

State Rep. by Vs. Arumuga Kona

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Court : Chennai

Decided On : Jan-30-2013

Judge : M.Jaichandren

Appellant : State Rep. by

Respondent : Arumuga Kona

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

30. 01/2013 CORAM THE HONOURABLE MR.JUSTICE M.JAICHANDREN AND THE HONOURABLE MR.JUSTICE S.NAGAMUTHU Criminal Appeal(md).No.202 of 2006 State rep. By Inspector of Police, Kalakadu Police Station, Tirunelveli District. Cr.No.266/2001 .. Appellant/Complainant Vs. Arumuga Konar .. Respondent/Accused PRAYER This criminal appeal has been preferred under Section 378 Cr.P.C against the order of acquittal passed in S.C.No.374/2002, dated 06.02.2003, by the II Additional Sessions Judge, Tirunelveli with respect to Section 302 I.P.C and pray this Court may be pleased to set aside the order of acquittal and convict the accused. !For Appellant ... Mr.A.Ramar Additional Public Prosecutor ^For Respondent ... Mr.S.Ramasamy State Brief Counsel **** :JUDGMENT (The judgment of the court was made by S.NAGAMUTHU,J.) The State is the appellant in this case. The respondent is the accused in S.C.No.374 of 2002 on the file of the learned II Additional Sessions Judge, Tirunelveli. The respondent stood charged for offence under Section 302 IPC. By Judgment dated 06.02.2003, the trial Court in stead of Section 302 IPC, convicted him under

Section 326 I.P.C and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for one year. The respondent has not preferred any appeal challenging the conviction and sentence. But the State has come up with this appeal seeking enhancement of the punishment. That is how, this appeal is before this Court.

2. The case of the prosecution is briefly as follows:- i)The deceased in this case was one Narayana Konar. The deceased Narayana Konar had Palmyra trees on his land. On 22.11.2001, at about 8.00 a.m, the accused had collected leaves of palmyra trees by engaging coolies without the consent of the deceased. The deceased questioned the same. Suddenly, the accused shouted at the deceased saying that so long as the deceased was alive, he could not collect leaves. At that time, the accused was armed with a revolver. He suddenly cut the deceased on his left leg. The left leg was amputated. Then, he made another cut on the neck of the deceased. The occurrence was witnessed by P.Ws.1 & 2. The accused fled away from the scene of occurrence with the weapon. P.W.2 and others, thereafter, took the deceased to the Government Medical College Hospital at High-ground at Tirunelveli. P.W.6-Dr.Murugan was an Assistant Surgeon attached to the Government Medical College Hospital at Tirunelveli at High-Ground. On 22.11.2001, at about 10.55 a.m, the deceased was brought for treatment. He underwent treatment for the injuries sustained by him as an inpatient continuously. Despite the treatment given on 30.01.2002, at about 11.00 p.m, he succumbed to the injuries. ii)While the deceased was in the hospital, P.W.12, the then Sub-Inspector of Police, attached to Kalakadu Police Station proceeded to the hospital and met the deceased. Then, one Head Constable by name Pandiyaraj also accompanied him. The deceased gave an oral complaint. On the directions of the P.W.12, the Head Constable Pandiyaraj reduced the same into writing. The deceased signed the same. Ex.P.18 is the said statement of the deceased. On returning to the Police Station, P.W.12, registered a case in Cr.No.266/2001 under Section 307 I.P.C. Ex.P.19 is the First Information Report. He forwarded Exs.P.1, 18 and 19 to the Court and handed over the case diary to the Inspector of Police for investigation. iii)P.W.14, the then Inspector of Police, attached to the Kalakkadu Police Station took up the case for investigation. On 22.11.2001 at 06.00 p.m, he proceeded to the place of occurrence and prepared an observation

