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Court : Chennai

Decided On : Sep-28-1966

Reported in : (1967)2MLJ74

Appellant : Podi Alias Vedachalam

Judgement :

R. Sadasivam, J.

1. Appellant Podi alias Vedachalam has been convicted under Section 302, Indian Penal Code, for having caused the death of Adu alias Arumugham, by forcibly fisting him on his head, neck, etc., at Dhobikhana Maidan in Otteri at 12 noon on 9th November, 1965; and sentenced to imprisonment for life.

2. The deceased Adu alias Arumugham organised gambling activities at Dhobikhana Maidan near Government Firewood Depot, Otteri, and during inclement weather, cards play used to take place in the Mottai Amman Temple nearby. On the date of occurrence, 9th November, 1965, there was drizzling in the morning and cards were therefore played in the Mottai Amman Temple. P.Ws. 1, 7 and 10 and the deceased formed one set of players; and P.Ws. 3, 5, 11 and 14 the other P.Ws. 6, 8, 15 and 16 were there witnessing the play. At about 10 or 10-30 A.M., the deceased Arumugham left for his house deputing as usual P.W. 15 Gopal to collect the fees (Kottai Kasu). P.W. 13 Kothandan took the place of the deceased Arumugham. A little later, the deceased Arumugham returned from his

house, but immediately left the place along with P.W. 6, Thagarakadai Arumugham to go to the corporation, where he was a part-time employee to get his salary. P.W. 2 Varadarajulu and the appellant came there at about 11 A.M. and the appellant took the place of Kothandan and played one or two games and lost some money. Just then, the deceased Arumugham returned and stopped the play on the plea that the drizzle had stopped and the weather had cleared and hence the cards-play could be continued at the Maidan. So saying the deceased, Arumugham gathered the cards of the senior set and walked towards the Dhobikhana Maidan followed by P.Ws. 1, 2, 3 and 7. P.W. 15 Gopal began gathering the cards of the junior set. The appellant got annoyed on account of the play being stopped suddenly and took the umbrella of the deceased, which was laying there, and assaulted P.W. 15 Gopal. On learning that the umbrella belonged to the deceased Arumugham, he deliberately broke it on his knees and threw it away. Then he mounted on his cycle and rushed towards the deceased Arumugham, who was walking ahead, and deliberately dashed his cycle against the deceased Arumugham with the result that the deceased Arumugham fell down. Thereafter, the appellant dismounted from his cycle and after parking it, went and caught hold of the deceased Arumugham by his shirt firmly in his grip and fisted him on his face, neck, head, chest and stomach. The mild protest by the deceased Arumugham had no effect. P.W. 4, Pettai Gopalan, who was crossing the Maidan on his cycle at that time, got down from his cycle and intervened on behalf of the deceased Arumugham saying that he was a weakling and was likely to die and asked the appellant not to fist him. But the appellant got annoyed at the intervention of P.W. 4 Pettai Gopalan, and knocked him down and kicked him. The prosecution case is that after the deceased Arumugham fell down, the appellant went away and brought a knife and turned the body of the deceased Arumugham this side and that side and finding him dead or senseless, threw the knife contemptuously there and went away.

3. There were about ten eye-witnesses to the occurrence. P.Ws. 1, 2, 3 and 7 who followed the deceased Arumugham closely when they left for the Maidan, gave the details of the entire occurrence. P.Ws. 5 and 8 left the temple only after the appellant mounted on his cycle and they gave evidence about the fisting of the deceased Arumugham by the appellant. But they did not speak to the earlier

incident in which the appellant dashed his cycle against the deceased Arumugham. P.W. 6 Thagarakadai Arumugham saw the later part of the incident in which the deceased Arumugham was fisted by the appellant and Pettai Gopalan (P.W. 4) was kicked by the appellant when he intervened on behalf of the deceased Arumugham. P.Ws. 10 and 11 witnessed the occurrence from some distance. According to them, they saw only the appellant standing between the prostrate bodies of the deceased Arumugham and Pettai Gopalan. They did not witness the earlier fisting. It is needless to state that P.W. 4 who was the victim of violence at the hands of the appellant, spoke to his having seen the appellant fisting the deceased Arumugham and about his (P.W. 4's) intervention and the attack made on him by the appellant. The injured Arumugham died on the spot, probably within a few minutes.

