

R. Jeeva Vs. State rep. By Inspector of Police, Salem Town Police Station, Salem

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Court : Chennai

Decided On : Dec-21-2016

Judge : S. Nagamuthu & N. Authinathan

Appeal No. : CRL.A.No. 528 of 2016

Appellant : R. Jeeva

Respondent : State rep. By Inspector of Police, Salem Town Police Station, Salem

Judgement :

(Prayer: Appeal filed under Section 374(2) of Cr.P.C. against the judgment dated 20.03.2016 passed in S.C.No.8 of 2015 by the learned II Additional Sessions Judge, Salem.)

N. Authinathan, J.

1. The accused is the appellant.

2. This appeal is directed against the conviction and sentence imposed in S.C.No.8 of 2015 on the file of the learned II Additional Sessions Judge, Salem ordering the accused to undergo imprisonment for life and also to pay a fine of

Rs.5,000/-, in default, to undergo two years simple imprisonment for the offence under Section 302 IPC.

3. Viji @ Manikandan (the deceased) is the son of Palanisamy (P.W.1). Geetha (P.W.3) is the sister of the deceased. Chandra (P.W.4), Jana, Jeeva (accused), Anand, Santhosh (P.W.2) and the deceased were friends.

4. On 28.01.2014, at about 9.00 p.m, the deceased was picked up by the accused. P.W.2 Santhosh, P.W.4 Chandra accompanied him. They spent time together chit-chatting near Muniappan Temple till 1.00 a.m on 29.01.2014. The accused put forth one bottle of beer and half bottle brandy, the deceased finding it to be quite meagre, sarcastically commented that is it for a small quantity of liquor that you have invited so many persons . This comment infuriated the accused. There arose a heated exchange of words. The deceased abused the accused in vulgar and filthy language. The accused punched with his fist on the chest of the deceased. The deceased fell down. The accused picked up M.O.1 cement mortar and brick block, lying nearby and dropped on the face of the deceased. P.W.4 and his friends ran away from the scene of occurrence out of fear.

5. As the deceased did not return home, his father P.W.1 asked P.W.3 over phone as to the whereabouts of the deceased. She told him that the deceased was picked up by the accused and his friends. On 29.01.2014, at about 6.30 a.m, Santhoshkumar (P.W.4) told P.W.1 that the accused dropped M.O.1 cement mortar and brick block on the face of the deceased following an altercation. Immediately, he rushed to the scene of occurrence and found the deceased lying dead. He proceeded to Salem Town Police Station and lodged Ex.P.1 complaint.

6. On receipt of Ex.P.1 complaint, P.W.12 Sub Inspector of Police, Salem Town registered a case in Cr.No.17 of 2014 for the offence punishable under Sec.302 IPC at about 7.45 a.m on 29.01.2014 and sent to the Court. Ex.P.15 is the First Information Report.

7. P.W.13 Inspector of Police took up the investigation, visited the scene of occurrence at 8.30 a.m,. He prepared Observation mahazar Ex.P.3 and rough sketch Ex.P.16. He collected sample earth and blood stained earth from the scene

of occurrence in the presence of P.W.5 Palanisamy under Ex.P.11 mahazar. He held inquest over the body of the deceased in the presence of panchayathars between 10.15 p.m and 12.30 p.m. Ex.P.17 is the Inquest Report. He sent the body for Post Mortem through Singaravel (P.W.9) Head Constable. P.W.9 seized the blood stained clothes M.O.6 to M.O.8 from the dead body and produced them at Station.

8. Dr.Gokularamanan (P.W.11), the doctor, attached to Mohan Kumaramangalam Medical College, Salem conducted autopsy on the body of the deceased on 2.15 p.m on 29.01.2014 and found the following injuries:

External Examination:

Injuries:

1. Dark Reddish abrasion over the front of right forearm M-10 x 8 cms
2. Multiple small abrasions of various sizes seen on the back of right forearm
3. Old healing sutured wound on the right palm M-2 cms long with 2 sutures
4. Laceration over outer and lower aspect of left thumb M-1 x 0.5 x 0.5 cms
5. Crush injury of Head exposing pieces of scalf, vault bones and base of skull exposing the brain with right side of the face pressed and deformed brain completely crushed into pieces and exposed.

