



Crl.A(MD)No.221 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 12.03.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

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Kalidhas

... Appellant/Single accused

Vs.

The State rep by
The Inspector of Police,
R.S.Mangalam Police Station,
Ramanathapuram
Crime No.169 of 2017

... Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the judgment dated 25.02.2021 passed in S.C.No.22 of 2018 by the learned Principal District and Sessions Judge, Ramanathapuram.

For Appellant : Mr.A.K.Jayaraj
For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor



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JUDGMENT

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

The instant criminal appeal has been filed by the sole accused against the judgment, dated 25.02.2021 passed in S.C.No.22 of 2018 by the learned Principal District and Sessions Judge, Ramanathapuram, by and in which, the appellant was convicted for the offence under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for 3 months.

2.The case of the prosecution is that,

The deceased Jaisankar was the incumbent Village President, whereas, the accused is the former Village President. There was some misunderstanding between the accused and the deceased regarding the account details of panchayat. While so, on 18.06.2017 at about 7.30 hours, the deceased demanded account from the Panchayat Secretary Murugan, knowing that the accused came in a bike bearing Registration No.TN65-AC-2597, and dashed against the deceased. He also abused him in filthy language. The deceased, who



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fell down, sustained internal injury. He was first taken to R.S.Mangalam Hospital. Thereafter, he was referred to Headquarters Hospital at Ramanathapuram. After few days of treatment, he was shifted to Velammal Medical College Hospital at Madurai, wherein the deceased died on 27.06.2017. The Police registered the FIR on 27.06.2017 based on the complaint given by the father of the deceased viz., Chinnathambi(P.W.1), on the death of Jaisankar, the charge was altered for murder and the investigation was taken up by P.W.23 in crime No.169 of 2017. On completion of investigation, final report was filed and the case was committed to Principal District and Sessions Court, Ramanathapuram and taken up the trial in S.C.No. 22 of 2018. The trial Court framed the charge under Sections 294(b) and 302 IPC against the accused.

3.To prove the charges, the prosecution has examined 23 witnesses as P.W.1 to P.W.23 and marked 20 exhibits as Ex.A.1 to Ex.A.20 and marked 2 material objects as M.O.1 and M.O.2. The CT scan report of the deceased was marked on behalf of the accused and no witness was examined.



4.The trial Court, on appreciating the evidence, has held that the accused has intentionally dashed against the deceased to cause death and due to injuries sustained on his head and chest, the deceased Jaisankar died and therefore, it is the case of culpable homicide amounting to murder. However, for want of evidence, the trial Court acquitted the accused for the offence under Section 294(b) IPC, and convicted the accused for the offence under Section 302 IPC for life sentence. Against which the present appeal is filed.

5.The learned counsel appearing for the appellant drew our attention to the contradictions in the medical report, particularly, the first accident report issued by the Government Hospital, Ramanathapuram shows that there was no external injury, erythema in chest(anterior surface) alone was noticed. At that time, the Doctor has smelled alcohol in the breath of the patient. This has been spoken by P.W.20-the doctor, who examined the deceased Jaisankar. Thereafter, he had been shifted to Ramanathapuram Hospital and from Ramanathapuram Hospital, he was taken to Velammal Medical College Hospital, Madurai. The medical record maintained by Velammal Medical College Hospital Research Centre would indicate that the patient was admitted



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on 26.06.2017 for the alleged history of assault on 19.06.2017 and he had been under treatment at Velmmal Hospital till his death on 27.06.2017 at 08.30 p.m.

6.The learned counsel would submit that the accident register marked as Ex.P.8 show that the said Jaisankar was brought dead to the Government Hospital Madurai on 27.06.2017 and there is corrections and alterations in time and he further referring the testimony of P.W.17-Head constable, submit that there is a discrepancy regarding the date of death. He also submitted that the evidence of P.W1 to P.W.3 are loaded with contradiction, and that they are close relatives of the deceased and interested in getting conviction of the accused since there was previous motive. Therefore, in the absence of any valid corroboration, these witnesses are not reliable. Hence, contended that the case of the prosecution ought to have been disbelieved. Nonetheless, the Court below without considering the contradiction in the evidence of P.W.1 viz-a-viz her previous statement regarding the treatment given at R.S.Mangalam Hospital and also regarding the alleged motive, convicted the appellant.



7.The learned counsel would also submit that according to the charge framed by the trial Court, the dispute was between the deceased and one Murugan Secretary of the Panchayat. Whereas the prosecution has miserably failed to examine the said Murugan to establish the alleged motive. The learned counsel also submitted that while the alleged incident taken place on 16.06.2017, the FIR was registered on the complaint only on 22.06.2017. After the death of Jaisankar on 27.06.2017 the charge was altered. Besides, enormous delay in preferring the complaint and long gap between the date of occurrence and the death of the deceased Jaisankar, the earliest document relied upon by the prosecution, which is Ex.P.11-A.R copy issued by the Government Hospital at R.S.Mangalam clearly shows that at the time of occurrence, Jaisankar had consumed alcohol and his breath had smell of alcohol. Since he died after 10 days from the date of occurrence, the trace of alcohol gone and that has been admitted by the postmortem doctor also. Therefore, there is no link between the alleged incident and the death of Jaisankar. The prosecution has also failed to prove that the injuries sustained by Jaisankar was only due to the overt act of the accused/appellant. Furthermore, the said overt act was not with an intention to cause injury which is likely to cause death.



