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CRL.A.NO.667 OF 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 02 / 08 / 2023

JUDGMENT PRONOUNCED ON: 30 / 01 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.A.NO.667 OF 2018

Sankar @ Sekar

...

Appellant /
Sole Accused

Versus

The State
Rep. By the Inspector of Police
Jayamkondam Police Station
Jayamkondam.

...

Respondent /
Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, 1973, to call for the records relating to the judgment dated 03.10.2018 passed in S.C.No.1 of 2018 on the file of Additional District and Sessions Judge, Ariyalur and set aside the same and acquit the appellant / accused from all charges levelled against him.

For Appellant : Dr.S.Manoharan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

This Criminal Appeal is preferred, assailing the judgment dated 03.10.2018 passed by the 'learned Additional District and Sessions Judge, Ariyalur ' (henceforth 'Trial Court' for the sake of brevity) in S.C.No.1 of 2018, by the 'appellant herein' (henceforth 'accused' as per Trial Court's description), in which he was convicted and sentenced to undergo five years rigorous imprisonment with a fine of Rs.5,000/-, in default thereof, to undergo further period of six months imprisonment for the offence under Section 304(ii) of 'The Indian Penal Code, 1860' [hereinafter referred to as 'IPC' for the sake of brevity and convenience].

2.The case of the prosecution, in brief, is as follows:

2.1.The deceased-Murugan and the accused-Sankar @ Sekar are brothers. The complainant-Pennarasi is the wife of the deceased. The deceased and the accused are residing in Devanur Village, Udayar Palayam Taluk, Ariyalur. On June 5th, 2017, due to Pennarasi's illness, the deceased



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Murugan borrowed Suresh's (P.W.16) motorcycle to take her to a Private

Hospital in Jeyankondam. He returned to Devanur the following day *i.e.*,

June 6th, 2017, at 12.00 hours. On his way back, he carelessly rode the bike

and ended up dropping it down causing damage to the headlamp and side

indicators. He then returned the vehicle to Suresh without repairing the

damage he had caused. Suresh, feeling aggrieved, informed and urged the

accused to repair the bike. Later on the same day, around 15.00 hours, near

the Devanur Colony Water Tank, a heated argument erupted between the

accused and the deceased regarding the damage to Suresh's motorcycle. This

disagreement escalated into a physical altercation, during which the accused

slapped the deceased on his cheek and pushed down the deceased. The

deceased suffered a head injury. At this point, people in the vicinity

intervened and pacified the situation. Then the deceased-Murugan went to his

house, informed his wife about the incident, and proceeded to meet the

Village President, by name Selvaraj. While doing so, the deceased was later

found dead near Devanur School. Suspecting that certain individuals with

whom he had previous enmity might be responsible for his death, the wife of

the deceased-Pennarasi went to Jeyankondam Police Station and lodged the



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Written Complaint (Ex-P1) at 06.00 hours on June 7th, 2017.

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2.2.Upon receiving the Written Complaint (Ex-P1), the then Sub-Inspector of Police, Jeyankondam Police Station (P.W.21) registered First Information Report [henceforth FIR] (Ex-P.9) in Crime No.178/2017 under Section 174(3) of Code of Criminal Procedure, 1973 [henceforth 'Cr.P.C.' for the sake of brevity]

2.3.Upon receiving the case files on the aforementioned date at 07.00 hours, the then Inspector of Police, Jeyankondam Police Station (P.W.22) [henceforth 'Investigation Officer' for the sake of brevity and clarity] rushed to the scene of occurrence and prepared Rough Sketch (Ex-P.3) and Observation Mahazar (Ex-P.2) in the presence of the witnesses Selvanadhan (P.W.9) and Arulmani (P.W.10). He then went to the Jeyankondam Government Hospital and conducted inquest upon the body of the deceased and prepared Inquest Report (Ex-P.10), in the presence of Panchayatdars and witnesses after which, he sent the body for Post-mortem. Pursuant Post-mortem Report is marked as Ex-P.7. Then, upon examining the witnesses and



