

Muniandi Vs. the State

Muniandi Vs. the State

SooperKanoon Citation : sooperkanoon.com/784756

Court : Chennai

Decided On : Jan-23-1991

Reported in : 1992CriLJ2954

Judge : Janarthanam, J.

Appeal No. : Cri. Appeal No. 869 of 1985

Appellant : Muniandi

Respondent : The State

Advocate for Def. : A.S. Chakravarthy, Govt. Adv. (Cri Side)

Advocate for Pet/Ap. : K.V. Sridharan for C.S. Dhanasekaran, Adv.

Judgement :

1. The appellant, who is the accused in S.C. No. 85 of 1985 on the file of the Court of Sessions Judge, Anna District at Dindigul, stands convicted for the offence under S. 304, Part (1) of I.P.C. and sentenced to undergo for Rigorous Imprisonment for seven years.

2. The brief facts leading to the filling of this appeal are : The accused is a resident of Sedapatti village, which lies within the jurisdiction of Sembatti Police Station. Poongodi, since deceased was no one-else than his younger sister. He is having another sister by name Mookkayee P.W. 3. The marriage of P.W. 3 took place

about 12 year prior to the day of occurrence, which happened on 29-3-1985. She was given in marriage to one Alagumalai. Two off-springs, One male, and female came into being as a result of that lawful wedlock. During the substance of the marriage P.W. 3 took a fancy for her uncle's son, Palaniappen and her intimacy with him developed day-in-and day-out even during her matrimonial life, which resulted in her elopement with her uncle's son, Palaniappen to Chettipalayam. The aggrieved husband Alagumalai convened a panchayat in the village regarding her elopement. In the Panchayat, it was decided to snap the matrimonial bond between P.W. 3 and Alagumalai and allow her to live with Palaniappan, a man of her choice as husband and wife. The panchayat also imposed upon Palaniappan a penalty of Rs. 600/- for his clandestine relationship with P.W. 3. Thereafter P.W. 3 and Palaniappan lived as husband and wife at Chettipalayam for about a year.

3. The accused had been fondling the deceased with so much of love and affection and was in fact in search of a good husband for her. While he was dreaming a rosy future for her, the said Palaniappan somehow or other developed a clandestine relationship with her also, the consequence of which was he has also taken her as his second wife, of course with the consent of P.W. 3 and this event happened some one year prior to the occurrence. Subsequently Palaniappan lived along with the deceased and P.W. 3 for some time at Thirupathur. The accused was rather infuriated by the conduct of his both sisters, P.W. 3 and the deceased, bringing stigma to the honour of the family.

4. Three months prior to the occurrence, P.W. 3 came to the scene village. At that time, the infuriated accused was stated to have made a dare devil attempt to inflict, some harm on her for her open clandestine life. Somehow or other such untoward incident was averted. Three days prior to the occurrence, the said Palaniappan along with his two wives, namely P.W. 3 and the deceased was stated to have visited the scene village in connection with a local temple festival, and all of them stayed in the house of P.W. 2 the mother of the said Palaniappan.

5. At 6.00 p.m. on the day of occurrence P.W. 2, P.W. 3 the deceased, Palaniappan and his brother Palanisami went to the well situated on the south west of the village for the purpose of fetching water, P.W. 2 and Palanisami were

bailing out the water from the well, while P.W. 3 deceased and Palaniappan were carrying the water to their house. The water carrying operation was effected by them for two trips. P.W. 3 and Palaniappan were stated to have remained in the house after the second trip. The deceased alone returned to the well for carrying water for the third time. Deceased carried the water in two Brass Vessels M.Os. 2 and 3 by having one over other on her head. She was also having a dhoti as '(vernacular omitted)' M.O. 4 while carrying the water. She was followed by P.W. 2 and Palanisami. While she came near the garden land of the Krishnasami Pillai, the accused all of a sudden emerged to the scene by rushing from the shed, situate in the said Thottam and inflicted a stab, which fell on her left flank, with M.O. 1 knife. The accused after inflicting the stab ran away from the scene with M.O. 1. The deceased fell down and by the time P.W. 2 and Palanisami came near her life became extinct.

6. The accused ran straight to the office of P.W. 1 the Village Administrative Officer of Bodikamanvadi. The time was then about 6.45 p.m. The accused made a clean breast of what had happened to P.W. 1 and gave Ex. P1 statement. It was reduced into writing as narrated by him. Thereafter, P.W. 1 along with his Thalairi went to the scene and ascertained about what the accused had stated. Thereafter he took the accused along with M.O. 1 which he was then having in his hand, to the Sembatti Police Station. The time was then 9.30 p.m.

