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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on	13.02.2018
Orders Pronounced on	27.03.2018

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI
Crl.A.(MD) No.460 of 2016

Mannarmannan

... Appellant/Accused/Accused

-VS-

State Rep. by
The Inspector of Police,
Lalapettai Police Station,
Karur District.
(Crime No.43 of 2015)

... Respondent/Complainant/Complainant

Prayer: Appeal filed under Section 374(2) of Cr.P.C. to call for the records relating to the judgment dated 27.07.2016 made in S.C.No.14 of 2016 on the file of the Fast Track Mahila Court, Karur and set aside the same and acquit the appellant by allowing this Criminal Appeal and thus render justice.

For Appellant : Mr.RMS.Sethuraman
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

J U D G M E N T

The appellant was convicted under Section 302 IPC and was sentenced to undergo life imprisonment and also to pay a sum of Rs.1000/- in default to undergo simple imprisonment for a period of one month. Challenging the same, this appeal is filed.

Brief facts:

<https://hcservices.ecourts.gov.in/hcservices/>

2.1. The accused was married to PW2 / Rosiammal about 12 years back and they had two children by name Yuvanesh (aged about

initiated
brought

2.3. The Investigating Officer received the complaint of the brother of the deceased, namely, PW1 / Manikandan and after investigation, laid the final report against the accused under Section 302 IPC.

4. The contention of the prosecution is that the death of the deceased was on account of murder, but the case of the defence is that the death of the deceased was on account of suicide.

<https://hdservices.ecouns.gov.in/training>



consequences, which arose on account of the injury, namely, the loss of blood. The Doctor has further stated that had there been a timely medical treatment, the life of the deceased would have been saved.

6. Having regard to the opinion of the Doctor, the issue is, to what extent the person who has allegedly caused the injury is responsible for that? Whether the accused will be responsible for the injury caused or he will be responsible for the death caused is the crucial issue.

7. Given the circumstances of the case, whether the accused would be responsible for homicide amounting to murder or homicide not amounting to murder, is yet another issue.

8. It is the case of the prosecution that the accused intentionally caused the death of the deceased and therefore, it amounts to homicide. The case of the defence is that the deceased had suicidal tendencies, had exhibited the suicidal tendencies by attempting to commit suicide on earlier occasions and even on the date of occurrence, he was threatenng to commit suicide and finally, he died on account of suicide.

9. The defence relies upon the evidence of the wife of the deceased and son of the deceased, who would categorically state that the death was on account of the suicidal injury caused by the deceased himself, though the wife has stated so, as a witness for the prosecution and the son has stated so, as the witness for the defence.

10. The evidence of both the witnesses have to be carefully scanned as there had been previous dispute between the deceased and his wife and that the entire family, namely, wife and two children are under the care and custody of the accused. This analysis may require the consideration of cumulative circumstances as established in the trial.

11. The complaint has been laid by none other than by the brother of the deceased, who was in cordial terms with the deceased. Therefore, much reliance can be relied upon the complaint laid by PW1 / defacto complainant. In the complaint itself, he would state that he was informed that the deceased threatened to commit suicide by taking poison, when the wife refused to join the husband. The complaint would also disclose that in the bus stop also, the deceased made a similar demand and on the refusal of the wife, he was attempting to snatch the children from the custody of the wife. During this altercation, the accused appears to have taken the knife from the pocket of the deceased and caused this fatal injury; for this occurrence, ~~Prakash and Udayakumar (PW5) are the witnesses.~~ It is also stated that he was informed that the deceased was taken to hospital by PW4 / Prakash and the mother of the deceased.



12. The learned counsel for the accused would submit that no reliance can be placed upon the complaint, as the entire version in the complaint is not based on the direct knowledge, but based on hearsay statements. This contention cannot be accepted, as even though they are hearsay statements, they are the statements made immediately after the occurrence having the value of *res gestae*. This Court has also opportunity to find out whether the statement made in the complaint is corroborated by the evidence adduced on the side of the prosecution. The prosecution relies upon the evidence of PW2 to PW5, out of whom, PW2 and PW3 have been declared as hostile witnesses and PW4 & PW5 are the relatives of the deceased.

