Public Prosecutor Vs. Somasundaram and ors.

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Court : Chennai

Decided On : Sep-30-1958

Reported in : AIR1959Mad323; 1959CriLJ993; [1961(2)FLR330]

Judge : Somasundaram and ;Ramaswami, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 299 and 300

Appeal No. : Criminal Appeal No. 140 of 1958

Appellant : Public Prosecutor

Respondent : Somasundaram and ors.

Advocate for Def. : P. Paramasivan, Adv.

Advocate for Pet/Ap. : Party in person

Disposition : Appeal partly allowed

Judgement :

Ramaswami, J.

1. This appeal is preferred by the State against the acquittal of accused 4 and the convictions of accused 1 to 3 under Section 304 (Part II) instead of under Section 302 I. P. C., in Sessions Case No. 132 of 1957 on the file of the Sessions Division, Salem.

2. The facts of this case are within a brief compass. There have been ill-feelings between the four accused persons and the deceased Naina Goundan. Accused 1 to 3 are the sons of accused 4. The deceased Naina Goundan had purchased lands which originally belonged to accused 4. The accused were pressing this Naina Goundan to give back two acres of land. The deceased was refusing. The accused therefore bitterly hated the deceased.

3. On 8-9-1957 at about 9-30 A.M. according to the prosecution the deceased Naina Goundan was ploughing his lands. The four accused then came' there and obstructed the old man from ploughing. They were insisting that he should give them back two acres of land. On Naina Goundan persisting in ploughing, accused 1 to 4, who were armed with bamboo stick and big portia sticks, fell upon him and belaboured him. Naina Goundan raised an alarm. In addition to Naina Goundan crying out, his grandson, P.W. 5, who was in the field gathering flowers for making a garland, raised an alarm. Thereupon the sons of Naina Goundan viz., Karurigannan (P.W. (1) who gave the first information report in this case, and his elder brother Kadaswami (P.W.2) ran there, P.Ws. 1 and 2 saw the deceased heing belaboured by die accused. On their interfering, P.Ws. 1 and 2 were also beaten by the accused. The wife of P.W. 1, Palani Ammal (P.W. 3) came there. Re-senting her interference, she was also beaten by the accused. P.Ws. 4 and 6 who live in the vicinity came there and witnessed the beating of P. Ws. 1 to 3 by the accused. They also noticed the deceased Naina Goundan lying on the ground,

near his plough. P.W. 5, has already been referred to as having witnessed the occurrence while collecting flowers for making a garland. P.W. 7 Korattayan alias Kali Goundan came there on hearing this Galatta. At that juncture the accused were going towards their nearby houses, armed with Sticks. P.W. 7 saw at the scene of occurrence the deceased and P.Ws. 1 to 3 injured. The injured persons told him what had happened. P.W. 8 speaks to the prior enmity between the parties and does not throw any light on the occurrence. '

4. P.W. 1, the son of the deceased, went and reported to the village Munsif (P.W. 16) before 11 A.M. about the occurrence. The first information report sets out concisely the aforesaid information. P.Ws. 4 and 6 are mentioned as having been present among others. The village Munsif verified the information and found severe injuries on the-deceased which had broken the hones all over and also injuries on P.Ws. 1 to 3, The village Munsif then despatched his reports to the Police and the Magistracy.

5. Subsequent to the information given by P.W. 1 to the village Munsif, accused 4 went to the village Munsif in the afternoon and gave information that when he was cooking in his- field hut at about 9-30 A.M., the deceased and his sons P.Ws. J and 2 and the wives of P.Ws. 1 and 2 and the grand-daughter of the deceased came there and the deceased and his sons started cutting the Seetha Trees, Papaiya trees and Athi trees forming the fence to This land, that on hearing the sound of cutting he rushed to the spot and questioned them that the deceased and his sons started belabouring him with stout sticks and stones, that on hearing his alarm his own sons accused 1 to 3 came there, that his sons were also belaboured with thick sticks and bill-hooks, that accused 1 and 2 were given blows on their heads with stout sticks, that accused 3 was given a cut on his right shoulder and another cut on the centre of his head and that then the deceased and his relatives ran away and that this is known to Chinnaswami and Nallur Sevi Goundan of Kongupatti village. This report also was sent to the Police and the Magistracy. In his report the village Munsif says that he saw injuries on the accused persons.

