In Re: Thunincharam and Another

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Court : Chennai

Decided On : Aug-21-1990

Reported in : 1991CriLJ1318

Judge : Padmini Jesuddurai and ;S.T. Ramalingam, JJ.

Appeal No. : Criminal Appeal No. 88 of 1985

Appellant : In Re: Thunincharam and Another

Advocate for Def. : R. Shanmughasundaram, Additional Public Prosecutor

Advocate for Pet/Ap. : V. Gopinath, Adv.

Judgement :

1. The appellants are respectively A. 1 and A. 3 in SC No. 31 of 1984 on the file of the Additional Sessions Judge, Ramanathapuram at Madurai. The first appellant has been convicted for an offence under section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000/-. The second appellant has been convicted for an offence under section 324 of the Indian Penal Code and sentenced to pay a fine of Rs. 300/-. The appeal challenges the convictions and sentences.

2. The gravaman of the charge against the appellants and their co-accused A-2, 4 and A-5 who were acquitted by the trial court, was that, on 25-9-1982 at 6.00 p.m. in the village Kanjithazhianthel, they formed themselves into an unlawful assembly

to cause the death of the deceased Kuttikuthirai alias Thuninjaram, aged 45 and armed themselves with deadly weapons and in furtherance of the common object, the first appellant caused the death of the deceased by beating him on the head with a crowbar and the second appellant as well as the acquitted accused persons were members of the unlawful assembly, sharing the common object and that the second appellant caused hurt to P.W. 2, the wife of the deceased. Against the first appellant, charges under sections 148 and 302 of the Indian Penal Code were framed and against the second appellant under sections 302 read with 149 and 324 of the Indian Penal Code.

3. The facts are briefly as hereunder :- P.W. 1 is the sister of the deceased, P.W. 2 is his wife and P.W. 3 is his son. The acquitted accused A.2 and A.4 are husband and wife and the first appellant is their son and the second appellant their daughter. The fifth accused is the daughter-in-law of A.2 and A.4 having marked another son. The accused and the deceased were living in the village Kanjithazhianthel, in opposite houses. There was enmity between the two families. West of their houses, there was a tank with a pathway leading to the tank on the eastern bund. A.2, the father of the appellants, had encroached some lands north of this pathway and had put up a kitchen shed their. The deceased had encroached some land, south of the pathway and was in possession of the same. On 25-9-1982 at about 6.00 p.m. the deceased was returning home with his cattle after ploughing his field. When he came near the pathway in the tank bund, he found that it was closed with thorny bushes. He removed the thorny bushes and came to his house through the pathway. On reaching his house, he tied his bulls in front of his house. A.2, the father of the appellants, questioned the deceased as to how the deceased could remove the thorny bushes he had put in the pathway to close it. The deceased replied that never before had that pathway been closed and that thinking that some thorny bushes were just lying there, he had removed them and had brought his bulls through the pathway. A.2 retorted as to how the deceased could remove the thorny bushes when he had closed the pathway and also questioned as to how the deceased could tie the bulls there. The deceased replied that he had tied his bulls in his place only and that therefore, he would not untie the bulls. So saying, the deceased went inside his house. The other accused also were there, the first appellant armed with an iron crowbar, the second

appellant with a wooden rice pounder, A.2 a wooden plank, A.4 a broomstick and A.5 a stick. All the accused abused the deceased in filthy language and threatened to murder the deceased. P.W. 1 sister of the deceased pleaded with them not to attack the deceased. The appellant and A.2 asserted that they would beat the deceased to death. P.W. 1, who was living in a separate house about 60 feet away asked the deceased to come to her house. The first appellant stated that if the deceased came out, he would be done to death in the very same place. The doorway of the house of the deceased was a low one and one had to bend while passing though it. The deceased stepped out of his house bending low. At that time, the first appellant with a crowbar beat the deceased on the centre of the head. The deceased fell face downwards, his tongue protruding. A.2 beat the deceased on the nape of the neck twice with the wooden plank. While A.2 tried to beat the deceased with a ricepounder, P.W. 2, the wife of the deceased intervened and the blow fell on her right arm. A.4 and A.5 caught hold of the tuft of P.W. 2 and dragged her and pushed her down. Thereafter, the appellants and the co-accused left the scene with their weapons 'Kuttikuthirai' was dead. P.W. 1 went to the Police Station at Kilathuval, 10 kilo metres away and at 10-30 p.m. gave Ex.P. 1 statement to P.W. 8 the Sub-Inspector of Police, who registered it as Cr. No. 75 of 1982 of his station for offences under sections 147, 148, 324 and 302 of the Indian Penal Code. On express intimation being sent to the Inspector of Police P.W. 9, he took up investigation. P.W. 9 visited the scene of occurrence, prepared an observation mahazar, seized the blood stained articles, held inquest and examined witnesses P.W. 2 was sent for medical examination.