mahazar and a rough sketch in the presence of witnesses. He recovered the bloodstained earth and sample earth from the place of occurrence in the presence of P.W.4 and another witness. Then, he examined the deceased, P.Ws.1, 2 and other witness and recorded their statements. On 26.11.2001, he recovered the dress materials worn by the deceased at the time of occurrence. In the meanwhile, the accused had surrendered before the Court. On 10.12.2001, on the orders of the learned Judicial Magistrate, he took the accused into his custody. On the same day at 3.30 p.m, while in the Police Station, the accused gave a voluntary confession, in which, he had disclosed the place where, he had hidden the aruval (M.O.1). In pursuance of the said statement, the accused took the Police and witness to the said place and produced M.O.1(aruval). The same was recovered under a mahazar. iv)It was only at that stage on 31.01.2002, the deceased succumbed to the injuries. On receiving intimation from the hospital, P.W.14 altered the case into one under Section 302 IPC. Ex.P.24 is the report. Then, he conducted inquest on the body of the deceased between 10.30 p.m and 12.30 p.m on 31.01.2002. Ex.P.25 is the inquest report. He forwarded the body for post mortem. P.W.7-Dr.Mani conducted autopsy on the body of the deceased on 31.01.2002 at 01.00 p.m. He noticed the following injuries. "i)Healed scar 9 cm in length seen on the left cheek to back of left ear. ii)7 cm below the lower part of left patella, the entire left leg found missing. The intact cut portion of upper part of left leg is found infected. iii)Bedsore seen on the sacral and gluteal regions" Ex.P.7 is the post mortem certificate. He opined that the deceased would appear to have died of complications of traumatic amputation of left lower limb by heavy cut injury sustained by him. v)P.W.14 collected medical records including the treatment records, examined the doctors and finally, he handed over the case-diary to his successor Inspector. vi)P.W.15, the successor, Inspector of Police, took up the case for further investigation and he made a request to the Court to forward all the materials for chemical examination. Ex.P.11 is the analysis report. According to the same, the aruval recovered from the accused contained human blood of 'o' group, which tallied with the blood group of the deceased found on the dress materials on the deceased. On completing the investigation, P.W.15 laid a charge-sheet against the accused under Section 302 of the I.P.C.

2. Based on the above materials, the trial Court framed a lone charge against the accused under Section 302 IPC. The accused pleaded innocence. Therefore, he was put on trial.

3. In order to prove the charge, the prosecution has examined as many as 15 witnesses and exhibited 25 documents besides 5 material objects. Out of the said witnesses, Pws.1 & 2 were examined as eye witnesses. But, P.W.1, the wife of the deceased has turned hostile and she has not supported the case of the prosecution in any manner. P.W.2 alone has deposed about the occurrence. P.W.6 has spoken about the treatment given to the deceased and P.W.7 has spoken to about the cause of the death.

4. When the above incriminating evidences were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he has not chosen to examine any witness or to mark any document on his side. Having considered the above materials, the trial Court came to the conclusion that it was this accused, who caused injuries on the leg and neck of the deceased. However, the trial Court found the accused guilty under Section 326 IPC, instead of 302 I.P.C. That is how, the State is before this Court with this appeal.

5. In this appeal, notice was ordered by this Court to the respondent when this appeal was admitted. Though notice was duly served on the respondent, he has not engaged any counsel to defend him in this appeal before this Court. Therefore, this Court considered it fit to appoint Mr.S.Ramasamy, a leading member of the Madurai Bar, having good amount of experience in the criminal cases, as State Brief counsel.

6. The learned counsel Mr.S.Ramasamy would submit before this Court that subsequent to his appointment, he sent a letter to the respondent on 18.01.2013 by registered post. After the said letter, the brother of the accused by name Balasubramaniam spoke to him over phone and gave instructions. After having obtained the case records and also on the basis of the above said instructions, Mr.Ramasamy has made his submissions before this Court.

7. Heard the learned Additional Public Prosecution and the learned State brief counsel.

8. As we have already pointed out, the respondent/accused has not preferred any appeal challenging the conviction and sentence imposed upon him. Thus, there is no challenge before this Court in respect of the finding of the trial court that it was the accused who cut the deceased twice. The first cut was made on the left leg and the left leg was amputated and second cut was made on the neck. It is the admitted case that the deceased was in the hospital as inpatient by taking treatment between 22.11.2001 to 30.01.2002. He died on 30.01.2002 at 11.00 p.m. According to the lower Court, the said conduct of the accused in causing injuries to the neck and the amputation of the left leg would constitute only an offence under Section 326 of I.P.C.

9. But the learned Additional Public Prosecutor would submit that the act of the accused would fall within the ambit of Section 302 I.P.C and it is a clear case of murder and so, the accused should have been convicted under Section 302 I.P.C. In order to substantiate his contention, the learned Additional Public Prosecutor has taken us through the medical evidence spoken to by P.W.7, who conducted autopsy on the body of the deceased. According to the said medical evidence, the deceased would appear to have died of complications of traumatic amputation of left lower limb by heavy cut injury sustained by him. Relying on this, the Additional Public Prosecutor would submit that though the death did not occur immediately after the occurrence, it was definitely due to the injuries caused by the accused. According to the learned Additional Public Prosecutor, the injury caused on the left leg is sufficient in the ordinary course of nature to cause the death. Therefore, according to him, the act of the accused would fall within the 3rd limb of 300 I.P.C.

