



Crl.O.P.No.30063 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 07.11.2022	Orders Pronounced On 15.11.2022
----------------------------------	------------------------------------

Crl.O.P.No.30063 of 2018
and Crl.MP.No.17673 of 2018

1.Mohandas
2.Gandhi

... Petitioners

Vs.

1.The State of Tamil Nadu,
Rep. By Inspector of Police,
Vikravandi Police Station,
Villupuram District.
Crime No.459 of 2017

2.Sakthivel

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the proceedings in S.C.No.185 of 2018 on the file of the 2nd Assistant Sessions Judge, Villupuram [2nd Additional Sub Court, Villupuram] and quash the same.



Crl.O.P.No.30063 of 2018

WEB COPY

For Petitioners : Mr.M.Devaraj

For Respondents

R1 : Mr.L.Baskaran
Government Advocate [Crl. Side]

R2 : No appearance

ORDER

The petitioners/accused in S.C.No.185 of 2018 facing trial on the file of the learned II Assistant Sessions Judge, Villupuram for the offence under Section 304(2) IPC filed this quash petition.

2.The background of the case is that on 21.05.2017, a complaint was received from L.W.1 stating that his brother's son Prasanth on the same day at about 6.00 a.m. went to Thuravi Village wherein the petitioners/A1 and A2 were doing agriculture on lease land. The said Prasanth and one Ramarajan were employed as daily coolie, by noon they completed the work and waiting for their wages. At that time, the petitioners said to have forced the said Prasanth to climb the Palm tree and collect some palm. The said Prasanth



Crl.O.P.No.30063 of 2018

informed them that he was without food, hungry, tired and further informed that he lack skill of climbing the Palm tree. But the petitioners forced him and insisted that unless he climbs the tree and plucks the Palm, he will not be paid his coolie. Having no other option and on compulsion, the said Prasanth climbed the tree and fell down from the tree. On seeing the fall, both the petitioners ran away without providing him any medical aid. Thereafter, with the aid of 108 Ambulance, he was rushed to the Mundiambakkam Government Hospital at about 1.30 p.m. where the Casualty Doctor/L.W.8 examined him and pronounced brought dead. Thereafter, L.W.1 lodged a complaint, by that time since it became late in the night on the next day, the respondent police visited the scene of occurrence, examined the witnesses present, collected documents and sent the body for Postmortem. Initially, a case was registered under Section 174 Cr.P.C. and later the case was altered to Section 304(2) IPC and charge sheet filed listing L.W.1 to L.W.12 and documents. After committal, the case was taken up for trial by the Trial Court in S.C.No.185 of 2018 and thereafter, the quash petition was filed.



Crl.O.P.No.30063 of 2018

WEB COPY

3.The contention of the learned counsel for the petitioners is that though 11 witnesses cited, the only eye witness is L.W.2/Ramarajan and all the other witnesses are hearsay witnesses or formal witnesses. He would submit that L.W.8/Casualty Doctor in the accident registered recorded as accident fall. He further submitted that due to undue pressure brought from the family members and villagers of the deceased, the respondent police were forced to convert the accident case into a case of homicide. Further, the Postmortem report confirms that due to the fall, the deceased sustained contusion on the occipital region. He further submitted that L.W.1 himself is a hearsay witness, L.W.3 to L.W.5 are close relatives of the deceased who only heard about the fall, L.W.6 and L.W.7 are the observation mahazar witnesses, L.W.8 is the Casualty Doctor who supports the case of the petitioners, L.W.9 is the Postmortem Doctor, L.W.10 is the Constable who was incharge of the body and L.W.11 is the Investigating Officer. He further submitted that the accident case is projected as though the petitioners with intention and knowledge, forced the deceased to climb the tree and hence cause for the fall and death of the victim. Hence, he prayed for quashing of



4.In support of his contentions, the learned counsel for the petitioners relied upon the following judgments:

