

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal No.457 of 2013

Rajan

... Appellant/Accused

-Vs-

State Rep. by
The Inspector of Police,
Gomangalam Police Station
Coimbatore District,
Now Tiruppur District.
[Crime No.31 of 2007]

... Respondent/Complainant

This Criminal Appeal has been preferred to set aside the conviction imposed in judgment dated 30.09.2008 made in S.C.No.144 of 2008 on the file of the Additional District & Sessions Court/Fast Track Court No.III, Coimbatore by allowing this appeal.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

J U D G M E N T

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C.No.144 of 2008 on the file of the learned Additional District Judge, Fast Track Court No.III, Coimbatore. He stood charged for offence under Section 302 IPC. By judgment dated 30.09.2008, the trial Court convicted him under Section 302 IPC and sentenced to undergo imprisonment for life [No fine was imposed]. Challenging the said conviction and sentence, the accused/appellant is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:

[a] The deceased in this case was one Mrs.Padma. The accused and the deceased had fallen in love with each other, which culminated in the marriage. After marriage, they were residing together and out of the said wedlock, three children

were born. On 25.03.2007, there was an ear boring ceremony at the house of P.W.4, who is the brother of the accused. The accused, the deceased and many other villagers participated in the same. P.Ws.1 and 2 who are the parents of the deceased also participated in the said function. After the ceremony was over, the accused and the deceased returned to their house.

[b] On that day, the deceased had a sum of Rs.500/- in her possession. The accused, who had, by the time become a drunkard, demanded the deceased to give Rs.100/- for his drinking purpose. The deceased refused to give the same. Fearing that the accused might snatch away the money, the deceased went to her parents house and gave the amount to her parents. The accused came to the house of P.W.1 and took the deceased back with him. On reaching the house, according to the case of the prosecution, there arose a quarrel between the accused and the deceased. At the end of the quarrel, it is alleged that around 4.30 p.m., the accused closed the mouth and nose of the deceased. The deceased fainted. Believing that the deceased was no more, the accused laid her on the mat, poured kerosene on her and set fire. He bolted the house from inside.

[c] On noticing the smoke emanating from the house, the neighbours rushed to the house of the accused. P.W.8 and other neighbours also rushed to the house. They found the house bolted from inside. One of the persons in the crowd climbed on to the top of the roof, made a small opening and jumped down into the house. Then he opened the door from inside. That time, the accused was standing inside the house, by the side of the doors. He had sustained burn injuries on left hand and right leg. The deceased was lying dead. P.W.1-the father, P.W.2-the mother and P.W.3-the son also rushed to the place of occurrence on hearing about the above information. They found the deceased lying dead with burn injuries. P.W.4, the brother of the accused took the accused to the hospital.

[d] P.W.13 - Dr.Udayakumar examined the accused on 25.03.2007 at 6.00 p.m. at Udumalpet Government Hospital. The accused was conscious. He told the Doctor, that while he attempted to extinguish the fire when his wife was in flames, he sustained injuries. P.W.13 treated him as inpatient. On 01.04.2007, he was discharged from the hospital. Ex.P12 is the Accident Register.

[e] From the place of occurrence, P.W.1 - the father of the deceased went to Komangalam Police Station and made a complaint under Ex.P1. On receipt of the same, P.W.15 registered a case in Cr.No.31 of 2007 under Section 174(iii) Cr.P.C. Ex.P15 is the FIR. She then forwarded Exs.P1 [complaint] and P15 [FIR] to the Court, which were received by the learned Judicial Magistrate at 10.00 a.m. on 26.03.2007.

[f] The case was taken up for investigation by P.W.17. On 26.03.2007 at 9.30 a.m., he visited the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.7 and another witness. Then, he recovered a plastic can with traces of kerosene from the place of occurrence under Ex.P3-mahazar, in the presence of the same witnesses. On examining a few more witnesses and recording their statements, since he came to know during investigation that it was not a case of dowry death, he transferred the investigation to the Inspector of Police.

