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Court : Chennai

Decided On : Jan-30-1997

Reported in : 1997CriLJ2349

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

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Crl. Appl. No. 494 of 1987

Appellant : Appadurai

Respondent : State by Inspector of Police Chatrapatty Police Station, Chatrapatty

Advocate for Def. : Mr. S. Anbalagan, Addl. Public Prosecutor

Advocate for Pet/Ap. : Mr. K. Asokan, Adv.

Judgement :

M. Karpagavinayagam, J.

1. The appellant - Appadurai is the accused in SC No. 1 of 1987 on the file of the Sessions Court, Anna District at Dindigul. He was tried and convicted for the

offence under S. 302, IPC, and sentenced to undergo imprisonment for life.

2. The gravamen of the charges is that on 23-7-1986 at about 5-30 p.m., when the deceased Palanisami was standing on the west of Mottaya Boyan's manure pit the appellant came there and questioned Palanisami as to how could he have intimacy with Rajamani, P.W. 4 who has been kept by him and so saying stabbed Palanisami with a knife below his left lung and as a result of which Palanisami fell down and died on the spot.

3. The facts that could be discerned from the materials placed before the Court could summarised as follows :

(a) P.W. 1 Murugesu Gounder is the father of the deceased Palanisami. He is living in Kanakkanpatti. His son Palanisami, the deceased, married one Palaniammal and the said Palaniammal died three months after the marriage. Thereafter the deceased Palanisami was living alone in the house situate in Rajapuram Puthur Street for the past 1 1/2 months prior to the occurrence. The appellant was also living in the same area. One Rajamani, P.W. 4 being a servant-maid, used to fetch water for the accused. The accused got married about three years back. Due to misunderstanding his wife left him and joined her mother. In course of time the accused had developed illicit intimacy with the said Rajamani. Sometime prior to the occurrence P.W. 4, who used to fetch water from the house of the deceased also had developed intimacy with him. Therefore, there was an ill-feeling between the appellant and the deceased Palanisami.

(b) P.W. 2 Murugesan is the relative of P.W. 1, who is also residing in the same area. On 23-7-1986 at about 1-30 p.m. the deceased Palanisami came to his house. When P.W. 2 was talking with the deceased inside the house, the appellant the neighbour of P.W. 2 peeped through the window and shouted at the deceased saying (Vernacular matter omitted Ed.). The deceased retaliated saying that (Vernacular matter omitted.... Ed.). Then a wordy quarrel ensued. The accused then went into his house. P.W. 2 pacified the deceased and then sent him to his house. After sometime P.W. 2 thought that this could be informed to P.W. 1, the father of the deceased and bring him here to stay along with the deceased so that any untoward incident could be averted. At 4 p.m. P.W. 2 Murugesan went to the

garden of P.W. 1 at Kanakkanpatti and informed him stating that the accused had threatened the deceased that he would finish him off. Therefore, both P.W. 1 and P.W. 2 left from the garden and were proceeding towards Rajapuram Puthur Street where the house in which the deceased was staying is situate. When they were going on the west of Kaliasman temple near Palanisami's tea shop in Kanakkanpatti at 5-30 p.m. they saw the deceased Palanisami standing near a manure pit facing north. The appellant suddenly appeared at the scene and came near the deceased and questioned the same saying (Vernacular matter omitted... Ed.). So saying the appellant stabbed Palanisami with a knife on the left scapula portion. On receipt of this injury the deceased Palanisami fell down on his back. P.W. 1, P.W. 2 and P.W. 3, Oomathurai, who was also standing near the tea shop and other persons raised a hue and cry as (Vernacular matter omitted.... Ed.). The appellant took to his heels with his knife by running towards the north. Then P.Ws. 1 and 2 and others came near the deceased and lifted him and found the blood oozing from the stab wound and he was already dead. Immediately thereafter P.Ws. 1 to 3 went to the police station at Chatrapatti which is situated 7 km. from the scene.

(c) P.W. 1 gave a complaint, Ex. P1 to P.W. 7, the Sub-Inspector of Police attached to Chatrapatti police station which was reduced into writing and the signature of P.W. 1 was obtained thereon. This was attested by P.Ws. 2 and 3. P.W. 7 registered a case in Cr. No. 202/86 for the offence under S. 302, IPC. Then at 6-45 p.m. he despatched the documents to the Court as well as to his senior officials. Ex. P5 is the printed FIR.

