

In Re: Krishnaswami Naicker

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Court : Chennai

Decided On : Jul-28-1964

Reported in : 1965CriLJ42

Judge : Anantanarayanan and ;Natesan, JJ.

Appellant : In Re: Krishnaswami Naicker

Judgement :

Natesan, J.

1. One Krishnaswami Naicker of Muthalapuram Kottur, Tirunelveli Dt., who has been convicted and sentenced to imprisonment for life under Section 302, I. P. C. for the murder of Kandaswami Naicker of the same place is the appellant.

2. At the Sessions along with the appellant, his elder brother, one Perumal alias Perumalswami Naicker, was also charged under Section 323, I. P. C. But he was found not guilty and acquitted. From the evidence let in by the prosecution, the following facts emerge.

3. The sister of the accused was the second wife of one Sangava Naicker, brother of the deceased, and by reason of the refusal by the said Sangava Naicker and the deceased to give the daughter of the former by his first wife in marriage to the second accused, the relationship between the two families was somewhat strained. On the day prior to the occurrence, when the deceased, P. W. 8 and

others were chatting near a shop, the second accused was walking into the shop and the deceased appears to have given him a push saying that he was too close. This appears to have hit a boil of the second accused on his leg. On the day of the occurrence, at about 8 p.m. or so, the deceased and P. Ws. 1 to 3 and 5 were sitting on a stone in front of the house of one Ramaswami and were chatting. The second accused who had resented the push he had on the prior day came that way hurling abuses at the person who had given him the hit the previous day, and this led to a wordy quarrel between the second accused and the deceased, later on developing into exchange of blows.

The evidence is that, at that time, the appellant herein, the first accused (younger brother of the second accused) came on the scene and beat the deceased on his back. When the deceased turned round, the appellant took a soori knife from his waist and stabbed him on the left side of the chest near axilla & started running. The deceased ran behind him, chasing him, & P. Ws. 1 to 3 and 5 who were there, also started chasing the appellant. Their progress was retorted by a dog coming in the way, and in the meanwhile the appellant escaped. The deceased who went chasing the appellant fell down after running a few yards. P. Ws. 1 to 3 and 5, thereupon, carried the deceased to his house and sent intimation to the village munsif, P. W, 7, of Muthalapuram. He arrived at about 11 p.m. and recorded the statement Ex. P-5, from the deceased. Placing the deceased in a cart to be taken to Ettayapuram P. W, 7 went ahead and handed over the statement, Ex. P-5, and his own report, Ex. P 5-A, to the Sub-Inspector of Police, P, W. 15, Ettayapuram. P. W. 15 also examined the deceased who WAS then conscious and recorded a statement, Ex. P-17, from him. A case was registered under Section 307, I. P. C.

4. There was only a Government dispensary at Ettayapuram and the deceased was taken there. The Junior Assistant Surgeon, P. W. 4, examined the deceased at about 6 a.m. and issued the wound certificate, Ex. P-1, He gave requisition for recording dying declaration from the deceased. The person available there, the village munsif, P. W. 6, Ettayapuram, recorded the dying declaration, Ex, P-2, from the deceased at about 6 a.m. The ambulance sent by the Sub-Inspector of Police, P. W, 15, to carry the deceased to Tuticorin arrived only at 9 a.m., and the victim passed away when being put into the ambulance. The police then amended the

charge into one under Section 302, I. P. C.

5. An inquest was held at which the eye witnesses P. Ws. 1 to 3 and 5 were examined. The post mortem was conducted on the body by P. W. 4. There were four external injuries on the person of the deceased. No. 1 was a stab wound 3' x 2' x 6' over the left arm near axillary fold. Muscles underneath and blood vessels were cut. The wound extended into the left arm inner aspect. Injury No. 2 was an incised wound 1 inch X 1/2 inch x 1/2 inch in the left axilla with muscles underneath being cut. Injury No. 3 was also an incised wound 1 inch x 1/2 inch over upper part of the right ear, the ear being cut and injury No. 4 was another incised wound 1 inch x 1/2 inch x 1/2 inch behind the right ear near the mastoid region. On dissection, P. W. 4 found, corresponding to injury No. 1, that the muscles underneath injury No. 1 and the brachial artery and vein were cut. In the opinion of the Doctor, P. W. 4, death was due to shock and haemorrhage following injury No. 1, and injury NO. 1 was necessarily fatal.

6. The appellant herein, the first accused, was arrested on 15th December 1962, near Moore Market in Madras. The second accused was arrested on 7-12-1962 at Guruswamikoil East of Sattur, It is needless to refer in detail to the course of the investigation. We may, however, state that besides the evidence of the eye witnesses and the consistent statements of the deceased made on three occasions, there is also an extra-judicial confession made by the appellant in proof of his guilt. There is evidence that sometime about the second week of December 1962, P. Ws, 11 and 12 residents of Thapathi village, about 1 1/2 miles away from Muthalapuram Kottur, were going to the fields at about 10 p.m. to answer calls of nature. They saw a person coming with his head covered, and when they accosted him, he turned to be the appellant. They depose that when questioned why he was there, the appellant told them that he stabbed Kandaswami & went away by train, that he was detained at Villupuram station by the Travelling Ticket Examiner, as he was travelling without a ticket, and that he had just then come back by train without a ticket to find out what happened to Kandaswami, P. Ws. 11 and 12 informed the appellant that Kandaswami was dead and that his brother was arrested by the police. It is stated that the appellant then went away from the place.

