



Crl.A(MD)No.109 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on	27.02.2023
Pronounced on	24.03.2023

CORAM

**THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

**Crl.A(MD)No.109 of 2023
and
Crl.M.P(MD)No.2339 of 2023**

Thangapandi

.. Petitioner/Sole Accused

Vs.

State rep. by,
The Inspector of Police,
Town Police Station,
Bodinayakanur,
Theni District.
(Crime No.130 of 2014)

.. Respondent/Complainant

PRAYER: Petition filed under Section 374 of the Criminal Procedure Code, against the judgement and order dated 31.07.2018 made in S.C.No. 157 of 2016 on the file of the learned Additional District and Sessions Judge(Fast Track Court), Theni, Theni District.



Crl.A(MD)No.109 of 2023

For Petitioner : Mr. A.Prasanna Rajadurai

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

JUDGMENT

K.K.RAMAKRISHNAN, J.

This criminal appeal is filed against the judgment and order dated 31.07.2018 passed by the learned Additional District and Sessions Judge,(FTC), Theni, in S.C.No.157 of 2016, wherein the appellant was convicted for an offence under Section 302 IPC and sentenced to undergo Life Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo Simple Imprisonment for six months.

2.The case of the prosecution runs thus:

- i. One Pitchaimani, the deceased Veerasamy and Kathavarayan are brothers and the appellant Thangapandi is their neighbour. Kathavarayan is suffering from seizure(fits and the appellant, Juvenile accused Karthick and one Koolpandi brought Kathavarayan for taking liquor with them frequently and the same was questioned by the deceased.



WEB COPY

- ii. On the date of occurrence 28.03.2014 at 6.00 p.m., when the appellant, Juvenile accused Karthick, Koolpandi and Kathavarayan were taking liquor in the nearby place of the appellant's house, the same was questioned by the deceased and he asked them inspite of the repeated request, why they took the company of the said Kathavarayan.
- iii. So, the appellant and the juvenile accused Karthick enraged and the juvenile caught hold the deceased and the appellant stabbed the deceased with M.O.1 knife and the deceased died on the spot. So, P.W-1, Manimegalai, went to the respondent police station on the same day at 06.45 p.m., and gave a written complaint (Ex.P1) to P.W-12, the Sub Inspector of Police. He, upon receipt of the complaint, registered the FIR(Ex.P7) in Crime No.130 of 2014 against the appellant for the offence punishable under Sections 341 & 302 IPC. He transmitted the express FIR to the learned District Munsif cum Judicial Magistrate, Bodi, as well as the Inspector of Police, Balaguru (P.W-14) on the same day.
- iv. P.W-14, Inspector of Police, took the investigation and went to the place of occurrence at 21.15 hours on the same day and prepared an observation mahazar (Ex.P4) and prepared the sketch and



WEB COPY



Crl.A(MD)No.109 of 2023

athatchi and conducted the inquest and sent the body to the Government Hospital, Bodinaiyakanur through P.W-1, constable along with requisition to conduct the postmortem.

- v. Thereafter, P.W-14, Inspector of Police arrested the appellant on 29.03.2014 at 10.30 a.m., near a park at Bodi. The appellant has voluntarily given confession under Ex.P2 based on which, M.O.1 was recovered under Ex.P3- Athatchi in the presence of P.W-7.
- vi. P.W.14, after examining the witnesses by recording their statements and collecting various reports including the postmortem certificate, viscera report, chemical analysis report, serological report filed the final report against the appellant on 23.06.2014 under Sections 341 & 302 IPC before the Judicial Magistrate Bodinayakanur and the same was taken on file by the learned Judicial Magistrate in P.R.C.No.14/2014. After furnishing copies of records to the appellant under Section 207 of the Code of Criminal Procedure, the learned Judicial Magistrate, Bodinayakanur, committed the case to the Court of Sessions. The Principal District and Sessions Judge, Theni, took up the case in S.C.No.157 of 2016 and framed necessary charges and questioned the appellant under Section 235(2) Cr.P.C and he pleaded not



WEB COPY



Crl.A(MD)No.109 of 2023

guilty and denied the charges and his involvement in the offence and stood for trial.

vii. The learned trial Judge conducted the trial by examining 14 witnesses on the side of the prosecution and marking Exhibits P.1 to P.10 and three material objects and questioning the appellant under Section 313 of the Code of Criminal Procedure, for which the appellant simply denied and neither examined any witness nor marked any document on his side.

viii. The learned Principal District and Sessions Judge, Theni, after analysing the oral and documentary evidence adduced on both sides, held that the prosecution had established the guilt of the appellant beyond reasonable doubts and convicted the appellant for the offence under Section 302 IPC and sentenced him to undergo Life Imprisonment and pay a fine of Rs.5,000/- in default, to undergo Simple Imprisonment for six months. Challenging the same, present appeal is filed by the appellant.

