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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	09.01.2024
Pronounced On	:	28.06.2024

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.378 of 2020

Gunasekaran

.... Appellant/Sole Accused

Vs.

State rep. by
Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District,
In Crime No.674/2008

...Respondent/Complainant

Prayer : This Criminal Appeal is filed under Section 374 (2) of Cr.P.C. to call for records and set aside the conviction and sentence imposed by the Principal District and Sessions Court, Virudhunagar District, Srivilliputhur in S.C.No.43/2010 on 10.02.2020 and allow this Criminal Appeal.

For Appellant : M/s.M.Jothibasu

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

JUDGMENT

The appellant, who is the sole accused in S.C.No.43 of 2010, on the file of the Principal District and Sessions Court, Virudhunagar District, Srivilliputur, filed this criminal appeal challenging the conviction and



sentence imposed against him by the Principal District and Sessions Court, Virudhunagar District, Srivilliputtur. The learned trial Judge has passed the impugned judgment, dated 10.02.2020 and found the appellant guilty, convicted and sentenced him as detailed below:-

<i>Accused</i>	<i>Convicted under Section</i>	<i>Sentence of Imprisonment/ fine imposed</i>
Sole Accused	Section 302 of IPC	Sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo Simple Imprisonment for six months.

2.The case of the prosecution is that the appellant/Sole accused and the deceased, namely, Napoleon are friends. On 29.09.2008, at 20.45 hours, there was a wordy quarrel between the appellant and the deceased relating to money transaction between them, in front of the Noonmeal-Centre near stone slabs at Puchakapatti Village. The deceased refused to repay the amount to the accused, which was borrowed by him and therefore, the appellant is said to have abused the deceased with filthy language and stabbed the deceased near right umbilicus by using a knife, thereby causing grievous injuries and committed murder and escaped from the scene of occurrence. Thereafter, the deceased was taken to the Sri Ram Hospital,



Sivakasi, for treatment. After admission, the doctor, namely, Subbaraju/P.W.15 declared the death of the deceased. Then, P.W.15 sent the body of the deceased to the Government Hospital mortuary for post-mortem. Thereafter, P.W.1, the mother of the deceased, gave a complaint to P.W.18. On the basis of the said complaint, P.W.18 registered a case against the appellant for the offence under Section 302 of IPC, in Crime No.674 of 2008.

2.1.After the receipt of the FIR, P.W.19 conducted inquest, prepared Observation Mahazer under Ex.P3 and drew a rough sketch under Ex.P10. Thereafter, he identified the body of the deceased and prepared inquest report under Ex.P.11. It is further stated that the P.W.19 sent the clothes worn by the deceased to the learned Judicial Magistrate, Sivakasi, under form 91. After conducting further investigation and examined the witnesses, the investigation officer/ P.W.19 arrested the accused on 30.09.2008 and recovered knife under Ex.P.5 and filed the final report. After receipt of the final report, the learned Judicial Magistrate, Sivakasi, took the case on file in P.R.C.No.53 of 2008. The learned trial Judge issued summons to the accused and after his appearance, served the copies under Section 207 Cr.P.C. Thereafter, he framed necessary charges and



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questioned the accused. The accused pleaded not guilty. Thereafter, the case was committed to the Principal District and Sessions Court, Virudhunagar District, Srivilliputur, under Section 209(a) of Cr.P.C. The same was taken on file and numbered as S.C.No.43 of 2010.

3. To prove the case, the prosecution examined P.W.1 to P.W.19 and exhibited 11 documents as Ex.P.1 to Ex.P.11 and produced 4 material objects as M.O.1 to M.O.4. The learned trial Judge thereafter, questioned the accused under Section 313 Cr.P.C proceedings by disclosing the incriminating evidence against him and he denied the same as false and thereafter, the case was posted for defence evidence. The accused neither produced any documents nor examined any witnesses on his side.

4. The learned trial Judge, on considering the evidence of witnesses, convicted and sentenced the appellant for the offence as stated supra. Aggrieved over the same, the appellant preferred this appeal.

5. The learned counsel appearing for the appellant submitted that according to the prosecution, P.Ws.1, 2, 3 and 6 to 9 are the eye witnesses to the occurrence. P.Ws.6 to 9 are independent eye witnesses and they were declared hostile. Hence, the conviction based on the evidence of the



interest witnesses of P.Ws.1 to 3 is not legally maintainable. P.Ws.1 to 3 are blood relatives of the deceased. There are material contradictions between their versions. Hence, the evidence had not been properly appreciated by the learned trial judge.

