

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.06.2018	Pronounced on : 12.09.2018
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CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA
AND
THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Criminal Appeal No.754 of 2017
Crl.M.P.No.2678 of 2018

Palaniammal ... Appellant / Accused
versus

The State, Rep. by the Inspector of Police,
R.S.Puram Police Station,
Coimbatore City
Crime No.607 of 2016 ... Respondents

Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code against the judgment dated 25.10.2017 made in S.C.No.90 of 2017 on the file of the learned II Additional District Judge (CBI Cases) in-charge of the Special Sessions Judge, Court of Bomb Blast Cases, Coimbatore.

For Appellant : Mr. S.Mohamed Ansal

For Respondent : Mrs.Prabhavathi, APP.,

JUDGMENT

(Judgment of the Court was delivered by S.Vimala, J.,)

Brief facts:-

The Criminal law has been set in motion by the wife of the deceased, namely, Shanthakumari, by filing a complaint. She was a resident of Door No.11, Ponnusamy Nagar, Papanaiickenpudur, Kovai. She had three children, by names, Mohana, Vidhya and Vinoth. All of them were married. She had a house, bearing Door No.19 at P.N.Pudur, which was rented out on 24.11.2015, to the accused Palaniappammal for the monthly rent of Rs.5000/- and for the advance of Rs.40,000/-.

1.1. The defacto complainant wanted the accused to vacate the house. The accused was protracting by offering an explanation that, after vacating her tenant at Linganur, she will vacate this house. In anticipation that she will vacate, the rents were deducted from the advance paid and even thereafter, the accused did not vacate the house.

1.2. On 26.09.2016 at about 07.00 pm, the defacto complainant along with her husband and elder daughter-Mohana went to the house of the accused and demanded them to vacate the house immediately. At that point of time, the accused and her daughter Anitha used abusive words and threatened the deceased's wife and her elder daughter saying that they would implicate them in a case of prostitution.

1.3. The accused caused bleeding injury over the ear of Mohana and caught hold of the hair of the defacto complainant and pushed the defacto complainant down with her legs. When this was questioned by the deceased, the accused hit him over the chest, head and then pushed him and that caused the deceased to fall over the nearby ditch. This was witnessed by Rathinavel, Suresh, Prema, Pushpa and Arun.

1.4. The deceased was taken to Vallalar Hospital, from where he was referred to Kovai CMC hospital, there he was declared dead. In respect of the same, a complaint was given under Ex.P-1. Mohana and the defacto complainant were referred to CMC Hospital for further treatment. The Accident Register copy issued to defacto complainant is Ex.P-6 and Accident Register copy issued to Mohana is Ex.P-7. The version of both of them before the hospital authorities was that they suffered injury on account of beating caused by three known persons with hands.

1.5. The death intimation of the deceased was sent to P-2-R.S.Puram Police Station. The complaint of the defacto complainant-Shanthakumari (P.W.1) was received and the case was registered in Crime No.607 of 2016 under Sections 294 (b), 323, 506 (ii) and 302 IPC. The first information report is Ex.P-9.

1.6. P.W.13 the Inspector of Police, who received the First Information Report, visited the place of occurrence and prepared Exs.P-2-observation mahazar and P-14-sketch. Then the Inspector took steps to conduct inquest and inquest report is Ex.P-15. The accused was arrested. The confession statement of the accused was recorded.

1.7. From the body of the deceased, the dresses M.Os.1 to 3 were recovered under Form-91. The Doctor was examined with regard to the cause of death and from him, past medical records (Ex.P-17) of the deceased of the year 2013 were obtained. The investigation revealed that it is only the accused who was involved in the occurrence and there is no role played by her daughters, Anitha and Priyanka. Therefore, final report was filed against the accused alone under Sections 294 (b), 355, 323 and 302 IPC.

2. When the incriminating circumstances were put to the accused, she would state that evidence against her are false. No defence witness has been examined.

2.1. The trial court, after examining the witnesses, has acquitted the accused under Sections 294 (b), 323 (2 counts) and 355 IPC, but convicted the accused under Section 302 IPC. Challenging the same, this Criminal Appeal is filed.

3. The main contention raised by the learned counsel appearing for the appellant / accused is that: a) there is no intention on the part of the accused to commit the offence of murder; b) the genesis of the occurrence has been suppressed by the prosecution; c) the presence of P.Ws.3 and 4 in the place of occurrence is highly doubtful and they could not have been

the eye-witnesses to the occurrence; d) the medical evidence does not show that the injuries allegedly caused by the accused could have been the cause for death; e) the investigation is a tainted one as it does not explain the contradictions between the complaint and the evidence of the defacto complainant; and f) the finding of guilt is unsustainable as the findings are based on no evidence and hence, it is perverse.

4. Heard the learned Additional Public Prosecutor on the submissions made by the learned counsel appearing for the appellant / accused.