3. Mr.A.Prasanna Rajadurai, learned counsel appearing for the appellant would submit that there was a contradiction version between the witnesses regarding the registration of FIR and the causing of the



injuries and also the material witness Koolpandi was neither examined nor furnished any reason for his non-examination during the trial and he is the competent witness who speak about the genesis of the occurrence. Further, he specifically contended that there was a contradiction between the version of the complainant and the remaining witnesses in respect of the manner of the assault and the injuries. Further, there was a difference between the contents of the complaint and evidence of the complainant and hence, the non-examination of the scribe of the complaint was fatal to the prosecution and the same creates doubt over the complaint version. Further P.W-2 stated that he came to the occurrence place after hearing the news of the death of the deceased. In the said circumstances, in view of the contradiction about the incident, the appellant is entitled for acquittal. Further, he would submit that the appellant has been in incarceration for the past 4 ½ years and if at all entire evidence of the P.W-1 to P.W-6 is accepted, offence under Section 302 IPC was not made out and it is the case of sudden fight and hence, he submitted that his offence come under the Exception (4) of the Section 300 IPC and prayed for modification of the conviction and sentence from 302 IPC to 304(ii) IPC.



WEB COPY

4. In countenance to the said argument, learned Additional Public Prosecutor, Mr.R.Meenakshi Sundaram, would submit that the cross-examination conducted after a long time and hence, the witnesses were won over and in the said circumstances, the prosecution proved the case on the basis of the chief examination of the P.W-1 to P.W-6 and the knife (M.O1) was also produced and also the medical evidence is corroborated with the version of the P.W-1 to P.W-6. The number of injuries speak the volume about the intention of the appellant and hence, there is no scope for reduction of sentence by modifying the offence from Section 302 IPC into 304(ii) IPC. Hence, there is no necessity to interfere the judgment passed by the trial Court.

5. Considering the rival submissions made on behalf of the appellant as well as the learned Additional Public Prosecutor, the specific question arise in this appeal is whether the prosecution proved the case against the appellant beyond reasonable doubts on the basis of the evidence of the prosecution witnesses, exhibits and material objects.

6. It is clear from the evidence of the prosecution eyewitness, namely, P.W-1 to P.W-6 that the appellant, Juvenile accused Karthick,



WEB COPY

Koolpandi and the brother of the deceased, Kathavarayan are jointly taken liquor behind the house of the appellant and the same was condemned by the deceased by shouting and abusing the appellant as to why he was taken the company of Kathavarayan to drink liquor frequently inspite of Kathavarayan already have had the seizure(fits) problem. The appellant and the juvenile accused got annoyed on the score that the deceased without questioning Kathavarayan abused the appellant. So, infuriated by the same, the juvenile accused caught hold the deceased and the appellant stabbed the deceased with knife(M.O.1) and done to death. All the witnesses cogently and without any material discrepancy deposed in similar line. The said version of the witnesses relating to the overtact of the appellant was corroborated with medical evidence namely, the postmortem Doctor (P.W-9) and M.O1 was identified by the witnesses and hence, this Court finds no reason for not to accept the evidence of P.W-1 to P.W-6.

7. Therefore, the following submission of the learned counsel for the appellant cannot be sustained:

7.1. The non-examination of the scribe of the complainant is not fatal as argued by the learned counsel for the appellant when P.W-1



Crl.A(MD)No.109 of 2023

clearly deposed about the lodging of complaint to the P.W-12 at 19.45 hours on 28.03.2014 and same was registered in Crime No.130 of 2014 for the offence under Sections 341 and 302 IPC under Ex.P7 (Express FIR). The said FIR was reached the Court at 2.30 a.m. The P.W-13 specifically stated that the jurisdiction Magistrate, Bodi, was on leave and hence, the same was transmitted to the learned Judicial Magistrate, Theni and handover the same at 2.30 a.m. Hence, there was a prompt lodging of the FIR and the same was reached the Court in time. So there was no doubt over the registration of the case and hence, the non-examination of the scribe is not material.

7.2. Koolpandi, who was the friend of the appellant and who was accompanied the appellant on the date of the occurrence intervened the fight made between the deceased and the appellant and sustained injuries. The said Koolpandi was the material witness to speak about the genesis of the occurrence and his non-examination is affected the prosecution version of the appellant stabbed the deceased. The learned Additional Public Prosecutor submitted that the Koolpandi was not available during the course of the trial and hence, the prosecution unable to examine him. The death of Koolpandi was also affirmed by the witnesses in the cross-examination. In the said circumstances, non-



examination of Koolpandi did not affect the veracity of the eyewitnesses, namely, P.W-1 to P.W-6.

8. The last submission of the learned counsel for the appellant that from the appreciation of the entire evidence, the appellant attacked the deceased without intention, premeditation, in sudden fight arose due to the questioning of the deceased about the conduct of the appellant for calling the brother of the deceased for taking liquor, that too, without asking the deceased's brother to avoid the company of the appellant, the case was come under the exception (4) of Section 300 IPC.

