

Manankathan Vs. the State, Rep. by

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Court : Chennai

Decided On : Nov-29-2013

Judge : V.Dhanapalan

Appellant : Manankathan

Respondent : The State, Rep. by

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

29. 11.2013 CORAM THE HONOURABLE MR.JUSTICE V.DHANAPALAN AND THE HONOURABLE MR.JUSTICE R.KARUPPIAH CRIMINAL APPEAL (MD).No.269 of 2012 Manankathan ... Appellant / 1st Accused -vs- The State, Rep. by Inspector of Police, Panthanallur Police Station, Thanjavur District. ... Respondent Crime No.111 of 2004 Prayer Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure against the conviction and sentence passed by the Additional Sessions Court, Thanjavur made in S.C.No.129/2005. !For Appellant ... Mr.S.Mohandass ^For Respondent ... Mr.K.S.Duraipandian Addl. Public Prosecutor ***** :

JUDGMENT

(Judgment of the Court was delivered by V.DHANAPALAN, J.) There are two accused in this case. The appellant / 1st accused, who has preferred this appeal, stands convicted in Sessions Case No.129 of 2005 on the file of the Additional

Sessions Judge, Fast Track Court, No.I, Thanjavur. He was convicted for offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and pay a fine of Rs.250/- in default to undergo simple imprisonment for one year and for offence under Section 201 IPC, he was convicted and sentenced to undergo rigorous imprisonment for three years and pay a fine of Rs.250/-, in default, to undergo simple imprisonment for six months and the substantive sentence were ordered to run concurrently. Aggrieved by the said conviction and sentence, the appellant is before this Court.

2. The prosecution case is as follows:- The appellant / 1st accused by name Manankathan, who is the husband of the second accused, had some sort of relationship with the deceased Pattupangi, who is stated to be the 2nd wife of the 1st accused, though not married legally, for about seven months prior to the date of occurrence and doubting her fidelity, he used to warn her frequently. While so, on 28.05.2004, the accused, having attended the festival at Maharajapuram Mariamman Kovil, returned home and gone to bed by 11 p.m. At that time, the deceased was found missing and hence, the 1st accused started searching her and finally, found standing at the bottom of the Vikraman river of Maharajapuram south bank. Since there was untrue reply from the deceased to the questions of the 1st accused as to why she was standing alone there?. and to whom was she talking to?., enraged by her act, appellant / 1st accused had attacked the deceased with an Aruval at her left wrist and cut her neck, by holding her hands with his legs, thereby caused her death and committed an offence punishable under Section 302 IPC. He also got the assistance of her wife / 2nd accused in burying the body of the deceased in a deep pit about 20 ft. distance, which led to the commission of offence under Section 201 IPC.

3. The prosecution has examined 18 witnesses, viz., P.Ws.1 to 18, marked both 29 exhibits and 8 Material Objects. On the side of the defence, neither oral nor documentary evidence was let in.

4. On appreciation of evidence and materials placed before it, the Trial Court convicted and sentenced the 1st accused as above stated, against which, the present appeal has been preferred by the 1st appellant.

5. Depositions of Prosecution Witnesses 1 to 18 are as follows: i) P.W.1 is the Village Administrative Officer, who deposed that based on the oral statement given by Manankathan to the effect that he had committed murder on his 2nd wife Pattupangi with the help of 2nd accused / his wife, on account of her adulterous attitude, the same Ex.P1 was recorded on obtaining signature from the 1st accused as also from the Assistant of VAO to prove it and subsequently, by treating the written statement as complaint Ex.P2, the Inspector of Police enquired him. ii) P.W.2 is the Village Assistant, who, besides identifying material objects 1 and 2, had narrated that the written statement given by the 1st accused was handed over by him to the Panthanallur Police Station and on the next day, one spade and aruval were seized from the backside of the house. Whatever stated before the VAO had been accepted once again in the confession statement of the 1st accused, in which also signature of P.W.2 was obtained. iii) P.W.3, who was residing close to the place of occurrence at Vikraman River Bank, had deposed that on 28.05.2004 at about 10:30 p.m., the 1st accused killed the deceased Pattupangi with Aruval and that on 30.05.2004, body of the deceased was taken away by the Inspector of Police in the presence of Tahsildar, which was duly identified by him. P.W.4, who is related to the deceased, in his deposition stated that on being heard from the accused that the deceased had stolen Rs.200/- and ran away, he started searching her, but his attempt ended in vain. Later on, it was informed to him that the accused committed murder on Pattupangi and he also deposed of noticing cut injuries on the body of Pattupangi. P.W.5 is the own sister of the deceased, who informed of both the deceased's stay with the 1st accused for 3 years and the cut on the neck of the body and she was also present at the time of post mortem of the body of the deceased. iv) P.W.6, a mason had witnessed murder of the deceased by the 1st accused in 10 feet distance and also identified the weapon used for commission of such offence. P.W.7 stood as a witness for seizure of blood stained sand (M.O.3) and ordinary sand (M.O.4) and also scribed his signature. P.W.8 was added as a witness in this case, who took away the body of the deceased from the pit and spoke about the condition of the body, which was in decayed stage. P.W.9 had spoken about the investigation conducted on the 2nd accused Anjammal and his signature was also obtained on the confession statement given by the 2nd accused. v) P.W.10, a Doctor,

