

SUPREME COURT OF INDIA

Mayandi

Vs.

State Rep.By Insp.of Police

CrI.A.No.1501 of 2010

(Harjit Singh Bedi and C.K. Prasad JJ.)

28.07.2010

ORDER

Leave granted.

We had issued notice only with regard to the nature of the offence on 14th September 2009.

We have heard the learned counsel for both parties.

The brief facts necessary for the disposal of this appeal are as under:

The appellant was an employee working in the kitchen of Palmgrove Hotel, Chennai. At about 6.15 a.m. on 8 th February 2005, the deceased Tr. Manickaraja Bala, the Managing Director of the hotel, came to the store room for carrying out a store check. As the deceased was returning to his office

after checking the store, the appellant attacked him with a sickle which he had concealed on his person. When the deceased tried to escape, the appellant made a further attack on him and caused him several injuries on his body and on his hands as well. PW.1-Tr. Raghavendran, PW.3-P.S.R. Aziri, PW.4-Tr. Pravin Padival who were around the place came rushing to the rescue the deceased but the appellant nevertheless ran away from the spot. PW.2, PW.4 and several others then took the deceased to the Apollo hospital where he was admitted to the Intensive Care Unit.

A FIR was thereafter recorded for an offence punishable under Sections 307 etc. of the I.P.C. and on the death of the injured at about 3.30 a.m. on 9th February 2005 the case was altered to one under Section 302 etc. of the IPC.

The Trial Court on a consideration of the evidence convicted the appellant for an offence punishable under Sections 302, 506 (II) and 341 of the IPC. This judgment was maintained by the High Court as well. It is in this situation that the matter is before us today.

Mr. R.Shunmugham Sundram, the learned senior counsel for the appellant has pointed out that a bare perusal of the injuries, the post-mortem report and the evidence of the Doctor would show that the injuries caused by the appellant were not the cause of his death and he had in fact died of Myocardial Infarction leading to heart failure. He has further submitted that the fact that the deceased was already a heart patient and had undergone angioplasty was a fact not within the knowledge of the appellant and in this view of the matter a case under Section 302 IPC was not spelt out.

Mr. R. Sunderavardan, the learned senior counsel for the respondent has however pointed out that even assuming that the immediate cause of death was the Myocardial Infarction and not the injuries caused to the deceased but in the light of the admitted fact that the appellant was an employee of the hotel of which the deceased was the Managing Director and that very severe injuries had indeed been caused with a sickle, required that the appellant would be punishable under Section 304 Part-I, IPC.

We have considered the arguments advanced by the learned counsel.

We reproduce the injuries found on the dead body of the deceased at the time of the post-mortem.

"Bandage seen over left forearm and right forearm below right below. Elastocreps bandage seen on top of left shoulder, Front of chest and back of chest.

An Elastocreps bandage on the right side of the neck.

1 Left shoulder - on removal of plaster:

2 3 A stapled sutured wound seen on the front of outer third of left chest (crossing top of the outer aspect of the left shoulder) extending up to outer aspect of back of left side chest. The total length is 16 cms.

1 A metallic wire is seen on the outer aspect of the left shoulder - 4 cm long on removal of the sutures (staples) the acromio-calvicular joint was fixed with a tension bank wire.

The surrounding soft tissues were found repaired 16 x 1.5 cm x bone deep.

2 3 2. Right hand - curved sutured wound seen over the right palm extending from the volar aspect of the right wrist passing through the right thenar eminence extending to the base of right thumb on the dorsal aspect. The total length is 18 c.m.

1 - On removal of sutures the margins are regular - 2 3 On further dissection the underlying muscles of the right thumb, nerves, blood vessels were found repaired 18 x 3 cms.

Muscle deep.

4 5 3. A sutured wound on the palmar aspect of the left thumb in the middle third, A curved sutured wound seen over the left thenar eminence 6 cm Long. On removal of the sutures the margins are clean out, the underlying muscles found repaired 6 x 2 cm x muscle deep.

6 7 HEART 8 An old vertical midline scar 18 cm Long seen in the midline of chest extending down from the suprasternal notch. On opening the thorax the underlying sternum was found sutured with stainless steel wire (old) on further dissection the heart was found grossly enlarged with increase in pericardial fat.

9 10 On dissection of the heart massive atheromatous changes seen in the root of aorta. Coronary artery by pass site made out and stent in situ. Heart sent for Histopathological examination. Coronary vessels found narrowed."

PW.13 also noted that the deceased had died due to complications arising out of Myocardial infarction and admitted that in the post-mortem report there was no suggestion that the death was a result of the injuries.

The learned counsel has also brought to our notice the death summary (Ext.p.8) which had been recorded in Apollo hospital by the attending Doctor (PW.8) who stated that as the deceased had lost a great deal of blood as the blood vessels had been cut and complications had arisen on account of his age (which was about 70 years) and was already a heart patient, the cause of death was:

Coronary Artery disease :

Acute Coronary Syndrome, Post Coronary Revascularisation status, practical post, Coronary artery bypass and post stent. Post-hand surgery status and Diabetes mellitus. Since he was already having heart disease bypass surgery had been done to him. Afterwards heart trouble had occurred to him."

Keeping in mind the said facts the High Court observed that:

"In view of the above categorical evidence of PW.8 and PW.13, we are of the considered view that though it had been stated in Post Mortem report that the death was due to the complications of Myocardial Infarction, such complications is directly attributed to the injuries inflicted by the accused which resulted in interruption of the free flow of the blood not only to the various vital organs but also the heart and therefore the contention of the learned Senior counsel for the accused is liable to be rejected and accordingly the same is rejected."

We have considered the reasons given by the High Court and also considered the evidence above referred.

It is the admitted fact that the Doctors have not opined that the death was caused due to the injuries caused by the appellant. There is also no evidence to show that the injuries could have independently caused the death of the deceased even if the deceased had not been suffering from a

heart problem. It is also the conceded position that the deceased had a serious heart problem which was matter not within the appellant's knowledge and on the contrary the medical evidence reveals that he had undergone an angioplasty but had nevertheless suffered a heart attack thereafter.

In this background the High Court's assertion that the death was occasioned by complications on account of the injuries caused by the appellant is not quite accurate. We are, therefore, of the opinion that the case would fall within Section 326 of the IPC and not under Section 302 of the IPC thereof.

Mr. R. Sundravardan's argument that this matter would nevertheless fall within Section 304 Part-I or Part -II of the IPC, is also rejected as there was no intention on the part of appellant to cause the death of the deceased nor could he be attributed with the knowledge that death would be caused.

We accordingly partly allow this appeal, set aside the acquittal and conviction of the appellant for the offence under Section 302 of the IPC, and alter his conviction to one under Section 326 of the IPC and award a sentence of 10 years R.I. and a fine of Rs.5,000/- and in default thereof, six months R.I. The sentence under the other provisions of the IPC is maintained.

The appeal is allowed in the above terms.