(d) At 7 p.m. P.W. 9, the Inspector of Police, Oddanchatram, who was in charge of Chatrapatti Police Station since the Inspector of Police of Chatrapatti was away from the headquarters, got the information through v.h.f. He rushed to Chatrapatti police station and got the FIR copy and from there he went to the scene of occurrence accompanied by the Sub-Inspector of Police, P.W. 7. At the scene he prepared an observation mahazar, Ex. P2 in the presence of P.W. 5, the Village Administrative Officer. He also drew rough sketch, Ex. P 11. He had conducted inquest over the dead body at 8-30 p.m. He examined P.Ws. 1 to 3 in the inquest. The inquest report is Ex. P12. At 2 a.m. on 24-7-1986 he handed over the dead

body along with the requisition Ex. P13 to P.W. 6 constable for taking to the doctor for post-mortem. At 2-15 a.m. P.W. 9 recovered M.O. 3 blood-stained earth and M.O. 4 sample earth from the spot under EX. P3. At 2.30 a.m. he recovered the blood-stained shirt from P.W. 1, M.O. 1 and blood-stained shirt from P.W. 2, M.O. 2. Ex. P4 is attested by P.W. 5.

(c) P.W. 6 constable handed over the body to doctor P.W. 10 along with the requisition for post-mortem. At 2 p.m. on 24-7-1986 P.W. 10 conducted autopsy over the dead body of the deceased. He found the following injuries :

'Examination of Thorax :- Oval shaped cut injury 5 cm x 3 cm / 15 cm. through 1st rib depth by probing 15 cms.

Internal examination : Right lung pale normal left lung up to lobe was pierced by cutting instrument about 10 cms. extending up to hilum of left lung-cutting the left bronchial vessels'.

He opined in the post-mortem certificate Ex. P14 that the deceased would appear to have died of shock and haemorrhage to the injuries on the vital organ viz., left lung. After the post-mortem was over P.W. 6 constable seized M.O. 5 blood-stained shirt, M.O. 6 blood-stained banian, M.O. 7 lungi and M.O. 8 under wear of the deceased and produced the same in the police station. On 27-7-1986 P.W. 11, the Inspector of Police, Chatrapatti took up further investigation and searched for the accused and he was absconding. Then he came to know that the accused surrendered before the Madurai Court on 19-8-1986. He sent a requisition Ex. P6 to the Court for sending the material objects for the chemical examination.

(f) P.W. 8 Headclerk, on receipt of M.Os. 1 to 8 on 24-7- 1986 along with the requisition Ex. P6 sent these material objects to the chemical examination along with covering letter the copy of which is Ex. P7. The chemical reports are Exs. P8 and P9 and the serological report is Ex. P 11. After completing investigation P.W. 11 laid the chargesheet against the accused for the offence under S. 302, IPC on 22-8-1986.

4. On committal, the trial Court framed the charge against the appellant for the offence under S. 302, IPC. The appellant pleaded guilty and claimed to be tried. To substantiate the charge framed against the appellant the prosecution examined P.Ws. 1 to 11, filed Exs. P1 to P14 and marked M.Os. 1 to 8.

5. After the evidence was over the appellant was questioned under S. 313, Cr.P.C with reference to the incriminating materials found against him in the evidence brought on record, the appellant chose to deny his complicity and deny the allegations levelled against him. However, no defence witnesses were examined.

6. After thorough analysis and appraisal of both oral and documentary evidence produced by the prosecution and the statement given by the accused, the trial court found the appellant guilty for the offence under S. 302, IPC and dealt with him as indicated above.

7. Challenging the conviction and sentence the appellant has approached this Court by filing this appeal.

8. Mr. Asokan, learned senior counsel appearing for the appellant took us through the entire evidence. He strenuously contended that there are lot of infirmities in the case of the prosecution which have been overlooked by the trial Court. He further submitted that though there are several eye-witnesses who are all having shops near the place of occurrence and whose names mentioned in the FIR have not been examined and that there was no reason for non-examination adduced by the prosecuting agency. He further contended that the evidence of P.W. 2 who speaks about the occurrence at 1-30 p.m. and the evidence of P.W. 4, who refers about the accused informing her about his design to kill the deceased, looks so artificial, and that the testimony of these witnesses could not be accepted. Ultimately learned counsel submitted that in the event of this Court coming to the conclusion that the prosecution has proved its case, the act that is attributed by the accused would not fall under S. 302, IPC, and at the most it would attract one of the exceptions of S. 300, IPC by which he is liable to be convicted for the offence under S. 304-I, IPC.

