

Kulandaisamy Vs. State

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Court : Chennai

Decided On : Feb-15-1996

Reported in : 1996CriLJ4478

Judge : A. Raman and ;Janarthanam, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 30, 300, 302, 304 and 307; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 173(2) and 313

Appeal No. : Criminal Appeal No. 150 of 1987

Appellant : Kulandaisamy

Respondent : State

Advocate for Def. : S. Somasundaram, Government Adv.

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

Judgement :

Janarthanam, J.

1. The Appellant is the accused in S.C. 93/86 on the file of Principal Sessions Judge, Tirunelveli. On trial, he was found guilty under section 302, IPC convicted thereunder the sentenced to imprisonment for life.

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

3. Brief facts are :-

a) The scene village going by the name Thalaivan Kottal is situate within the jurisdictional limits of Puliyankudi Police Station, 8 Kms., on the north east. One Anthonysami, (since deceased) and the accused hailed from the scene village. P.W. 1's husband viz., P.W. 2 and the accused are brothers. Further, P.W. 1 is related to the deceased, as his sister. P.W. 4 is the wife of the deceased P.W. 1 and the accused, it is said, reside at Aranmanai vasal street in the same village. Their houses are situate adjacent to each other. The house of P.W. 1 is situate on the eastern side, while the house of the accused is situate on the western side. The house of P.W. 1's father-in-law viz., Francis Veluchami Thevar, it is said, is also situate in the scene village, some distance away from her house.

b) P.W. 1, it is said, had been rearing a milching cow. In her house, there is no cattle shed at all. Therefore, some how or other, she managed to keep the milching cow in her house. However, she used to tether the calf in the cattle shed of her father-in-law's house. It is more or less a daily routine for P.W. 1 to take the milching cow to the house of her father-in-law, both in the morning as well as in the evening for milching the Cow.

c) On the day of occurrence, which event happened on 5-8-1985, as usual, she milched the cow by taking it to the house of her father-in-law and tethered the calf there itself. At about 7.00 p.m., on that day, her mother-in-law came and informed her that the accused objected to the tethering of the calf there and consequently he untied the calf and allowed it to go away from there. On hearing the same, she went in search of the calf and she was able to locate the same on the western side of her father-in-law's house. She caught hold of the calf, tethered it and took it to her house. At that time, the accused was stated to be standing adjacent to the house of her father-in-law. On seeing her, the accused abused her in filthy language and questioned the propriety of herself tethering the calf in the house of her father-in-law, and he also warned P.W. 1 that she should not tether the calf any further. P.W. 1 without making a fuss or much ado about what the accused

said, was talking the calf to her house. The accused also followed her abusing her in filthy language. At that time, her husband P.W. 2, who as present there then, objected to the accused abusing his wife in a filthy language.

d) P.W. 2 thereafter went to fetch his brother-in-law, the deceased, with a view to pacify the accused. The accused also was stated to have followed P.W. 2. Wielding a Palmyra stick in his hand. Obviously perceiving some sort of untoward occurrence to happen, P.W. 1 was also said to have followed the accused. The house of the deceased Anthonisami, it is said, is located one furlong away from the house of the father-in-law of P.W. 1. It so happened when she went near the house of P.W. 3, her husband P.W. 2 and the deceased were coming in the opposite direction. When both the deceased and her husband P.W. 2 neared the house of P.W. 3, the accused was stated to have picked up a quarrel with the deceased, stating that it was none of his business to interfere in a family dispute with the accused and so saying, with the palmyra stick he was having in his hand, inflicted a beating on the left parietal region of the deceased. Again, the accused was stated to have given another beating on the occipital region of the deceased. After receipt of those beatings, the victim deceased fell down. Thereafter, the accused was stated to have beaten with the same palmyra stick he was having four times on his right chest, proclaiming that he be done away with these beatings. At that time, P.W. 2 snatched Oonikambu M.O. 1 from a cart parked there and inflicted a beating with M.O. 1 on the nape of the neck of the accused. Thereafter, the accused ran away from there. At that time, the electric bulb in the front vasal of P.W. 3 was stated to be burning.

e) The entirety of the occurrence as such, had been witnessed by P.W. 1 and 2. P.W. 3, in front of whose house the occurrence took place, was stated to have seen a part of the occurrence, in the sense of witnessing one of the beatings stated to have been given by the accused on the chest region of the deceased with palmyra stick. Similarly, P.W.4, wife of the deceased happened to witness a part of the occurrence as P.W. 3, in the sense of the accused beatings the deceased with palmyra stick on his chest region.

