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Pichapillai Vs. the State

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Court : Chennai

Decided On : Mar-04-1996

Reported in : 1996CriLJ3634

Judge : Rengasamy, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 302, 304, 323 and 328

Appeal No. : Criminal Appeal No. 855 of 1989

Appellant : Pichapillai

Respondent : The State

Advocate for Def. : R. Raghupathy, Addl. Public Prosecutor

Advocate for Pet/Ap. : S.E. Victor, Adv.

Judgement :

1. This appellant stands convicted and sentenced to undergo rigorous imprisonment for five years by the learned Additional Sessions Judge, South Arcot at Cuddalore in S.C. 13 of 1988 for the offence under Section 304 (II) Indian Penal Code. The facts of the case are in brief as follows :-

The appellant and the deceased are brother-in-law to each other. The property is not divided between the appellant and his brother, P.W. 3 and on the fateful day, P.W. 3 cut certain thorny branches of the tree in the undivided land for fire wood

and it was objected to by the appellant, stating that he should not cut the firewood in the plants standing in the undivided land. As there was a quarrel between them, P.W. 4 who came by that way after grazing his cattle, intervened and separated them. By about 6.00 p.m., on the same day, i.e. on 9-7-1987, once again the brothers viz., the appellant and his brother, P.W. 3.were quarrelling with each other for cutting twigs in the plants standing in the undivided land. The deceased intervened and he sent P.W. 3 to his house. P.W. 1, the son of the deceased and is mother also came to the house of the appellant on hearing the noise of the quarrel. The appellant who went inside his house came out when the deceased was standing at the entrance of his house. The appellant became furious and told the deceased that who was he to intervene for doing the panchayat and so saying he rested his hands on the chest of the deceased and gave a push. The deceased fail on the ground with his face upwards, where a stone in the ground was present. There was bleeding injury on the head. P.W. 1 and others brought him to his house and he could not even swallow the water and within a few minutes, his life became extinct. P.W. 1 by about 9.00 p.m., went to the house of the village Chief where the village Administrative Officer, P.W. 2 was present. P.W. 1 gave a statement to him which was reduced to writing as Ex. P. 1 and along with a report of the Village Administrative Officer, Ex. P. 2, he took them to Kacharapalayam Police Station. P.W. 10, the Sub-Inspector of Police in Kacharapalayam Police Station, after receiving the complaint with Ex. P. 2 report registered the case in Crime No. 136 of 1987 under section 302 Indian Penal Code and forwarded the first information to the superior police Officer.

2. P.W. 11, the Inspector of Police Sanwarapuram, who received the message at 5.00 a.m. on 10-7-1987, came to the scene of occurrence and prepared the observation mahazar, Ex. P. 3 in the presence of P.W. 5 at 6.00 a.m. He collected the blood stained mud M.O. 1 and the sample and M.O. 2 in the presence of the witnesses under mahazar Ex. F. 4. He also prepared the rough sketch Ex. P. 18 for the scene of occurrence. He conducted the inquest and prepared inquest report, Ex. P. 19. The body was sent through P.W. 7 for doing post-mortem examination in the Government Hospital at Kallakurichi.

3. P.W. 6, the Medical Officer attached to the Government Hospital, Kallakurichi, received the requisition of the Inspector of Police, Ex. P. 5 on 10-7-1987 and conducted the post-mortem examination on the body of the deceased. She found a semi linear shaped injury 2 1/4 x 1/4 c.m. exposing the bones, over the back of the scalp left side, a contusion of 6 x 6 cm. over the lateral aspect of the scalp left side and in the left side of the face, lateral to the left eye, a constusion 1 x (1/2) c.m. The internal examination revealed fracture of the parietal bone, left side corresponding to the external injury No. 1 and laceration over the brain and another fracture in the temporal bone left side with clotted blood behind the scalp corresponding to the external injury No. 2. She was of the opinion that the death was due to shock and haemorrhage due to the head injuries, 18 to 22 hours prior to the post mortem examination. Ex. P. 6 is the post-mortem certificate issued by her.

P.W. 7 recovered M.O. 3 dhoti, M.O. 4 waist cord and M.O. 5 loin cloth from the body of the deceased for handing over the same to the Inspector of Police.

4. P.W. 11 Inspector of Police examined the witnessess and arrested the accused/appellant at 5.00 p.m. on 10-7-1987 in Eravaipattinam village in the road leading to Chinnasalem. The Inspector of Police, P.W. 11 sent requisition to the Judicial Magistrate's Court, Kallakurichi for sending the blood stained articles for forensic examination. The Judicial Magistrate, Kallakuriehi, who forwarded them along with his covering letter Ex. P. 8, received the forensic report Ex. P. 9 and the serologist report Ex. P. 10. After completing the investigation, P.W. 11 filed the charge sheet against the appellant for the offence under Section 302 Indian Penal Code.