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recording their statements, he altered the section from 174(3) of Cr.P.C. to 302 of IPC vide Alteration Report (Ex-P.11), and removed the accused, namely Irulappu Selvakumar and Sivakumar, from the case vide deletion report (Ex-P.12). Then he arrested the accused-Shankar @ Sekar on the aforementioned date at 14.15 hours near Vaariangkaval Bus Stop, in the presence of the witnesses Thriunavukarasu (Ex-P.13) and Rajendran (Ex-P.14), based on a tip-off. Then he recorded the voluntary confession given by the accused in the presence of the aforementioned witnesses. Then he sent the accused for Judicial Remand, and the clothes of the deceased [Lungi (M.O.1) and Underwear (M.O.2)] received after Post-mortem to Judicial Custody under Form 95 (Ex-P.15). Then, based on the Investigation Officer's request to the learned 'Judicial Magistrate No.1, Jeyankondam' (henceforth 'Judicial Magistrate'), Lungi (M.O.1), Underwear (M.O.2) and viscera of the deceased were sent for forensic examination. Pursuant FSL Report is marked as Ex-P.8. Then he examined and recorded the statements of the FSL officers, and Final Opinion of the Post-mortem Doctor is marked as Ex-P.16.

2.4.After completion of the investigation, the Investigation



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Officer filed a charge-sheet against the accused-Shankar @ Sekar for the offence punishable under Section 302 of IPC before the learned Judicial Magistrate.

2.5.The learned Judicial Magistrate registered the case on file as PRC.No.28/2017. After furnishing copies under Section 207 of Cr.P.C. to the accused, he committed the case file to the Principal Sessions Court under Section 209(a) of Cr.P.C., as the offence punishable under Section 302 of IPC is exclusively triable by the Sessions Court. The Principal Sessions Court in turn made over the case to the Trial Court. The Trial Court, after receiving the case file, framed a charge under Section 302 of IPC against the accused, read over the charges and explained them to the accused in Tamil. Since the accused pleaded not guilty, trial was ordered.

2.6.To prove its case, the prosecution examined P.W.1 to P.W.22 (Witnesses) and marked Ex-P.1 to Ex-P.16 (Documents) and M.O.1 to M.O.2 (Material Objects). The defense side neither examined any witnesses nor marked any documents.



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2.7.The Trial Court after hearing either side, concluded that the prosecution has proved the offence punishable under Section 304(ii) of IPC against the accused. Accordingly, the Trial Court convicted and sentenced the accused as stated supra in paragraph No.1.

2.8.Feeing aggrieved with the Conviction recorded and the Sentence imposed by the Trial Court, the accused have preferred this Criminal Appeal under Section 374(2) of Cr.P.C.

ARGUMENTS

3.Dr.S.Manoharan, learned counsel for the appellant / accused submitted that the Trial Court did not properly appreciate the evidence of the alleged ocular witnesses; that though P.W.10 is not cited as an ocular witness but as an Observation Mahazar witness in this case, he has deposed as if he is an ocular witness and hence, his evidence is not believable and trustworthy; that there was no intention for the accused to hurt the deceased who is none



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other than his own brother; that it is unclear when and what caused the hemorrhage, which ultimately led to the deceased's demise; and that the prosecution failed to prove the case beyond reasonable doubt. Accordingly, he prayed to allow the appeal and acquit the accused. As an alternate argument, he argued that if the Court believes the evidence of P.W.6 and P.W.7, even then the act of the accused would attract the offence under Section 323 of IPC alone. Accordingly, the learned counsel for accused prayed to allow the Criminal Appeal, set aside the impugned Judgment and acquit the accused.

4.In response to the above arguments, Mr.A.Gokulakrishnan, learned Additional Public Prosecutor for the respondent-State submitted that the testimony of the ocular witnesses are believable and trustworthy; that the statement of the deceased made to P.W.8, P.W.11 and P.W.12 that the accused had assaulted the deceased is elevated to the position of dying declaration under Section 32 of 'The Indian Evidence Act, 1872' (henceforth 'Evidence Act') after the demise of deceased; that though the witnesses are relatives to both, the accused and the deceased, they have deposed against the accused;



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that the Trial Court, after careful consideration and evaluation of the arguments advanced and the evidence adduced, concluded that the accused is guilty for the offence punishable under Section 304(ii) of IPC and there is no reason to interfere with the same; and that the prosecution has proved the case beyond reasonable doubt. Accordingly, he prayed to dismiss the Criminal Appeal and sustain the Conviction recorded and Sentence imposed by the Trial Court.

5.This Court has perused the case file and heard either side. The following points arise for consideration:-

i.Whether the prosecution has proved the charge leveled against the accused under Section 304(ii) of IPC?

ii.Whether there exist any reason to interfere with the impugned judgment?



DISCUSSION AND DECISION FOR POINT NOS.(i) AND (ii)

OCULAR WITNESSES

6.Veerasley (P.W.6) deposed that on June 6th, 2017, that he went to fetch water; that between 13.00 hours and 14.00 hours, a heated argument erupted between the accused and the deceased near water-tank regarding the damage to Suresh's motorcycle; and that he tried to pacify the situation and then left the spot.

