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Crl.A.No.1060 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.09.2024

PRONOUNCED ON : 03.10.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.A.No.1060 of 2022

Binojyakka

... Petitioner

Vs.

State rep. By
The Inspector of Police,
Annur Police Station,
Coimbatore District.
Crime No.45 of 2019

... Respondent

PRAYER: Criminal Revision is filed under Section 482 of the Code of Criminal Procedure, to set aside the conviction and Sentence imposed in S.C.132 of 2019 dated 12.03.2021 on the file of the I Additional District and Sessions Judge, Coimbatore to secure the ends of Justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.S.Raja Kumar



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Additional Public Prosecutor

ORDER

V.SIVAGNANAM

The appellant has filed this appeal against the judgment dated 12.03.2021 passed by the I Additional District and Sessions Judge Court, Coimbatore in SC.No.132 of 2019.

2.The appellant/accused was charged and prosecuted under Section 302 IPC by the Inspector of Police, Annur Police Station in Crime No.45 of 2019.

3.To prove the prosecution case, prosecution has examined 13 witnesses, PW 1 to PW13, and marked 13 documents Ex.A.1 to Ex.A.13. Besides, one material object MO.1 is marked. Incriminating prosecution witnesses explained to the accused under Section 313 Cr.P.C. He denied them as false. Further, the accused has not examined any witnesses nor exhibited any documents.

4.After considering the evidence and documents, the Trial Court



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convicted and sentenced the appellant for the offences under Section 302 IPC and was sentenced to undergo life imprisonment and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for 3 months.

5.The prosecution case is that the deceased Sivasamy was residing at Senkattuthottam, Ganesapuram in Annur Police Station limits in Coimbatore District. The accused Binojyakka, belonging to Kunthura Village in Koraput District in Odisha State, had come to Coimbatore District with his friends and was searching for employment. On 31.01.2019 the accused went to Ganesapuram to seek employment and trespassed into the gardens of the said Sivasamy.

6.On 31.01.2019 at about 6.00 A.M, Sivasamy (since deceased) with witnesses PW1/Chelladurai, PW2/Shanmugasundaram and Karunakaran completed walking and was consuming tea in front of his house at his garden. On noticing the entry of the accused into the said garden, Sivasamy questioned him who was he and why did he come there. The accused gave some reply in Hindi. Sivasamy asked the accused to go out of the place. But the accused did not move. Hence Sivasamy took him to Kovai to



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Sathiyamangalam Main Road, left him and was returning to his house on the mud Road. At that time the accused, with the intention of committing the murder of Sivasamy, picked up a coconut fiber (தென்னைமட்டை) and hit Sivasamy repeatedly with the said weapon on his head and back. Sivasamy fell down unconsciously.

7.PW1/Chelladurai took Sivasamy in his Omni car to Kovai Medical Centre Hospital, Kovilpalayam at 7.05 A.M, PW6/Dr.Vishnupriya examined Sivasamy and declared that he was already dead. She issued Ex.P.6 Accident Register copy and Ex.P.7 Death Intimation. Meanwhile while he was chased from the scene of occurrence by witnesses, the accused fell down and sustained injuries. He was admitted at Annur Government Hospital at 7.50 A.M by PW2 Shanmugasundaram and PW4 Moona @ Sithender Bagh. PW8/Dr.Kannan examined the accused for the injuries and issued Ex.P.10 Accident Register copy.

8.PW1/Chelladurai appeared at Annur Police Station on the same day at 8.30 A.M and gave Ex.P.1 written complaint. Sivasamy, Sub Inspector of Police received it and registered Ex.P.11 FIR in Cr.No.45 of 2019 under



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Section 302 IPC against the accused Binojyakka. PW12/Venkatesan, the Inspector of Police, Annur Police Station took up the investigation.

9. During investigation, PW12 visited the scene of occurrence on the same day at 9.15 A.M in the presence of PW7/Muthusamy and Selvaraj and prepared Ex.P.12 rough sketch and Ex.P.8 observation mahazar. He examined witnesses. He seized MO.1 coconut fiber under Ex.P.9 recovery mahazar at 10.15 A.M from the scene of occurrence. He held inquest over the body of Sivasamy from 12.15 P.M to 2.00 P.M at KMCH Hospital and prepared Ex.P.13 inquest report. He sent the dead body with Ex.P.2 request letter for conducting postmortem examination to CMC Hospital through PW11/Kanagarajan, Special Sub Inspector of Police.

