

Kannan Vs. State

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Court : Chennai

Decided On : Sep-28-1994

Reported in : 1995(2)ALT(Cri)16; 1995CriLJ2721

Judge : Janarthanam and ;Thangamani, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302, 304 and 324; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173(2) and 313; Evidence Act - Sections - 27

Appeal No. : Crl. Appeal No. 164 of 1987

Appellant : Kannan

Respondent : State

Advocate for Def. : R. Raghupathy, Additional Public Prosecutor

Advocate for Pet/Ap. : S.B. Victor, Adv.

Judgement :

Janarthanam, J.

1. The appellant was the accused in S.C. No. 103 of 1986 on the file of Court of Session, North Arcot at Vellore. He was found guilty for the offence under Section 302 of Indian Penal Code, convicted thereunder and sentenced to imprisonment

for life.

2. Aggrieved by the conviction and sentence, the present action has been resorted to.

3. The brief facts are : (a) The accused Kannan, is a resident of Kalarpalayam, situate within the limits of Katpadi Police Station. Poonagavanam, since deceased, was his wife. There was no matrimonial peace and harmony between the husband and wife. There were very often wordy altercations ensuing between them. The husband-accused suspected the chastity of his wife, the deceased, and as a consequence, and less altercation was stated to have ensued between them.

(b) Some time prior to the occurrence, which had happened on 18-4-1986, the deceased wife went to her parents house and returned to the matrimonial abode one week prior to the occurrence. The deceased-wife and the accused-husband were alone living in the house. PWs. 1 and 2 are their neighbours. The accused, PWs. 1 and 2 are engaged in Beedi Rolling operations. In front of the house of the accused, a hand-pump is situate. The Beedi workers like PWs. 1 and 2 used to wake up early in the morning, perform all sorts of house-hold-sundry works of drawing water for drinking purposes before they went for work. On the early hours of the morning of the day of occurrence, PWs. 1 and 2, as usual woke up at 4.00 or 4.30 a.m. and went to fetch water in the hand-pump situate in front of the house of the accused. At that juncture, they were able to hear wordy altercations ensuing between the accused and his wife, the deceased. A little later, they saw the deceased wife, falling in front of her house crying that she had been stabbed by her husband. Synchronizing with her falling, the husband-accused was found running out of the house.

(c) PW. 3, like PWs. 1 and 2 also woke up early in the morning to attend to his agricultural operations. He went to the tea shop to consume a cup of tea before going to his fields. The tea shop, where he took tea is situate half-a-furlong from the house of the accused. On hearing the hue and cry that emerged from the scene, he went there and saw the victim deceased-wife lying in front of the house with an injury on her abdomen. From her, he was able to understand that she had been stabbed by her husband-accused.

(d) PW. 3 and another by name Muniammal, in a bid to save her life, took her in a auto-rickshaw to Vellore Government Hospital, seven miles away from there. They reached the hospital along with the victim at about 7.10 a.m.

(e) PW. 5, was the then Civil Assistant Surgeon attached to the Government Hospital, Vellore. He admitted the victim in the hospital. She was then in a conscious state. The small intestine was then protruding out of the exit of the wound. After admission into the ward, he sent Ex. P. 5 intimation to the out-post Police Station, situate within the permises of the hospital. Ex. P. 6 is the copy of the Accident Register. PW. 7 another Civil Assistant Surgeon, attached to the said Hospital, performed the emergency operation in a bid to save the life of the victim-deceased. That apart, Ex. P. 9 requisition had also been sent to PW. 9-Judicial Second Calss Magistrate No. 1, Vellore for recording dying declaration from the victim.

(f) PW. 9 received Ex. P. 9 reguision at 8.30 a.m., immediately rushed to the Government Hospital, Vellore, and reached there at 9.10 AM. The victim then was fully conscious. P.W. 9 revealed his identity and the purpose for which he had gone there. The Doctor PW. 10, attached to the said hospital, was bodily present then. The statement of the victim had been taken down by PW. 9 in her own words. After the taking down the statement, PW. 9 read over the same to the victim and she in fact admitted it as correct. Then he got her thumb impression in it. Ex. P. 10 is the dying declaration. The doctor-PW. 10 appended a certificate to the said dying declaration to the effect that the victim was fully conscious at the time when the dying declaration was recorded.

