



Crl.A.(MD)No.62 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.03.2024**

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**
AND
THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

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Jeyaraman

...Appellant

/Vs./

State through
The Inspector of Police,
Devakottai Police Station,
Sivagangai District.
(In Crime No.533 of 2010)

...Respondent

PRAYER:- Appeal - filed under Section 374 of the Criminal Procedure Code, to call for the entire records connected to the judgment in S.C.No. 16 of 2011 on the file of the Hon'ble Principal Sessions Judge, Sivagangai, dated 17.09.2019 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.G.Bhagavath Singh

For Respondent : Mr.R.Meenakshi Sundaram

Additional Public Prosecutor



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JUDGMENT

DR.G.JAYACHANDRAN, J.
AND
C.KUMARAPPAN, J.

The appellant, one of the accused has been tried for the offence under Sections 341, 302 r/w Section 114 of IPC.

2. The case of the prosecution is that the deceased Karthick was employed under PW4, friend of one Ilayaraja and Pandiyarajan. He was assisting them in arranging the mike set for the village temple festival. At that time, the appellant along with A2-Murugesan and A3-Govindaraj (died pending trial) picked a quarrel with Mathi, PW2 for not including him in the temple festival committee. When the deceased Karthick tried to intervene, the second accused Murugesan caught hold of the deceased. The third accused Govindaraj asked the first accused to stab him. Immediately, the first accused stabbed Karthick with knife on his left chest. All the three accused ran away from the scene of occurrence. The injured Karthick was taken to the hospital, but he was declared as dead. PW12, Doctor Raju, who had conducted autopsy had



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noted a deep stab injury of size 1.2 x 1 x 15 between the ribs 4 and 5 just above the apex. It has entered into the left chamber of his heart's left ventricle. No other external injuries were seen. He has opined that the death would have caused due to the stab injury and loss of blood.

3. Based on the complaint given by one Muthu, PW1, the respondent police registered a case in Crime No.533 of 2010. The police visited the scene of occurrence and prepared the observation mahazer, Ex.P2 and collected blood stained soil and unstained soil and also prepared the seizure mahazer, Ex.P3. The appellant, who is the first accused was arrested on 16.08.2010. Based on his confession, the knife marked as MO1 was recovered in the presence of witnesses, namely Senthamarai (PW9 and Muniyandi (not examined). Recovery mahazer was marked as Ex.P5. The prosecution has relied upon the testimony of 13 witnesses besides 12 exhibits and 6 material objects.

4. PW2, PW3 and PW6 are the witnesses of the occurrence. They have deposed about the incident and have implicated all the three



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accused with overt act. The injury found on the deceased as mentioned in Ex.P7, post mortem report as well as the knife, MO1 correlates with the evidence and substantially proved the case of the prosecution. On the instigation of A3, A1 has stabbed him with knife, MO1. Due to stab with MO1, Karthick sustained the fatal injury.

5. PW3 corroborates the testimony of PW2. PW6 had deposed that when the first accused was quarrelling with Mathi (PW1) and Ilayaraja (not examined), at about 10.15 pm, he (PW6) and Karthick intervened to pacify them. At that time, the 2nd accused, Murugesan caught hold of Karthick. The 3rd accused incited the first accused to stab Karthick. Then, the first accused stabbed Karthick. The injured was taken to the hospital by these witnesses along with others. The doctor has declared him dead at about 11.30 p.m. The trial Court has believed the evidence of all these witnesses to hold the appellant guilty of offence under Section 302 of IPC and sentenced him to undergo life imprisonment and pay a fine of Rs.1,000, in default 3 months rigorous imprisonment.



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6. The learned counsel appearing for the appellant argued that the motive for the occurrence was not established by the prosecution, even otherwise motive was only against Mathi as per his own evidence of PW2. But the victim in this case, Karthick, had nothing to do with the appointment of the committee members for the temple festival. Furthermore, the evidence for prosecution would clearly show that there was no dispute at all regarding the committee membership and the accused A1, the appellant had never sought for any membership. Having failed to prove the motive and witnesses to the prosecution, who have been claimed to be the eye-witnesses, being very close relatives of the deceased Karthick, the trial Court ought not to have been believed the case of the prosecution. The learned counsel appearing for the appellant also submitted that even the prosecution has not contended that the accused had intention to kill Karthick and therefore, the prosecution case, even if it is to be accepted has carved out the truth. The offence will fall only under Section 304 (ii) of IPC and not under Section 302 of IPC.



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7. The learned Additional Public Prosecutor submitted that it is the case of transfer of malice. The intention of the appellant was to create ruckus, so that the temple festival would get stalled. The accused picked quarrel on the festival night. The deceased Karthick was caught hold and attacked by the accused. The nature of the injury would itself clearly show that the appellant has inflicted with an intention to cause injury for the death of Karthick.

8. This Court, on cumulative assessments of the evidence, particularly, PW2, PW3 and PW6, who have been claimed to be the eye-witnesses to the occurrence, it is a clear case that the injury on the deceased Karthick was inflicted by the appellant, but not with an intention to cause death. However, the knife and stab injury would clearly show that it is sufficient to cause death and the person, who has inflicted the injury on the deceased must have the knowledge that it would cause death. Infact, the single stab injury on vital part has caused death.



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9. Taking note that single stab injury was not with an intention to cause death, but to create ruckus so that the temple festival would get stalled, this Court, on relying upon the judgment of the Hon'ble Supreme Court cited by the learned counsel appearing for the appellant **Tholan vs. State of Tamil Nadu** reported in **1984 2 SCC 133**, wherein the facts are almost identical to the facts in the case on hand, modifies the sentence from 302 of IPC to 304 (ii) of IPC and imposes rigorous imprisonment for a period of five years with a fine of Rs.1,000/- in default six months rigorous imprisonment. Accordingly, this Criminal Appal is partly allowed.

10. The bail bond, if any, executed by the appellant / accused shall stand cancelled and fine amount, if any paid by him is ordered to be refunded. The appellant / accused shall surrender before the trial Court within 15 days from today, to undergo the remaining period of sentence. Failing which, the respondent police shall secure him and commit him to

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undergo the remaining period of sentence, after expiry of the said period
of 15 days.

[G.J.J.] & [C.K.J.]
15.03.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes
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TO:-

- 1.The Principal Sessions Judge, Sivagangai.
- 2.The Inspector of Police,
Devakottai Police Station,
Sivagangai District.



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DR.G.JAYACHANDRAN, J.
AND
C.KUMARAPPAN, J.

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Judgment made in
Crl.A.(MD)No.62 of 2020

Dated:
15.03.2024