9. Per contra, Mr. Anbalagan, learned Additional Public Prosecutor pointed out by reading various portions of the evidence adduced by P.Ws. 1 to 3 and contended that the evidence of these witnesses is cogent and consistent which could be acted upon. He further said that the act of the accused, who suddenly emerged at the scene and stabbed on the deceased on the scapula which pierced into the lung would be indicative of the mind of the accused to cause death of the deceased, thereby the accused would be convicted under S. 302, IPC. He would also submit that the reasonings and the conclusions arrived at by the trial Court to sustain the conviction for the offence under S. 302, IPC, is correct and sound which are unassailable.

10. We have carefully scrutinised the evidence adduced by the prosecution and considered the submissions made by learned counsel on either side.

11. Regarding the motive, the prosecution has let in evidence through P.W. 1 and P.W. 4. P.W. 4 admitted in her evidence that she had illicit intimacy with the accused originally and thereafter for some time prior to the occurrence she was kept by the deceased. She would also admit that she was staying along with the deceased for two days in his house. According to P.W. 1 the deceased was a widower. P.W. 2 also would say that at about 1-30 p.m. on 23-7-1986 the deceased came to his house and that he was talking with him. At that time the accused appellant, who was a neighbour, was threatening through his window, the deceased, stating that (Vernacular matter omitted Ed.). Then after this incident was over, P.W. 2 pacified the deceased Palanisami and sent him home. Thereafter sensing danger to the life of Palanisami he went to the house of P.W. 1's garden and informed him. Then both of them left from there and started proceeding towards the house of the deceased. At that point of time this occurrence had taken place. Even according to the evidence of P.Ws. 1 and 2 the accused had suddenly appeared at the scene and stabbed on the deceased by exclaiming that (Vernacular matter omitted Ed.). This evidence of P.Ws. 1 and 2, who are relations is also fully corroborated by P.W. 3, who is an independent witness. According to the prosecution P.W. 3 was standing near the tea shop, just opposite to the place of occurrence. Of course, though the names of other witnesses mentioned in the first information report, who were having shops near

the place of occurrence were not examined, P.W. 3's evidence would suffice to conclude that the occurrence had taken place as spoken to by P.Ws. 1 and 2 as his evidence is corroborated in all the material particulars. In those circumstances, it is not necessary for the prosecution to examine all the persons who saw the occurrence.

12. It is also contended by counsel for the appellant that the evidence of P.W. 4, who states that at about 4 O'clock the accused came and assaulted P.W. 4, her mother and her husband stating that (Vernacular matter omitted Ed.). He also had challenged that he would go to the place of the deceased and finish the deceased once for all and then come back again to the house to see them. At that time P.W. 4 found the knife with a sheath in his waist. Of course, as correctly pointed by learned counsel for the appellant, there is no necessity for the accused to go to P.W. 4 with the knife to inform her that he would go to the house of the deceased and kill him and come back to attack P.W. 4 and others further. If the occurrence had taken place at 4 O'clock in which the accused was assaulted and his shirt was torn. The accused would have used the knife then and there for attacking the deceased. Suppose if the knife was not available at that time he would have gone to the shop or again to the house and after getting the knife he would have gone to the house of the deceased to attack him. It is not necessary for him to go to the house of P.W. 4 and assault her. If that is so, he would have used the knife which he had carried in his waist for assaulting P.W. 4 also. Furthermore, P.W. 4 was not examined immediately after the occurrence but she was examined as admitted by her only four days later. So, the evidence relating to the accused informing P.W. 4 that he would go to the house of the deceased to attack him is not inspiring and as such the said aspect need not be acted upon. But, even if the evidence of P.W. 4 on this aspect is eschewed, the other aspects as spoken to by P.W. 4 which is corroborated by P.W. 2 would go to show that the accused had the desire to finish the deceased once for all because he thought that he was the hindrance for his continuing the illicit intimacy with P.W. 4. Therefore, we are of the considered view that both the motive and the occurrence had been established through the evidence of P.Ws. 1 u to 4.

