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Crl.A.No.306 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2023

CORAM

THE HONOURABLE **MR. JUSTICE N.ANAND VENKATESH**

Crl.A.No.306 of 2016

Thangaraj

.. Appellant /Accused

.VS.

State rep.by
Inspector of Police
Sirumugai Police Station
Coimbatore District.

.. Respondent/Complainant

(Crime No.2 of 2015)

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, to set aside the judgment and order of conviction passed in S.C.No.128 of 2015 by order dated 22.03.2016 on the file of the learned III Additional District & Sessions Judge, Coimbatore.

For Appellant Mr.S.Shankar

For Respondent Mr.L.Baskaran
Government Advocate (Crl Side)



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JUDGMENT

This Criminal Appeal has been filed against the judgment and order passed by the III Additional District and Sessions Judge, Coimbatore in S.C.No.128 of 2015, dated 22.03.2016, convicting the appellant for offence u/s. 304(i) IPC and sentencing him to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- and in default to undergo three months rigorous imprisonment.

2.The case of the prosecution is that the appellant and his wife Poongodi (PW.2) were staying along with their children and were working in a farmland owned by one Rasappan. The deceased Karuppusamy @ Periyakaruppan is the father-in-law of the appellant and he also used to stay along with the appellant and his family. There was some misunderstanding between them and hence, the appellant left the farmland and he started living with his parents.

3.The further case of the prosecution is that on 31.12.2014 at about 8.30 pm, when PW.2 and the deceased were in the shed at the farmland, the appellant came and demanded that his daughter Kalaiyarasi must be sent along with him. PW.2 refused to send the daughter along with the appellant. The appellant started dragging Kalaiyarasi by her hands and this was prevented by PW.2. Enraged by the same, the appellant attempted to assault PW.2. On seeing this, the deceased interfered and the appellant is said to have kicked him in his abdomen and the deceased fell down on a grinding stone resulting in an injury. The appellant ran away from the scene of occurrence.



4.The deceased was taken to Annur Government Hospital and first aid treatment was given by the doctor examined as PW.6. The accident register was marked through PW.6 as Ex.P.3. On going through the accident register, it is stated as if, the deceased had fallen down on his own and had sustained injuries and hence, it was not treated as an injury caused due to any commission of offence.

5.PW.1, who was living in the adjacent land, gave a complaint (Ex.P.1) before the Sub Inspector of Police, Sirumugai Police Station on 02.01.2015 at about 21.45 hours. Based on the complaint, PW.7 registered an FIR (Ex.P.4) in Crime No.2 of 2015 for offences u/s. 294(b), 323 and 506(i) IPC. PW.7, thereafter went to the scene of occurrence on 03.01.2015 at about 6.00 am, and prepared the observation mahazar marked as Ex.P.2 and rough sketch marked as Ex.P.5 in the presence of witnesses. Thereafter, he also recorded the statements of witnesses u/s.161(3) Cr.PC. At about 8.15 am, the appellant was arrested and he was produced before the concerned Court and he was remanded to judicial custody.

6.The deceased died on 07.01.2015 and hence, an alteration report was prepared and was submitted before the concerned Court and the same was marked as Ex.P.8. The offence was altered to Section 302 IPC.

7.The investigation was taken over by PW.9 and he took steps to conduct the inquest on the body of the deceased from 8.00 am., to 11.00 am. The inquest report was marked as Ex.P.9. PW.9 thereafter sent the body of the deceased for post-mortem



and the post-mortem was conducted by PW.8. The post-mortem report which was marked as Ex.P.6 through PW.8 records of the following injuries:

The following ante mortem injuries noted over the body:

- Superficial surgical incisor noted over right side chest, right shoulder and inner aspect of both arm.
- Sutured wound 3 cm in length noted over inner aspect of right ankle joint.

Abrasion 3x2 cm noted over lateral aspect of back of left mid abdomen

On dissection of Thorax and Abdomen; Contusion in variegated colour 3x2 cm noted over lower lobe of right lung in its anterior aspect. Pus material noted posterior aspect of right lung. Left lung found collapsed.

8.A final opinion was given by PW.8, to the effect that the victim appears to have died due to blunt injuries and its complications.

9.PW.9 thereafter recorded the statements of the other witnesses and also the doctor and collected the relevant reports and filed the final report on 08.02.2015, before the District Munsif-cum-Judicial Magistrate, Mettupalayam, which was taken on file in PRC No.18/2015.

10.The learned Judicial Magistrate served the copies to the appellant u/s.207 Cr.PC, and the case was committed u/s.209 Cr.PC, and was made over to the III Additional District and Sessions Judge, Coimbatore.



