

CASE DETAILS

MARIAPPAN

v.

STATE REP. BY INSPECTOR OF POLICE

(Criminal Appeal No. 3598 of 2023)

NOVEMBER 24, 2023

[VIKRAM NATH AND RAJESH BINDAL, JJ.]

HEADNOTES

Issue for consideration: On the day of incident, heated arguments took place between the two parties. During the quarrel, accused nos.1 and 2 stabbed victim multiple times with sooriknives, while accused no.3, though armed with a spade handle, did not inflict injuries but facilitated in the attack. The appellant-accused was convicted u/s. 302 IPC. Whether the acts of the accused would come under Exception 4 to s.300 IPC or would be an act of culpable homicide amounting to murder punishable u/s. 302.

Penal Code, 1860 – s. 302 and s.304 Part-I – Trial Court after examining witnesses and material evidence, convicted appellant-accused no.1 u/s. 302 IPC and acquitted accused nos. 2 and 3 from all charges levelled against them – The High Court confirmed the order of conviction u/s. 302 of the IPC – Propriety:

Held: Right from the beginning i.e. the prosecution story as set up in the FIR was that initially there was a heated discussion between the parties and in a fit of anger the physical assault took place – Even the ocular testimony is also to the same effect – Although on the same evidence the Trial Court has acquitted two co-accused and convicted only the appellant – It has also come in evidence that the appellant had caused only one injury whereas other accused had caused multiple injuries – However, the Trial Court acquitted the other two accused – The previous enmity between the appellant and the deceased had been a contributory factor leading to the verbal altercation but it was not the reason for the accused to carry out a pre-planned fatal attack against the deceased – The appellant had acted “suddenly”, in the heat of passion and without a pre-planned approach to kill the deceased – Hence, it can be safely concluded from the evidence

led in the present case that the appellant's overt act of killing the deceased happened during a fit of anger in the heat of a passionate verbal quarrel and would fall under Exception 4 to s.300 IPC – The conviction u/s. 302 IPC is converted to s. 304 Part-I IPC. [Paras 11, 12 and 13]

LIST OF CITATIONS AND OTHER REFERENCES

Rampal Singh v. State of U.P., (2012) 8 SCC 289 : [2012] 7 SCR 160;
Surinder Kumar v. Union Territory, Chandigarh, (1989) 2 SCC 217 : [1989] 1 SCR 941 – relied on.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.3598 of 2023.

From the Judgment and Order dated 22.04.2016 of the High Court of Judicature at Madras in CRLA No.151 of 2013.

Appearances:

T. Harish Kumar, Navneet Dugar, Subham Kothari, Ms. Preethi, G, Advs. for the Appellant.

Dr. Joseph Aristotle S., Ms. Shubhi Bhardwaj, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT

ORDER

VIKRAM NATH, J.

1. This appeal assails the correctness of the final Judgment and Order dated 22.04.2016 passed by the High Court of Judicature at Madras in Criminal Appeal No.151 of 2013 whereby the High Court has dismissed the appeal of the present appellant and confirmed the order of conviction under Section 302 of the Indian Penal Code, 1860¹ and awarding life sentence passed on 05.10.2012 by the Trial Court.

¹ IPC

2. The facts of the case in brief are as follows:

2.1 The case involves the offence of culpable homicide committed by the present appellant. The present appellant was accused no.1 before the Trial Court in S.C.No.177 of 2010 on the file of the learned IV Additional District & Session Judge, Erode District, at Bhavani. While the other two accused, i.e., accused nos.2 and 3 were acquitted of all charges by the Trial Court.

2.2 The case involves the murder of one Kolandaippam, wherein the core motive was identified as a longstanding enmity over a land dispute between the deceased and the three accused. Prior to the incident, there were several confrontations and threats, notably 3½ years earlier on the disputed land, and a subsequent altercation involving the deceased's wife and Pappa, the sister of the first accused. These events, including a police-compromised complaint by the deceased's wife, intensified the hostility.

