

Chami Vs. State of Kerala

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Court : Kerala

Decided On : Nov-30-1959

Reported in : AIR1960Ker241; 1960CriLJ1086

Judge : K. Sankaran, C.J. and; Anna Chandy, J.

Acts : [Evidence Act, 1872](#) - Sections 105; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 466

Appeal No. : Criminal Appeal No. 110 of 1959

Appellant : Chami

Respondent : State of Kerala

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : M. Seethi, Adv.

Judgement :

Anna Chandy, J.

1. This appeal is by the accused in Sessions Case No. 75 of 1958 of the Trichur Sessions Court. He was convicted under Section 302 I. P. C. and sentenced to undergo rigorous imprisonment for life for causing the death of one Vellachi by stabbing her with a dagger, The incident took place on 30-10-1958 at about I. P.

M.

2. On Sunday previous to the date of occurrence there was a 'Kavadi Pooja' in the house of the accused. As the 'Pandaram' did not turn up for conducting the pooja it had to be performed by PW-13 'Raman and his wife Vellachi. Thereafter the accused and his family along with some others went on a pilgrimage to Palni. On their return they alighted at the Mankara Railway Station early in the morning of 30-10-1958 and walked the rest of the distance to their house in Thiruvilwamala which is about six miles from the station. By the time they reached Thiruvilwamala the accused became agitated and began to exhibit signs of mental derangement. When the accused and his relations were sitting on the verandah of the house, Vellachi and her relations went over there to enquire about the Palani trip.

The accused on seeing Vellachi said that he did not want to see her or any of her people and asked them to clear out. They left the place and went to the house of Neelakantan (Pw-5) a relation of the accused. There Vellachi was talking with Pw-5 'when the accused came rushing with M. O. 1 dagger and asking her why she was standing there stabbed 'her on her right chest. She fell down and died immediately. After stabbing Vellachi the accused danced about the place with the dagger for some time bawling out 'Swami Saranam' and then ran away from the place. After being pursued for about two furlongs, the accused was apprehended and the dagger taken from him. He was produced at the Thiruvilwamala Police Outpost at about 4 P. M.

3. The accused pleaded not guilty. In the committal court when he was asked about the evidence against him he replied that he was not aware of anything. In the Sessions Court he stated that he had no idea about the incident and he did not remember anything about. He added that when he regained consciousness he found himself in the Viyoor Jail with no clothes on. He asked the warden of the Jail for some clothes. He was then taken to a doctor. He was given some injections and medicines after which he became well. He admitted that the deceased Vellachi and her husband had performed the 'Kavadi' in his house and that he went on a pilgrimage to Palani along with his relations.

4. Ext. P-2 is the certificate issued by Pw-4 the Assistant Surgeon who conducted the post-mortem examination on the body of Vellachi. He found a penetrating incised wound on the right breast below the collar bone which pierced the fourth intercostal space and caused a tear on the right lung. The doctor gives evidence that the injury was sufficient in the ordinary course to cause death and that death was the result of shock and haemorrhage consequent on the injury to the lung.

5. The fact that it was the accused who caused the injury appears to have been not disputed before the Sessions Court and is also not challenged before us. Pws. 2, 3 and 5 are the actual witnesses to the incident. They speak to the incident in all its details. Pw-2 is the son-in-law of the deceased Vellachi and Pw-3 is her son. They give evidence that they along with the deceased went to the house of the accused to enquire about their Palani trip and on being asked by the accused to clear out. they went to the house of Pw-5. While Vellachi and Pw-5 were talking the accused came rushing with M. O. 1 dagger and stabbed Vellachi on the right side of her chest. She died on the spot. Pw. 5 corroborates the evidence of Pws. 2 and 3.

6. The most important question for determination in this appeal is whether the accused is entitled to the benefit of Section 84 of the Indian Penal Code in that he was, at the time of the incident, by reason of unsoundness of mind, incapable of knowing the nature of his acts, or that he was doing what was wrong or contrary to law. It should be mentioned even at the outset that in our opinion there is ample evidence in the case to show that the accused was of unsound mind at the time he stabbed the deceased. The learned Sessions Judge in coming to the opposite conclusion laid some stress on the fact that the accused neither raised a specific plea of insanity nor let in evidence on that behalf. The learned Sessions Judge seems to have been of the opinion that the statement of the accused before him does not amount to a specific plea of insanity. As already noted the statement of the accused before the committal court was that he was 'not aware of anything'.

