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Crl.A.No.521 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.04.2024

PRONOUNCED ON: 08.04.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.521 of 2018

Thamizhmani @ Mani

... Appellant/sole accused

vs.

State rep. By
The Inspector of Police,
Mudaliarpur Police Station,
Puducherry.
(Crime No.201 of 2011)

...Respondent/complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in S.C. No.8 of 2014 dated 28.04.2018, on the file of the learned Principal Sessions Judge, Puducherry and set aside the conviction and sentence imposed in judgment dated 28.04.2018 and acquit the appellant.

For Appellant : Mr.M.Mohammed Saifulla
Legal Aid Counsel



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For Respondent : Mr.K.S.Mohan Dass
Public Prosecutor (Puducherry)
JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 28.04.2018 in S.C.No.8 of 2014 on the file of the learned Principal Sessions Judge, Puducherry.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3(i) It is the case of the prosecution that the accused was the owner of an autorickshaw and he gave the said autorickshaw to the deceased on hire; that the deceased did not pay the hire charges regularly; that due to that the accused had a grudge against the deceased and threatened to cause his death; that on 30.08.2011 at about 8.45 p.m., the deceased and the accused quarrelled and the accused is said to have stabbed the deceased on the chest with knife and thereafter, the deceased succumbed to the injuries at 10.15



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p.m., the same evening.

(ii) It is the further case of the prosecution that PW1 the wife of the deceased came to know about the attack on her husband and went to the Puducherry Government Hospital, where the accused was taking treatment; that the deceased told PW1 that the accused stabbed him; that at about 11.00 p.m., PW1 went to the police station and made a complaint [Ex.P1], before the Sub-Inspector of Police [PW17], who registered an FIR [Ex.P21] in Cr.No.201 of 2011 for the offence under Section 302 of the IPC and the FIR marked as Ex.P21.

(iii) Thereafter, PW18, the Inspector of Police, took up the investigation and he went to the scene of the occurrence, the next morning i.e., on 31.08.2011 at 00.15 hours and prepared the Observation Mahazar (Ex.P22) and Rough Sketch. He examined the witnesses and conducted the inquest in the presence of the panchayathars and prepared the inquest report [Ex.P6]. He made a request to conduct a postmortem, which was conducted by PW13-Doctor, who issued a postmortem certificate and final opinion



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[Ex.P18]. On 05.09.2011, he arrested the accused and on his confession, the admissible portion of which is marked as Ex.P24, seized the autorickshaw (M.O.7) and a knife [M.O.6] in the presence of the witnesses under Seizure Mahazar [Ex.P25]. Thereafter, he examined the other witnesses and after obtaining the expert opinion, filed the final report before the learned Judicial Magistrate-I, Puducherry on 19.11.2011 against the accused for the offence under Section 302 of the IPC.

(iv). On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.8 of 2014 and was made over to the learned Principal Sessions Judge, Puducherry, for trial. The trial Court framed a charge under Section 302 of the IPC against the accused, and when questioned, the accused pleaded 'not guilty'.

(v). To prove the case, the prosecution examined 18 witnesses as P.W.1 to P.W.18, marked 27 exhibits as Exs.P1 to P27, and marked 7 Material Objects as M.O.1 to M.O.7. When the accused was questioned,



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u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant/accused neither examined any witnesses, nor marked any documents.

(vi). On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the accused guilty of the offence under Section 302 of the IPC, and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for three months. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

4. When the matter was called on 13.07.2023, before the Co-ordinate Bench of this Court, the learned counsel for the appellant submitted that the appellant has taken a change of Vakalat and that the suspension of sentence granted on 19.12.2018 to the appellant was cancelled by this Court vide order dated 10.11.2022. Hence, this Court directed the Registry to issue notice to the appellant and list the matter after two weeks. The notice was sent to the appellant. However, the appellant neither engaged counsel



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nor appeared in person before this Court. Hence, on 24.01.2024, this Court appointed Mr.M.Mohamed Saifulla, learned counsel as legal aid counsel.

