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Crl.A.No.728 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06..02..2024

CORAM
THE HON'BLE MR JUSTICE M.S. RAMESH
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN

Criminal Appeal No.728 of 2018

Pathan @ Padhmanaban
S/o Ramasamy,
Male, aged 43 years

... Appellant

-Versus-

The State,
Rep. By its
Inspector of Police,
Udumalpet Police Station,
Tiruppur District.
[Crime No.571 of 2015]

... Respondent

Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the judgement of conviction and order of sentence dated 26.09.2018 made in S.C.No.67 of 2016 by the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, Tiruppur District.

For Appellant/Sole Accused : Mr.M.Rajkumar

For Respondent/State : Mr.M.Babu
Muthumeeran, APP



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JUDGEMENT

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The appellant, who is the sole accused in S.C.No.67 of 2016 on the file of the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, Tiruppur District, has come forward with the present criminal appeal challenging the conviction for offence under Section 302 of IPC and the sentence imposed thereof directing the appellant to undergo imprisonment for life and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) and in default of payment of fine, to suffer simple imprisonment for a further period of six months.

2. (a) It is the case of the prosecution that the appellant and the deceased-Ayyappan were close friends and were in the habit of consuming liquor together; that two days prior to the occurrence, the appellant had criticized the conduct of the wife of the deceased and the daughter; that the deceased enraged by the said Act of the appellant, attacked him with hands; that on 18.09.2015, at about 01.15 p.m. in the vegetable shop, the appellant and the deceased had quarrelled with each other and the appellant picked up a stone nearby and threw it on the head of the deceased as a result of which, the deceased sustained injuries and succumbed to it.



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(b) It is the further case of the prosecution that P.W.1, the wife of the deceased came to know that the appellant and the deceased were fighting with each other and when she went to the place of occurrence, she found the appellant throwing a stone on the deceased; that she with the help of the persons in the market, took her husband, the deceased to the hospital and the deceased died a little later due to the injuries.

(c) P.W.1 lodged a complaint (Ex.P.1) at 02.30 p.m. on the same day which was registered by P.W.14, the Sub Inspector of Police, in Crime No.671 of 2015 for the offence punishable under Section 302 of IPC. P.W.15, the Investigating Officer, took up the investigation and proceeded to the scene of occurrence and in the presence of witnesses, she prepared a rough sketch (Ex.P.9) and observation mahazar (Ex.P.2). She recovered the stone used by the accused, blood stained earth and sample earth which was not blood stained in the presence of witnesses through mahazar (Ex.P.3).

(d) Thereafter, she conducted inquest in the presence of witnesses and prepared inquest report (Ex.P.10). She thereafter, sent the body of the deceased for postmortem through P.W.8. P.W.5 Doctor conducted postmortem and issued postmortem certificate (Ex.P.4) and final opinion (Ex.P.5). P.W.15, the



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investigating officer, in the course of her investigation, arrested the appellant and recorded the confession of the appellant in the presence of P.W.6, the Village Administrative Officer and another witnesses. She, thereafter, examined other witnesses and file final report before the Judicial Magistrate-I, Udumalpet, against the appellant for the offence punishable under Section 302 of IPC.

(e) On the appearance of the appellant/accused, the provisions of Section 207 of Cr.P.C. were complied with and the case was committed to the Court of Sessions in P.R.C.No.03 of 2016 by the learned Judicial Magistrate-I, Udumalpet for trial. On committal by the learned Magistrate to the Court of Session, the case was taken cognizance of offence under Section 302 of IPC by the learned Sessions Judge, Tiruppur in S.C.No.67 of 2016 and, thereafter, it was made over to the learned Additional District and Sessions Judge, Hossur, Krishnagiri for trial. The trial court framed charges against the appellant/accused and when question, the appellant/accused pleaded 'not guilty'.

3. Before the Trial Court, the prosecution examined 15 witnesses and marked exhibits P.1 to P.10 and produced material objects M.O.1 to M.O.5. The defence had not examined any witness. The accused denied the incriminating circumstances put against them under Section 313 CrPC. The Trial Court found



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that the prosecution had established the case beyond reasonable doubt and convicted and sentenced the accused as stated earlier. Challenging the conviction and sentence the sole accused is before us.

