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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.13321 of 2017

and

Cr1.MP.No.8625 of 2017

1.Venkatachalam

2.Uma Maheswari

...Petitioners/Accused No.2

-Vs-

State rep.by
The Inspector of Police,
Vennandur Police Station,
Rasipuram Taluk,
Namakkal District.

... Respondent/Complainant

Prayer:

Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to C.C.No.249 of 2012, on the file of the learned Judicial Magistrate, Rasipuram and set aside the order dt.27.02.2017 in CMP.No.9536 of 2015 in CC No.249/2012. passed by the learned Judicial Magistrate, Rasipuram.

For Petitioners : Mr.B.Kumar, Senior Counsel
for Mr.B.Shruthan

For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below transferring the case in exercise of its jurisdiction under Section 323 of Cr.P.C. to the District and Sessions Court.

2.A complaint was given against the petitioners and an FIR came to be registered in Cr.No.370 of 2011 for an offence under Section 341, 323, 324, 506 (ii) & 302 IPC. An investigation was conducted and a Final Report was filed by the



respondent Police against the petitioners for an offence under Section 341, 323, 324 & 506(ii) IPC. The offence under Section 302 IPC was dropped since the investigation did not reveal sufficient materials to sustain the offence under Section 302 IPC. The Court below took the Final Report on the file and also framed charges against the accused persons for the above said offences.

3.The trial commenced and PW-1 to PW-3 were examined on the side of the prosecution. At this stage, the prosecution filed Crl.M.P.No.9356 of 2015, seeking to alter the charges by including Section 302 IPC and to commit the case to the Sessions Court.

4.The learned Magistrate by his order dated 27.02.2017, allowed the petition on the ground that there are prima facie material to add the charge under Section 302 of IPC, and therefore transferred the case to the Sessions Court in view of Section 323 of Cr.P.C. This order has been put to challenge in this Criminal Original Petition.

5.Mr.B.Kumar, learned Senior Counsel appearing on behalf of the petitioners submitted that it is the case of the prosecution that the deceased in this case was a lady aged about 90 years. There was a property dispute between the parties and on 17.07.2011, at about 7.15 p.m., the petitioners are said to have come to the scene of occurrence and questioned regarding the right over the property and have abused and attacked one Selvam (LW-2) and Rasammal (LW-3). In the course of the same occurrence, the de facto complainant (LW-1) was also attacked by the accused persons. The deceased was also pushed down by the accused persons and she was admitted in the hospital on 18.07.2011, and she died on the same day.

6.The learned Senior Counsel after explaining the case of the prosecution brought to the notice of this Court, the Postmortem Report that was filed by the prosecution. In the Postmortem Report, the cause of death is stated to be due to shock and hemorrhage due to rupture of aorta. Immediately on receipt of the Postmortem Report and Final Opinion, the Investigating Officer had taken statement from the doctor in order to clarify as to whether the deceased died a natural death or she died due to the injuries sustained in the attack. The doctor has given a categorical answer to the effect that there were no external injuries or internal injuries in the body of the deceased and that she has died due to her advanced age and rupture of aorta is a natural phenomenon which is caused due to old age.



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7.The learned Senior Counsel after pointing out to the Postmortem Report and the Final Opinion of the doctor submitted that the respondent Police had dropped the offence under Section 302 of IPC, even at the time of filing of the Final Report since they were not able to get any material to sustain the offence of murder.

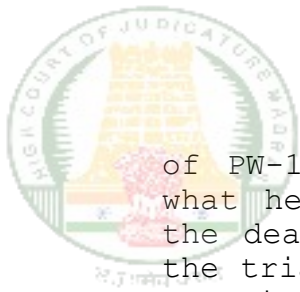
8.The learned Senior Counsel thereafter focused his arguments on the impugned order passed by the Court below. He submitted that the Court below has gone by the statement made by PW-1 to PW-3 at the time of recording evidence and has taken into consideration the 161 statements recorded from them. While doing so, the Court below lost sight of the fact that the cause of death can never be spoken by PW-1 to PW-3 and the only document that can be relied upon is the Postmortem Report and the Final Opinion given by the doctor. This is more so since the deceased was aged about 90 years at the time of occurrence. The learned Senior Counsel concluded his arguments by submitting that there was absolutely no material before the Court below to alter the charges by adding Section 302 IPC and the Court below went wrong in transferring the case to the Sessions Court under Section 323 of Cr.P.C.

9.The learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that the Court below took into consideration the evidence of PW-1 to PW-3 and it found prima facie materials to alter the charge by adding Section 302 IPC and there are no grounds to interfere with the same.

10.This Court has carefully considered the submissions made on either side and the materials available on record.

11.A ground has been taken in this case by the petitioners to the effect that a Court cannot alter the charges based on the petition filed by the prosecution. This Court is not able to accept the said ground since it is always open to the prosecution to bring to the notice of the Court the materials available for the alteration of the charges and ultimately it is left to the trial Court to decide upon the alteration of charges in exercise of its powers under Section 216 of Cr.P.C. The trial Court cannot alter the charges merely based on a petition filed by the prosecution or the de facto complainant and it has to independently assess the availability of materials and state the reasons for the alteration of charges and thereby exercise its jurisdiction.

12. In the present case, the trial Court has taken into consideration the 161 statements recorded from PW-1 to PW-3. The trial Court has also taken into consideration the evidence



of PW-1 before the Court wherein he did not go in line with what he stated before the Investigating Officer with regard to the death of the deceased. This was the only reason as to why the trial Court came to a conclusion that there are prima facie materials to add the charge under Section 302 IPC and consequently decided to transfer the case to the Sessions Court.

13. In the considered view of this Court, the trial Court completely lost sight of a very vital document in this case viz; the Postmortem Report and the Final Opinion given by the doctor. This is the only document which can speak about the cause of death of the deceased. A careful reading of these documents shows that the deceased died due to natural causes and her death was not as a result of the incident. This is further substantiated by the fact that there were no external and internal injuries sustained by the deceased. Therefore, there are absolutely no materials to bring the case either under Section 299 or under Section 300 of IPC.

14. In the considered view of this Court, the Court below proceeded to pass the impugned order without any strong reasons and therefore the same requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

15. In the result, the order passed by the Court below in CrI.MP.No.9536 of 2015 dated 27.02.2017, is hereby set aside. Accordingly, this Criminal Original Petition is allowed and the Court below is directed to continue with the proceedings in C.C.No.249/2012 and complete the proceedings within a period of four months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

To

1.The Inspector of Police,
Vennandur Police Station,
Rasipuram Taluk,
Namakkal District.



2. The Judicial Magistrate,
Rasipuram.

3. Do Through The Chief Judicial Magistrate,
Namakkal.

4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.B.Shruthan, Advocate, S.R.No.60980

Crl.O.P.No.13321 of 2017

RSI (CO)
CS/03/09/2019