

In Re: Suyambu

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Court : Chennai

Decided On : Jul-17-1990

Reported in : 1991CriLJ2506

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

Appeal No. : Cri. Appeal Nos. 282 and 289 of 1985

Appellant : In Re: Suyambu

Advocate for Def. : Mr. G. Krishnan, Adv. and ;Mr. R. Shanmugasundaram, Addl. Public Prosecutor

Advocate for Pet/Ap. : Mr. P.M. Sundaram, Adv.

Judgement :

Padmini Jesudurai, J.

1. The appellant in C.A. No. 282 of 1989 was the 1st accused in S.C. No. 144 of 1984 on the file of the First Additional Sessions Judge, Tirunelveli. He was convicted for an offence under section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life. The appellants 1 and 2 in C.A. No. 289 of 1985 were accused 2 and 3 in the same Sessions case before the First Additional Sessions Judge, Tirunelveli. They were convicted for an offence under section 302 read with S. 34 of the Indian Penal Code and sentenced to undergo

imprisonment for life.

2. The gravaman of the charge against the accused as arrayed before the trial Court was that they, along with 4th accused Gurusami (who was acquitted by the Sessions Judge), at 5-30 p.m. on 17-2-1983 caused the death of the deceased Thangapandi Nadar in the village Alagappapuram within the jurisdiction of Panagudi police station, 8 K.M. away from Alagappapuram, the 1st accused stabbing him on his chest with a spear, while in furtherance of the common intention, the 2nd accused cut him on the left hand with aruval, the 3rd accused attempted to cut him, which was warded off by P.W. 1 Thanga Krishnan and the 4th accused instigated the other accused to commit the crime.

3. The facts relating to the prosecution case as disclosed by evidence is briefly as follows :- The accused as well as the deceased belong to the village Alagappapuram. Accused 1 and 4 are brothers, while accused 2 and 3 are brothers. The 1st accused has married the sister of accused 2 and 3.

4. On 17-2-1983 at about 5-30 p.m. P.W. 7 while going on a bicycle accidentally dashed against the 2nd accused who was also going on another bicycle. P.W. 7 left his bicycle there and ran to his house. The 2nd accused went to the house of P.W. 7 and abused him. P.W. 1 his brother Rajkumar and their brother-in-law P.W. 2 questioned the 2nd accused, as to why he was scolding P.W. 7 and asked him to go away. The 2nd accused while going away threatened the witnesses, and left the house of P.W. 7. A little later, while P.Ws. 1 and 4 were coming from the East towards the west in the Harijan Street, they saw P.W. 2 and Rajkumar being chased from the west towards the east by all the four accused. The 1st accused was armed with a spear, the 2nd accused with an arrival M.O. 1 and the 3rd accused with a knife M.O. 2. When they came in front of the house of P.W. 3, the deceased Thangapandi whose house was 100 feet away, came there and asked the accused as to why they were quarrelling over small fight among youngsters. The 4th accused retorted by questioning the deceased, as to who he was to interfere and instigated the others to cut the deceased. The cut fell on his left hand. P.W. 2 tried to snatch the arrival M.O. 1, which the 2nd accused was having in his hand and in that process, the 2nd accused sustained an injury on the head.

The 4th accused again instigated the other accused to cut the deceased. Thereupon, the 1st accused with the spear gave one stab on the chest of the deceased who fell down crying that he was dead. The 3rd accused tried to cut P.W. 1. P.W. 1 tried to snatch the knife M.O. 2, as a result of which, the 3rd accused sustained an injury on his left hand. People raised alarm and the accused left the scene with their weapons. P.Ws. 1, 2 and 4 found the deceased dead. They lifted and placed in front of the house of one Appadurai.

5. P.W. 1 then went to the police station at Panagudi and gave Ex. P. 1 to P.W. 10 the Sub-Inspector of Police there. At 8 p.m. P.W. 10 registered Ex. P. 1 as crime No. 45 of 1983 for an offence under section 302 of the Indian Penal Code. Ex. P. 10 is the printed first information report. He sent copies of express first information report to concerned authorities.

