

Subramani Vs. the State

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Court : Chennai

Decided On : Nov-25-1992

Reported in : 1993CriLJ1885

Judge : Janarthanam and; Thangamani, JJ.

Appeal No. : Criminal Appeal No. 183 of 1986

Appellant : Subramani

Respondent : The State

Advocate for Def. : S. Shanmughavelayutham, Addl. Public Prosecutor

Advocate for Pet/Ap. : M. Jagadeesan, Adv.

Judgement :

Janarthanam, J.

1. The accused, aggrieved by his conviction and sentence in S.C. 142 of 1985 on the file of the Additional Sessions Judge, Coimbatore, has come forward with this appeal.

2. The brief facts are :

a. Three estates going by the names Nithyakalyani, Shanmugha and Sakthi, stated to be belonging to different and distinct individuals, are situate adjacent to

each other, within the territorial jurisdiction limits of Kadambarai Police Station. It is said to be 38 kms. away. The accused Subramani, one Chinnaswamy (since deceased) and P.Ws. 1 to 3, it is said are workers in Nithyakalyani estate. Staff and workers' quarters, it is said, had been provided within the estate. The quarters of accused and P.W. 3 are situate adjacent to each other in one block. The quarters of the deceased and P.W. 1 are situate in different block separated by two houses in between. The staff and workers' quarters, office bungalow and the guest house are all, it is said, situate in close quarters to each others. The office bungalow is on the western extremity while the staff and workers' quarters are situate on the eastern extremity. The staff and workers' quarters and the office bungalow is connected by a road running east-west. The guest house is situate on the north-east of a small road, branching off from the east-west road towards north to reach the guest house. In the east-west road, there is a bridge.

b. Independence day is usually declared as a holiday for the workers in all the estate. On 15-8-1984, as usual, there was a holiday for all the workers in all the estates. On that day, the management of Shanmugha estate, it is said, arranged for sports meet for the school children. The sports meet was to commence at 9 a.m., P.Ws. 1, 2, accused and the deceased went to witness the sports meet. The said meet was over by about 3 p.m.

c. One Palanichamy, a jeep driver belonging to Shanmugha estate, happened to meet at or about the termination of the sports meet, the accused and requested him to deliver a letter intended to Nithyakalyani estate. At that time, accused and P.Ws. 1 and 2 were standing together in a bid to make a return march to their home. The accused, it is said refused to receive such a letter. As a consequence of such refusal, it is said a wordy altercation ensued between them. P.W. 1 intervened with the best of intentions and agreed to receive the letter from the said Palanichamy. The accused got wild at the conduct of P.W. 1 in receiving the letter and started quarrelling within him. At that juncture, the deceased appeared to have remonstrated the conduct of the accused and exclaimed, '.....' and so saying, the deceased and P.Ws. 1 and 2 left the scene and marched towards their home. The accused, in turn, returned to his home in a breakneck speed.

d. P.W. 1 whilst returning in the company of P.W. 2 and the deceased, went to the office bungalow and handed over the latter. P.W. 2, in the meantime went to answer the calls of nature behind the office bungalow. The deceased and P.W. 1 were proceeding towards the house from west to east. The time was then 4 p.m.

e. P.W. 3, it is said was standing in front of his house. The accused rushed and went into his house in a hurly burly fashion and rushed out with M.O. 1 Kavathu Kathi. The panickstricken P.W. 3 gazed at the conduct of the accused and he was able to see him rushing towards P.W. 1 and the deceased, who were then nearing the bridge. At that time, the deceased was going ahead of P.W. 1. The accused with M.O. 1 mounted an attack on the deceased and the attack so made fell on the left side of his neck. After receipt of the cut, the deceased attempted to run away and fell down, after traversing a little bit of a distance. P.W. 1, it is said was also threatened by the accused and he, in turn, ran for his life and took shelter in a nearby place. The accused also, it is said, ran away with M.O. 1 from there.

