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Pattani Vs. State

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Court : Chennai

Decided On : Nov-03-1992

Reported in : 1993CriLJ1709

Judge : Janarthanam and;Thangamani, JJ.

Appeal No. : Crl.A. No. 947 of 1986

Appellant : Pattani

Respondent : State

Advocate for Def. : Mr. S. Shanmugha Velayutham, Addl. P.P.

Advocate for Pet/Ap. : Mr. N. Doraisamy, Adv.

Judgement :

Janarthanam, J.

1. The accused, aggrieved by his conviction and sentence in S.C. No. 94 of 1983 on the file of Court of Session, West Thanjavur Division, Thanjavur, has come forward with this appeal.

2. The brief facts are :-

(a) The accused is a resident of Kottur Chatram village, which is situate within the jurisdiction of Kottur Police Station. He got married to one Krishnammal (since

deceased - Deceased 1) some 25 years prior to 28-2-1983 the date on which the occurrence was said to have happened. The spouses lived happily and two female offsprings came into existence. They were named as 'Vijayalakshmi' and 'Malliga'. They came of age and both were happily married.

(b) Some one and a half decades before the occurrence, the matrimonial life between the accused and deceased I was not cordial and it so happened that Deceased 1 eloped with a paramour of her choice and started living with him in the village going by the name Oomathankadu. While so living, she begot a female child by name Muthulakshmi (since deceased - Deceased 2).

(c) Some six months prior to the occurrence, the accused took ill and got himself admitted at Hanifa Hospital, Thiruthuraipoondi. Deceased 1 had come to know of the illness of her husband - the accused and paid on him a courtesy call at the hospital. His two daughters Vijaylakshmi and Malliga also made similar calls along with deceased 1. During the course of such courtesy call, deceased 1 informed him of issue she had as a result of her illicit relationship. The accused however condoned her past illicit relationship and was prepared to accept her and also her daughter Muthulakshmi (deceased 2). The moment the accused was discharged from the hospital, deceased 1 and 2 and the accused had started living together in the house of the accused.

(d) The house of the accused is situate at Thiruthuraipoondi - Kottur Road. In the road, there are electric posts with electrical bulbs burning during night hours. It is exactly located on the western side of the road, facing east. There is a saw mill more or less opposite to the house of the accused. In the said saw mill, P.W. 2 had been engaged as a night watchman. There is a barber shop of P.W. 3 next adjacent to the house of the accused and he used to take his bed there during night hours. The paddy shop of P.W. 4 is situate on the north adjacent to the barber shop of P.W. 3. There is also a tea shop belonging to P.W. 5 on the north-east of P.W. 4's shop, that is to say, situate on the eastern side of the road facing west.

(e) The accused and the deceased 1 and 2, it is said, had a happy time for about two months. Thereafter, want of cordial atmosphere between the accused and

deceased 1 came to prevail. There were very often skirmishes and quarrels between them at odd times attracting the attention of the neighbours. The accused was every often stated to be proclaiming that he would somehow or other murder deceased 1. The skirmishes and quarrels between the accused and deceased 1 having acquired the status of a day-to-day occurrence, neighbours did not take their quarrels seriously, despite the hue and cry arising from their house even at odd hours.

(f) P.W. 2, as usual, went to the saw mill for keeping night watch on the evening of the 27th February, 1983. Her had the fortuitous opportunity of witnessing the accused and deceased 1 quarrelling with each other. At about 8 p.m., he went to his house for taking supper. Then he had seen the accused sitting on the pial of his house. At about 10 p.m., he returned to the saw mill and took his bed there. P.Ws. 3 and 4 were also available, by taking their bed in their respective shops. P.W. 5 had been conducting a tea shop in front of his house. He and his family members were residing in the back portion.

(g) After the night show in a nearby cinema theatre was over, that is to say, at or about 2 a.m. on the next day (28th February, 1983), there was a hue and cry emerging from the house of the accused. None of the neighbours took it serious. P.W. 2 however came out of the saw mill and saw the accused going out of the house, after closing the front door. The accused, it is said, approached P.W. 5 for a cup of tea. While so entreating for a cup of tea to be given, he was stated to have revelled in a pensive mood to P.W. 5 as to his having murdered deceased 1 and 2. P.W. 5 was unable to provide him a tea, as the shop had been closed much earlier.