10. But the learned counsel for the respondent would submit that the act of the accused would not fall under any of the limbs of Section 300 I.P.C. The learned counsel would further submit that the act of the accused would not fall under any of the limbs of Section 299 I.P.C and therefore, there is no scope to convict the accused either under section 304 or under Section 302 of I.P.C. He would further submit that even assuming that, it would fall under the 3rd limb of Section 300

I.P.C, still the act of the accused would fall under the 4th exception to 300 I.P.C. Therefore, at the most, the accused could be punished under Section 304(ii) I.P.C. It is his further contention that death was not attributable to the injuries caused by the accused and so, the trial court was right in convicting the accused only under Section 326 I.P.C.

11. We have considered the above submissions and also perused the materials available on record.

12. As of now, there is no controversy before this Court that the accused cut the deceased twice. The first cut was made on the left leg which amputated the left leg and the second cut was made on the neck. At no stretch of imagination, it could be contended that these two injuries were unintended injuries. We have already explained while narration of these facts, as to how these two injuries were the intended injuries.

13. Now, we have to examine the nature of the injuries. In a case, where leg is amputated, there are two immediate causes for the death. The death may occur due to shock due to hemorrhage, due to the amputation of the leg. The other cause is that death may occur due to shock due to pain. If death has to occur, due to shock due to hemorrhage, death will not be postponed for two months. The shock will occur as soon as a considerable volume of blood is drained from the body. Here, in this case, had it been true that a considerable volume of blood had drained from the body of the deceased, then the deceased would have died of shock either instantaneously or within few hours or within few days. But, the deceased was alive for about two months. There is no medical opinion that he died of shock and hemorrhage. Therefore, in this case, the death cannot be stated to be due to shock due to hemorrhage. Similarly, the death due to shock on account of pain will normally be instantaneous or it will occur so long as the pain continues. But, in this case, there is no evidence that the deceased was suffering from pain for two months. He was conscious for quite some time. It is not the medical evidence also that death was due to shock due to pain. Thus, it is crystal clear that death was not due to shock, due to pain, on account of the injuries sustained by the deceased.

14. Then, let us examine as to what is the actual cause of death. According to the doctor, during the interregnum period, there were complications due to injury. Though the doctor has not stated in clear terms that the complication was septicaemia, from the records, we can infer that the complication is nothing but septicaemia. Septicaemia is the complication, which had arisen out of the injury. But without injury, septicemia would not have occurred. Therefore, it can be concluded that the death of the deceased was the result of the injury caused by the accused. But on that score, whether we can hold that the accused guilty of murder is the next question to be answered.

15. At this juncture, we have to point out that killing of a human being by another human being is homicide. If the act of the accused causing homicide falls under any one of the limbs of 299 I.P.C, it becomes culpable homicide. Culpable mental state of the accused makes the homicide as the culpable homicide. If suppose the act of the accused, inturn falls under any one of the limbs of 300 I.P.C, the said culpable homicide becomes murder. For any reason, if the act of the accused could not be brought under any one of the limbs of 300 I.P.C, thought it is a culpable homicide, it is not a murder, otherwise, it is called as culpable homicide, not amounting to murder.

16. With these legal backdrops, let us examine the injury to the leg. As we have already pointed out, the injury to the leg did not cause instantaneous death. But it resulted in septicaemia. But, undoubtedly, the primary cause for the death was only the injury as septicaemia is only the secondary cause. As we have already pointed out, the injury to leg amputating the same was the intended injury which has caused the death and so the act of the accused would fall within the second limb of Section 299 I.P.C. The second limb of 299 I.P.C states that whoever with the intention of causing such bodily injury as is likely to cause death, commits the offence of culpable homicide. Here, in this case as we have already pointed out, both the injuries found on the deceased are intended injuries, though, in our considered view, injury to the leg, amputating the left leg is likely to cause death. (we will give our reasons for this conclusion later). The second limb of Section 299 I.P.C is relatable to 2nd and 3rd limbs of Section 300 I.P.C. In the instant case, the second limb of Section 300 I.P.C is not applicable. Let us now examine as to