[g] P.W.18 took up the case for investigation. When the investigation was in progress, the accused appeared before P.W.12., the then Village Administrative Officer of Mukkoodal Jallippatti. On such appearance before him, the accused wanted to give a voluntary confession. After having ascertained that the accused was in a mood to voluntarily confess, P.W.12 started recording the statement of the accused. Ex.P9 is the said statement reduced to writing by P.W.12. Then, he prepared a Special Report and along with the same, he took the accused to the Inspector of Police and produced him along with his extra judicial confession and his own report. On such production, P.W.18 arrested the accused in the presence of P.W.12 and another witness. While in custody, he gave a voluntary confession. Then, P.W.18 altered the case into one under Section 302 IPC and submitted an Alternation Report under Ex.P17. P.W.18 then examined the doctor who treated the accused and collected medical records. Following him, the investigation was taken up by P.W.20. Finally, he laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge u/s 302 IPC. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 20 witnesses were examined and 21 documents were exhibited, besides 4 Material Objects.

4. Out of the said witnesses, P.Ws.1 to 3 are the father, mother and son respectively of the deceased. They have stated that they heard about the occurrence and when they went to the place of occurrence, they found the deceased lying in the house with burn injuries and she was dead. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner. P.Ws.5 and 6 are the relatives of the deceased and also neighbours, who have stated that on seeing the smoke emanating from the house of the deceased, when they rushed to the house, they found the house bolted from inside and one of the persons in the crowd climbed on to the roof, made a small opening and jumped down into the house. Then the house was opened. The accused was still standing inside the house with burn injuries. Thereafter, according to him, P.W.4 took the deceased to the

hospital and the deceased was dead. P.W.7 has spoken about the preparation of the Observation Mahazar and Rough Sketch at the place of occurrence. P.W.8 is yet another relative who has also stated that he went to the place of occurrence, after the occurrence was over. P.W.9 has spoken about the hearsay information about the occurrence. P.W.10 has spoken about the post-mortem conducted and his Final Opinion regarding the cause of death. P.W.11 has spoken about the photographs taken by him at the place of occurrence on the request of P.W.17. P.W.12 has spoken about the extra judicial confession given by the accused under Ex.P10. P.W.13 has spoken about the treatment given to the accused. P.W.15 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.17 and 18 have spoken about the investigation done by them. P.W.19 - the Executive Magistrate has spoken about the inquest conducted by him in the presence of P.W.17.

5. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness nor he did mark any document in his favour. His defence was a total denial. In the statement filed by him under Section 313 Cr.P.C., he has stated that when he was sleeping in the house, he found that his wife had set fire to herself and when he extinguished the fire, she sustained injuries.

6. Having considered all the above, the trial Court convicted the accused for the lone offence u/s 302 IPC. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

7. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. This is a case based on circumstantial evidence. The prosecution mainly relies on the extra judicial confession said to have been given by the accused to P.W.12, the Village Administrative Officer, wherein the accused has given a complete narration of the occurrence and his involvement [vide Ex.P.10]. The learned counsel for the appellant would submit that there was no reason for the accused to choose P.W.12 to make such an extra judicial confession, as P.W.12 was a stranger to the accused. He would further submit that the said extra judicial confession by itself cannot be the foundation for conviction. We do not find any force in the said argument of the learned counsel for the appellant. P.W.12 is an independent Village Administrative Officer. He had no axe to grind against the accused. For his own reasons, the accused had gone to P.W.12 to make the extra judicial confession. As a matter of fact, in Ex.P10 - the extra judicial confession itself, the accused has

stated as to what prompted him to choose P.W.12 to make extra judicial confession. Therefore, we do not find any reason to reject the extra judicial confession given to P.W.12.

9. We are conscious of the legal position that an extra judicial confession, if shrouded with doubts, is a weak piece of evidence and unless it inspires the fullest confidence of the Court, the same cannot be the sole foundation for conviction. If there are doubts about the extra judicial confession, then the Court should look for corroboration from any other independent source. Here in this case, apart from the fact that there is no doubt in respect of Ex.P10 - the extra judicial confession given by the accused to P.W.12, there are also other circumstances to corroborate the said extra judicial confession.