f. After sometime, P.W. 1, returned to the scene and with the help of P.W. 3 and others, he made arrangements for the victim-deceased to be lifted in a cradle like thing by utilising a woollen blanket, M.O. 2, to the hospital situate at Sakthi estate. The time was then 8 p.m.

g. The compounder P.W. 4 then present in the hospital, after examining the victim-deceased pronounced him dead. The body of the victim was again lifted from there and placed in front of the office bungalow of Nithyakalyani estate.

h. On the next day, namely, 16-8-1984 morning, P.W. 1 traversed the entire distance to Kodambarai Police Station by walk passing through Kavarkal and reached the police station at 12 noon and lodged an information Ex. P. 1 to P.W. 7, Head Constable present there. The same was registered as a case in crime No. 52/84 under S. 302, I.P.C. Ex. P. 6 is the printed F.I.R. He prepared express reports and sent the same to the concerned officials. He also sent a VHF message to P.W. 9 the Inspector-in-charge.

i. P.W. 9, in turn, on receipt of the message, directed P.W. 7 to the spot with a copy of express FIR and informed him that he would rush to the spot directly. He

also sent a memo Ex. P. 16 to P.W. 6, Medical Officer, Govt. Hospital, Valaparai requesting him to go over to the spot for conducting autopsy. P.W. 9 reached the scene at 2.30 p.m. After inspecting the scene, he prepared Ex. P. 12 observation mahazar. He drew a rough sketch of the scene, Ex. P. 13. Between 2.30 and 5.30 p.m., he held inquest over the body of the deceased. Ex. P. 14 is the inquest report. He examined P.Ws. 1 to 3 and others during inquest. After inquest, he handed over the body of the deceased to the Head constable, P.W. 7, along with Ex. P. 4 requisition for conducting autopsy at the spot. Since there was profuse rain, he could not seize any bloodstained earth from the scene of occurrence. He searched for the accused and he was not available. He also examined P.W. 4.

j. P.W. 6 commenced autopsy at 5.45 p.m., at the spot. Ex. P. 5 is the postmortem certificate he issued. He opined that the injury he found on the body of the deceased could have been caused by a weapon like M.O. 1. He further opined that the deceased would appear to have died of massive haemorrhage with shock and that the injury is fatal. He would further state that the injury could have survived for a few hours.

k. After autopsy was over, the Head Constable P.W. 7 seized the body, blood-stained clothes, namely, M.O. 4, dhoti, M.O. 5 woollen banian, M.O. 6 towel and M.O. 7 lungi, M.O. 8 waist chord and M.O. 2 woollen blankets and handed over the same at the police station, where they were seized under Exhibit P.7 Form No. 95.

l. On 17-8-1984, at about 5 p.m., P.W. 9 arrested the accused near Anna statue at Attakatti. On interrogation, the accused was stated to have given voluntarily a confessional statement under S. 27 of the Evidence Act. The admissible portion is Ex. P. 2. The dhoti (M.O. 9), which the accused was stated to be wearing at the time of the arrest was stated to be stained with blood and the same had been recovered under mahazar Ex. P. 15. Pursuant to the confession statement, the accused produced M.O. 1 and M.O. 3 bloodstained shirt from the place of concealment and the same had been recovered at 6.30 p.m., under Exhibit P. 3 mahazar Exhibits P. 2, P. 3 and P. 15 had been attested by P.W. 5 and another.

m. The accused along with the material objects seized had been taken to Kadambarai. Police Station and on the next day, the accused has been sent to court for remand. On 19-8-1984, he examined P.Ws. 6 and 7. He also sent Ex. P. 8 requisition to the Judl, Second Class Magistrate, Pollachi for sending the incriminating material objects to the chemical examiner for the purpose of examination.

n. P.W. 8 is the Head-clerk attached to the Judicial Second Class Magistrate's Court, Pollachi. On receipt of Ex. P. 8 requisition, the material objects, as per the direction of the Magistrate, had been forwarded to the Chemical Examiner along with the letter office, copy of which is Ex. P. 9. Exts. P. 10 and P. 11 are the reports of the chemical examiner and the serologist respectively.

o. P.W. 10 the Inspector of Police, completed the formality of simply laying the final report under S. 173(2) Cr.P.C. before the Judicial Second Class Magistrate, Pollachi on 7-10-1984 for alleged offence under S. 302, I.P.C. against accused.