- (f) P.Ws. 1, 2, 4 and others looked at the victim deceased, with a view to take him to his house. The victim deceased was then found to be unconscious.
- (g) P.W. 5, who was present there, was instructed to inform the Police over phone. He, in turn, reached Mullikulam in a bicycle at 8.00 p.m. and conveyed the message over phone to Puliyanakudi Police station.
- (h) P.W. 14 was the then Sub Inspector of Police, Puliyanakudi Police Station. On 5-8-1985 at about 8.00 p.m. while he was in charge of the station, he received a phone message from P.W. 5 relating to the occurrence, in the sense of the victim - Anthonisami having been beaten by the accused and the said victim-deceased being in a state of unconsciousness. On receipt of the said message P.W. 14 entered the same in the general diary of the police station, P.W. 14, along with P.W. 13 went to the bus stand and engaged a van, bearing registration No. TDU 6895 of which P.W. 12 was its then driver, to go to the scene village. They reached the scene village in the said van at 8.30 p.m.
- (i) After reaching the scene village, P.W. 14 found the victim-deceased in a state of unconsciousness, besides not being in a position to speak. Consequently, he recorded Ex. P-1 statement from P.W. 1, attested by P.W. 2. Since the victim-deceased was in a precarious condition, he sent him in the same van to Government Hospital, Sankarankoil with the medical memo Exhibit P. 3, through P.W. 13 Head Constable. P.Ws. 1, 2 and 4, it is said, also accompanied the victim-deceased in the van to the hospital.
- (j) P.W. 14 returned back Puliyanakudi Police Station at 9.30 p.m. and after reaching the police station, he registered a case, on the strength of Exhibit P. 1 in crime No. 284 of 1985 for an alleged offence under Section 307, IPC. Exhibit P. 15 is the printed first information report. He despatched Exhibits P. 1 and P. 15 through the Constable P.W.15 to the Court of Judicial Second class Magistrate, Sankaran koil, Ex. P.17 is the passport.
- (k) P.W. 17 was the then Inspector of Police, Puliyanakudi circle. He reached Puliyanakudi police station at 10.30 p.m. He got a copy of the first information report from P.W. 14 and took up further investigation on the case. He reached the scene

village at 11.00 p.m. He inspected the scene in the presence of P.W.10. He prepared an observation mahazar, Exhibit P. 10. He also drew a rough sketch of the scene. Exhibit P. 18. At 12.00 mid night, he seized from the scene blood stained earth M.O. 6, sample earth M.O. 7, M.O. 1 Oonikambu and the electric bulb M.O. 3 burning in the front vasal of P.W. 3 under Exhibit P. 11 mahazar. Exhibits P. 10 and P. 11 were attested by P.W. 10 and another.

(l) In the meantime, the victim-deceased, who had been despatched to Government Hospital, Sankarankoil, for the purpose of treatment, had been admitted at the Government Hospital, Sankarankoil by P.W. 7, the then Civil Assistant Surgeon, attached to the said hospital. The said Doctor treated him for the injuries. Exhibit P. 4 is the wound certificate issued to the victim-deceased. Since the victim deceased was in a critical condition, he was referred to Tirunelveli Medical college Hospital Tirunelveli for further treatment and management.

(m) P.W. 8 was the then Civil Assistant Surgeon attached to Tirunelveli Medical College Hospital, Tirunelveli. While he was on duty at 11.40 p.m., on 5-8-1985, the victim deceased was referred to for further management and treatment and he, in turn, admitted the said victim deceased in the hospital as an in-patient. At that time, the said victim deceased was found in a state of unconsciousness. Exhibit P. 5 is the copy of the accident register he issued to the victim-deceased.

(n) The victim admitted in the Tirunelveli Medical College Hospital breathed his last at 00.30 hours on 6-8-1985 and the Doctor P.W.6 the then Civil Assistant Surgeon attached to Tirunelveli Medical College Hospital sent Exhibit P.2 death intimation to the out post police station.

(o) On 6-8-1988, at about 8.00 a.m. P.W. 14 received Exhibit P. 2 death intimation through P.W. 13. He, in turn, altered the case into one under Section 302, IPC and prepared express reports and sent the same to the concerned officials. Exhibit P.16 is the copy of the express first information report sent to the Judicial Magistrate's Court, Sankarankoil.