9. Before considering the last submission that whether the appellant's case come under the exception(4) of Section 300 IPC, for better appreciation, it is relevant to extract the provision of Section 300 IPC.

“300.Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—



Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.”

10. Further, it is relevant to refer the following passage from the Judgments of the Hon'ble Supreme Court to fortify the ingredients of the



Exception (4) of Section 300 IPC:

WEB COPY

(i) In 2017 5 SCC 796 (*Surain Singh v. State of Punjab*):

“13. Exception 4 to Section 300 IPC applies in the absence of any premeditation. This is very clear from the wordings of the Exception itself. The Exception contemplates that the sudden fight shall start upon the heat of passion on a sudden quarrel. The Fourth Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of provocation not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A “sudden fight” implies mutual provocation and blows



WEB COPY



Crl.A(MD)No.109 of 2023

on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter.”

14. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat



WEB COPY



Crl.A(MD)No.109 of 2023

between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.

(ii) In 2018 2 SCC 496 (*Atul Thakur v. State of H.P.*):

“12.The number of wounds caused by the appellant, it is a well-established position, by itself cannot be a decisive factor.”.

“.....Neither the use of a knife in the commission of offence nor the factum of multiple injuries given by the appellant would deny the appellant of the benefit of Exception 4.”

11. The submission of the learned counsel for the appellant that his case come under the Exception (4) of Section 300 IPC is accepted on the facts of the case. Infuriation on the part of the appellant to cause



injuries to the deceased is justified upon the sequence of events narrated by the witnesses P.W-1 to P.W-6, more particularly, the deceased without condemn his brother and find fault with the appellant and uttered the words towards the appellant by shouting forced the appellant to enrage and assault the deceased without any intention and also without any premeditation. It is further case of the witnesses that the deceased also entered into quarrel with the appellant, more particularly, he made annoyance by his action of shouting the appellant. Hence, the appellant was in the heat of passion imflicated the injuries without taking any undue advantage. Further, his blood was warm and hence he caused injury to Koolpandi also.

12. So from the above sequence of event, the appellant caused injuries in the sudden fight taken place between the deceased and the appellant. In this case, due to sudden fight, the appellant under the total deprivation of his self-control and caused the injuries to the deceased under the heat of passion.

13. The learned Additional Public Prosecutor submitted that injury speaks the intention of the appellant is not accepted in the specific



Crl.A(MD)No.109 of 2023

circumstances of the present case where there was a sudden fight between the appellant and the deceased and it is not the case of the witnesses that the appellant had kept the knife, even prior to the occurrence. So, the occurrence took place suddenly and the witnesses also spoke about the fight between the deceased and the appellant and there is some justification for both appellant and the deceased are to be blamed equally. It is settled principle of law, in the case of sudden fight, the number of injuries is not material and number of wound caused by the appellant itself cannot be a justifying factor to bring the case under the Exception (4) of Section 300 IPC when there was no premeditation and the act was done in the heat of passion without taking undue advantage. The same was the dictum laid by the Hon'ble Supreme Court in the decisions in *Atul Thakur v. State of Himachal Pradesh and others*, reported in 2018 (2) SCC 496.

14. In result, the submission of the learned counsel for the appellant that the act of the appellant is not murder but only culpable homicide not amounting to murder is accepted and hold this case come under exception (4) to Section 300 IPC.



Crl.A(MD)No.109 of 2023

WEB COPY

15. In the result,

(i) This Criminal Appeal is partly allowed. Consequently, connected miscellaneous petition is closed.

(ii) The conviction under Section 302 IPC passed by the learned Principal District and Sessions Judge(Fast Track Court), Theni, dated 31.07.2018, in S.C.No.157 of 2016, is set aside and modified into conviction under Section 304(ii) IPC.

(iii) Accordingly, the sentence of Life Imprisonment passed by the Court below is set aside and the appellant is sentenced to undergo Rigorous Imprisonment for 6 years and to pay a fine of Rs.5,000/-, and in default to pay the fine amount, to undergo Simple Imprisonment for six months.

(iv) The period of sentence already undergone by the accused/appellant shall be set off under Section 428 Cr.P.C., as against the substantive sentence.

[G.J.,J.] & [K.K.R.K.,J.]
24.03.2023

Index: Yes/No
Internet: Yes/No
NCC: Yes/No

PJL



WEB COPY



Crl.A(MD)No.109 of 2023

To

1.The Principal District and Sessions Judge(FTC),
Theni.

2. The Inspector of Police,
Town Police Station,
Bodinayakanur,
Theni District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A(MD)No.109 of 2023

**DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.**

PJL

**Judgment made in
Crl.A(MD)No.109 of 2023**

24.03.2023