



CrI.A.No.10 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :07.03.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.A.No.10 of 2020

Vekatesan, M/43 (Convit Number 7676)
S/o Radhakrishnan
Convicted Prisoner,
Central Prison-Puzhal,
Chennai.

.. Appellant

/versus/

The State by
Inspector of Police,
J-11, Kannaki Nagar Police Station,
Kancheepuram District.
(Crime No.1527 of 2010)

.. Respondent

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., praying to set aside the order of conviction passed by the judgment in S.C.No.66 of 2012 passed by the Additional District and Sessions Court, Chengalpattu, by judgment dated 29.08.2019 and acquit the appellant/accused.

For Appellant :Mr.R.Thirumoorthy

For Respondents :Mr.R.Krishore Kumar
Government Advocate (CrI.Side)



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CrI.A.No.10 of 2020

JUDGMENT

This appeal is filed by the sole accused, who was found guilty of offence under Section 304(i) of IPC for causing death of 1 ½ years old child. While the accused attempted to stab one Pachaiammal, but accidentally, hit the child carried by the daughter of Pachaiammal, who tried to prevent the accused from stabbing Pachaiammal.

2. The case of the prosecution is as follows:-

The accused Venkatesan was residing opposite to the house of the complainant. When the accused asked Pachaiammal to arrange a job, she has arranged for a helper job to the mason work in a construction site for daily wages of Rs.400/-. After 3 days, the accused was paid Rs.370/- per day after deducting Rs.30/- per day from his wages. The wage of the accused had deducted at the rate of Rs.30/- per day as a commission for Pachaiammal who arranged the job for him. Therefore, on 14.12.2010 at about 10 am the accused went to the house of the Pachaiammal, picked up quarrel and questioned, how she got the commission for arranging his job. When Pachaiammal denied receiving any commission, the



CrI.A.No.10 of 2020

accused took a pen knife and tried to stab Pachaiaammal. On seeing this, Banumathi the daughter of Pachaiaammal, who was carrying 1 ½ years old boy Vadivel Murugan, intervened and tried to stop the accused, the attack and aim fell on the child head caused cut injury. The child was taken to the Government Hospital, Chennai, but died. Initially, a case was registered for the offence under Section 302 of IPC in Crime No.1527 of 2010 on 15.12.2010. Later, in the course, it was found that the death occurred not due to the intentional to cause death of the 1 ½ years old child. Hence, the police altered the charge and filed the alteration report under Section 304 of IPC, instead of 302 of IPC.

3. On completion of investigation, final report was filed. The accused was served with papers under Section 207 of Cr.P.C and the case was committed to the Court of Sessions for trial. The trial Court framed charge under Section 304 (i) IPC and questioned the accused , who denied the charge and went for trial. To prove the prosecution case, 12 witnesses were examined and 16 exhibits were marked and also 4 material objects were marked. On completion of trial, the trial Court held the accused guilty of the offence under Section 304(i) of IPC and convicted him to undergo 10 years RI and fine of Rs.1000/- in default, to undergo one year



CrI.A.No.10 of 2020

RI. The period of imprisonment already undergone by the accused was ordered to be set off under Section 428 of Cr.P.C.

4. The accused being aggrieved by the conviction and sentence, has preferred this appeal on the ground that the witnesses to the prosecution are close relatives and interested witnesses and therefore, they are not reliable. The injury caused to the deceased boy probably would have been caused due to the accidental fall of the child on record and got hit by stones and bricks. The evidence of the eye witness regarding the stab injury does not tally with the post mortem report, which renders the evidence of the so-called eye witness is doubtful. In the absence of intention or knowledge to cause the death of minor boy, the trial Court ought not to have convicted the accused for the offence under Section 304 (i) of IPC since the ingredient required for the offence under Section 304 (i) IPC is not satisfied. When there is a reasonable doubt regarding the witnesses to the prosecution and the witnesses regarding the confession statement and recovery have not been supported by the independent witness, who turned hostile, the accused should have been extended the benefit of doubt.