Government Hospital, Thiruppanandal, on receipt of requisition from P.W.18 / Inspector of Police, conducted postmortem on the body of the deceased Pattupangi on 30.05.2004 to discover the cause of death. After identification of the body by one Police Constable No.1455, named, Asok Kumar, she started dissecting the body of the deceased and submitted her post mortem report /Ex.P9, which reads as under: ".POST-MORTEM CERTIFICATE PM.NO.1/20014 No.GOV.T.HOSPITAL THIRUPPANANDAL Regarding the body of a female aged about 40 years, named Pattupanki, Requisition received at 12.00 Noon on 30.05.2004 from The Taluk Magistrate. Police Inquest received at 5 p.m. on 30.05.2004 from Inspector of Police, Pandanallur of Thiruvudaimaruthoor with his letter No.PS Crime No.111 dated 30.05.2004. Body incharge of Police Constable No.1455 named Ashok Kumar. Identification and caste marks: Could not be recognised. The body was first seen by the undersigned at 5.00 P.M. on 30.05.2004. Its condition then was Rigor mortis absent in both upper limbs present in lower limbs. Post-mortem commenced at 5.00 P.M on 30.05.2004. Appearances found at the post-mortem on the body of a moderately nourished female lying on its back with closed eyes and opened mouth Tongue protruding outside the mouth. External appearance:- Skin peeled off here and there all over the body

(2) An incised wound 4 cm x 1/2 cm x 1/2 cm about 2". above the left wrist on the anterior aspect

(3) An incised wound in and around the neck exposing muscles nerves and arteries-bone deep excluding the cervical spined is the only bone attacking the head with body. Internal appearance: Left horn of Hyoid bone Broken

2) Heart weight 200 gms c/s pale chambers empty

3) Lungs Right lung weight 350 gms Left lung weight 300 gms c/s pale

4) No fracture ribs Abdomen: Stomach distended with 400 gm of undesignated food particles

(2) Intestine:- Mucosa pale yellow coloured pasty material seen

(3) Liver weight:- 1200 gm c/s pale

(4) Spleen:- weight 150 gm c/s pale

(5) both kidney almost liquified

(6) Bladder empty

(7) Uterus c/s pale cavity empty. No fracture skull and pelvic bones and spinal column. Brain liquified. The following specimen for chemical analysis

(1) Stomach and its contents

(2) Loop of intestine and its content

(3) Sample of Liver

(4) One Kidney

(5) Saturated solution of Nacl

(6) Hyoid bone soaked in Formalin. Post mortem concluded at 6 P.M. on 30.05.2004 Opinion as to cause of death:- (a) Reserved pending report of Chemical Analysis (b) The deceased would appear to have died of 40 hrs to 46 hrs prior to autopsy because of hemorrhagic shock due to injury to vital blood vessels. Chemical Analysis Report: Poison was not detected in any of them (1-4) Hyoid bone - No ante-mortem Injury. Post mortem dislocation of left greater horn. Station: Name: K.Shanthakumar Dated: Rank: Civil Surgeon sd/- Medical Officer Government Hospital Thirupanandal 612 504 D.O.Code No.MF321Opinion as to cause of death:

1. 7.2004 The deceased would appear to have died of 40 hrs to 46 hrs prior to post mortem, because of hemorrhagic shock due to injury to vital blood vessels. sd/- Medical Officer Government Hospital Thirupanandal 612 504 D.O.Code No.MF321" vi) P.W.11, a Scientific Officer, who had submitted the Chemical Analysis report in Ex.P14, deposed that no poison was detected in any of specimen received for analysis. P.W.12, a Scientific Assistant Grade-I, had stated that on receipt of material objects, viz., spade, sand, aruval, saree and inner dress, it was found that that there were blood stains on spade and aruval and no blood

stain was seen on sand, saree and inner dress, which were sent to Chennai for serological report. vii) P.W.13, an expert in photographic field had shot 20 photographs of the deceased Pattupangi and hence was added as one of the prosecution witnesses in this case. P.W.14 was a Chief writer of the Court, who had spoken about the conduct of chemical examination of the case properties and the receipt of forensic report. P.W.15 had deposed that while he was working as Tahsildar, Thiruvidadimarudhur Taluk, Thanjavur District, burial of a body was reported to him, that in his presence, the same was taken away from the pit after identification by the 1st accused Manankathan and that later on, one Dr.Shanthakumari conducted post mortem of the body there itself. P.W.16, a Head Constable, had deposed that on registration of an FIR, he had taken the same to the Incharge District Munsif-cum-Judicial Magistrate, Papanasam and a copy of which was also handed over to higher officials. P.W.17, another Head Constable in his deposition had stated that he was present along with the Doctor, who conducted autopsy test, that seized all the materials found at that place and that on completion of post mortem by the Doctor, the body was handed over to the relatives of the deceased. viii) On receipt of confession statement given by the 1st accused Manankathan to the Village Administrative Officer duly signed by witnesses, P.W.18, Inspector of Police, Panthanallur Police Station, based on the statement sent by VAO, registered a case in Crime No.111 of 2004 (Ex.P25) initially for an offence under Section 302 IPC and sent the FIR to the Court through P.W.16, a Head Constable. P.W.18 also visited the scene, where the dead body was buried along with the 1st accused accompanied by Head Constable Nos.2810, 2436 and 1879 and a Woman Head Constable No.2749, arranged for digging out the body of the deceased in the presence of Tahsildar and Panchayathdars, prepared a rough sketch (Ex.P26) and seized material objects in M.Os.1 to 7 as shown by the accused in the presence of witnesses under mahazar. Thereafter, he passed on all the seized materials including Photo Negatives (M.O.8) to Court in Form No.95 with the request for chemical analysis besides sending requisition (Ex.P15) for post mortem of the deceased to the Medical Officer, Government Hospital, Thiruppanandal. After completion of investigation on 15.09.2004, he filed a charge sheet for the offences under Sections 201 and 302 IPC against the 1st accused and Section 201 IPC against

the 2nd accused.

6. We have heard the learned counsel for the appellant / 1st accused and the learned Additional Public Prosecutor.

7. Mr.S.Mohan Doss, learned counsel for the appellant / 1st accused, would submit that the appellant had caused the death of the deceased due to sudden provocation. He has referred to the statement given by the appellant under Section 313 Cr.P.C., to the first question, wherein he had admitted his guilt of murdering the deceased Pattupangi, owing to the circumstances and intolerances happened at that time. Learned counsel for the appellant, by pointing out to the last question, posed to the appellant / 1st accused has stated that the appellant had deposed to the effect that he, on his return home at 8 p.m. and not finding the deceased at home, had gone out in search of her. The doubt arose, when he saw her standing at the river bank, consequent to which, he posed questions as stated earlier. Again, the appellant / 1st accused also questioned her as to whom she had accompanied with and to who was running on seeing him. Upon sudden provocation over her repeated lies and betrayal, he killed her and also reported the incident to the Panchayat President. Therefore, the appellant's act could not attract the commission of offence of murder and it could only be a culpable homicide, which would be one punishable under section 304 IPC and not Section 302 IPC. He has also pinpointed that when there was enmity between the family of the appellant / 1st accused and P.Ws.3 and 6, there is every possibility of P.Ws.3 and 6 giving false evidence against the appellant / 1st accused. Though the learned counsel has raised certain points on the merits of the case, ultimately he has sought mercy at the hands of this Court, by pleading that the appellant / 1st accused had already undergone 9 1/2 years of conviction, that now he is aged about 61 years and that he has got no bad antecedents. He would, therefore, submit that a lesser punishment may be imposed on him so as to enable him to reform himself and also to become a useful member of the humanity. He would also bring to the notice of this Court about the family circumstances of the accused, besides praying for modification of the conviction and sentence imposed by the Trial Court.

