SUPREME COURT OF INDIA
Bench: Justices B.R. Gavai, Dipankar Datta, and Aravind Kumar

Date of Decision: December 12, 2023

CRIMINAL APPEAL NO. 2294 OF 2010

SEKARAN … APPELLANT

VS.

THE STATE OF TAMIL NADU …RESPONDENT

Sections, Acts, Rules, and Articles Mentioned

Indian Penal Code, 1860 (IPC): Section 302 (Murder), Section 304 Part II (Culpable Homicide Not Amounting to Murder)

Code of Criminal Procedure, 1973 (CrPC): Section 374(2)

Indian Evidence Act, 1872

Subject of the Judgment

The subject of the judgment revolves around the appeal against the conviction under Section 304 Part II of IPC for culpable homicide not amounting to murder. The Supreme Court's task was to review the evidence and findings of the High Court which had modified the original conviction from murder to culpable homicide.

Headnotes .

Criminal Appeal – Conviction for Culpable Homicide Not Amounting to Murder – Appellant challenging High Court's judgment modifying conviction from murder to culpable homicide under Section 304 Part II, IPC – review the evidence and High Court's findings. [Para 1, 8]

Prosecution Case – Incident of Assault and Subsequent Death – Prosecution alleging appellant assaulted the victim, leading to his death –

Initial conviction for murder by Sessions Court, later modified to culpable homicide by High Court. [Para 2, 3]

Appellant's Arguments – Allegations of Misinterpretation of Evidence and False Implication – Appellant's counsel arguing about misinterpretation of evidence by High Court and withholding of key witnesses by prosecution, raising questions about the actual cause of victim's death. [Para 4, 5]

Respondent's Arguments – Support for High Court's Reasoning and Judgment – Respondent's counsel defending the High Court's judgment, emphasizing the credibility of eyewitnesses and medical evidence linking the death to the assault. [Para 6, 7]

Analysis of Evidence – Scrutiny of Witnesses and Circumstances – Supreme Court meticulously examining FIR, witness testimonies, medical evidence, and other circumstances, especially focusing on inconsistencies and missing evidence. [Para 9-24]

Acquittal of Appellant – Supreme Court finding the evidence insufficient to establish culpable homicide beyond reasonable doubt, leading to appellant's acquittal and discharge from bail bonds. [Para 25, 26]

Decision – High Court's Judgment Set Aside – Supreme Court setting aside the High Court's judgment, leading to the appellant's release unless required in other cases. [Para 26]

Referred Cases: None.

J U D G M E N T

DIPANKAR DATTA, J.

The Challenge

1. The Principal Sessions Judge, Kanyakumari District at Nagercoil, *vide* judgment and order dated 22nd March 2002, convicted the appellant for committing murder and sentenced him to life in prison together with fine of Rs.1000/-, in default to undergo rigorous imprisonment for 6 (six) months. Aggrieved thereby, the appellant invoked the jurisdiction of the Madras High Court, Madurai Bench, under section 374(2) of the Code of Criminal Procedure, 1973. The High Court, *vide* judgment and order dated 12th November 2009, allowed the appeal in part. The appellant was convicted for an offence under section 304-Part II, of the Indian Penal Code, 1860 ("IPC", hereafter) and sentenced to five years' rigorous imprisonment. Still dissatisfied, the judgment and order of the High Court has been carried by the appellant in appeal before this Court.

Prosecution Case

2. The prosecution case is that the victim, Palas, and his wife (PW-3) after returning from their respective jobs on 12th March, 1996, had been to a tea stall run by Velukutti (not examined). At the tea stall were present Ponnaian (not examined) and Wilson (PW-2). In their presence, Palas had demanded Rs.50/-, being his wages, from the appellant. Incidentally, Palas was a "coconut cutting coolie" working under the appellant. Hearing such demand, the appellant abused Palas in filthy language which was followed by physical abuses by and between them. Suddenly, the

