GOVINDAN

v.

STATE REPRESENTED BY THE DEPUTY SUPERINTENDENT OF POLICE

(Criminal Appeal No. 1665 of 2021)

DECEMBER 17, 2021

[R. SUBHASH REDDY AND HRISHIKESH ROY, JJ.]

Sentence / Sentencing – Quantum of punishment – Appellant convicted by trial court u/s.304(II) IPC and sentenced to undergo rigorous imprisonment for ten years – Conviction and sentence confirmed by High Court – Issue before Supreme Court limited to quantum of punishment – Held: With regard to quantum of sentence, it all depends on background facts of the case, antecedents of the accused, whether the assault was pre-meditated and pre-planned or not, etc. – In the present case, there was a dispute with regard to pathway, which the complainant's family members were claiming from the land of the accused – The incident occurred in front of the house of the accused and when the female family members of the accused were assaulted, the appellant in retaliation seems to have assaulted the family members of the complainant – Trial Court itself recorded that the de facto complainant's family members were the aggressors and they tried to disturb the peaceful possession of the accused from their land – The same was not questioned either by the State or by the complainant – It was also clearly held by the Trial Court that it was not a premeditated or pre-planned incident and happened during a sudden quarrel – Findings recorded by Trial Court have become final – Fit case to modify the sentence, to meet the ends of justice – Sentence imposed on appellant modified to two years' rigorous imprisonment – IPC – s.304(II).

Partly allowing the appeal, the Court

HELD:1. With regard to quantum of sentence, it all depends on background facts of the case, antecedents of the accused, whether the assault was premeditated and pre-planned or not, etc. In this case on hand, it is clear from the evidence on record that there was a dispute with regard to pathway, which the

complainant's family members were claiming from the land of the accused. In view of such interference, it appears that the accused filed a Suit and obtained injunction orders from Civil Court and in spite of the same, for violation of Court orders, the family members of the complainant were put behind bars for 30 days. The same is evident from the deposition of PW-1. The incident occurred in front of the house of the accused and when the female family members of the accused were assaulted, the appellant in retaliation seems to have assaulted the family members of the complainant. Trial Court itself has recorded that the de facto complainant's family members are the aggressors and they have tried to disturb the peaceful possession of the accused from their land. The said findings recorded by the Trial Court, became final. The same was not questioned either by the State or by the complainant. It is also clearly held by the Trial Court that it was not a premeditated or pre-planned incident. It happened in a sudden quarrel on the day of occurrence. [Para 11][519-G-H; 520-A-D]

2. Having regard to such findings recorded by the Trial Court itself, which have become final and further, in view of the judgments relied on by the appellant, which support the case of the appellant for modifying the sentence, this is a fit case to modify the sentence, to meet the ends of justice. For the aforesaid reasons, while confirming the conviction for offence under Section 304(ii) of the IPC, the sentence is modified to two years' rigorous imprisonment. [Paras 12, 13][520-D-F]

Lakshmi Chand and Anr. v. State of Uttar Pradesh, **(2018) 9 SCC 704;** *Madhavan and Ors. v. State of Tamil Nadu*, **(2017) 15 SCC 582** and *Ram Pyare Mishra v. Prem Shanker and Ors.*, **(2008) 14 SCC 614 : [2008] 12 SCR 497 – referred to.**

Case Law Reference

(2018) 9 SCC 704	**referred to**	**Para 10**
(2017) 15 SCC 582	**referred to**	**Para 10**
[2008] 12 SCR 497	**referred to**	**Para 10**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1665 of 2021.

From the Judgment and Order dated 16.08.2019 of the High Court of Judicature at Madras in Crl.A. No.179 of 2015.

S. Nagamuthu, Sr. Adv., M. P. Parthiban, R. Sudhakaran, Mrs. Shalini Mishra, Advs. for the Appellant.

Dr. Joseph Aristotle S., Ms. Preeti Singh, Sanjeev Kumar Mahara, Advs. for the Respondent.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

1. Leave granted.

2. This Appeal is preferred by the sole appellant in Criminal Appeal No.179 of 2015 filed before the High Court of Judicature at Madras, aggrieved by the judgment and order dated 16.08.2019.

3. By the aforesaid judgment, the High Court has confirmed the conviction of the appellant/accused no.1 in Sessions Case No.42 of 2011 on the file of the learned Principal Sessions Judge, Dharmapuri by which, the appellant was convicted for offence under Section 304(ii) of IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- in default to undergo three months rigorous imprisonment.

4. The sole appellant was tried along with three other accused persons for offences under Sections 302 r/w 34, 307 of IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The accused nos.2 to 4 were acquitted of all the charges, however, the appellant alone was convicted for offence under Section 304(ii) of IPC and was sentenced to undergo rigorous imprisonment for ten years with a fine of Rs.5,000/-.

5. The respondent/complainant and the accused are having adjoining lands at Kolimekkanur. It is the case of the complainant that there is an existing pathway from the land of the accused to go to the land of the complainant party. A Civil Suit was filed by the appellant in O.S.No.146 of 2010 before the Pappireddypatti District Munsif Court and an injunction order was granted in favour of the appellant. It was the case of the prosecution that on the date of occurrence, the accused

A tried to put a fence, so as to block the de facto complainant's family members using the cart track. On the other hand, the case of the appellant/accused is that the de facto complainant tried to lay a new cart track from the patta land of the appellant. In view of such dispute about the cart track, there was a quarrel in front of the appellant's house by de facto complainant's family members. In the said quarrel, female family members of the appellant namely Ms.Kaliammal and Ms.Rajammal suffered injuries, which provoked the appellant/accused Govindan to attack on the deceased and cause knife injuries which resulted in death of the deceased Kamsala.

