

Annamalai Vs. State

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Court : Chennai

Decided On : Mar-26-1997

Reported in : 1997CriLJ3324

Judge : M. Karpagavinayagam and ;S.M. Sidickk, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 299, 300, 302, 304 and 307; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313; Arms Act - Sections 25(1) and 25(1B)

Appeal No. : Crl. Appeal No. 171 of 1988

Appellant : Annamalai

Respondent : State

Advocate for Def. : Babu Muthumeeran, Govt. Adv.

Advocate for Pet/Ap. : Gopinath, Senior Counsel for ;K. Selvarangan, Adv.

Judgement :

M. Karpaga Vinayagam, J.

1. The Appellant Annamalai, is the accused in S.C. 60/1986 on the file of First Additional Sessions Judge, Salem. He was tried and convicted for the offences under Sections 302, IPC, 25(1)(c), 25(1b)(a) of Indian Arms Act and 9B(1)(b) of

Indian Explosives Act, 1984 and sentenced to undergo life imprisonment for the offence under S. 302, IPC and RI for 3 years on each count for the offence under Indian Arms Act and RI for 2 years for the offence under Indian Explosives Act respectively.

2. The facts need narration. The deceased Madayaian aged about 13 years, is the son of P.W. 3. P.W. 1 Raman and P.W. 3 Andi are brothers. P.W. 2. Andi is pangali of P.Ws. 1 and 3. Accused Annamalai is Oor Gounder belong to the same village Kilakadu, hamlet of Chinnakalrayan Malai. One day prior to the occurrence, at about 7.00 p.m., P.W. 1 Raman, his brother P.W. 3 Andi Sadayan and Annamalai were sitting in the house of P.W. 3 and conversing with each other. The appellant Annamalai at that time came to the house of P.W. 3 and asked the witnesses to give Rs. 200/- so that he would make arrangements for getting patta for the poromboke land, which was being enjoyed by P.W. 1's brother Sadayan. Then P.W. 3 and others asked the appellant to go away from the place stating that they could know how to obtain patta for the land. The appellant getting angry with these words retaliated by exclaiming (vernacular matter omitted). So saying he left the place and went away.

3. The next day i.e. on the date of occurrence early morning at about 8-00 a.m. on 12-7-1985, P.W. 1. Raman, P.W. 2 Andi along with the deceased Madayan, son of P.W. 3 went to Alamarathu Kadayu reserve forest and engaged themselves in cutting the wood for constructing a pandhalkal for their house. During that time, the appellant suddenly appeared in the scene and fired a shot by a country unlicensed revolver aiming at the victim Madayan. P.Ws. 1 and 2 on hearing the sound turned towards the place where the accused was standing. Immediately the appellant/accused with a country unlicensed revolver which he had in his hand was found running away from the scene. Then both of them went near the victim Madayaian, who was found lying on the ground with injuries on the left eye, left shoulder, mouth and left knee and other places, due to the pellets fired at him through the country revolver by the appellant.

4. Immediately thereafter, the victim was taken to the house of P.W. 3. Then P.W. 4 one Arunachalam, a local resident arranged to take the victim to the Ethapur

Government Hospital. In the meantime, P.W. 1 went to the police station at Karumanthurai and gave complaint against the appellant to P.W. 13 the Sub-Inspector of Police. P.W. 13 reduced the same into writing and obtained the signature thereon and registered a case in Crime No. 9/85 for the offences under Sections 307 IPC and 25(1a) of the Indian Arms Act. Ex. P.1 is the statement given by P.W. 1 Ex. P.25 is the Printed F.I.R. P.W. 13 then sent these documents to the Court as well as to the senior officials. Then he took up investigation and went to Alamalathukadavu the scene place at about 1.20 p.m. and prepared the observation mahazar Ex. P. 7 and drew the rough sketch Ex. P.26. He also recovered M.O. 5 and 6 Bloodstained stones, M.O. 7 Blood stain earth, M.O. 8 sample earth and M.O. 9 series pellets under Ex. P.8 mahazar attested by P.W. 8 and another.