13. Coming to the nature of the offence, learned counsel for the appellant would contend on the strength of some decisions stating that since the occurrence had taken place suddenly and a single blow is dealt by means of a knife, the offence would only fall under S. 304, Part II, IPC. The first decision is *Tholan v. State of Tamil Nadu*, : 1984 CriLJ478 . In this case, since there was a fraud committed by the organizers of a chit transaction, the appellant came near the house of the deceased and started objecting and demonstrating about the conduct of the said organizers, the deceased Sampath was not in any way connected with the chit transaction and that while the appellant started using filthy language, one Palani ammal, who was in the court-yard of the house asked the appellant to move away from the place and that the accused objected to Palani Ammal by abusing her and it was at that stage the deceased sitting in the nearby house came from his house and told the accused not to use vulgar languages because ladies were present and asking him to move away from that place and in that context the appellant questioned the authority of the deceased Sampath and immediately thereupon he took out a suri knife from his waist and gave one blow to Sampath which landed on his right side of his chest. On the basis of this sudden occurrence though the injury was inflicted on the chest a vital part of the body, the Apex Court held that he could be attributed the knowledge while he used the weapon like knife that he was likely to cause an injury which was likely to cause death and held that he would be guilty of committing an offence under S. 302, IPC. The facts of that case is not parallel to the facts of the present case. As discussed above, this is a case where already there was a move by the accused to kill the deceased and there was an incident at 1-30 p.m. by which the accused threatened the deceased that he would kill him, in the presence of P.W. 2. Thereafter P.W. 2 informed P.W. 1. In that context the occurrence had taken place in the presence of P.Ws. 1 and 2. So, the facts of this case would make it clear that the design crafted by the accused earlier had been properly executed at about 5-30 p.m. in the presence of the witnesses, referred to above.

14. The second decision is *Jagtar Singh v. State of Punjab* 1983 SCC (Cri) 459 : 1983 CLJ 852. In that case the Apex Court would hold that in a sudden quarrel, to some extent provoked by the deceased, the appellant gave one blow with a knife and there was no pre-meditation, there was no malice and the meeting also was a

chance meeting. The further observation of the Apex Court is that the cause of quarrel being a trivial was just, sudden and in this background the appellant, a very young man, gave one blow. In those circumstances, the Apex Court came to the conclusion that the appellant cannot be imputed with the intention to cause death or the intention to cause that particular injury proved fatal. As explained above, the facts of this case also are not applicable to the present case.

15. The next case is *Randhir Singh v. State of Punjab* 1981 SCC (Cri) 856 : 1982 CLJ 195. In this case, in a sudden and minor quarrel, the appellant, a young boy, aged about 18 1/2 years studying in the Engineering College and not shown to have been armed, gave one blow by *Kassi* brought by his father. This incident also took place in pursuance of the altercation between the father and the deceased. So, in those circumstances, the Apex Court held that the accused could not be said to have intention to cause that particular injury. Moreover, the facts of the case on hand, as indicated above, that the accused came with the weapon with a plan to attack the deceased and then in pursuance of the said plan he gave a fatal blow though is a single on the vital part of the deceased. So, this case also does not help the defence.

16. Per contra, learned Additional Public Prosecutor cited the following decisions to show that the present facts of the case would definitely attract the clause thirdly of S. 300, IPC liable to be convicted under 302.

Vide Vasanta v. State of Maharashtra : 1983 CriLJ693 . The relevant observation is this (at page 694 of Cri LJ) :-

'Mr. Lalit, however, submits that the case falls under S. 304, Part 2, IPC in view of serious altercations between the parties as held by the trial Court. We are, however, unable to agree with this contention because there is nothing to show that altercation was of such a serious nature which could cause sudden provocation. Secondly, the nature of injury, namely, the stab on the chest which resulted in the fracture of the 6th rib and injured the heart and the lung and which according to the doctor was given with great force showed that it was most cruel and, therefore, the case squarely falls under S. 302, IPC.'

