

Perumal Vs. the State

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Court : Chennai

Decided On : Jan-08-1997

Reported in : 1997CriLJ1773

Judge : M. Karpagavinayagam and ;S. Marimuthu, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Criminal Appeal No. 470 of 1987

Appellant : Perumal

Respondent : The State

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

Advocate for Pet/Ap. : Swamidoss Manoharan, Adv.

Judgement :

M. Karpagavinayagam, J.

1. In Sessions Case No. 11 of 1987, on the file of Second Additional Sessions Judge, Tiruchirapalli, the appellant Perumal has been convicted for the offence under S. 302, IPC, and sentenced to undergo imprisonment for life, on the allegation that on 14-11-1986 at about 8-00 a.m., in Ayyampatti Mariamman Koil

street, in front of the petty shop of the appellant, he attacked the deceased Chinnaiyan on his left side of the head with 'nunakkattai' (M.O. 1), as a result of which the deceased died at 1-30 p.m., at the Government General Hospital, Trichy.

2. The prosecution case is briefly as follows :-

(a) The appellant Perumal is the elder brother of the deceased Chinnaiyan. P.W. 1 Sivapakkiyam is the wife of the deceased. The houses of the deceased as well as the appellant are situate in the main road near Mariyamman Koil Street, Ayyampatti village, separated by a partition wall. Both the deceased and appellant had their petty shops in front of their respective houses. For a long number of years, there was misunderstanding between them. Two years prior to the occurrence a panchayat was convened to settle the property dispute between them.

(b) P.W. 2 Kalimuthu, one Solaimuthu Raja, who was the President of the Ayyampatti Panchayat Union, and one Natarajan were the panchayatars. In the said Panchayat, it was decided that the appellant has to settle the portion occupied by him in favour of the deceased, on his payment of Rs. 10,500/- within a period of 3 1/2 months. It was also decided in the panchayat, that the party who failed in complying with the above terms was to pay a fine of Rs. 5,000/- to the other party, for which two pronotes for the value of Rs. 5,000/- each have been executed, one by the deceased and another by the appellant, and the same were handed over to the said Solaimuthu Raja.

(c) Within the said period of three and a half months, though the deceased was ready to pay the said sum of Rs. 10,500/-, the appellant refused to receive the same and he was not ready to settle the portion occupied by him in favour of the deceased, as agreed in the panchayat. The deceased waited for six months thereafter, and since the appellant was not ready to settle the portion favour of the deceased, he filed a suit for recovery of the amount, based on the pronote executed by him before the panchayatars, in District Munsif's Court at Turaiyur. Ex. P18 is the copy of suit register extract. Due to the filing of the suit for recovery of money, the appellant had developed hostile attitude towards the deceased.

(d) On 14-11-1986, the said Solaimuthu Raja, one of the panchayatars died. At about 8-00 a.m., P.W. 1 and her husband, the deceased Chinnaiyan, were in their petty shop, while the appellant along with her wife was in his petty shop. P.W. 2 Kalimuthu and P.W. 3 Ariyaan, after visiting the house of said Solaimuthu Raja, came to the main road and sat under a tree situate near the petty shop of the deceased. At that point of time, the appellant and his wife by pointing out the deceased told (Vernacular matter omitted) On hearing these words, the deceased came to the petty shop of the appellant and retaliated saying (Vernacular matter omitted)

Then wordy quarrel ensued between them. Ultimately the deceased said that (Vernacular matter omitted)

But the appellant exclaimed by saying (Vernacular matter omitted) and took M.O. 1 thadi, which was kept in the shop and beat on the leftside head of the deceased.

(e) On seeing this occurrence, P.Ws. 2 and 3 rushed to the scene, in order to prevent the appellant from beating further. However, the deceased after sustaining the head injury fell down and became unconscious. Then, the appellant with M.O. 1 weapon went inside the house. The entire occurrence was witnessed by P.Ws. 2 and 3.

