



WEB COPY



Crl.A.No.583 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 05.03.2024

PRONOUNCED ON: 12.03.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.583 of 2018

M.Palanisamy

... Appellant/sole accused

VS.

State rep. By
The Inspector of Police,
C-2, Race Course Police Station,
Coimbatore.
(Crime No.790 of 2016)

...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.171 of 2016 dated 22.03.2018, on the file of the learned III Additional District and Sessions Judge, Coimbatore and set aside the conviction and sentence imposed in judgment dated 22.03.2018 and acquit the appellant.



WEB COPY



Crl.A.No.583 of 2018

For Appellant : Mrs.Veeramarthini
Legal Aid Counsel

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

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 22.03.2018 in S.C.No.171 of 2016 on the file of the learned III Additional District and Sessions Judge, Coimbatore.

2. For the sake of convenience, the accused is hereinafter referred to as 'appellant'.

3(i) It is the case of the prosecution that the appellant was married to the daughter of the deceased-PW2; that since the appellant and PW2 had matrimonial differences, PW2 stayed with the deceased and her mother-PW1; that on 21.08.2016 at 12.00noon, the appellant along with his sister



WEB COPY

and brother-in-law came to the house of the deceased and requested PW2 to come along with them; that when PW2 refused, the appellant thought that it was the deceased, who prevented PW2 from going with him and stated that he would kill the deceased and thereafter, take PW2 with him; that on 22.08.2016 at 5.30 p.m., when the deceased and PW1, who were rag-pickers, were picking up waste papers, the appellant abused the deceased and attacked the deceased; that when PW1 tried to prevent the appellant, the appellant pushed her and thereafter, stabbed the deceased above his right side stomach with a knife, as a result of which, the deceased died; that PW1 gave a complaint [Ex.P1] on the same day at about 8.00 p.m., which was registered by PW14, the Sub-Inspector of Police in Cr.No.790 of 2016 for the offence under Section 302 of the IPC. The printed copy of the FIR was marked as Ex.P14.

(ii) PW15, the Inspector of Police, took up the investigation, went to the scene of the occurrence, prepared the Observation Mahazar [Ex.P2] and the Rough Sketch [Ex.P15]. He conducted an inquest in the presence of the Panchayatars and prepared the inquest report [Ex.P16]. Thereafter, he made



WEB COPY
a requisition for conducting postmortem and seized the bloodstained earth [M.O.4] and the earth that was not bloodstained [M.O.5] under Seizure Mahazar [Ex.P3]. He also seized the bloodstained tiles [M.O.6] which were found in the footpath opposite AR Bakery, near the place of occurrence and also tiles that were not bloodstained [M.O.7] under Seizure Mahazar [Ex.P4].

(iii) On 23.08.2016 at 9.00 a.m., PW15 arrested the appellant and on his confession, the admissible portion of which is marked as Ex.P5, he seized a steel knife with the plastic handle measuring 27cms length under Seizure Mahazar [Ex.P6]. The knife was marked as M.O.3. He sent the seized articles for analysis to the Forensic Science expert, who gave Serology reports viz., Ex.P18 and Ex.P19 and thereafter, he examined the other witnesses.

(iv) In the meantime, the postmortem was conducted by PW12, who issued the postmortem certificate [Ex.P7]. The doctor had opined that the deceased would appear to have died due to shock and heemorrhage due to



Crl.A.No.583 of 2018

internal injuries suffered by the deceased. After examination of all the witnesses, PW15 filed the final report before the learned Judicial Magistrate No.3, Coimbatore, on 29.08.2016, against the appellant for the offence under Section 302 of the IPC.

(v). On the appearance of the appellant, 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.171 of 2016 and was made over to the learned III Additional District and Sessions Judge, Coimbatore, for trial. The trial Court framed a charge under Section 302 of the IPC against the appellant, and when questioned, the appellant pleaded 'not guilty.

(vi). To prove the case, the prosecution examined 17 witnesses as P.W.1 to P.W.17, marked 19 exhibits as Exs.P1 to P19, and marked 7 Material Objects as M.O.1 to M.O.7. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant/accused neither examined any witnesses,



Crl.A.No.583 of 2018

nor marked any documents.

WEB COPY

(vii). 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 simple imprisonment for six months. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

4. When the matter was called on 16.10.2023 before the Co-ordinate Bench of this Court in which one of us [Hon'ble Mr.Justice Sunder Mohan], was a party, the learned counsel for the appellant submitted that he had no instructions and was withdrawing his vakalat. Hence, this Court directed the Registry to issue notice to the appellant and list the matter on 03.11.2023. The notice was sent to the appellant and was served on the appellant on 02.11.2023. However, the appellant neither engaged counsel nor appeared in person before this Court. The Co-ordinate Bench in order



Crl.A.No.583 of 2018

to give one more opportunity listed the case again on 08.11.2023 and observed that if the appellant fails to appear or engage counsel, the bail granted by this Court earlier will be cancelled. Even on 08.11.2023, the appellant did not appear before this Court either in person or through pleader. Hence, this Court cancelled the suspension of sentence and appointed Mrs.Veeramarthini, as legal aid counsel.