10. PW5/Dr.Peranantham conducted postmortem over the dead body of Sivasamy and noted an antemortem injury, reddish contusions 4 x 3 x 0.5 cm noted over outer aspect of right elbow and 10 x 4 x 0.5 cm noted over right scapular region and on dissection of scalp, skull and dura, diffuse sub arachnoid hemorrhage seen over both cerebral hemisphere. Doctor issued Ex.P.3 postmortem certificate. The said Doctor preserved viscera and sent



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them for chemical analysis. In the chemical analysis no poison was detected.

Hence Doctor issued Ex.P.4 final opinion stating that, the deceased would appear to have died of shock and hemorrhage due to the head injury.

11.PW12 arrested the accused on the same day i.e., on 31.01.2019 at 4.00 P.M at Annur Government Hospital and recorded his confession statement with the help of PW4. He sent the accused to the court for judicial custody.

12.As PW12 was transferred, PW13/Shanmugam joined as the Inspector of Police, Annur Police Station and continued his investigation. After completing the investigation, he filed chargesheet against the accused on 09.05.2019 under Section 302 IPC in the Court of the learned Judicial Magistrate, Mettupalayam.

13.The learned Judicial Magistrate, Mettupalayam took the chargesheet on file as PRC No.5 of 2019 and committed the case to the Sessions for trial on 13.11.2019. The learned I Additional District and Sessions Judge, Coimbatore took the case on file in S.C.No.132 of 2020 and



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tried the case.

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14.The learned counsel for the appellant contention is that the judgment is against the evidence on records and contrary to law. He further contented the alleged eye witnesses PW1/Chelladurai, PW2/Sanmugasundaram and PW3/Lakshmi are not reliable. According to the prosecution, the occurrence took place at 06.30 a.m., and it may not be possible for anyone to witness the said occurrence. The complaint was filed after two hours of the alleged occurrence. The injuries of the accused is not explained properly by the prosecution. It tears the genuineness of the prosecution case. The prosecution failed to conduct identification parade, since the accused is the native of Orissa. The alleged weapon stated here is coconut fiber (தென்னைமட்டை), which could never be considered as a dangerous weapon. The condition for offence under Section 302 is not made out. Medical evidence shows that there is only one injury on the head and the other injury on the back side is a simple one. Weapons used also is not a deadly one. Further, there is no intention for the accused to cause death to the deceased. The incident took place on a spur of moment. Therefore, the absence of pre-meditation or any design on the part of the accused person to



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commit the murder of the deceased namely Sivasamy and no materials to show as the accused in furtherance of the common intention to kill the deceased Sivasamy. Therefore, the conviction of the accused under Section 302 IPC is not proper and it may be altered to one under Section 304(2) IPC. He is in custody for more than 5 ½ years and pleaded to reduce the sentence and to set off the accused for a period undergone in the prison and he may be released with lesser punishment. Thus, pleaded to modify the appeal.

15.The learned Additional Public Prosecutor appearing for the State supported the conviction and sentence of the Trial Court and further pleaded that the evidence of PW1/Chelladurai, PW2/Sanmugasundaram and PW3/Lakshmi are reliable one. These evidences are corroborated by the medical evidence of PW8/Doctor Kannan and post-mortem certificate Ex.P.3. The Trial Court rightly found the accused guilty and convicted and sentenced him. There is no ground for interference and pleaded to dismiss the appeal as it has no merits.

16.We have considered the matter in the light of the submissions made by the learned counsel for the parties and perused the records.



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17. On perusal of records, evidence and documents, it is seen that the PW 1 Chelladurai is the eye witness to the occurrence as well as the defacto complainant in this case. He deposed that, on 30.01.2019, at about 05.30 a.m., he along with his friend PW2 Shanmugasundaram and his friends while they were on walking went to deceased Sivasamy's house and PW3 Lakshmi/ deceased wife offered tea and at that time, the accused came to Sivasamy's house. Sivasamy took the accused and left him at 50 feet away from the house and while he was returning, the accused assaulted Sivasamy with coconut fibre (தென்னைமட்டை) on his neck and back. Thus, he deposed that he witnessed the occurrence in which the Sivasamy was repeatedly hit with a coconut fiber. PW2/Shanmugasundaram and PW3/Lakshmi also deposed that they witnessed the occurrence. PW3/Lakshmi identified the MO.1 coconut fibre (தென்னைமட்டை). PW4/Muna @ Jijendarpak translated the confession statement of the accused to the Police. PW5/Doctor Peranandham conduct post-mortem upon the body of the deceased. He stated that he found ante mortem injuries seen all over the body. The relevant portion of the post mortem certificate is extracted as follows,

“Reddish contusion 4x3x0.5cm noted over



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outer aspect of right elbow and 10x4x0.5cm noted over right scapular region.