2.3 On 17th March 2009, around 6:00 p.m., at Koil Kaadu Chithanattu Salai in Neringipettai Village, the deceased, along with P.Ws.2, 3, and 5, was confronted by the accused. Heated arguments took place between the two parties. During the quarrel, accused nos.1 and 2 stabbed Kolandaippam multiple times with soori-knives, while accused no.3, though armed with a spade handle, did not inflict injuries but facilitated in the attack. P.W.1, the daughter of the deceased, witnessed this event. Following the attack, the deceased was taken to the Government Hospital at Bhavani, where Dr. (Mrs.) Janatha pronounced him dead and a complaint was lodged at the Ammapettai Police Station, leading to the registration of a case under Sections 302 and 324 of IPC.

2.4 The investigation, led initially by Subbiah (P.W.13) and later by A. Rajendran (P.W.14), involved meticulous collection of evidence. This included bloodstained earth from the crime scene, preparation of an Observation Mahazar and a Rough Sketch, and the recovery of the murder weapons. The autopsy conducted by Dr. Poornachandrika (P.W.8) revealed multiple stab wounds as the cause of death, particularly noting a fatal injury to the heart.

2.5 Significant evidence contributing to the appellant's guilt includes the recovery of the murder weapon (a soori-knife) and bloodstained clothes following his voluntary confession. Additionally, the testimonies of the

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eyewitnesses, especially P.W.1, and the forensic evidence linking the blood group from the material objects to the deceased, played a crucial role. Despite some inconsistencies in the eyewitness accounts, the overwhelming evidence pointed towards the accused no.1's direct involvement in the assault.

2.6 Upon filing of charge sheet by the respondent police, a session case was registered before the Additional Sessions Judge, Bhavani in S.C.No.177 of 2010. The Trial Court taking cognizance of the offence, framed two charges. Charge against the accused Nos.1 to 3 was under Section 302 read with Section 34 IPC. Charge was against the accused no.3 under Section 307 IPC.

2.7 The trial involved the examination of 14 witnesses, and the presentation of 18 documents and 9 material objects. While the accused nos.2 and 3 were acquitted due to lack of conclusive evidence against them, the accused no.1, i.e., the appellant herein was found guilty based on the weight of the testimonies and other documentary and material evidence. According to the Trial Court there was compelling evidence, particularly the recovery of the murder weapon and the consistency of the eyewitness testimonies, which duly proved the conviction of the appellant.

3. As already narrated earlier, by judgment dated 05.10.2012, the Trial Court convicted the accused no.1, i.e., the appellant herein under Section 302 IPC and acquitted accused Nos.2 and 3 from all the charges levelled against them. The appellant was sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for one year for the said offence.

4. The appellant filed Criminal Appeal No.151 of 2013 before the High Court at Madras. Vide order dt. 22.04.2016, the High Court upheld the Trial Court's order and dismissed the appeal of the appellant concluding that the act of the appellant would squarely fall within the third limb of Section 300 IPC and the same would not fall under any of the Exception to Section 300 IPC and hence he is liable to be punished under Section 302 of IPC.

5. The appellant has filed the present appeal against the aforementioned order of the High Court in Criminal Appeal No. 151 of 2013 praying to set aside the order of conviction on several grounds, inter alia, that the Trial Court held that accused no.1, all of a sudden, while the wordy quarrel

was going on, had stabbed the deceased in front of his daughter, son, his relatives and hence his act should come under Exception 4 to Section 300 IPC and would be guilty of Section 304 part 1 IPC and should be sentenced accordingly.

6. On the other hand, learned counsel for the respondent-State supported the judgments and orders passed by the Trial Court and the High Court, opposing the arguments of the appellant.

7. Having heard the arguments of both the parties, we find that the evidence presented before the Trial Court and the facts and circumstances of the case clearly establish beyond reasonable doubt that the wound caused by the appellant was the reason for the death of the deceased. The High Court also reaffirmed this observation that the injuries with soori-knife caused by the appellant were the reason for the death of the deceased.

