



CRLA(MD)No.379 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.01.2023

CORAM

**THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN**

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Muthuraj

.. Appellant/Sole Accused

Vs.

State rep. by

The Inspector of Police,

Seethaparpanallur Police Station,

Thenkasi District.

(Crime No.91 of 2016)

.. Respondents/ Complainant

PRAYER: Appeal filed under Section 378 of the Criminal Procedure Code, to call for the records and set aside the order and judgment of conviction dated 20.02.2020 passed in S.C.No.41/2018 by the learned Additional District and Sessions Judge(FTC), Thenkasi, and that the accused to be acquitted.



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For Appellant : Mr.T.R.Subramanian

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

The appeal has been filed by the sole accused convicted by the learned Additional District and Sessions Judge, Thenkasi, for the offence under Section 302 IPC and sentenced to undergo Life Imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo two years Simple Imprisonment.

2.The case of the prosecution is that on 09.09.2016 at about 5.00 a.m, at the house of the appellant, when the appellant demanded money from the deceased, who is his wife to buy alcohol, the deceased refused and enraged by that, the appellant caused the death of the deceased by holding the neck of the deceased, closed her mouth with a towel and thereafter severed her



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head with aruval, and walked out of the house with the severed head and aruval.

3. The prosecution had examined 15 witnesses and marked Ex.P1 to Ex.P23. P.W.1 to P.W.4 are eyewitnesses to the occurrence. P.W.1 and P.W.2 are daughters of the deceased, P.W.3 is the son of the deceased and P.W.4 is the mother of the accused. P.W.5 is the neighbour, who saw the accused walking along with the head of the deceased and aruval in his hand. P.W.6 is the scientific expert and P.W.7 is the observation mahazer witness. P.W.8 is the postmortem doctor and P.W.9 is the witness to the arrest. P.W.10, Grade-I Police Constable, who handed over the FIR to the Court. P.W.11, Head Constable, who received the complaint and registered the FIR. P.W.12 and P.W.13 are the officials of the Electricity Board, who speak about the fact that there was no electricity at the time of the occurrence. P.W.15 is the investigating officer, who conducted investigation and filed the final report.



4. It is the case of the prosecution that P.W-1 gave the complaint after the occurrence to P.W-11, who registered the FIR. The accused was arrested at 10.00 a.m, on the same day and on his confession, the severed head and the aruval were recovered. The learned Sessions Judge found that the prosecution had established its case that the deceased died due to the act of the accused, convicted the appellant for the offence under Section 302 IPC and sentenced him to undergo Life Imprisonment.

5(i). The learned counsel for the appellant submitted that the evidence of witnesses cannot be believed. P.W.2 is not mentally sound and therefore, her evidence cannot be believed. P.W.1, the daughter of the deceased was then a minor, whose version appears to be tutored and hence her evidence cannot be believed. P.W.3 and P.W.4 also cannot be believed since P.W.4, mother of the accused says that she saw the occurrence after hearing the sound and she being an old lady did not have good eye sight and therefore, her evidence is highly doubtful. The learned counsel would further submit that the evidence of P.W.5, the neighbour who had seen the accused taking the head of the deceased outside the house is highly artificial and his



evidence also cannot be believed.

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5(ii). The learned counsel thereafter made a plea that since the accused was intoxicated, it has to be presumed that he had no intention and knowledge to cause the death of the deceased and therefore, his act would be at best culpable homicide not amounting to murder. The learned counsel relied upon Sections 85 and 86 of IPC to impress upon us that the accused did not have the requisite intention to cause the death of the deceased.

6(i). The learned Additional Public Prosecutor submitted that P.W.1 to P.W.4 are natural witnesses and the occurrence took place in the house of the accused. P.W.4 is the mother of the accused and he further added that under normal circumstances, she would have given evidence in favour of the accused, however, she stuck to truth and supported the case of the prosecution. There is no doubt that P.W.1 was minor at the time of the occurrence, but there is no bar, and there is no reason, to disbelieve her evidence. There is nothing to show that P.W.2 was mentally unsound. Even assuming that the evidence of P.W.2 has to be discarded, the prosecution



case is supported by the evidence of P.W.1, P.W.3, P.W.4 and P.W.5.

Their evidence has not been dislodged by the defence in the cross examination. The prosecution has also established that the head of the deceased which was recovered on the confession of the appellant, belonged to that of the deceased and has established the *corpus delicti*.