appellant picked up one rubber stick (lying on the back side of the tea stall) and hit Palas on the front and back sides of his head while exhorting him to get lost. On receiving such blow from the appellant, Palas fell down whereupon Ponnaian, Devaraj (PW-1) and PW-3 separated the two (appellant and Palas). Holding the rubber stick, the appellant threatened those present thereat that they would have to suffer the same consequences as Palas, if any of them challenged him. Thereafter, the appellant fled towards the north side. Palas was taken to a private nursing home, *viz*. Sivanandam Nursing Home at Panichamuttu (sic, Panachamoodu) village, Kanyakumari district, and admitted there on the ame day. On 13th March, 1996, the doctor at the nursing home (PW-7) advised shifting of Palas to another hospital, whereafter he was taken to a government hospital, *viz.* Medical College and Hospital, Thiruvananthapuram (the nearest government hospital, although in a State different from the State where the alleged incident occurred). Palas was admitted there at on 13th March 1996 at 11.00 p.m. but, unfortunately, breathed his last on 14th March 1996 at about 07.15 p.m. A death intimation memo (Ex. P3) was issued by the doctor (PW-8). It was on the following day, i.e. 15th March 1996, that the first information report ("FIR", hereafter) was registered on a complaint by Devaraj (PW-1) against the appellant for the offence punishable under section 302, IPC at Arumanai Police Station at about 09.00 a.m. On 15th March 1996 itself, post mortem was conducted by an Assistant Professor of Forensic Medicine and

Deputy Police Surgeon, Medical College, Thiruvananthapuram (PW-9). The post mortem report (Ex. P5) revealed the opinion that “head injury” sustained by Palas was the cause of death.

Proceedings before the Courts

3. Before the Sessions Court, 11 (eleven) witnesses were examined on behalf of the prosecution. The trend of cross-examination suggested that Palas died of a head injury that he sustained due to a fall from a tree. While the Sessions Court was of the view that the prosecution had been successful in establishing the charge against the appellant beyond reasonable doubt, the High Court while exercising appellate jurisdiction considered the oral testimony of PWs 2 & 3 and held that it had no hesitation to hold that it was the appellant who caused the head injury resulting in the death of Palas. However, at the same time, the High Court was of the view that the attendant circumstances and evidence brought on record unmistakably showed that the appellant may not have intended to cause the death of Palas. There was a quarrel between the appellant and Palas with regard to demand of wages prior to the occurrence, the appellant did not possess any weapon and that the appellant picked up the rubber stick from behind the tea stall and attacked Palas – all these led to the conclusion that there was no premeditation or intention on the part of the appellant to commit the murder of Palas. Being of the view that

the incident of assault leading to the ultimate death of Palas had happened at the spur of the moment, the High Court was also of the view that Exception- II of section 300, IPC stood attracted and consequently, the appellant could not be held liable under section 302, IPC; instead, he would be liable for the offence of culpable homicide not amounting to murder punishable under section 304-Part II, IPC. It was as a result of such a finding and recording of conviction that the High Court proceeded to impose on the appellant the sentence of 5 years' rigorous imprisonment.

Appellant's arguments

4. Appearing in support of the appeal, Mr. Basant, learned senior counsel contended that the High Court grossly erred in misreading the oral evidence on record as well as drawing conclusions from the documentary evidence led by the prosecution, without appreciating that the most vital evidence which could have clinched the issue was withheld by the prosecution by not examining the independent witnesses, *viz*. Ponnaian and Velukutti. Exception was next taken to delayed lodging of the FIR and it was asserted that the appellant had been falsely implicated. It was further contended by Mr. Basant that PW-7 had issued a certificate (Ex. P2) certifying that Palas had been treated at Sivanandan Nursing Home, Kanyakumari District on 12th March 1996 "for injury on the scalp as an outpatient". According to him, if indeed Palas had been assaulted

by the appellant and such incident was witnessed at least by PWs 2 and 3, as part of normal human reaction, the person(s) taking Palas to the nursing home/hospital would be expected to disclose the factum of Palas having suffered head injury as a result of blows inflicted on him by the appellant; however, neither any disclosure was made of such assault nor the appellant was named as the assailant. There is also no evidence as to the nature of treatment extended to Palas on 12th March as well as on 13th March, 1996 prior to he being shifted to the government hospital at Thiruvananthapuram. No document regarding admission of Palas at such hospital as well as treatment rendered to him was also produced as evidence. Referring to Ex. P3, being the death intimation memo issued by PW-8, Mr. Basant contended that there was sufficient ground to believe that Palas had suffered injury as a result of a fall from the tree. Moreover, it was argued that the so-called rubber stick with which the appellant was alleged to have struck a blow on the head of Palas was not recovered. Finally, it was brought to our notice that PW-1, a so-called eyewitness and the first informant, had turned hostile.

5. Resting on the aforesaid contentions, Mr. Basant urged that the prosecution had failed to prove that the appellant [who has unnecessarily suffered 11 (eleven) months incarceration] was instrumental in assaulting Palas which ultimately led to his death. It was, accordingly, prayed that

the judgment and order under challenge be set aside and the appellant set free.