In the Sessions Court also he stated that he remembers nothing about the incident. He further stated that he remembered the trip to Palani and his return from there but was not aware of anything that happened afterwards till he regained

consciousness at the jail. This is our opinion amounts to a plea of insanity for to hold otherwise would be tantamount to saying that to plead insanity, the accused should be aware of his mental derangement. An insane person is prima facie incompetent to plead insanity, and indeed the very plea if taken would establish his sanity. As for the failure of the accused to adduce evidence to prove insanity though no doubt the burden is on the accused to prove the exception, of which he claims the benefit, it is now well-accepted that even if he lets in no evidence of his own, his case can be spelled out from the circumstances appearing in the prosecution evidence.

7. There is ample evidence in the case to justify the inference that at the time of stabbing Vellachi the accused was by reason of unsoundness of mind incapable of knowing the nature of his act. It is admitted by the prosecution that there was absolutely no motive for the accused to commit the crime and there is a positive finding by the Sessions Judge that the accused committed the murder 'without any apparent sane motive'. There is also a total absence of provocation for the accused, to stab Vellachi to death. It was when Vellachi was in the house of Pw-5 talking to him that the accused rushed up to the place and gave her the fatal stab. Pw-5 is the cousin of the accused and was one of those who accompanied him to Palani. He says that on their return from Palani as he was nearing his house the accused became agitated and began shivering. He took out his knife and cried out 'Swami Saranam' and ran to the house of Pw-6. He returned after some time later still trembling and reciting 'Swami Saranam'. The witness asked the accused why he was behaving in that manner to which the accused replied that he was not aware of anything. The accused's father and his father-in-law on seeing this change of behaviour in the accused remarked that it might be due to the wrath of the Gods. Pw-6 is another person who had accompanied the accused to Palani. He too says that when the accused returned to his house he was shivering and calling out 'Swami Saranam'. He saw the accused rushing out of the house and when the witness came out on hearing the commotion he saw Vellachi lying dead and the accused standing outside the gate calling out 'Swami Saranam.' Pw. 7 is the father of the accused. He swears that on their return from Palani, when they had neared their house, the accused began to tremble.

He then took out a knife and shouting 'Swami Saranam' ran to the house of Pw-8. After some time he returned still reciting 'Swami Saranam' and muttering to himself. The witness says that the accused appeared to be a man out of his senses. He added that the accused had not taken any meals that day and when the deceased came there and asked him for 'a chew' the accused asked her to go away. A little later the accused again began to tremble and taking out his dagger rushed out of the house. According to Pw. 7, at this time also the accused appeared to be insane, Pw-8 swears that at about 10 or 10-30 in the morning the accused ran up to his place with a knife in an agitated mood. He asked the accused to put down the knife. He did not do it first, but when the witness raised his voice and commanded him, he obeyed. Then the accused prostrated himself before the witness.

When the witness asked him what had happened to him the accused did not reply and those who came with the accused told him that it appeared to them that it was the wrath of the Gods. The witness then advised the accused to pray and to keep himself at home. The accused went away shouting 'Swami Saranam'. On receiving information about Vellacbi's death, the witness went to the scene where he found Vellachi lying dead and the accused dancing around holding a knife. Pw-9 swears that when he caught hold of the accused as he was running off after stabbing Vellachi it appeared to him that the accused was of unsound mind. The witness also says that earlier in the day when the accused was running to the house of Pw-8 he appeared to be not in his senses. Pw-11 saw him immediately after the incident at the gate of Pw. 5 with the knife in his hand shivering and reciting 'Swami Saranam' and this witness also felt that the accused was then not in his senses. Pw. 12 is the father-in-law of the accused.

He swears that when he went to the accused's house to enquire about the Palani trip he found the accused behaving like a mad man. The witness treated him by smearing some sacred ashes on him. That was of no avail and the accused crying out 'Swami Saranam' took the knife which the witness was using for cutting betel nuts and rushed out to the house of Pw-5. The witness adds that when he went to Vellachi's house on hearing the commotion, he saw the accused near the gate jumping about and howling in an insane manner. Pw-16 is the police constable who

was present in the police station when the accused was produced there by Pws-9 and 11 and others.