5. Heard, Mrs.Veeramarthini, learned legal aid counsel appearing for the appellant/accused, and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

6. (i) Mrs.Veeramarthini, learned counsel appearing for the appellant submitted that the prosecution suffers from several infirmities and though the material objects contained bloodstains, it has not been proved by the prosecution that the blood group that was found in those articles belonged to that of the deceased. The learned counsel further submitted that all the independent witnesses turned hostile and the conviction on the basis of the



Crl.A.No.583 of 2018

sole testimony of the interested witness-PW1/wife of the deceased , cannot be sustained.

(ii) The learned counsel submitted that in any case even if the prosecution case is accepted to be true, the act of the appellant would show that he had no intention to cause the death of the deceased, and the injury caused by him was not sufficient in the ordinary course of nature to cause the death and thus, the appellant would only be liable for culpable homicide, not amounting to murder. Therefore, she prayed for a lesser punishment.

7. The learned Additional Public Prosecutor *per contra* submitted that nothing has been elicited from the evidence of PW1 to discredit her version. Though the other witnesses turned hostile, their evidence cannot be discarded totally, as they have supported the prosecution case to the extent of confirming the presence of the accused near the scene of the occurrence. He would also submit that PW1, PW2 and PW3 have also spoken about the motive and thus, the prosecution has established its case beyond reasonable doubt. Hence, prayed for the dismissal of the appeal.



WEB COPY

8. We have carefully considered the rival submissions and perused the materials on record.

9. On perusal of the records, we find that PW1, PW2 and PW3 are the mother-in-law, wife and the daughter of the deceased, respectively, who spoke about the incident that took place on 21.08.2016, when the accused threatened the deceased; PW4 and PW5 originally examined as eyewitnesses, turned hostile. However, they supported the prosecution case to the extent of stating that they saw the appellant near the scene of the occurrence along with PW1 and the deceased, who had suffered a stab injury; PW6 who runs a shop near the scene of the occurrence, also turned hostile; PW7 the neighbour to the deceased, has turned hostile. PW8 had spoken about the incident on 21.08.2016; PW9, is the witness to the observation mahazar, rough sketch and seizure of articles at the place of occurrence; PW10 is the witness to the arrest of the appellant; PW11 is a hearsay witness; PW12 is the postmortem doctor; PW13 is the Special Inspector of Police, who assisted the investigation; PW14 is the Sub



Crl.A.No.583 of 2018

Inspector of Police, who registered the FIR; PW15 is the Inspector of Police, who conducted the investigation and filed the final report; PW16 and PW17, who were examined as eyewitnesses, turned hostile.

10. PW12 is the postmortem doctor, who found two external injuries, which reads as follows:

“1. Reddish abrasion 8x5cm noted over right knee.

2. Horizontal oblique stab injury 3x0.5cm x peritoneal cavity deep noted over out aspect of right side upper abdomen, 8cm above right Iliac crest. The anterior end is blunt and the posterior end is sharp. On dissection the wound passes inwards medially, cutting the underlying muscle, vessels, nerves and lower part of 12th rib and enter into peritoneal cavity then piercing the right lobe of liver measuring about 3x0.5x7cm in depth. Peritoneal cavity contains about 500 grams of blood clot with 1000ml of fluid blood.

He had opined that the deceased would appear to have died due to shock and haemorrhage due to stab injury in the abdomen and the corresponding internal injuries. Thus, the prosecution has established that the deceased suffered homicidal violence and died due to that.

11. PW1 is an eyewitness to the occurrence. She had spoken about the incident that took place on 21.08.2016 wherein, when the appellant went



Crl.A.No.583 of 2018

to take his wife-PW2 to his house, she refused and assuming that the deceased was responsible for her refusal to go with him, the appellant told the deceased that he would cause his death and thereafter take PW2 with him. PW2 the wife of the deceased had corroborated the evidence of PW1. PW3 a child witness and daughter of the deceased, also supported the prosecution case. She was studying in the 9th standard, when she was examined and the occurrence had taken place one year before the examination. Her evidence is cogent and corroborates the evidence of PW1 and PW2 about the incident on 21.08.2016.

12. As regards the occurrence on 22.08.2016, we find that PW1's evidence is cogent and does not suffer from any infirmity, whatsoever. She lodged the complaint immediately after the occurrence and in our view there is no delay in lodging the FIR. The printed FIR also reached the learned Magistrate on the same evening at 9.30 pm.

13. Though PW5 turned hostile, he had supported the prosecution case to the limited extent of seeing the deceased and PW1 at the place of



WEB COPY

occurrence. He had also stated that he came to know from PW1 that the appellant stabbed the deceased. In our view, this portion of PW5's evidence which is consistent with the other evidence on record, can be accepted even though PW5 was declared as hostile.

14. Above all, there is no reason for PW1 to falsely implicate the appellant in the occurrence. The material objects viz., the knife [M.O.3] and the dress materials [M.O.1 & M.O.2] of the deceased contained human blood.