11.The Trial Court framed the charge against the appellant for offence u/s.302 IPC. When the appellant was questioned on the charge, he denied the same.

12.The prosecution examined PW.1 to PW.9 and marked Ex.P.1 to Ex.P.9. The incriminating evidence that was collected during the course of trial was put to the appellant when he was questioned u/s.313(1)(b) Cr.PC., and he denied the same as false.

13.The Trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the prosecution has made out the case for offence u/s.304(i) IPC and convicted and sentenced the appellant accordingly. Aggrieved by the same, the present criminal appeal has been filed before this Court.

14.Heard Mr.S.Shankar, learned counsel for the appellant and Mr.L.Baskaran, learned Government Advocate (Crl.side) appearing for the respondent/State.

15.The prosecution examined PW.1, PW.2, PW.3 and PW.5 as eye witnesses. In the course of trial, it came to light, PW.1 is the paramour of PW.2 and he was living with PW.2. PW.2 is the daughter of the deceased, PW.3 is the grandson of the deceased and PW.5 is the adjacent land owner, who is said to have witnessed the incident.



16. On carefully going through the evidence of PW.1 and PW.2, it can be seen that there are lots of contradictions and in fact the Trial Court on taking note of those contradictions, gave a finding to the effect that their evidence raises serious doubts as to the veracity. The Trial Court also gave a finding to the effect that PW.1 and PW.2 were living together and that was one of the main reasons for the quarrel between the appellant and PW.2 and since they had an axe to grind, the evidence of PW.1 and PW.2 was rejected by the Trial Court. The findings rendered by the Trial Court with regard to the evidence of PW.1 and PW.2 is backed by proper reasoning and this Court also holds that the evidence of PW.1 and PW.2 is unreliable.

17. In view of the above, this Court will now deal with the evidence of PW.3 and PW.5. PW.3 is none other than the son of the appellant. At the time of the incident, PW.3 was aged about 13 years. He has described the manner in which the entire incident took place. He has stated that his father came and was insisting for taking his sister along with him and it was prevented by his mother (PW.2). Enraged by the same, the appellant attempted to attack PW.2. When this was questioned by the deceased, the appellant had kicked him in his abdomen and as a result, the deceased fell on a grinding stone and sustained injuries. Thereafter, the deceased was taken to the hospital and was given treatment. The evidence of PW.3 has not been discredited in the cross examination and he has withstood the questions put to him in the cross examination. Hence, the incident and the manner in which the incident had taken place and the act committed by the appellant has been cogently spoken by PW.3 and there is no ground to disbelieve the same.



18.Insofar as the evidence of PW.5 is concerned, even though he has stated in the chief examination as if he had seen the incident, during the cross examination, he has stated that he heard the noise from the scene of occurrence and it is not possible to see the scene of occurrence from his property and that he had reached the scene of crime after the incident had taken place. In view of this doubtful evidence of PW.5, it is not safe to completely rely upon the evidence of PW.5. The evidence of this witness can be taken into account for the purpose of understanding as to what happened immediately after the incident.

19.The evidence of PW.6 also assumes significance. The deceased is said to have taken treatment at Coimbatore Medical College and Hospital and on 03.01.2015, a request was made to PW.6 to prepare an accident register and accordingly, an accident registrar marked as Ex.P.3 was prepared on 03.01.2015 at 12.30 pm. When the deceased was admitted on 01.01.2015 in the hospital, it was recorded as if he fell down and sustained injuries and hence it was not treated as an injury arising out of an accident or commission of an offence. From the evidence of PW.6, it can be seen that there is absolutely no mention about the nature of injury for which the deceased was admitted on 01.01.2015 and as to what treatment was given to the deceased. In fact, PW.6 goes to the extent of saying that he has not even seen the deceased while preparing the accident register.

20.The post-mortem doctor had opined that the deceased had died due to blunt injuries sustained by him and its related complications.



21. In the considered view of this Court, the evidence of PW.3, who is none other than the son of the appellant, explains the manner in which the incident had taken place and the involvement of the appellant and there is no reason to discard this evidence. Hence, this Court has to necessarily act upon the evidence of PW.3. Even though, the learned counsel for the appellant submitted that PW.3 is a tutored witness since he was living with PW.2, this Court is not able to come to such a conclusion on an over all appreciation of the evidence of PW.3.

22. The next issue to be gone into is as to whether the appellant is liable to be convicted for offence u/s.304(i) IPC and sentenced for the same.