5.1.The learned counsel for the appellant further submitted that the prosecution failed to prove the charge under Section 302 of IPC. Even if the evidence of the prosecution witnesses is accepted as true, the conviction under Section 302 of IPC of the appellant is not legally sustainable. The learned counsel further submitted that the occurrence took place, out of sudden fight between the appellant and the deceased. The same was clear from the evidence of P.Ws.1 and 3. If the said evidence is taken into consideration, the offence under Section 302 is not made out. It makes out only the offence under Section 304 (II) of IPC. The petitioner already had undergone more than two years and he seeks for reduction of sentence suitably by converting the offence under Section 302 of IPC into 304(II) of IPC.

5.2.The learned counsel appearing for the appellant relied the following judgment of the Honourable Supreme Court and this Court.



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(i) In the case of *Sarup Singh Vs. State of Haryana* reported in *AIR 1995 SCC 2452*.

(ii) In the case of *Mohammed Fazluddin Vs. State* reported in *(2007) 1 MLJ (CRL) 810*.

(iii) In the case of *Sukhbir Singh Vs. State of Haryana* reported in *(2002) 3 SCC 327*.

6. The learned Additional Public Prosecutor appearing for the respondent Police submitted that it is a well settled principle that there is no bar to rely on the evidence of relative witness. When the incident took place in front of the place of the residence and they are the competent persons to speak about the occurrence. P.Ws. 6 to 9 independent witnesses turning hostile is not a ground to disbelieve the evidence of P.Ws. 1 and 3, who are the eye witnesses of the occurrence, which corroborated with the medical evidence. Apart from that, the prosecution clearly proved the arrest of the accused and recovery of M.O. 1 and the same was clearly proved through P.W. 12. Further, the FIR was registered promptly and the same reached the Court without any delay. In the said circumstances, the prosecution clearly proved Section 302 of IPC against the appellant. Further, in view of the specific overtact attributed to the appellant and he



had enough time to cool off and hence, he would not come under 304(ii)

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IPC.

7. This Court has considered the rival submissions made by both parties and perused the records and also the precedents relied upon by the appellants.

7.1. Whether the conviction and sentence imposed against the appellant under Section 302 of IPC is in accordance with law?

8. P.W.1 is the mother of the deceased. The deceased and the appellants are close relatives. The deceased was selling snacks in retail. The deceased borrowed money from him. He had failed to repay amount. Hence, there was a money dispute between them. On 29.09.2008 at 08.45 p.m., in the occurrence place, when P.W.1 was talking with P.W.3, the appellant had engaged in a wordy quarrel with the deceased. On seeing the said wordy quarrel, P.W.1 intervened and when she was taking the deceased to her house, the appellant stabbed the deceased in right umbilicus by using M.O.1 and he fled from the scene of occurrence with the knife. She raised an alarm and on hearing the same, her another son P.W. 2 came and had seen the appellant fleeing from the occurrence place



with knife and P.W.1 and P.W.3 and other took the deceased to the hospital.

In the hospital, the Doctor declared his death. Thereafter, P.W.1 and P.W.3, went to the police station and preferred a compliant. The said testimony of P.W.1, is cogent and without any material infirmity and corroborated with the evidence of P.W.3 in all aspects. Further, both the evidence of P.W.1 and P.W.3 corroborated with the medical evidence. The doctor/P.W.16 deposed about the stab injury measuring an extent of 4X1.5 c.m., in the right umbilicus found in the body of the deceased and the same was sufficient to cause death and he also opined that the same would have been caused by M.O.1/Knife. P.W.19 investigating officer arrested the accused on 30.09.2008 in the presence of P.W.12. The appellant gave the voluntary confession and he also disclosed the place of the occurrence and the place where he hid the knife. On the basis of the same, the knife was recovered. Ex.P4 is the admitted portion of the confession. Ex.P5 is the athachi. P.W. 12 is the relative of both the accused and the deceased and his evidence is cogent and there is no reason to disbelieve his testimony. The witnesses P.W.1 and P.W.3 also clearly identified M.O.1. Therefore, in all aspects, the prosecution clearly proved that the appellant caused death of the deceased by stabbing him in the right umbilicus by using M.O.1, beyond reasonable doubt.