Respondent's arguments

6. *Per contra*, it was contended on behalf of the respondent by Dr. Aristotle, learned counsel that the judgment of the High Court convicting the appellant for the offence punishable under section 304-Part II, IPC is well reasoned and does not merit interference. PWs 2 and 3 were eyewitnesses to the assault on Palas by the appellant and nothing surfaced in course of their cross-examination to discredit them. The death of Palas was attributed to the head injury suffered by him on 12th March 1996 and injury nos. 1 and 2, indicated in the post mortem report, were sufficient to cause the death of Palas. It was further contended that any slip or laxity in investigation ought not to be given any importance, particularly when there are eye-witnesses of the crime. Dr. Aristotle further contended that delay in lodging an FIR is not always fatal and the prosecution case cannot be disbelieved merely because of minor contradictions in the testimony of witnesses which were recorded between 4 (four) to 6 (six) years after the incident.

7. While concluding his address, Dr. Aristotle submitted that the High Court has exercised appellate power judiciously by returning a finding that the appellant was guilty of culpable homicide not amounting to murder and that the sentence imposed upon him neither being

disproportionate nor shocking to the conscience of the Court, the same ought not to be interfered.

The Question

8. The question we are tasked to decide is whether, based on the evidence on record, the High Court was justified in returning a finding that the appellant was guilty of the offence punishable under section 304Part II, IPC and liable to be sentenced as a consequence thereof, as has been imposed on him.

Analysis

9. We have meticulously perused the materials on record as well as considered the contentions advanced at the Bar with the care and attention the same deserve.

10. In cases of the present nature, where material witnesses are withheld by the prosecution and it is the positive case set up by the defence that he has been falsely implicated for murder though death of the victim could be for reasons attributable to an accidental fall from a tree and such a case in defence finds some amount of corroboration from the other evidence on record, coupled with the fact that the appellate court has imposed a lesser sentence upon reversal of the finding of murder returned by the trial court, this Court as the court of last resort has

a duty to separate the grain from the chaff and after sieving the untruth or unacceptable portion of the evidence, to also examine whether the residue is sufficient to prove the guilt of the accused. There seems to be no legal bar in convicting an accused resting on part of the evidence, which is primarily found to be credible and acceptable; however, where the evidence is so inseparable that any attempt to separate them would destroy the substratum on which the prosecution version is founded, then this Court would be within its legal limits to discard the evidence in its entirety. Bearing this settled principle in mind, we proceed to assess the evidence on record.

11. We start with the FIR, to which exception has been taken by the appellant urging that there has been no satisfactory explanation for its belated registration. It is trite that merely because there is some delay in lodging an FIR, the same by itself and without anything more ought not to weigh in the mind of the courts in all cases as fatal for the prosecution. A realistic and pragmatic approach has to be adopted, keeping in mind the peculiarities of each particular case, to assess whether the unexplained delay in lodging the FIR is an afterthought to give a coloured version of the incident, which is sufficient to corrode the credibility of the prosecution version. In cases where delay occurs, it has to be tested on the anvil of other attending circumstances. If on an overall consideration of all relevant circumstances it appears to the court that the delay in

lodging the FIR has been explained, mere delay cannot be sufficient to disbelieve the prosecution case; however, if the delay is not satisfactorily explained and it appears to the court that cause for the delay had been necessitated to frame anyone as an accused, there is no reason as to why the delay should not be considered as fatal forming part of several factors to vitiate the conviction.

12. In the present case, we have noticed that the FIR was admittedly lodged on 15th March 1996 at about 09.00 a.m. although the incident was of 12th March 1996 and in between Palas was treated initially in a private nursing home and then in the government hospital where he passed away on 14th March 1996 around 07.15 p.m. From the evidence on record, what we find is that the crime was not reported to the police because, first, none of the doctors who had attended to Palas had advised PWs 2 and 3 to so report; secondly, PW-2 did not report out of fear as the appellant had threatened PWs 2 and 3; and thirdly, PW-3 wanted to save her husband. It is the oral evidence of a head constable who was posted at Arumanai Police Station (PW-10) that PW-1 had visited the police station on 15th March 1996 and given a statement (Ex. P7) based whereon the FIR (Ex. P8) was prepared. He admitted that no message was received prior to the FIR (Ex. P8) and that one police outpost is there within the campus of the Trivandrum Medical College. He also admitted that generally an FIR should be registered at the police

outpost prior to admitting the patient for treatment and that such FIR should be forwarded to the police station. It is also in the evidence of the Inspector of Police, Arumanai Police Station (PW-11) that the place of occurrence is at a distance of 15 kms. from his police station.

