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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.11.2026

DELIVERED ON: 03.11.2026

CORAM

THE HON'BLE MR.JUSTICE D.LINGESWARAN

Crl.A(MD) No.74 of 2019
CNR:{HCMD010346972019}

Periyasamy

..Appellant/Sole Accused

Vs

The Inspector of Police
Muthaiahpuram Police Station,
Thoothukudi District.
Crime No.357 of 2016

..Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C, to call for the records in S.C.No.126 of 2017 on the file of the learned II Additional District and Sessions Judge, Thoothukudi, Thoothukudi District and set aside the judgment dated 07.12.2018 and acquit the appellant of the charges leveled as against him.

For Appellant :Mr.A.Thiruvadi Kumar

For Respondent :Mr.A.Robinson
Additional Public Prosecutor

JUDGMENT

This Criminal Appeal is filed challenging the judgment passed by the II Additional District and Sessions Judge, Thoothukdi, Thoothukudi District in S.C.No.126 of 2017 dated 07.12.2018.

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2. The case of the prosecution:

The case of the prosecution is that on 10.10.2016 at 10.30 a.m., in the Gypsum yard belonging to JVP Contractors, situate behind the SPIC at Muthiahpuram, Thoothukudi, the appellant, who was operating a JCB machine, hit a lorry bearing registration No.TN 69 K 5411. Therefore, the driver of the lorry, Mr.Sudhakar, and the deceased Raja @ Maharajan quarrelled with the appellant. The duo had abused the appellant using filthy language. Enraged by the invectives, directed at him, the appellant lifted the deceased Raja @ Maharajan and Mr.Sudhakar in the bucket of the JCB machine. Sudhakar managed to jump from the bucket and escaped, but the accused threw the deceased from a height and repeatedly struck him on his head and other parts of the body. The deceased died on the spot. A First Information Report was lodged and registered as Crime No.357 of 2016 with Muthiahpuram Police Station. The accused was arrested, witnesses were examined, evidence was collected and a Final Report was filed, against the accused under Section 302 of IPC before the learned Judicial Magistrate No.2, Thoothukudi.

3. The case was taken on file as P.R.C.No.46 of 2016 by the learned Judicial Magistrate No.2, Thoothukudi, and after following due process, it was committed to the learned Principal Sessions Judge,

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Thoothukudi. Subsequently, the learned Sessions Judge made over the case to the II Additional Sessions Judge, Thoothukudi for trial. The trial was conducted, and the prosecution examined 16 witnesses and exhibited 18 documents and 12 material objects. The defence exhibited 3 documents. No oral evidence was adduced on behalf of the defence. The learned Trial Judge, after considering the entire evidence on record, came to the conclusion that culpable homicide committed by the accused fell within the Exception 1 to the definition of murder under Section 300 of IPC. The learned Trial Judge concluded that the appellant, whilst deprived of the power of self control by grave and sudden provocation, caused the death of the deceased Raja @ Maharajan. While acquitting the accused under Section 302 of IPC, the Trial Judge convicted him under Section 304 of IPC and sentenced him to undergo 10 years of Rigorous Imprisonment along with the fine of Rs.1,000/- with a default sentence of 6 months of Simple Imprisonment. The period of imprisonment already undergone was ordered to be set off under Section 428 of Cr.P.C. Aggrieved by the conviction and sentence, the present appeal is filed.

4. Heard both sides. The entire evidence on record is carefully considered.

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Arguments:

5. The learned counsel for the appellant fairly conceded that the evidence of eye witness, namely PW1 Muthukrishnan, was hard to get over. A careful perusal of the evidence of PW1 clearly shows that the defence did not deny the quarrel. It was suggested to PW1 that the deceased during the quarrel, tripped and fell down on the bucket of the JCB and sustained the fatal injuries. The suggestion was denied. It is also on record in Ex.P14 that the appellant had also lodged a First Information Report in Crime No.359 of 2016 in respect of the same incident, wherein he had narrated the incident and admitted the attack on the deceased. The evidence of Dr.Manoharan (PW9) and the autopsy report in Ex.P5 show that the various injuries and fractures on several parts of the body of the deceased, including his head and T10 vertebra could not have been sustained due to accidental fall on the bucket of the JCB machine. As the finding of the Trial Court was unassailable the learned counsel for the appellant argued, relying upon Ex.P14 statement that the case of the appellant would not fall under Exception 1 of Section 300 of IPC, rather, it would fall under Exception 4 of Section 300 of IPC and therefore, would be punishable only under Section 304 Part II of IPC and not under Section 304 Part I of IPC. The learned counsel for the appellant, in fine, prayed for reducing the sentence of the appellant.

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6. Per contra, the learned Additional Public Prosecutor submitted that the appellant repeatedly struck the deceased on the head and all over the body and crushed to death on the spot, which indicates the clear intention of the appellant to kill the deceased. He relied upon the evidence of PW1 and the evidence of the doctor (PW9) who conducted autopsy and noted the injuries in Ex.P5, and prayed for upholding the conviction under Section 304 Part I of IPC and the sentence of imprisonment awarded thereon.

7. Discussions:

The principal contention advanced on behalf of the appellant is that the occurrence took place in the heat of passion, upon a sudden quarrel, following the deceased hurling filthy and abusive words against the appellant connecting his mother. This Court is unable to accept the said contention. Exception 4 to Section 300 of IPC contemplates a situation where culpable homicide is committed without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner. All the four requirements are cumulative in nature. Even assuming that the occurrence was preceded by a sudden quarrel and that the deceased had abused the appellant, connecting his mother, in filthy

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language, the applicability of Exception 4 cannot be determined merely by referring to the circumstances which preceded the occurrence. The manner in which the assault was perpetrated and the conduct of the accused during the occurrence are equally relevant considerations.