10. It is the evidence of P.Ws.5,6 and 8 that on noticing the smoke emanating from the house of the deceased, when they went to the house of the deceased, they found both the accused and the deceased inside. It is the evidence of P.W.8 that one of the persons in the crowd, climbed on to the top of the roof of the house; made a small opening; jumped down into the house and opened the doors. It is not as though the accused was lying unconscious at that time. He was still standing. In the statement filed by him under Section 313 Cr.P.C., he has stated that when he tried to extinguish the fire, he sustained injury. If really the accused had tried to extinguish the fire, he would have made an attempt to open the door to seek the help of others to extinguish fire and to take the deceased to the hospital. But, he did not do so. This conduct of the accused is inconsistent with his so called innocence pleaded by him. This conduct of the accused itself is sufficient to hold him guilty. This circumstance clearly corroborates the extra judicial confession [Ex.P10]. The extra judicial confession also clinchingly goes to prove the guilt of the accused. It is not as though there was anybody else inside the locked house. Thus, it has been clinchingly proved that it was this accused who had set fire to the deceased.

11. Having come to the said conclusion, now we have to examine, as to "what was the offence that was committed by the accused by the said act". What actually transpired inside the house could be gathered only from the extra judicial confession. In Ex.P10-extra judicial confession, the accused had stated that when he asked his wife to give money, she refused, which resulted in a wordy quarrel inside the house. Since the deceased shouted at him in a loud voice, he slapped her. The confession would further reveal that on receiving the said slap, she fell down. Thereafter, the accused tried to wake her up. But, there was no response from her. The confession would further state that the accused believed that the deceased had

already passed away. Only under that belief, according to the confession, in order to escape from the clutches of law, he set fire to the deceased. The medical evidence, however, states that the death was only due to burn injuries and not due to smothering or strangulation or due to any other physical violence. Thus, according to the accused, at the time when he poured kerosene and set fire, he was under the mistaken impression that the deceased had already died whereas, in fact, she was alive.

12. From the above narration, it is crystal clear that the appellant had committed two acts. The first act was manhandling the deceased by giving a slap. Immediately, she fell down and became motionless, but, still she was alive. The second act was that believing that she had already died, he poured kerosene and set fire to her. The death was only due to the burn injuries. Whether from these two acts of the appellant, can it be concluded that he is guilty of murder or at least guilty of culpable homicide?

13. In English law, every offence is defined based only on general principles of the common law whereas, fortunately, in India, every offence is defined, both as to what must be done and with what intention it must be done, by the section of the penal code which creates it a crime. Section 299 of IPC defines culpable homicide. The opening words of Section 299 of IPC need to be kept strongly in mind. Section 299 reads as follows:

"299. Culpable homicide.— Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

14. The death undoubtedly should have been caused by a human being as defined in Section 46 of IPC. Similarly, the act of causing death need not necessarily be by a single act and it may be by a series of acts which, as defined in Section 33 of IPC, may constitute a single act. It is not every such act / acts causing death that makes the act of the accused as an offence of culpable homicide. For a homicide being culpable, it should be further proved that the act of the accused was done with the intention of causing death; or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death. These three are the species of mens rea in culpable homicide. Unless it is proved that the act of the accused would fall under any one of these three ingredients, it would not amount to an offence of culpable homicide. With this broad understanding of the definition of culpable homicide, let us again proceed further to analyze the facts of the present case.

15. As we have already concluded , the appellant had committed two acts. One was slapping the deceased and making her motionless/unconscious and the second was pouring kerosene and setting fire to her. Whether two or more acts of an accused would constitute a single act or not depends upon the fact whether there was continuity of action. As defined in Section 33 of IPC, a series of acts may constitute a single act. But, if more than one act are committed, not in series, it would not constitute a single act. In the instant case, going by the evidences available on record, we are of the view that these two acts were committed in a series and, therefore, they constitute a single act as defined in Section 33 of IPC.

16. So far as the first act is concerned, undoubtedly, it will not fall within the ambit of Section 299 of IPC inasmuch as by the said act, the appellant did not cause the death of the deceased though he believed that he had caused death by the first act. Further, the first act of slapping was done not with either intention to cause death or intention to cause such bodily injury as is likely to cause death or with the knowledge as defined in Section 299 of IPC.