*On dissection of Scalp, Skull and Dura:-
Diffuse Sub arachnoid hemorrhage seen over the
both cerebral hemisphere.”*

18.PW6/Dr.Vishnupriya, deposed that, on 31.01.2019 at 07.00 a.m., while she was on duty at the Emergency Ward at KMCH Kovilpalayam Hospital, Sivasamy was brought into the emergency ward in unconscious state. She examined him and found him already dead and issued Accident Registrar Ex.P.6 and also sent intimation to Annur Police Station, Ex.P.7. PW7/Muthusamy, was the witness to the observation magazer Ex.P.8 and recovery magazer Ex.P.9 for recovering MO.1 from the scene of occurrence by the Inspector of Police. PW8/Dr.Kannan, Medical officer Government Hospital, Annur gave treatment to the accused and issued accident registrar copy Ex.P.10. PW9/Sivasamy, Sub Inspector of Police, Annur Police Station received a complaint, Ex.P1 from PW1 and registered the FIR in Crime No.45 of 2019 under Section 302 IPC (printed FIR, Ex.P.11). PW10/Shanmugavel, Head Constable, Annur Police Station handed over the express FIR to the learned Judicial Magistrate, Mettupalayam.



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PW11/Kanagaraj, Sub Inspector of Police brought the body of the deceased Sivasamy to KMCH Kovilpalayam Hospital for conducting post-mortem. PW12/Venkatesan, Inspector of Police, Annur Police Station investigated the case. PW13/Shanmugam, Inspector of Police, Annur Police Station filed final report against the accused for the offence under Section 302 IPC.

19. Based upon the evidence of prosecution witnesses, supported by the Medical version and prosecution exhibits, the Trial Court found guilty and convicted the accused for the offence under Section 302 IPC.

20. The prosecution proved by witnesses that the accused by his act has caused the death of Sivasamy.

21. Now, it should be determined, whether the facts proved by the prosecution bringing the case within the ambit of any of the four clauses of the definition of “Murder” contained in Section 300 IPC.

22. Having regard to the injury, as proved by the evidence of PW5 and Ex.P3, there can be no doubt that the injury was sufficient in the ordinary



course of nature to cause death.

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23.However, from the evidence on record, we found that the prosecution has not been able to establish any motive on the part of the accused person for committing the offence of murder of the deceased. Admittedly, there was no enmity between the accused person and the deceased and there was no pre-meditation or any design on the part of the accused person to commit the murder of Sivasamy. No material is forthcoming to show that the accused in furtherance of common intention to kill the deceased had assaulted him. As regards the accused in the absence of any pre-meditation or prior design or any intention to kill the deceased and the entire incident having taken place on a spur of the moment and the assault being with coconut fiber on the backside of the head of the deceased and the weapon used is not a deadly weapon, it is reasonable to hold that the appellant/accused had only knowledge that the injuries inflicted by them were likely to cause death of the deceased. There is no intention to cause death.

24.In these view of the matter, the conviction of the accused by the



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Trial Court is liable to be modified into Section 304(II) IPC from 302 IPC.

Hence, we alter the conviction from 302 IPC to one punishable under Section 304(II) IPC and reduce the sentence from life imprisonment to 5 ½ years, confirming the fine imposed by the Trial Court.

25.In the result, this Appeal is modified and conviction of the accused is altered from Section 302 IPC to one punishable under Section 304(2) IPC and we reduce the sentence of life imprisonment to 5 ½ years of rigorous imprisonment and confirming the fine amount imposed by the Trial Court. Set off already granted by the Trial Court is also confirmed. The order passed by the I Additional District and Sessions Judge, Coimbatore made in S.C.132 of 2019 dated 12.03.2021 is set aside. With these modifications, this Criminal Appeal is partly allowed.

(S.M.S.J.,)

(V.S.G.J.,)

03.10.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

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S.M.SUBRAMANIAM, J.
and
V.SIVAGNANAM, J.

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To

- 1.The I Additional District and Sessions Judge, Coimbatore
- 2.The Inspector of Police,
Annur Police Station,
Coimbatore District.
- 3.The Superintendent of Prison,
Central Prison, Coimbatore.
- 4.The Superintendent of Prison,
Johat Central Prison,
State of Assam.

Pre-Delivery Order in
Crl.A.No.1060 of 2022

03.10.2024