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5. Per contra, the learned Government Advocate (crl.side) appearing for the State submitted that, it is the case where the occurrence been witnessed by PW-2 the mother of the minor child and PW-1 the grand mother of the minor child. The case of the prosecution that suspecting the PW-1 has taken commission for arranging the job, the accused has gone to the house of the PW-1, picked up quarrel and tried to stab her with the pen knife marked as M.O.1. On seeing this, the daughter of PW-1 rushed and tried to prevent the accused from stabbing her mother. In the course of the said event, the accused stabbed the minor boy held by PW-2 on her hip. The boy was taken to the hospital, immediately, but did not survive the injury, since it was on the vital part, namely, forehead causing exposure of the brain and loss of blood. Apart from PW-1 and PW-2, the incident have been seen by PW-4 and PW-5. They have corroborated the evidence of PW-1 and PW-2 and they are not related to PW-1 and PW-2. Therefore, the contention of the learned counsel appearing for the appellant that the witnesses to prosecution are all relatives and interested witnesses, is incorrect.



CrI.A.No.10 of 2020

6. Further, the learned Government Advocate submitted that the contention of the defence counsel that the injury might have been probable occurred due to the child was hit with stones and iron rod, when he accidentally fell on road, has also been ruled out, when the suggestion put to the post mortem Doctor that the injury might have happened by fall on the uneven road, he has categorically denied the suggestion that, there is no chance of sustaining such injury, if the person falls on the road accidentally.

7. The learned counsel for the appellant made an alternative submission that even if the Court holds that the death of 1 ½ years old boy was due to the injury caused by the accused, such injury was not caused with intention to cause death or with knowledge of causing death, it was an accidental injury, even as admitted by the witnesses to the prosecution and found in the charge framed by the trial Court. In such circumstances, it will not attract for the offence under Section 302 of IPC but only Section 308 of IPC.

8. Heard the learned counsel appearing for the appellant and the learned Government Advocate (crl.side) appearing for the State and perused the records.



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9. PW-1 Pachaiaammal and PW-2 her daughter Banumathi are the star witnesses of the prosecution. They are the mother and daughter. The victim of the crime is 1 ½ years old boy namely, Vadivel Murugan, who is the son of PW-2. The presence of the accused on the date of the occurrence at about 09.30 to 10.00 p.m., is spoken by PW-1, PW-2, PW-4 and PW-6. It is also seen from the evidence that the house of the accused and the house of the victim are nearby in the same street viz., VOC street. The quarrel has erupted, when the accused went to the house of PW-1 and picked up quarrel with regard to the commission alleged to have been collected by PW-1. All these witnesses had consistently deposed that the accused tried to stab PW-1 with M.O1, but it got lodged on the head of Vadivel Murugan, who was carried by his mother Banumathi (PW-2). The injury caused is found in the post mortem report, which is marked as Ex.P6. The nature of the injury as found in the post mortem is extracted below:

“1.As obliquely placed elliptical stab injury of size 3.6 cmx 1.7cm x cavity deep over right frontoparietal region of scalp with underlying cur fracture of right frontoparietal bones of size 3.5cm. Margins clean-cut, regular, angles acute. Tear of underlying dive of size 4 cm with brain parenchymaprotudingout. Laceration of right parietal lobe of brain of size 4x2x2 cm. Subdural and subarachnoid



hemorrhage present on right frontal and parietallobes. Intraventricular hemorrhage present on right side. The direction of the stab injury was downwards, forwards and inwards.

2.Dark red scalp contusion of size 6x6 cm on over left frontoparietal region with underlying depressed fracture of size 3x3 cm on left too temporal 6x2 base unit.”