(h) P.W. 1 is the Village Administrative Officer. The accused, it is said, made a direct march to the house of P.W. 1 and revealed to circumstances under which he happened to murder deceased 1 and 2. P.W. 1 in order to verify his veracity, took the accused to his house and saw deceased 1 and 2 lying dead in a pool of blood. He thereafter reduced the statement of accused to writing in his own words. He read over the same to him and he accepted the same to be correct. Exhibit P-1 is that statement. He also prepared Exhibit P-2 yadhast. He then took the accused

and reached Kottur Police Station at 4.30 a.m.

(i) P.W. 10, Sub-Inspector of Police was then in charge of the station. He produced accused before him, along with Exhibits P-1 and P-2. P.W. 10 registered the case in Crime No. 11/83 for alleged offences under section 302, I.P.C. He prepared express reports and sent the same to the concerned officials. Exhibit P-9 is the printed copy of the express FIR. He arrested the accused and seized from his towel (M.O. 3) under Form No. 95. He searched the accused and kept him in the lock-up. He thereafter despatched Exhibits P-1, P-2 and P-9 through P.W. 11 Grade I Constable to Court.

(j) P.W. 12, Inspector of Police, on receipt of the copy of the express F.I.R. at 7 a.m. whilst he was at Muthpet, rushed to Kottur Police Station and took up further investigation of the case. He reached the scene village at 8.30 a.m. After inspecting the scene at about 8.45 a.m., he prepared Exhibit P-3 observation mahazar. He also drew a rough sketch, Exhibit P-10 of the scene of occurrence. At 9.15 a.m., he seized from inside the house of the accused, near the body of deceased 1 and 2, broken pieces of pestle, M.Os. 1 and 2 series under Exhibit P-4 mahazar. Between 9.30 a.m. and 12.30 p.m., he conducted inquest over the body of deceased 1. During inquest, he examined P.Ws. 1 to 5. Exhibits P-11 is the inquest report, as respects the body of deceased 1. Between 12.30 and 2 p.m., he held inquest over the body of accused 2. During such inquest, he also examined the same witnesses, P.Ws. 1 to 5. Exhibit P-12 is the relevant inquest report. He also caused photographs of the scene to be taken by P.W. 9 photographer. M.Os. 22 to 28 are the photo prints and M.Os. 29 to 35 are the negatives. At 2 p.m., from near the body of deceased 1, he seized mat (M.O. 4), bloodstained earth (M.O. 5) and sample earth (M.O. 6) and from the place near the body of deceased 2, bloodstained earth (M.O. 7) under Exhibit P-5 mahazar. Exhibits P-3 to P-5 were attested by P.W. 1. After inquest, he despatched the bodies of deceased 1 and 2 through the Constable, P.W. 8, along with requisition, Exhibit P-6 for purposes of autopsy, P.W. 6 accordingly handed over the bodies of deceased 1 and 2 to the Government Hospital, Mannargudi for the purpose of autopsy.

(k) P.W. 6 is the Assistant Surgeon, Government Hospital, Mannargudi. He commenced autopsy over the body of deceased 1 at 10 a.m. on 1-3-1983. Exhibit P-7 is the post-mortem certificate. He would opine that injury Nos. 3 and 4 described under Exhibit P-7 could have been caused by beating with iron ring of the pestle, M.Os. 1 and 2 series. He would further opine that the deceased 1 would appear to have died of shock and haemorrhage due to injury to the brain, fracture of left maxilla, left mandible and left humerus, besides stating that injury No. 1, with corresponding internal injuries, is fatal. He would also stated that injury No. 6, being mere abrasion, could have been caused by a fall on the ground.

