2024 INSC 45

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 212 OF 2024

Ramalingam & Ors. ... **Appellants**

versus

N. Viswanathan ... **Respondent**

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The appellants have taken exception to the judgment and order dated 20th December 2018 passed by the learned Single Judge of the High Court of Judicature at Madras. The learned Additional District and Sessions Judge, Salem, had passed an order dated 9th January 2009 granting discharge to the appellants in the exercise of powers under Section 227 of the Code of Criminal Procedure, 1973 (for short 'CrPC'). One Nanjundan, the husband of the deceased Siddammal, challenged the order of the learned Additional District and Sessions Judge by filing a revision application. The High Court, by the impugned judgment and order, has allowed the revision application and has remanded the case to the learned Additional District and Sessions Judge for holding trial. The

said Nanjundan died during the pendency of revision application. The respondent is his son.

2. We must advert to a few factual aspects. The respondent's father Nanjundan had lodged a First Information Report bearing Cr. No.107 of 2004 (the FIR) alleging the commission of offences under Sections 341, 323 and 302 of the Indian Penal Code against the appellants. The FIR was based on the incident of 9th October 2004. In the complaint, based on which the FIR was registered, it was alleged that the first appellant had filed a suit against the respondent, praying for carrying out the measurement of the property claimed by the appellants and removing encroachment. On the date of the incident, around 11 am, the appellants and one Gopal assembled in front of the respondent's house, along with village munsif and a surveyor. They informed the respondent's father that Gopal had purchased the said property from the first appellant, and they wanted to measure the property. The respondent's mother (the deceased) tried to prevent them from entering to carry out a survey. The allegation is that at that time, the first appellant exhorted the second appellant to kill the deceased. Thereupon, the second appellant picked up a stick lying at the site and assaulted her on the chest. After that, the third and first appellant kicked the deceased on her chest and stomach. The respondent's mother was declared dead in the hospital where she was taken.

3. After completing the investigation, the investigating officer submitted a final report recording that the death of the deceased was due to natural cause and due to prior enmity,

the respondent falsely implicated the appellants. The final report was accordingly, filed on 22nd December 2004. Instead of filing a protest petition, the respondent's father filed a complaint under Section 200 of CrPC containing the same averments made in his complaint based on which the FIR was registered. The Judicial Magistrate recorded evidence of witnesses, including a doctor who performed a post-mortem. The doctor deposed that the death was natural.

4. As stated earlier, the appellants invoked Section 227 of CrPC for discharge, which was allowed by order dated 9th January, 2009.

SUBMISSIONS

5. The submission of the learned counsel appearing for the appellants is that the post-mortem certificate dated 10th October 2004 records that there were no ante-mortem injuries anywhere on the body of the deceased. Moreover, it records that the final opinion was reserved pending the chemical examiner's and histo-pathological reports. He submitted that both the reports were not placed on record, and there is no final opinion regarding the cause of death. He invited our attention to the deposition of Dr. R. Vallinayagam, who conducted a post-mortem on the body of the deceased. He pointed out that apart from stating that there were no ante-mortem injuries, the doctor opined that there was a tear in the heart caused due to heart disease. The doctor stated that the death was a natural one. He submitted that the case made out by the respondent's father was false.

6. The learned counsel appearing for the respondent supported the impugned judgment. He submitted that though his father may not have filed a protest petition, he was entitled in law to file a private complaint under Section 200 of CrPC. He submitted that ultimately, only after a complete trial the question of whether the appellants are responsible for the homicidal death of the deceased can be determined. He would, therefore, submit that no case is made out for interference.

OUR VIEW

7. Perusal of the impugned judgment shows that the High Court was of the view that the learned Additional District and Sessions Judge had conducted a mini-trial. We may note here that initially, the learned Judicial Magistrate had dismissed the complaint by exercising the power under Section 203 of CrPC on the ground that the death was not proved to be homicidal. The High Court, in a petition filed by the respondent's father, interfered and, by judgment and order dated 18th September 2007, set aside the order of the learned Magistrate. We find from a copy of the said judgment and order that the same was passed without a notice being issued to the present appellants.

8. After having perused the order of the learned Additional District and Sessions Judge dated 9th January 2009, we find that a mini-trial was not conducted. The Court has considered the case within four corners of its limited jurisdiction under Section 227 of the CrPC.

9. On our query, the learned counsel appearing for the respondent stated that, to his knowledge, the chemical

examiner's report and the histo-pathological report had not been received even today. The incident is of 9th October 2004. The significance of the post-mortem certificate is that it records that there were no ante-mortem injuries present on the body of the deceased. The evidence of Dr. R. Vallinayagam examined by the respondent himself is the most material. The doctor reiterated that in the post-mortem examination, he did not notice any external injuries on the body of the deceased. He has stated thus:

> "In my report, I have given a report that there are no external injuries. There was a tear in the heart of about 0lx.5 cm. This tear was caused because of the heart disease. So, I did not take this as an injury. I have told in the report that death has occurred only due to the above reason. I have stated in the report that 100 grams of clotted blood was present surrounding the heart. Police have enquired me in this regard. **During the enquiry, I have stated that death has occurred due to the tear in the heart, the wall of the heart was weak, due to blood flow and shock and stated that the death is a natural one."**
>
> (emphasis added)

10. Thus, the expert witness examined by the respondent, who admittedly carried out a post-mortem on the body of the deceased, has categorically stated that the death of the deceased was natural. This is coupled with the fact that there were no external injuries found on the body of the deceased.

11. The version of the respondent's father who was examined as PW-1 is that one of the appellants hit the deceased with a

stick on her chest, and the other appellant repeatedly kicked her on her chest. In the post-mortem, no injury was found on the chest or any other part of the body of the deceased. Therefore, taking the evidence of the respondent's father and other witnesses as it is, there was no material to proceed against the appellants in the private complaint filed by the respondent's father. We may also note here that even according to the case of the respondent's father, there was a dispute between him and the appellants over the property, and the incident occurred when, as per the order of the Civil Court, an attempt was made to survey the property through a government surveyor.

12. The High Court, even after referring to the post-mortem certificate, has completely ignored the doctor's evidence. Hence, the impugned judgment and order cannot be sustained, and the same is set aside. The Judgment and order dated 9th January 2009 in Crl. Misc. Petition No.51 of 2008 in Sessions Case no. 270 of 2008 is restored.

13. The appeal is, accordingly, allowed.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

New Delhi;
January 18, 2024.