5. Heard, Mr.M.Mohammed Saifulla, learned counsel appearing for the appellant/accused, and Mr.K.S.Mohandas, learned Public Prosecutor (Puducherry) appearing for the respondent/State.

6. (i) Mr.M.Mohammed Saifulla, the learned counsel appearing for the appellant submitted that the case rests on the alleged dying declaration given by the deceased to PW1; that the said dying declaration cannot be believed as the prosecution evidence suggests that the deceased was in an unconscious state and not in a position to make any statement; that PW2, who is said to have witnessed the occurrence and the majority of the witnesses turned hostile; that since PW2 turned hostile, the prosecution sought to prove its case through circumstantial evidence, which has not been conclusively established.

(ii) The learned counsel submitted that in any case even if the



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prosecution case is accepted to be true, the portion of the evidence of PW2 that is consistent with the other evidence on record suggests that the appellant had no intention to cause the death of the deceased, and the incident happened without any premeditation in a sudden quarrel and hence, the appellant would only be liable for culpable homicide, not amounting to murder. Therefore, he prayed for a lesser punishment.

7. The learned Public Prosecutor (Puducherry) *per contra* submitted that PW2 though turned hostile had seen the deceased and the appellant quarrelling with each other on the day of occurrence; that the deceased had quarrelled with the appellant, which is clear from the evidence of PW1 and PW2; and that the dying declaration given by the deceased to PW1 is natural and there is no reason to disbelieve the same. He further submitted that the other circumstances relating to the recovery of weapons would all go to show that the accused is guilty of the offence and he prayed for the dismissal of the appeal.

8. We have carefully considered the rival submissions and perused the



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materials on record.

9. PW1 is the wife of the deceased; PW2 is an eyewitness to the occurrence, did not fully support the prosecution case and hence was treated as hostile; PW3 is the brother of the deceased and a hearsay witness and he would state that his brother (the deceased) had suffered breathlessness and was unable to speak when he met him at the hospital; PW4 is a hearsay witness, who turned hostile; PW5, an auto driver known to the accused, also turned hostile; PW6, an eyewitness also turned hostile; PW7 is witness to the Seizure Mahazar (Ex.P8); PW8 is a hearsay witness and was examined as a witness during the inquest; PW9 is the witness to the Observation Mahazar and also turned hostile; PW10 is a hearsay witness and was examined during the inquest; PW11 and PW12 are witnesses to the confession of the accused, also turned hostile; PW13, is the postmortem doctor, who issued the postmortem certificate and final opinion [Ex.P18]; PW14 is the photographer who has taken pictures of the occurrence place; PW15 is the Sub-Inspector of Police who assisted in the investigation; PW16 is the Doctor, who made the entries in the Accident Register



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[Ex.P20]; PW17 is the Sub-Inspector of Police, who registered the FIR and PW18 is the investigating officer, who filed the final report.

10. From the above narrative, it could be seen that the prosecution sought to prove the case through eyewitnesses. PW2, is one of the eyewitnesses and has not supported the prosecution case fully. He had not seen the occurrence. However, he would state that he witnessed the accused and the deceased quarrelling with each other and that thereafter, he saw the deceased lying down with the injuries on the chest. However, in the cross-examination by the learned Public Prosecutor, PW2 admitted that he had given a statement to the police as if he had witnessed the occurrence. This would not be of any use to the prosecution. The prosecution must have further elicited that the facts stated before the police were true. That apart in the cross examination, PW2 would also add that he came to know that the accused caused injuries to the deceased only in the hospital, where the wife and children of the deceased were present.