- 1) ***K.Rajendran Babu and another vs. State rep. by the Inspector of Police and another*** reported in ***[2021] 2 MLJ (Crl.) 367***, wherein this Court referred to the Apex Court judgment in the case of State of Andhra Pradesh vs. Rayavarapu Punnayya and another [1976 (4) SCC 382] wherein the Apex Court referred to three stages to find out whether the offence falls under murder or culpable homicide not amounting to murder and consequences to be considered, whether the accused has done an act by doing which he has caused the death of another. Proof of such casual connection between the act of the accused and the death, leads to the second stage and if it is found that it is prima facie found in the affirmative , the stage for considering the operation of Section 300 IPC is reached. In the present case, no such situation arose and further, the accused to be given the benefit of Section 72 IPC.
- 2) ***Venkatesan vs. State rep. by the Inspector of Police, B1 North Beach Police Station, Chennai***



Crl.O.P.No.30063 of 2018

[Crl.Appeal.No.706 of 2008], wherein this Court referring to the Apex Court judgment in the case of **Jani Gulab Shaikh vs. The State of Maharashtra [1969 (2) UJ 598 SC]**, held that on the facts of the case it can be said that the case which would fall under Section 323 IPC and nothing more.

- 3) **Captain Sunil Kumar Rai vs. Assistant Commissioner of Police, J5 Shastri Nagar Police Station, Adyar Range, Chennai** reported in **2019 (1) MWN (Cr.) 127**, wherein the Apex Court reiterated the principle that intention and knowledge are the essential ingredients for constituting offence of culpable homicide not amounting to murder. Further, the High Court in exercise of power under Section 482 can look into certain incriminating and relevant documents to scrutinize legality of charges framed for the purpose of securing ends of justice.
- 4) **Mahadev Prasad Kaushik vs. State of Uttar Pradesh and another** reported in **[2008 (14) SCC 479]**, wherein the Apex Court listed out the ingredients to be satisfied before a person is charged under Section 304 IPC.



Crl.O.P.No.30063 of 2018

WEB COPY

5.The learned counsel for the petitioner further referred to the judgment of the Kerala High Court in the case of ***P.M.Raju vs. State of Kerala and others in Crl.A.No.1531 of 2008***, wherein the Kerala High Court referred to various Apex Court judgments and it finally held that knowledge contemplated under Section 304 IPC to bring home a case of culpable homicide is of a higher degree. The knowledge of mere possibility that the act may cause death is not the knowledge envisaged. The degree of knowledge required to bring an act within the realm of culpable homicide must be a knowledge that is almost on the verge of certainty and not a mere possibility.

6.The learned Government Advocate [Crl. Side] submitted that L.W.1 lodged a complaint on the death of his brother's son, Prasanth. He would submit that the victim is an orphan and was brought up by his grandmother and aunt. He further submitted that the victim in this case as well as L.W.2 were engaged as coolie in the agriculture field of the petitioners which is not



Crl.O.P.No.30063 of 2018

in dispute. The fall injury and death took place in the agriculture field of the petitioners. It is to be seen that L.W.2 clearly states about the sequence of events as to how the deceased was compelled and forced to climb the Palm tree despite the deceased informing that he was hungry, tired and further not had the skill to climb the tree. He further submitted that since wages will be paid only after he climbs the tree, the deceased had no other option, to receive the wages for his hard labour he had to climb the tree and in the process, he fell down, sustained injuries and lost his life. L.W.3 to L.W.5 are the relatives of the deceased who confirm that the deceased as coolie was working in the field of the petitioners. L.W.6 and L.W.7 are the observation mahazar witnesses and L.W.8 is the Casualty Doctor who pronounced the death of the victim. In the accident register copy, L.W.8 recorded that one Suresh Kumar informed about the fall of the deceased and sustaining injury, the said Suresh Kumar is the Ambulance Driver who was not present in the scene of occurrence, don't know the reason for the fall. He further submitted that the conduct of the petitioners/accused fleeing from the scene of occurrence not providing any medical aid to the deceased immediately, added



Crl.O.P.No.30063 of 2018

to it only on their force and compulsion, the deceased climbed the tree would prove the knowledge and intention of the petitioners. He further submitted that the points raised by the petitioners are factual which have to be decided during trial. He would also submit that the occurrence took place in the year 2017 and for the past five years the family of the victim is denied justice. Hence, he prayed for dismissal of this petition.