7. P.W. 1 produced the accused along with M.O. 1 to P.W. 7 the Sub-Inspector of Police. He has also submitted Ex. P.1 along with his report Ex. P.2. On receipt of Ex. P.1 and P.2, P.W. 7 registered a case in Crime No. 52 of 1988 under S. 302 of I.P.C. and arrested the accused. P.W. 7 prepared express F.I.R. and despatched it to concerned officials. Ex. P.10 is the copy of the express First Information Report.

8. P.W. 9 the Inspector of Police, received the express First Information Report at 12 mid-night took up further investigation in the case, reached the spot of occurrence at 6.00 a.m. on 30-3-1985 after inspecting the same he prepared Ex. P.3 observation mahazar. He also drew a rough sketch of the scene of Ex. P.11. at 7.30 a.m. He seized from the scene M.Os. 2 and 3 Brass Vessels, M.O. 4 Dhoti, M.O. blood-stained earth and M.O. 6, sample of earth, under the cover of

mahazar Ex. P.4. Exs. P.3 and P.4 were actually attested by P.W. 4 between 8 and 11 hours, he conducted inquest over the body of the deceased. Ex. P.12 is the inquest report. During inquest he examined P.Ws. 1, 2, 3 and others. He therein the body of the deceased, for autopsy along with the requisition through P.W. 8 constable. He returned to the police station and made arrangements for the remand of the accused.

9. P.W. 5 the Medical Officer attached to the Government Hospital, Dindigul, on receipt of request on from P.W. 9 commenced autopsy at 2.00 p.m. Ex. P.5 is the post-mortem certificate. He opined that the injury on the body of the deceased could have been caused by a weapon like M.O. 1. He further opined that the deceased could have died instantaneously on the spot and that the injury is necessarily fatal.

10. After autopsy, P.W. 8 seized from the body M.O. 7, blood-stained saree, M.O. 8 blood-stained skirt and M.O. 9 blood stained jacket and handed over the same at the police station.

11. P.W. 9 sent Ex. P.6 requisition on 9-4-1985 to the Court of the Judicial II Class Magistrate No. 1, Dindigul for sending the incriminating material objects to the Chemical Examiner for the purpose of analysis. On receipt of Ex. P.6 P.W. 6 Head Clerk attached to that Court, as per the directions of the Magistrate, sent the incriminating material objects to the Chemical Examiner for the purpose of analysis under the original of Ex. P.7 office copy of the letter. Ex P. 8 and Ex P. 9 are respectively the reports of the Chemical Examiner and Serologist.

12. P.W. 9 after completing the formalities of investigation lodged a final report under S. 173(2) of Cr.P.C. before the Judicial Second Class Magistrate Court, on 6-5-1985, for the alleged offence under S. 302 of I.P.C. against the accused.

13. Upon Committal learned Sessions Judge, Anna District at Dindigul, framed a charge against the accused under S. 302 of I.P.C. and the accused when questioned, as respects the charge framed against him, pleaded not guilty and claimed to be tried.

14. The prosecution in proof of the charge examined P.Ws. 1 to 9, filed Exs. P.1 to P.12 and marked M.Os. 1 to 9.
15. The accused when questioned as respect the incriminating circumstances appearing in evidence against him denied his complicity in the crime. He would however state that the murder of the deceased had been committed by her husband Palaniappan and the case had been foisted on him. He would also mark on his side Ex. D.1 arrest card.
16. Learned Sessions Judge, on consideration of the material placed before him and after hearing the arguments of learned Public Prosecutor as well as learned counsel for the defence, found the accused guilty under S. 304, Part 1 of I.P.C. convicted and sentenced him as stated above giving rise to the present appeal.
17. Learned counsel appearing for the appellant-accused submits the following points for consideration.
1. Irrespective of the defence taken by the accused it is the fundamental postulate of criminal jurisprudence that the prosecution has to prove its case beyond any shadow of doubt and the facts of this case, if approached from this angle, would point out the futile exercises resorted to have been taken for proof of this case.
 2. In any event, the offence stated to have been committed by the accused on the facts and circumstances of the case, cannot at all fall under S. 304 Part I of I.P.C. and if at all it may fall at the best under S. 304, Part 2 of I.P.C.
 3. In case the Court comes to the conclusion that the offence committed by the accused is one falling under S. 304, Part 2 of I.P.C. interests of justice require infliction of minimum sentence of imprisonment taking into account the broad aspect of circumstances which impelled the accused to have resorted to stab her beloved sister.
18. Learned Government advocate would however repel such submissions.
19. There can be no manner of doubt whatever that the deceased met her fateful end by homicidal violence, as disclosed by the clinching testimony of the Doctor