(p) On 6-8-1985 at about 11.00 a.m. while P.W. 17 was available in Tirunelveli Medical College Hospital, P.W.14 met him there and handed over the copy of the

express first information report. He then held inquest over the body of the deceased between 11.00 a.m. and 2.30 p.m. Exhibit P. 19 is the inquest report. During inquest, he examined P.Ws. 1 to 4. He also seized M.O. 2 blood stained black shirt from P.W. 2, besides seizing M.O. 4 blood stained saree and M.O. 5 blood stained Pink coloured shirt from P.W. 4. He sent the body of the deceased through the constable P.W. 16, along with Exhibit P. 12 requisition, for the purpose of autopsy.

(q) The Doctor P.W. 11 was the then Professor of Forensic Medicine, Tirunelveli Medical College Hospital Tirunelveli. On receipt of Exhibit P. 12 requisition, he commenced autopsy over the body of the deceased at 2.55 p.m. Exhibit P. 13 is the post mortem certificate he issued. He would opine that the deceased would appear to have died of shock and haemorrhage due to head injuries sustained by him. He would further opine that the injury he found on the head of the deceased was sufficient in the ordinary course of nature to cause death.

(r) After the autopsy was over the Constable P.W. 16 seized from the body M.O. 8 blood stained banian, M.O. 9 lungi and M.O. 10 half trouser and handed over them at the police station.

(s) On the evening of the same day, P.W. 17 the Inspector of Police went to Thalaivankottai and examined P.W. 5 and others. He then proceeded to Puliyanakudi and examined P.W. 12. Exhibit P. 14 is the trip sheet of the van bearing Registration No. TDU. No. 6895. He searched for the accused and he was absconding. On 7-8-1985 he examined P.Ws. 10, 13, 16 and others. On 8-8-1985 he came to know that the accused surrendered before Special Judicial Magistrate, (Prohibition and Excise), Tirunelveli. On 19-8-1985, he examined P.W. 11. On 11-9-1985 he examined P.Ws. 6 to 8. On 13-9-1985 he sent Exhibit P. 6 requisition to the Judicial Magistrate, Sankarankoil, for the purpose of sending the incriminating material objects to chemical examiner.

(t) P.W. 9 was the then Head Clerk attached to the Judicial Magistrate, Sankarankoil. On receipt of Exhibit P.6 requisition, pursuant to the directions from learned Magistrate, he separately packed and sent the material objects to the Chemical Examiner for the purpose of analysis under the Original of Exhibit P. 7,

office copy of the letter. Exhibits P. 8 and P. 9 are respectively the reports of the Chemical Examiner and the serologist.

(u) P.W. 17 on completing the formalities of the investigation, laid a final report under section 173(2) Cr.P.C. before Judicial Magistrate, Sankarankoil, on 17-9-1985 against the accused for an alleged offence under Section 302, IPC.

4. On committal, learned Sessions Judge, Tirunelveli framed a charge against the accused under section 302 IPC.

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

6. The prosecution in proof of the charge so framed, examined P.Ws. 1 to 17, filed Exhibits P. 1 to P. 19 and marked M.Os. 1 to 10.

7. The Accused, when questioned under section 313 Cr.P.C. as respects the incriminating circumstances appearing in evidence against him, denied his complicity in the crime. He did not choose to examine any witness on his behalf.

(a) He, however, filed a written statement. The pith and substance of what he would state in the written statement so filed, was, that the brother P.W. 2 against the wishes of his parents, married P.W. 1 consequently, his parents and relations ceased to have social contact with him. That apart, his parents declared that he would not be given any share in the property so, with a view to succeed to the properties of his father, he had been falsely implicated in the case by his brother P.W. 2 and his wife P.W. 1

8. Learned Sessions Judge, taking into consideration the materials placed and after hearing the arguments of learned counsel for the appellant/accused and learned Public Prosecutor, however, rendered the verdict, as stated above.

9. Mr. S. Swamidoss Manoharan, learned Legal Aid counsel, appearing for the appellant/accused would, with all force and vehemence submit that assuming for argument's sake that the entirety of the case of the prosecution, as projected by the ocular witnesses, to be true, even then, the overt act of the accused-appellant

in inflicting certain beatings with a palmyra stick on the head and chest region of the deceased, on the facts and in the circumstances of the case, can, by no stretch of imagination, be stated to be one done with the requisite mens rea, attracting any one of the four clauses of Section 300 IPC and thereby punishable under section 30 IPC and if at all, such an overt act of his can constitute only an offence punishable under Section 304 Part II IPC.

10. Mr. S. Manimaran, learned Government Advocate representing the respondent would, however, repel such a submission.

11. The fact that learned Legal Aid counsel appearing for the appellant, projected a submission as above, does not relieve us, we rather feel, of the botheration to consider the evidence on record, to record a finding as to whether the accused was responsible for infliction of certain beatings on the person of the deceased with a palmyra stick, culminating in his death, at a later point of time.

