

Murugan Alias Chitravel Vs. State

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Court : Chennai

Decided On : Jan-23-1990

Reported in : 1992CriLJ930

Judge : K.P. Sivasubramaniam and ;S.T. Ramalingam, JJ.

Appeal No. : Criminal Appeal No. 857 of 1984

Appellant : Murugan Alias Chitravel

Respondent : State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Mrs. Ammu Balachandran, Adv.

Judgement :

Sivasubramaniam, J.

1. This criminal appeal is directed against the conviction and sentence passed in S.C. No. 341 of 1983 on the file of the learned Sessions Judge, Thirunelveli. The appellant was convicted under Section 302 of the Indian Penal Code and sentenced to imprisonment for life.

2. The prosecution case in brief is as follows : PW 2 Arasamuthu along with his wife Annammal and minor Arumugam are residing in Ramanujam Pudhu Theru in

Nambi Thope attached to Tirukurungudi. The deceased Gnanaraj is the husband of PW 2's wife's sister. PW 1 is the father of the deceased. PW 3 is the maternal uncle of the deceased, who is living opposite to the house of PW 2.

3. About a month prior to the occurrence, PW 6 Sekar came to the house of PW 2 and was assisting PW 2 in his work. During that time, the appellant used to visit his uncle PW 3's house, and therefore, they became friends. Ten days before the occurrence, PW 6 and the appellant were apprehended by Nanguneri police on suspicion. However, they were released subsequently. Therefore, PW 2 advised PW 6 to return to his native place. But PW 6 was taken to the house of the appellant, wherein he stayed for four or five days. He used to come to the house of PW 3 often. The appellant also used to come there on the pretext of seeing PW 6. The day prior to the occurrence, the appellant came to the house of PW 2 to see PW 6. A wordy quarrel arose between the appellant and PW 2 at about 7 p.m. The appellant attempted to beat PW 2 with a spade. PW 2's wife and her sister pacified them. The appellant returned saying that he would take his revenge later on. On the next day i.e. 1-6-1983 at about 7 p.m. the appellant went to the house of PW 2 and asked for PW 6. PW 2 came out of the house along with his wife and minor Arumugam. A quarrel arose between the appellant and PW 2. On hearing the noise, PW 3 came out. PW 2 attempted to beat the appellant. But when PW 3 intervened, it fell on his head causing a minor injury. On seeing that PW 3 was injured, the appellant took out a bitchuva knife and attempted to stab PW 2. Minor Arumugam rushed to the house of PW 1 and informed him about the occurrence. On hearing that, the deceased ran towards the scene accompanied by his father PW 1. The appellant attempted to stab PW 2 with the bitchuva knife and at that time, the deceased intervened. The appellant stabbed him on the left side of his stomach. This was witnessed by PWs 2, 3 and others. Afterwards, the appellant ran away with the knife.

4. PW 1 took his injured son through short-cut to the police station at 7.45 p.m. The injured Gnanaraj was examined by the Head Constable PW 8 and a statement was recorded from him. PW 1 was fully conscious at that time and signed the report Ex. P 1. A case was registered in Crime No. 62/83 under S. 307 of the Indian Penal Code. PW 8 sent the printed F.I.R. Ex. P. 6 and informed the

Sub-Inspector PW 16 through wireless message. PW 16 reached the police station at 8 p.m. and received copy of Ex. P. 6. He saw the injured and PW 1 in the police station. He saw the injured and PW 1 in the police station. He examined the injured Gnanaraj under S. 161 of the Code of Criminal Procedure and recorded his statement, which is Ex. P. 17. He sent the injured Gnanaraj in a taxi to the Nanguneri Government Hospital.

5. PW 4 examined the injured at about 8.45 p.m. and found on him an incised wound of 10' x 2' at the middle of the abdomen, and the small intestinal loops were outside. After initial treatment, he referred the patient to the Thirunelveli Medical College Hospital. Ex. P. 4 is the wound certificate issued by him. He was of the opinion that the injury was necessarily fatal.

6. Then the injured was taken to the Government Hospital at Tirunelveli at Palayamkottai. He was admitted in the hospital by PW 5 at 9.40 p.m. PW 10 treated the injured in the hospital. But he died at 6.40 a.m. on 2-6-1983. Ex. P. 7 is the death intimation sent by him.

7. PW 16 after recording Ex. P. 17 reached the scene of occurrence and inspected the same. At that time, the mercury lamp was burning in the street. He examined PW 2, minor Arumugam and others. On the next day at 6.15 a.m. He examined the scene of occurrence and prepared Ex. P. 4 observation mahazar and Ex. P. 8 rough sketch of the scene in the presence of PW 7 and others. He recovered blood stained earth M.O. 1 sample earth M.O. 2 under Ex. P. 5 attested by the same witnesses. He then examined some other witnesses.