3. Upon committal, learned Sessions Judge framed a charge against the accused under S. 302, I.P.C.

4. The accused, when questioned as respects the charge so framed, denied the same and claimed to be tried.

5. The prosecution, in a bid to prove the said charge against the accused, examined P.Ws. 1 to 10, filed Exhibits P.1 to P.16 and marked M.Os. 1 to 9.

6. The accused, when examined under S. 313, Cr.P.C., as respects the incriminating circumstances appearing in evidence against him, denied his complicity in the crime. He would however set up a plea of alibi by stating that he was at a place going by the name Kavarkal, which is 22 kms. away from the scene, at the time of the occurrence. He did not choose to examine any witness on his side.

7. Learned Sessions Judge, on consideration of the materials placed and after hearing the arguments of learned public prosecutor as well as learned counsel for the defence, however, found him guilty under S. 302, I.P.C., convicted him

thereunder and sentenced him to imprisonment for life, giving rise to the present action.

8. Learned counsel for the appellant-accused would submit that a careful consideration of the evidence of the so-called ocular witnesses, P.Ws. 1 to 3 and the evidence respecting the arrest, confession and consequent recovery, as disclosed by the testimony of P.Ws. 5 and 9, besides the medical evidence, in the shape of the testimony of P.W. 6 coupled with the post-mortem certificate, Ex. P. 5 would point out that their evidence, in the facts and circumstances of the case, cannot at all be stated to be above reproach and beyond suspicion for placing any reliance so as to fasten or mulct criminal liability upon the accused. Even otherwise he would contend that the act of the accused, in the facts, and circumstances of the case can by no stretch of imagination, be stated to be one done with the intention of causing the liability of the deceased, so as to attract the liability under S. 302, I.P.C., and if at all, his act would come within the four corners of Section 304, Part I, I.P.C.

9. Learned Additional Public Prosecutor would, however, repel such submissions emerging from the other side.

10. We may now proceed to consider the rival submissions emerging from the other side to consider the tenability or otherwise of the same.

11. Admittedly there is no long standing enmity or animosity between the accused and the deceased. The plain fact is that the accused, deceased and P.Ws. 1 to 3 as well had been working in Nithyakalyani estate for quite long without any sort of a hitch or irritation whatever between them. All of them had been to witness the sports meet on the morning of the day of the occurrence. No incident whatever had happened till upto 3 p.m. the time at which the sports meet got terminated. It is only at that juncture, as the quirk of fate would have it, an incident of a trivial nature had happened. The jeep driver Palanichamy belonged to Shanmugha estate entreated the accused to deliver a letter intended for Nithyakalyani estate at the office of the estate. The accused, appearing to be so small-minded took it as an affront or insult to his personality that such a job of delivering a letter should not at all be entrusted to him and therefore, he rejected such a request forthright. The

jeep driver Palanichamy, not knowing the wounded feelings of the accused, wanted him to deliver the letter and he, in turn appeared to have questioned the accused as to what wrong he had committed in asking him to deliver a letter and in such a process, a wordy altercation between them ensued. The good samaritan P.W. 1, thinking that the deliver of such a letter intended for the office of the Nithyakalyani estate, where he was working was not at all a job, if done, would in any way derogate his position, accepted the letter from the said Palanichamy for effecting delivery. This infuriated the accused and he questioned the propriety of P.W. 1 in accepting the letter from the said Palanichamy, when especially he himself, a worker in the same estate, refused to do so. Irritated by such a conduct of the accused the deceased, who was also there appeared to have decisively remarked. '.....' (vernacular matter is omitted) The Tamil expression '.....' (Tamil matter is omitted) cannot at all be effectively translated into English to convey the exact meaning of such a slang expression. The nearest English translation in such a context would mean,

'Are you such a great personality, as not to be entrusted with the job of delivery of a letter intended for the office ?'