6(ii). The learned Additional Public Prosecutor further submitted that Sections 85 and 86 of IPC relied upon by the learned counsel for the appellant is to bring the appellant's case as one under culpable homicide not amounting to murder cannot be accepted. It is not the case of the defence that he was intoxicated against his knowledge or against his will by any third party. Section 86 of IPC in fact makes the position very clear that where intoxication is voluntarily done by the accused, he cannot plead that the act was committed without knowledge. This provision has been incorporated only to prevent such type of defences by intoxicated persons committing crimes. Therefore, the learned Additional Public Prosecutor submitted that Sections 85 and 86 will not come to the aid of the appellant to bring his case under culpable homicide not amounting to murder.



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7. Heard Mr.T.R.Subramanian, learned counsel for the appellant and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the State.

8. We find that the occurrence has taken place at 5.00 a.m., on 09.09.2016. The occurrence took place in the house, where the deceased and the accused lived along with their children P.W.1 to P.W.3 and mother of the accused P.W.4. All these witnesses are natural witnesses to the occurrence. The witnesses P.W.1 to P.W.3, the children of the accused and the deceased, have given cogent evidence as to how the occurrence took place. Further, on a reading of the evidence of P.W.2, we find that her evidence also is cogent. She had only taken psychiatric treatment which no way affects her testimony. From the case of the prosecution, it is seen that it would have taken considerable time for the accused to sever the head of the deceased. Therefore, it is not as if that the witnesses heard the sound and came and saw the accused and the deceased. All the three children, namely, P.W.1 to P.W.3 clearly state that they saw the accused cutting the neck of the deceased with an aruval. Further, the deposition of P.W.4, who is the



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mother of the accused, has to be appreciated in that context. Under normal circumstances, as rightly pointed out by the learned Additional Public Prosecutor, no mother would come and depose falsely against her own son. She fairly stuck to truth and stated very cogently about the occurrence and the manner in which the deceased had severed the head of the deceased. The evidence of the scientific expert establishes that the head recovered by the respondent belongs to that of the deceased.

9. Therefore, it is clear that the occurrence had taken place only due to the act of the accused and nothing has been elicited through the cross-examination of P.W.1 to P.W.4 to disbelieve them. That apart, it is the case of the prosecution that the appellant ran out of the home with the head of the deceased and the aruval at 05.10 hours in the morning. Further we see from the evidence of P.W.5, neighbour, that he saw the accused holding the severed head and aruval coming out of the home and it has been corroborated by the recovery of the severed head and aruval on the confession made by the accused. The admissible portion of the confession is marked as Ex.P16 and the recovery mahazar is marked as Ex.P8.



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10. The learned counsel for the appellant submitted that the towel, which is said to have been used by the accused, has not been recovered. In our view, that cannot affect the prosecution case in any manner. At best, it is an infirmity in the investigation, and not a ground for disbelieving the prosecution case.

11. The next submission made by the learned counsel for the appellant is that the appellant's case would fall within Sections 85 and 86 of IPC and that since the appellant was intoxicated *mens rea* to cause murder cannot be imputed. His acts would constitute only an offence of culpable homicide not amounting to murder. This submission made by the learned counsel for the appellant is misconceived both on facts and law. In the instant case, there is no evidence to suggest that the appellant was intoxicated. Even assuming that the appellant was intoxicated, there is no evidence to suggest that the appellant was administered alcohol without his knowledge or will. The learned counsel's reliance on the Section 86, is again misconceived. Section 86 though falls under the Chapter General



exception is in the nature of proviso to Section 85 of the Penal Code. The framers were conscious of the fact that a person who is intoxicated on his own volition, may plead that due to the intoxication, he did not have the requisite *mens rea* for committing the offence. It is to clarify and counter such defences this provision has been enacted.

12. Sections 85 and 86 of IPC is extracted hereunder for better understanding:

“85. Act of a person incapable of judgment by reason of intoxication caused against his will.—Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

86. Offence requiring a particular intent or knowledge committed by one who is intoxicated.—In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to



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be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.”

13. It is not the case of the appellant that he was intoxicated and the thing which intoxicated has been administered without his knowledge or against his will. Hence, Section 85 IPC has no application to the facts of the case. Section 86 IPC makes it very clear that where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated. Though the first part of Section 86 IPC deals with offence which requires knowledge and intent, the second part states that knowledge has to be presumed, as if he had not intoxicated. The Section does not provide for presumption of requisite intention. However, in a case of murder, as in the instant case, the mental states required is either intention or knowledge. Even assuming that intention cannot be inferred one can infer knowledge with the aid of Section 86 IPC, which is also a mental state for



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murder under Section 300 IPC. That apart, in the instant case, the conduct of the accused is that after the occurrence, he had taken the head of the deceased after severing it, to another place to hide it along with weapon used by him. The conduct herein would show that he also intended the natural consequences of his acts.