4. The learned counsel for the appellant submitted that the presence of P.W.1 is doubtful as the accident register shows that the deceased was brought by one Santhosh and not by P.W.1, the wife of the deceased; that the evidence of the other witnesses are also not cogent and hence, the same cannot be believed; and that there are several inconsistencies in their testimonies. Therefore, according to the learned counsel, it is highly unsafe to record a finding of guilt on the basis of such evidence and hence he prayed for acquittal of the appellant.

5. The learned Additional Public Prosecutor per contra submitted that the occurrence was not only witnessed by P.W.1 but also by P.W.3 and P.W.10 who were also working in the market as loadmen. Therefore, their presence is natural and there is no reason for them to implicate the appellant falsely. P.W.1 also came to the place of occurrence immediately after she came to know about the fight between the appellant and the deceased and hence her presence also cannot be said to be improbable. Therefore, the learned Additional Public Prosecutor submitted that the finding of the trial court holding the appellant guilty of offence



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under Section 302 of IPC need not be interfered with.

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6. We have carefully considered the rival submissions and perused the evidence of record.

7. The prosecution had examined P.W.5 Doctor who conducted post-mortem and issued Ex.P.4-Post-mortem Certificate and Ex.P.5-Final Opinion as to the cause of death of the deceased. P.W.5 Doctor had found the following injuries on the deceased.

- “1.A lacerated wound over left frontal region 2 x 1 x 1 cm
- 2.A lacerated wound over right occipital region 2 x 1 x 1 cm
- 3. A lacerated wound behind right ear 3 x 1 x 1 cm”

In his final opinion (Ex.P.5), P.W.5, the Doctor, had opined that the deceased would have died of head injuries. P.W.5 further stated that the said injuries could be caused by a stone like M.O.1 which was seized from the scene of occurrence. Nothing has been elicited in the cross examination to discredit the evidence of P.W.5-Doctor. Therefore, we are of the view that the prosecution has established that the deceased suffered 'homicidal violence ' and died because of that.

8. P.W.1 is the wife of the deceased and was an eye-witness to the occurrence. P.W.2 is the son of the deceased who came to the place of occurrence



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later. P.W.3 and P.W.10 were load men working in the market. They are also eye-witnesses who supported the prosecution case. P.W.4 is a mahazar witness. P.W.5 is the Doctor who conducted postmortem on the body of the deceased. P.W.6 is the Village Administrative Officer who witnessed the arrest and confession of the appellant. P.W.7 is an hearsay witness. P.W.8 is the Head Constable who has handed over the dead body of the deceased to the hospital for post-mortem. P.W.9 is the Head Constable who handed over the internal organs of the deceased to the Forensic Science Laboratory for chemical analysis. P.W.11 is the Head Constable who handed over the original FIR to the jurisdictional court. P.W.12 is the Doctor who first examined the deceased and issued accident register (Ex.P.6). P.W.13 is an Assistant Director in the Forensic Science Laboratory in Coimbatore. P.W.14 is the Sub Inspector of Police, who registered the FIR. P.W.15 is the investigating officer.

9. From the above list of witnesses, it could be inferred that the prosecution is based on the testimonies of eye witnesses P.W.1 , P.W.3 and P.W.10. P.W.3 who was working as loadman in the market would state that the appellant and the deceased were friends and that around 01.15 p.m. on 18.09.2015 both the appellant and the deceased were quarrelling with each other



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and that suddenly, the appellant threw a stone on the head of the deceased and that P.W.1, the wife of the deceased was present at that time and pleaded with the appellant not to do so. Nothing has been elicited in the cross examination of P.W.3 to disbelieve his version. Similarly, P.W.10, another load man working in the market, has also spoken about the incident and the quarrel between the appellant and the accused before the incident. He has also spoken about the presence of P.W.1 and P.W.3 at the time of occurrence. Nothing has been elicited from him also to discredit his testimony.