6. We may briefly summarise here the medical testimony. On the deceased Naina Goundan the Doctor found several fractures of the bones and contused wounds. In the opinion of the Doctor the fractures and contusions would have been caused at the time and in the manner mentioned by the prosecution. On P.Ws. 1 to 3, the Doctor found contusions and ordinary fractures consistent with their having been beaten with sticks at the time mentioned by the prosecution. The Doctor found on accused 1 to 4 contusions, which are all simple in nature and which, in the opinion of the Doctor, could have been caused by hits with stones or sticks. The Doctor was not also prepared to rule Out that these injuries might have been self-inflicted also, taking into consideration the nature of the injuries and the accessibility of the places where they were found.

7. Then, to resume our narrative, P.W. 17 the Sub-Inspector of Police, Deevattipatti, on receiving the reports of the village Munsif, registered them and started investigation. He visited the scene of occurrence and examined the material witnesses. On learning the death of the deceased, in the Hospital, P.W. 17 held the inquest. The material witnesses were examined without practicable delay. The report of Accused 4 was referred as false. On the report of the P. W. 1 an enquiry was held by the Stationary Sub-Magistrate, Omalur, and the accused were committed to Sessions.

8. The defence of the accused was their own version which on investigation was found to be false.

9. The learned Sessions Judge came to the conclusion, notwithstanding the fact that the evidence against accused 4 is identical with the evidence as against the Other three accused, that accused 4 was not guilty and acquitted him (accused 4) and found accused 1 to 3 guilty under Section 304 (Part II) I. P. C, on the ground that their intention to cause the death of the deceased has not been made out. Accused 1 to 3 were also found guilty of charges under Sections 326, 324 and 447 I. P. C. In all each of the accused 1 to 3 was sentenced to 3 years' rigorous imprisonment. Hence this appeal by the State as stated above. The convicted accused have not appealed against their convictions and sentences. But inasmuch as the Stale has preferred an appeal against their acquittal, it was open to them to canvass the correctness, propriety and legality of their convictions and sentences which they did.

10. The point for determination which arises in this appeal by the State regarding the offence under Section 302, I. P. C., is whether the learned Sessions Judge erred in his opinion that the offence made out was an offence under Section 304 (Part II) I. P. C.

11. The learned Sessions Judge thus expressed his conclusion regarding the nature of the offence proved :

'The seviousness of the injuries has been spoken to not only by the victims and the eye-witnesses P.Ws. 1 to S and 5, but by the medical evidence, The hits were so hard that the bones of the deceased were protruding and the limbs were broken and the victim died on the very day of his admission in the hospital. The weapons used for causing the injuries' are M.O. 1 series. The strained relationship and the dispute between the deceased and A4 as regards the land purchased by the deceased which originally belonged to A4 appears to be the motive for the wordy quarrel and use of sticks by the sons of A4 (Al to A3) ending in the breaking of the limbs of the deceased and his death. Though the injuries were severe, the prosecution has not proved beyond reasonable doubt the intention on the part of Al to A3 to cause the death of the deceased as the sale of the land by A4 was 20 years ago, and there had been other complaints also between them in the interval ..... It would therefore follow that taking all the probabilities in the case and the evidence, the prosecution has failed to make out a definite case of intention on the part of the accused 1, 2 and 3 to cause the death of Naina Coundan by causing the injuries on the person of the deceased and P.Ws. 1 2 and 3. The counsel for the defence suggests at the time of arguments that since the injuries have been aimed not on the vital part but only on other parts of the body, and only one injury bad been caused on the head and as the medical evidence would show that the injuries caused on the deceased taken singly could not have resulted in his death, the offence under charge 1 must be deemed to be only one of grievous hurt. But taking into consideration the fact 'that the three brothers have taken part in the occurrence in beating the old man and causing the injuries as are revealed by the post-mortem examination as very severe, it must be presumed that Al, A2 and A3 must have had the knowledge that the said injuries which they were causing would end in his death. I, therefore, find that though the prosecution has not proved beyond reasonable doubt the intention to cause the death on the part of Al, A2 and A3, the prosecution has proved beyond reasonable doubt that the accused 1 to 3 caused those injuries on the deceased as alleged, resulting in his death with the knowledge of the seriousness of the injuries that such injuries would cause his death.'