whether the act of the accused would fall within 3rd limb of Section 300 I.P.C. In order to prove that the act of the accused will fall under the 3rd limb of Section 300 I.P.C, the prosecution should prove that the intended injury is sufficient in the ordinary course of nature to cause the death. Here, in this case, injury to the leg as well as to the neck were the intended injuries. Regarding this, there is no dispute. The injury found on the neck was a superficial injury, which cannot be stated to have contributed to the cause of death. Amputation of left leg was a serious injury. But the doctor has not opined that this injury is sufficient to cause death in the ordinary course of nature. Whether the injury is sufficient to cause death or not is to be decided objectively.

17. In case, possibility of death is more than the possibility of survival, then, it is stated that the injury is sufficient to cause death in ordinary course of nature. In other words, "sufficient in the ordinary course of nature to cause death means that the death will be the "most probable" result of the injury. If the possibility of death and survival are equal, then, it is stated that the injury is likely to cause death. Hence, the death due to the injury is not a mere possibility but, it is improbable". If the possibility of survival is more than the possibility of death due to the injury, in other words, if the possibility of death is of lowest degree, it is held that the injury is not even likely to cause death. Applying the said test, if we look into the injury to the leg, one can very easily come to the conclusion that the chances of survival and death are equal and therefore, injury is only likely to cause death and thus the same does not fall under the 3rd limb of Section 300 I.P.C. Hence, we are impelled to conclude that the act of the accused squarely falls under the 2nd limb of Section 299 I.P.C. If once, we hold that the offence falls within the ambit of 2nd limb of 299 I.P.C, then, appropriate punishment will be under Section 304(i) I.P.C.

18. The learned counsel for the respondent/accused has made an attempt to convince us to hold that the offence would fall under Section 304(ii) I.P.C. Since we have come to the conclusion that the 2nd limb of Section 299 I.P.C is attracted, then, proper punishment will be under Section 304(i) I.P.C. Since the act does not fall under any one of the limbs of 300 I.P.C, there is no scope for invoking the 4th proviso to 300 I.P.C, as it is pointed by the learned counsel for the respondent.

19. In the result, we hold that the conviction of the accused should have been under Section 304(i) I.P.C and the conviction recorded by the trial Court under Section 326 I.P.C is improper.

20. Now, dealing with the quantum of punishment, the learned counsel for the respondent/accused would submit that at the time of judgment, the accused was 42 years old and he had two children aged 8 years and 6 years respectively. Having regard to the family background, age and other circumstances, the learned counsel for the respondent would submit that leniency may be shown in the matter of punishment.

21. The question of measuring the sentence is always a subject of debate before the various courts for years. There is no fixed policy of sentencing evolved by the law makers. Courts have been given vast discretion to decide about the quantum of punishment. But the Honourable Apex Court has made a number of observations in various judgments, wherein, the Honourable Apex Court has observed that while deciding the quantum of sentence, the Courts should objectively examine the gravity as well as the mitigating circumstances. Gravity refers to the crime. Mitigating circumstances refer to the circumstances and the background of the criminal. In short, it is a question between the crime and criminal. As hold by the Honourable Supreme Court in *Dhananjay Chatterjee vs State of West Bengal* (1994-(1) SCR:37), justice demands that courts should impose punishment befitting the crime, so that the courts reflect public abhorrence of the crime. It is for the Court to comprehensively and judiciously consider the crime as well as the criminal namely the aggravating circumstances as well as the mitigating circumstances, while deciding the quantum of punishment. In this case, having regard to the all the relevant facts such as the age, absence of premeditation, family background pointed out by the learned counsel, the gravity of offence and the nature of the weapon used, the nature of the injury and all the other circumstances, we are of the view that imposing a punishment of rigorous imprisonment for 10 years with a fine of Rs.1,000/- will be fair, just reasonable.

22. In the result, the appeal is partly allowed in the following terms: i)The conviction and sentence imposed on the respondent/accused by the learned II

Additional Sessions Judge, Tirunelveli under Section 326 I.P.C is set aside and instead, he is convicted under Section 304(i) I.P.C and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for two years. ii)The period of sentence already undergone by the respondent/accused shall be set off. vs To 1.The Inspector of Police, Kalakadu Police Station, Tirunelveli District. 2.The II Additional Sessions Judge, Tirunelveli. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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