P.W. 5, coupled with Ex. P.5 post-mortem certificate. The question that dwells for consideration is as to whether the accused is responsible for the infliction of the injury on the deceased resulting in her death. The prosecution in an attempt to prove its case is placing reliance on the testimony of P.W. 2 besides the extra-judicial confession stated to have been made by the accused to P.W. 1 the village Administrative Officer.

20. Let me embark upon a discussion on the evidentiary value of the testimony of P.W. 2, as well as the extra-judicial confession. In such a process, the extra-judicial confession may first fall for consideration. The occurrence happened at 6.00 p.m. The extra-judicial confession of the accused was stated to have been made within 45 minutes of the occurrence namely at 6.45 p.m. While P.W. 1 was in his office along with the company of his office Thalayari. The evidence of P.W. 1 discloses that the accused came to his office with M.O. 1 and narrated the sequence of events and gave Ex. P.1 statement, which was reduced into writing as narrated by him. It is not as if at the time when the accused made a clean breast of the events that had happened, he was accompanied by some other person. The sordid fact is that he all alone went to the office of P.W. 1 and narrated the sequence of events that had happened, without any sort of inducement, ferver or promise coming from any quarters whatever.

21. The narration of the sequence of events was rather spontaneous by the accused. There is no material whatever available on record to point out that P.W. 1 a person in authority issued any threat or made any inducement or promise to the accused, to make a confession and the accused succumbing to such threat or promise made a confession with a view to avoid any criminal proceedings being taken against him. The way in which the accused narrated the sequence of events immediately after the occurrence is nothing but a manifestation of his desire to make a clean breast of what had happened, when especially he was the cause for putting an end to the life of his own beloved sister, about whom he was dreaming of a rosy future in securing a good husband for her. Of course, the defence could mount an attack, that the extra-judicial confession, as reflected in Ex. P.1 could not have come into existence in the manner as stated by the prosecution and it is quity possible that Ex. P.1 could have been prepared at Sembatti Police Station and in

order to make it an admissible piece of evidence, the prosecution did very well manage, with the active assistance of P.W. 1, as if Ex. P.1 had been prepared much earlier than the Police came to the scene. This sort of an argument on the face of it appears to be very attractive, but to come to such a conclusion excepting some suggestion thrown during the course of trial to certain witnesses, which remained as a shot in the dark, in the sense of the same being denied, there are no other materials to make it appear that Ex. P.1 could have been prepared only at the Police Station. No doubt true it is that the burden that is cast upon the accused to prove the theory of the defence is not the one as that of the prosecution. It is enough for the defence to make it appear that the defence theory could not be ruled out, in the circumstances of the case.

22. If at all there is any circumstances on this aspect of the matter, there is an admission of P.W. 2 during the course of cross-examination that when the police arrived at the scene, it was 7.00 p.m. on the day of occurrence. It is not as if that the police who happened to be there at 7.00 p.m. took the accused to the police station. The arrival of the police on the scene by itself is not sufficient to point out that the accused had been taken to the police station and a confession under Ex. P.1 had been extorted and a credible look of admissibility had been given with the active assistance of P.W. 1 who has no axe to grind against the accused. In this view of the matter, I have no hesitation in coming to the conclusion that the extra-judicial confession, as reflected by Ex. P.1 is true and was voluntarily made by the accused, obviously in a bid to unburden his mind immediately after the occurrence, when especially he was the root cause for snuffing the life of his beloved sister - the deceased.

23. The testimony of P.W. 2 as respects the occurrence, is not suffering from any serious infirmity of material contradiction or inherent improbability, so as to disbelieve her version when she deposed that it was the hand of the accused that was responsible for giving a stab on the left flank of the deceased with a weapon like M.O. 1. She is not a stranger to the accused. She is closely related to the accused, being the aunt of the accused. The place where the occurrence took place is not an inhabited one and the human habitation is 200 feet away from the place of occurrence, in the sense of a Harijan Colony being situated there. At the