12. As to the actual occurrence, there is the testimony of P.Ws. 1 to 4. P.Ws. 1 and 22 would speak to the entirety of the occurrence, whereas P.Ws. 3 and 4 would speak to a part of the occurrence. The alleged overt act of the accused consists of two beatings given with a palmyra stick on the head of the deceased and thereafter, after his fall as a consequence of the beatings, he received on his head, his being beaten up with the same palmyra stick on the chest region by him four times. On this aspect of the matter, P.Ws. 1 and 2 speak in rather a convincing and cogent fashion without any sort of a contradiction. P.W. 1 as already stated, is the wife of P.W. 2, besides herself being related to the deceased as his sister. The fact that P.W. 1 is related to the deceased as his sister is not by itself sufficient to throw her testimony, on the ground of such relationship with the deceased, unless and until there are certain inherent infirmities attached to her testimony.

13. Her husband P.W. 2 is the brother of the accused. There is no rhyme or reason for a person like P.W. 2 to falsely implicate his own brother the accused in a heinous crime of murder leaving out the real culprit and falsely implicating him as the accused. Of course, true it is, in the statement filed under Section 313 Cr.P.C., the accused would throw mud on his brother P.W. 2, stating that since his brother

P.W. 2 married against the wishes of his parents, he was segregated by his relations inclusive of his parents and that apart, his parents declined to give any share in the property and on the other hand, the entirety of the property would be given to him (accused). Such a hyperbole version, as given in the fag end of the case, is not having any limb to stand. Such projection of a theory was not at all adverted to during the course of cross-examination and further, no tangible material, either in the shape of evidence-oral or documentary - has been produced to substantiate such version. In such state of affairs, no importance can ever at all be attached to such a projection of version,.

14. Both P.Ws. 1 and 2 are natural witnesses to the occurrence. For the sake of emphasis, we may further state that their evidence is not suffering from any infirmity of either inherent improbability attaching to the version nor is there any sort of a material and vital contradiction, as respects the manner and methodology of the occurrence, thereby doubting their presence at the scene.

15. The occurrence had taken place only in front of the house of P.W. 3 and according to him, he had the fortuitous opportunity of witnessing a part of the occurrence, by rushing outside from his house on hearing the hue and cry emerging from the street. He was able to see only the beatings given by the accused with the palmyra stick on the chest region of the deceased. If at all he could, in the very nature of things, have posted himself as if he was a witness to the entirety of the occurrence and he could, have done it so. Such a testimony if given would wear a credible look but he had not chosen to do so. That itself shows that he is a witness of truth and deposes only to what he had actually seen. Further, he is a witness coming from independent quarters. There is nothing to be preferred for him to choose between the deceased and accused.

16. Similarly, P.W. 4, wife of the deceased came to the scene only at the fag end of the occurrence and she had the fortuitous opportunity of witnessing the deceased being beaten up by means of a palmyra stick by the accused on his chest region. There is every reason for P.W. 4 have come to the scene of occurrence, on the facts and in the circumstances of the case.

17. The trouble started on the evening of the day of occurrence when the accused untethered the calf from the cattle shed of the house of the father-in-law of P.W. 1 by the accused, claiming that it was not proper for her to tether her calf there. It is only on the information furnished by her mother-in-law about the cow being left off from the house by the accused, she went in search of the calf, which was available in the vicinity of her mother-in-law's house. The accused was also stated to be standing there and started abusing her in filthy language. It was at that juncture her husband P.W. 2, remonstrating the conduct of the accused in abusing his wife, thought of securing his brother-in-law the deceased to effect a mediation between his family and the accused, as respects the tethering of cattle in the common house belonging to his father. So P.W. 2 went in search of the deceased. At that time, the accused was also stated to have followed him. P.W. 4 being a worldly wise woman and having a clairvoyant mental eye in order to prevent any untoward incident at the hands of the accused also followed P.W. 3 and the accused. Of course, she was rather little bit late in reaching the scene of occurrence and perhaps that was the reason she had the fortuitous opportunity of witnessing a part of the occurrence of the accused beating on the chest region of the deceased with a palmyra stick, Thus, there is nothing unnatural in the evidence of P.W. 4.

