



Crl.O.P.No.9474 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.9474 of 2023

and

Crl.M.P.No.6202 of 2023

P.Sankar
S/o.Perumal

.. Petitioner

Vs.

1. State Rep.by :
The Inspector of Police,
Kilvellur Police Station,
Nagapattinam District.

2. M.Selventhiran
Village Administrative Officer,
Andhakudi Village,
Kilvellur Taluk,
Nagapattinam District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records and quash the PRC 40/2022 on the file of the District Munsif cum Judicial Magistrate Court, Kilvellur, Nagapattinam (Now committed the Principal Sessions Court at Nagapattinam yet to be numbered).

For Petitioner : Mr.N.Manokaran for
Mr.A.Jotheeswaran

For Respondents : Mr.A.Gopinath
Government Advocate (Crl.Side) [R1]



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ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in PRC 40 of 2022 on the file of the District Munsif cum Judicial Magistrate Court, Kilvellur, Nagapattinam (Now committed to the Principal Sessions Court at Nagapattinam and yet to be numbered).

2. The case of the prosecution is that on 25.07.2022, at about 21.30 hours, some boys had gathered to celebrate a birthday and at that point of time, the deceased Balamurugan is said to have told them not to gather and had sent away the boys. These boys had informed about this incident to the petitioner and the petitioner had questioned the deceased Balamurugan and there was some wordy quarrel and the petitioner is said to have punched the deceased in his chest and had pushed him, as a result, the deceased sustained injuries in the front side of his head after hitting a cement transformer.

3. The complaint was given by the Village Administrative Officer, viz., the second respondent on 29.07.2022 after he was informed that the deceased had died on 29.07.2022 at Rajiv Gandhi Government General



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Hospital, Chennai, under suspicious circumstances. Based on the same, a First Information Report came to be registered in Crime No.331 of 2022 u/s.174 Cr.P.C. Later, it was altered to offence u/s.302 IPC.

4. The first respondent took up investigation and filed a final report before the Judicial Magistrate I, Nagapattinam and the same was taken on file by the Court below in PRC No.40 of 2022. The same has been put to challenge in this petition.

5. Heard Mr.N.Manokaran, learned counsel for petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.Side) appearing for first respondent.

6. The short issue that arises for consideration in this case is as to whether even on the admitted facts as projected in the final report, an offence u/s.302 IPC has been made out.

7. This is a case where there was a wordy quarrel and the accused is said to have pushed the deceased and as a result, the deceased hit a cement



transformer and sustained injuries in the front portion of the head. It will be more relevant to take note of the postmortem certificate that was issued by LW-21. For proper appreciation, the relevant portions are extracted hereunder:

"Appearances found at the Postmortem : on moderately nourished dead body of the male with bluish finger nails, hazy cornea and postmortem lividity on its back, the following antemortem injuries were present on the body:

1) Reddish brown abrasions : a) 2 x 2 cm on the left eyebrow; b) 2 x 2 cm on the left eyebrow; c) 0.5 x 0.5 cm on the knuckle of left middle finger; d) 1-0.5 x 0.5 cm abrasions on the tips of all five toes of left foot.

The deceased would appear to have died of effects of Acute Cerebrovascular accident (stroke), a natural cause. However the chemical analysis of viscera could not detect alcohol (or) other poison."

8. It is clear from the above that the deceased had not died due to the injuries sustained by him and he had died due to natural cause. The same is also further explained by the doctor [LW-21] from whom statement was recorded u/s.161(3) Cr.P.C.

9. It is further seen from the Accident Register, which was recorded by the doctor [LW-23] that the deceased had got himself admitted in the Tiruvarur Medical College Hospital on 25.07.2022 at 11.26 p.m. and it is



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recorded that the deceased had fallen down from the motor cycle under the influence of alcohol on 25.07.2022 at 09.30 p.m. The deceased had absconded from the hospital on 26.07.2022 and he got readmitted in the Rajiv Gandhi Government General Hospital, Chennai, on 28.07.2022 and he died on 29.07.2022 between 06.30 and 07.00 a.m. It is not known as to what happened to the deceased during the interregnum period.

10. The evidence of the eye witnesses, who were examined as LW-2 to LW-4 also shows that there was a wordy quarrel and the petitioner is said to have pushed the deceased.