4. The appellant has his own version about the occurrence in this case. According to him, he is a social worker and he was against the activities of the deceased, He however stated even during his examination under Section 342, Criminal Procedure Code, in the committal Court that he saw gambling in the temple from, the road and went to the Medical Stores in Perambur Barracks to phone to the police, returned home, that the deceased Arumugham called him and told him that he was showing persons to police and aimed to stab him with a knife M.O. 3, that he caught hold of Arumugham, that the knife fell down from the hand of Arumugham, that he picked up the knife and pushed Arumugham, that Arumugham fell down from the cycle and once again attempted to pick up the knife, that he fisted Arumugham on his face with his hand by way of self-defence and that but for his doing so, he would have been murdered and that Arumugham kicked him on his chest with his legs. During his examination under Section 342, Criminal Procedure Code, in the Sessions Court, he stated that he went to the police station and complained that the deceased tried to murder him with a knife and that thereafter he fisted him only twice, but that he was told that the deceased Arumugham was dead.

5. Having regard to the large volume of evidence in this case, and the admission of the appellant that he did fist the deceased Arumugham several times, the learned Advocate for the appellant did not dispute the fact that it was the appellant

who fisted the deceased. He addressed arguments in support of his contention that the appellant attacked the deceased Arumugham in the exercise of his right of private defence and, alternatively, that the offence committed by the appellant would not amount to murder, but only to grievous hurt, or in any event only culpable homicide not amounting to murder.

6. There is really nothing to support the plea of self-defence put forward by the learned Advocate for the appellant. It is true the learned Sessions Judge did not accept the prosecution case that the appellant went home and brought the knife M.O. 3, which was found lying at the scene of occurrence, though there is nothing improbable in the evidence of the prosecution witnesses about it. But this would not show that the deceased brought the knife M.O. 3. If really the deceased was armed with such a formidable knife like M.O. 3, the blade of which is more than a span in length, it is unlikely that he would have allowed himself to be fisted black and blue by the appellant without inflicting a single injury, or even a scratch on the appellant. It is true it was suggested to everyone of the eye-witnesses that the deceased Arumugham had the knife M.O. 3, but everyone of them denied the suggestion. There is no circumstance which would support the plea of the appellant that the deceased Arumugham attempted to attack him with the knife M.O. 3. There is, therefore, no scope for invoking the plea of right of private defence put forward by the appellant in this case.

7. P.W. 12, Dr. Gopalakrishnan conducted post-mortem on the body of the deceased Arumugham and he found about a dozen injuries. He gave his opinion that the injuries could have been caused by a bare hand fisting and that the deceased Arumugham would have died within 10 minutes. Injuries Nos. 4 and 5 are contusions over the temporal and parietal region on the right side. Injuries Nos. 8 to 11 are bruises of the right temporal and occipital region and the left parietal and frontal region. Thus there were bruises and contusions all over the head of the deceased Arumugham. The post-mortem disclosed subarachnoid haemorrhage. Such haemorrhage occurs between the arachnoid and the pia mater, and it is not localised but is diffused mixing with the cerebrospinal fluid in the subarachnoid space and spreading upwards over the surface of the brain. It is clear from Modi's Medical Jurisprudence and Toxicology, Fifteenth Edition, pages

271 and 272 that the haemorrhage is caused by injury to the vessels crossing the subarachnoid space and is usually associated with fracture of the skull bones and with contusion or laceration of the cortex of the brain. The author refers to a case reported in Lancet, 26th April, 1958, page 907, of a boxer aged 23 having died 321 days following two blows on the chin in a contest. The post-mortem in that case disclosed subarachnoid haemorrhage which could have been caused by a blow on the jaw. In the present case, the doctor has stated that the injury resulting in the haemorrhage could have been caused by fisting and that there must have been at least 5 blows on the head.