12. Now, as pointed out in the judgment in The Public Prosecutor v. Madasami, C. A. No. 646 of 1957, delivered on 4-6-1958,

'the expression 'intention to murder' used in a judgment dealing with a charge under Section 302 I. P. C, is wholly devoid of meaning. Indeed, the mistake made by the learned Sessions Judge in his judgment, as to the offence committed, flows directly from his failure to use the requisite legal terms and to adopt lines of thinking appropriate of the definition of murder given in Ss. 299 and 300 I. P. C. It is necessary that learned Sessions Judges and Magistrates dealing with offences, which have been defined with precision in the Indian Penal Code, should so thoroughly read those fine definitions that, the language of the sections gets woven into the: texture of their thought'. (Per Subrahmanyam J.)

13. A correct apprehending of the phrase 'intention to murder' requires an analysis of sections 299 and 300, I. P. C.

14. The mental element in culpable homicide: i.e., the mental attitude of the agent towards the I consequences of his conduct, is one of intention or knowledge. Motive is immaterial so far as the offence is concerned, and need not be established: The intention refers to either the death itself or a bodily injury which is likely to cause death i.e., an injury dangerous to life, whilst the knowledge refers to the death itself. There are thus three species of mens rea in culpable homicide. (1) An intention to cause death. (2) An intention to cause a dangerous injury. (3) Knowledge that death is likely to happen. Illustrations (a) and (b) to Section 299 I.P. C. give examples of culpable homicide accompanied by the first or third species and Illustration (c) shows that unless one or Other of the there species is present there can be no culpable homicide.

15. Every act is followed by consequences. The consequence necessary to constitute 'the offence of culpable homicide is death. By 'intention' is meant the expectation of the consequences in question and intention does not therefore necessarily involve premeditation, or thinking out the killing before hand. A man expects the natural consequences of his acts and therefore in Law is presumed to intend them. Therefore, if a person in performing some act either (1) expects death to be the consequence thereof; or (2) expects a dangerous injury i.e., a bodily injury likely to cause death) to be the consequence thereof; or (3) knows that death is a likely consequence thereof, and in each case death ensues, his intention in the first two cases, and his knowledge in the third render the homicide culpable. A guilty intention or knowledge is thus essential to this offence, and if this does not exist the killing cannot amount to culpable homicide.

16. It will also be observed that death must be a likely result of the intended bodily injury in' the second case, and also a likely result of the act1 or omission in the third case. An effect is 'likely' to take place when there is a likelihood is distinguishable from mere possibility. A thing is possible when it may happen; likely when the chances are in favour of its happening, and probable when the chances are strongly in its favour. Thus, probability is the stronger degree of likelihood. A thing may therefore be likely without being probable, though a thing probable must be likely. Now, as pointed out in Section 200 I. P. C. death is a likely result either (i) in the ordinary course of nature, i.e., any one would be likely to die under the circumstances, or (ii) owing to special circumstances in the case or the person in question; for instance a dose of poison-sufficient to kill a child of tender years' would be comparatively innocuous to a man; the deprivation of food for twenty-four hours is sufficient to kill an invalid under some circumstances, whereas it would only affect a healthy individual unpleasantly; a shock sufficient to kill an individual suffering from aneurism of the heart, might be hardly felt by a strong person.