5. After the examination of the witnesses, the appellant was questioned with regard to the incriminating circumstances found against him in the evidence of the witnesses, but the accused denied his complicity in the crime and he said that the village Menial Munusami is his enemy and at his instance, the case, has been foisted against him. He has not chosen to examine any witness on his side. Learned Sessions Judge, South Arcot. Applying his mind, has found that though the appellant was charged for the offence under Section 302 I.P.C., the

prosecution has established the guilty of the accused only for the offence under Section 304(II) Indian Penal Code and having found the appellant guilty of the said offence, convicted him and sentenced to undergo rigorous imprisonment for five years.

6. Learned counsel appearing for the appellant Mr. S. E. Victor argues before me only with regard to the nature of the offence said to have been committed by the appellant and also for the reduction of the sentence. According to the learned counsel, the appellant who is none-else than the brother-in-law of the deceased, had no enmity against him and there was also no intention to cause the death of the deceased, but, even according to the prosecution a simple push which made the deceased to fall behind on the stone has caused the fatal injury in the head leading to his death. Except the overt act for the pushing down by the appellant, there are no other incriminating circumstances to find him guilty under Section 304(II) Indian Penal Code and therefore, the offence would fall only under Section 323 Indian Penal Code, even according to the facts of the case as narrated by the prosecution witnesses.

7. As the learned counsel for the appellant does not dispute the truth of the version spoken to by P.W. 1 and P.W. 3 the brother of the appellant who though denies knowledge as to the alleged push given by the appellant, he concedes the quarrel between himself and the appellant. The evidence of P.W. 1 and P.W. 4 establishes the prosecution case that on account of the quarrel between the brothers the deceased had to intervene as he happened to be the brother-in-law of them; but the appellant some how mistook that the deceased should not have intervened in his family dispute and therefore, without any intention of causing any harm to the deceased had given a push by resting his hand on the chest of the deceased which made the deceased to fall backward on a stone. Therefore, this untainted version of the prosecution witnesses cannot be disputed and the learned counsel for the appellant also is not challenging this version of the prosecution witnesses. Therefore, the only question is as to the nature of the offence committed by the appellant.

8. Learned Additional Public Prosecutor fairly concedes that this appellant cannot be punished for the offence under Section 304(II) Indian Penal Code, as he did not do anything except giving a push on the chest of the deceased that too without any intention to cause any injury or damage to the deceased. It is also not the prosecution case that the appellant wanted to cause any injury to the deceased. Therefore, the appellant can be punished only for the overt act of pushing down the deceased. The Supreme Court in Jani Gulab Shaikh v. State of Maharashtra, 1969 UJ (SC) 598, has dealt with a similar case of pushing the deceased who was a drunkard as he scolded the accused in that case. The deceased fell down on the ground by which he developed fracture in the scalp leading to his death. Though the trial Court and the High Court convicted the accused in that case for the offence under Section 304(II) Indian Penal Code, the Supreme Court held that the appellant who pushed down the deceased was punishable only under Section 328 Indian Penal Code. This Court in Crl.A. 759 of 1983 dated 20-3-1987 has dealt with a similar case in which the deceased who was standing at some height for putting a pandal was pulled down by his leg by the accused on account of which, the deceased who fell down developed fracture in the scalp leading to his death. This Court brought the offence only under Section 328 Indian Penal Code as the overt act alleged against the appellant in that case was pulling down the deceased by his leg unintentionally to cause his death. Therefore, in this case also the same view has to be followed. This appellant who has committed the offence under Section 328 Indian Penal Code, shall be dealth with only for this offence. The result is that the conviction and sentence of the appellant for the offence under Section 304(II) Indian Penal Code is set aside, instead he is convicted under Section 323 Indian Penal Code and sentenced to undergo rigorous imprisonment for one year. Subject to the modification in the nature of the offence and the consequential sentence, the appeal otherwise stands dismissed. Though the appellant has been convicted to undergo rigorous imprisonment for one year, in view of the G.Os. 781 Home (P.R.C.) Dept., dated 11-4-1990 and 279 Home (Prison-C) Department, dated 23-2-1992, the entire sentence stands remitted. Therefore, the appellant can neither be arrested nor detained.

9. Order accordingly.

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