23. When the Court is confronted with the question as to whether the offence is a murder or a culpable homicide not amounting to murder, it has to be dealt with in three stages. The first stage is whether the accused has done an act by doing which he has caused the death of any person. This stage involves finding out the causal connection between the act of the accused and the deceased. The second stage for consideration is as to whether the act of the accused amounts to culpable homicide as defined in Section 299 IPC. If the answer to this question is in the affirmative, the last stage is reached for considering the operation of Section 300 IPC. The third stage is the stage at which the Court should determine whether the acts proved by the prosecution brings the case within the ambit of any of the four limbs of the definition of murder contained in Section 300 IPC. If the answer to this question is in the negative, the offence would be culpable homicide not amounting to murder and punishment can



be imposed under the first or second part of Section 304 IPC.

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24.If the act of the accused has resulted in the death, but it does not amount to culpable homicide, the Court must next see whether the facts of the case falls u/s. 304-A IPC. If it does not fall within the ingredients of Section 304-A IPC, the next step to be taken by the Court is to see if the facts of the case falls within the definition of a hurt u/s. 319 IPC or a grievous hurt as defined u/s. 320 IPC. Depending on the same, the accused can be punished u/s. 323 IPC if the act of the accused is construed as voluntarily causing hurt or where the accused has used dangerous weapons or other means, the punishment will fall u/s. 324 IPC. If the act of the accused falls within the definition of a grievous hurt u/s.320 IPC, the accused person will be punished u/s. 325 or 326 as the case may be.

25.A Court has to adopt the steps that have been stated supra to ultimately come to a conclusion and to decide under which provision the accused person must be convicted and sentenced in the given facts of the case.

26.If the above test is applied to the facts of the present case, it is seen that the appellant had kicked the deceased when the deceased attempted to prevent the appellant and questioned him on his attempt to take away his daughter. After the appellant kicked the deceased, the deceased fell on a grinding stone and had sustained injuries. The factum with regard to this incident has been spoken to by PW.3 and this Court has already held that there is no ground to discard the evidence of PW.3.



27.The act of the appellant does not fall within any of the three limbs of Section 299 IPC. It cannot be stated that the appellant kicked the deceased with the intention to causing him death or with an intention of causing such bodily injury as is likely to cause death or with the knowledge that the act is likely to cause death. Intent and knowledge which are the ingredients provided u/s.299 IPC postulates the existence of a positive mental attitude and this mental condition is the special mens rea necessary for the offence. The said mens rea is absent on the facts of the present case. Hence, this Court holds that the act of the appellant will not constitute culpable homicide.

28.The act of the appellant also cannot be brought under offence u/s.304-A IPC since it cannot fit into the terms "rash or negligence act". In view of the same, this Court must go to the next step and see whether the act of the appellant will satisfy the requirements of Section 319 or 320 IPC.

29.Section 320 IPC defines grievous hurt and the injuries which will be construed as grievous hurt has been provided u/s.320 IPC. The injury that was sustained by the deceased does not fall under any of the clauses u/s.320 IPC.

30.Insofar as the definition u/s.319 IPC is concerned, it deals with hurt. To constitute this offence, the act must cause bodily pain, disease or infirmity to any person. Any person who voluntarily causes hurt is punishable u/s.323 IPC. In the present case, post-mortem doctor has opined that the blunt injuries sustained by the deceased and the related complications was the reason for the death of the deceased.



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That apart, the deceased died nearly after seven days after the incident. Obviously, the act of the appellant has caused bodily pain to the deceased and unfortunately, the deceased died after seven days. It should be kept in mind that the deceased was aged about 85 - 88 years at the time of the incident. Hence, this case can be brought within Section 323 IPC.

31.In the light of the above discussion, this Court is inclined to interfere with the judgment of the Trial Court with respect to both the conviction and sentence imposed against the appellant and accordingly, both the conviction and sentence stands modified. The appellant is convicted for the offence u/s.322 punishable u/s.323 IPC and the imprisonment is confined to the period already undergone by the appellant and to pay a fine of Rs.1,000/- and in default to undergo three months simple imprisonment. It is brought to the notice of this Court that the fine amount has already been deposited by the appellant during the pendency of this criminal appeal.

32.In the result, this Criminal Appeal is partly allowed to the extent indicated herein above.

17.03.2023

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Internet : Yes
Index : Yes
Speaking Order : Yes
Neutral Judgment : Yes



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N.ANAND VENKATESH,J.

KP

To

1. III Additional District & Sessions Judge
Coimbatore.
2. Inspector of Police
Sirumugai Police Station
Coimbatore District.
3. The Public Prosecutor
High Court, Chennai.

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