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9. Now the remaining question is whether the offence under Section 302 of IPC is made out or any other lesser offence. It is admitted case that there was money dispute between the deceased and the appellant. On 29.09.2008 at 08.45 p.m., there was a wordy quarrel between the appellant and the deceased and the same resulted in sudden fight. In the said sudden fight, the appellant stabbed the deceased in the right umbilicus measuring an extent of 4 X 1.5 c.m. There was no other injury caused by the appellant. Even P.W.12 deposed that the appellant gave the confession that as a result of sudden out burst he stabbed the deceased. Even P.W.1 also deposed that there was a scuffle between them. The same was also corroborated by P.W.3. From the above sequence of the events and nature of injury it is seen that the appellant without any intention to cause death stabbed the deceased in sudden fight. There was no premeditation on the part of the appellant to make murderous assault and the appellant has also not taken undue advantage and acted in a cruel manner.

10. Apart from that, in this case, the appellant was incensed by the act of the deceased as seen from the sequence of events narrated by the witnesses P.Ws.1 and 3, more particularly, the deceased without making repayment



of the amount, found fault with the appellant and hence, there was a sudden fight and uttered filthy words towards the appellant by shouting which enraged the appellant and he assaulted the deceased without any intention and also without any premeditation. Hence, the appellant in the heat of passion inflicted the injuries without taking any undue advantage. Further, his blood was boiling.

11. In view of the above discussion, in this case, due to sudden fight, the appellant under the total deprivation of his self-control caused injury to the deceased under the heat of passion. In the said circumstances, the case of the appellant is accepted and the act of the appellant is not murder but only culpable homicide not amounting to murder and this Court holds that this case comes under exception (4) to Section 300 IPC punishable under Section 304(II) of IPC and the appellant's case comes under the parameter laid down by the judgment of the Hon'ble Supreme Court:

(i) In 2017 5 SCC 796 (Surain Singh v. State of Punjab):

“13. Exception 4 to Section 300 IPC applies in the absence of any premeditation. This is very clear from the wordings of the Exception itself. The Exception contemplates that the sudden fight shall start upon the heat of passion on a sudden quarrel. The Fourth



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Exception to Section 300 IPC covers acts done in a sudden fight. The said Exception deals with a case of provocation not covered by the First Exception, after which its place would have been more appropriate. The Exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1, but the injury done is not the direct consequence of that provocation. In fact, Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon an equal footing. A "sudden fight" implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor could in such cases the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to



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be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter.”

14. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the “fight” occurring in Exception 4 to Section 300 IPC is not defined in IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties had worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts



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of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression “undue advantage” as used in the provision means “unfair advantage”.

(ii) In 2018 2 SCC 496 (Atul Thakur v. State of H.P.):

“12.The number of wounds caused by the appellant, it is a well-established position, by itself cannot be a decisive factor.”.

“.....Neither the use of a knife in the commission of offence nor the factum of multiple injuries given by the appellant would deny the appellant of the benefit of Exception 4.”

12. Considering the relationship of the appellant and the deceased and the incident taking place when the appellant demanded the repayment of the debt amount from the deceased and there was no previous antecedent and the appellant has four year old female child, this Court inclines to impose a sentence of three years of rigorous imprisonment and to pay a sum of Rs.5000/- as fine and in default to pay the fine amount, to undergo Simple Imprisonment for six months.



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13. In the result,

(i) This Criminal Appeal is partly allowed.

(ii) The conviction under Section 302 IPC passed by the Principal District and Sessions Court, Virudhunagar District, Srivilliputhur, dated 10.02.2020, in S.C.No.43 of 2010, is set aside and modified into conviction under Section 304(II) IPC.

(iii) Accordingly, the sentence of Life Imprisonment passed by the Court below is set aside and the appellant is sentenced to undergo Rigorous Imprisonment for 3 years and to pay a fine of Rs.5,000/-, and in default to pay the fine amount, to undergo Simple Imprisonment for six months.

(iv) The period of sentence already undergone by the accused/appellant shall be set off under Section 428 Cr.P.C., as against the substantive sentence.

(J.N.B.J.) (K.K.R.K.J.)

.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To:

1. The Principal District and Sessions Judge,
Virudhunagar District, Srivilliputhur.
2. The Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District,
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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J.NISHA BANU, J.
and
K.K.RAMAKRISHNAN, J.

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