(f) Immediately thereafter P.W. 2 arranged to take the victim to the Government Hospital, Thuraiyur. P.W. 5 Doctor Nandagopal, attached to Government Hospital, Thuraiyur, at 9-40 a.m., admitted the victim in the Hospital and gave first aid. He found the following injuries :-

- '1. Constitution on the left side of frontal region of scalp 5 cm x 5 cm.
2. Three abrasions in left side of forehead (1 1/2 cm x 1/2 cm each).
3. An abrasion on left cheek 0.3 cm x 0.2 cm.
4. An abrasion on left temple 1 1/2 cm x 1/2 cm.
5. An abrasion on left shoulder 6 cm x 3 cm'

Ex. P6 is the wound certificate issued by P.W. 5. Since his condition was serious, P.W. 5 advised, P.W. 2 take the victim to the Government General Hospital, Tiruchirapalli.

(g) At about 11-25 a.m., on 11-11-1986, the victim was examined by P.W. 6 Doctor Prakasam, attached to Government Hospital, Trichy, who arranged to take x-ray and sent the victim for further treatment to surgeon, after noticing the injury on his head. Ex. P7 is the accident register extract issued by P.W. 6.

(h) P.W. 7-Azaraf, another Doctor, attached to Govt. Hospital, Trichy, attended on the victim and since the victim died at 1-50 p.m. on 14-11-1986, he sent Ex. P8 death intimation to the police.

(i) In the mean time, at about 10-30 a.m., P.W. 9 Kasinathan, a Police Constable attached to Thuraiyur police station received a telephonic message about the incident, in which the deceased was attacked by his brother, the appellant, and made an entry in the general diary - Ex. P10 and sent message to higher police officials.

(j) P.W. 10 Jayam, Head Constable, attached to Thuraiyur police station on receipt of telephonic message came to the Hospital at about 1-00 p.m., and obtained Ex. P1 complaint from P.W. 1 at about 2-00 p.m., and handed over the same to P.W. 11 Sub-Inspector of Police, in the police station at about 3-30 p.m. P.W. 11 Ramaiyan, on receipt of Ex. P1 registered the case in Cr. No. 190 of 1986, for the offence under S. 302, IPC. Thereafter the documents Ex. P1-complaint and Ex. P11-the printed FIR, were despatched to the Court, as well as to the senior police officials.

(k) P.W. 15, the Inspector of Police, Thuraiyur police station, took up further investigation at 4-30 p.m. on 14-11-1986, and went to the Hospital at about 6-00 p.m. He conducted inquest over the dead body of the deceased and examined P.Ws 1 to 3. Ex. P16 is the inquest report. Thereafter he sent the dead body through P.W. 13 Police Constable, for post-mortem. On 14-11-1986, at about 9-30 p.m., P.W. 13-Seamidoss, Police Constable handed over the dead body of the deceased to P.W. 8 doctor, for post-mortem.

(1) P.W. 8-Thirugnanam, the Doctor attached to Govt. Hospital, Trichy, commenced post-mortem on the body of the deceased at 9-40 a.m., on 15-11-1986, and found the following injuries :-

- '1. Abrasion 2 sq' left forehead.
2. Abrasion 1 1/2 sq' left side of face.
3. Abrasion 4 sq' left shoulder Sutured wound left temporal region.
4. Sub-apeneurosie blood cloth about 10 ml. scalp.
5. Buro hole left temporal bone
6. Coronal suture separation
7. Subdural clot about 50 ml. right side over right parietal, occipital lobes.
8. Subdural clot about 50 ml. left parietal and occipital lobe.
9. Slight contusion 1 sq' left temporal lobe.
10. Contusion left parietal lobe'.

Ex. P9 is the post-mortem certificate issued by P.W. 8. He opined that the deceased would appear to have died of subdural clot and injury to brain. After post-mortem, P.W. 13 Police Constable recovered M.O. 2 dothi, from the body of the deceased and handed over the same in the police station.

(m) In the mean time at about 7-00 a.m., on 15-11-1986, P.W. 15-Inspector of Police went to the scene of occurrence and prepared Ex. P4-observation mahazar and Ex. P17 rough sketch. He recovered Ex. P2 promissory note executed by the deceased in favour of the appellant from P.W. 1, the wife of the deceased.