6. P.W. 13 Inspector of police, received a copy of Ex. P. 10 from P.W. 10, took up investigation and reached the scene of occurrence at 6 a.m. on 18-2-1983. He inspected the scene of occurrence and prepared observation mahazar Ex. P. 15. From the scene, he recovered blood stained earth and sample earth M.Os. 5 and 6 under athakshi Ex. P. 18. Between 6 a.m. and 9 a.m. he held inquest over the dead body of the deceased as per inquest report Ex. P. 17. He gave Ex. P. 2 requisition along with the dead body to P.W. 6 the medical officer for conducting post-mortem examination.

7. P.W. 6, the then Assistant surgeon in the Government Dispensary, Panagudi conducted post-mortem on the dead body of the deceased at 10-30 a.m. on 18-2-1983, and noticed the following injuries and symptoms described by him in his Post-mortem certificate Ex. P. 3.

Presence of Visible diseases : Absence of penis. Opening and withdrawal orifice on the Posterior aspect of scotum. Lymphadenopathy on the left inguinal glands.

External injuries :

1. A horizontal incised wound over the middle of the chest 1' above the xipisternum. The wound is 1' x 1/2' x 2'. Margin regular.

2. An incised wound 1' x 1/2' x 2' present On the middle Of the left forearm in the ventricle aspect. Margin regular.

On Deep Dissection :

Fracture of the 6th rib on the left side at the costs chondral junction. An incised wound 1' length present in the pericardium. Haemopericardium was seen. The incised wound extended into the right atrium. Signs of decomposition, rigor mortis present all over the body. General appearance tally with police report. Death would appear to have occurred about 16 hours back. Head : Symmetrical calm. Eyelids nose, mouth, tongue-NAD Jaws clenched. Absence of two teeth front incisor in the lower jaw. Ears, neck, glands-NAD. Thorax : well present. Mammary glands-NAD. Abdomen NAD. Groin glands enlarged on the left Generative organ. Penis absent. Urethral opening on the posterior aspect of scrotum. Testis : Normal. Hands clenched, Feet flat, inverted.

Opening of Abdomen : Abdomen uniform 1/2' diaphragm lies over 6th (torn)

Opening of Thorax, Position of organs : Normal Fracture of 6th rib on the left side of the costochondral junction seen. Pericardium : Incised wound 1' length. Haemopericardium present. Heart : The incised wound extended into the right auricle. Rupture of right auricle was seen. Heart weighed 13 1/2 ounces. Lungs side weighed 14 ounces and right 21 ounces. Stomach : Dilated, weight of contents 17 ounces. 3 ounces of undigested rice particles were seen. Liver weighed 43 1/2 ounces brown in colour. kidneys : left 3 1/2 ounces and right 4 ounces. Surface smooth uned. G.B. empty. Spleen : 3 1/2 ounces pulp easily washed off. pale. Cut section pale, small intestine empty mucosa pale. Large intestine dilated, empty. Bladder : empty. Bladder :empty. Pelvis : no fracture.

Opening of the head : Scalp line thick, no injury. Brain : 48 ounces reddish yellow tissue. Spinal column : no injury. Atlas and Axis : NAD.

8. P.W. 6 is of the opinion that the deceased would appear to have died of shock and haemorrhage as a result of external injury No. 1 together with its corresponding internal injuries, which is necessarily fatal.

9. The same day at 8-30 p.m. P.W. 6 examined the 2nd accused and found on him, an abrasion mark over the centre of the scalp. Ex. P. 4 is the wound certificate issued by him. According to P.W. 6, the injury is simple in nature and could have been caused in a scuffle to snatch the arrival from the hand of the 2nd accused.

10. P.W. 6 examined the 3rd accused at 8-30 p.m. on 18-2-1983 and found on him an incised wound 3' x 0.25 cm. x .25 cm. on the left wrist on the ventral aspect. Margins were regular and clotted blood was seen. Ex. P. 5 is the wound certificate. According to P.W. 6, the injury is simple in nature and could have been caused in a scuffle to wrest the knife from the hand of the 3rd accused. He is also of the opinion that injuries found on accused 2 and 3 could have been caused at about 5-30 p.m. on 17-2-1983.