The fickle minded accused, appeared to have been aggrieved by such a slang expression hurled against him and in a bid to teach him a lesson, went ahead of the deceased and P.W. 1 to his house in a hurly-burly fashion and returned to the scene with M.O. 1 and mounted an attack by inflicting a cut on his left neck that day.

12. On the aspect of the matter leading to the occurrence, there is the inconsistent evidence of P.Ws. 1 and 2 and P.Ws. 1 to 3 speak to the actual occurrence. P.Ws. 1 to 3 cannot at all be stated to be interested in the cause and welfare of the deceased. Nor are they having any sort of animosity or enmity towards the accused. To put it otherwise, they are friends of the deceased as well as the accused. Therefore, they cannot be expected to depose falsely against the accused, leaving out the real assailant, unless such an occurrence or incident had happened.

13. Learned counsel appearing for the appellant-accused would however urge that there is a vital contradiction as to the manner of mounting of an attack by the accused on the deceased with M.O. 1 and such a vital contradiction, getting reflected in the ocular testimony of the witnesses, he would say, revolves on the question as to whether the deceased was inflicted a cut on his neck by the accused by standing in front of him or at his backside and on the face of such a contradiction he would urge that if really those ocular witnesses had seen the occurrence, as deposed to by them, such a contradiction could not have arisen when especially the over act of the accused consists of a bare infliction of a single cut on the neck of the deceased and nothing more. On a perusal of the evidence of the ocular witnesses, we are of the view that there was no such contradiction at all and this will be borne, if one visualises the response and reaction of the victim deceased at or about the time of the attack. As already stated, it transpires from the evidence on record that the deceased, accompanied by P.W. 1 was proceeding from west towards east and the accused was rushing arming himself with M.O. 1 from east to west and after nearing him, the accused was stated to have mounted an attack on him. No sooner the deceased came to perceive an attack to be mounted on him by the accused, when he, obviously daunted by the instinct of self-preservation, turned back and attempted to run and only in such process, the cut inflicted by the accused on the neck of the deceased fell. In such a situation, we are of the view that there is no apparent contradiction as respects the position taken up by the accused, whether in front or back of the deceased in mounting an attack on him. Learned counsel for the appellant-accused, of course, in the discharge of his duty, catching such a small mole of a contradiction, wanted to make it as big a mountain to somehow or other save his client from the perilous consequences he was facing.

14. He would also make an attack on the testimony of P.W. 2 stating that he could not at all have witnessed the occurrence. It is the evidence of P.W. 2 that he went behind the office bungalow for answering the calls of nature. The distance between the place where the occurrence took place, that is to say, near the bridge and the place where P.W. 2 was stated to have answered the calls of nature was about 1000 yards, as disclosed by Ex. P. 13. If really P.W. 2 had witnessed the occurrence from behind the office bungalow where he had been to answer the

calls of nature, it could not have been possible for him to have witnessed the occurrence. In chief-examination, of course, nothing had been elicited as to at what point of time, the occurrence took place and wherefrom he had seen the occurrence. The prosecution made him to go behind the office bungalow for answering the calls of nature and left him there not in a position to have any fortuitous opportunity of witnessing the occurrence. If such an evidence had been left there, without any further probe by way of putting questions in cross-examination, we could have affixed our seal of approval to the argument emerging from learned counsel for the appellant-accused that P.W. 2 could not have been a possible witness. But the pity is, it has been elicited in cross-examination that he was virtually 100 feet behind the deceased at the time of the virtual attack. Such a position of his appears to be probable, in the circumstances of the case.