8. PW 15, on receipt of Ex. P. 7 death intimation at 7.45 a.m. on 2-6-1983 altered the crime into one under Section 302, I.P.C. and sent express reports to the court and concerned officers. Ex. P. 16 is the copy of the express first information report.

9. PW 17 took up further investigation in the matter. He reached the scene of occurrence and after verifying the investigation made by PW 16 examined some witnesses. He then went to the Government Hospital and conducted inquest over the dead body of Gnanaraj from 12.30 to 3.30 p.m. in the presence of witnesses.

Ex. P. 19 is the inquest report. PWs 1, 3 and others were examined during the inquest. He despatched the dead body to the hospital for post-mortem through PW. 8. M.O. 8 lungi was recovered from the wife of the deceased.

10. PW 11, medical officer attached to the Government Hospital, conducted autopsy on the dead body of Gnanaraj of receipt of the requisition Ex. P. 8 on 2-6-1983 at 3.45 p.m. He found the following injuries on the dead body :

Incised Wounds : Sutured 1 cm. long on the lower part of right and left side of the abdomen with rubber drain communicating with abdominal cavity done by surgeon as part of treatment.

2. Sutured incised wound 26 cms. long horizontally oblique on the abdomen 3 cms. above the hip on the right side, 3 cms. below the umbilicus and 3 cms. below the costal margin on the left side.

Dissection : On dissection, the wound was found communicating with abdominal cavity. The peritoneum (covering of abdomen) was found sutured. The small intestine was anastomosed. Cut ends of the small intestine joined together by suture. The lower part of the small intestine was sutured to a length of 2 cms. The doctor was of the opinion that the deceased would appear to have died of shock and haemorrhage due to injury to the abdomen sustained by him. Ex. P. 9 is the post-mortem certificate issued by him.

11. PW 12 examined PW 3 on 6-6-1983 at 12.30 p.m. and found on him a vertical lacerated wound measuring 2 1/2' x 1/4' x skin deep running from the base of the fourth metacarpal to the middle of distal phalanx of right finger (palmar aspect). Ex. P. 11 is the Accident Register. He was of the opinion that the injury was simple in nature.

12. The accused surrendered before court on 4-6-1983. PW 17 examined other witnesses and after completing investigation, he laid the charge-sheet in this case on 24-8-1983.

13. When the accused was questioned under Section 313 of the Code of Criminal Procedure, on the incriminating evidence appearing against him, he denied the

occurrence. He stated that PW 2 was never residing in the street where PW 3 was living, that he was never called as Murugan and his real name is only Chitravel, that he was not arrested along with PW 6 by the Nanguneri police and that he is innocent. He did not examine any witness on his side.

14. Learned Sessions Judge after elaborately considering the evidence adduced in this case came to the conclusion that the prosecution has proved its case against the accused beyond reasonable doubt and therefore he found the accused (applicant) guilty and sentenced him as stated above.

15. The only point that has to be decided in this appeal is whether the prosecution has established its case against the appellant beyond all reasonable doubts

16. At the outset it must be stated that it is the admitted case that there was no enmity between the prosecution party and the accused and, therefore, the question of motive does not arise in this case.

17. The prosecution has examined PWs 1 to 3 to speak about the actual occurrence. PW 1 who is the father of the deceased came in the middle of the quarrel and witnessed only the latter part of the occurrence. PW 2 is the person, who speaks about the entire occurrence. He has narrated the genesis of the quarrel between him and PW 3, the uncle of the appellant. It appears that originally the quarrel started between the appellant and PW 2 when the appellant went to the house of the latter to find out whether PW 6 was there. When both of them were quarrelling, PW 3, the uncle of the appellant living on the opposite side came there. When PW 2 attempted to hit the appellant with a firewood, PW 3, intervened and, therefore, the blow was about to fall on his head. But PW 3 attempted to prevent the blow and so he sustained a bleeding injury on his right finger. On seeing this, the appellant took out a knife and attempted to stab PW 2. By that time, minor Arumugam informed the father of the deceased. Immediately the deceased Gnanaraj followed by his father PW 1 rushed to the scene of occurrence. At that time, the appellant attempted to stab PW 2 with a bitchuva knife. When the deceased Gnanaraj intervened, he was also stabbed. This was witnessed by PW 3 and PW 2's wife. Thereafter, the appellant ran away from the scene and PW 1 took his injured son Gnanaraj to the police station, where a

statement was given by the injured Gnanaraj himself, which is marked as Ex. P. 1 in this case.

18. It is not in doubt that the injured Gnanaraj died later on as a result of the stab injury sustained by him at the time of occurrence. PW 4 who admitted the injured at the first instance noticed an incised wound of 10' x 2' on his stomach. He later on referred the patient to the Government Hospital, Tirunelveli where, after treatment, he passed away. PW 11 who conducted autopsy on the dead body of Gnanaraj, was of the opinion that the deceased would appear to have died of shock and haemorrhage due to the injury sustained by the injured in his abdomen. Therefore, the cause of death has been satisfactorily, established, and, as a matter of fact, it has not been challenged before us.