6.1.Kamaraj (P.W.7) deposed that he and a few others were engaged in a conversation near the water pipe on June 6th, 2017; that between 13.00 hours and 14.00 hours, a heated argument erupted between the accused and the deceased near the water tank regarding the damage to Suresh's motorcycle; and that they intervened and pacified the situation after which the accused and the deceased departed from the scene.

6.2.Veerachandran (P.W.8) deposed that at about 16.00 hours on



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June 6th, 2017, the deceased came to Vasuki's (P.W.11) house to get some drinking water as he was feeling dizzy; and that, the deceased stated that his brother (accused) assaulted him and then left to the Village President's house to complain in this regard. Tmt.Vasuki (P.W.11), Tmt.Senthamizhselvi (P.W.12) deposed in the line of P.W.8.

6.3.Arulmani (P.W.10) cited as observation mahazar witness has deposed as if he witnessed the occurrence. In his chief examination, he deposed that on June 6th, 2017, the accused and the deceased were engaged in an altercation near the water tank; that the accused assaulted the deceased and thereby caused head injury; and that, thereafter, the deceased proceeded to west street and drank water from Village President's house. He further deposed that, he heard about someone lying near "Jalli Muttu" (ஜல்லி முட்டு) and that he and Selvanathan upon reaching the spot and turning the body over, found the deceased dead. He further deposed about the preparation of the Rough Sketch (Ex-P.3) and Observation Mahazar (Ex-P.2). In his cross-examination, he deposed that he did not witness the deceased drinking water



from Village President's house.

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6.4.This Court would like to note here that, given P.W.10's evidence in cross-examination and since P.W.10 was cited as observation mahazar witness, his evidence with regard to him witnessing the incident, is not believable and trustworthy.

6.5.The accused and the deceased are brothers. P.W.6 and P.W.7 are eye witnesses to the alleged occurrence. On June 5th 2017, Pennarasi the wife of the deceased was unwell. Hence, the deceased Murugan borrowed Suresh's motorcycle (P.W.16) to take his wife Pennarasi to a private hospital in Jeyamkondam. The deceased and his wife Pennarasi while returning from the hospital to Devanur on June 6th, 2017, at 12.00 hours, on his way back, the deceased carelessly rode the motorcycle and ended up dropping it down causing damages to headlight and left side of the motorcycle. The deceased returned the vehicle to Suresh without repairing the damages he caused to the vehicle.



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6.6. According to the prosecution case, the factum of causing damages to the Motor-cycle aggrieved Suresh and made him urge the accused who is none other than the deceased's brother to repair the bike and later, on the same day, around 15.00 hours, near Devanur Colony Water Tank, a heated arguments erupted between the accused and the deceased pertaining to the damages caused to the motorcycle. The further case of the prosecution is that during the disagreement that escalated into a physical altercation, the accused slapped the deceased on his cheek and pushed down the deceased; that due to the act of the accused, the deceased suffered a head injury and due to the head injury, the deceased died. P.W.6 and P.W.7 are examined as ocular witnesses. They did not state that the accused pushed down the deceased and due to the said act, the deceased got a head injury.

6.7. Evidence of P.W.6 and P.W.7 proves that there was a wordy quarrel between the accused and deceased. Consequent to the wordy quarrel, the accused assaulted the deceased. This fact is easily discernible from the evidence of P.W.8, P.W.11 and P.W.12. The deceased himself did not tell P.W.8, P.W.11 and P.W.12 that the accused caused a head injury to him with



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the intention of killing him. However, the deceased has stated to P.W.8, P.W.11 and P.W.12 that the accused assaulted him. It is true that the statement made by the deceased to P.W.8, P.W.11 and P.W.12 is elevated as an oral dying declaration after the demise of the maker namely the deceased. As stated supra, the deceased did not himself tell P.W.8, P.W.11 and P.W.12 that the accused caused him head injury with the intention of killing him.

6.7.A cumulative reading of P.W.6, P.W.7, P.W.8, P.W.11 and P.W.12 would show that some altercation took place between the accused and the deceased on June 6th 2017. During the said altercation, the accused assaulted the deceased.