(n) On 16-11-1986, at about 5-30 p.m., since the appellant could not be apprehended, P.W. 15, after sending advance intimation to Court, searched the premises of the appellant in the presence of P.W. 4 Arumugham, and the wife of the appellant. Ex. P5 is the search list. P.W. 15 recovered from the house of the

appellant, M.O. 1 thadi, which was used by the appellant for commission of the offence.

(o) On 3-12-1986, P.W. 15 sent M.Os. to Court along with Ex. P12 requisition to send the M.Os. for chemical analysis. On receipt of Ex. P12 requisition, M.Os. 1 and 2 were sent for chemical analysis along with the original of Ex. P13-letter of the Judicial Magistrate. Ex. P14 is the chemical analyst's report and Ex. P15 is the serologist's report. On 7-12-1986, after finishing the investigation and examining all the witnesses, P.W. 15 Inspector of Police filed the charge sheet in this case.

3. On committal, the learned Sessions Judge, framed charge against the appellant under S. 302, IPC, and questioned him. The appellant pleaded not guilty and wanted trial to be conducted.

4. To substantiate the charge framed against the appellant, the prosecution examined P.Ws. 1 to 15, filed Exs. P1 to P18 and marked M.Os. 1 and 2.

5. After evidence was over, the appellant was questioned under S. 313, Cr.P.C. to explain the incriminating circumstances brought against him on evidence. The appellant said that he was innocent, and on the date of occurrence, there was a quarrel between his wife and the wife of the deceased (P.W. 1) and they scuffled each other and during that time, the deceased attempted to beat his wife and in that process, he fell down at the ditch, with the result he sustained injuries, and that he never caused any injury on the deceased. However, no witness was examined on the side of defence.

6. On termination of trial, after considering the evidence, oral and documentary, the trial Court concluded that the prosecution has established its case against the appellant beyond all reasonable doubt, and convicted and sentenced him as referred to above. The appellant challenging this verdict has presented the present appeal.

7. Mr. Swamidoss Manoharan, learned counsel appearing for the appellant, while taking us through the entire evidence, contended that the motive for the occurrence has not been established, since P.W. 1, the wife of the deceased has

given a different version, while deposing before the Civil Court in the suit on pronote, denying the motive alleged by the prosecution in this case.

8. Per contra, Mr. S. Anbazagan, learned Additional Public Prosecutor, countered the above submissions by pointing out the various materials, as referred to in the judgment of Court below, and submitted that the reasonings given for basing the conviction are valid in law, and therefore, the conviction and the sentence have to be confirmed.

9. We have gone through the records and read out the depositions, as pointed out by both the counsel. At the outset we must mention that learned counsel for the appellant cannot argue on the basis of the document, which has not been marked as exhibit in this case. The evidence of P.Ws. 1 and 2 is categoric, that there was misunderstanding between the appellant and the deceased over the issue on house property, for which a panchayat was convened, and even though the appellant agreed for the terms of the panchayatars, following which he execute a pronote for a sum of Rs. 5000/-, he did not comply with that terms of agreement, and so the deceased, the husband of P.W. 1 was constrained to file a suit for recovery of amount in the District Munsif's Court, at Thuraiyur. This act of filing of the suit, aggravated the situation, by which the appellant had developed a grudge over the deceased and one Chellamuthu Raja, one of the panchayatars.

10. When the appellant heard about the death news of the said Chellamuthu Raja, he by raising his voice and pointing out the deceased, said (vernacular matter omitted). The deceased had objected to the above remarks made against the dead person, by saying that Court would see the truth. On hearing these words, the appellant took out a stick (M.O. 1) kept in the petty shop, and gave a heavy blow on the left side of the head of the deceased, and then he went inside the house. This was witnessed by P.Ws. 1 to 3.

11. Of course, P.W. 1 is an interested witness. But her evidence is so cogent and consistent, in the sense that the wife of the deceased need not speak falsehood against the appellant, by allowing the real culprit to escape, that too in a murder case. Further more, it is to be noted that her evidence is fully corroborated by P.Ws. 2 and 3. The medical evidence as adduced by P.Ws. 5 and 8, would also

make it clear that the ocular testimony is fully in consonance with the medical testimony.