(l) P.W. 7 is the Assistant Surgeon attached to the Government Hospital, Mannargudi. He commenced autopsy over the body of deceased 2 at 11.15 a.m. on 1-3-1983. Exhibit P-8 is the post-mortem certificate. He opined that the injuries he found on the body of deceased 2 could have been caused by beating with a pestle, M.Os. 1 and 2 broken pieces. He would further opine that deceased 2 would appear to have died of shock and haemorrhage, as a result of the injuries to the skull bone of the brain and that the external injuries Nos. 1 and 2 with their corresponding internal injuries individually and collectively are fatal.

(m) After the autopsy was over, P.W. 8, seized from deceased 1, brass nose screw (M.O. 8 series), brass stud (M.O. 9), toe rings (M.O. 10), rubber bangles (M.O. 11), blood-stained jacket (M.O. 12), skirt (M.O. 13) and saree (M.O. 14), besides seizing brass nose screw (M.O. 15), toe rings (M.O. 16), plastic garland (M.O. 17), rubber bangles (M.O. 18 series), jacket (M.O. 19), skirt (M.O. 20) and upper garment (M.O. 21) from the body of deceased 2 and entrusted them to P.W. 12 at the police station, who, in turn, seized them under Form No. 95.

(n) On 14-3-1983, P.W. 13 sent Exhibit P-13 requisition to the Judicial Second Class Magistrate, Mannargudi for despatching the incriminating articles to the Chemical Examiner for the purpose of examination. On receipt of Exhibit P-13, it appears that all the incriminating material objects had been sent to the Chemical Examiner for the purpose of examination. Exhibit P-14 is the report of the Chemical Examiner and Exhibit P-15 is the report of the Serologist.

(o) After completing the formalities of the investigation, P.W. 12 laid the final report on 29-4-1983 before the Judicial Second Class Magistrate, Mannargudi, against accused for an offence under section 302, I.P.C. (two counts) appeared to have been committed by him.

3. Upon committal, learned Sessions Judge framed a charge against accused under section 302, I.P.C. (two counts).

4. The accused, when questioned as respects the said charges framed against him, denied the same and claimed to be tried.

5. The prosecution, in a bid to prove the charges framed against the accused, examined P.Ws. 1 to 12, filed Exhibits P-1 to P-15 and marked M.Os. 1 to 35.

6. The accused, was questioned under section 313 Cr.P.C. as respects the incriminating circumstances appearing in evidence as against him, denied his complicity in the crime. He would however state that he was not at all connected with the crime; that when he returned to his house at 1 p.m. after finishing his work, to his dismay, he found a crowd of people in his house and that the police took him to the police station and obtained his signature in piece of paper. He did not choose to examine any witness on his behalf.

7. Learned Sessions Judge, on consideration of the materials available on record and after hearing the arguments of learned Public Prosecutor as well as learned Defence Counsel, found the accused guilty under Section 302, I.P.C. (two counts), convicted him thereunder and sentenced him to imprisonment for life under each count, with a direction for life under each count, with a direction for the sentences to run concurrently. Hence this appeal.

8. Learned Counsel appearing for the appellant-accused would contend that in a case where the materials projected in proof of an offence consists of evidence, not direct, but only circumstantial, it is incumbent upon the prosecution to establish those incriminating circumstances by unimpeachable evidence and the circumstances so established must have to point out in a clinching fashion that the accused and he alone could have committed the offence with which he stood

charged and none-else could have done it and the facts and the circumstances of the present case, he would say, if viewed from that angle, it cannot be stated that the prosecution succeeded in discharging its burden and therefore it is that it is but proper for this Court to acquit the accused by giving him the benefit of reasonable doubt. He would alternatively contend that if the Court comes to the conclusion that it was the hand of the accused that was responsible for inflicting certain beatings on the deceased 1 and 2 which resulted in their death, even then, it cannot be stated that the acts of the accused, in the infliction of beating both, cannot be stated to be one done otherwise than in the exercise of the right of private defence of the person of the accused.

9. Learned Additional Public Prosecutor would counter those submissions in all seriousness.

10. No doubt true it is that the case of the prosecution is built upon the edifice of foundation of evidence, not direct, but only circumstantial. The various incriminating piece of circumstances and other evidence relied upon by the prosecution, which commended acceptance at the hands of the Court below consists of the following :

(1) The elopement of the deceased 1 some one and a half decades before the occurrence with a paramour of her choice and begetting a female child, that it to say, deceased 2, as a result of such illicit relationship.