15. At the time of his going to consider the calls of nature, P.W. 1 and the deceased had been to the office bungalow for delivering the letter. Only after the delivery of the letter, P.W. 1 and the deceased made their march towards their house. The distance between the office bungalow and the bridge where the occurrence took place is about 1000 yards as disclosed by Ex. P. 13 plan. By the time P.W. 1 and the deceased delivered the letter in the office bungalow and made a return march towards their house by traversing a distance of about more or less 1000 yards, P.W. 2, could have finished the job of answering the call of nature and could have been following them and in such a process, he could have been placed at a distance of 100 feet behind them. So, P.Ws. 1 and 2 were very near and in close proximity to the place where the deceased was attacked by the accused.

16. The distance between the place where P.W. 3 was standing, namely, in front of his house and the place where the occurrence took place is after all 75 feet to 100 feet, as disclosed by Ex. P. 13 plan. There is no obstruction in the middle affecting the visible factor of P.W. 3. The day of occurrence being holiday, it is but natural for a person like P.W. 3 either to have gone outside to spend the holiday or remain in the house. As already stated, P.W. 3 was standing in front of his house and had the fortuitous opportunity of witnessing the occurrence. There is nothing unnatural in his evidence. In these circumstances, we are of the view that the testimonies of the ocular witnesses, P.Ws. 1 to 3 rings the bell of truth in pointing

out that it was the hand of the accused that was responsible for the infliction of a cut by means of a weapon like M.O. 1 on the neck of the deceased at the time of the occurrence.

17. The medical evidence on record reflected by the testimony of P.W. 6, coupled with the post-mortem certificate Exhibit P.5 he issued cannot at all be stated to be not serving as a corroborative piece of evidence to the evidence of ocular witnesses, P.Ws. 1 to 3. The doctor has categorically stated that the injury he found on the neck of the deceased could have been caused by weapon like M.O. 1. Learned Counsel appearing for the appellant-accused however tried in a vain bid to cast a doubt on that testimony of the ocular witnesses, P.Ws. 1 to 3, when, they had stated that the life of the deceased was lingering till up to his being taken to the hospital at Sakthi estate, where he was pronounced dead by the compounder P.W. 4. Learned counsel would urge that if really there was massive haemorrhage with shock as a consequence of the cut injury the deceased received on his neck, as depose to by the doctor, there could have been bleak possibility for the deceased to have survived for about four to five hours after the occurrence. This argument of learned counsel is not at all deriving any sort of a solidified support from the medical evidence, when especially the doctors has categorically stated that the deceased would have survived for a few hours after the occurrence. In order to eschew such sort of an opinion, learned counsel for the appellant would say that his evidence as to massive haemorrhage and the survival of the deceased for a few hours are irreconcilable and the greater probability could have been that the deceased could have met his fateful end more or less immediately after the occurrence, as a result of extensive haemorrhage. Such an argument cannot at all be countenanced, in the circumstances of the case.

18. It is not as if the cut that was given by the accused on the neck portion of the deceased went to the extent of cutting the major arteries which could have resulted in completely draining the blood from the body of the deceased within a few minutes so that he would die. Of course, certain minor vesseles had been cut in the process of infliction of the injury on the neck portion, apart from causing injury to the spinal cord, as disclosed by the description of the injury, which is to be following effect :-

An incised injury oblique in nature, size : length about 9' depth 2' breadth 3' starting from centre of back to neck left side, extending downwards, forwards, crossing over the ramus of the left side mandible ending the centre of the mandible anteriorly with traumatic comminuted fracture of the upper segment of the left side of the mandible severing all anatomical structures deep to the cut including vessels.

'The body margins of the spinal column exposed at the level of the third cervical bone with disarticulation at the level. The muscles, tendons, and vessels were severed by traumatic cut of the above injury.' In such a situation, massive, haemorrhage could have occurred by the draining of the blood from the body of the deceased on a slow process and that perhaps was the reason for the victim-deceased to have survived or a few hours, as stated by the doctor. As such, the medical opinion on record cannot throw any sort of a doubt on the testimony of the ocular witnesses, P.Ws. 1 to 3.