13. Upon consideration of the other circumstances, belated reporting of the crime to the police resulting in undue delay would bear relevance and we need to arrive at a conclusion as to whether what the PWs 2 and 3 deposed could be regarded as explanations worthy of acceptance for not reporting the crime to the police between 12th March 1996 (evening) and 15th March 1996 (before 9.00 a.m.).

14. PW-2 deposed that he had taken Palas to Sivanandan Nursing Home and had stated to the doctor (PW-7) that the appellant had hit Palas with a rubber stick. Such version of PW-2 has been contradicted by PW-7.

According to PW-7, Palas was brought to the nursing home on 12th March at about 07.30 p.m. Since he had injury on his head, PW-7 provided first aid to him. At such nursing home, Palas received treatment for a day whereafter he was advised by PW-7 to be admitted at a government hospital. It is in the version of PW-7 that information would have been given to the police had he been told that Palas was attacked by somebody. It is, therefore, clear that the version of PW-7 has a different tale to tell.

15. Moving on to the oral testimony of the witnesses, what we have to bear in mind is section 134 of the Indian Evidence Act, 1872 ("Evidence Act", hereafter) and the categorization of oral testimony into witnesses who are (i) wholly reliable; (ii) wholly unreliable; and (iii) neither wholly reliable nor wholly unreliable. It is not the quantity but the quality of evidence that would matter.

16. PWs 2 and 3 were the star witnesses for the prosecution, having deposed to have not only been present at the place of occurrence but also having witnessed the quarrel between Palas and the accused over wages demanded by the former and the subsequent blow inflicted by the latter. PW-2 in course of cross-examination admitted of the existence of a police station 10 kms. away and that vehicle facility to reach there was available. He simply avoided responsibility by deposing that PW-8 did not advise him to report to the police outpost, which was within the campus of the hospital. PW-3 in course of her cross-examination (conducted a little less than 4 years from the date of incident) could recollect the incident and all follow up steps sequentially, and went on to depose that she chose not to report the crime or have the same reported since she decided to save Palas. There could be nothing unusual if safety of her husband was the prime consideration of PW-3. However, what is striking is that PW-3 could not recall as to whether she had stated at the hospital that the appellant had attacked Palas with the rubber stick. She shrugged

off the responsibility by deposing that someone else must have disclosed to the doctor regarding the injury sustained by Palas.

17. In the light of the above explanation proffered by PWs 2 and 3, which does not appear to us to be reliable and acceptable, we do feel that the absence of Ponnaian and Velukutti assumes importance. In fact, their absence has the effect of seriously damaging the prosecution case and rendering it quite unreliable.

18. It is in the deposition of PW-11 that PW-10 had recorded the statement of, *inter alia*, Velukutti earlier and that PW-11 himself had recorded the statements of PWs 1, 2 and 3 as well as Ponnaian. Ponnaian and Velukutti were admittedly present at the tea stall when the alleged incident of assault took place (version of PWs 2 & 3). The prosecution has not explained why Ponnaian and Velikutti were not called upon to depose despite they being present at the place of occurrence and despite their statements having been recorded in course of investigation. If indeed they were unavailable to depose, it was incumbent on the prosecution to adduce relevant evidence in that regard. The prosecution having not examined Ponnaian and Velikutti, illustration (g) of section 114 of the Evidence Act is well and truly attracted in the present case.

19. Next, there is something noteworthy about the injury inflicted on Palas if at all the version of the prosecution is to be believed. PW-2 in

course of cross-examination deposed that Palas had suffered a “small injury”. It is also in the evidence of PW-7 that after Palas was brought to Sivanandam Nursing Home, he was provided first aid by PW-7. Providing first aid to Palas coupled with the statement of PW-2 of a small injury having been suffered by Palas, it is not unreasonable to presume that the injury was obviously not too serious and Palas himself was in a position to say how he had suffered the injury. From the evidence of the two doctors, *viz*. PWs 7 and 8, it does not appear that Palas was physically disabled to speak or that any conversation took place in course whereof Palas did disclose that he was assaulted by the appellant. It was incumbent on the prosecution to produce documents relating to admission of Palas in the nursing home and at the government hospital as well as those relating to his treatment to prove that Palas himself was not in a position to speak. None of these medical documents having been produced, there is no corroboration that the head injury which Palas suffered was caused by the blow of the rubber stick and also that the same could not have been suffered as a result of a fall from the tree.