(2) Deceased 1, on hearing the accused having been admitted in Hanifa Hospital at Thiruthuraipoondi, feeling penitence and remorse about her conduct calling on him at the hospital and the accused on his part also forgetting the past life of deceased 1 and accepting her and her daughter, deceased 2.

(3) Joint living of accused along with deceased 1 and 2 for about six months prior to the occurrence.

(4) Accused and deceased 1, though lived together in a blissful and happy atmosphere initially for two months, however, resorted to bickerings, quarrels an skirmishes very often at odd hours attracting the attention of the neighbours and

on such occasions, accused opening proclaiming that he would somehow or other murder deceased 1 in due course of time.

(5) Accused and deceased 1 quarrelling with each other on the evening of the day of the occurrence and accused and deceased 1 and 2 were found together living in the house during the fateful night and night and agonising shrieks and shouts being heard by the neighbours at about 2 a.m. and thereafter, accused leaving the house, after closing the front door and in the morning, both deceased 1 and 2 having been found dead in pool of blood inside the house.

(6) Accused making extra judicial confessions to P.W. 5 as well as P.W. immediately after the occurrence.

(7) Exhibits P-1 and P-2 reaching the police station within 2-1/2 hours of the occurrence serving as a lending assurance factor in pointing out that there could have been no embroidered or embellished version projected by the prosecution.

(8) The medical testimony available on record lending necessary corroboration support to the extra judicial confessions given by accused to P.Ws. 5 and 1.

(9) The pestle, M.Os. 1 and 2 series and the towel M.O. 3 belonging to accused found to be containing blood of the same group as that the deceased pointing out the participation of accused as well as the manner of attack upon deceased 1 and 2.

11. There is no controversy as to deceased 1 eloping with a paramour of her choice and begetting through such illicit relationship her daughter - deceased 2, aged 13 at the time of the occurrence. Yet another fact, about which there is no dispute is that accused and deceased 1 and 2 were living together jointly. During the course of such living, it is the evidence of P.Ws. 2 to 4, neighbours, that there were frequent quarrels between accused and deceased 1 at all odd hours of the day, causing nuisance and attracting their attention. Though initially they viewed their quarrels seriously, they never paid and heed to such quarrels in course of time, as such quarrels had become the routing affairs between them. It also transpires from their evidence that accused had been proclaiming very often that

he would some or other murder the deceased 1 in due course of time. Such utterings had not been taken by them very seriously. Perhaps they though that going by the adage, 'words will not break bones', accused had been proclaiming such utterances without attaching any meaning to what he had expressed. But unfortunately such utterances of accused, to the dismay of the neighbours, proved otherwise on the day of the occurrence. It is their consistent evidence that the agonising shrieks and shouts emerged from the house of accused at or about 2 a.m. on the fateful night; besides, according to P.W. 2, accused left the house immediately thereafter, after closing the front door. He was also seen by P.W. 5 in his tea shop, when he craved for a tea to be given to him and also indicated the circumstances under which he happened to murder his wife-deceased 1 and her daughter-deceased 2. There is nothing unnatural or inherently improbable in the evidence of P.Ws. 2 to 5, when they narrated the way in which accused and deceased 1 lived a life full of bickerings and quarrels, No motive or any sort of animosity they bore towards accused had been brought to the surface so as to brush aside their testimony as put up for the occasion or so to say, their testimony is not above reproach and beyond suspicion.