19. Coming to the arrest, confession and consequent recovery, there is the evidence of P.W. 5 and the Inspector of Police, P.W. 9. The accused was stated to have been arrested at 5 p.m., on 18-8-1984 near Anna Statue at Attakatti. Then he was stated to have given a voluntary confession statement, the admissible portion of which Ex. P. 2. He was then stated to be sporting a dhoti, M.O. 9 stained with blood and the same had also been seized under Exhibit P. 15 mahazar. Pursuant to the admissible portion of the confession, M.Os. 1 and 3 were stated to have been recovered at the instance from the place of concealment under Ex. P. 3 mahazar. There is no apparent contradiction between the evidence of P.Ws. 5 and 9 on anything except the place from where M.Os. 1 and 3 were recovered at the instance of the accused by P.W. 9. P.W. 5 would depose that the accused took M.Os. 1 and 3, which were kept concealed underneath a tree and handed over the same to P.W. 9 for seizure whereas P.W. 9 would depose in his evidence that the accused took out these material objects kept concealed underneath a bridge and consequently, the same had been seized. Apparently on the face of such a contradiction, the argument of learned counsel for the appellant that the arrest, confession and consequent recovery is a stage managed show suiting to the exigencies of the prosecution case cannot at all be brushed aside as of no consequence. Even if the evidence relating to the arrest, confession and

consequent recovery is eschewed, out of consideration, we rather feel, the other evidence available on record is sufficient and adequate enough to point out that it was the hand of the accused that was responsible for the infliction of a cut on the neck of the deceased at or about the relevant time of the occurrence.

20. The next question that crops up for consideration is as to what is the offence that had been committed by the accused. Learned counsel for the appellant-accused would submit that there could not have been any sort of a premeditation on the part of the accused to commit the murder of the deceased, especially when occurrence took place as a result of a wordy altercation that took place between the deceased and P.W. 1 on the one hand and the accused on the other, respecting a trivial matter about delivering or handing over a letter intended for the offence of the Nithyakalyani estate coupled with the fact that there was no animosity or enmity between them anterior in point of time to the occurrence, and that the utterance of the slang expression, '(Vernacular matter omitted)' by the deceased towards the accused could have resulted in a sudden heat of passion leading to the occurrence and such an act of his would come within the four corners of Exception 4 to Section 300, I.P.C. attracting the penal consequences under Section 304, Part I, I.P.C., such a submission cannot at all be expected to command acceptance at our hands, in the facts and circumstances of the case.

21. The testimony of the ocular witnesses does point out in a categorical fashion that the moment there was emergence of the slang expression '(Vernacular matter omitted)' directed towards the accused; the accused in a fit of anger did not wait there for a moment and he, in turn, rushed to his house ahead of P.W. 1 and the deceased in a break neck speed and emerged to the scene arming himself with a dangerous weapon, M.O. 1 and inflicted a lethal cut on the neck of the deceased. Nothing is available to point out that the wordy altercation resulted in a mutual fight between the accused and the deceased and in the course of such a fight in the heat of passion and sudden quarrel, the accused inflicted some hurt on the person of the deceased, which resulted in his death. As pointed out earlier, it is the other way about. The intention of the accused in mounting a murderous assault on the deceased is rather manifest by his rushing to his house and returning to the scene arming himself with the weapon and mounting an attack on the deceased, that too,

on the vulnerable portion of his body, namely neck. The weapon, namely, M.O. 1 state to have been utilised in inflicting the cut is a lethal one. Considering the place where the cut is given namely, the neck, a vulnerable portion of human anatomy and the weapon utilised in inflicting the cut, namely, M.O. 1 coupled with the medical evidence available on record that such injury is fatal, we are of the view that act of the accused squarely falls under clause 1 of Section 300, I.P.C. in the sense of himself inflicting the injury on the neck of the deceased with the intention of causing his death. The conviction of the appellant accused as such by the Court below for the offence under Section 302, I.P.C., and sentence of imprisonment for life on him is perfectly justified in the circumstances of the case. The appeal as such deserves to be dismissed.

22. In the result, the appeal is dismissed, confirming the conviction and sentence imposed on the appellant-accused by the court below.

23. Appeal dismissed.