

Karuppa Pillai Vs. State

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Court : Chennai

Decided On : Mar-19-1996

Reported in : 1996CriLJ3880

Judge : Rengasamy, J.

Acts : [Constitution of India](#) - Articles 15(3) and 39; [Indian Penal Code \(IPC\), 1860](#)
- Sections 302, 304, 323, 324 and 325;

Appeal No. : Crl. Appeal No. 104 of 1988

Appellant : Karuppa Pillai

Respondent : State

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

Advocate for Pet/Ap. : K.N. Basha, Adv. for ;S. Ashok Kumar

Judgement :

1. The appellant herein stands convicted by the learned Principal Sessions Judge. Tiruchirapalli to undergo Rigorous Imprisonment for seven years for the offence under Section 304 Part II in Sessions Cases No. 175 of 1987 for having caused the death of one Govindam Pillai. The prosecution has examined 14 witnesses and the case of the prosecution as revealed from these witnesses in brief is as follows :-

The deceased Govindam Pillai is the junior paternal uncle of P.W. 1. The accused/appellant also is related to P.W. 1 as the agnate of the husband of P.W. 1. P.W. 1's husband Rajalingam, the appellant are all agricultural collies and they go in the morning to attend cooly works and returns in the evening. The deceased Govindam Pillai. P.W. 1 and the appellant are all living in the same area in Thimmampatty village within the limits of Kulithalai police station. On 7-5-1987 at about 6.00 p.m. when P.W. 1 was alone in her house, the appellant came to her house and expressed his love to her. He also invited her for his sexual pleasure. P.W. 1 became furious and shouted at him that she would beat him with broomstick. The appellant ran away from there. P.W. 1 thinking that if this incident was revealed to her husband on the same night it would provoke her husband, she suppressed it and on the next day morning she told him about the misbehaviour of the appellant. Her husband Rajalingam told her that he would tell to his parents to scold him. P.W. 1 told this incident of misbehaviour of the appellant to the deceased's wife Matheswari and also her cousin P.W. 2. On 8-5-1987 at about 7.00 p.m. P.W. 1 and P.W. 2 were conversing in the street in between the house of P.W. 2 and one Paramasivam. The mother of the appellant Ahilandathammal and his aunt Nagammal who were coming by that way scolded P.W. 1 for speaking about the appellant, saying that her conduct itself is disputable. P.W. 1 provoked by such a scolding, took up a stick lying there and beat the mother of the appellant Ahiladathammal on her left hand. P.W. 2 also with a similar stick beat Nagammal. At that time the appellant was standing at the entrance of his house. In the notice created on account of this quarrel between them, the deceased who was in his house came out. The deceased told Ahilandathammal that she, should ask her son to come out, so that he would disclose about his conduct. The appellant who was standing in front of his house, immediately saying that who was he to question his conduct, came with M.O. 1 spade handle and hit him on his head on the back side, right shoulder, right sheek and left chest. The deceased immediately fell down and became unconscious. The appellant took to his heels with the M.O. 1 spade handle. P.W. 1's husband Paramasivam went in search of the Village Administrative Officer, but as he was not found P.W. 1 the wife of the deceased, and P.W. 1's husband took the deceased in a bullock cart to Kulithalai police station. As the deceased was unconscious P.W. 1 give the complaint Ex P.1

to the Head Constable P.W. 12 who was available in the police station. P.W. 12 registered the complaint by about 10.00 p.m. in Crime No. 160 of 1987 under Section 324 of Indian Penal Code and prepared the First Information Report Ex. P.9 which was sent to the court. By about 11.55 p.m. the mother of the appellant and Nagammal came to the police station and Ahilandathammal gave the Statement Ex. P.10. The deceased and Ahilandathammal were sent to Kulithalai Government Hospital for treatment. P.W. 6 the medical officer attached to Kulithalai Government Hospital examined the deceased by about 11.15 p.m. and he found on him a contusion of 3' X 2' in the left temporal region, another contusion of 1' X 1' in the right cheek with a superficial abrasion and another abrasion of 1' X 1/2' on the right scapular. As he found the blood pressure was very high he suspected subdural haemorrhage and therefore after giving emergency treatment he referred the patient to headquarters hospital at Tiruchi. P.W. 6 is the accident register recorded by him. P.W. 7 the Doctor attached to the headquarters hospital at Tiruchi admitted the deceased in the hospital for treatment. In the meanwhile the Sub-Inspector of Police P.W. 13 took up the investigation and went to the scene of occurrence where he prepared the observation Mahazar Ex. P.2 in the presence of the Village Administrative Officer, P.W. 3 and also prepared the rough sketch Ex. P.11 for the scene of occurrence. The deceased who was undergoing treatment in the hospital at Tiruchi died at 4.00 a.m. on 9-5-1987. Death intimation was sent to, the outpost police station which conveyed the death of Givindam Pillai to Kulithalai Police Station. The Station Officer at Kulithalai Police Station, recording the death information prepared an express report Ex P.12 after altering the nature of the offence in F.I.R. to 302 of Indian Penal Code and forwarded the express report to the court and also to the higher police officials. P.W. 14 the Inspector of Police received the Express Report on 9-5-1987 and took up the investigation. After verifying the statements recorded by the S.I. of Police, he visited the hospital and conducted the inquest at 10.30 a.m. on that day in the presence of panchayatdhara Ex. P.13 is the inquest report prepared by him. The body was handed over to P.W. 10 constable attached to Kulithalai police station who recovered M.O. 3 Dhothi from the body of the deceased after inquest. P.W. 14 sent requisition Ex. P.7 to the Medical Officer attached to the Tiruchy General Hospital to conduct post mortem