(g) PW. 11 was the then Constable attached to Out-Post Police Station, situate within the premises of the hospital. He received Ex. P. 5 accident intimation at 9.00 a.m. He went to the hospital at 9.30 a.m. The victim was then conscious. He recorded a statement, Ex. P. 11 from her. He read over the same and the victim admitted the same to be correct. Then he obtained her thumb impression in it. The statement she gave was Ex. P. 11. He forwarded Ex. P. 11 along with the memo Ex. P. 12 to the Station House Officer, Katpadi Police Station.

(h) PW. 13 was the then Constable attached to Katpadi Police Station. He received Exs. P. 11 and P. 12 at 12.00 Noon. On the basis of Ex. P. 11, he registered a case in Crime No. 127 of 1986, for an alleged offence under Section 324 of Indian Penal Code. The then Sub-Inspector by name Jayaraman, took up further investigation in this case, He along with PW. 13 immediately rushed to the scene village. After inspecting the scene, Ex. P. 2 Observation Mahazar had been prepared, and the same had been attested by P.W. 4. A rough sketch Ex. P. 18 had also been drawn. On the way to the scene village, he alongwith P.W. 13, went to the Government Hospital and from the victim, H.O. 1 blood stained saree had been seized under Ex. P. 3 Mahazer, attested by P.W. 3. At 6.00 p.m. the accused had been arrested at Vishunthangal village junction road in the presence of PW. 5. On interrogation, he gave voluntarily a confession-statement under Section 27 of the Evidence Act, the admissible portion of which is Ex. P. 3. Pursuant to the said confession, he produced the knife M.O. 2, from his pocket, which was seized under Ex. P. 4 Mahazar. Exs. P. 3 and P. 4 were attested by P.W. 5. On the same day the said Sub-Inspector examined Pws. 1 to 5. On 19-4-1986 At 7.00 p.m. the victim Poongavanam, died at the Government Hospital, Vellore. On receipt of Ex. P. 19, death intimation, the said Sub-Inspector altered the case to one under section 302 of Indian Penal Code. Ex. P. 20 is the altered First Information Report. Express Reports had been prepared and sent to the concerned officials. The seized M.Os. 1 and 2 had been respectively sent to the Court under separate Form 95, namely, Exs. P. 21 and P. 22. At the time when the trial took place, the said Sub-Inspector Jayaraman had been deputed for training to Delhi and consequently he was not examined and P.W. 13, who assisted him in the investigation had been examined to speak to the relevant portion of the investigation done by him.

(i) PW. 15 was the then Inspector of Police, At 1.00 p.m. on 20-4-1986 he received the express First Information Report and immediately thereafter he took up further investigation in the case. He rushed to the scene village and verified the investigation earlier done by the Sub-Inspector Jayaraman. He then returned to the Government Hospital, Vellore. Between 6.00 and 9.00 a.m., he held inquest over the body in the hospital. During inquest, he examined PWs. 1 to 5. Ex. P. 23 is the inquest report. After the autopsy was over, he handed over the body of the

deceased to PW. 14 Constable, along with Ex. P. 7 requisition, for the purpose of autopsy.

(j) PW. 8 was the then Civil Assistant surgeon attached to the Government Hospital, Vellore. On receipt of Ex. P. 7 requisition, she held autopsy over the body of the deceased at 12.00 Noon. Ex. P. 8 is the post-mortem certificate. She would opine that the deceased would appear to have died of shock and haemorrhage as a result of injury to the small intestine (due to stab) about 17.00 hours prior to post-mortem and the injury described in the post-mortem certificate could have been caused by a weapon like M.O. 2.

(k) On 20-4-1986, PW. 14 examined PWs. 6 to 8, 11, 13 and 14. On 12-6-1986 he sent Ex. P. 13 requisition for forwarding the incriminating material objects to the Chemical Examiner for the purpose of examination.