Internal Examination:

O/D Head: Vide injury column

O/D Neck: Neck structures Normal.

Hyoid Bone Intact

O/D Thorax: No RIB cage. Heart- Normal in size. On C/s chambers-empty. Valves and coronaries Normal. Lungs C/s Pale.

O/d ABDOMEN : Stomach contains 150 gms of partly digested cooked rice particles with fruity odour mucosa-c/s pale. Liver Spleen, both kidneys, normal in size. On c/s pale. Bladder-empty. Pelvis and spinal column intact.

Viscera preserved and sent for chemical analysis.

Ex.P.13 is the Post Mortem Certificate. Ex.P.4 is the Viscera Report issued by Ms.Geetha (P.W.6), Scientific Officer attached to Forensic Lab, Salem. She detected Ethyl alcohol but not poison.

9. After receipt of Ex.P.4 Viscera Report, P.W.11 Dr.K. Gokula Ramanan opined that the deceased would appear to have died of shock and haemorrhage due to head injuries with evidence of consumption of Ethyl Alcohol. Ex.P.14 is the final opinion.

10. The Investigating Officer (P.W.13) arrested the accused on 29.01.2014 at 15.30 hrs and interrogated him in the presence of A.Siva (P.W.10) Village Administrative Officer, Kannangurichi, who held additional charge of Salem Town and Palanimuthu Village Assistant of Salem Town. The admissible portion of the statement of the accused is Ex.P.9. In pursuance of it, the accused took them to his house and produced blood stained clothes M.Os.8 and 9, full hand shirt and track suite respectively, which were seized by the investigating officer. Then, he took them to the place of occurrence and produced the blood stained M.O.1 cement mortar and brick block, under Ex.P.11 mahazar. The investigating officer sent the accused for remand. He sent a requisition under Ex.P.19 to the Court to cause sending seized articles for chemical examination.

11. P.W.7 Assistant Director, attached to Regional Forensic Science Lab detected blood on the clothes of the accused and M.O.1. Ex.P.6 is the Chemical report. Ex.P.7 is the Serology report. The investigating Officer, after completion of the investigation, laid charge sheet for the offence punishable under Sec.302 IPC on 31.03.2014.

12. When examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the prosecution evidence the accused

reiterated his innocence. The accused examined his mother as witness as D.W.1. She would state that no police official visited his residence during the period from 28.01.2014 to 30.01.2014. She has produced a photo copy of her family card.

13. The trial Court has accepted the case of the prosecution and come to convict and sentence the accused / appellant as aforesaid.

14. Viji @ Manikandan (the deceased) is the son of Palanisamy (P.W.1). Geetha (P.W.3) is the sister of the deceased. Chandra (P.W.4), Jana, Jeeva (accused), Anand, Santhosh (P.W.2) and the deceased were friends.

15. The prosecution case mainly rests on the direct evidence of Santhoshkumar (P.W.4). It is seen from his evidence that on 28.01.2014 at about 9.30 p.m, the accused invited P.W.4 and his friends for a drinking session. They picked up the deceased from the house of P.W.3. It is also his evidence that they have spent time together till 1.00 a.m on 29.01.2014. Then they proceeded to the scene of occurrence for consuming liquor. The accused put forth half bottle of brandy and one bottle of beer. Finding the liquor available was quite meagre, sarcastically commented is it for a small quantity of liquor that you have invited so many persons . This comment infuriated the accused. There arose a heated exchange of words. The deceased abused the accused in vulgar and filthy language. The accused punched with his fist on the chest of the deceased. The deceased fell down. The accused picked up M.O.1 cement mortar and brick block, lying nearby and dropped on the face of the deceased.