8. Hence the only question that remains for consideration before us is whether the act of the accused is culpable homicide amounting to murder or not. In other words, the question is whether the acts of the accused would come under Exception 4 to Section 300 IPC or would be an act of culpable homicide amounting to murder punishable under Section 302.

9. This Court in **Rampal Singh v. State of U.P.**², while altering the offence under Section 302 to Section 304 Part 1 of IPC, has elaborately discussed the distinction between culpable homicide amounting to murder and culpable homicide not amounting to murder. What is held is that classification would be a matter of fact depending upon the evidence led in the trial. Broadly speaking, the factors to be considered are enumerated in paragraph 25 thereof. The same is been reproduced below:

“**25.** As we have already discussed, classification of an offence into either part of Section 304 is primarily a matter of fact. This would have to be decided with reference to the nature of the offence, intention of the offender, weapon used, the place and nature of the injuries, existence of premeditated mind, the persons participating in the commission of the crime and to some extent the motive for commission of the crime. The evidence led by the parties with reference to all these circumstances

2 (2012) 8 SCC 289

greatly helps the court in coming to a final conclusion as to under which penal provision of the Code the accused is liable to be punished. This can also be decided from another point of view i.e. by applying the “principle of exclusion”. This principle could be applied while taking recourse to a two-stage process of determination. Firstly, the Court may record a preliminary finding if the accused had committed an offence punishable under the substantive provisions of Section 302 of the Code, that is, “culpable homicide amounting to murder”. Then secondly, it may proceed to examine if the case fell in any of the Exceptions detailed in Section 300 of the Code. This would doubly ensure that the conclusion arrived at by the court is correct on facts and sustainable in law. We are stating such a proposition to indicate that such a determination would better serve the ends of criminal justice delivery. This is more so because presumption of innocence and right to fair trial are the essence of our criminal jurisprudence and are accepted as rights of the accused.”

10. It would also be apt here to refer to the judgement of **Surinder Kumar Vs. Union Territory, Chandigarh**³, wherein this Court had laid down the grounds to invoke Exception 4 to Section 300 IPC:

“7. To invoke this exception four requirements must be satisfied, namely, (i) it was a sudden fight; (ii) there was no premeditation; (iii) the act was done in a heat of passion; and (iv) the assailant had not taken any undue advantage or acted in a cruel manner. The cause of the quarrel is not relevant no is it relevant who offered the provocation or started the assault. The number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger. Of course, the offender must not have taken any undue advantage or acted in a cruel manner. Where, on a sudden quarrel, a person in the heat of the moment picks up a weapon which is handy and causes injuries, one of which proves fatal, he would be entitled to the benefit of this exception provided he has not acted cruelly.”

3 (1989) 2 SCC 217

11. In the present case, while looking at the facts and circumstances of the case, it can be seen that the appellant had suddenly stabbed the deceased during a heated verbal argument with him and not during a pre-planned attack which was carried out with the sole intention of causing the death of the deceased. The previous enmity between the appellant and the deceased had been a contributory factor leading to the verbal altercation but it was not the reason for the accused to carry out a pre-planned fatal attack against the deceased. The appellant had acted “suddenly”, in the heat of passion and without a pre-planned approach to kill the deceased.

12. Right from the beginning i.e. the prosecution story as set up in the FIR was that initially there was a heated discussion between the parties and in a fit of anger the physical assault took place. Even the ocular testimony is also to the same effect. Although on the same evidence the Trial Court has acquitted two co-accused and convicted only the appellant. It has also come in evidence that the appellant had caused only one injury whereas other accused had caused multiple injuries. However, the Trial Court acquitted the other two accused.

13. Hence, it can be safely concluded from the evidence led in the present case that the appellant’s overt act of killing the deceased happened during a fit of anger in the heat of a passionate verbal quarrel and would fall under Exception 4 to Section 300 IPC. Moreover, the clear intent needed to prove culpable homicide amounting to murder has also not been established by the prosecution.

14. The appeal is partly allowed.

15. The conviction under Section 302 IPC is Converted to Section 304 Part-I with sentence of 10 years Rigorous Imprisonment and fine of Rs. 50,000/-, to be paid to the victim’s family.