13. The learned counsel for the accused would term the evidence of PW4 & PW5 as unnatural evidence, abundant in mistakes and contradictions and therefore, the evidence of PW4 & PW5 have to be rejected. On the other hand, learned APP would submit that they are independent witnesses, having had first hand knowledge regarding the nature of relationship between the deceased and his wife and also they having been eyewitnesses to the occurrence. It is pointed out that it is only PW4/ Prakash, who had admitted the deceased in the hospital, thus confirming his presence in the place of occurrence. This statement takes us to the Accident Register copy, which are marked as Ex.P7 dated 22.02.2015 and Ex.P15 / AR copy. In the AR copy issued by Kulithalai Government Hospital, it is stated that the deceased had been brought in an Ambulance with the history of the deceased attacked by known person with knife. This earliest statement confirms that the death was not on account of suicide, but was on account of alleged homicide. One can expect that nobody would be inclined to give a false statement to a Doctor, as it would affect the line of treatment. Moreover, at the earliest point of time, the version could be true, as at that point of time, nobody would have thought of embellishment or implicating somebody through active planning.

14. There is yet another AR copy issued by Karur Hospital, in which also it is stated that it is a case of assault and the deceased had been brought to hospital by PW4/Prakash and the mother of the deceased. This AR copy is timed as 09:20pm. The complaint has been timed at 23:00hrs in the night. The statements in the complaint is corroborated by the statements made in the two Accident Register copies through the recordings of the Doctor.

15. The earliest statement before the Doctor gets corroboration by the evidence of eyewitnesses / PW4 & PW5. Whether the evidence of so called eyewitnesses PW2 and DW1 is to be believed or the evidence of PW4 & PW5 has to be believed is the service court in his presence/ Though PW2 and DW1 are closely related to the deceased, their evidence has to be taken with a pinch of salt as they are under the custody of the accused and the deceased has



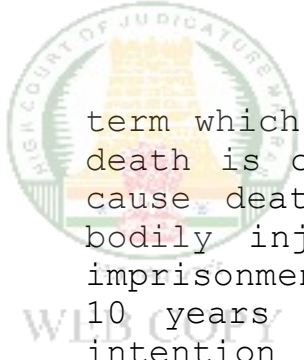
left the world already. Even while living, the deceased had not maintained cordial relationship with the wife and children and it was only the accused, who was extending his protective arms to the wife and children of the deceased.

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16. The conduct of the husband as established through the cross examination have to be taken into account while judging the conduct of the accused. Apart from that, the nature of the injury caused and the context in which the injury is caused and the place from which the weapon of attack has been taken will provide sufficient indication as to the cause for the accused, to cause injury to the deceased.

17. There had been sufferings for the wife and the children on account of the conduct of the deceased. He is stated to be a drunkard and also not providing any maintenance to the wife. When the wife wanted to support the family by getting a job, even for that, the deceased had strong objections. Unable to bear the cruelty, the wife has left the company of the deceased with the children. The harassment and cruelty had continued wherever the wife went outside the home. The evidence indicates that the deceased caused humiliation to the wife in front of the relatives in the marriage and when the wife refused, instead of persuading his wife, the deceased adopted the strategy of compulsion and force by snapping the children from the custody of the wife. This too had taken place in the bus stand. When the harassment and humiliation continued in public premises, the brother of the wife might have entertained sudden and grave provocation and in order to prevent the occurrence, he might have caused injury to the deceased. It is relevant to point out that though deadly weapon has been used, the weapon is from the pocket of the deceased and not from the pocket of the accused, thus indicating that there had been no preplan to cause either injury or to cause death. Moreover, the brother (accused) would not have been inclined to cause death, when there are two children. The cumulative circumstances only indicate that the intention might have been to cause injury and not to cause death. This evidence has to be looked into along with the evidence of Doctor, where he states that the injury per se is not sufficient to cause death in the ordinary course of nature and it is only non availability of timely medical intervention, the deceased had suffered death.