12. It is the evidence of P.W. 1 that accused tapped the doors of his house at 3 a.m. on the day of the occurrence and narrated how he happened to beat deceased 1 and 2 to death by means of a pestle. He did not immediately proceed to record any statement from accused. He wanted to verify the veracity of such a statement. He in fact went to the house of accused and found to his bewilderment and dismay, deceased 1 and 2 lying dead in a pool of blood inside the house and by their side, the broken pieces of the pestle, M.Os. 1 and 2 series lying. Vouchsafed by the verification of the truth of the statement of accused, he happened to record the statement of accused in his own words, and after reading the same, and accepted by him to be correct, he got his signature, as reflected in Exhibit P-1. There is nothing unusual in the conduct of accused in reporting the matter to the Village Administrative Officer like P.W. 1. The accused in a frenzy after committing the dare-devil acts of the murder of deceased 1 and 2, engrossed, perhaps, in a mood of depression, frustration, penance and remorse thought of unburdening himself to a person like P.W. 1, who, in such circumstances, would at least, render him the minimal help of his being produced

before the police without running the risk of torture at their hands, which he would have anticipated, in case he happened to be arrested at a later stage, and such arrest cannot at all be ruled out of consideration, when especially the murders had happened within the four walls of the house solely occupied by him along with deceased 1 and 2. The cross-examination of P.W. 1 does not reveal anything as to his having any sort of animus towards the accused, so as to implicate him falsely in the crime, leaving out the real assailant, but for himself having made such an extra judicial confession. Of course true it is, a suggestion had been thrown during the course of the cross-examination that the extra judicial confession, as reflected in Exhibit P-1, is a stage-managed show, in the sense of the same having been prepared at the police station, utilising the services of P.W. 1, which in fact remained as a shot made in the darkness, in the sense of the same having been denied as stout a fashion as possible. We also feel that there is not other circumstance of any significance pointing out the probability of the extra judicial confession having been brought into existence at the dexterous hands of the police by utilising the services of P.W. 1, when especially there is nothing for P.W. 1 to oblige the police in treating to walk on the path as shown by them. As such, we are impressed by the evidence of P.W. 1 and we have no hesitation in safely placing reliance on the testimony as respects the extra judicial confession made by accused to him.

13. The extra-judicial confession also gets the necessary corroborative support from the medical evidence available on record. No doubt, learned counsel appearing for the appellant-accused would strenuously contend that the medical evidence available on record cannot be stated to be in tune with the case of the prosecution. He would draw our attention to injuries Nos. 3 and 4 as described in Exhibit P.7 as being 'incised injuries'. They are of the following descriptions :

'Injury No. 3 : An incised wound about 1 cm. x 1 cm. about 3' in front of left ear.

Injury No. 4 : An incised wound 1 cm. x 1 cm. below the left outer angle of the left eye. The maxillary bone on the left side was broken into pieces.'

From the description of the above injuries, as contended by learned counsel for the appellant-accused, they are clear cut incised injuries. From such a description

of those injuries, learned counsel would contend that the weapon of offence in this case, being a pestle, could not have caused those two clear-cut injuries. The submission, on the face of it, appears to be tenable and attractive but none-the-less, we are unable to affix our seal of approval to such a submission, in the facts and circumstances of the case. It is not as if, the attention of the doctor P.W. 6, who conducted the autopsy over the body of deceased 1, had not been drawn to those aspects of matter both by the prosecution as well as by the defence during the course of trial. The doctor had specifically stated in his chief-examination that those two injuries, though incised, could have been caused by the ring portion attached to the pestle, M.Os. 1 and 2 series. It is not as if the ring portion as blunt. The ring portion had been found to be sharp and this aspect of the matter is getting revealed by the answers given by him during the course of cross-examination. After verifying the sharpness of the ring portion, the doctor had given a categorical opinion that those injuries could have been caused by hitting with the iron ring portion of the pestle M.Os. 1 and 2 series. Except injury No. 6, an abrasion, he had opined that all the other injuries, inclusive of injuries Nos. 3 and 4 could have been caused with a pestle M.Os. 1 and 2 series. Similar was the opinion expressed by another doctor, P.W. 7, who happened to do autopsy over the body of deceased 2 in stating that all those injuries he found on that dead body could have been caused by beating with the pestle, M.Os. 1 and 2 series. As such, medical opinion available on record lends ample support to the extra-judicial confession of accused in pointing out that both the deceased could have been done to death by beating him with the pestle, M.Os. 1 and 2 series.

