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Court : Chennai

Decided On : Apr-13-2016

Judge : The Honourable Dr. Justice P. Devadass

Appeal No. : Crl.M.P. No. 4328 of 2016 in Crl.A. No. 270 of 2016

Appellant : Ranganathan and Others

Respondent : The State Represented by Inspector of Police, Coimbatore

Judgement :

(Prayer: Petition filed under Section 389(1) r/w Section 439 of Cr.P.C., to suspend the sentence of imprisonment passed in S.C.No.6 of 2014 dated 14.3.2016 by the learned IV Additional District and Sessions Judge, Coimbatore and enlarge the petitioner on bail pending disposal of the Criminal Appeal.)

A1 to A3 in the Sessions Case in S.C.No.6 of 2014 on the file of learned IV Additional Sessions Judge, Coimbatore while challenging his conviction and sentence, seeks suspension of his sentence of imprisonment under Section 389(1) of Cr.P.C.

2. They were tried for a charge under Section 302 IPC. Ultimately, the learned Judge recorded conviction under Section 304(ii) IPC and sentenced each of them to two years R.I each and also directed each to pay a compensation of

Rs.50,000/-, i/d 6 months S.I.

3. It started a drunken brawl but ended in the death of a person all because of a useless liquor bottle. Bottle gone to the dustbin. One man gone to grave yard.

4. The trial Court, considering that a person has been killed, convicted and sentenced the accused as stated already.

5. The learned counsel for the petitioner argued that at any rate it will not be 'murder', it will not also 'culpable homicide' not amounting to murder. If the evidence of prosecution is taken as such, it may be an hurt case. This vital aspect has been missed by the trial Court. The trial Court seems to be mainly carried away by the evidence of postmortem doctor P.W.9. However, oral evidence and medical evidence as such would not show that it is a case of culpable homicide. Thus, there is prima facie case in favour of the petitioner. Yet without prejudice to the defence contention, the petitioner is ready to deposit the compensation amount as ordered by the trial Court.

6. The learned Additional Public Prosecutor submitted that in the occurrence there is a dead body. The trial Court has taken into account the circumstances leading to the death of the deceased. Having taken into account that there was no unusual act or cruel act recorded a lesser conviction and accordingly, punished him. Thus, there is no prima facie case in favour of the petitioner.

7. In the facts and circumstances, now the question is whether the petitioner could be granted appeal.

8. Lord Macaulay, in his great Indian Penal Code while dealing with offence against human bodies separately cataloged offences affecting human life. While codifying such offences, the basic principles of criminal law namely, mens rea (guilty mind) and overt act has not been discarded by the framer of the Code. It would be seen from the key words employed in Section 299 I.P.C.

9. The minute distinction between the mens rea namely, intention and knowledge has been very nicely distinguished by Justice Melvill in R VS. GOVINDA (1876) 1 Bombay (Also see State of Andhra Pradesh Vs. R.Punnaiyya (AIR 1977 SC 45),

which has been put in a tabular form in Ratanlal and Dhirajlal's Indian Penal Code. (Indian Penal Code Ratanlal and Dhirajlal, 32nd Edition, 2010, Lexis-Nexis Wadwhan, Nagpur, PP 1300-1302). Even now it holds the field.

10. The maker of the Code for the purpose of Section 299 300 IPC (302, 304(i) or (ii) IPC), has classified mens rea into three categories, namely, 'intention' to cause death, 'knowledge' that the overt act is sufficient to cause death, in other words, likely to cause death and 'knowledge' that the overt act is sufficient to cause death in the ordinary course. If any of the said facet of mens rea is established, then the killing would be 'culpable homicide'. It is a condition precedent. Then only whether the overt act amounts to murder or culpable homicide not amounting to murder either falling under Section 302 or 304 (i) or (ii) IPC will become relevant.

11. Thus, merely because there is a dead body in an occurrence, one cannot suddenly jump to conclusion that it is a culpable homicide. There may be overt act. It may be sans or mens rea or malice as employed in Section 299 IPC. There may be a death but sans mens rea as prescribed in Section 299 IPC. Sometimes at the most if there is evidence it may become an hurt case, the gravity which is based on the 'type of the weapon' and the 'nature of the injury'.

12. The conclusion of the doctor on the injury etc., is not equivalent to a Judgment of a Court. It is his opinion. It is opinion evidence. Just like other expert, the medical expert gives his opinion. It will be a corroborative piece of evidence. It is to know whether the manner of assault or offence as projected by the prosecution is probable, possible. The evidence of medical witness is not equivalent to evidence of an ocular witness. The view of the medical witness is based on his knowledge on Medical Science but a view of a Judge must be based on his legal knowledge. I mean to say as prescribed under Section 299 I.P.C. In this regard, the opinion of a medical witness is of helpful but it cannot be sole test, independent of the requirement of Penal law.

13. In this case, the accused were alleged to have slapped the deceased in his cheeks. P.W.9 Dr.Kuladai Velu conducted autopsy on the dead body of the deceased. There is one lacerated wound on the leg, contusion on his cheek, neck, abrasion on his left knee.

14. In the light of the above, certain eminently arguable points are involved in this criminal appeal are required to be examined in detail at the time of hearing the main appeal. Thus, I find prima facie case in favour of the petitioners. That apart, they were on bail throughout the trial court proceedings. Further, the petitioners have come forward to deposit the compensation. Further, it will take some time for the disposal of this criminal appeal. In the circumstances, I am inclined to grant them appeal bail.

15. Ordered as under :

(i) Appeal bail granted.

(ii) Their Sentence of imprisonment alone is suspended;

(iii) There shall be two sureties, they and the petitioner shall execute a bond for Rs.15,000/- (Rupees Fifteen Thousand only) each to the satisfaction of the learned IV Additional Sessions Judge, Coimbatore.

(iv) At the time of executing the bail bond each shall deposit a compensation of Rs.50,000/- ordered under Section 367 Cr.P.C in the trial Court and in the event of depositing the amount, the trial Court will disburse the amount to the eligible person.

(v) Petitioners shall also appear on the first working day of every month before the said Court at 10.30 a.m., until further Orders.

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