7. On the evidence, the learned Sessions Judge rightly came to the conclusion that the appellant stabbed the deceased on his left chest with a knife resulting in his death. Soon after the occurrence and twice thereafter, as occasion arose, the deceased had consistently referred to the appellant as his assailant. The circumstances under which the stab had been inflicted have been set out in the dying declaration, Ex. P-17. No doubt, in the latter portion in Ex. P-17 there is a mistake, as it is recorded in one place as if the deceased stated that Perumal Naicker stabbed him. In the earlier portion, the deceased has clearly stated how and in what circumstances the appellant stabbed him. A reading of Ex. P-17 in its entirety shows that the mistake may be in the recording and besides in the circumstances it is an immaterial one. Apart from the dying declarations of the deceased, there is the evidence of the eye witnesses, P. Ws. 3 and 5. They had even chased the appellant to catch hold of him; but failed in their attempt. There is no reason why all these witnesses should falsely incriminate the appellant. Equally there is no reason to disbelieve P. Ws. 11 and 12 to whom the appellant had confessed his guilt.

In view of the overwhelming evidence, establishing the guilt of the appellant, with a view to mitigate the position, an argument was advanced in the lower Court that the offence made out was one under Section 326, I. P. C. and reliance was placed on the decision in *In re Kottengodan Alavi* AIR 1939 Mad 269. The learned Sessions Judge rejected the contention and here in this Court, once again learned Counsel appearing *amicus curiae* for the appellant, pressed the argument that the offence was not one of murder. The argument as we understand appears to be that the stab was not given at a vital part of the body, as the stab wound was only over the left arm near the axillary fold, and that, therefore, the offence is not murder. The decision in question no doubt gives scope for such an argument; but the judgment is a short one; the facts are set out briefly and no reasons are given for the conclusion. All that appears from the judgment is that in an altercation between the appellant and the deceased in that case, the deceased was stabbed on the left forearm, that the radial artery was pierced, and that the deceased died of haemorrhage. The Public Prosecutor conceded that the offence was not murder and the learned Judge held that it would not also be culpable homicide not amounting to murder, and the appellant would only be guilty of voluntarily causing

grievous hurt with a deadly weapon.

It is not clear from the judgment in AIR 1939 Mad 269, whether there was a finding in the case based on medical or other evidence that the injury was sufficient in the ordinary course of nature to cause death and we cannot in the circumstances regard the decision as a precedent. It is not a requirement of Section 300 that the injury must be to a vital part of the body. The first part of Section 300, I. P. C. takes in acts done with the intention of causing death, The third part of Section 300 coming 'thirdly' of the section brings within the definition of murder all acts done with the intention of causing bodily injury to any person, when the bodily injury actually found on the person of the deceased was the one that was intended to be inflicted and was sufficient in the ordinary course of nature to cause death.

There is a clear enunciation of the scope of the section in the decision of the Supreme Court in *Virsa Singh v. State of Punjab* : 1958 CriLJ818 , where Rose, J., sets out the four elements which the prosecution must establish for bringing a case under Section 300, I. P. C. They are:

First, it must establish quite objectively, that a bodily injury is present;

Secondly, the nature of the injury must be proved. These are purely objective investigations;

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended.

Once these three elements are proved to be present the enquiry proceeds further, and,

Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

It is also not the requirement of the section that the injury should be intended to be serious. As Bose, J. observes:

The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present.

No doubt the prosecution has to establish, that the prisoner had intention to inflict the injury that was present on the victim.

But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there.

Vide dictum at page 468 in the same case.

8. A question was put to the doctor, P. W. 4, who conducted the post mortem and an answer elicited that the deceased would have survived if medical attention had been given to him immediately. This has no relevancy and the suggestion is fallacious, for if death results from an injury intentionally caused, the person who causes that injury is deemed to have caused death even though the life of the victim might have been saved if proper medical attention had been given. Explanation 2 to Section 299, Indian Penal Code is explicit and gives no room for discussion. It provides-

Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death although by resorting to proper remedies and skilful treatment the death might have been prevented.

The reason for the provision is obvious. It is not always that proper remedies and skilful treatment are within the reach of a wounded man and the danger of allowing any exception in the matter could be easily imagined.

9. In the present case it is established beyond doubt that the prisoner inflicted the stab wound in question and the medical evidence is that it was necessarily fatal and the victim died of shock and haemorrhage due to the injury. All the essential ingredients to constitute the offence of murder under the third category in Section

300, I. P. C. have been made out by the prosecution. Therefore, the conviction of the appellant under Section 302, I. P. C. has to stand.

10. Before the matter was taken up for trial at the sessions, there was a doubt as to the age of the appellant, whether he had completed 18 years of age and an enquiry was held. The Birth Register was produced from the Sub-Registrar's Office. Other documents were also produced and on a consideration of all the relevant materials on the matter, it was held that the appellant had completed 20 years of age by 7th November 1962. Taking into consideration the fact that the appellant attacked the deceased, in aid of his elder brother who had been assaulted by the deceased, the learned Sessions Judge awarded the lesser penalty of imprisonment for life and also made a recommendation to the Government that the sentence be reduced to five years rigorous imprisonment. We consider that the circumstances justify the recommendation and we endorse the same.

11. In the result, the appeal fails and is dismissed.

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