11. In the light of the materials that are placed before this Court, it must be seen as to whether an offence of murder has been made out on the facts of the case. Useful reference can be made to the judgment of this Court in ***K.Jeevanantham and Ors. v. State and Ors. [2018 (4) MLJ (Crl) 709]*** wherein this Court had an occasion to deal with a case with almost similar facts and it was held as follows:

"14.The distinction between a culpable homicide amounting to murder and culpable homicide not amounting to murder has been dealt with by the Hon'ble Supreme Court in various decisions. A



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comparative table of Section 299 and Section 300 of IPC is extracted herein below for easy reference.

<u>299 - Culpable Homicide</u>	<u>300 - Amounting to Murder</u>
<u>Intention:-</u> a) With the intention of causing death.	(1) With the intention of causing death.
(b) With the intention of causing such bodily injury as is likely to cause death.	(2) With the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused.
	(3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause the death.
<u>Knowledge:-</u> (c) With the knowledge that he is likely to cause death.	(4) With the knowledge that the Act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause.

15. The materials available on record does not fall within the four limbs of Section 300 IPC. The same will be clear from the injuries recorded by the doctor during the Postmortem. The injuries as extracted herein above are simple injuries without any serious corresponding internal injuries. In other words none of these injuries had caused the death of the deceased Muthu. If the case does not fall within the four limbs of Section 300 IPC, it is not culpable homicide amounting to a murder.



16. This Court has to next see whether the act of the accused persons will amount to culpable homicide not amounting to murder deserving to be punished under Section 304(i) or (ii) of IPC. In order to bring in a case under this Clause, the Court has to see whether the 2nd or the 3rd Clause under Section 299 IPC has been made out by the prosecution. In the facts and circumstances of the case and based on the materials available on record, the act of the petitioners will not fall even within the 2nd or 3rd limb of Section 299 IPC. Whether by employing the test of intention or the test of knowledge, there are absolutely no materials to connect the injuries sustained by the deceased and the actual cause of his death. The final opinion very clearly states that the deceased died out of Coronary Artery Heart Disease and admittedly the deceased had consumed ethyl alcohol which is clear from the viscera report prepared by the Forensic Department at Salem. If the deceased had died due to the emotional stress he suffered after the incident, that will not automatically result in a charge of murder against the accused persons. Therefore, this Court finds that there are absolutely no materials to frame a charge against the petitioners for an offence under Section 302 of IPC."

12. In the instant case, the facts as also the materials placed before this Court do not bring this case within the ambit of the four limbs of Section 300 IPC. Similarly, the facts of this case do not fall within the three limbs of Section 299 IPC. Either by employing the test of intention or the test of knowledge, there are absolutely no materials to connect the injuries sustained by the deceased and the actual cause of his death. At the best, it can only be construed that the deceased would have died due to emotional stress after the incident, but, that by itself will not make out a charge for the offence of murder against the petitioner. In view of the same, there are absolutely no material to proceed further against the petitioner for the charge



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u/s.302 IPC.

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13. The facts of the present case, at the best, makes out offences u/s.323 and 324 IPC. For this purpose, the petitioner has to necessarily face the trial before the concerned Court. It is brought to the notice of this Court that the case has already been committed to the Principal District and Sessions Court, Nagapattinam and it was taken on file in S.C.No.49 of 2023.

14. In the light of the above discussion, the charge against the petitioner for offence u/s.302 IPC is unsustainable.

15. The Principal District and Sessions Judge, Nagapattinam, is directed to send back the entire case records to the Judicial Magistrate Court, Kilvellur, Nagapattinam and the Court below shall frame appropriate charges against the petitioner based on the materials collected by the prosecution. It is left open to the petitioner to raise all his defence in the course of trial and the same shall be considered on its own merits and in accordance with law.



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This Criminal Original Petition is disposed of in the above terms.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Speaking order: Yes/No

Neutral citation: Yes/No

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To

1.The Principal District and Sessions Judge,
Nagapattinam.

2.The Judicial Magistrate Court,
Kilvellur, Nagapattinam.

3.The Inspector of Police,
Kilvellur Police Station,
Nagapattinam District.

4.The Public Prosecutor
High Court of Madras,
Madras.

N.ANAND VENKATESH, J

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