5. In the meantime, P.W. 5 Doctor attached to Ethapoor Government Hospital examined the victim brought by P.W. 4 on 12-7-1985 at about 11.30 a.m. and he found the following injuries :

1. An injury on the left upper eyelid $1\frac{1}{2}' \times 1\frac{1}{2}' \times 1\frac{1}{8}'$
2. An injury on the left side of the forehead $1\frac{1}{4}' \times 1\frac{1}{4}' \times 1\frac{1}{4}'$
3. An injury on the left side of the mouth $1\frac{1}{4}' \times 1\frac{1}{4}' \times 1\frac{1}{4}'$
4. An injury on the left side of the cheek $1\frac{1}{4}' \times 1\frac{1}{4}' \times 1\frac{1}{4}'$
5. An injury over the chin $1\frac{1}{4}' \times 1\frac{1}{4}' \times 1\frac{1}{4}'$
6. An injury over the left side of the neck $1\frac{1}{4}' \times 1\frac{1}{4}' \times 1\frac{1}{4}'$
7. 5 injuries on the upper and center of the chest $1\frac{1}{4}' \times 1\frac{1}{4}' \times 1\frac{1}{4}'$ each
8. 2 injuries one on the right collar bone and another on the front part of the right shoulder $1\frac{1}{4}' \times 1\frac{1}{4}' \times 1\frac{1}{4}'$
9. An abrasion 3' below the right elbow $1\frac{1}{4}' \times 1\frac{1}{4}'$.

He issued the wound certificate Ex. P.4. After giving first aid treatment, he referred the victim to the Salem Hospital.

6. At about 2.20 p.m. on the same day, P.W. 6 Doctor attached to General Hospital, Salem admitted the victim as an inpatient and gave treatment to him. During the course of treatment, on 15-7-1985, the victim himself got discharged from the hospital against the medical advise. Ex. P.21 is the case sheet relating to the treatment given to the victim. Ex. P.16 series are X-ray photos. P.W. 6 sent the report to the hospital Ex. P.23. Ex. P.24 is the another X-ray report.

7. In the mean time, when the victim was taking treatment in the Salem Hospital, the Sub-Inspector of Police P.W. 13 went to the hospital and obtained statement from the victim Ex. P. 27. He recovered M.O. 2 bloodstained half drawyer from the victim under Ex. P.3 mahazar attested by P.W. 4 and another.

8. He sent a requisition to Salem Hospital to remove the pellets entered into the body of the victim and preserve the same for chemical examination. Then he took efforts to arrest the appellant/accused but he was not available. On 13-7-1985 on information P.W. 13 the S.I. of Police, went to Maniyaramkundram area and arrested the accused appellant at about 4.00 p.m. The appellant gave confession, the admissible portion of which is marked as Ex. P.9. In pursuance of his confession, he escorted the police party to the nearby bush and took out the country revolver M.O. 1, leather bag M.O. 10 and handed over the same to P.W. 13. Inside the bag there is a bottle containing chemical powder, an aluminum tumbler which also contained some medicine powder, and another bottle containing pellets. They were recovered under mahazar Ex. P.10. They are M.Os 11 to M.O. 14. Thereafter at 6.00 p.m. they came to the police station and on the next day P.W. 13 sent the appellant for remand. All the Material Objects were sent to the court for causing the same to be sent for forensic lab.

9. P.W. 15 the Inspector of Police, who investigated the matter in this case after recovery of the unlicensed revolver, sent a letter, copy of which is marked as Ex. P.29 to the District Collector, requesting for sanction. In pursuance of the said request on 29-7-1985, sanction was granted. Ex. P.30 is the said sanction order. In the meantime, on receipt of Ex. P. 11 requisition sent to the Court to arrange for

the chemical analysis of the Material Objects, P.W. 11 the Head clerk attached to the Judicial Magistrate's Court, Attur sent these M.Os. to the forensic Laboratory along with the covering letter Ex. P. 12. Ex. P. 13 is the Chemical Analyst report. Ex. P.14 is the Serologist report. On 22-7-1985 the M.Os. inclusive of three pellets contained in the leather bag and the unlicensed revolver with other things had also been sent to the forensic examination under covering letter of the Magistrate Ex. P.16. Ex. P.17 is the report sent by P.14. On 19-11-1985 P.W. 15 filed the charge sheet against the appellant for the offence under Section 307 IPC and under Section 25(1)(ba) of Indian Arms Act.

10. On 18-2-1986 at about 1.30 p.m. Andi P.W. 3 came and gave Ex. P.2 report stating that the victim Madaiyan, who was discharged from the hospital on 15-7-1985 from Salem Hospital was taken to Pondicherry Hospital and then to General Hospital, Madras and after the treatment was over, he was taken back to the village but on 18-2-1986 at about 1.00 p.m. he died. So, on the basis of this report, P.W. 13 altered the offence into one under Section 302 IPC and prepared the Express FIR Ex. P.28. He arranged to send the documents to the Court as well as to the senior officials.

11. On the same day i.e. on 18-2-1986 at about 4.00 p.m. P.W. 15 on receipt of the information sent by P.W. 13 about the death of the victim Madayan he went to Kilakadu. He conducted the inquest on the dead body of the deceased Madayan between 4.00 and 6.00 p.m. Ex. P.31 is the inquest report. He examined P.W. 2 and others. Then he sent the body to the hospital through the constable for post mortem.