4. P.W. 5, the Civil Assistant Surgeon, Government Hospital at Mudhukulathur, conducted post-mortem on the dead body of the deceased on 26-9-1982 at 1-15 p.m. and found on the body, the following injuries described by him in his post-mortem certificate, Ex.P. 4.

'Appearances found at the post-mortem : Male body-Moderately nourished lies on back with arms close to the body. Rigor mortis present in all the four limbs.

External Injuries : 1. An oblique lacerated injury of about 3' x 3/4' Bone depth present over the middle of left parietal region. Skull seen.

Internal Examination : Abdomen : Normal; Thorax : No Fracture of ribs. Heart : 7 czs. cut section-Pale. Lungs : Right 16 ozs; Left 14 ozs. Cut section Pale. Hyoid Bone : Intact; Stomach : Contains undigested rice particles. Pancreas 4 ozs; cut section Pale. Liver : 50 ozs; cut section Pale; Spleen; 4 ozs, Cut Section Pale. Kidneys : 4 ozs cut Section Pale; Intestines : Distended with gas; Bladder : Empty; Head : Middle of left parietal bone fractured obliquely over the skull; Brain : 45 ozs cut-Section Pale. Middle of left cerebral Homisphere lacerated'.

According to P.W. 5, the injury to the brain corresponds to the external injury. The external injury, with its corresponding internal injuries, could have been caused by beating with an iron crow-bar. The injuries were necessarily fatal. Death was due to shock and haemorrhage due to injury to vital organ (Brain) 16 to 22 hours prior to autopsy.

5. P.W. 5 examined P.W. 2, the same day at 11 a.m. and found on her a contusion about 2 1/2' x 2' over the ulnar half of dorsum of right hand. Ex.P. 2 is the extract of the accident register issued by him. The injury was simple in nature and could have been caused at about 6 p.m. on 25-9-1982 by a rice pounder.

6. After completing investigation, P.W. 9, laid charge sheet against the appellants and A. 2, A. 4 and A. 5.

7. During trial on behalf of the prosecution P.Ws 1 to 9 were examined and Exs.P. 1 to P. 13 marked. M.Os. 1 to 7 were produced. The accused when questioned, denied complicity the with the crime. They had no evidence to offer, either oral or documentary. The learned Sessions Judge giving benefit of doubt to A. 2, A. 4 and A. 5 acquitted them of all the charges and convicted the appellants as stated earlier, which had resulted in the present appeal being filed by them.

8. Thiru V. Gopinath, learned counsel for the appellants initially urged that the trial court ought not to have accepted the evidence of P.Ws. 1 to 3, who are the eye witnesses to the occurrence, in the absence of any corroboration by independent testimony, particularly in view of the fact that they had consciously made improvements to their earlier versions in Ex.P. 1 and statements made to the investigating officer, P.W. 9 under section 161 of the Code of Criminal Procedure

and that therefore it would be unsafe to accept the testimony of P.Ws. 1 to 3 to render a conviction. The next submission of the learned counsel was that, since the first appellant had merely given one blow on the head of the deceased, his act would not come under Clause 'thirdly' of S. 300 of the Indian Penal Code and the offence, therefore, would only fall under section 304 part (ii) of the Indian Penal Code. Reliance was placed upon certain decisions, which we shall refer to in the course of the discussion.

9. Per contra the learned Public Prosecutor sought to sustain the convictions by referring to the salient features of the prosecution case.