18. The Indian Penal Code recognises two kinds of homicides, namely, 1) culpable homicide amounting to murder (Section 300 and 302 IPC), 2) culpable homicide not amounting to murder (Section 304 IPC). Two kinds of punishment for culpable homicide not amounting to murder, has been contemplated, which applies under two different circumstances, 1) if the act by which death is caused is done with the intention to causing death or such bodily injury as is likely to cause death, the punishment is imprisonment for life or imprisonment of either description for a

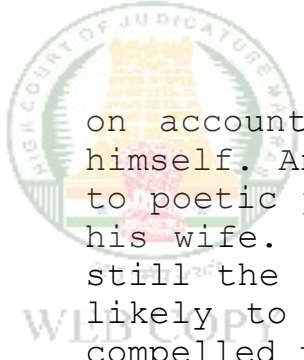


term which may extend to 10 years or fine, 2) if the act by which death is caused is done with the knowledge that it is likely to cause death, but without any intention to cause death or such bodily injury as is likely to cause death, the punishment is imprisonment of either description for a term, which may extend to 10 years or fine or with both. In other words, if there is intention or knowledge, then the case would be under Section 304 (I) and if it is only a case of knowledge with no intention, the same would fall under Section 304(II) IPC. Now, the question is, whether the act of the accused would be, a) homicide b) if it is so, whether it is culpable homicide or non culpable homicide c) it is the culpable homicide, whether it is culpable homicide amounting to murder or culpable homicide, not amounting to murder.

19. As discussed already, whether the conduct of the accused in causing only one injury, that too, with the weapon taken out from the pocket of the deceased can be termed as with intention to cause death or it can be termed as the act done with knowledge that it is likely to cause death. Whether the act was done out of sudden and grave provocation triggered by the conduct of the deceased in trying to snap the children or it could also be on account of sustained provocation by the continued torture and harassment caused by the deceased even in public places. It may not be out of place to point out that the evidence of wife has been brought on record, not in the chief examination, but in the cross examination, therefore, the evidence brought on record cannot be easily brushed aside.

20. The Indian culture puts more burden upon brothers to look after the deserted sister. The burden would be still heavier for a married brother, who would suffer a pull from his wife, even when the brother is willing to support the deserted sister. Under such circumstances, might be out of love and affection for the sister or unable to bear the humiliation in public view or on account of the sustained suffering, while supporting the family of the sister or sustained provocation due to continued harassment at the hands of the accused, the accused might have caused this blow, which turned out to be fatal on account of other reasons. Therefore, the accused can be held responsible for causing injury and not for the consequences. Even assuming that the accused is responsible for consequences, there is no intention on the part of the accused to cause the death of the accused. Under such circumstances, we hold that the conduct of the accused would be covered under Section 304(ii) IPC.

21. While choosing the appropriate sentence, the consequences of punishment to be imposed upon the accused also is to be considered. He was a person looking after not only his own family of his sister and her two children. The protective umbrella to both the families would be taken away, not on account of any wilful conduct on the part of the accused, but



on account of unbearable circumstances, created by the deceased himself. Any direct punishment imposed on the accused would amount to poetic justice for his sister and her two children and also for his wife. Though the private defence is not taken by the accused, still the circumstances would show that the act of the accused is likely to be covered under private defence also. These factors compelled the Court to show lenience in awarding sentence.

22. In the result, appeal is partly allowed and the conviction and sentence passed under Section 302 IPC is set aside. The accused is found guilty under Section 304(II) IPC and the period is restricted to the one already undergone by the accused. The accused is ordered to be released forthwith, if not needed in any other case.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To:

1. The Sessions Judge,
Fast Track Mahila Court,
Karur.
2. The Principal District Judge,
Karur.
3. The Chief Judicial Magistrate,
Karur.
4. The Judicial Magistrate No.I,
Kulithalai.
5. The Director General of Police,
Mylapore,
Chennai-4.
6. The District Collector,Trichy.
7. The District Collector,Karur.
8. The Superintendant of Central Prison,
Central Prison,Trichy.
[in duplicate for communication to the accused]
9. The Inspector of Police,
Karur District.



10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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+1. CC to Mr.R.M.S.SETHURAMAN Advocate SR.No.58081

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MV:VR:AR:30/03/2018:8P/12C

PRE-DELIVERY ORDER IN
Cr1.A. (MD) No.460 of 2016

27.03.2018