



Crl.A.(MD).Nos.544 and 113 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED 06.12.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Sithick ... Appellant/Accused No.2
in Crl.A.(MD).No.544 of 2021

Antony ... Appellant/Accused No.1
in Crl.A.(MD).No.113 of 2021

Vs.

The Inspector of Police,
Cumbum North Police Station,
Theni District.

(In Crime No.96 of 2019) ... Respondent (In both the cases)

COMMON PRAYER : Criminal Appeals filed under Section 374 of the Criminal Procedure Code, to call for the entire records connected with the judgment rendered by the learned Additional District and Sessions Judge



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(Fast Track), Theni, in S.C.No.73 of 2019 dated 27.11.2019 and set aside the same and consequently acquit the appellant.

For Appellant : Mr.R.Prakash

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

COMMON JUDGMENT

These two Criminal Appeals have been filed to set aside the judgment rendered by the learned Additional District and Sessions Judge (Fast Track), Theni, in S.C.No.73 of 2019 dated 27.11.2019 and consequently acquit the appellant.

2.Since the appellants in the two appeals are arrayed as accused No.1 and 2 in the same crime number, these appeals are taken up together for hearing and disposed by way of this common judgment.

3.The appellants are vagrants and the deceased was a load man. On 03.03.2019, at about 02.00 p.m near Kambam bus stand, there was a wordy quarrel between the appellants and the deceased. At that time, the



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appellants were said to have assaulted the deceased and pushed the deceased and he fell down on the road and at that time, the rear tire of the Government bus bearing registration No.TN 57 N 1914, which was moving very fast from west to east inside the bus stand hit the deceased and he sustained grievous injuries and the deceased was taken to the hospital and in the hospital, the doctor declared brought dead. After obtaining the statement from the P.W.1, the complaint was registered by the P.W.10 in Crime No.96 of 2019 for the offence punishable under Section 304(ii) of IPC. Thereafter, P.W.11 conducted the investigation by preparing rough sketch and examined number of witnesses at the spot. Thereafter, he conducted the inquest at Hospital and examined number of the witnesses and filed the final report and the same was taken on file in P.R.C.No.8 of 2019 by the learned Judicial Magistrate, Uthamapalayam. The learned Judicial Magistrate, Uthamapalayam, after compliance of 207 proceedings, committed the case to the Additional District and Sessions Judge (Fast Track), Theni, for proper trial. The same was taken on file in S.C.No.73 of 2019.



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4.The learned trial Judge framed appropriate charges and questioned the accused. The accused denied the charges and pleaded not guilty and stood for trial.

5.To prove the case, the prosecution examined P.W.1 to P.W.11 and exhibited 7 documents as Ex.P.1 to Ex.P.7. Thereafter, both the accused were questioned under Section 313 Cr.P.C proceedings putting the incriminating evidence against them and they denied the same as false and thereafter, the case was posted for defence evidence. On the side of the accused/appellants, neither witness was examined nor document was marked.

6.After considering the material adduced by the prosecution and also hearing the argument of the appellants, the trial Court convicted the appellants for the offence under Section 304(ii) of IPC and sentenced them to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.5,000/- each, in default to undergo six months Simple Imprisonment each. Aggrieved by the same, the present appeals have been filed.



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7.The learned counsel appearing for the appellants submitted that there is a delay in registering the FIR. Even though the occurrence took place in the bus stand at 02.45 p.m, the FIR was registered only at 07.00 p.m and there was no proper explanation regarding the delay on the side of the prosecution.

7.1. The learned counsel further submitted that according to P.W. 1, he gave a complaint at 03.00 p.m and the said FIR was suppressed. The learned counsel further submitted that there was some contradiction between the evidence of P.Ws.1, 3, 4. He further submitted that even if the entire evidence is taken into consideration, it will not attract section 304(ii) IPC and hence conviction under Section 304(ii) of IPC is not proper. It is not the prosecution case that the appellants intentionally pushed the deceased noticing the moving the bus. In the said circumstances, the offence under Section 304(ii) I.P.C., is not made out. The learned counsel submitted that the appellants have so far undergone a period of four years of rigorous imprisonment. He further submitted that the appellants are beggars and there is no motive against the deceased. Hence, he seeks for acquittal.



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8. The learned Additional Public Prosecutor, on instructions, submitted that the appellants have no intention against the deceased. There was no evidence to prove that there was some wordy altercation in the bus stand. In the said circumstances, the learned trial Judge correctly appreciated the facts and circumstances of the case and convicted the appellant under section 304(ii) of IPC. He further submitted that the delay in lodging the FIR is concerned, the deceased sustained injuries and immediately, he was taken to the hospital and in the hospital, he was declared brought dead. In the said circumstances, P.W.1 is a relative, who witnessed the occurrence and taken the deceased to the hospital and after that, the complaint was received at 07.00 p.m. In the said circumstances, the delay has been explained.

8.1. The learned Additional Public Prosecutor further submitted that the independent witnesses P.W.3 and P.W.4 clearly deposed about the incident that the appellant pushed the deceased, due to which, the deceased fell down and sustained injuries. Some contradiction has naturally happened due to the examination of the witnesses after some delay from the date of



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registration of the case. In this case, the prosecution clearly proved that all the ingredients constituting the offence under Section 304(ii) of IPC. Hence, he seeks to confirm the conviction under Section 304(ii) of IPC. So far as sentence is concerned, he fairly conceded that there was no previous antecedents and moreover, they are beggars.

9. This Court perused the records and the documents adduced by the prosecution and the grounds raised by the appellants and reply made by the learned Additional Public Prosecutor and also considered the precedents relied upon by the learned counsel appearing for the appellants in the case of ***Govindan Vs. The State of Tamil Nadu*** reported in ***(2022) 1 Supreme Court Cases (Crl) 571***.

10. The deceased is the father-in-law of the P.W.1. The appellants are vagrants. They were roaming in the Kambam bus stand and begging and eating and eking out a living. On 13.03.2019 at 02.00 p.m, at the Kambam bus stand, the deceased had a wordy altercation with the appellants, followed by a scuffle between them. In the course of the scuffle, the



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appellants pushed the deceased and the deceased fell down and caught in the rear wheels of the bus driven by the P.W.3 and sustained injuries and died on the spot. From the above sequence of events, it is clear that the conviction passed by the Court below under Section 304 (ii) of IPC is not legally correct. To pass the conviction under Section 304 (ii) of IPC, the prosecution must prove the appellants acted with knowledge that their act is likely to cause death but, without any intention to cause death or such bodily injuries as is likely to cause death. This Court finds neither intention to cause death nor they pushed the deceased with knowledge that their act is likely to cause death. The deceased had a wordy altercation with the appellants, who were begging in the bus stand. At that time, the appellants without any intention and knowledge that their act is likely to cause death and without even noticing the on coming bus, pushed the deceased and the bus ran over the deceased. Hence, this Court modifies the conviction from the Section 304(II) of IPC to Section 325 of IPC.



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11. Accordingly, these Criminal Appeals are partly allowed in the following terms;

1.The conviction passed under Section 304(ii) of IPC is modified into Section 325 of IPC.

2.The sentence of imprisonment imposed against the appellants is modified into sentence already undergone.

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

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To:

- 1.The learned Additional District
and Sessions Judge (Fast Track),
Theni.
- 2.The Inspector of Police,
Cumbum North Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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