17. The intention or knowledge necessary in order to render killing culpable homicide must be clearly proved by the prosecution, which can usually he done by proof of the circumstances which prove the act or omission in question, for the presumption is that a man knows the probable result of his con-duct. The fact that such knowledge is accompaniedIby indifference whether death or serious injury is caused or not, or even by a wish that it may not be caused, makes no difference.

18. In order that culpable homicide may amount to murder, two things are essential, (i) The Jailing must be accompanies by the intention or knowledge specified in section 300 I. P. C. Culpable homicide is not prima facie murder. It lies on the prosecution to prove the requisite intention or knowledge. If the prosecution Tails to do this, But the Section 299.

Culpable homicide is causing death by an act or omission.

(1) With the intention of causing death

Or (2) With the intention of causing a bodilyinjury, likely to cause death, |

Or (3) With a knowledge that such act or omission is likely to cause death.

19. The terms of Sections. 299 and 300 are almost identical, as readily appears from the following tabular comparison : --

Section 300.

Culpable homicide is murder, If the act or omission is done,

(1) With the Intention o causing death.

(a)such as the offender knows is likely to cause the death of the person to whom the harm is caused, or

(b) sufficient in the ordi-nary course of natureto cause death.

Or (2) With the inten-tion of causing abodily injury.

Or (3) With a knowledge that the act oromission is so Imminently dangerous, that itmust in all probability cause death, or a bodilyInjury likely to cause death.

the act in question is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death; i.e.. if death is the most probable result of the act, then it will be a case of murder; but if only a likely result, then it will be only culpable homicide. Thus, culpable homicide (3) may or may not be equal to Murder (S).

20. The similarity between the two definitions has caused some difference of opinion as to the nature of the distinction between culpable homicide, and murder under the Code. The opinion on this point of the late Sir J. F. Stephen, the greatest criminal lawyer of his day, was as follows. In reference to the above table of comparison, he pointed out that culpable homicide (1) and murder (1) are identical; that murder (2) (a) and (b) together equal culpable homicide (2), i.e.. they explain the meaning of the word 'likely' by showing that a thing may be likely to happen, either because of some special circumstance in connection with the person injured, pr in the ordinary course of nature; that murder (3) differs from culpable homicide (8) only in the circumstances that it is more explicit, viz., that the conduct an question is so imminently dangerous to life that it is likely in all probability to cause death. Further: lie was of opinion that the mental elements referred to are comprised under the term 'voluntarily,' as defined in Section 89, and that consequently Section 300 could be shortly stated thus :

'Whoever voluntarily causes the death of any person is guilty of murder, except in the cases hereinafter mentioned. Whoever voluntarily causes the death of any person in any of the cases hereinafter mentioned is guilty of culpable homicide.'

In other words, culpable homicide is always murder unless it falls under one or other of the Exceptions to Section 300.

21. Comparing the defnitions of culpable homicide and murder contained in Sections. 299 and 300 respectively, and referring to the tabular comparison given above, it will be seen that the following is the result.

First: To cause death by an act intended toIcause death is culpable homicide under Section 299, amounting to murder under Section 300. Culpable homicide (1) is equal to Murder (1).

Second : To cause death by an act intended tocause an injury likely to cause death is culpablehomicide under Section 299. 'amounting to murder underSection 300. Culpable homicide (2) is equal to Murder1(2) (a) or (6) according to the circumstances.

Third: To cause death by an act which is known to be likely to cause death is culpable homicide under Section 299, and it will amount to murder if intention or knowledge requisite under Section 299 is established, then the accused is guilty of culpable homicide not amounting to murder, (ii) The killing must not fall within one or other of die five Exceptions to Section 300. If it does fall within them, the accused is guilty of culpable homicide not amounting to murder.

22. Putting it shortly, all acts of killing done with the intention (1) to kill, or (2) to inflict bodily injury likely to cause death, or (3) with the knowledge that death must be the most probable result, are prima facie murder, whilst those committed with a knowledge that death will be a likely result are culpable homicide not amounting to murder.

