

**Murugesan and Another Vs. State**

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**Court :** Chennai

**Decided On :** Jun-23-1992

**Reported in :** 1993CriLJ2565

**Judge :** K. Swamidurai, J.

**Appeal No. :** Criminal Appeal No. 787 of 1986

**Appellant :** Murugesan and Another

**Respondent :** State

**Advocate for Def. :** A.N. Rajan, Govt. Advocate (Crl. Side)

**Advocate for Pet/Ap. :** S. Sethuratnam, Adv.

**Judgement :**

1. The accused 1 and 2 are son and father respectively. The first accused was charged for an offence punishable under section 302, I.P.C. The second accused was charged for an offence punishable under section 302 read with Section 109, I.P.C.

2. The case of the prosecution is that on 27-9-1985 the first accused murdered his wife by severing her head at Nanjaiyaidaiyar Village and caused her death and that his father A-2 abetted A-1 in committing the murder of his wife. P.W. 1 is the Village Administrative Officer of Nanjaiyaidaiyar Village. His evidence is that on 27-

9-85 at about 1 p.m. A-1 came to him and gave a confessional statement to the effect that his wife was having illicit intimacy with a teacher by name Ramanuja Iyer, that his wife went away with the said teacher on the previous day and that the first accused brought her back, that on 27-9-1985 his wife was making arrangements to go along with the said teacher and she was adamant in her action and so the first accused took out an aruval and severed her head. P.W. 1's further evidence is that the first accused told him that the second accused was holding her legs and hands and that the second accused had taken away the head and also the aruval stating that he would go to the police station. The first accused signed the statement given by him and recorded by P.W. 1, after admitting the contents. Ex. P-1 is the confession statement. Ex. P-2 is the carbon copy of the same. Exs. P-3 and P-4 are the reports prepared by P.W. 1. P.W. 1 forwarded Exs. P-2 and P-3 to the Police Station and also sent copies of the same Exs. P-1 and P-4 to the Judicial Magistrate. Some time thereafter, the Village Administrative Officer, Punjaiyidaiyar came to see P.W. 1. P.W. 1 asked the first accused to sit in his office and at 3.45 p.m. the Inspector of Police, Sub-Inspector of Police and other came to the office of P.W. 1. The Inspector of Police arrested the first accused and obtained a confession statement from the first accused. P.Ws. 2, 3 and 5 have turned hostile and therefore their evidence is not helpful to the case of the prosecution.

3. P.W. 4 is the owner of the cycle in which the second accused is stated to have taken the head and the aruval to the police station soon after the occurrence. According to P.W. 4 the first accused brought the aruval and the head and asked for a cycle. P.W. 4 seemed to have refused to give the cycle. He identified the head as that of the deceased Selvi, M.O. 1 is the aruval identified by P.W. 4. P.W. 5 turned hostile and his evidence is not helpful to the prosecution. P.Ws. 6 and 7 speak about the second accused carrying away the head and the aruval in a cycle. P.W. 8 is a broker in Mohanur Kakka Thope. He found a person carrying - a head of a woman and also a bloodstained aruval on the cycle carrier. Apart from that he could not identify the accused. P.W. 9 is an attestor of the confessional statement obtained by the Inspector of Police from the first accused and he also attested Ex. P-8 under which M.Os. 4 to 6 were seized. Ex. P-7 is the rough sketch prepared by the Inspector of Police, P.W. 10 is the Medical Officer attached to the

Government Hospital, Vellore, at the time when he was examined. On 27-9-85 he received a message from the Inspector of Police from Vellore Jail under Ex. P-9, P-10 and P-11. He conducted post-mortem over the body of the deceased which was brought by P.C. 173. He issued post-mortem certificate under Ex. P-12. P.W. 11 is the P.C. 189 who took the body of the deceased for post-mortem, P.C. 173 accompanied the Inspector of Police to the Mohanur Police Station at 7 p.m. on 27-9-1985. He received M.O. 1 and also the head of the deceased Selvi with a message under Ex. P-10 and he entrusted the body with the Vellore Government Hospital for post-mortem. After the post-mortem is completed he received the dead body and entrusted it with the father of the deceased. P.W. 3 is the Judicial Second Class Magistrate and he speaks about the receipt of the material objects and sending all the material objects for Chemical examination. The other prosecution witnesses do not speak about the occurrence and they speak about the facts subsequent to the occurrence and their evidence need not be taken into consideration very much to find out whether the accused have committed the offences with which they are charged.