8. Per contra, Mr.K.S.Duraipandian, learned Additional Public Prosecutor would contend that the commission of offence was witnessed by P.Ws.3 and 6 only and the accused himself has admitted his guilt. The trial Court, having considered every factor involved in it and on examining the oral and documentary evidences, has arrived at the decision of finding the accused guilty and therefore, there is no necessity to interfere with the findings of the Trial Court, which is based on strong evidences. He has also defended the version of the prosecution by stating that the commission of offence was proved with eye witnesses and relevant materials, thereby linking the accused to the guilt.

9. We have considered the rival submissions, perused the entire records and examined all the evidences both oral and documentary.

10. It is alleged by the prosecution that the accused himself appeared before P.W.1, Village Administrative Officer and gave an oral statement Ex.P1. P.W.1, Village Administrative Officer along with P.W.2 examined him and took the accused to the police station for lodging a complaint. It is argued that once P.W.1, Village Administrative Officer has not narrated the circumstances, under which, the accused has come forward to give a statement admitting his guilt for commission of such offence, it is the duty of the investigating officer concerned to send the FIR along with report in the prescribed format to the Court, which was, admittedly not done in this case and there was a procedural lapse.

11. Further, the prosecution relied on witnesses P.Ws.3 & 6, who deposed that on hearing the cry of the deceased, they went to the place of occurrence and saw the accused cutting the neck of the deceased by holding hands of the deceased with his legs, thereby committed the murder and buried the corpus in order to screen the offence. On the other hand, as against the said statement, defence has come out with a case that there was enmity between the family of the accused and P.Ws.3 & 6.

12. Upon analysing the evidences both oral and documentary, it could be seen that P.Ws.3 and 6 are eye witnesses and the suggestion of enmity between the accused and the deceased have not been supported and proved. Since there was no contradiction between the version of P.Ws.3 & 6 and the statement given by

the 1st accused before P.W.1, the trial Court has rightly come to the conclusion, rejecting the plea of defence regarding enmity.

13. A bare looking at the evidence of P.Ws.4 and 5 shows some contradictions, which ultimately result in spoiling the case of prosecution. While the latter informed of the stay of deceased with the 1st accused for about three years. former informed of missing of the deceased for some time . Above all, exact relationship between the accused and deceased has not been clearly proved by the prosecution and it has merely been stated that both the accused and deceased lived like husband and wife and on suspicion over the fidelity of the deceased, the entire episode had begun.

14. To examine the contention of the learned counsel for the appellant that this was a case of sudden and grave provocation, a fine distinction has to be kept in mind between sudden and grave provocation resulting in sudden and temporary loss of self-control and the one which inspires an actual intention to kill. Once there is pre-meditated act with the intention to kill, it will obviously fall beyond the scope of culpable homicide amounting to murder. The provocation could be an act or series of acts done by the deceased to the accused, resulting in inflicting of injury. In this case, the 1st accused, during the course of examination had stated reasons as to his grave and sudden provocation for commission of such offence. The admission of his guilt and reason for sudden provocation has been spoken by the accused at the time of giving statement under Section 313 Cr.P.C., which reads as under: Bfs;tp - muR rhl;rp - 1 kBdhfud;. fpuhk eph;thf mYtyu; jk;; rhl;rpaj;jpy; 29/04/2006. md;W3kzpastpy; jhDk; m.rh.2 gpr;ira[k;. mYtyfj;jpy; nUe;jnghJ ePh; M\$uhfp thf;FKyk; bfhLj;jij gjpt[bra;J ifbaGj;J bgw;W me;j thf;FKyk; m.rh.M.1 vd;Wk;. jhd; bfhLj;j g[fhh; m.rh.M.2 vd rhl;rpak; mspf;f Bfl;OBu mJ gw;wp vd;d brhy;fpwPh;?. gjpy; - ehd; jhd; bfhiy bra;Bjd;. ghh;j;jij fz;zhy; jhA;f Koahky; bra;Jtpl;Bld;". Bfs;tp - nt;tHf;fpy; ckJ jug;gpy; VnjDk; brhy;y Btz;Lkh?. gjpy; - ehd; ntiyf;F ngha;tpl;L nut[8 kzpf;F tPl;Lf;F te;J ghh;j;j bgh GJ gl;LghA;fp ny;iy/ BjoBghd bgh GJ Mw;wA;fiua[k; xU MZld; ngha; bfhz;oUe;jJ.