14. The law relating to Section 86 of the Indian Penal Code was dealt with by the Hon'ble Apex Court in ***Basdev vs. State of Pepsu*** reported in ***AIR 1956 SC 488***. The relevant observation of the Hon'ble Supreme Court is as follows:-

"4.It is no doubt true that while the first part of the section speaks of intent or knowledge, the latter part deals only with knowledge and a certain element of doubt in interpretation may possibly be felt by reason of this omission. If in voluntary drunkenness knowledge is to be presumed in the same manner as if there was no drunkenness, what about those cases where mens rea is required.

Are we at liberty to place intent on the same footing, and if so, why has the section omitted intent in



its latter part? This is not the first time that the question comes up for consideration. It has been discussed at length in many decisions and the result may be briefly summarized as follows:-

5. So far as knowledge is concerned, we must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, we must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being?

If so it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about, we can apply the rule that a man is presumed to intend the natural consequences of his act or acts.

6. Of course, we have to distinguish between motive, intention and knowledge. Motive is something which prompts a man to form an intention and knowledge is an awareness of the consequences of the Act. In many cases intention and knowledge merge into each other and means the same thing more or less and intention can be presumed from knowledge. The



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demarcating line between knowledge and intention is no doubt thin but it is not difficult to perceive that they connote different things. Even in some English decisions, the three ideas are used interchangeably and this has led to a certain amount of confusion."

15. The above passage of the Hon'ble Apex Court is often quoted and followed by the Hon'ble Apex Court in a series of decisions subsequently as well. The Apex Court quoted the above observation with approval in ***(2007)9 SCC 360 (Shankar Jaiswara vs. State of West Bengal)*** and in ***(2020)3 SCC 115 (Paul vs. State of Kerala)***.

16. The principles relating to application of section 85 and 86 of the Indian Penal Code can be summed up as follows:

- a) Intoxication is a defence under Section 85 IPC provided the person committing the act is incapable of knowing the nature of the act or that he is doing what is wrong or contrary to law due to intoxication and the intoxication was administered to him without his knowledge or against his will.



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- b) Section 86 IPC is in the nature of a proviso to Section 85 IPC.

The provision begins by laying down that in all cases where a particular knowledge or intent is the ingredient of the offence, a person who is intoxicated voluntarily shall be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated. Though the first part deals with knowledge and intent, the second part permits presumption of knowledge alone.

- c) Where the *mens rea* for the offence includes both intention and knowledge, the offender can be presumed to have had knowledge by virtue of Section 86 IPC and it would be no defence for him to say that he was intoxicated and therefore, he did not have the requisite knowledge.

- d) Even where intention is the only mental state provided for the offence, the presumption is that the offender intended the natural consequences of his act. It is for the offender to establish that by virtue of the intoxication he was deprived of knowing the nature of the act and as to whether it was wrong



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and contrary to law. In cases of murder and other offences where both intention and knowledge are the culpable mental states, even in the absence of intention, knowledge can be presumed under section 86 and voluntary intoxication cannot come to the aid of the offender.

17. From the above principles, it would be clear that even if a person is intoxicated, knowledge can be presumed as if the accused had committed the act without the influence of intoxication. So far as the intention is concerned, it is to be presumed that the man intended the natural consequences of his acts. In order to dislodge this presumption, the accused must be able to show that his intoxication was to such an extent that he was incapable of understanding the nature and effect of the act. However, in the instant case, that question is academic since the appellant had not established that in the first place that he was intoxicated which had affected his sense of understanding the nature and consequences of his act. In any event, since the offence involved is murder, knowledge can be presumed under Section 86 IPC, which is in the nature of proviso or exception to



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Section 85 IPC. The framers had consciously incorporated this provision only to counter defences by perpetrators of crime by voluntary intoxication.

18. For the aforesaid reasons, we see that there is no reason to interfere on the finding of the trial Court and the conviction and sentence imposed against the appellant.

19. In the result, this Criminal Appeal stands dismissed and the order and judgment dated 20.02.2020 passed in S.C.No.41/2018 by the learned Additional District and Sessions Judge(FTC), Thenkasi, is hereby confirmed.

[G.J.,J.] & [S.M.,J.]
02.01.2023

Index: Yes/No
Internet: Yes/No

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To

1.The Additional District and Sessions Judge(FTC),
Thenkasi.

2.The Inspector of Police,
Seethaparpanallur Police Station,
Thenkasi District.

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



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**DR.G.JAYACHANDRAN, J.
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