(l) P.W. 12 was the then Head clerk attached to the Judicial Second Class Magistrate No. 1, Vellore. On receipt of Ex. P. 13 requisition, as per the direction of learned Magistrate, the material object M.O. 1 had been sent to the Chemical Examiner under the original of Ex. P. 14, copy of letter. Exs. P. 15 and P. 16 were respectively the reports of the Chemical Examiner and Serologist.

(m) On completion of investigation, P.W. 14 filed a final report under Section 173(2) of Criminal Procedure Code, against the accused for an alleged offence under Section 302 of Indian Penal Code, before the Judicial Second Class Magistrate No. 1, Vellore, on 28-6-1986.

4. On committal, learned Session Judge framed charges under Section 302 of Indian Penal Code against the accused. The accused, when questioned as respects the charges so framed, denied the same and claimed to be tried.

5. The prosecution in proof of the charge so framed, examined PWs. 1 to 15, filed Exs. P. 1 to P. 23 and marked M.O.s. 1 and 2.

6. The accused, when questioned under Section 313 of Criminal Procedure Code as respects the incriminating circumstances appearing in evidence against him, denied his complicity in the crime. He did not, however, choose to examine any

witness on his side.

7. Learned Session Judge, on consideration of the materials available on record and after hearing the arguments of learned Legal Aid Counsel for the accused and learned Public Prosecutor, recorded the verdict as stated above.

8. Mr. S. E. Victor, learned Legal Aid Counsel appearing for the appellant-accused would press into services the sole and lone submission, that the entire materials available on records in the shape of evidence, oral and documentary, if carefully perused sifted and scanned, would point out in a clinching fashion, that the act committed by the accused in inflicting a stab, which landed on the abdomen of the deceased by means of a knife like M.O. 2, normally possessed of by a Beedi Roller like the accused, cannot at all be stated to be one, falling under any of the four clause of Section 300 of Indian Penal Code, punishable under Section 302 of Indian Penal Code and if at all, such act might amount to culpable homicide not amounting to murder, punishable under Section 304 Part-II of Indian Penal Code.

9. Mr. R. Ragupathy, learned Additional Public Prosecutor, representing the prosecution, would however repel such a submission.

10. From the submission of learned Legal Aid Counsel for the appellant-accused, it is crystal clear that he is not challenging the act of the accused, which resulted in death of the deceased. But what he would contend is that such an act as attributed to the accused would amount to an act not punishable under Section 302 of Indian Penal Code, but one punishable under Section 304 Part II of Indian Penal Code. Apart from the concession as above made, it is not as if there are no clinching materials to prove the overt act attributed to him. No doubt, there is no direct evidence available on record. Circumstantial evidence alone is available. Such circumstantial evidence, on the facts and in the circumstance of the case, cannot at all be stated to be grossly inadequate and insufficient so as to point out that it was the hand of the accused that was alone responsible for the infliction of the stab on the abdomen of the deceased.

11. PWs. 1 and 2 are admittedly the neighbours of the accused. It is but natural for witnesses like PWs. 1 and 2 engaged in Beedi Rolling operation, to have woken up early in the morning to finish their household work and go for their avocation. In such a situation, it cannot be said that there is no pale of truth, in what they had stated, that only when they were pumping the water from the hand-pump in the morning, they had, apart from hearing the hue and cry emerging from the house of the deceased and the accused, the fortuitous opportunity of seeing the deceased emerging and falling in front of her house, crying that she had been stabbed by her husband. Simultaneously, they had also seen the accused-husband running out of the house. Even PW. 3, who came to the scene after hearing the hue and cry was also apprised of being stabbed by her husband. Such an information had been conveyed by no less than a person, the victim-deceased. That is an incriminating piece of evidence in the shape of oral dying declaration. Nothing had been elicited in the course of the cross-examination of PWs. 1 to 3 to point out that their version as respects the occurrence is not above reproach and beyond suspicion. Therefore, their evidence commands acceptance at our hands.