10. The question that arises for determination is whether the convictions of the appellant can be sustained.

11. Taking the first of tile submissions of the learned counsel for the appellants; that the evidence of P.Ws. 1 to 3 ought not to be accepted, we find that the occurrence has taken place in front of the house of the deceased. It is the prosecution case that while the appellants and their co-accused, were standing in front of the house of the deceased hurling abuses, the deceased was inside his house and the moment he stepped out of the house, he was attacked and he fell down and died. P.Ws. 2 and 3 being wife and son respectively of the deceased, who were living with the deceased, would be the natural witnesses. P.W. 1 was a married sister of the deceased, who was living about 60 feet away in the same street, east of an intersecting road. She too would be a natural witness. It is the evidence of P.W. 1, that though others in the street also witnessed the occurrence, they are inimically disposed towards their family, since Velusamy, another brother of P.W. 1 had also been murdered and the younger brother of A. 2 was involved in that case and as such, no one would volunteer to give evidence. This statement of hers has not been seriously challenged. Absence of independent corroboration, therefore, by itself would not discredit the testimony of P.Ws. 1 to 3, whose evidence has to be subjected to greater scrutiny, in view of their close relationship with the deceased. Learned counsel for the appellants sought to discredit the testimony of P.Ws 1 to 3 on the ground that in Ex. P. 1, there was no reference to tying of the bulls by the deceased, or to A. 2 beating the deceased and A.4 and

A.5 pulling the tuft of the deceased and so on. It was also pointed out that there was discrepancy between the evidence of P.Ws. 2 and 3, as to when exactly the deceased took his last meal and that a conscious attempt was made by P.W. 3 that the deceased was actually having his meals at the time of the occurrence, in order to bring it in line with the post-mortem finding of P.W. 5 that undigested rice particles were found in the stomach. We have gone through the entire evidence and we are satisfied that these little variations and additions, are not of much significance and would not discredit the testimony of P.Ws. 1 to 3. In fact the learned Sessions Judge has considered them and has acquitted A. 2, A. 4 and A. 5. We are, therefore, satisfied that in so far as these appellants are concerned, the first appellant had beaten the deceased on the head with a crowbar and the second appellant had caused an injury to P.W. 2 in the manner spoken to by P.Ws. 1 to 3.

12. The more serious contention of the learned counsel for the appellants was that the act of the first appellant in giving a single blow on the head of the deceased, would not bring the case under Clause 'thirdly' of Section 300 of the Indian Penal Code, since the first appellant could never be said to have intended to cause that particular injury on the deceased that had proved fatal and that the first appellant could only be attributed the knowledge, that he was likely by such act to cause death and that therefore, the offence would fall under section 304(ii) of the Indian Penal Code.

13. Reliance was placed by the learned counsel upon a decision of the Supreme Court in Chamru Budhwa v. State of M.P. : AIR 1954 SC652 wherein, a single blow on the head of the deceased with a lathi was held to fall under section 304 part (ii) of the Indian Penal Code in that, the act had been done without and intention to cause death or to cause such bodily injury as was likely to cause death, but had been done only with the knowledge that it was likely to cause death. The above case would be of no assistance to the learned counsel for the appellant in view of the fact that in that case the Supreme Court found that the appellant was in fact entitled to the benefit of Exception 4 to S. 300 of the Indian Penal Code in that, the crime had been committed without pre-meditation, in a sudden fight, in the heat of passion, upon a sudden quarrel and without the

accused having taken undue advantage or acted in a cruel or unusual manner. It is on this ground that the Supreme Court held that the offence would fall under section 304 Part 2 of the Indian Penal Code and not because the act of the accused did not fall within clause 'thirdly' of S. 300 of the Indian Penal Code. Further referring to this decision the Supreme Court in a later decision Gudar Dusadh v. State of Bihar : 1972 CriLJ587 observed that decision did not warrant the proposition that if the accused gave a deliberate blow on the head of the deceased with a lathi and thereby caused the injury which is sufficient in the ordinary course of nature to cause death and actually resulted in death, the case against him would not fall under Clause 'thirdly' of S. 300 of the Indian Penal Code.