The accused had some injuries on his person and when the witness asked him about it the accused did not give any reply. He swears that when the accused was brought to the police station he behaved like a mad man and apart from producing some meaningless sounds he did not reply to the questions put to him. Pw. 4 is the medical officer before whom the accused was produced at 5-30 P. M. on the date of incident for a certificate regarding the injuries. She says that when she questioned the accused as to how he came by the injuries she did not get a reply. The accused appeared to her to be a man not in his normal senses. In reply to the questions put to him the accused lay down on the ground and rolled about,

It also appears that just before the incident, the accused stabbed a goat and a cow and also inflicted some injuries on himself. When the accused was taken to the doctor after arrest certain Injuries were noted on his person. He had wounds on the right arm, shoulders, and on the bridge of the nose. Pw-2 had given evidence that these injuries were caused by the accused himself by scratching with the dagger. His evidence on this point was not challenged by the prosecutor. However the prosecution would have it that the injuries were caused when the accused fell down on being chased after the incident. If as a matter of fact the injuries were so caused Pws. 9 and 11 who chased and caught hold of the accused and produced him before the police would have been the best persons to give evidence about it.

However they were not asked anything about it. After observing that this was a serious omission, the learned. Sessions Judge goes on to find that the injuries were caused while the accused was. being apprehended, basing his conclusion solely on the evidence of the investigating officer that Pws-9 and 11 told him about the incident even though he had failed to make a note of it in the Case Diary. It is clear that the theory that the injuries were sustained by the accused in the course of a fall IB an after thought and that there was no justification to discard the unchallenged evidence of Pw. 2 on this matter.

8. From the above discussion of the evidence it will be seen that all those including the police constable and the medical Officer who came into contact' with the

accused shortly before and after the incident are agreed on the point that the accused appeared to be out of his senses. It will also be seen that there is a total absence of motive or provocation for the crime. In the face of such consistent and acceptable evidence, it is difficult to see how the learned Sessions Judge could have failed to come to the conclusion that the accused was insane at the time he stabbed Vellachi. The learned Sessions Judge seems to have been greatly influenced by the absence of a considered medical opinion to the effect that the accused was insane.

It is seen from the records that on 4-11-1958 the Sub-Inspector filed a report to the Magistrate that 'from the investigation made in the case it is reported that the accused was showing signs of insanity before and after the occurrence' and requested the Magistrate to take steps to keep him under medical observation. In pursuance of that report on 11-11-1958 the Magistrate addressed the Superintendent of the Sub-Jail, Viiyur where the accused was remanded to custody to keep the accused under medical observation and intimate the result. Another communication appears to have been sent on the 17th to have the result of the observation communicated before 25-11-1958 to which date the case stood posted.

On the back of that communication we find an endorsement dated 24-11-1958 which appears to have been made by the Assistant Surgeon to the effect 'on my observation he is mentally sound at present'. Apart from these records there is no evidence in the case to indicate how long the accused was kept under observation, the nature of such observation, and the data on which the Assistant Surgeon gave his opinion that the accused was mentally sound on 21-11-1958. In the uniform nature of the evidence of all concerned including the police constable and the doctor who saw the accused within a few hours of the incident that he was not in a sound state of mind it was incumbent on the police officer to promptly report the matter to the Magistrate and to take the necessary steps to keep the accused under observation with a view to finding out whether the accused was in fact insane.

The Sub-Inspector seems to have thought of it only on 4-11-1958, that is five days after the accused was arrested. The learned Magistrate also appears to have taken his own time and delayed till 11-11-1958 to address the jail authorities on the matter. The Sub-Inspector tried to get over this defect by giving out his opinion that the accused was pretending or acting like a mad man. One is at a loss to know what is the basis of this 'expert' opinion pronounced in court by the police officer. The evidence in the case including that of the police constable and the doctor who examined the accused is to the contrary and there was not even a suggestion to any one of the numerous witnesses who gave evidence before court that the accused was behaving like a mad man before the incident, at the time of the incident and after the incident, that it was a case of pretended or feigned madness.

In this connection we think it fit to remind the police and the Magistracy dealing with such cases of their responsibility in the matter. The accused in such cases especially if he is undefended is naturally thrown at the mercy of the court whose duty is then to offer him all reasonable assistance. The first thing and perhaps the most important thing is to place the prisoner suspected of insanity under medical observation promptly, so that when the case comes up for trial there would be reliable medical evidence of the state of mind of the accused immediately after the incident.

9. On a consideration of the evidence and circumstances noted above we have no hesitation in coming to the conclusion that this is a case in which the accused is entitled to the benefit of the exception covered by Section 84 I. P. C. We therefore find that the accused caused the death of Vallachi by stabbing her on her right chest. But his act is saved by Section 84 I. P. C. from constituting an offence. The accused is therefore acquitted, but in conformity with Section 471, Criminal Procedure Code, we direct that the accused be detained in safe custody in the Viyyur Jail. This shall be reported to the State Government for taking such further action as maybe deemed necessary.