8.Per contra, the learned Additional Public Prosecutor would submit that the prosecution has proved the guilt of the accused to the core by examining the eye witnesses. Though P.W.1 to P.W.3 are the father, mother and wife of the deceased, since the occurrence has taken place in front of the deceased house, they are the natural witnesses. The evidence of these three witnesses clearly prove the motive for the occurrence and the overt act of the accused.

9.The learned Additional Public Prosecutor by relying upon the evidence of these three witnesses, who have narrated as to how the deceased Jaisankar sustained injury by the overt act of the accused, submitted that the injuries found in the body of the deceased and recorded in the postmortem report tally with the narration of all the eye witnesses and therefore, the minor discrepancies in the A.R report which is not a substantial piece of evidence has to be ignored. The trial Court in view of overwhelming evidence has rightly convicted and the appeal is to be dismissed.



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10. Heard the submissions made on either side and perused the records.

11. The case of the prosecution as spoken by P.W.1 to P.W.3 clearly indicates that there was enmity between the deceased and the accused. The deceased, who succeeded the accused as the village president, was demanding of rendition of account but the accused was not inclined to give. In the said background on 18.06.2017 in front of the deceased house, the villagers gathered and gheraoing. On hearing that, the appellant/accused came in the two wheeler and dashed against the deceased. P.W.2-mother of the deceased had deposed that “ஆஐர் எதிரி தெற்கிலிருந்து பைக்கில் வந்து என் மகன் மீது நெஞ்சில் தூக்கி மோதினார். என் மகன் அம்மா என்று சொல்ல ரோட்டில் சுயநினைவு இல்லாமல் விழுந்து விட்டான்.”

12. The reading of the postmortem certificate, we find that though there was no evidence of external injuries noted on the body, on dissection of Scalp, Skull & Dura, the following injuries were noted:

“Subscalpal contusion measuring 6cm x 6cm noted on right occipital region contusion measuring 8cm x 8cm noted on



right parieto region, and right frontal region. Diffuse subdural haemorrhage and subarachnoid haemorrhage noted over the both cerebral hemispheres. Fracture base of skull involving anterior cranial fossa right side.

On dissection of Chest:

Fracture ribs from 3 to 4 noted on right side in its mid clayicular line with surrounding bruising noted. Pleural cavity contains 150ml of fluid blood with clots.”

13.The injury corresponds with the evidence of the eye witnesses. Hence, this Court is of the view that the evidence of P.W.2 is natural and inspires the confidence. The trial Court has accepted the ocular evidence of P.W.2 to hold the accused is guilty for causing death. As per the fact proved through the witnesses the appellant had hit the deceased and due to that, the deceased has sustained injuries as found in the postmortem report.

14.Having held so, it is the duty of the Court to find out whether the proven act of the accused would amount to murder or not. To fall under the definition of culpable homicide amounting to murder, the ingredients as found in clause(a) and (b) of Section 300 IPC requires intention to cause death or the knowledge that the injuries will be sufficient to cause death or the injury which



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is likely to cause death. While considering the conduct of the appellant/accused, who had dashed the deceased with his bike, had stopped without doing anything else to cause, once the deceased fell down. While so, it cannot be construed that the injury was caused by him with an intention to cause death or he had the knowledge, by dashing a person of 45 years old would likely to cause death. From the postmortem report, this Court finds that the fracture of right ribs 3 to 4 is the impact of the two wheeler on the deceased whereas, the injuries on the skull was due to the fall of the deceased on the floor. The deceased died after 10 days of the incident. Hence, this Court holds that it is the case of culpable homicide not amounting to murder and the accused had no intention to cause death, but had the knowledge that this will likely to cause death.

15.It is to be noted that the case of the prosecution that while dashing against the deceased the accused utter obscene words. However, the Court below disbelieved the charge under Section 294(b) IPC. This is yet another reason to hold that the accused had no intention of causing death of Jaisankar.



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16.In such circumstances, we alter the conviction under Section 302 IPC to Section 304(ii) IPC and modify the sentence to 3 years Rigorous Imprisonment with fine of Rs.15,000/- in default to undergo six months simple imprisonment. The period of imprisonment already undergone by the appellant shall be set off under Section 428 Cr.P.C.

17.In the result, this Criminal Appeal is partly allowed by modifying the period of sentence as stated above.

(G.J.,J.) (C.K.,J.)
12.03.2024

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

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To

1.The Principal District and Sessions Judge,
Ramanathapuram.

2.The Inspector of Police,
R.S.Mangalam Police Station,
Ramanathapuram.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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