17. Now, so far as the second act is concerned, it was only by this act he caused the death of the deceased. At the time when he did the same, according to him, he was under the belief that the deceased was no more. Therefore, when he committed the second act also the appellant had no intention to cause death of the deceased or to cause such bodily injury as is likely to cause death. Since the appellant was under the belief that the deceased was already dead, it cannot be said that the appellant, had intended to cause death or cause such bodily injury as is likely to cause death. Thus, the second act of the appellant, causing the death of the deceased by pouring kerosene and setting fire to the deceased also, would not fall within the first or second limb of Section 299 of IPC at all.

18. Now, turning to the third limb of Section 299 of IPC, it speaks of knowledge that he is likely by such act to cause death. Here again, it can be argued that since the appellant was under the belief that the deceased was no more, knowledge on his part that by his act he was likely to cause death cannot be imputed. But, such argument cannot be countenanced for, such belief can not be farcical or illogical. It should be examined whether the belief of the accused in this case, that the deceased was no more was based on logic and on good faith. If the belief of the appellant that the deceased was already dead is based on due care and attention, then, the knowledge as dealt with in the third limb of section 299 of IPC cannot be imputed to him. But, if the belief that the deceased was dead was not based on due care and attention and such belief was recklessly held, then, certainly, knowledge as defined in Section 299 of

IPC can be imputed to the accused. In other words, the belief of the appellant that the deceased was dead must be out of good faith. The term "Good faith" is defined in Section 32 of IPC which reads as follows:-

"52. "Good faith".-Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention. "

19. In the instant case, the appellant, without taking due care and attention, that is, without fully ascertaining whether the deceased was already dead or not, in haste, had poured kerosene and set fire to the deceased. There was total lack of due care and attention on the part of the appellant. Thus, the belief of the appellant that the deceased was already dead was not based on due care and attention and so, he cannot escape by taking recourse to the plea of good faith as defined in Section 52 of IPC. In such view of the matter, we have to hold that the second act of the appellant in the instant case would squarely fall within the third limb of section 299 of IPC.

20. In this regard, we may make a survey of few leading judgments on this subject. The earliest case upon which we are able to lay our hands is, In Re: Gour Gobindo Thakoor, In re 6 W.R.Cr. 55. That was a case where the accused struck the deceased a blow which knocked him down, and then he and others, without enquiry as to whether he was dead or not, in haste, hung him up to a tree so as to make it appear that he committed suicide. Going by these facts, a question arose whether the act of accused would amount to culpable homicide. In that case, Mr. Justice Seton-Karr, held, if, however, the deceased was not actually killed by the blow, but was killed by the suspension, then the accused himself and also the others who took part in hanging him up to the tree, would be clearly liable to a charge of culpable homicide amounting to murder; for, without having ascertained that he was actually dead, and under the mistaken impression that he was dead, they have done the act. The other Judge Mr. Justice Norman Fays held thus: "Suppose, secondly, that the Thakoors had no intention of killing the deceased, but, finding him insensible, without enquiry whether he was dead or alive, or giving him time to recover, under an impression that he was dead, hung him to the tree, and thereby killed him. It appears to me that they might all have been put on their trial, under section 304, for culpable homicide not amounting to murder.

21. The next case is Queen Empress v. Khandu 15 B. 194 ; 8 Ind. Dec. (N.S.) 131. In that case the accused struck the deceased three blows on the head with a stick with the intention of killing him. The accused, believing him to be dead, set fire to the hut in which he was lying with a view to remove all evidence of the crime. The medical evidence showed that the