14. Reliance was then placed upon in Jagtar Singh v. State of Punjab : 1983 CriLJ852 wherein a single blow with knife on the chest of the deceased was held to fall under section 304 Part 2 of the Indian Penal Code on the ground that though the injury was sufficient in the ordinary course of nature to cause death in view of the circumstances, that preceded the assault, the accused could not be imputed with the intention to cause death or the intention to cause that particular injury which had proved fatal. The Court found that there was no previous enmity or motive for the occurrence and the quarrel had taken place on the spur of the moment and the meeting of the parties was a chance meeting and there had been exchange of abuses. In the course of which a single blow with the knife on the deceased had landed on the chest.

15. Our attention was also drawn to Tholan v. State of Tamil Nadu 1984 Crl LJ 478 wherein also, under more or less similar circumstances, a single stab on the chest of the deceased, in the absence of any pre-meditation or motive, the incident occurring on the spur of the moment, was held to fall under section 304 Part 2 of the Indian Penal Code, since the accused meeting the deceased was purely accidental and the accused could never have had the intention to cause that particular injury that had proved fatal.

16. Finally, the learned counsel relied upon a decision of a Division Bench of this Court in In Re Velu (1984 LW Crl. page. 73 Short Notes) wherein also, a single

stab on the chest, which proved fatal was held to attract only S. 304 Part I of the Indian Penal Code and not S. 302 of the Indian Penal Code.

17. It is settled law that in order to bring the act of the accused under Clause 'thirdly' of S. 300 of the Indian Penal Code, certain requirements have to be fulfilled in Virsa Singh v. State of Punjab : 1958 CriLJ818 the requirements are stated as follows at page SC 467 of AIR 1958 :-

'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.'

The third requirement was further clarified as -

'No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape, if it can be shown, or reasonably deduced, that the injury was accidental or otherwise unintentional.'

The Court went on to observe.

'The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he

intended to inflict an injury in question, and once the existence of the injury is proved, the intention to cause it will be presumed, unless the evidence or the circumstances warrant an opposite conclusion'

Finally the Court found, that the question whether the accused intended to cause the injury in question or some other injury, is a matter of proof, by calling in aid all reasonable inferences of fact in the absence of direct testimony and is not one for guess work or fanciful conjecture.

18. It follows therefore, that in every case of a single blow, stab or cut, the offence would not by the mere fact that it is a single blow reduce itself to S. 304. Lest such an interpretation be put, the Supreme Court in Jagrup Singh v. State of Haryana : 1981 CriLJ1136 observed at page 1554; AIR 1981 SC. -

'There is no justification for the assertion that the giving of a solitary blow on a vital part of the body resulting in the death must always necessarily reduce the offence to culpable homicide not amounting to murder punishable under section 304 Part II of the Code. If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negativing the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death. The whole thing depends upon the intention to cause death, and the case may be covered by either Clause Firstly or Clause Thirdly. The nature of intention must be gathered from the kind of weapon used, the part of the body hit, the amount of force employed and the circumstances attendant upon the death.'

In that case, the Supreme Court referred to Gudur Dusadh v. State of Bihar : 1972 CriLJ587 and Chahat Khan v. State of Haryana : 1973 CriLJ36 wherein a single blow on the head, was held not to fall under section 304 Part 2 of the I.P.C. but to fall under Clause 'thirdly' of the I.P.C. and consequently, S. 302 of the I.P.C. and observed that these decisions are destructive of the theory that a solitary blow on the head, reduced the offence to culpable homicide not amounting to murder punishable under section 304 Part 2 of the Indian Penal Code. In the first of the above decisions, the court observed -

'It is not the case of anyone that the appellant aimed a blow on some other part of the body and because of some supervening cause, like sudden intervention or movement of the deceased, the lathi struck the head of the deceased. The fact that the appellant aimed a blow on the head of Ramlal with the lathi, would go to show that it was the intention of the appellant to cause the precise injury which was found on the head of the deceased.'

19. To this list of decisions could also be added Aditya Mohapatra v. State of Orissa : 1980 CriLJ1475 wherein also, a single stab in the chest of the deceased, penetrating to a depth 1 3/4', piercing the left lung, cutting the fourth rib through and through, indicating that considerable force had been used, was held to fall under section 302 of the Indian Penal Code and not under section 304.