11. P.W. 13 examined witnesses and at 4-30 p.m. he arrested accused 2 and 3. The 2nd accused gave a statement, in which he stated that he had kept M.O. 1 arrival under a thorny bush in Nambi pothai Ex. P. 6 is the admissible portion of the statement. He then examined the 3rd accused, who stated that he kept M.O. 2 knife in a thorny bush in Nambi Pothai. Ex. P. 7 is the admissible portion of the statement. Accused 2 and 3 then took P.W. 13 and others to Nambi Pothai and from under two thorny bushes, each one of them took M.Os 2 and 1 respectively, which were seized under mahazars Exs. P. 8 and P. 9, P.W. 9 who was present attested Exhibits P. 6 to P. 9.

12. P.W. 13 then sent the seized articles to court along with the requisition Ex. P. 11, to send the blood stained articles for chemical Analysis. P.W. 12 the concerned clerk in the committal court, under the original of Ex. P. 12, sent the properties to the Chemical Examiner, Ex. P. 13 is the report of the chemical Examiner and Ex. P. 14 is the report of the Serologist.

13. On 22-8-1983, accused land 4 surrendered before court. After completing investigation, the Inspector P.W. 13 laid the charge sheet.

14. During trial, on behalf of the prosecution, P.Ws. 1 to 13 were examined and Exs. P. 1 to P. 18 were marked. M.Os. 1 and 6 were produced. The accused were

questioned. Accused 1 and 4 denied complicity with the crime. The 2nd accused stated that, on the day of occurrence, P.W. 1, P.W. 2 and the brother of P.W. 1 Rajkumar came from the arrack shop nearby with aruval and sticks and P.W. 2 cut him on the head and he warded off the cut with his hands, as a result of which, the cut fell on his hand and that P.W. 1 attempted to stab him with the knife and the 3rd accused tried to prevent P.W. 1 from stabbing, in the course of which, the 3rd accused sustained an injury on his hand and that Rajkumar attempted to stab the 3rd accused and when the deceased intervened the stab fell on the deceased and that soon after himself and the 3rd accused went to the police station at Panagudi, where they were kept under custody. The 3rd accused adopted the statement of the 2nd accused. The accused had no evidence to offer, oral or documentary.

15. The learned Sessions Judge found that the case against the 4th accused had not been proved and acquitted him of all the charges. He however, convicted the appellants, as stated earlier, against which, the present appeals have been preferred.

16. Learned counsel for the 1st accused as well as the learned counsel for accused 2 and 3 contended that the motive was too flimsy and that the evidence of P.Ws. 1, 2 and 4 is interested and P.W. 3 the only independent witness had been treated hostile by the prosecution and the inordinate delay in the police arriving at the scene would probalilise the version of the accused that the deceased-party were the aggressors. It was also urged that there was delay in Ex. P. 1 reaching the committal court and the explanation offered by P.W, 11 ought not to be accepted. It was further contended that the non-examination of Rajkumar, who, even according to the prosecution, was chased by all the accused and who had been present throughout the occurrence, is fatal to the prosecution case.

17. Finally the learned counsel appearing for the 1st accused, in particular, contended, that even if the prosecution case is believed in its entirety, the offence committed by the 1st accused would not fall under section 302 of the Indian Penal Code but would reduce itself to a minor offence. He relied upon certain decision which we shall refer to later.

18. Per contra, learned Public Prosecute placing particular reliance upon the evidence of P.W. 3 the independent witness, urged th the defence version could not be true and injuries on accused 2 and 3 were too trivial be of any significance. Even if there was delay in Ex. P. 1 reaching the commits court, the explanation offered by P.W. 11 he been rightly accepted by the trial court, and such, the conviction had to be confirmed. Learned Public Prosecutor also relied upon certain decisions, which we shall refer to in th course of the discussion.