10. P.W.1, the wife of the deceased, whose presence has been spoken to by both P.W.3 and P.W.10. Her evidence is natural and cogent. The defence suggested to her in the cross examination that she had not gone to the hospital since in the accident register (Ex.P.6) it is shown that one Santhosh brought the deceased to the hospital. This in our view would not affect prosecution case in any manner as on a overall reading of the evidence of P.W.1, P.W.3 and P.W.10, we are convinced that the appellant had caused injuries on the deceased.

11. The next question is as to what is the offence committed by the appellant. Admittedly, the deceased and the appellant were close friends. P.W.1, P.W.3 and P.W.10 have confirmed the said fact. P.W.2 who is the son of the



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deceased and P.W.1 would also state that the deceased and the appellant were close friends. It is also in the evidence that the appellant and the deceased were quarrelling with each other prior to the occurrence which is also spoken to by P.W.1, P.W.3 and P.W.10 and corroborated by P.W.2, who came to know about it later. The motive alleged by the prosecution is that since the appellant had spoken ill of the wife and the daughter of the deceased, the deceased beat him as a result of which the appellant was enraged. However, we find that from the evidence of eye-witnesses that on the date of occurrence, the appellant was not armed with any weapon. There was a quarrel between the appellant and the deceased and the evidence of P.W.3 and P.W.10 would suggest that the appellant suddenly picked up a stone which was nearby and threw it on the head of the deceased. The accident register (Ex.P.6) would also reveal that the deceased smelt of alcohol. All these would only suggest that there was a quarrel and there was no premeditation to cause the death of the deceased and the appellant had not acted in a cruel or unusual manner and therefore, his act would fall under fourth exception to Section 300 of IPC. From the available evidence we can safely conclude that the accused had no intention to cause the death of the deceased. However, we can infer that the act has been done with the knowledge



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that it is likely to cause death. Therefore, we are of the view that the appellant is liable for the offence punishable under Section 304(II) of IPC instead of offence punishable under Section 302 of IPC.

12. In view of the foregoing discussions, the conviction of the appellant/accused by the Trial Court for offence under Section 302 of IPC is modified into one under Section 304 (II) of IPC and insofar as the sentence is concerned, the appellant/accused is directed to undergo Rigorous Imprisonment for 5 (five) years and to pay a fine of Rs.5,000/- (Rupees Five Thousand only) for offence under Section 304(II) of IPC and in default of payment fine, he shall suffer simple imprisonment for a further period of 3 (three) months.

In the result, this Criminal Appeal is partly allowed on the following terms:-

(i) The conviction of the appellant/accused imposed by the learned III Additional District and Sessions Judge, Tiruppur at Dharapuram, in S.C.No.67 of 2016 by judgement dated 26.09.2018 for offence under Section 302 of IPC and the sentence imposed thereof to undergo imprisonment for life and to pay a fine of Rs.2,000/- are set aside and instead the appellant/accused is convicted for offence under Section 304 (II) of IPC and sentenced to undergo rigorous



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imprisonment for 5 (five) years and to pay a fine of Rs.5,000/- for offence under Section 304(II) of IPC and in default of payment of fine, he shall undergo simple imprisonment for a further period of 3 (three) months.

(ii) The fine amount paid, if any, is directed to be adjusted as against the fine amount now imposed.

(iii) The appellant/accused has to surrender before the Trial Court within two weeks from the date of receipt of a copy of this judgement to undergo the remaining unserved portion of sentence imposed hereinabove failing which the trial court may take steps to secure the appellant/accused. The appellant/accused would be entitled to set off the period of detention already undergone by him under Section 428 of Cr.P.C.

Index : yes / no
Neutral Citation : yes / no
Speaking/Non Speaking order
kmk

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

- 1.The III Additional District and Sessions Judge, Tiruppur at Dharapuram, Tiruppur District.
- 2.The Inspector of Police,Udumalpet Police Station, Tiruppur District.

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3.The Public Prosecutor, High Court of Madras, Chennai 600 104.

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**M.S. RAMESH.J.,
AND
SUNDER MOHAN.J.,**

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