20. That apart, it is seen from the evidence of the autopsy surgeon (PW-9) that there were several scratch injuries suffered by Palas near to his left shoulder, on his left elbow, on his upper right thumb, and lower to left knee on his left foreleg. Most importantly, there was a lacerated injury on the corner of the tongue. It was not elicited from PW-9 how these

injuries could have been sustained by Palas; on the contrary, the chemical examiner's report dated 31st March 1999 (Ex. P6) reveals positive results for Indoform, Dichromate and Ethyl Acetate tests. Presence of ethyl alcohol in the blood, liver and kidney of Palas, which was not disputed by PW-9 and his further statement that "liquor was remained up to 3 days" coupled with his testimony in course of cross-examination that it is "possible to have sustain injuries found on head if a person fallen down from a high tree", gives us reason to entertain serious doubts about the prosecution case which get amplified by what is discussed now.

21. Ex. P3, being the death intimation memo, is of some significance. The contents thereof are not entirely in the handwriting of PW-8. PW-8 while admitting his signature at the foot of Ex. P3, cleared the position that the contents on the first page were written by the hospital staff. The contents on the reverse are definitely not in the handwriting of PW-8 but reveals the words "fall from tree". The prosecution has not made any attempt to explain how these words came to be written on Ex. P3 and by whom. Significantly, no circumstance has been brought on record to attribute such writing to the appellant. Had Ex. P3 been entirely written by PW-8 and the words "fall from tree" by someone else, this document would have been of no importance at all; however, in the absence of any explanation proffered by the prosecution, it constitutes another important

material to doubt the prosecution case of the appellant being responsible for the death of Palas. All circumstances taken together tilt more towards the inference that Palas was under the influence of alcohol, did fall from a tree, had a head injury and several scratch injuries and, most importantly, in the process of the fall and hitting the ground, bit his tongue resulting in the lacerated injury spoken of by PW-9. These injuries, we are minded to believe, were not suspected to be serious injuries at the inception warranting admission of Palas in a government hospital or even to report such incident to the police but the situation having taken a turn for the worse and to evade responsibility, the appellant had been framed possibly in connivance with one Radhakrishnan (not examined) whose role surfaces from what is referred to by PW-1.

22. The deposition of PW-1 arouses suspicion as to the incident in question. He is the younger brother of Palas and the first informant; however, he was declared hostile by the prosecution after having spoken of his unawareness of the occurrence. PW-1 thereafter proceeded to give an ocular version as if he was an eyewitness. According to him, after seeing the occurrence, Ponnaian as well as PWs 2 and 3 came to the place of occurrence and separated the appellant and Palas. Thereafter he (PW1), Ponnaian and PWs 2 and 3 took Palas to Sivanandan Nursing Home. During cross-examination by the appellant, PW-1 spoke of one

Radhakrishnan (according to PW-3, Radhakrishnan is PW-3's sister's husband) and police of Arumanai Police Station having obtained the signature of PW-1 on "one paper". This is an additional circumstance that renders the prosecution version not wholly acceptable.

23. Although not brought to our notice in course of arguments, it is revealed from the oral testimony of PW-11 that the appellant could be apprehended 3 (three) years after the incident from Puliyur road junction in (1 km. away from Ambalakalai) in Kerala after vigorous search. However, abscondence by a person against whom an FIR has been lodged and who is under expectation of being apprehended is not very unnatural. Mere absconding by the appellant after alleged commission of crime and remaining untraceable for such a long time itself cannot establish his guilt or his guilty conscience. Abscondence, in certain cases, could constitute a relevant piece of evidence, but its evidentiary value depends upon the surrounding circumstances. This sole circumstance, therefore, does not enure to the benefit of the prosecution.

24. Viewed in the light of the delay in lodging of the FIR and on threadbare consideration of the other evidence on record, the circumstances surrounding the unfortunate death of Palas do not clearly and unequivocally point to the involvement of the appellant and his false implication cannot be wholly ruled out.

Conclusion

25. We are of the firm opinion, having regard to the aforesaid discussion, that the prosecution cannot be held to have established even the accusation of culpable homicide not amounting to murder against the appellant beyond reasonable doubt and to extend the benefit of doubt to him is what the justice of the case demands; hence, he is entitled to be acquitted. Ordered accordingly.

26. The appeal succeeds. The judgment and order dated 12th November 2009, which is under challenge in this appeal, stands set aside. The appellant shall be set free, unless he is wanted in any other case. He stands discharged of his bail bonds.