19. As far as the occurrence is concerned what preceded the actual assault, is spoken to by P.W. 7, P.W. 1 and P.W. 2. It is thereafter that the occurrence had taken place. No doubt, P.W. 3, did not support the prosecution case in its entirety. Yet, P.W. 3 is natural witness, since the occurrence had taken place right in front of his house. He has been treated hostile by the prosecution because he stated that he did not see who actually stabbed the deceased. It is settled law that the evidence of a hostile witness, need not rejected in its entirety. P.W. 3 has stated hat while P.Ws. 1 and 4 were coming from the east, P.W. 2 and Rajkumar were being chased from the west by all the four accused and that at that time, the 1st accused was armed with spear and the 2nd accused with M.O. 1, while the 3rd accused with M.O. 2. He has also stated that at that time, the deceased, came there and was murdered. P.W. 3, in addition has stated that while P.W. 2 tried to snatch the aruval from the hand of the 2nd accused, the 2nd accused sustained an injury on the head, and while P.W. 1 tried to snatch the knife from the hand of the 3rd accused, 3rd accused sustained an injury on the left hand. The evidence of P.W. 3 appears natural and there is no reason why his evidence should be discarded. He is an independent witness and nothing serious has been suggested against him. Besides P.W. 3, there is the evidence of P.Ws. 1, 2 and 4 who are full fledged eye-witnesses to the occurrence. Except that they are distantly related to the deceased, nothing has been urged against them. As Exs. P. 4 and P. 5 would show, the injury Sustained by accused 2nd 3 respectively, very insignificant and from that alone, it cannot be inforced that it was the Prosecution Party, who brought weapons and attacked the accused party. We therefore, find no reason to reject the evidence of P.WS. 1 to 4 regarding the manner in which the occurrence had taken place.

20. Taking up the next question as to whether, in the circumstances of the case S. 34 of the Indian Penal Code could be invoked against accused 2 and 3, we find that the immediate cause for the occurrence is the incident that had taken place at 5-30 p.m. between P.W. 7 and the 2nd accused. It is not known as to what exactly intervened between that incident and the actual occurrence when all the accused were found chasing P.W. 2 and Rajkumar. Whatever that be, even in the earlier incident, the deceased was not concerned. While the accused were chasing P.W. 2 and Rajkumar deceased accidentally happened to come to the scene, because his house was only 100 feet away. Being an elder to the accused and the prosecution witnesses he had felt that the trivial incident that had happened at 5-30 p.m. need not be further pursued by the accused taking arms and chasing P.W. 2 and Rajkumar. He had, therefore, intervened to state that the matter could be dropped. At least till that point of time, the accused could not have had any common intention to cause the death of deceased. No doubt common intention could develop any moment, but still, the way in which the occurrence had taken place, would make us conclude that there never been any common intention between accused 1 to 3 to cause the death of the deceased. The 3rd accused was armed with a knife M.O. 2. Yet, he did not attack the deceased at all. Only once he is said to have tried to use M.O. 2 but was directed only against P.W. 1 and not deceased. P.W. 1 had tried to snatch the weapon, in the course of which, the 3rd accused sustained an injury on the left hand. The 3rd accused therefore, though he was armed with a deadly weapon, had not even attempted to cause any injury on the deceased. He could, therefore, never have had any intention to cause the death of the deceased.

21. Regarding the 2nd accused, though at one stage he had cut the deceased on the left hand, he had not followed it up by repeating the assault. The resultant injury on the deceased was only a simple injury. If the 2nd accused had any common intention, he would have persisted in the assault, since he was armed with a deadly weapon. We are, therefore, not able to support the finding of the learned Sessions Judge that all the three accused had the common intention to cause the death of the deceased. S. 34 of the Indian Penal Code, therefore, cannot be invoked against accused 2 and 3. The 3rd accused had not caused any injury on the deceased. He will, therefore, be entitled to an acquittal. The 2nd

accused has caused injury No. 2 shown in Ex. P. 3, which is a simple injury. The offence committed by the 2nd accused, therefore, would fall only under section 324 of the Indian Penal Code, for which, a sentence of imprisonment already undergone by him, would meet the ends of justice.

