



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.3489 of 2021

and

Crl.M.P. (MD)No.1924 of 2021

WEB COPY

1.Noorullah

2.Mariappan

... Petitioners /
Accused Nos.1 & 2

vs.

1.The State rep. by
The Inspector of Police,
Srivilliputhur Police Station,
Virudhunagar District.
(Crime No.1276 of 2020)

... 1st Respondent/
Complainant

2.Maheswari

... 2nd Respondent/
defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in Crime No.1276 of 2020 on the file of the 1st respondent police and quash the same.

For Petitioners	: Mr.T.Antony Arulraj
For R1	: Mr.M.Sakthikumar Additional Public Prosecutor
For R2	: R.M.Nixon

O R D E R

This Criminal Original Petition has been filed to quash the impugned FIR in Crime No.1276 of 2020 registered on the file of the Inspector of Police, Srivilliputhur Town Police Station for the offences under Sections 288 and 337 of IPC. Alteration report was later filed and the offence under Section 304 Part II of IPC was later added.

2.The first petitioner appeared before this Court and submitted that he had already paid a sum of Rs.2,50,000/- as compensation to the second respondent who is the wife of the deceased. The second respondent was duly identified by the police and she stated that she has no objection for quashing the impugned FIR. In fact, the parties have also filed a memo of compromise. I made it clear to the counsel for the petitioners that the criminal case involving the offence under Section 304 Part II of IPC cannot be quashed on the strength of compromise. Therefore, the matter was adjourned to enable the counsel to argue on merits.



3.The learned counsel for the petitioners pointed out that the first petitioner Noorullah had engaged the second petitioner Mariappan to carry out the certain carpentry works. The deceased Sarveswaran was working as carpenter for daily wages. On 06.12.2020 at about 11.30 a.m., Sarveswaran was carrying a fiber sheet from the ground floor to the first floor. While doing so, he slipped and fell and suffered head injury. He was rushed to the Hospital. However, he succumbed to injuries later.

4.From a reading of the FIR and the other materials collected by the prosecution, one can safely come to the conclusion that the petitioners cannot be charged with any act of culpable homicide. The second respondent in her complaint had stated that since the deceased was asked to go to the first floor, he had met with an accident. The husband of the defacto complainant was engaged as carpenter and therefore, he was obviously required to carry out of the carpentry works. Because he slipped, the accident had taken place. The reason for the accident was nobody else.

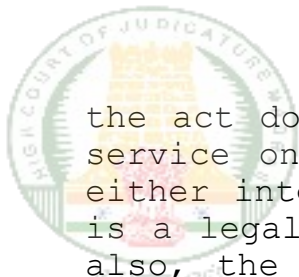
5.The FIR has been registered against the petitioners by including the offence under Part II of 304 of I.P.C. Sections 304 of I.P.C. reads as under :-

"304. Punishment for culpable homicide not amounting to murder - Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

Section 304 can be invoked only if the accused commits culpable homicide not amounting to murder. If the act is intentional, it will fall under Part I. If knowledge alone can be attributed and there is no intention, then the offence will fall under Part II. Section 299 of I.P.C. defines culpable homicide as follows:-

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.

6.Section 300 of I.P.C. defines 'murder'. It also sets out five exceptions. If culpable homicide falls within the exceptions, then



the act does not amount to murder. Section 304 can be pressed into service only where the accused causes bodily injury; he must have either intention or knowledge. Of course, failure to act when there is a legal duty could also be a cause for death and in that event also, the penal provision can kick in. The condition precedent is that the act or omission must be the proximate cause for the death. If the act is committed intentionally or with knowledge of the consequences, Section 304 of IPC will come into play. If criminal homicide is caused recklessly or negligently, then Section 304A of IPC will be attracted. In ***Sushil Ansal V. State (2014) 6 SCC 173***, the Hon'ble Supreme Court approved the proposition laid down by Sir Lawrence Jenkins in ***Emperor V. Omkar Rampratap (1902) 4 Bom LR 679*** in the following terms:-

" ... to impose criminal liability under Section 304A of the Penal Code, 1860, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must have been the causa causans; It is not enough that it may have been the causa sine quo non."

' Causa causans ' has been defined in Black's Law Dictionary as the immediate cause; the last link in the chain of causation. ' Proximate cause ' has been defined as that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred. The injury or damage was either a direct result or a reasonably probable consequence of the act or omission."

7.By no stretch of imagination, the petitioners herein could be imputed with the knowledge that there was reasonable possibility of the deceased slipping while carrying the fiber sheet. The offence under Section 304 Part II of IPC is clearly not made out. The petitioners had engaged the deceased for carpentry works and when the deceased was carrying out the same, he accidentally fell and died. The petitioners for the reasons already set out cannot be fastened with any penal liability. The impugned FIR is quashed. This criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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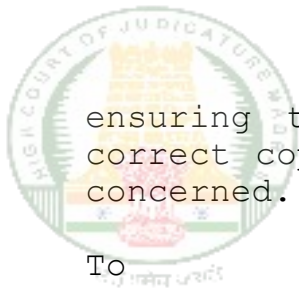
/ /2022

Sub Assistant Registrar(CS)

skm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but,

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



ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

Enclose xerox copy of Joint Compromise Memo.

- 1.The Inspector of Police,
Srivilliputhur Police Station,
Virudhunagar District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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RK(15/03/2022) 4P 3C