blows were not likely to cause death and did not cause death and that death was really caused by injuries from burning. Owing to a difference of opinion between two Hon'ble Judges [Birdwood and Parsons.JJ.,] the matter was referred to Hon'ble Sargent. C.J., and the Hon'ble Chief Justice held that as the accused had not intended to cause the death of the deceased by setting fire to the shed but had only done so after he thought that the deceased was dead, the act of setting fire to the shed by which the death was caused was not done with such intent or knowledge as is contemplated in Section 299 of IPC. But, Parsons.J., took a different view who held thus "Immediately after he dealt the three blows, his father-in-law died and fell down on the ground, but he does not say that he in any way satisfied himself that he was actually dead or even that he thought that he was dead, still less does he say that his intention in setting fire to the hut was to conceal his crime. He does not say what his intention was. This being so, I think the presumption of law is that in all that he did he was actuated throughout by one and the same intention. There is no evidence or proof of any, change therein. There is then the intention of the accused to cause death and there are two acts committed by him which together have caused death acts-so closely following upon and so intimately connected with each other that they cannot be separated and assigned the one to one intention and the other to another, but must both be ascribed to the original intention which prompted the commission of those acts and without which neither would have been done. In my opinion, the accused in committing those acts is guilty of murder." Since Sargent.C.J., did not concur with Parsons.J., and concurred with Birdwood.J., by majority, the accused was acquitted from the charge of murder. However, the majority convicted the accused of attempting to murder because of his own admission that he intended by the blow to kill the deceased.

22. The third case is in Emperor v. Dalu Sardar 26 Ind. Cas. 157 ; 18 C.W.N. 1279 ; 15 Cr.L.J. 709. In that case, the accused kicked his wife below the navel; she fell down and became unconscious. In order to create an appearance that the woman had committed suicide, he took up the unconscious body and, thinking it be a dead body, hung it by a rope. The Judge has said that as he thought it to be a dead body, he could not have intended to kill her if he thought that the woman was dead, and seem to assume that the intention to cause death is a necessary element in the offence of murder.

23. In view of the above conflicting views taken, the matter was thoroughly examined by a larger Bench in In Re: Palani Golundan v. Unknown (1919) ILR 547 (Mad) : AIR 1920 Mad 862. While resolving the above conflicting views, the Full Bench in para 18 of the reference held as follows:-

18. It is not necessary that any intention should exist with regard to the particular person whose death is caused, as in the familiar example of a shot aimed at one person killing another, or poison intended for one being taken by another. 'Causing death' may be paraphrased as putting an end to human life: and thus all three intentions must be directed either deliberately to putting an end to a human life or to some act which to the knowledge of the accused is likely to eventuate in the putting an end to human life. The knowledge must have reference to the particular circumstances in which the accused is placed. No doubt if a man cuts the head off from a human body, he does an act which he knows will put an end to life, if it exists. But we think that the intention demanded by the section must stand in some relation to a person who either is alive, or who is believed by the accused to be alive. If a man kills another by shooting at what he believes to be a third person whom he intends to kill, but which is in fact the stump of a tree, it is clear that he would be guilty of culpable homicide. This is because, though he had no criminal intention towards any human being actually in existence, he had such an intention towards what he believed to be a living human being. The conclusion is irresistible that the intention of the accused must be judged, not in the light of the actual circumstances, but in the light of what he supposed to be the circumstances. It follows that a man is not guilty of culpable homicide, if his intention was directed only to what he believed to be a lifeless body. Complications may arise when it is arguable that the two acts of the accused should be treated as being really one transaction, as in *Queen Empress v. Khandu* 15 B. 194 ; 8 Ind. Dec. (N.S.) 131 or when the facts suggest a doubt whether there may not be imputed to the accused a reckless indifference and ignorance as to whether the body he handled was alive or dead, as in *Gour Gobindo's case*. 6 W.R. Cr. 55. The facts as found here eliminate both these possibilities, and are practically the same as those found in *Emperor v. Dalu Sardar* 26 Ind. Cas. 157 ; 18 C.W.N. 1279 ; 15 Cr.L.J. 709. We agree with the decision of the learned Judges in that case, and with clear intimation of opinion by Sargent, C.J., in *Queen Empress v. Khandu* 15 B. 194 ; 8 Ind. Dec. (N.S.) 131."

24. The Full Bench finally concluded in paragraph 19 as follows:-

"19. Though in our opinion, on the facts as found, the accused cannot be convicted either of murder or culpable homicide, he can, of course, be punished both for his original assault on his wife, and for his attempt to create false evidence by hanging her."