time of occurrence there was none present, excepting P.W. 2 and her son, who was coming behind her. The accident took place by a tickle of a second, in the sense of the accused emerging to the scene all of a sudden unexpectedly and inflicting a stab which fell on the left flank of the deceased. The act of stabbing been perpetrated, when the deceased was carrying water from the adjoining well in brass vessels M.Os. 2 and 3 by having one over the other on her head. On receipt of the stab, she immediately fell on the ground and the M.Os. 2 and 3 and the '(vernacular omitted)' also fell on the ground. The blood stained earth M.O. 5 was also stated to have been recovered from the scene. P.W. 2 could have been a natural witness in the sequence of events that had happened on the day of occurrence. She accompanied the deceased only in the process of carrying water. It is but natural for the women-folk to go to the adjoining well for the purpose of taking water. As such the presence of P.W. 2 in the scene cannot at all be doubted. There is also no reason for her to falsely implicate the accused, unless he being a real culprit. As such I have no hesitation in accepting the testimony of P.W. 2 as respects the occurrence.

24. The learned counsel would also make a comment that there is an inordinate delay in the lodging of First Information Report to the Police as well as despatch him of the said First Information Report to the Court, which causes serious doubt about the case of prosecution. The occurrence, as already stated had happened at 6.00 p.m. The accused was stated to have given Ex. P.1 statement to P.W. 1 at 6.45 p.m. P.W. 1 produced the accused along with M.O. 1 and Ex. P.1 along with his import Ex. P.2 at 9.30 p.m. at the police station. Admittedly the distance between the place of occurrence and the office of P.W. 1 is about 1 1/2 furlongs and the distance between the scene of occurrence and Sembatti Police Station is about 4 kilo metres. Taking into account the distance and the production of the accused before the Sub-Inspector of Police P.W. 7 it cannot be stated that there is an inordinate delay in lodging the First Information Report for setting the wheels of law in motion Ex. P.1 and Ex. P.2 also reached the portals of the gate of the Judicial Second Class Magistrate, Dindigul at 3.00 a.m. which is admittedly situate 12 kilo metres away from the police station. In such state of affairs to say that there is an inordinate delay causing a serious doubt on the prosecution, cannot at all be countenanced.

25. In view of what has been stated above, there can be no manner of doubt whatever that the prosecution had succeeded in proving that it was the hand of the accused that was responsible for the infliction of the stab on the left flank of the deceased by M.O. 1 on the day in question.

26. The next question that falls for consideration is as to whether the act of the accused would fall under S. 304, Part 1 as had been done by the Court below or under S. 304, Part 2 of I.P.C. The deceased as already indicated, being the sister of the accused, was affectionately brought by the accused with the fond hope of getting her married to a good husband and his hopes had been shattered to pieces by the deceased marrying Palaniappan as his second wife bringing dishonour and disrepute to the family of the accused. This was irritating in the mind of the accused. The bottled up irritation got bursted out when the deceased came to the village in connection with the local temple festival. The pent-up of feelings, irritation and emotion of the accused were given vent to at the time of occurrence by his resorting to giving a lone stab while she was carrying water, which unfortunately fell on the left flank of the deceased, culminating in her death on the spot. It cannot be stated that in such situation he intended to cause death of the deceased. If that was his intention, he could have resorted to give some more stabs. He did not do so. Even while inflicting a single stab, it is not all the case of the prosecution that he aimed the stab on the left flank of the deceased a vulnerable portion of human anatomy. Therefore, there cannot be any intention on the part of the accused, who caused injury on the left flank of the deceased, to have caused her death in the dare devil act of punishing his sister by the infliction of stab, which unfortunately fell on her left flank. In such a circumstance it can be stated to have been done with the knowledge that by such act it is likely to cause her death. In this view of the matter, the offence committed by the accused would fall within the four corners of S. 304, Part 2 and not under S. 304, Part I of I.P.C., as had been done by the Court below. The conviction, and sentence of the accused under S. 304, Part I therefore deserve to be set aside and accordingly set aside, and instead he is found guilty under S. 304, Part 2 of I.P.C. convicted thereunder.

27. Coming to the question of sentence, in the backdrop of the circumstances, as already narrated culminating in the occurrence, I do not think that it will be besides justice, to impose on him the sentence of Rigorous Imprisonment for three years for the offence under section 304 Part-2 of I.P.C. and accordingly he is sentenced.

28. In the result, the conviction and sentence of the accused under S. 304 Part I of I.P.C. are set aside and instead he is found guilty of the offence under section 304, Part 2 of I.P.C. convicted thereunder and sentenced to Rigorous Imprisonment for three years. The appeal shall stand dismissed in other respects.

29. Appeal dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com