10. The doctor has given the post mortem report wherein he has concluded that the death has occurred due to head injury. That apart, the ocular evidence clearly indicates that the head injury, which caused the death of minor boy was caused by the accused and the said evidences stands unimpeached. Whether the said act of committing culpable homicide not amounting to murder falls under Section 304(i) or 308 IPC as contended by the learned counsel appearing for the appellant is to be now considered.

11. Section 304 (i) reads as follows:-

304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with 1 [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

12. While Section 304 IPC deals with punishment with culpable homicide, 308 IPC deals with attempt to commit culpable homicide. These two Sections fall on two different footing. If a culpable homicide falls under any of the exemption enumerated under Section 300 IPC, lesser punishment is imposed under Section 304 holding that the culpable homicide is not amounting to murder. At the same time, if the homicide is not committed but only attempt, if the attempt is to commit murder, then punishment is prescribed under Section 307 IPC, if the attempt is to commit culpable homicide not amounting to murder, the punishment is prescribed under Section 308 of IPC. The case in hand, the death has been caused and the said death is not natural, but un-natural. Hence, it is a homicide. It has been committing in the course of attempt to stab PW-1, but fall on the minor boy viz., Vadivel Murugan 1 ½ years old boy, who has been carried by her mother PW-2, when she intervened to stop the accused stabbing PW-1.



13. For this purpose, referring illustration (b) of Section 300 of IPC is

beneficial. The said illustration reads as below:-

“(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as in the ordinary course of nature would cause death.”

14. It is the case where the prosecution has proved that it is the case of culpable homicide committed by the accused, but not amounting to murder since it was committed in the course of sudden provocation and the accused has lost his self control. However, the injury so caused likely to cause death and even though the intention of the accused was to cause injury to PW-1, but by mistake, it fell on Vadivel Murugan. Going by the illustration, it is culpable homicide not amounting to the murder committed with the knowledge that the injury is likely to cause death



CrI.A.No.10 of 2020

and therefore, the finding of the Court below holding guilty of the accused under

Section 304 (i) IPC is sustainable and upheld.

15. As far as the sentence is concerned, this Court, taking into note of the fact that causing death of Vadivel Murugan was not the intention of the accused. However, his act has caused the death of Vadivel Murugan. His conduct after causing injury to Vadivel Murugan clearly indicates that he absconded from the scene of occurrence and thereafter, when he was apprehended by the police, he has honestly confessed his guilt and explained, how the incident had happened and also disclosed the place, where he has concealed the blood stain knife. The saree of PW-1 and shirt of the accused along with blood stain knife were sent for Serological test. Though the result of blood group in respect of the sample collected from the knife was inconclusive, the blood group found in the saree of PW-2 and the shirt of accused has confirmed that they belonged to “A” blood group. Therefore, the contention of the learned counsel appearing for the appellant the variation and contradiction regarding the scene of occurrence has to be rejected, since the house of PW-1 and the scene of occurrence are shown in sketch Ex.P8 very close to each other.



CrI.A.No.10 of 2020

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16. Taking into consideration of the facts and circumstances, stated above, the sentence of 10 years RI is modified to 3 years RI with fine of Rs.1000/- in default, 6 months SI.

17. With the above modification, this Criminal Appeal is partly allowed. The judgment of conviction passed by the Additional District and Sessions Court, Chengalpattu, in S.C.No.66 of 2012, dated 29.08.2019 is confirmed. However, the Sentence of 10 years RI and fine of Rs.1000/-, in default, to undergo one year RI is modified to the effect that he is sentenced to undergo 3 years RI with fine of Rs.1000/- in default, 6 months SI. The period of imprisonment already undergone by the accused was ordered to be set off under Section 428 of Cr.P.C.

07.03.2023

Index:yes/no

speaking order/non speaking order

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To:

- 1.The Additional District and Sessions Court, Chengalpattu.
- 2.The Public Prosecutor, High Court, Madras.



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CrI.A.No.10 of 2020

DR.G.JAYACHANDRAN,J.

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CrI.A.No.10 of 2020

07.03.2023