17. The next decision is Babubhai Ranchodbhai Patel v. State of Gujarat 1994 SCC (Cri) 265 : 1994 CLJ 2099. The relevant portion reads as follows (at p. 2101 of Cri LJ) :

'The evidence of P.Ws. 2, 4 and 5 established beyond all reasonable doubt that A-1 inflicted injury on the spinal region which proved fatal. The description of the injury itself would show that the same was inflicted with force with a knife. There cannot be any doubt that he intended to inflict that injury which is found to be sufficient in the ordinary course of nature to cause death. Even if there was a sudden quarrel that cannot be a ground to hold that he had only the knowledge. The intention for the purpose of Clause 3rdly of Section 300, I.P.C. has to be inferred from the facts and circumstances in each case. One can understand if there had been some grappling or struggle between A-1 and the deceased and in the course of which if he came to inflict an injury perhaps a doubt may arise whether he aimed and intended to cause that particular injury during that grappling or struggle. But in this case the evidence is that he went straight and attacked the deceased with a knife inflicting such a serious injury and not only that he also inflicted injuries on the two witnesses with the weapon. These circumstances would attract Clause 3rdly of Section 300, I.P.C. Therefore, an offence under section 302, I.P.C. is clearly made out against him.'

In Sannappa Rayappa Jadge v. State of Karnataka 1994 SCC (Cri) 1167, the Apex Court would observe as follows :

'According to the learned Counsel since the accused inflicted only one stab injury and since the doctor has not specifically stated that the injury was sufficient in the ordinary course of nature to cause death, Clause 3rdly of Section 300, I.P.C. is not attracted. We are unable to agree. The medical evidence shows that the stab wound was on the left side of the chest and it had cut the lung and heart. It does not require an expert's opinion to say further that this injury is sufficient in the ordinary course of nature to cause death. That apart the evidence is to the effect that the accused went towards the deceased who was sitting under the tree and stabbed him with a knife on the chest and caused the injury. Therefore, he intended to cause that particular injury and Clause 3rdly of Section 300, I.P.C. is

fully attracted.'

In *State of Karnataka v. Vedanayagam* 1995 SCC (CrI) 231 the Apex Court while distinguishing the case in *Tholan's case* 1984 SCC (CrI) 164 : 1984 CLJ 478 following *Jai Prakash v. State (Delhi Administration)* 1991 SCC (CrI) 299 would observe as follows :

'In the instant case, the accused had illicit intimacy with the wife of P.W. 1. From this it can be said that there was hostility between P.W. 1 and the accused. On the fateful day P.W. 3, the mother of the deceased and the mother of the accused were quarrelling with each other, and even by then the accused hearing the quarrel came out of his house armed with a dagger. Then the accused shouted that : 'You have defamed me. I would not leave you. I will kill'. Saying this he stabbed on the left side of the chest of the deceased and the deceased fell down and died instantaneously. It is important to note that there was neither a quarrel nor a fight between the deceased and the accused. The words uttered by the accused against the deceased followed by the stabbing with the dagger on the left side of the chest of the deceased, would clearly indicate that he intended to cause that particular injury which was objectively found to be sufficient in the ordinary course of nature to cause death.'

On the strength of these cases, learned Additional Public Prosecutor vehemently contended that the facts and circumstances of the case would attract only Clause 3rdly of Section 300, I.P.C. whereby he is liable to be convicted under section 302, I.P.C. In the instant case, admittedly there was no fight or wordy quarrel between the accused and the deceased while the fatal blow was dealt upon him at the scene of occurrence. Further more, the evidence of the doctor P.W. 10 would show that there was an oval shaped cut injury 5 cm. x 3 cm. x 15 cm. through the first rib and depth by probing 15 cms. He also found in the internal examination that the left lung upper lobe was pierced by cutting instrument about 10 cm. extending up to hilum (sic) of left lung cutting the bronchial vessels. It is also the case of the prosecution that the deceased fell down immediately after receipt of this injury and died instantaneously. So, the intention to kill the deceased would be gathered as the Apex Court often held from the factors such as the nature of the

weapon used, part of the body hit and the seriousness of the injury inflicted and the other circumstances attended to. So, if this principle is applied, we have no hesitation to hold that the accused had intention to murder the deceased and with that purpose he came to the scene armed with weapon and taking advantage of the fact the deceased was unarmed he gave a fatal blow by choosing vital part viz., the lung. It is also seen from the records that even previously the accused had exclaimed and challenged to the deceased in the presence of P.W. 2 that he would not leave him and he would kill him at any cost. So, these things would indicate that the accused had intended to kill the deceased and with that plot he came to the scene and executed the same that he had in his mind. Therefore, there is no infirmity in the conclusions arrived at by the trial Court while imposing the conviction and sentence for the offence under section 302, I.P.C. While confirming the conviction and sentence, since we see no reason to take a different view from that of the view of the trial Court, we feel the appeal deserves to be rejected.

18. In the result, the appeal is dismissed.

19. Appeal dismissed.