ehd;tPl;oy; nt;tst[nlk; nUf;Fk; bgh GJ ahhplk; ngrpf; bfhz;L nUf;fpwha; vd Bfl;Bld;. cd;id nt;tst[Jhuk; ghJfhj;J tUfpBwd;. vdf;Bf JBuhfk; bra;fpwhBa vd brhy;yp

btl;otpl;Bld;".

15. From the above statement made by the appellant / 1st accused, it could be seen that enraged by the incident, viz., the deceased's conversation with another person during late hours, and upon losing his self control, he had committed the offence thereby caused her death. If the offender once deprived of the power of his control by grave and sudden provocation caused the death of a person by mistake or accident, then the exceptions are to be invoked by giving the benefit to the accused. However, the said exception is subject to following provisions: i) that the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person; ii) that the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant; and iii) the provocation is not given by anything done in the lawful exercise of the right of private defence. The question of fact has to be decided as to whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. Section 300 IPC codifies the principle that if homicide is committed in face of grave and sudden provocation emanating from the victim, the charge of murder by person for such grave and sudden provocation from the victim reduces the charge of murder to culpable homicide not amounting to murder. The requirements of exception-1 to section 300 are (1) provocation (2) that such provocation must be sudden and grave and (3) that same should emanate from the victim except when death of some other person than intended is caused by mistake or accident.

16. The Hon'ble Supreme Court in the case of Chinnathanam vs. State represented by Inspector of Police, reported in (2007) 14 Supreme Court Cases 690, has held as under: ".....there was no premeditation or pre-plan to cause death by the accused and in the background of the accused nurturing a feeling that the deceased and his sisters son had facilitated elopement of his niece and thereby defamed the family and that the deceased though younger to the accused had advised him to behave properly, it was held that the same would amount to grave and sudden provocation. On the additional facts that the medical opinion did not suggest that the injuries were sufficient in the ordinary nature to cause death and despite having sufficient opportunity to give further blows, accused had not

done so and thus not acted in a cruel manner, the conviction was converted from that of section 302 to section 304 Part I of the IPC."

17. In the case of Pundalik vs. State of Maharashtra, reported in (2010) 15 Supreme Court Cases 122, the Hon'ble Supreme Court converted the conviction from that under section 302 to section 304 Part I, when it was found that even according to the prosecution, there used to be frequent quarrels between the accused and his deceased wife. On the date of incident finding his wife in an inebriated condition, he got infuriated and in the heat of passion assaulted her.

18. Though the delay in handing over FIR has been taken as one of the grounds to assail the order of conviction and sentence, it has been properly explained by the prosecution to the effect that though occurrence had taken place in the midnight of 28.05.2004, the surrender of the accused was only at 3.00 p.m. on 29.04.2005 and thereafter P.W.1 had made a statement and then it was handed over to the competent authority at 18 hours, pursuant to which, delay occurred.

19. On examination of the factual circumstances and happenings, which led to the commission of offence, on going through various legal positions and material information both oral and documentary and upon consideration of the submissions made on either side, we are of the firm view that the offence committed by the 1st accused does not attract the provisions of Section 302 IPC and it could only be an exception to Section 304(i) IPC, thereby converting the offence into Section 304 (i) IPC instead of Section 302 IPC.

20. In the result, the Criminal Appeal is partly allowed. The conviction and sentence imposed on the appellant under Section 302 IPC is modified to undergo rigorous imprisonment for ten years for the offence punishable under Section 304(I) IPC. The appellant / 1st accused, after adjusting the period of imprisonment already undergone shall undergo imprisonment for the remaining period. rr/ar To
1. Additional Sessions Court, Thanjavur
2. The Inspector of Police, Panthanallur Police Station, Thanjavur District.

3. The Public Prosecutor, Madurai Bench of Madras High Court, Madurai.