5. The admitted facts in this case has to be considered while considering the merits of the matter. The accused is a tenant of whom the deceased was a landlord, is an admitted fact. In respect of the dispute between the accused and the deceased, there had been two cases - one pending before the civil court and another pending enquiry / investigation before the Police. The accused has moved the Civil Court in respect of her tenancy rights. On the otherhand, the deceased had filed complaint before the Police during which he was advised to approach the Civil Court for the redressal of his problem. Only two months thereafter, this occurrence of murder is said to have taken place.

6. Who is the aggressor? Who was in a dominant position? Whether the place of the occurrence, i.e., the occurrence in the house of the accused and not in the house of the deceased would have a bearing on the intention on the part of the accused? When the Civil Court has already taken cognizance of the matter, what made the deceased and his family members to go to the house of the tenant / accused? Whether the conduct of the tenant in not vacating the house could have been the cause for this incident and if so, whether the tenant can be termed as an aggressor? If the visit of the defacto complainant and her husband in order to get the tenant vacated, whether they could be termed as aggressors? What is the tool used in causing the murder?

6.1. These are all the issues that would determine whether the intention of the accused was to cause murder or it is a case of culpable homicide not amounting to murder or it is a case of mere beating which unfortunately led to the death of the deceased.

6.2. Obviously, the occurrence is in the house of which the defacto complainant is the owner, but it was in the occupation of the accused as tenant. The deceased is the resident of a place which is located 2 Kms away from the place of occurrence. Even as per the case of the prosecution, the deceased, his wife and his elder daughter had come to the house of the accused and it is not the case of the prosecution that the accused went to the house of the defacto complainant and initiated the fight and thus caused murder.

6.3. The prosecution states that the accused had beaten the deceased and pushed him and thus, caused his death.

7. Whether beating by bare hands and pushing by hands, leading to the deceased falling over a ditch, could have been the main cause for the death of the deceased, is yet another issue to be considered.

8. The nature of the injuries sustained and the opinion of the Doctor regarding the cause of death are material in this regard.

8.1. The following are the description of the ante-mortem injuries suffered by the deceased:-

1. Reddish abrasion 2 x 1 cm - noted over left knee.
2. Reddish abrasion 3 x 1 cm - noted over inner aspect of right forearm in its middle third.
3. Subscalpal contusion reddish in colour - 4 x 3 cms noted over mid-occipital region. Brain found edematous.

8.2. It is to be noted that it not the case of the Doctor (P.W.12-Jaisingh), who conducted postmortem, that the death was on account of the injuries sustained during the fight between the accused and the deceased. As admitted by the defacto complainant / wife, the deceased had been a heart patient for a period of 15 years and sugar patient for a period of 21 years. According to her, the heart surgery has been performed at Ramakrishna Hospital, Coimbatore, during the year 2013 and the checkup continues once in six months and he was under medication by taking five tablets a day.

8.3. The opinion of the Doctor is that the death was on account of pulmonary edema, which could have been due to cardiogenic shock.

9. Whether this cardiogenic shock could have been caused by beating a person or it could have been due to the cardiac problem already suffered by the deceased?

9.1. The Doctor has not stated that a mere beating by hands alone can create cardiogenic shock. What he would state is that the injury to heart would have caused problem in the lungs leading to his death. From the facts and circumstances, the legitimate inference could be that the incident itself is not the cause of death, but the incident should have aggravated the heart problem, thus leading to cardiogenic shock. Therefore, it is clear that beating by the deceased cannot be the cause for the death of the deceased.

9.2. The contention raised by the learned Additional Public Prosecutor, which has been accepted by the trial court also, is that the accused had beaten the deceased with the knowledge that the deceased is a heart patient.

9.3. Assuming that it was within the knowledge of the accused, even then one cannot expect a prudent conduct on the part of the accused when there had been heated exchanges between both of them or when one is acting on provocation. As rightly submitted by the defence, the genesis of the occurrence is not placed before the Court in a plain way, so as to take any inference with regard to the intention.

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9.4. The vital and material contradictions between the averments made in the complaint / First Information Report and

the evidence would clearly show that the genesis of occurrence has been willfully suppressed by the prosecution. In the complaint, allegations have been levelled against the accused and her two daughters. It is alleged in the complaint that the defacto complainant and her daughter were hit by the two daughters of the accused, but during the course of evidence, the defacto complainant would state that, her version that she was beaten by three of them was out of tension and she was hit only by the accused. The prosecution has filed the Accident Register copy of the defacto complainant and her daughter Mohana, in which, it is stated that each of them were hit by three persons. Those three were obviously the accused and her two daughters. But all the eye-witnesses support the case of P.W.1, but P.W.1 herself is found to be an untrustworthy witness.