8. It remains only to consider the nature of the offence made out on the facts proved in this case. The learned Sessions Judge has relied on the decision in *Virsa Singh v. State of Punjab* : 1958 CriLJ818 , wherein it has been held that once the intention to cause the bodily injury actually found to be present is proved, the only question thereafter is whether the injury is sufficient in the ordinary course of nature to cause death. It is clearly stated in that decision that if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. There could be no difficulty in understanding the principle stated in, that decision in the light of the facts in that case. The appellant in that case gave one injury to the deceased on the abdomen by thrusting a spear which resulted in three coils of intestines coming out of the wound and the injury in the opinion of the doctor was sufficient in the ordinary course of nature to cause death. It is clear from that decision that the question involved in the first part of Clause 3 of Section 300, Indian Penal Code, namely, the intention to inflict is subjective to the offender; but the latter part, that the bodily injury so caused was sufficient in the ordinary course of nature to cause death, has to satisfy an objective test, namely, whether the injury was on the leg, or the arm, or the stomach, how deep it penetrated, whether any vital organs were cut and so forth. In *Anda v. State of Rajasthan* : 1966 CriLJ171 , it is clearly pointed out that the intentional injury which must be sufficient to cause death in the ordinary course of nature is the determining factor. The following passage in this decision gives the scope of Clause 3 of Section 3,00, Indian Penal Code, is pointed out:

The third clause views the matter from a general standpoint. It speaks of an intention to cause bodily injury which is Sufficient in the ordinary course of nature to cause death. The emphasis here is on the sufficiency of the injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary way of nature and when this exists and death ensues and the causing of Such injury is intended the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused and sometimes both are relevant.

In fact as early as in the decision in Reg v. Govinda I.L.R.(1876) 1 Bom. 342 , it is pointed out that the decision of doubtful cases like the present one must generally depend on a comparison of Clause (b) of Section 299 with Clause (3) of Section 300, Indian Penal Code. It is pointed out in that decision that the offence is culpable homicide, if the bodily injury intended to be inflicted is likely to cause death; it is murder, if such injury is sufficient in the ordinary course of nature to cause death, that the distinction is fine, but appreciable and that it is much the same distinction as that between Clause (c) of Section 299 and Clause (4) of Section 300, Indian Penal Code. As it is a question of degree of probability it is observed in that decision that practically it will generally resolve itself into a consideration of the nature of the weapon used. Thus a blow from the fist or a stick on a vital part may be likely to cause death; a wound from a sword in a vital part is sufficient in the ordinary course of nature to cause death.

9. In *W. Slaney v. State of M.P.* : 1956 CriLJ291 , the accused caused the death of the deceased in that case in the course of a sudden quarrel by hitting him with a hockey stick resulting in a fracture of the skull. It was held in that decision that the offence committed by the accused in that case without any premeditation was not murder, but one of culpable homicide not amounting to murder. It was also held in that decision that the nature of the injury was such that the accused could not be attributed with the special knowledge required by Section 300, Indian Penal Code, and the case was brought under Section 304, Indian Penal Code.

10. Applying the principles of the decisions cited above to the facts of the present case, we have no doubt that the act of the appellant would amount only to

culpable homicide not amounting to murder falling under Part I of Section 304, Indian Penal Code, and not murder falling under Section 302, Indian Penal Code. There is evidence in this case that the appellant is a trained boxer. The deceased Arumugham was a few years older and of a slender build with only one eye. The evidence of P.W. 4 is that he intervened on behalf of the deceased Arumugham saying It is significant to note that the other eye-witnesses in this case did not intervene as they were afraid of the appellant and their fear seems to be justified by the way in which P.W. 4 was treated by the appellant. It is on account of this fact that none went to the help of the deceased Arumugham, when he was lying down, even after the appellant left the place. There can be no doubt in this case that the appellant should have known that fisting on the head of a person without the hands being protected by gloves is likely to cause the death of the victim. The evidence in this case shows that the witnesses expected for sometime that the deceased would get up in the same manner as P.W. 4. But on account of the large number of fist blows received by the deceased Arumugham, which resulted in internal haemorrhage, he died on the spot. The doctor has stated that the haemorrhage noted as item 12 in his evidence is 'sufficiently fatal'. Evidently he means nothing more than that the injuries which caused the haemorrhage proved fatal in this case. But even in determining by objective test, we have to take note of the fact that no weapon was used by the appellant in attacking the deceased. Having regard to the above facts and circumstances of this case, the act of the appellant would amount only to culpable homicide not amounting to murder. We, therefore, alter the conviction from Section 302, Indian Penal Code to one under Section 304, Part I, Indian Penal Code and reduce the sentence from imprisonment for life to ten years' rigorous imprisonment. Subject to this modification, the criminal appeal is dismissed.