examination on the body of the deceased. P.W. 9 the Medical Officer in the Headquarters Hospital at Tiruchi received the requisition on 9-5-1987 at 4.30 p.m. and commenced the post mortem on the same day. He found a swelling over the left temporal region and left parital region, a contusion 1 cm. diameter over the right cheek, an abrasion 2 X 5 cms over the injury No. 2, an abrasion 5 X 1 cm front of left shoulder, an abrasion 4 X 1 cm. left mammary region and an abrasion 3 x 1 cm front of right shoulder. The opening of the skull revealed the extensive haematoma over left temporal and parietal region 10 X 4 cm. size, fracture of left temporal bone and adjoining parietal bone vertically placed 6 cms in length extending from 2' from the left of midline to 1' above the left zygoma. The left temporal muscle bruised, Membranes found ruptured in the line of fracture to the same extent. There was sub-dural haematoma over left temporal and parietal region 6 x 3 cms. The brain over the left parietal and temporal lobes were contused. The Doctor was of the opinion that the deceased died due to the injury to the vital organ viz., brain about 13 hours prior to the post mortem. Ex. P.8 is the post mortem certificate issued by him. P.W. 14 the Inspector of Police continued, the investigation and arrested the appellant on 11-5-1987 near Pettaivaithalai bus stand in the presence of P.W. 5 and on examination he made a statement before the Inspector of Police. The admissible portion of his statement is Ex. P.4. He took the Inspector of Police and P.W. 5 to Timmampatti and east of the land of one Rathinam Pillai, near the water pipe, he took up M.O. 1 spade handle from a bush. The same was seized under Mahazar Ex. P.5 in the presence of P.W. 5 and another person. The appellant was remanded to judicial custody. On the complaint given by the mother of the appellant P.Ws. 1 and 2 were prosecuted for the offence under Section 323 I.P.C. and they were convicted and sentenced to pay a fine of Rs. 75/- each. The Inspector of Police, after completing the investigation filed the charge sheet against this appellant on 15-6-1987 for the offence under Section 302 I.P.C.

2. After the committal of this case to the Court of Sessions, the learned Sessions Judge, Tiruchi framed charge against this appellant for the offence under Section 302 I.P.C. After the examination of the witnesses on the prosecution side, the appellant was asked to explain the incriminating circumstances found against him in the evidence of the prosecution witnesses, he denied the complicity in the crime

and he simply stated that he did not know about the occurrence itself as he was in a place where his cycle was kept. He did not examine any witness on his side.

3. The learned Sessions Judge, having gone through the evidence has found that the offence committed by this Appellant would fall under Section 304 Part II and therefore, he has convicted him for the said offence and sentenced to undergo RI for 7 years.

4. Mr. K. N. Basha, learned counsel appearing for the appellant would contend that the evidence on the prosecution side establishes the fact that there were so many persons closely related to the deceased standing at the time of occurrence, when the mother of the appellant was beaten up by P.W. 1 and therefore, there was imminent danger to the life of the appellant and his family members for which he had to resort by retaliation and therefore, the action of the appellant will amount to private defence for which he cannot be convicted for the offence under Section 304 Part II I.P.C. the learned counsel would further contend that even assuming that the private defence was not available to the appellant at the time of occurrence, he gave only a single blow on the head of the deceased without any intention of causing his death and therefore, this would fall under Section 325 I.P.C. So far as his first contention is concerned, the evidence reveals that there was no imminent danger to his mother at the time of occurrence. The appellant was standing in front of his house when his mother Ahilandathammal was quarelling with P.Ws. 1 and 2 in the street. The evidence of P.Ws. 1 to 3 reveals that they bear Akilandathammal And Nagammal only with a small sticks having thorns. The evidence nowhere discloses that P.W. 1 and P.W. 2 attempted on the life of the said Akilandathammal and Nagammal. As there was quarrel between them, Akilandathammal, the mother of the appellant when questioned about the virtues of P.W. 1, it appears that she was provoked and taking out a small stick found nearby, she beat Akilandathammal and her cousin P.W. 2 also had beaten Nagammal. The appellant was not provoked on account of beating of his mother and aunt. But when the deceased came from his house and asked Akilandathammal to bring her son, so that he would disclose his conduct, the appellant became furious by saying that who was he to question his conduct and only thereafter he attacked the deceased with spade handle. The evidence of P.W.

