Section 304(ii) of I.P.C., is concerned, the blood clot injury which has caused to the deceased not been attributed to any one of the accused individually. These three accused persons have shared the common object to cause hurt to the deceased and in furtherance of common intention, they jointly attacked the deceased. The trial Court has rightly held that their intention was not to cause death, however, the seat of injury and the



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manner in which the deceased was attacked and his age leads to an inference they had knowledge that the injury will likely to cause death.

10. Therefore, this Court finds no error in convicting the accused persons for the offence under Section 304(ii) of I.P.C. However, taking note of their age of, this Court is of the view that the period of sentence reduced from five years R.I to four years R.I with fine of Rs.25,000/- each, in default to undergo 6 months S.I.

11. Accordingly, this ***Criminal Appeal is partly allowed.*** The period of sentence already undergone shall be set off under Section 428 of Cr.P.C. The trial Court shall secure the accused/appellants and commit him to prison to undergo the remaining period of sentence.

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Index :Yes/No.
Internet :Yes/No.
Speaking order/Non-speaking order
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Dr.G.JAYACHANDRAN,J.

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To:-

1. The Learned Additional District & Sessions Judge, Ariyalur
2. The Inspector of Police, Meensuriti Division, Ariyalur District.
3. The Public Prosecutor, High Court, Madras.

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