7.Considering the submissions and on perusal of the materials, it is seen that L.W.1 on getting information from L.W.2 about the fall injury and taking the victim to the hospital gone there, found his brother's son Prasanth lying there declared dead by L.W.8. Thereafter, he approached the respondent police lodged a complaint. In this case, L.W.2 is the eye witness not only for the fall injury of Prasanth he was with the deceased right from the morning, when both were working as agriculture coolies L.W.2 witnessed the compulsion, force and threat of the petitioners to the victim to climb the Palm tree. Further, the contusion confirmed by the Postmortem certificate and statement of L.W.9/Postmortem Doctor wherein the injury on the head and



Crl.O.P.No.30063 of 2018

the occipital undersurface. Further, from the opening of the abdomen it is seen that only 300ml brownish fluid confirming that the deceased was in a hungry state and he was also tired due to his work from morning till middle of the day and that to, in the month of May under hot sun. The fear of denial of his coolie forced him to climb the tree despite victim was exhausted, drained both physically and mentally and in the process, he fell down and lost his life which is witnessed by L.W.2. L.W.3 to L.W.5 relatives of the deceased confirm the orphan status of the deceased, his need and necessity to make his livelihood and support his aged grandmother and spinster aunt. L.W.2 accompanied the deceased to the work on the fateful day to the field of the petitioners. The attendant circumstances clearly found available in the statement of L.W.2. L.W.6 and L.W.7 are the observation mahazar and rough sketch witnesses. L.W.8 is the Casualty Doctor who issued the accident register. The petitioners attempt to project that in the accident register it is only recorded as accident as stated by one Suresh Kumar, a friend of deceased. On verification it is found that the said Suresh Kumar is an Ambulance Driver and not a friend. Hence, what is recorded by L.W.8 in



CrI.O.P.No.30063 of 2018

the accident register is not of any consequences. The right person to speak about the fall and its reason would be L.W.2. In this case, L.W.2 categorically stated that it is due to the petitioners' compulsion and force, the deceased climbed the tree and fell down and later succumbed. Added to it, it is seen that the petitioners ran away from the scene of occurrence after seeing the fall of the deceased without providing any medical assistance and making arrangements for ambulance. The deceased said to have fallen down at 12 noon and he was taken to the hospital after 1½ hours. Therefore, the golden period of saving the life is lost. These are the factors which lead to the respondent filing alteration report under Section 304 (2) IPC. The Postmortem report is in confirmity to the case of the prosecution. The viscera report confirms no toxic presence in the body of the deceased. Further, the decisions referred to by the petitioner are in the case of accidents under various circumstances which are not applicable to the facts and circumstances of the above case.

8.In view of the above, this Court is not inclined to entertain this



Crl.O.P.No.30063 of 2018

petition. Hence, the Criminal Original Petition stands dismissed. Further, finding that the occurrence took place in the year 2017, it is almost five years lapsed the case is kept pending at the stage of trial without any progress and also finding that there are only 12 witnesses in this case, the Trial Court is directed to conduct and complete the trial without any further delay preferably within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

15.11.2022

Index : Yes/No

Internet: Yes/No

cse



WEB COPY



CrI.O.P.No.30063 of 2018

To

- 1.The Inspector of Police,
Vikravandi Police Station,
Villupuram District.
- 2.The 2nd Assistant Sessions Judge,
Villupuram.



WEB COPY



Crl.O.P.No.30063 of 2018

M.NIRMAL KUMAR, J.

cse

Pre-delivery order made in

Crl.O.P.No.30063 of 2018

15.11.2022