1 and 2 makes very clear that there were no circumstances to show any danger to the life of Akilandathammal or Nagammal including that of the appellant, because, these two women were beaten only with small sticks. But the appellant who was standing and watching this quarrel at some distance came to the scene of occurrence only when the deceased was shouting that he would disclose the conduct of the appellant and pounced upon the deceased by beating him with spade handle on his head. It is true that some others including the husband of P.W. 1 Paramasivam, Nallu Pillai, Manimegalai, Angammal, Selvam and others were present at the time of occurrence. It cannot be said that they are men of the prosecution witnesses, except the husband of P.W. 1. P.W. 1 has spoken in her evidence that the appellant is her husband's Pangali (agnate). Therefore, all these who were standing there, were related to bothsides. There is also no evidence that any of these persons who were present on the scene of occurrence attempted to assault the appellant or his family members. In view of this clear evidence, at no stretch of imagination it can be said that the appellant had the right of private defence to attack the deceased when especially the deceased was unarmed and he was simply shouting at the appellant's mother. The evidence of P.Ws. 1 and 2 has not been shattered in the cross-examination by the appellant/accused. As the mother and aunt of the appellant, picked up wordy quarrel with P.W. 1, P.W. 2 and the wife of the deceased, imputing the character of P.W. 1, P.W. 1 and P.W. 2 beat those two women only with a small twig like sticks. Till then the appellant did not interfere in this quarrel. But only when the deceased came there shouting that he would impeach the character of the appellant he was attacked by the appellant as spoken to by P.Ws. 1 and 2 the eye witnesses. There is no reason to disbelieve or reject the testimony of P.Ws. 1 and 2. As I find no infirmity in their testimony, their evidence is acceptable to uphold the participation of the appellant in the crime alleged.

5. The learned counsel for the appellant Mr. K. N. Basha citing certain decisions argued that as the weapon viz., the spade handle cannot be considered to be a dangerous weapon and as a single blow alone was aimed at the head of the deceased, the appellant had no intention to cause his death and further as he did not have the knowledge that the blow he delivered was likely to cause the death, the appellant cannot be punished for the offence under Section 304 Part II I.P.C.

but the offence would fall under Section 325 I.P.C. The spade handle M.O. 1 is to the length of 24' and is having two iron rights around it. As this spade is to the length of 24' feet this cannot be compared with an ordinary stick. This spade handle certainly can be used as a weapon of offence even to cause death. In this case, the appellant had aimed at the head of the deceased and delivered the fatal blow which had caused fracture of frontal and temporal bones. As two bones have been fractured it shows the violent force applied by the appellant while attacking the deceased who was an old man. When he had aimed at the head of the deceased which is a vulnerable part and delivered a blow with such a force, it is futile to argue that he had no knowledge that the injury on the head was likely to cause death. There was haematoma on the head and the deceased became unconscious soon after the hit on his head. In such circumstances, it cannot be said that the appellant is liable to be punished only under Section 325 I.P.C. for having caused the fracture of the skull bone and that he had no knowledge that the injury caused by him on the head was likely to endanger the life of the deceased. As rightly contended by the learned Additional Public Prosecutor if the aim of the appellant was on any other part, especially on non-vital parts, this argument can be accepted. The head being a vital and vulnerable part, the blow on the head certainly ropes in the appellant for the offence under Section 304 Part II, I.P.C. which the court below has rightly concluded. Therefore, there is no merit in the contention of the appellant for the alteration of the nature of the offence. Hence the findings of the court below for the offence under Section 304 Part II, I.P.C. is upheld.

6. Coming to the question of sentence, the learned counsel for the appellant Mr. K. N. Basha contended that the appellant and the deceased are closely related and they are living in the same village, close by and now the harmony is restored between these families and further, he is recently married and under those circumstances, the sentence of RI for 7 years imposed on the appellant might be reduced. As the appellant and the deceased party are related and they are also living close by in the village Thimmampatti, I feel that instead of 7 years RI, it can be reduced to 3 years RI, as I am inclined to award compensation also to the family of the deceased. Therefore, the sentence of 3 years RI and a fine of Rs. 5,000/- is sufficient to meet the ends of justice.

7. In the result, subject to the modification in the sentence viz., to 3 years RI and a fine of Rs. 5,000/- this appeal is dismissed. The fine amount collected shall be paid to the wife of the deceased as compensation. In default to pay the fine, the, appellant has to undergo RI for two years. Bail bond is cancelled, For payment of fine amount, three months time is granted. Certainly the Jail Authorities will remit the sentence applying the several Government Orders issued by the Government.

8. Order accordingly.

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