12. Of course the Apex Court and this Court would very often hold that the testimony of the interested witnesses should be viewed with care and caution, in order to eschew the persons implicated falsely. But in this case, a careful scrutiny of the testimony of P.W. 1 coupled with the evidence of P.Ws. 2 and 3 corroborated by the evidence of medical witnesses, would clinchingly point out that the appellant alone has caused the serious injury with thadi on the head of the deceased, as a result of which he died at 1.30 P.M., at the Government General Hospital, Trichy.

13. In a murder case, the motive part has no significance, when there are materials through ocular witnesses. But in this case, motive also has been established through P.Ws. 1 to 3. In such circumstances, since we feel the testimony of prosecution witnesses is beyond reproach and above suspicion, we have no hesitation to hold that the prosecution has established its case beyond doubt.

14. Learned Counsel for the appellant Mr. Swamidoss Manoharan, however contended that even if the entire evidence of the prosecution is accepted, the act of the appellant in having caused injury by using wooden log cannot attract the offence under S. 302 IPC, and if at all it would only fall under Section 304 Part I or II IPC, since the occurrence had taken place in a sudden quarrel and heat of passion, and especially when this is case of single hit by means of thadi.

15. Learned Additional Public Prosecutor also has not raised any serious objection in relation to this aspect, in view of the Judgment rendered in Joseph v. State of Kerala, : 1994 CriLJ21 , wherein, the Apex Court, while dealing with a similar case, would observe as follows (Para 3) :-

'In this appeal the learned counsel for appellant submits that the intention to cause the injury which was found sufficient to cause the death in the ordinary course of the nature was not established. In support of this submission he relied on the circumstances, namely that the whole incident took place because of a trivial

incident which resulted in a quarrel and that the weapon used was only a lathi and in the circumstances it cannot be said that the accused intended to cause the death by inflicting that particular injury which objectively was proved by the medical evidence to be sufficient in the ordinary course of nature to cause death. In other words he submits that clause 3 of S. 300, IPC is not attracted in this case. We find considerable force in the submission. The weapon used is not a deadly weapon as rightly contended by the learned counsel. The whole occurrence was a result of a travail incident and in those circumstances the accused dealt two blows on the head with a lathi'

In the instant case, the weapon used by the appellant was 'wooden log'. The measurement of M.O. 1-thadi is shown in Ex. P5 as follows :-

(vernacular matter omitted.)

Of-course P.W. 88-Doctor, who conducted the post-mortem would say that the injuries were sufficient to cause the death in the ordinary course of nature. He also opined that death was due to brain injury.

16. But at the same time, it should not be overlooked that the occurrence had taken place in a sudden quarrel ensued between the deceased and the appellant, when the appellant said something against a dead person and when the deceased objected the same by approaching the petty shop of the appellant. So in the facts and circumstances of the case, we could infer that there cannot be any intention to cause death of the deceased, especially when 'thadi', which is not a deadly weapon as referred to in the above decision of the Supreme Court, was used by the appellant by inflicting a single blow, and there was no instantaneous death. Further more, though P.W. 8-Doctor would say that the injury could be sufficient to cause death in the ordinary course of nature, applying the principle laid down in the above referred to decision, we could hold that the appellant beat the deceased only with wooden-log, with intention to cause injury as was likely to cause death, and that act attracts the offence under S. 304, Part I, IPC. In that view of the matter, the conviction and the sentence imposed upon the appellant by the trial Court, under S. 302, IPC, to undergo life imprisonment are to be set aside and instead the appellant has to be convicted under Section 304, Part I, IPC.

17. For the reasons stated above, the appeal is partly allowed. The conviction and the sentence imposed upon the appellant by the Court below under Section 302, IPC, to undergo imprisonment for life are set aside. However, the appellant is convicted under Section 304, Part I, IPC, and sentenced to undergo R.I. for seven years. The appellant shall surrender to undergo the remaining period of imprisonment, as it is noticed that he is on bail.

18. Appeal partly allowed.

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