19. Mrs. Ammu Balachandran, learned counsel appearing for the appellant submitted that the prosecution has not satisfactorily proved its case. According to her, even if the prosecution case is accepted, it would be a case of self defence on the part of the appellant. She pointed out that even according to the prosecution evidence, it was only PW 2, who initially attempted to attack PW 3, the maternal uncle of the appellant. Since the appellant was present at that time, he was entitled to defend the life of his maternal uncle and, therefore, he is entitled to exercise right of private defence of the life of PW 3. She also submitted that all the witnesses who were present were not examined in this case and especially no Harijan member of the colony was examined by the prosecution. According to her, only interested witnesses like PWs 1 and 2 have been examined in this case and other persons who had also witnessed the occurrence have been deliberately kept back in this case. This according to her, throws considerable doubt on the prosecution case. Further she submitted that there is considerable doubt regarding the statement alleged to have been recorded from the injured Gnanaraj, as there is significant contradictions in the evidence of PW 1 respecting thereto.

20. We have carefully considered the evidence on record and we are unable to accept the contentions raised by the learned counsel for the appellant. Realising this, the learned counsel did not press those points any further, and confined her arguments to the nature of offence that has been established against the

appellant. According to her, the entire occurrence took place out of a petty wordy quarrel and the appellant did not stab the deceased with the intention of either causing a fatal injury or causing his death. She referred to the evidence of PW 1, father of the deceased, who has categorically stated that when the appellant attempted to stab PW 2 his son Gnanaraj tried to prevent the same and, therefore, the stab accidentally fell on his stomach.

21. Even though PW 2 made an attempt to show that the appellant stabbed the deceased deliberately, he has changed the version during cross-examination and admitted that the stabbing was by accident, thereby falling in line with the evidence of PW 1. Even though in Ex. P. 1, the deceased Gnanaraj has stated that the appellant stabbed him stating that he should be done away with, we find that version has not been supported by PWs 1 and 2. Considering the background in which the quarrel arose and the sequence of events, we find that the version spoken to by PW 1 appears to be the truth. In the absence of any motive on the part of the appellant, it is not possible to hold that he ever intended to cause the death of the deceased. The cumulative effect of evidence of PWs 1 and 2 would fully support the defence taken on behalf of the appellant before us. Therefore, there is no difficulty in coming to the conclusion that the stab given by the appellant accidentally fell on the deceased and he never intended to either kill PW 2 or the deceased in this case. If that is the actual position, we will have to find out the nature of offence committed by the appellant.

22. In *Randhir Singh v. State of Punjab*, : 1982 CriLJ195 , the Supreme Court observed that in order to bring the case within clause III of Section 300, I.P.C., it must be proved that there was intention to inflict that particular bodily injury. In other words, the injury found to be present was intended to be inflicted which, in the ordinary course of nature, was sufficient to cause death. Applying the abovesaid principles, we find that in this case, as already noticed, the incident happened as a result of a petty quarrel between PW 2 and PW 3, during which the appellant intervened. Unfortunately, the deceased who had nothing to do with the subject matter of the quarrel intervened when the appellant was trying to stab PW 2 in order to deprive the life of the uncle PW 3, who was initially attacked by PW 2 with a firewood causing him a bleeding injury. PW 1 has categorically stated that

the stab accidentally fell on the stomach of the deceased. As already noticed, there was absolutely no enmity between the deceased and the appellant. Under these circumstances, it is difficult to bring in the offence either under clause I or clause III of Section 300 of the Indian Penal Code.

23. There is one other fact which also has to be taken not of in this regard. After causing a single stab on the deceased, the appellant did not try to stab him again, but, on the other hand, he ran away from the scene with the bitchuva knife. This clearly demonstrates that he did not take advantage of the situation and cause more number of injuries. He did not persist in attacking the deceased after inflicting the single stab. In these circumstances, it will be difficult to say that appellant/accused knew that the injury inflicted by him would be to the extent of causing the death of the deceased. Therefore, the injury found on the stomach must be described to be non-intentional or accidental attack and if that were to be so, the appellant cannot be imputed with the intention of causing that particular injury, which was found on the deceased. Once we find that the particular injury found on the deceased which caused the death of the deceased was not intended to be caused by the appellant, the offence will be punishable under Section 304, Part II of the Indian Penal Code.

24. In the result, the appeal is allowed in part and the conviction of the appellant under Section 302, I.P.C. is modified into one under Section 304, Part II of the Indian Penal Code, and the appellant is sentenced to undergo R.I. for six years. In other respects, the appeal is dismissed.

25. Order accordingly.