23. In all, there are thus five forms of culpable homicide, of which the first four are murder. To cause death by an act-

(1) intended to cause death;

(2) intended to cause a bodily injury which is| known to the doer to be likely to cause the death' of the person in question;

(3) intended to cause a bodily injury sufficient) in the ordinary course of nature to cause death;

(4) which is known to be so imminently dangerous that it must in all probability cause death, or a bodily injury likely to cause death;

(5) which is known to be likely to cause death. It Will be observed that (4) and (5) have no application to cases where death is caused by an act which is intended to cause death, or a dangerous bodily injury. An intentional infliction of a bodily injury falls within (1), (2) or (3).

24. Thus, (1) To cause death by conduct coupled with an intention to cause death is culpable homicide amounting to murder, (see Section 300, Exception 1, Illustrations (a), (c), (d), (e) and (f), unless it falls within one or other of the Exceptions to Section 300 (see Exception 1, illustrations (b) and (f) and Exception 2, Illustration), (2) To cause death by intentionally inflicting a bodily injury likely to cause death is culpable homicide, amounting to murder, unless it falls within one or other of the Exceptions to section 300. (3) To cause death by conduct known to be likely to cause death is culpable homicide; but it is not murder, unless the conduct is so imminently dangerous, that death, or a bodily injury likely to cause death, must tin all probability occur. But in the latter case it is not murder if it falls within one or other of the Exceptions to Section 300.

25. Referring to the tabular comparison given above, the foregoing may be briefly expressed as follows. Culpable homicide (1) always amounts to murder (1); culpable homicide (2) always amounts to murder (2) (a) or (b), according to the circumstances; culpable homicide (3) may or may not amount to murder (3). Wherever however culpable homicide amounts to-murder, it is reduced to culpable homicide if it falls within one or other of the Exceptions to Section 300. (R. A. Nelson I. P. C. Fifth Edn. (Sweet and Maxwell) P. 506 and Ml; J. D-Mayne The Criminal Law of India Third Edn. (Higginbotham) p. 642 and foll; Sir Hari Singh Gour, The Penal Law of India Sixth Edn. (1955) p. 1268 and foil. Dr. Nand Lal I. P. C. Vol. II p. 1348 and foil; V. B. Raju I. C. Section Penal Code (1957) page 648 and foll: Ski. Ratan Culpable Homicide (M.L.J.) p. 26 and foll.

26. Bearing this analysis in mind, if we examine the facts of this case, on the conclusions arrived at by the learned Sessions Judge the offence would fall under Clause (2) of Section 300 I. P. C. In fact from the nature of the weapons used (stout sticks) and the extensive and serious injuries caused in the vulnerable parts of 'the body of the deceased, the act done by the accused will also fall under Clause (3) of Section 300 I. P. C. The point is concluded by authority: see Virsa Singh v. State of Punjab, AIR 1958 SC 565.

27. If the matter had rested here, we would have found no difficulty in convicting accused 1 to S for an offence under Section 302 I. P. C. But the matter does not rest there. The evidence on record shows that this offence was committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offenders having taken undue advantage or acted in a cruel or unusual manner, thereby attracting Exception 4 to section 300 I. P. C. In this case there is no dispute that 'there were strained feelings between the parties on account of the accused asking the deceased to give back 2 acres of land. We do not know the rights and wrongs of it. The accused were constantly asking the deceased for the return of two acres and on the day of the offence they have gone to the field which the deceased was ploughing and asked him to return the two acres. There has been a wordy quarrel. From words the parties have come to blows. The weapons which they had been using are those which these ryots generally carry to the fields or those lying handy in the fields viz., sticks. In 'the course of the quarrel both the parties have sustained injuries. It cannot he said that the accused took undue advantage or acted in a cruel or unusual manner. Thus, all the elements for attracting Exception 4 to Section 300. I. P. C., are present in this case. There was no premeditation and it was only from words and that 'they had suddenly come to blows. It cannot be said that the accused had gone