11. It could be seen that the other eyewitnesses turned hostile. The



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question is whether the deceased could have made a dying declaration to PW1. The defence relied upon the evidence of PW3, the brother of the deceased, who had stated that the deceased suffered breathlessness and could not speak when he saw him at the hospital. Further, PW2 would state that he could not speak to the deceased. However, the Doctor who had first treated the deceased PW16 would state that the deceased himself told his name to him.

12. Considering the above fact that the deceased was in a position to tell his name to PW16, it cannot be said that the deceased was in an unconscious state. Merely because PW2 and PW3 were not able to communicate with the deceased, the evidence of PW1 cannot be disbelieved. PW1, PW2 and PW3 went to the hospital at different times and therefore, it cannot be held that the deceased was unconscious, when PW1 met the deceased. PW16-Doctor who made entries in the Accident Register [Ex.P20] found a single stab injury in the centre of the chest measuring 3x3 cm. The relevant entry in Ex.P20 reads as follows:

“Stab wound to centre of chest 3 x 3 cm depth cannot be assessed due to



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profuse bleeding.”

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13. Further PW2 had stated that he saw both the deceased and the appellant quarrelling with each other, though he had not supported the prosecution case on other aspects. The fact that the appellant caused the injury is established by the evidence of PW1 to whom the deceased is said to have given a dying declaration besides the evidence of PW2, who had seen both the appellant and the deceased quarrelling with each other. However, taking into consideration PW2's evidence that there was a quarrel and the nature of injury viz., a single stab injury, we are of the view that the act of the appellant would be a case of culpable homicide not amounting to murder.

14. The Hon'ble Supreme Court in the recent decision in *Anbazhagan Vs. State represented by the Inspector of Police*, reported in 2023 SCC OnLine SC 857, considered the difference in language in Section 299 and Section 300 of the IPC and after discussing the case laws on the subject, the Hon'ble Supreme Court at paragraph No.66 summed up the principles.



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Paragraph 66(12) is relevant for the purpose of this case, which reads as follows:

“66(12) In determining the question, whether an accused had guilty intention or guilty knowledge in a case where only a single injury is inflicted by him and that injury is sufficient in the ordinary course of nature to cause death, the fact that the act is done without premeditation in a sudden fight or quarrel, or that the circumstances justify that the injury was accidental or unintentional, or that he only intended a simple injury, would lead to the inference of guilty knowledge, and the offence would be one under Section 304 Part II of the IPC.”

15. In the instant case, the prosecution was unable to prove the case through the evidence of eyewitnesses. The dying declaration said to have been given to PW1 cannot be construed as an account of all the events leading to the attack. As stated earlier PW2 had spoken about the quarrel between the two of them that preceded the occurrence. Considering the said evidence of PW2 we are of the view that the act was done without any premeditation in a sudden quarrel. It is a case of a single stab injury inflicted on the deceased. The above extracted portion of the judgment of the Hon'ble Supreme Court would squarely apply to the facts of this case and hence, the appellant would only be guilty of the offence under Section



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16. Under these circumstances, we are of the view that the appellant is liable to be convicted only under Section 304 (II) of the IPC and sentenced accordingly.

17. In the result, the Criminal Appeal is Partly Allowed. The judgment of conviction and sentence dated 28.04.2018 made in S.C.No.8 of 2014 on the file of the learned Principal Sessions Judge, Puducherry, is modified. The conviction of the appellant under Section 302 of the IPC is altered to one under Section 304 (II) of the IPC. For the altered conviction, the appellant is sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for three months.

[M.S.R.,J.] [S.M.,J.]
08.04.2024

Index : yes/no
Neutral citation : yes/no



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Speaking/Non-speaking order

To

1.The Principal Sessions Judge,
Puducherry.

2.The Inspector of Police,
Mudaliar Police Station,
Puducherry.

3. The Superintendent of Prisons,
Central Prison, Puducherry.

4.The Public Prosecutor,
High Court, Madras.



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M.S.RAMESH,J.

and

SUNDER MOHAN,J.

ars

Pre-delivery Judgment in

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