12. P.W.7 on 19-2-1986 at about 9.05 p.m. received the requisition Ex. P.5 sent by P.W. 15 for post mortem. On 20-2-1986 at about 11.00 a.m. he commenced the post mortem and he found the following injuries :-

1. Three old healed rounded scars seen over the centre of the forehead of 1 cm x 1/2 cm in size each.
2. An old healed rounded scar over the nose of size 3/4 cm x 1/2 cm.

3. Four old healed scars seen over the manubrium stern.

Internally Thorax well formed. Hear 150 Gms Four Chamber full. Lungs 350 gms each soft and fiable left apex Exploration showed a lead pellets and removed. Pellets surrounded with fibrous tissue. On opening the neck area two pellets were removed from the left sternomastoid muscle, which surrounded with fibrous tissue. On opening the forehead area two pellets were embedded on the frontal bone and removed. A mass pellets were removed from the medulla oblongata while removing the brain and further dissection it was found that the spinal cord was compressed and necrossed with sero sanguinous discharge.

He opined that the deceased would appear to have died of respiratory failure due to migration of the pellets into the medulla oblongata of the brain and spinal card compression.

13. P.W. 16 a successor to P.W. 15 took up further investigation and filed the charge sheet on 30-4-1986 against the appellant.

14. On committal the trial Court framed charges against the appellant/accused for the offence under Sections 302 IPC read with 25(1)(c), 25(1b)(a) of Indian Arms Act and 9-B(1)(b) of Indian Explosives Act. The appellant pleaded not guilty. The prosecution had examined P.Ws. 1 to 16 on its side and filed Ex. P.1 to P. 31. The prosecution had marked M.Os. 1 to 17 on its side.

15. After the evidence was over, the appellant was questioned under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him. He denied the complicity in the commission of the crime. However, he did not adduce any evidence on his side.

16. On conclusion of trial, the trial Court convicted the appellant/accused holding him guilty for the offences under Sections 302 IPC and 25(1)(c), 25(1b)(a) of the Indian Arms Act and under Section 9-B(1)(b) of Indian Explosives Act, 1984 and sentenced him to undergo life imprisonment for the offence u/S. 302 IPC and RI for 3 years on each count for the offence under Indian Arms Act and RI for two years for the offence under Indian Explosives Act respectively, and directing the

sentences to run concurrently.

17. Being aggrieved over this judgment of the trial Court, the appellant/accused has filed this appeal before this Court.

18. Mr. Gopinath, learned Senior Counsel appearing for the appellant after taking us through the evidence would contend that there are no sufficient materials to conclude that the appellant is the culprit in this case since even in Ex. P.27 statement given by the deceased to P.W. 13 the S.I. of Police the appellant had not been implicated and so, the only evidence available against the appellant is res gestae as spoken to P.Ws. 1 and 2, which may not be sufficient to base the conviction on the appellant.

19. The learned Government Advocate on the contrary would contend that there are other materials also to show that the appellant is the person who fired at and caused injuries on the deceased which resulted in his death.

20. We have carefully considered the submissions made by the respective counsel on either side. As contended by the learned Government Advocate there is not only evidence through P.Ws.1 and 2 to the effect that they saw the accused after firing a shot at the deceased running from that place, but also the recovery of the revolver on the confession of the accused and also the recovery of the pellets removed from the body of the deceased, which would make it clear that the appellant/accused alone used the said revolver to commit this act. Therefore, in the absence of any reason to reject the evidence with reference to the above factors, we are unable to persuade ourselves to hold that there are no sufficient materials. As such, we are of the view that the prosecution had established the case beyond doubt through the materials which are available in this case and in our view, there is sufficient material to hold that the appellant is guilty for the act of having fired a shot at the deceased.

21. However, the learned counsel for the appellant would contend that even if the entire case of the prosecution is accepted to be true, the appellant/accused could not be convicted for the offence under Section 302 IPC and at the best he could be convicted only for the offence under Section 304 Part I or II IPC, since there is

no specific medical evidence to hold that the injury caused by the act of the accused has directly caused the death of the deceased. We find some force in this contention. Admittedly, the occurrence had taken place on 12-7-1985. Even according to the Doctor, the victim got himself discharged from the hospital on 15-7-1985 on his own accord against the medical advise. In the meantime, i.e. between 12-7-1985 and 15-7-1985, sufficient treatment had been given to the deceased.