10. The facts and circumstances indicate that the aggressor could have been the deceased and his family members. Admittedly, the dispute regarding the vacating of premises is pending consideration before the Civil Court. The accused has moved the Civil Court seeking civil remedy. The deceased has preferred a complaint before the Police even though the issue is a civil one. The police has rightly directed him to approach the civil court. Despite a civil case pending and despite a direction by the Police that the remedy lies in the Civil Court, the deceased along with his family members had gone to the place of the accused only to threaten them to vacate the property. Even though it is alleged that the deceased used flowery words, it is quite unbelievable, under the circumstances stated. Having gone there, it is only the defacto complainant and the deceased person who could have began the altercation and they should have been the aggressors. Only to suppress this, perhaps, many things in the complaint had not been spoken to by defacto complainant during evidence. The place of occurrence and the nature and circumstances surrounding the same would go to show that the accused could not have been the aggressor.

11. Whether there could have been intention on the part of the accused to cause the death of the deceased is the very vital question.

12. In the Criminal law of all jurisdictions, mens rea is relevant. The maxim applicable is 'actus non fit reus nisi mens sit rea'. According to the foundational principles of the criminal law, proof of actus reus alone is not sufficient as a person committing some act either innocently or inadvertently or unwittingly cannot be made to suffer for what he did not intend to do, especially when the offence alleged is murder.

12.1. Further, most criminal cases, involve one of the following kinds of mens rea, viz., (i) Intent: this is the explicit and conscious desire to commit a dangerous or illegal act; (ii) Knowledge: this term applies if a person is aware that his or her actions will have certain results, but does not seem to care; (iii) Recklessness: Recklessness is the decision to commit a certain action despite knowing about associated risks; (iv) Negligence: This is the mildest form of criminal culpability. A person commits negligence when she fails to meet

a reasonable standard of behavior for her circumstances.

13. It is settled law that the onus is on the prosecution to establish the mens rea beyond all reasonable doubts.

14. So far as the Indian Penal Code is concerned, the expressions indicating mensrea are - dishonestly (Section 24), fraudulently (Section 25), intentionally (Section 37), voluntarily (Section 39), reason to believe (Section 26) wrongful gain or wrongful loss (Sec 23), knowledge or intention (Sections 299 and 300), wantonly (Section 153) and Malignantly (Section 153).

15. In this case, we are concerned with Section 299 IPC, culpable homicidal not amounting to murder and Section 300 IPC speaking about murder.

15.1. So far as this case is concerned, at a time when the accused had beaten the deceased with hands, what could have been the intention or with what amount of knowledge or what kind of knowledge the accused should have done that and only to that extent she will be liable.

15.2. As the fact goes that the accused is a woman with two daughters under her custody. To the extent of committing murder, there is no serious enmity between the accused and the deceased. The tools used for committing the offence are only bare hands. The nature of dispute also does not indicate an intention to commit murder.

15.3. It is not the case of the prosecution that the accused has gone to the house of the deceased and had beaten him. When the deceased had come to the house of the accused along with two others, in order to vacate the accused from the premises, the accused has allegedly beaten him. Therefore, the accused is not even an aggressor and the incident might have happened towards private defence also.

15.4. Whether the beating that had unfortunately led to the extent of causing the death of the deceased can make the accused responsible for the death of the deceased?

15.5. When the evidence reveals that the deceased was a chronic heart patient and the death of the deceased itself was on account of pulmonary edema, the accused cannot be responsible for the death of the deceased. Even assuming that the beating of the accused is the proximate cause for the cardiogenic shock of the deceased, even then, at the time of beating, which was out of sudden and grave provocation, would not have got the knowledge that this beating would go to the extent of causing death. Therefore, the accused would be responsible only for having beaten the deceased, which would be an offence punishable under Section 323 IPC.

16. It is submitted by the learned counsel appearing for the appellant that the accused has suffered imprisonment for a period of 2½ months, during pre-trial and she continued to be in

custody from the date of judgment, i.e., 25.10.2017.

17. In view of the foregoing reasonings, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant / accused by the learned II Additional District Judge (CBI Cases) in-charge of the Special Sessions Judge, Court of Bomb Blast Cases, Coimbatore, in S.C.No.90 of 2017, by the judgment, dated 25.10.2017, are hereby set-aside. The appellant is acquitted of all the charges levelled against her, except for the offence under Section 323 IPC, for which sentence already undergone is found sufficient. The accused is directed to be set at liberty, forthwith, unless her presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to them. Bail bond, if any, shall stand discharged. Consequently, the connected CrI.M.P. is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

srk
To

1. II Additional District Judge (CBI Cases) in-charge of the Special Sessions Judge, Court of Bomb Blast Cases, Coimbatore.
2. The Public Prosecutor, High Court, Madras.
- 3.The Judicial Magistrate No.I, Coimbatore
- 4.Do-Thro The Chief Judicial Magistrate, Coimbatore
- 5.The Inspector of Police
R.S.Puram Police Station,
Coimbatore
- 6.The Superintendent
Central Prison
Coimbatore
- 7.The District Collector
Coimbatore
- 8.The Director General of Police
Mylapore, Chennai

+1cc to M/s.S.Mohamed Ansar, Advocate SR.NO.63593

RSI(CO)
sm:26.10.2018