25. The above said judgement in Palani Goundan's case came up for consideration in Kaliappa Goundan v. Emperor, 145 Ind Cas 953 . In that case, factually, there was a scuffle between the deceased and the accused. The deceased fell unconscious. The accused dragged her to the railway line and laid the body across the rails to make it appear that she died of a train accident. Subsequently, the train hit her and according to the medical evidence, the death was due to hitting by train. Though it was not specifically pleaded by the accused that they believed that the deceased was dead and under the said belief they dragged the body and laid it across the railway line, the trial court made an inference that the accused would have believed that the deceased was already dead and on that belief, laid it across the railway line to make it appear as though she died of the accident. On this inference, the trial court acquitted the accused holding that the act of the accused would not amount to culpable homicide. But, the High Court found that in the absence of any evidence or even a plea that the accused believed that the deceased was already dead and under that belief the body was dragged and laid across the railway line, the finding of the trial court cannot be sustained as it is based only on mere surmise. The High Court, therefore, set aside the acquittal and convicted the accused for murder. While doing so, the High Court has held in paragraph 12 as follows:-

"12. To sum up this case: (1) an intention to kill Muthayee was clearly proved; (2) that it was in pursuance of a deliberate plan; (3) that the appellants placed Muthayee's body across the Railway line; (4) that it was that act which caused her death; (5) the appellants have not put forward the case that they believed Muthayee to be dead when they put her body across the line; (6) the marks of a struggle and the body being dragged and the discovery of the woman's that at that, spot prove nothing more than a struggle and (7) there is some slight medical evidence regarding marks of strangulation. This, however, was not the cause of Muthayee's death. The conclusions I arrive at from the before mentioned facts are that the appellants had a struggle with the deceased woman during which her that fell off

of was removed, that an attempt may have been made to strangle her, that she was immediately dragged either in an unconscious or semi-conscious condition on to the Railway line and placed in front of the train, the intention throughout being to kill Muthayee, that the intention with which the accused struggled with Muthayee cannot be separated from the intention with which they put her body across the line, that the two acts were intimately connected with each other and the latter act followed immediately upon the former, that both the acts of the appellants must be treated as being only one transaction, the transaction being to kill Muthayee, and that the most favourable inference that could possibly be drawn in favour of the appellants is that they acted with a reckless indifference and ignorance as to whether Muthayee was alive or dead. Even this inference, in my view, is not such a reasonable one as the former but it is the most favourable one which could be drawn. All this leads me to one conclusion and one conclusion only, namely, that the appellants were guilty of the offence of murder." (Emphasis added)

26. In *Re: Thavamani v. Unknown*, (1943) 2 MLJ 13, Palani Goundan and Kaliappa Goundan cases cited supra, came up for consideration. In that case, the deceased was held by the accused and attacked. Believing that she died, with a view to erase the evidence, threw the body into the well. But, the deceased died only due to drowning. Seeking help from Palani Goundan case, it was argued before this court that since the accused believed that the deceased was already dead, he threw the body into the well and as such the act of the accused would not amount to either culpable homicide or murder. But, the court held that the initial intention of the accused itself was to commit murder and the first act of attacking the deceased was with the intention to kill her and the second act of throwing the body into well was in continuation of the first act and thus, both the acts constitute a single act which was done with the intention to kill the deceased. Thus, in that case, this court followed the distinction made in Kaliappa Goundan case distinguishing the Palani Goundan case and held that the accused was liable to be punished for murder.

