

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.1142 of 2016

and

Crl.M.P.No.10010 of 2016

1. Murugan

2. Raman

3. Dharmalingam

..Petitioners/Accused No.1 to 3

vs.

State rep.by

Sub Inspector of Police,

Thevoor Police Station,

(Crime No.401/2012)

.. Respondent/ Complainant

Criminal Revision filed under Section 397 (1) and 401 Cr.P.C. to set aside the order dated 22.06.2016 passed by the learned Judicial Magistrate, No.I, Sankari in C.C.No.25 of 2012.

For Petitioners : Mr.L.Mouli

For Respondent : Mr.M.R.Ravichandran (GA)
Criminal side

O R D E R

This revision challenges the order of learned Judicial Magistrate, No.I, Sankari, passed in C.C.No.25 of 2012 dated 22.06.2016.

2. Case was registered in Crime No.401 of 2012 on the file of the respondent police. On completion of investigation charge sheet informing commission of offences u/s.148, 341, 506(ii) and 324 IPC by A1 and A2, u/s.148, 341, 506(ii) and 326 IPC by A3 and u/s. 147, 148, 341 and 294 (b) of IPC by A4 to 8 was filed. Injured witness Periyasmy was called as a witness at the instance of the prosecution though he was in no condition to speak and was motion less. When examined as P.W.13 it was found that while he could nod his head towards confirming his identity but could do no more and hence his examination was stopped. Witness P.W.13- Periyasamy subsequently died on 12.04.2015. At the instance of the prosecution, Trial Court, being of the view that Periyasamy - P.W.13 who was under treatment at the Erode Government hospital had died owing to the injuries suffered by him in the occurrence in the case, took the view that P.W.13- Periyasamy had died owing to the head injury deliberately caused

by A3 with intent to cause death and that A3 would have to answer charge u/s 307 IPC. Learned Magistrate reasoned that as no post mortem of the body of P.W.13 was conducted no charge u/s. 302 IPC could be framed. Under orders dated 22.06.2016 learned Magistrate directed the Calender Case tried in C.C.No.25 of 2012 to be renumbered as a P.R.C case towards committal to the Sessions Court, as offence u/s. 307 IPC warranted Sessions trial.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. The very reasoning informed by learned Magistrate for not finding the case one fit to attract charge u/s. 302 IPC applies also to finding the case not a fit one to alter the charge against A3 from u/s. 326 IPC to 307 IPC. In the absence of a post mortem and ruling out the possibility of any other cause of death years after the occurrence. The presumption of death of P.W.13 being a direct result of the injury suffered by him at the hands of A3 is a dangerous one to make and more dangerous the presumption that in causing the injury intended his death.

5. This revision shall stand allowed. The order passed by the learned Judicial Magistrate No.I, Sankari in C.C. No.25 of 2012 on 22.06.2016 shall stand set aside. Court below shall now proceed with the case in C.C.No.25 of 2012 and dispose of the same in accordance with law. Consequently connected miscellaneous petition is also closed.

dpq/kpr

Sd/-
Assistant Registrar
/TRUE COPY/

Sub-Assistant Registrar

To

1. The Judicial Magistrate I, Sankari

2. -Do-The Chief Judicial Magistrate, Salem

Copy to:

The Section Officer,
Criminal Section,

Cr1.R.C.No.1142 of 2016
and
Cr1.M.P.No.10010 of 2016

RSY [CO]
MLT-28/03/2018