8. In the case on hand, the evidence establishes that the appellant was operating a JCB machine and, in the course of the occurrence, he lifted both the deceased and another person (Mr.Sudhakar). While one of them managed to jump out and escaped, the deceased remained in the bucket. The appellant thereafter used the bucket of the JCB machine to throw the deceased down from a height and repeatedly strike him on his head and other parts of the body. The assault was not a single or spontaneous act resulting in an unintended injury. On the contrary, the repeated use of a heavy mechanical bucket against the deceased, particularly against his head and other vital parts of the body, demonstrates the nature and gravity of the attack.

9. The deceased sustained multiple fractures and extensive injuries on his head and various parts of his body and succumbed at the spot. The nature, number and distribution of the injuries, read along with the manner in which the weapon of assault was employed, leave no room for

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treating the occurrence as an ordinary consequence of a sudden quarrel.

10. More importantly, the appellant was operating a heavy earth-moving machine and was in complete control of its movements. He had the ability to stop the machine or desist from further assault. Instead, he chose to use the bucket of the JCB machine repeatedly against the deceased. The fact that the appellant continued the assault even after the deceased had been thrown down assumes considerable significance. Such conduct cannot be characterised as an act committed merely in the heat of passion or as an uncontrolled reaction to verbal provocation.

11. It is true that the deceased had allegedly abused the appellant, connecting his mother, in filthy language. Such provocation may explain the circumstances which led to the occurrence, but it cannot, by itself, justify the manner in which the appellant chose to retaliate. Verbal abuse, however reprehensible, does not confer upon a person the right to inflict repeated and potentially fatal injuries upon another. The appellant, by repeatedly using the bucket of the JCB machine against the deceased, clearly exceeded the limits of any permissible reaction to the alleged provocation.

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12. This Court, therefore, of the considered view that the appellant cannot claim the benefit of Exception 4 to Section 300 of IPC, particularly, in view of the cruel and unusual manner in which the assault was perpetrated. The requirement that the offender should not have taken undue advantage or acted in a cruel or unusual manner is not satisfied in the present case.

13. The further contention that the offence ought to be brought within the ambit of Section 304 Part II of IPC is equally untenable. The distinction between part I and Part II of Section 304 of IPC lies in the nature of the intention and knowledge attributable to the accused. Where the act is committed with the intention of causing bodily injury which is likely to cause death, the offence would fall under Part I; whereas Part II applies where there is knowledge that the act is likely to cause death, but no intention to cause death or such bodily injury as is likely to cause death.

14. In the present case, the act of the appellant of repeatedly striking the deceased with the heavy bucket of a JCB machine, particularly on the head and other vital parts of the body, resulting in multiple fractures and extensive injuries, is sufficient to establish the

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requisite intention contemplated under Section 304 Part I of IPC. The repeated nature of the assault and choice of the instrument employed cannot be brushed aside as mere acts of rashness or a momentary loss of self-control. The circumstances clearly establish that the appellant intended to cause bodily injuries which were likely to result in death.

15. This Court finds that the learned Trial Judge has carefully appreciated the oral and documentary evidence, and has rightly concluded that the appellant is guilty of the offence punishable under Section 304 Part I of IPC. The acquittal of the appellant from the charge of murder, coupled with his conviction under Section 304 Part I of IPC has already taken into consideration, the distinction between murder and culpable homicide not amount into murder. This Court finds no justification to extend the benefit of a further reduction in the nature of offence.

16. Now, coming to the sentencing aspect, there is nothing in the Trial Court's record or in the impugned judgment to show that the appellant had any bad antecedents. He is the only breadwinner of the family, as per his plea before the Trial Court. The accused was just 26 years old at the time of occurrence. It is also to be noted after the

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occurrence, he was attacked by the witnesses indiscriminately and sustained grievous injuries. These mitigating circumstances deserve due consideration while determining appropriate sentence. Though the manner in which the appellant committed the offence is undoubtedly grave and resulted in the death of the deceased, the sentence imposed must also bear a reasonable proportion to the circumstances of the offender.

17. It is well settled that, while determining the quantum of sentence, the Court is required to strike a balance between the aggravating circumstances surrounding the commission of the offence and the mitigating circumstances relating to the offender. The object of sentencing is not merely to punish the offender but also to afford an opportunity for reformation and rehabilitation, where ever the circumstance permit. The young age of the appellant, the absence of previous criminal antecedents and his responsibility as the sole breadwinner of the family are relevant factors which persuade this Court to take a lenient view with regard to quantum of sentence.

18. This Court is conscious of the fact that the offence resulted in the loss of a precious human life and that the gravity of the crime cannot

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be over ruled. Nevertheless, having regard to the over all circumstances of the case, this Court is of the considered view that the sentence of ten years Rigorous Imprisonment imposed by the learned Trial Judge is somewhat excessive and that the ends of justice would be met by reducing the same to rigorous imprisonment for five years, while maintaining the conviction under Section 304 Part I of IPC.

19. Conclusion:

Accordingly, the conviction of the appellant under Section 304 Part I of IPC is confirmed. However, the sentence of ten years Rigorous Imprisonment is reduced to five years of Rigorous Imprisonment. The sentence of fine and the default sentence shall remain unaltered. The appellant is entitled to set off the period of imprisonment already undergone under Section 428 of Cr.P.C.

20. The Criminal Appeal is partly allowed to the extend indicated above.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The Inspector of Police
   Muthaiahpuram Police Station,
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2. The Additional Public Prosecutor
   Madurai Bench of Madras High Court
   Madurai

Copy To :
Section Officer (VR Section)
Madurai Bench of Madras High Court

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