16. The doctor, who conducted autopsy on the body of the deceased, opined that the deceased would appear to have died of shock and haemorrhage due to head injuries with evidence of consumption of Ethyl Alcohol. The doctor has stated that the injuries could have been caused in the manner alleged by the prosecution. The medical evidence lends great support to the case of the prosecution.

17. The learned counsel for the accused pointed out that Anand and Jana who have been cited as eyewitnesses were not examined by prosecution. He has also pointed out that there is no evidence to corroborate the evidence of P.W.4.

18. It is well settled that conviction can be based on the evidence of a single eyewitness, if his evidence is not shaken in any manner. It is the quality and not the quantity that matters. As the prosecution case rests on the sole evidence of P.W.4, we have carefully analysed his evidence. The non-examination of the Anand and Jana does not affect the case of the prosecution, since the evidence of P.W.1 is wholly reliable.

19. P.W.4 is not a chance witness and not shown as a partisan witness to concoct a story of his own. He is also a friend of the accused. There is nothing on record which suggests that his evidence should be viewed with suspicion. He along with the accused took the deceased from the house of P.W.2 to the place of occurrence. Nothing useful has been brought forth in his cross examination so as to discredit the validity of his evidence. We have no good reason to disbelieve his testimony. We, therefore, prepared to accept the evidence of P.W.4 to hold that the occurrence had taken place in the manner spoken to by him.

20. The occurrence had taken place at about 1.00 a.m on 29.01.2014. Ex.P.1 complaint has been preferred by P.W.1 at 7.45 a.m on 29.01.2014. The case had been registered immediately. The investigating officer took up the investigation of the case. The accused has been arrested at 1530 hours and pursuant to his statement, his blood stained clothes and M.O.1 cement mortar and brick block were recovered. These circumstances show that there could not have been any false implication of the accused in the commission of the offence. The eyewitness account of P.W.4 coupled with the above mentioned circumstances would prove beyond reasonable doubt that the accused caused the injuries on the victim, resulting in his death.

21. It now remains to be seen on the materials available on record as to the nature of the offence committed by the accused. It is the specific evidence of P.W.4 that the occurrence had taken place all of a sudden. It is clear from the evidence of P.W.4 that the deceased who was slightly under the influence of alcohol abused the accused in filthy and vulgar language and the accused in a fit of anger, punched on the chest of the deceased and picked up M.O.1 cement mortar and brick block, lying nearby and dropped on the face of the deceased. The doctor,

who conducted post-mortem, opined that the deceased would appear to have died of shock and haemorrhage due to head injuries with evidence of consumption of Ethyl Alcohol.

22. The prosecution did not attribute any motive. It bears out on evidence that the incident has taken place all of a sudden. There was no previous enmity and no premeditation. The accused came to the place of occurrence unarmed. The accused and the deceased were friends. The accused picked up M.O.1 cement mortar and brick block, lying nearby and dropped it on the deceased. On a consideration of the aforesaid facts and circumstances, we are of the considered view that the act of the accused in causing the death of the deceased would squarely fall within IV limb of Sec.300 IPC and also under the first exception to Sec.300 IPC. The accused is therefore found guilty of having committed culpable homicide not amounting to murder under Sec.304 Part II IPC.

23. The accused is aged about 29 years at the time of occurrence. He appears to have committed crime wholly in a fit of rage and anger and under the aforesaid extraordinary circumstances. In view of the above circumstances, we feel that the ends of justice would be met by awarding a punishment of five years rigorous imprisonment with fine.

24. In the result,

(i) the Criminal Appeal is partly allowed;

(ii) the conviction and sentence imposed on the accused / appellant by the learned II Additional Sessions Judge, Salem in SC No.8 of 2015 are set aside but he is convicted for the offence punishable under Sec.304 Part II IPC and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/, in default, to undergo rigorous imprisonment for six weeks.

(iii) The period of sentence already undergone by the accused shall be set off under Section 428 Cr.P.C.