to the field with express malice or pre-arrangement to cause the death of Naina Goundan. The term 'fight' occurring in Exception 4 to Section 300, I. P. C., is not defined in the Indian Penal Code. It takes two to make a fight. In order of constitute a fight it is necessary that blows should he exchanged and it is not necessary that weapons should be vised. Heat of passion requires that 'there must be no time for the passion to coot down and in this case the parties have worked themselves into a fury on account of the verbal altercation in the beginning. The fight, as the nature of the injuries on both sides would show, appears to be on equal terms. In fact if after exchange of blows on equal terms one of the parties without any such intention at the commencement of the affray suatches a deadly weapon and kills the other party with it, such a killing will be only manslaughter. But if A party under colour of fighting, upon equal terms, uses from the beginning of the contest a deadly weapon without the knowledge of the other party and kills the other party with such weapon, or if, at the beginning of the contest he prepares a deadly weapon so as to have the power of using it at some part of the contest and uses it accordingly in the course of the combat, and kills the other party with the weapon, the killing in both these eases will be murder. Thus to sum up, this is a case where when two men 'engage suddenly in a fight the death of one of them is not the most natural or inevitable result, nor can it be said that either of them desires the end of the other.

But it is a case where they may he borne, as it were, on the waves of the ocean of passion and if the sea is rough and the weather inclement only the fittest' can survive. In such a case the Court is not concerned with the origin of the fight and| the guilt or innocence of the accused is not dependent upon the result of an inquiry as to his conduct. The temper may rise with each exchange of blows, and it is not unlikely that the less blameworthy individual may conduct himself in a more blameworthy manner.

So long as 'the fight is unpremeditated and sudden, the accused, irrespective of his conduct before the fight, earns the mitigation provided for in the Exception 4 to Section 300 subject to 'the condition that he did not in the course of the fight take undue advantage or act in a cruel or unusual manner. This has been the case here and therefore the offence committed by the accused would attract Exception 4 to Section 300, I. P. C.

28. The net result of this analysis is that though the appeal by the State arose from the conclusions of the learned Sessions Judge due to his failure to comprehend the distinction between Ss, 299 and 300, I, P. C., on the facts of the case the convictions of accused 1 to 3 under Section 304 (Part II), I. P. C., have to be maintained for another reason viz., that the offence attracts Exception 4 to Section 300, I. P. C.

29. The appeal against the acquittal of accused 4 is bound to succeed. The evidence against him is identical as stated above, on the foot of which the learned Sessions Judge has convicted accused 1 to 3 and which conviction we are maintaining. The presence of accused 4atthe fight is fixed beyond doubt by the injuries found on him. In fact in his own first information report he speaks to the infliction of the injuries by the opposite party upon him and his sons and discreetly on its to mention the injuries inflicted by him and his sons on the opposite party.

The only reason given by the learned Sessions Judge for acquitting accused 4 is that the deceased Naina Goundan did not implicate in his dying declaration this accused 4. As a matter of fact the dying declaration is not admissible in evidence because the Magistrate who recorded it has noted in it that 'ho is not fully conscious of what he says' and in his evidence as P. W. 9 he states. 'The patient was blabbering something .....He could not be interrogated as he was not quite coherent'.

The Doctor who was present has noted in the dying declaration that the patient was not fully conscious. In fact the dying man spoke of Attukkaran stabbing him and running away, whereas there has been no stabbing and no question of any Attukkaran, having anything to do with this occurrence. Therefore, to state that the deceased did not implicatethis accused 4 is meaningless. On the evidence asset out above, which brings home to accused 4 theoffences for which he has been charged, we setaside his acquittal and convict him under Section 304(Part II) in respect of charge No. 1, under Section 326read with Section 34, I. P. C. (Charge No. 3) and underSection 447, I. P. C. (Charge No. 6) and sentence him tothe same terms of imprisonment

awarded to accus-ed 1 to 3 viz. R. I. for three years under Section 304(Part II) I. P. C., R. I, for two years under Section 326read with Section 34, I. P. C. and R. I. for two monthsunder Section 447, I. P. C., the sentences to run concurrently.

30. In the result, the appeal by the State willstand allowed and disallowed to the above extents.