6. The Trial Court by appreciating oral and documentary evidence on record, has recorded a finding that the de facto complainant's family members were the aggressors and they have tried to disturb the peaceful possession of the accused. The Trial Court also found that the appellant stabbed the deceased, Kamsala with a knife, but there was no premeditation or pre-planning and it was a sudden quarrel and the appellant exercised his right of private defence, but exceeded the limit.

7. The High Court while dismissing the Criminal Appeal, has observed that when the Civil Suit is pending between the parties and if at all, the de facto complainant passed through their patta land, the appellant/accused should have availed a remedy before the Civil Court, but should not have attacked the deceased.

8. We have heard Mr. S. Nagamuthu, learned senior counsel appearing for the appellant and Dr. Joseph Aristotle S., learned counsel appearing for the State of Tamil Nadu.

9. This Court by order dated 29.01.2021 issued notice, limited to the quantum of punishment. The Trial Court itself has found that there was a quarrel in front of house of the accused by the de facto complainant's family members on the date of incident. It is also clear from the evidence on record that on the date of occurrence i.e. 13.06.2010, the dispute was only on account of cart track from the land of accused to reach the land of the complainant. When there was an interference with the land of the accused, a Civil Suit was filed in which there were injunction orders issued by the competent Civil Court. In deposition, PW-1 also admitted that he along with his father, younger brother and mother were put in civil prison for 30 days for violating the orders of the Court. Learned senior counsel for the appellant has

contended that the unfortunate incident happened only on account of civil dispute and when the complainant's family members themselves have assaulted the female family members of the appellant, it provoked the accused to retaliate on the family members of de facto complainant. The Trial Court itself has recorded a finding that the complainant's family members are aggressors and there was no premeditation or pre- planning and it was a sudden quarrel, where the appellant exercised his right of private defence. It is also submitted that with regard to injuries caused on family members of the appellant, in spite of complaint, no steps were taken to prosecute the family of the complainant. On the other hand, learned counsel for the respondent-State has submitted that as the appellant was convicted under Section 304(ii) of IPC, as such, no case is made out to modify the sentence also.

10. In the judgment of this Court in the case of ***Lakshmi Chand and Anr. v. State of Uttar Pradesh***[1]***,*** *relied on by the learned senior counsel for the appellant,* this Court has reduced the sentence from eight years to two years mainly on the ground that the occurrence had taken place on spur of the moment without any premeditation and the same was on account of a dispute between the neighbours with regard to straying cattle. Further, in the judgment of this Court in the case of ***Madhavan and Ors. v. State of Tamil Nadu***[2]***,*** this Court has reduced the sentence of the accused who was convicted for offence under Section 304(ii) of IPC, to five years without disturbing fine amount, mainly on the ground that incident in question, happened all of a sudden without any premeditation and it was a free fight between the members of two families and both sides suffered injuries in the incident. Learned counsel for the respondent-State opposing for modification of sentence, placed reliance on the judgment of this Court in the case of ***Ram Pyare Mishra v. Prem Shanker and Ors.***[3]***.*** In the aforesaid judgment, while reversing the judgment of the High Court, this Court has convicted the accused for offence under Section 304(i) of IPC and imposed the sentence of eight years.

11. With regard to quantum of sentence, it all depends on background facts of the case, antecedents of the accused, whether the assault was premeditated and pre-planned or not, etc. In this case on

[1] (2018) 9 SCC 704
[2] (2017) 15 SCC 582
[3] (2018) 14 SCC 614

A hand, it is clear from the evidence on record that there was a dispute with regard to pathway, which the complainant's family members were claiming from the land of the accused. In view of such interference, it appears that the accused filed a Suit and obtained injunction orders from Civil Court and in spite of the same, for violation of Court orders, the family members of the complainant were put behind bars for 30 days. The same is evident from the deposition of PW-1. The incident occurred in front of the house of the accused and when the female family members of the accused were assaulted, the appellant in retaliation seems to have assaulted the family members of the complainant. Trial Court itself has recorded that the de facto complainant's family members are the C aggressors and they have tried to disturb the peaceful possession of the accused from their land. The said findings recorded by the Trial Court, became final. The same was not questioned either by the State or by the complainant. It is also clearly held by the Trial Court that it was not a premeditated or preplanned incident. It happened in a sudden quarrel on the day of occurrence i.e. on 14.06.2010.

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12. Having regard to such findings recorded by the Trial Court itself, which have become final and further, in view of the judgments relied on by the learned senior counsel for the appellant, which support the case of the appellant for modifying the sentence, we deem it appropriate that this is a fit case to modify the sentence, to meet the E ends of justice.

13. For the aforesaid reasons, while confirming the conviction for offence under Section 304(ii) of the IPC, we modify the sentence to two years' rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three (03) months' rigorous imprisonment.

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14. The Appeal is allowed in part, to the extent as indicated above.

Bibhuti Bhushan Bose Appeal partly allowed.