



Crl.A.No.74 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

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Saravanan

... Appellant

Vs.

The Inspector of Police,
Tambaram Police Station,
Kancheepuram District.

... Respondent

Prayer : Criminal Appeal filed under Section 374(2) Criminal Procedure Code 1973, against the judgement and orders dated 18.12.2017 passed in S.C.No.164/2013 by the Principal Sessions Judge, Kancheepuram District at Chengalpattu.

For Appellant	: Mr.Venkatesh for Mr.S.Jayaprakash
For Respondent	: Mr.S.Raja Kumar, Additional Public Prosecutor.



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JUDGMENT

1. The appellant stood charged for an offence punishable under Section 302 IPC in S.C No.164/2013.

2. The learned trial court Judge, after full trial, convicted and sentenced the appellant, vide his judgment dated 18.12.2017, as detailed hereunder.

<i>Conviction</i>	<i>Sentence</i>
Section 304 (Part-II) IPC	Rigorous imprisonment for ten years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months.
The aforesaid sentences shall run concurrently. The period of sentence already undergone is set off under Section 428 Cr.P.C.	

3. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

3.1. The appellant Saravanan and the deceased Subramani were working as suppliers in a bar at Door No.22/282, M.R.K. Road, West



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According to the prosecution, the appellant and the deceased used to pick up quarrel with each other on account of professional rivalry. On 08.07.2012 at about 4.00 p.m. there was an altercation between two, and the appellant, in a fit of rage, broke a beer bottle and stabbed the deceased Subramani on the left side of his neck. The victim fell down and he was rushed to Government Hospital, Tambaram, by Ramasamy @ Ganesan (P.W.1) and other employees of the bar.

3.2. Dr.Chandrabose Ambedkar (P.W.6), examined Subramani at about 4.30 p.m. on 08.07.2012 and found Subramani with a deep cut on his left neck. According to the doctor, Subramani was conscious at the time of admission and informed him that he was attacked by a person with a broken bottle at about 4.00 p.m. on the same day. P.W.6 gave him first aid and referred him to Rajiv Gandhi Government Hospital, Chennai, for further treatment. However, Subramani succumbed to injuries on the way to the hospital.



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3.3. Ramasamy @ Ganesan (P.W.1), the owner of the bar where the appellant and the deceased were working, had deposed that the appellant and the deceased used to quarrel with each other in his bar and that he would pacify them. However, on 08.07.2012 there was a wordy duel between them, which subsequently ended in the stabbing of the victim by the appellant with a broken beer bottle. P.W.1, along with other employees took the victim (Subramani) to the Government Hospital, Tambaram, from where he was referred to Rajiv Gandhi Government Hospital, Chennai. However, when they were nearing Saidapet, Subramani died. Therefore, P.W.1 and others brought the body of the deceased back to the Government Hospital, Chrompet, where it was kept in mortuary.

3.4. P.W.1 then went to Tambaram Police Station and lodged a complaint (Ex.P1) at about 6.00 p.m. with Thiru.Albin Raj, the then Inspector of Police, Tambaram Police Station. P.W.9 received the



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complaint (Ex.P1) from P.W.1 and registered FIR (Ex.P8) in Crime No.4822/2012 against the appellant for an offence punishable under Section 302 IPC.

3.5. Thereafter, P.W.9 took up investigation, went to the scene of occurrence, prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P9) in the presence of the witnesses John (P.W.3) and Murugan (not examined). He recovered blood stained cement mortar (M.O.8) and ordinary cement mortar (M.O.9) from the place of the occurrence in the presence of the same witnesses under the cover of a seizure mahazar (Ex.P3). He also went to the mortuary of Government Hospital, Chrompet and conducted inquest (Ex.P10) on the body of the deceased in the presence of panchayatdhars. Subsequently, he handed over the body to Dr.S.Kavitha (P.W.8) for conducting postmortem through Thiru. Settaiyan (P.W.7), the then Special Sub Inspector of Police, Tambaram Police Station.

3.6. Dr.S.Kavitha (P.W.8), conducted autopsy on the body of



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the deceased on 08.07.2012 and found the following injuries :

- i. 15 x 8 cm deep penetrating wound in 'C' shape with all major blood vessels in the neck, penetrating the trachea and extending down to the mandibular region.
- ii. A laceration was present on the right side of the upper lip.