6.8.It is to be noted that initially, a case was registered under Section 174 of Cr.P.C., against the accused and two other persons. The Investigating Agency deleted two other accused from the case. As per the evidence of the post-mortem Doctor (P.W.17) it is clear that the deceased died due to blood clot over the temporal lobe of the brain. The altercation between the accused and the deceased took place at about 15.00 Hours. The deceased



died at about 19.00 Hours. The Doctor who conducted the post-mortem of the deceased body was examined as P.W.17. He opined that the deceased died due to hemorrhage in brain and consequent blood clot over the temporal lobe brain. Contents of the post-mortem certificate, which is marked as Ex-P.7 is extracted hereunder:

“Moderately nourished male body lying on his back, arms by the side, eyes closed, mouth partially opened, blood stained discharge from both nostril and mouth.

Ext Injury:- (i) Abrasion of 3X1 cm over the (L) Knee. (2) Contusion (L) Temporal region size 5 X 3 CM. No other external injury.

Internal examination: Hyoid bone intact.

Thorax: No ribs on both side. Lungs: B/L congested

Heart: All chamber empty. Abdomen: Stomach 200 ml yellow colour fluid with no specific odour.

Liver, Spleen, kidney: All are congested.

Bladder – empty. Skull : (L) Temporal bone injury present. Size: 3 X 0.5 X 0.5 CM.

Scortum: No injury.

Brain: 100 gm clotted blood seen over the (L) Temporal Lobe brain.

PM conducted at 6.30 p.m., on 07.06.2017.

Death would occur appear to have occurred 12 – 24 hours prior



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to autopsy. Viscera presented for chemical analysis.

Final opinion:

The deceased would appear to have died of shock and hemorrhage due to injury of vital organ namely brain.”

6.9.The appellant and the deceased are blood brothers. There was no animosity or grudge between the appellant and accused before the incident. Hence, the appellant has no intention to kill the deceased. The evidence would show that a minor altercation took place between the appellant and the deceased. The prosecution failed to establish that the accused had caused head injury to the deceased with an intention to kill the deceased. Conjoint reading of the ocular witnesses and the statement made by the deceased to P.W.8, P.W.11 and P.W.12 would prove that the accused assaulted the deceased. Hence, this Court is of the view that the act of the accused would attract Section 325 of IPC only. There is no sufficient evidence available on record to say that the accused has committed the offence of culpable homicide not amounting to murder punishable under Section 304 of IPC. This Court is of the considered view that the appellant has neither intention to kill the deceased nor knowledge to cause head injury



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to the deceased.

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6.10.The Trial Court has decided that the act of the accused would attract the offence punishable under Section 304(ii) of IPC. There is no sufficient evidence available on record to show that the appellant had the intention or knowledge to cause death to the deceased. In the absence of sufficient evidence, the decision of the Trial Court that the appellant committed the offence punishable under Section 304(ii) of IPC deserves to be interfered by this Court. Point Nos.(i) and (ii) are answered accordingly.

CONCLUSION

7.Before writing the operative portion of the judgment, on perusal of the records, it is seen that the appellant / accused belongs to a Scheduled Caste Community and the appellant is working as as a Mason. The deceased died leaving behind him his wife Pennarasi, two sons and one daughter. The deceased was working as a Sanitary Worker in the Village Panchayat Office. In the circumstances, considering the economic conditions



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of the appellant and also considering the nature of the case, this Court is of the view that the dependents namely, wife and children of the deceased are entitled to claim compensation under the Victim Compensation Scheme. Accordingly, this Court directs the District Legal Service Authority, Ariyalur, to get a formal application from the dependents of the deceased, fix the quantum of compensation and recommend it to the Government as per the Victim Compensation Scheme.

8.Resultantly, **this Criminal Appeal is partly allowed** and the conviction and sentence imposed by the trial Court under Section 304(ii) of IPC is set aside and the appellant / accused is found guilty under Section 325 of IPC and this Court imposes punishment of ONE YEAR simple imprisonment, with a fine of Rs.5,000/-, in default thereof, the appellant/accused shall undergo two months simple imprisonment. The Trial Court is directed to secure the appellant / accused and commit him to prison to undergo the remaining period of his sentence. The period of incarceration already undergone by the appellant / accused shall be set off under Section 428 of Cr.P.C.

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9.The Registry is directed to mark a copy of this judgment for the District Legal Services Authority, Ariyalur. Upon receipt of the copy of this judgment, the District Legal Services Authority, Ariyalur shall initiate process of giving compensation to the dependents of the victim under the Victim Compensation Scheme.

30 / 01 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking
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To

1.The Additional District Sessions Judge
Ariyalur.

2.The Inspector of Police
Jayamkondam Police Station
Jayamkondam.

3.The Public Prosecutor
High Court of Madras.

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4.The District Legal Services Authority
Ariyalur.

R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
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