14. The participation of the accused and the wielding of the pestle, M.Os. 1 and 2 series, are also vouchsafed by the presence of the group of blood as that of the deceased in M.Os. 3 towel stated to have been worn by the deceased at or above the time of the occurrence, as well as the pestle stated to have been utilised in inflicting certain injuries on the person of deceased 1 and 2.

15. Top of all, the version as projected by the prosecution gets accredited credibility by Exhibit P.1 reaching the precincts of the police station barely within 2-1/2 hours of the commission of the offences. This apart, Exhibit P.1, along with Exhibits P.2 and P.9, had reached the portals of the Court on the same day at 3

p.m. and the little bit of delay, if any, in those documents having been handed over to the Court or the Magistrate had been explained by the prosecution in an admirable fashion through P.W. 11.

16. In view of the discussions as above, we are of the view that the prosecution succeeded in not only establishing the various incriminating circumstances of circumstantial evidence, but also those proved circumstances pointed out unerringly that the accused and him alone was responsible in beating deceased 1 and 2 to death by means of the pestle, M.Os. 1 and 2 series.

17. Having reached such a conclusion, we have to consider the alternative fang of argument of learned counsel for the appellant-accused. As adverted to earlier, according to him, if the extrajudicial confession, as reflected in Exhibit P.1 is perused with a little bit of care, caution and circumspection, it would point out that the act of accused in inflicting beating on the person of deceased 1 had been resorted to be made by the exercise of his right of private defence, pure and simple. No doubt true it is that the last paragraph of Exhibit P.1 reveals that when accused resorted to beating deceased 1 with the pestle M.Os. 1 and 2 series, she caught hold of the private part of accused and thereafter, he gave two or three beatings on the head of deceased 1 and when deceased 2 also came to the rescue of deceased 1, he also beat her on her head with the same pestle and in the process of such beating the pestle broke to pieces. It is this portion, which is heavily relied upon by learned counsel for the appellant-accused for invoking the right of private defence of person-accused. A careful sifting of that portion of the confession statement would point out that if at all the exercise of the right of private defence of a person is available, it is available only to deceased 1 and not to accused. Deceased 1 as well as deceased 2 were lying on the ground unarmed in the process of sleeping or otherwise. It is only at that juncture, accused without or any sort of a provocation whatever or any sort of an imminence of threat or danger to his life or any sort of imminent apprehension of any grievous hurt being caused to him at the hands of deceased 1 rose in revolt and attempted to attack deceased 1 with the pestle and such an attempt caused imminence of threat or danger to the life of deceased 1 or at least a grievous hurt being caused to her. Placed in such a situation, she not having possessed with any arms except

possessing her own arms - thought of catching hold of the private parts of accused, obviously in a bid to save her from the dastardly act of accused in attempting to beat her with lethal weapon like the pestle, M.Os. 1 and 2 series. But none-the-less, she could not save herself and the result was that accused clubbed on her head with the pestle two or three times, besides hitting on the head of deceased 2, when she came to the rescue of deceased 1, which resulted in their death on the spot. As such, we are unable to affix our seal of approval to the second fang of the submission of learned counsel for the appellant-accused.

18. The next question that crops up for consideration is as to what is the offence committed by accused, in the facts and circumstances of the case. The weapon of offence used in this case is a pestle with iron rings on both sides, a lethal weapon indeed. Such a weapon of offence was wielded by accused and he had chosen to inflict beatings on the head of deceased 1 and 2, with such ferocity that the pestle itself broke to pieces. In such circumstances, we have no doubt that the intention of the accused, in beating deceased 1 and 2 with a weapon like pestle on their heads - vulnerable portion of human anatomy and other portions of their body cannot be anyone other than the intention of causing their death, thereby taking the acts of accused, falling with the four corners of Clause 1 to S. 300, I.P.C., punishable under S. 302, I.P.C. The conviction and sentence imposed on accused for two counts under S. 302, I.P.C., as had been done by the Court below cannot be stated to be not sustainable; in such circumstances, in the eye of law.

19. In the result, the appeal is dismissed. The conviction and sentence for offences under S. 302, I.P.C. (two counts) as imposed on accused by the Court below are confirmed.

20. Appeal dismissed.

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