22. Regarding the 1st accused, learned counsel appearing for him, would rely upon the decision of the Supreme Court in Jagtar Singh v. State of Punjab, : 1983 CriLJ852 in support of his contention that the offence would not fall under section 302, IPC. In that case the deceased accidentally happened to pass in front of the house of the accused and was injured by a projecting 'Parnala'. When the deceased protested to the accused that he should have raised the height of the parnala, an exchange of abuses followed, in the course of which the accused gave one stab with a knife on the deceased, which landed on the chest. Though before the Supreme Court it had been urged by the State that the injury was sufficient in the ordinary course of nature to cause death and the offence, therefore, would fall only under section 302 of the Indian Penal Code, the Supreme Court held that in the facts and circumstances of that case, in view of the fact that the meeting of the deceased and the accused was only a chance meeting and the cause of the quarrel though trivial, was just sudden and the appellant being a very young man and had given only one blow, he could not be imputed with the intention to cause death or the intention to cause that Particular injury, which has proved fatal. The conviction therefore was modified to one under section 304 part II of the Indian Penal Code.

23. Reliance was also placed by learned counsel for the 1st accused on the decisions in Kulwant Rai v. State of punjab : AIR 1982 SC126 and also on the decision of a Division Bench of this Court, viz. Sundarapandian In re (1988 Law Weekly (Cri.) 64 short notes), which had followed the decision Jagtar Singh v. State of Punjab, : 1983 CriLJ852 .

24. Per contra, learned public prosecutor would rely upon the decision of the Supreme Court in Vinod Mohan Avasthi v. State of Uttar Pradesh : (1982)2SCC146 for the proposition that it was for the accused to establish that he came under any one of the exceptions to S. 300 of the Indian Penal Code.

25. Bearing the principles laid down by the Supreme Court in the above decisions, we will now analyse the case against the 1st accused. As stated earlier, the deceased was not involved in the incident that took place at 5-30 p.m. which was the immediate cause for the occurrence. There was no previous enmity between the deceased and the accused. Since the house of the deceased was closely, he came out voluntarily and intervened, in an attempt to pacify the accused. It is under these circumstances that without any premeditation and any prior motive, on the spur of the moment, the 1st accused had given one stab, which happened to fall on the left side chest of the deceased, resulting in fracture of the 6th rib on the left side at the costochondral junction, causing an injury to the left auricle and causing rupture in the right auricle. The facts in Jagtar Singh v. State of Punjab, : 1983 CriLJ852 , though not identical with the present case, cannot be said to be totally dissimilar to the facts of the present case, since there was no quarrel between the deceased and the accused, as in the case before the Supreme Court. However, considering the fact that it was the deceased, who had suddenly intervened, though with the best of intentions A1 in the spur of moment, had given a single stab, we feel that the offence would not fall under section 302 of the Indian Penal Code. We hold that the accused by his act had not the intention of causing such, bodily injury as is likely to cause death. Therefore, we find that the offence would fall under section 304, Part I of the Indian Penal Code, for which a sentence of ten years rigorous imprisonment would meet the ends of justice.

26. In the result, the conviction of the appellant in C.A. No. 282 of 1985 (1st accused) under section 302 of the Indian Penal Code and the sentence of imprisonment for life are set aside, and instead, he is found guilty for an offence under section 304, Part I of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for ten years. With this modification in the conviction and sentence, the appeal C.A. No. 282 of 1985 is dismissed.

27. The conviction of the first appellant (second accused) in C.A. 289 of 1985 for the offence under section 302 read with S. 34 of the Indian Penal Code and the sentence of imprisonment for life are set aside. Instead, the first appellant (second accused) is convicted under S. 324 of the Indian Penal Code and sentenced to imprisonment for the period already undergone by him (1-1/2 years).

28. The conviction of the second appellant (third accused) under section 302 read with S. 34 of the Indian Penal Code and sentence of imprisonment for life are set aside and he is acquitted. His bail bond shall stand cancelled. C.A. 289 of 1985 is allowed in part.

29. Order accordingly.

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