20. It follows from the foregoing discussion that merely because death has ensured from a single stab, cut or blow, the act of the accused would not automatically fall out of clause 'thirdly' of S. 300 of the I.P.C. On the contrary, when the injury is proved to be sufficient in the ordinary course of nature to cause death, the intention to cause it will be presumed, unless the evidence or the circumstances warrant an opposite conclusion. This conclusion is to be reached, not by guess work or fanciful conjecture, but by establishing circumstances from which a reasonable deduction could be made, that the injury was accidental or otherwise unintentional, in other words that the intention was to cause some other injury, which was not sufficient in the ordinary course of nature to cause death, but that due to some intervening circumstances, unintentionally the injury found on the deceased had been caused by the accused. Some of the relevant circumstances for deciding whether the actual injury found to be present, was the injury intended to be inflicted would be, the presence or absence of previous enmity, pre-meditation, the kind of weapon used, the part of the body hit, the amount of force employed, the genesis of the quarrel resulting in the injury and several other details preceding the assault. A light weapon could be used with much force or a heavy weapon could be used with moderate force a heavy weapon, could also be used with much force. These and several such circumstances would really tilt the issue either way.

21. Testing the facts of the instant case in the light of the above principles, we find that there had been previous enmity between the two families. Even the brother of the deceased had been murdered and the younger brother of the 2nd accused, had been involved in it. On the day of the occurrence, the first appellant had closed the pathway leading to the house of the deceased from inside the tank and later, when the deceased had removed the thorny bushes and had used the pathway, the first appellant, coming to the house of the deceased, had picked up a quarrel and had questioned the deceased. The first appellant then switched on to the tying of the bulls in front of the house of the deceased. Replying that the bulls had been tied in his own place only, the deceased had gone inside his house. According to P.W. 3, the deceased was taking his meals. The first appellant was standing outside, armed with an iron crowbar. The other accused, were also armed and were abusing the deceased and threatening to murder him on the spot, if he comes out of his house. The doorway was a low one and the deceased was just in the process of coming out of the doorway, bending his head, when the first appellant gave one blow on the head of the deceased, which resulted in the tongue of the deceased protruding and the deceased falling down. He died almost instantaneously. The skull was visible and P.W. 5, the Medical Officer describes it as an external injury. The injury was 3' x 3/4' bone deep over the middle of left parietal region. On dissection, there was an oblique fracture of the parietal bone, with laceration of the left cereberal hemisphere of the brain. This would show that considerable force had been used to cause the injury. The weapon is a heavy one, being made of iron and had been used with much force. The site of the injury was the centre of the head. It is not as if, the deceased unexpectedly bent and the resultant injury aimed elsewhere, accidentally fell on the head. On the contrary, the doorway being a low one, the deceased bent while crossing the doorway, when the first appellant had beaten him on the centre of the head with the crowbar with much force, causing almost instantaneous death. There was previous enmity between the parties. The occurrence had not taken place on the spur of the moment, nor was the meeting of the deceased and the first appellant accidental. The appellant armed with an iron crowbar had, gone to the house of the deceased and, picked up a quarrel and had continued it till the fatal blow. In these circumstances, it is quite clear that the first appellant intended to cause precisely

that injury, which had been caused on the deceased and which according to the Doctor, is necessarily fatal. We are unable to hold that the first appellant did not intend to cause that particular injury. The act of the first appellant, would fall squarely under Clause 'thirdly' of S. 300 of the Indian Penal Code, punishable under section 302.

22. Regarding the second appellant, the charge against her is for having caused a simple injury with a wooden rice pounder on P.W. 2. All the witnesses speak about it and P.W. 5, the Medical Officer has examined P.W. 2 on the same day at 11 a.m. and found on her a contusion about 21/2' x 2' over the ulnar half of dorsum of right hand. Ex.P. 2 is the extract of the accident register issued by him. He has also offered opinion that the injury could have been caused in the manner alleged by the prosecution. That is nothing to discredit the testimony of witnesses on this aspect. The second appellant, therefore, has been rightly convicted for the offence under section 324 of the I.P.C. The sentence is only one of fine. The conviction and sentence are confirmed.

23. We, therefore, confirm the convictions and sentences. In the result, the appeal is dismissed.

24. Appeal dismissed.