She also sent the internal organs for chemical analysis. After getting viscera report, she opined that the death had occurred 'from the injuries and profuse bleeding, due to shock'. The postmortem certificate was marked as Ex.P7.

3.7. In the meanwhile, P.W.9 (Investigation Officer), arrested the appellant at about 10.00 p.m. on 08.07.2012 near Tambaram bus stop and recorded his confessional statement in the presence of the witnesses Selvakumar (not examined) and Stalin (P.W.5). Based on the confessional statement, he recovered a broken beer bottle (M.O.1), blood stained cement colour pant (M.O.2), blood stained half arm shirt (M.O.3) under the cover of a seizure mahazar (Ex.P5) in the presence of the same witnesses. Thereafter, he produced the appellant before the jurisdictional



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magistrate for remanding him to judicial custody.

3.8. P.W.7, the then Special Sub Inspector of Police received the body after conduct of postmortem from the hospital and recovered the dress worn by the victim (M.O.4 to M.O.7) and handed over the same to the Inspector of Police.

3.9. P.W.9, the Investigation Officer sent M.O.1 to M.O.9 to the Forensic Sciences Department. The forensic analysis report (Ex.P11) showed the presence of human blood in all the items except M.O.9 (ordinary cement mortar).

3.10. Thiru. Padmanathan (P.W.2) is the brother of the deceased. His evidence is that his brother used to confide in him that the appellant used to pick up quarrel with him very often. He advised his brother to adjust with the appellant and however, on 08.07.2012, he received a phone call from P.W.1 that his brother was stabbed by the appellant with a broken beer bottle.



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3.11. P.W.9 after completing investigation laid a final report against the appellant for the offence punishable under Section 302 IPC before the Judicial Magistrate, Tambaram, in P.R.C.No.84/2012.

3.12. The learned Judicial Magistrate after furnishing copies of records to the accused under Section 207 Cr.P.C, committed the case to the Court of Sessions. The learned Principal District Sessions Judge took the case on file in S.C.No.164/2013 and framed a charge against the appellant for the offence punishable under Section 302 IPC.

3.13. In order to bring home the guilt of the accused, the prosecution examined 9 witnesses, marked 11 documents and 9 Material Objects.

3.14. The accused, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. However, he did



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not examine any witness on his side.

3.15. The learned trial court judge after analysing the oral and documentary evidence on record, convicted and sentenced the appellant as stated in paragraph No.2, vide his judgment and orders dated 18.12.2017, aggrieved over which, the appellant / accused has preferred the present appeal.

4. Heard Mr.Venkatesh, learned counsel for the appellant and Mr.S.Rajakumar, learned Additional Public Prosecutor for the respondent.

5. Mr.Venkatesh, learned counsel for the appellant contended that the prosecution has not proved its case beyond reasonable doubt. He raised the following points to substantiate his contention :

- i. There is no eyewitness to the occurrence.
- ii. When P.W.1 in his evidence had categorically stated that he handed over the broken beer bottle (M.O.1) to the Inspector of



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Police, the Investigation Officer had contradicted by stating that he recovered M.O.1 from the appellant.

iii. Though P.W.1 in his evidence had stated that there were 30 - 40 tables in his bar, the observation mahazar (Ex.P2) showed that there were only four tables in the place of occurrence.

iv. The fingerprint on the broken bottle (M.O.1) was not lifted by the Investigation Officer to prove the case against the appellant.

v. P.W.1 in his evidence had deposed that he had marble flooring in his bar. However, the prosecution recovered blood stained cement floor (M.O.8) and ordinary cement floor (M.O.9) which shows that the place of occurrence is totally different.

vi. When Dr.Chandrabose Ambedkar (P.W.6) had found the deceased with a deep cut injury on his left neck, the postmortem certificate (Ex.P7) shows another injury on the upper lip of the deceased.

He therefore prayed for setting aside the conviction and sentence passed by the trial court judge.

6. Per contra, Mr.S.Raja Kumar, learned Additional Public



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Prosecutor would contend that the trial court after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the present appeal.