15. The recovery of the knife on the confession of the appellant has been established by the prosecution through the evidence of PW10 and the investigating officer-PW15. There is no reason to disbelieve the recovery made from the appellant. The PW12, the postmortem doctor has opined that the injuries suffered by the deceased could have been caused by M.O.3-Knife. Therefore, we are of the view that the appellant had caused the injury to the deceased and the prosecution has established the said fact. However, we find that though PW1 would state that the appellant stabbed



Crl.A.No.583 of 2018

the deceased twice, the postmortem certificate does not support the same.

The postmortem certificate only suggests that the deceased sustained a single stab injury on the right side upper abdomen.

16. The learned counsel for the appellant contended that even assuming that the prosecution case is true, since only a single stab injury was inflicted on the deceased, the intention to cause death cannot be inferred and that the nature of injury would suggest that the injury was not sufficient in the ordinary course of nature to cause death. Therefore, we propose to examine the said question on the basis of the medical evidence and the law on this subject.

17. (i) The Hon'ble Supreme Court in *Virsa Singh v. State of Punjab*, reported in **AIR 1958 SC 465** had held that in a case of a single injury, the prosecution must prove the following four elements to bring it within clause thirdly of Section 300 of the IPC. The relevant paragraphs read as follows:

“15. First, it must establish, quite objectively, that a bodily injury is present.

16. Secondly, the nature of the injury must be proved; These are purely objective investigations.



Crl.A.No.583 of 2018

WEB COPY

17. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

18. Once these three elements are proved to be present, the enquiry proceeds further and,

19. Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.”

(ii). The Hon'ble Supreme Court in the recent decision in *Anbzhagan 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. Paragraph 66(1) is relevant for the purpose of this case, which reads as follows:

“66(1) When the court is confronted with the question, what offence the accused could be said to have committed, the true test is to find out the intention or knowledge of the accused in doing the act. If the intention or knowledge was such as is described in Clauses (1) to (4) of Section 300 of the



WEB COPY

IPC, the act will be murder even though only a single injury was caused. To illustrate : 'A' is bound hand and foot. 'B' comes and placing his revolver against the head of 'A', shoots 'A' in his head killing him instantaneously. Here, there will be no difficulty in holding that the intention of 'B' in shooting 'A' was to kill him, though only single injury was caused. The case would, therefore, be of murder falling within Clause (1) of Section 300 of the IPC. Taking another instance, 'B' sneaks into the bed room of his enemy 'A' while the latter is asleep on his bed. Taking aim at the left chest of 'A', 'B' forcibly plunges a sword in the left chest of 'A' and runs away. 'A' dies shortly thereafter. The injury to 'A' was found to be sufficient in ordinary course of nature to cause death. There may be no difficulty in holding that 'B' intentionally inflicted the particular injury found to be caused and that the said injury was objectively sufficient in the ordinary course of nature to cause death. This would bring the act of 'B' within Clause (3) of Section 300 of the IPC and render him guilty of the offence of murder although only single injury was caused.”

Thus, there cannot be any universal rule that in all cases where a single stab injury is inflicted, the offence would be culpable homicide. It would depend on the nature of the injury inflicted and the intention of the accused.

18. In the instant case, the prosecution had established that the appellant had a grievance against the deceased and had threatened the deceased of dire consequences for not letting the daughter of the deceased / wife of the appellant, to go with the appellant. The deceased and his wife



are rag-pickers and when they were doing their job, the appellant inflicted the injury.

19. The postmortem doctor (PW12), found an external stab injury, as stated earlier, which measures 3x0.5cm into peritoneal cavity. On dissection, he also found that the wound passes inwards medially, cutting the underlying muscle, vessels, nerves and lower part of 12th rib and enter into peritoneal cavity then piercing the right lobe of liver measuring about 3x0.5x7cm in depth.

20. The depth of the internal injury indicates the force used by the appellant. The appellant had carried the knife with him and there is nothing to suggest that there was any scuffle and the incident that occurred on the previous day would suggest that the appellant committed a premeditated act. Applying the principles laid down in the above judgments, we are of the view that the appellant had committed an act with an intention to cause death. In any case, the intention was to cause the injury, which is sufficient in the ordinary course of nature to cause death, which would bring the act of



Crl.A.No.583 of 2018

the appellant within clause thirdly of Section 300 of the IPC. Either way, the appellant would be guilty of the offence punishable under Section 302 of the IPC.

21. For the aforesaid reasons, we find no infirmity in the judgment of the trial Court. Hence, this Criminal Appeal is liable to be dismissed and accordingly, dismissed. The judgment of conviction and sentence dated 23.03.2018 made in S.C.No.171 of 2016 on the file of the learned III Additional District and Sessions Judge, Coimbatore, is hereby confirmed.

[M.S.R.,J.] [S.M.,J.]
12.03.2024

Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order

ars

To

1.The III Additional District and Sessions Judge,
Coimbatore.

2.The Inspector of Police,
C-2, Race Course Police Station,



Crl.A.No.583 of 2018

WEB COPY

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

3. The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.A.No.583 of 2018

M.S.RAMESH,J.

and

SUNDER MOHAN,J.

ars

Pre-delivery Judgment in

Crl.A.No.583 of 2018

12.03.2024