4. When the accused were questioned under section 313, Cr.P.C. they denied the offences and pleaded not guilty to the charges. The learned Session Judge, Salem, found the accused guilty as stated above, convicted and sentenced them accordingly.

5. The learned counsel for the appellants contended that the second accused was charged under section 302 read with Section 109, I.P.C. convicted and sentenced to undergo rigorous imprisonment for three years under section 304 (Part I) read with Section 109, I.P.C. According to him, there is no direct evidence to implicate the second accused with the offence of abetment. Excepting the evidence of P.Ws. 6 and 7 that the Second accused was found carrying the head and the aruval on a cycle, there is no evidence to show that the second accused had taken part in the commission of the murder. Section 109, I.P.C. reads as follows :-

'109. Punishment of abetment if the act abetted is committed in consequence and where no express provisions made for its punishment :- Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and

no express provision is made by this code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation :- An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.'

There is no evidence to show that the second accused abetted, the offence of murder said to have been committed by the first accused. Therefore, the second accused cannot be held liable under S. 304 (Part-I) read with S. 109, I.P.C. and the finding of the trial court cannot be justified and the conviction and sentence in respect of A.2 are not aside and the second accused is acquitted.

6. So far as the first accused is concerned, there is sufficient evidence to show that after the murder he was found along with his father A.2 with the head and aruval. There is also motive to show that the deceased Selvi was having illicit intimacy with a teacher. Ex. P-5 is the letter said to have been written by the deceased Selvi to her husband, the first accused, in that it is stated that she was not willing to live with her husband since she wanted to live with a person who liked him :

(Vernacular matter omitted.)

Even though the first accused did not admit the genuineness of this letter, the prosecution has relied upon the same to show that there is a motive for the first accused to commit the murder. Therefore, accepting the case of the prosecution I am of the view that there is a motive for the first accused to commit the offence of murder, since he had grave and sudden provocation to commit the murder when he came to know that his wife was making arrangements to go along with her paramour, a teacher. Section 304, I.P.C. reads as follows :-

'304. Punishment for culpable homicide not amounting to murder :- Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is

caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with fine, or with both, if the act, is done with fine, or with both, if the act, is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.'

Section 300, I.P.C. Exception 1 reads as follows :-

'When culpable homicide is not murder; -

Exception 1 :- Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provision :-

Firstly :- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly :- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly :- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation :- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.'

In the circumstances, there is ample evidence that the first accused has committed the offence, but under a grave and sudden provocation. The trial court has correctly appreciated the evidence of the prosecution witnesses and found that the first accused has committed the offence under S. 304 (Part-I), I.P.C. The Lower

Court has sentenced the first accused to undergo rigorous imprisonment for seven years.

7. In the circumstances of the case I reduce the sentence imposed on the first accused for a period of three years under S. 304 (Part-I), I.P.C.

8. The first accused is entitled to the benefit of the three Government Orders, namely, (1) G.O.Ms. No. 180 Home (Prison-IV) Dept., dt. 28-1-1989, (2) G.O.Ms. No. 781 Home (P.R.C.) Dept., dt. 11-4-1990 and (3) G.O.Ms. No. 277 Home (Prison-C) Dept., dt. 23-2-1992. The first accused has to undergo the rest of the period of sentence. With this modification in the sentence, the criminal Appeal is partly allowed so far as the first accused is concerned. The appeal is allowed so far as the second accused is concerned.

9. Order accordingly.

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