27. The above judgments from this court in Palani Goundan and Kaliappa Goundan cases have been followed and the distinction between these two cases has been approved by many High Courts. To cite a few, we may refer to *Sarthi v. State of Madhya Pradesh*, 1976 Cri.L.J. 594. In that case, the Madhya

Pradesh High Court found that the accused had pressed the neck of the deceased and as a result, the deceased fell unconscious. The accused became panicky believing that the deceased was already dead, they hanged the deceased. The death actually occurred due to hanging. The court held that the accused had no intention to cause death or intention to cause bodily injury as was likely to cause death, but by hanging the body recklessly with gross negligence without verifying as to whether the deceased was dead or not since they hanged the body, they were imputed with the knowledge required under the third limb of section 299 of IPC. Accordingly, the accused were convicted under Section 304(ii) of IPC. Similarly, in *The King v. Sreenarayan* (1948) ILR 27 Pat 67, the Patna High Court also held that if the belief of the accused that the deceased was no more already is reckless with gross negligence then, he should be imputed with knowledge as required in the third limb of Section 299 of IPC. Accordingly, the Patna High Court convicted the accused in similar circumstances under Section 304(ii) of IPC.

28. In the instant case, as we have already pointed out, when the accused committed the first act of slapping the deceased, he had no intention at all, either to cause the death or to cause such bodily injury which is likely to cause death. Similarly, when he committed the second act of pouring kerosene and setting fire to the deceased also, he had no intention to cause the death of the deceased or to cause such bodily injury as is likely to cause death. As we have already concluded, these two acts constitute one single act. Had it been the case that the first act was done with the intention to cause death and believing that out of the first act, the deceased died, the second act is done, though factually, the death was caused only by the second act, since both the acts constitute one single act and since there was initial intention for the accused to cause the death of the deceased, the act of the accused would fall within the first limb of section 299 of IPC and section 300 of IPC and, therefore, he would be liable for punishment under Section 302 of IPC. But, obviously, the accused never had such intention to cause the death of the deceased nor did he have intention to cause such bodily injury as is likely to cause death. But, at the same time, as we have already concluded, since the accused had committed, the said second act of pouring kerosene and setting fire without taking adequate care and attention, in a reckless manner, and without making due verification as to whether the deceased was dead or not, he had in haste poured kerosene and set fire and killed the deceased. Therefore, the belief as claimed by the accused that the deceased was dead is not out of good faith. So, he can be imputed with knowledge as required under third limb of Section 299 of IPC when he did the second act of pouring kerosene and setting fire to the deceased. At this juncture, it needs to be mentioned that clause (iv) of Section 300 of IPC and the third

limb of section 299 of IPC have presented considerable difficulty to courts in their practical application to concrete cases. The range of probability in the two clauses relates to causing of death but in one it is comparatively not so strong as in the other. Although one may know that the act or illegal omission is so dangerous that it is likely to cause death still, it is not murder, even if death was caused thereby, if the doer had no knowledge that in all probabilities it would cause death [vide State of Kerala v. Mani @ Chandran, 1992 CrL.J.1682]. In the instant case, we are of the view that so much of knowledge as is required under the fourth limb of section 300 of IPC cannot be imputed to the accused and, therefore, he cannot be punished for offence under Section 302 of IPC and thus, he is liable to be punished only under Section 304(ii) of IPC.

29. Now turning to the quantum of punishment, it is stated that the accused has been in jail for more than eight years and that he is an old man. He has got no bad antecedents. Having regard to these aggravating and mitigating circumstances, we are of the view that, reducing the sentence to the period already undergone would meet the ends of justice.

30. In the result, the appeal is partly allowed. The conviction and sentence imposed on the appellant under Section 302 IPC is set aside and instead, he is convicted under Section 304(ii) IPC. The period of sentence imposed on the appellant is reduced to the period of sentence already undergone by him and he is directed to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for two weeks. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

gms/kmk

To

- 1.The Judicial Magistrate No.2, Udumalpet.
- 2 The Chief Judicial Magistrate, Coimbatore.
- 3.The Addl. Sessions Court, FTC No.III,
Coimbatore District now Tirupur.
4. The Principal Sessions Judge, Coimbatore.
- 5.The Inspector of Police, Gomangalam Police Station,
Coimbatore now Tiruppur District.

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6. The District Collector, Coimbatore District.
7. The Director General of Police Mylapore,
Chennai 600 004.
8. The Superintendent Central Prison, Coimbatore.
9. The Public Prosecutor, High Court, Chennai.

+ 1 cc to MR.N. Manokaran, Advocate Sr.22467

Cr1.A.No.457 of 2013

SR(CO)
EU 10.06.16



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