18. Of course, the occurrence had happened during night hours at about 7.30 p.m. In a night occurrence like this, visible factor is of signal importance for the witnesses to have a glimpse of the occurrence and to identify accused as the assailant involved in the occurrence. In the case on hand admittedly, apart from burning up the street light, there was an electric bulb turning in front of the vasal of P.W. 3. As such, there was sufficient and adequate visible factor in the scene of occurrence for the ocular witnesses to identify the accused as the assailant. Even otherwise, there could have been no difficulty at all for such ocular witnesses to have identified the accused as the assailant, on the facts and in the circumstances of the case. It is not as if the accused is quite a stranger to those ocular witnesses. But the sordid fact is that such ocular witnesses had the facility of seeing the accused day-in and day-out in the concourse of dealings with one another and this sort of a facility those witnesses, had, was obviously because of the reason that such ocular witnesses and the accused, reside not only in the same village but also in the same locality.

19. These things apart, the occurrence as such had been picturesquely painted in the earliest information Exhibit P. 1 recorded in the scene of occurrence at 8.30 p.m. by P.W. 14 Sub-Inspector of Police, who happened to arrive at the scene, after receiving a telephonic message at 8.00 p.m. given by P.W. 5 from a telephone booth at Mullikulam. Further, Exhibit P.W. 1 had been received by the Judicial Magistrate, Sankarankoil at his residence at 7.30 a.m. on 6-8-1985. Worthy it is to notice here that the distance between Pulivankudi Police Station and Sankarankoil is about 15 K.Ms. In such state of affairs, it cannot be stated that there is any sort of undue delay in the first information reaching the hands of the Judicial Magistrate. Therefore, we can safely conclude that there was no time left for projecting a cooked up version in the earliest information Exhibit P. 1 falsely implicating the accused.

20. These things apart the medical evidence available on record in the shape of the testimonies of the doctors P.W. 11 P.W. 7 and P.W. 8 coupled with Exhibit P. 13, post mortem certificate, Exhibit P. 4, wound certificate and Exhibits P. 5 copy of accident register lends a corroborative support to the testimony of the ocular witnesses in the sense of disclosing that the injuries the deceased received could have been caused by beating with a palmyra stick, besides the victim-deceased having been unconscious after the receipt of injuries till up to his death.

21. For the reasons above, we are of the view that the accused and him alone was responsible for inflicting the injuries on the person of the deceased on the day of occurrence by means of a palmyra stick.

22. The next question that arises for consideration is as to what is the offence that had been committed by the accused-appellant. The question, as posted would take in its fold the arguments as projected by learned counsel for the accused appellant, which we have penned earlier.

23. Admittedly, there is no sort of enmity or embittered relationship between the deceased and the accused anterior to the time of occurrence. It is not as if the deceased volunteered to interfere in the affairs between the family of his brother-in-law P.W. 2 and the accused as respects the tethering of the cattle in the common house belonging to the father of the accused and P.W. 2. It is only P.W. 2

who went in search of the deceased, seeking his assistance to mediate the dispute between him and his brother-the accused, as respects the tethering of cow in the house of their father. It is only when P.W. 2 and the deceased were coming together near the house of P.W. 3, the accused questioned the deceased as to how he could interfere in the family affairs or dispute between him and P.W. 2 and only in such process the accused was stated to have inflicted in quick manner two beatings on the head of the deceased with the palmyra stick, which he was having, then besides inflicting four other beatings on the chest region of the deceased after he fell on the ground.

24. For the girth and dimension of the palmyra stick stated to have been utilised by the accused in the occurrence, there is practically no evidence at all, apart from the same not being seized, produced and marked as a material object. The further factor of some importance to be taken into account is that the accused, after the deceased had fallen on the ground after the receipt of beatings on his head, did not at all inflict any beating either on the head or any other vulnerable portion of the human anatomy of the body of the deceased and what all he did was inflicting certain beatings on the chest region of the deceased. The weapon of offence, being only a palmyra stick, in inflicting the beatings on the chest region as well as on the head of the deceased, could not be stated to be a lethal one to term the act of the accused to be such a heinous one on the part of the accused attracting any one of the four clauses of Section 300 IPC, with the requisite mens rea prescribed therefor, constituting an offence under section 300 IPC and thereby punishable under section 302 IPC and such an act of the accused, if at all, could be stated to have been done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injuries as is likely to cause death, thereby taking such an act of his to attract Part II of Section 304, IPC.

25. In this view of the matter, the accused is found not guilty under Section 302, IPC and consequently the conviction and sentence of the appellant-accused for an offence under section 302, IPC, as had been done by the Court below is not at all sustainable in law.

26. In fine, the conviction and sentence under section 302, IPC, as had been imposed upon the appellant-accused by the Court below are set aside and instead, the appellant/accused is found guilty under section 304 Part II IPC, convicted thereunder and sentenced to R.I. for 5 years.

27. Subject to the modification as above, the appeal shall stand dismissed.

28. Appeal dismissed.

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