22. According to P.W. 3, the victim died after 7 months from the date of occurrence. According to P.W. 3, after the victim was discharged from the General Hospital, Salem he was taken to Pondicherry Hospital, and from there to Egmore Hospital, and then to Madras General Hospital. In fact, his deposition made before the Court would disclose that he was taking treatment for 3 months at Egmore Hospital and another 3 months at Madras General Hospital. However, the prosecution has not produced any records to show that what sort of treatment that had been given during his stay at these hospitals. But a reading of the deposition of P.W 7, the Post mortem Doctor, would show that the death was due to pus formation in the brain, near the area of medulla oblongata. He would say in the post mortem certificate-Ex. P6, that a mass pellets were removed from the medulla oblongata while removing the brain and on further dissection, it was found that the spinal cord was compressed and necrosed with sero sanguinous discharge and localised ligufaction and proulant discharge of the brain near the medulla oblongata. He also gave opinion that the death was due to respiratory failure due to migration of the pellets into the medulla oblongata of the brain and spinal cord compression. As referred earlier, though the occurrence had taken place on 12-7-1985, the death was caused only on 18-2-1986. So only during that time, the pellets must have travelled from the eye portion to the medulla oblongata of the brain. He has also stated (vernacular matter omitted).

From a reading of the deposition of P.W. 7, it is clear that when the occurrence had taken place on 12-7-1985 and at the time when the injury was inflicted on the left eye by firing a shot, the pellets entered into the eye portion could not have travelled upto the medulla oblongata portion. If the migration had taken place at that time, the victim would have died on that day itself. But here, admittedly the

victim after discharge from the hospital was taken to several hospitals where continuous treatments had been given about which no particulars are available in this case. Then after seven months i.e. on 18-2-1986 the death had been occurred due to the travel of the pellets to various places and finally entered into medulla oblongata which resulted in the death of the deceased. Therefore, it cannot be contended that the injury so inflicted at the time of occurrence had directly caused the death.

23. The learned counsel for the appellant cited : 1977 CriLJ1937 , Kishore Singh v. State of M.P. in order to substantiate his submission that the act of the appellant would only attract 304 Part I IPC and not 302 IPC. The relevant observation is as follows, at Page 2270 of AIR :-

'On the facts and circumstances of the present case in order to sustain charge under Section 302 IPC the prosecution has to establish the ingredients of the clause '3rdly' under Section 300 IPC.

That both the appellants caused injuries on the vital parts on the body of the deceased with dangerous weapons has been fully established. It is absolutely clear on the evidence that both the appellants intended to cause the bodily injuries to the deceased. Thus the first part of '3rdly' is established.

With regard to the second part of '3rdly' namely whether the bodily injury is sufficient in the ordinary course of nature to cause death, the Court's enquiry is not confined to the intention of the accused at that stage of judicial evaluation, once the intention of the accused to cause the injuries has already been established

.....

The court will have to judge objectively from the nature of the injuries and other evidence, including the medical opinion, as to whether the injuries intentionally inflicted by the appellants on the deceased were sufficient in the ordinary course of nature to cause death. In judging whether the injuries inflicted are sufficient in the ordinary course of nature to cause death, the possibility that skilful and efficient medical treatment might prevent the fatal result is wholly irrelevant. Having regard to the entire evidence and the circumstances of the case and in view of the

somewhat hesitant medical opinion with regard to the cause of death given by the three doctors and the further fact that the deceased died a month after the occurrence, we think that clause '3rdly' of Section 300 IPC has not been established beyond reasonable doubt in this case. The evidence fulfils one of the ingredients of Section 299, namely, that the appellants caused the death by doing an act with the intention of causing such bodily injury as is likely to cause death as deposed to by the Surgeon

.....

Both the appellants are, therefore, convicted under Section 304 (Part 1) read with Section 34 IPC and sentenced to ten years' rigorous imprisonment.'

24. The principles that have been laid down in this case would, in our view, squarely applicable for the present facts of the case, because, there is no positive evidence from the Doctor that the injury inflicted by the accused directly caused the death of the deceased. Moreover, the Doctor P.W. 7 would say that the pellets have travelled from one place to another place and ultimately migrated and reached medulla oblongata, with the result, death has been caused and that too, after seven months. Therefore, in the absence of medical evidence the act of the appellant/accused would not be punishable under Section 302 IPC. Therefore, we are of the considered opinion, that the act of the appellant/accused would only come under Section 304 Part I IPC. Therefore, the conviction imposed on the appellant for the offence under Section 302 IPC, is set aside, instead the appellant is convicted for the offence under Section 304 Part I IPC, and sentenced to undergo R.I., for ten years.

25. With this above modification, the appeal is dismissed.

26. Appeal dismissed.