7. The appellant and the deceased were employed as suppliers in the bar owned by P.W.1. It is seen from the evidence of P.W.1 and P.W.2 that both the victim and the appellant used to quarrel often. On 08.07.2012 at about 4.00 p.m. a wordy duel between the appellant and the victim ended in death of the victim as the appellant attacked the victim with a broken beer bottle. Thiru.Rasukannan (P.W.4), was working in the kitchen of the bar on the date of occurrence. At about 4.00 p.m. he heard some noise in the bar area and came out of the kitchen. He saw the deceased with bleeding injuries. He also saw the other employees of the bar who had apprehended the appellant. Thus, the evidence of P.W.1 and P.W.4 clearly shows that the offence took place in the bar. In other words, there is no dispute with regard to the place of occurrence. P.W.9, the Investigation Officer had indicated that he recovered blood



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stained cement floor (M.O.8) and ordinary cement floor (M.O.9) in the seizure mahazar (Ex.P3). Therefore, based on the evidence of P.W.1, this Court cannot come to a conclusion that P.W.1 had in fact, laid a marble floor in his bar. Even assuming that it is only a marble floor the error in indicating the same in the seizure mahazar (Ex.P3) cannot be said to be fatal to the case of the prosecution as there is no dispute over the place of occurrence. The victim was taken to Government Hospital, Tambaram at about 4.30 p.m. and he had a deep cut injury on his left neck. The postmortem certificate (Ex.P7) shows that there was a deep penetrating wound measuring 15 x 8 cm with 'C' shaped curve cutting all the major blood vessels and piercing through the trachea. This clearly shows that the deceased was bleeding profusely. However, he was conscious at the time of admission in the Government Hospital, Tambaram and also informed the doctor that he was attacked by a person with a broken beer bottle. The injury found on the lip of the deceased was probably omitted to be mentioned by Dr.Chandrabose Ambedkar (P.W.6) obviously because he wanted to refer the victim to Rajaji General Government Hospital, Chennai since the victim was profusely bleeding. It cannot be a



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8. The next point urged by the learned counsel for the appellant is that when P.W.1 had stated that there was 30 to 40 tables inside his bar, the observation mahazar (Ex.P2) showed only four tables. A perusal of the observation mahazar (Ex.P2) also shows that the area of the bar is 15 x 30 feet and it would not accommodate 40 tables as alleged by P.W.1. In any event, this again cannot be a ground for acquitting the appellant.

9. P.W.1 in his chief examination had categorically stated that he witnessed the occurrence, but during the course of cross examination had deposed that he had not properly seen the appellant stabbing the deceased as he was concentrating on his business. But he was very much present in the scene of occurrence and in fact, the other employees had apprehended the appellant. P.W.1 is the person who rushed the victim to the hospital with the help of his employees and had also lodged a police complaint (Ex.P1) against the appellant on the same day. There is no



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delay in lodging complaint and registering FIR. There is nothing to suggest that P.W.1 was inimical towards the appellant. The evidence of P.W.2 and P.W.4 also shows that there used to be a quarrel between the appellant and the deceased and that on the fateful day the appellant stabbed the deceased with a broken beer bottle. In fact, P.W.1 had informed P.W.2 about the occurrence over phone. All these factors leads to an irresistible inference that the appellant is the person who stabbed the deceased with a broken beer bottle on his neck causing his death. The broken beer bottle (M.O.1) was recovered by the Investigation Officer at the time of the arrest of the appellant and therefore, there was absolutely no necessity for the prosecution for lifting the fingerprints from the bottle and also in view of overwhelming evidence adduced on the side of the prosecution.

10. The trial court had convicted the accused for the offence punishable under Section 304 (Part - II) IPC and had assigned cogent reasons for coming to such a conclusion. The attack on the body of the deceased by the appellant was due to fit of rage in the place of their work and therefore, the conviction of the appellant under Section 304 (Part -



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II) IPC cannot be assailed. The trial court had also shown leniency while sentencing the accused. Therefore, I do not see any reason to interfere with the conviction and sentence passed by the trial court judge.

11. In the result,

- i. The Criminal Appeal is dismissed.
- ii. The judgement and orders dated 18.12.2017 passed in S.C.No.164/2013 by the Principal Sessions Judge, Kancheepuram District at Chengalpattu, is confirmed.
- iii. The accused shall surrender before the Principal Sessions Judge, Kancheepuram District at Chengalpattu, within 15 days from the date of receipt of a copy of this order/uploading of the order, failing which, the Trial Court shall take steps to secure his presence for undergoing the remaining period of sentence.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The Principal Sessions Judge, Kancheepuram District at Chengalpattu
2. The Inspector of Police, Tambaram Police Station, Kancheepuram District.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.



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R. HEMALATHA, J.

mtl

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