12. This apart, there is the dying declaration Ex. P. 10 recorded by the Judicial Second Class Magistrate - PW. 9. During the course of recording of the said declaration the victim-deceased was fully censcicus and this aspect of the matter is proved beyond shadow of doubt, as disclosed by the testimony of the doctor-PW. 10, coupled with the certificate, she had appended in the said declaration, apart from the testimony of the Magistrate - PW. 9. A perusal of the said declaration also points out in unmistakable terms that it was the hand of the accused that was responsible for inflicting the injury on the abdomen of the victim-deceased. Thus from the various pieces of circumstantial evidence as referred to above, we are thoroughly satisfied that it was the hand of the accused that was responsible for inflicting the stab wound which landed on the abdomen of the deceased, resulting in her death.

13. The moot question that arises for consideration as to what is the offence that had been committed by the accused on the facts and in the circumstances of the case. There is no pale of controversy that the accused and her wife the deceased, were alone living in the house. It is also not in dispute that the accused and the

deceased very often resorted to revel in wordy dual and as a consequence thereof, the wife-deceased was accustomed to take shelter in her parents house very often and return to the matrimonial abode after some time. The materials on record also point out that the deceased wife, who departed some time prior to the occurrence, returned to the matrimonial abode, just a week prior to the occurrence. No material had been placed on record to point out that, during such period, there was any sort of a trouble or quarrel between the accused and the deceased. It is also equally true that when the accused and the deceased went to bed on the fateful night, there was no quarrel of any sort between them. They had sound slumber till about 4.00 or 4.30 on the morning of the day of occurrence. An altercation arose between them only during such early hours. What was the exact nature of the wordy duel that took place between them is not known and what all PWs. 1 and 2 would state is that at the time when they were pumping water in the hand-pump, situate in front of the house of the accused, they heard the wordy altercation between them and it was not possible for them to say as to what transpired between them during such wordy duel. It is only in process of such wordy duel, the victim-deceased came out and fell down in front of the house crying that she had been stabbed by her husband-accused who, also at or about the same time, ran out of the house. Only one injury had been inflicted during the course of such an altercation. Even the said injury was stated to have been inflicted by a weapon like M.O. 2 ordinarily possessed of by a Beedi Roller. There is no wonder that the accused, a Beedi roller by profession, had in his possession M.O. 2 knife always with him. It is not a deadful weapon and it is more or less a weapon like a pen-knife. One more single circumstance available is that no light had been thrown by the prosecution as to whether any lamp was burning inside the house of the accused at the time when the altercation took place between them. It is only in the course of the altercation, a single stab had been inflicted by the accused and such a stab was found porched on the abdomen of the deceased. Can it be stated in such a situation that the injury found on the abdomen of the deceased was the one, intended to be inflicted by the accused on such portion of the bed of the deceased We rather feel that on the facts and in the circumstances of the case, the answer to such a question cannot be any one other than an emphatic 'No'. It is quite conceivable that in the course of an altercation that ensued between them,

he would have inflicted a stab with a weapon like M.O. 2 and in the melee that followed the stab so inflicted could have landed unfortunately on her abdomen. Further, he did not at all revel in inflicting any further stab on any portion of the body of the deceased. No sooner did he deliver the stab than he ran out of the house. Is it plausible to infer in such a situation any sort of premeditation on the part of the accused to murder the deceased It was something like hit and run. The victim-deceased did not die-immediately but died 1 1/2 days after the occurrence. In such circumstances, we do not think that we will be far wrong in coming to a conclusion that the act of the accused is one done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death, amounting to offence under Section 304 Part-II of Indian Penal Code. In that view of the matter, we rather feel that the conviction and sentence imposed upon the accused for the offence under Section 302 of Indian Penal Code, as had been done by the Court below, are not sustainable in law and, therefore, they are set aside. He is however, found guilty under Section 304 Part-II of Indian Penal Code and convicted thereunder. The accused, it is said, had been in jail on and from the date of his arrest, which event happened on 1-8-1986 till today without his being released on bail at any point of time. Thus, the total period of jail term, both as pre-trial prisoner and as prisoner after conviction comes to 8 years, 5 months and 10 days as on date. The period of imprisonment he had undergone so far, we feel is more than adequate and sufficient for the offence under Section 304 Part-II of Indian Penal Code.

14. In this view of the matter, the appellant/accused is ordered to be set at liberty forthwith and the appeal is disposed of accordingly.

15. Order accordingly.