

Thamilarasan Vs. the State

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Court : Chennai

Decided On : Jul-04-1995

Reported in : 1996CriLJ274

Judge : J. Kanakaraj and ;Janarthanam, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302, 304 and 307; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173(2) and 313; Evidence Act - Sections 27

Appeal No. : Crl. Appeal No. 681 of 1987

Appellant : Thamilarasan

Respondent : The State

Advocate for Def. : R. Ragupathi, Addl. Public Prosecutor

Advocate for Pet/Ap. : V. Sairam, Adv.

Judgement :

Janarthanam, J.

1. The Appellant who was accused in S.C. No. 62 of 1987 on the file of Court of Session, South Arcot Division at Cuddalore, was found guilty under Section 302, I.P.C, convicted thereunder and sentenced to imprisonment for life. Aggrieved by

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

2. Brief Facts are :-

(a) The accused is a resident of Vayalamoor village, a rustic atmosphere falling within the jurisdiction of Pudukottam police station, P.W. 1 is his wife. Their marriage took place in the year 1984. Of the lawful wedlock, a female offspring came into existence. On the morning of 1-11-1986, P.W. 1, the wife of the accused gave birth to a male issue in the house of the accused. P.Ws. 2 and 3 are the sisters of the accused. One Chinnadorai is his brother. The accused had been employed as a Kalasi at Neyveli. It appears that for the purpose of avocation, he had been staying at Neyveli and visiting his house often and on.

(b) 1-11-1986 happened to be Deepavali day. At about 9.30 a.m. the accused came and saw the new-born-male-babe to his wife. He was puzzled to see the complexion of the child. The complexion of the child was red in colour. On seeing such a complexion, he suspected the fidelity of his wife and openly proclaimed that the said child was not born to him. Unable to bear the sight of such a child, he whipped to bear the sight of such a child, he whipped out a hacksaw blade (MO3) from his waist and ripped open the belly of the said child and ran away from there.

(c) At that time, his sister P.W. 2 was bodily present inside the room, where the child was lying, while his another sister, P.W. 3 was in the adjoining portion. P.W. 2 raised a hue and cry and attracted by such a hue and cry, P.W. 3 came there and saw the pitiable plight of the new-born-male-babe with injury on its abdomen. She immediately, along with her brother Chinnadorai, took the child for the purpose of treatment at the hands of the doctor, P.W. 7, attached to a private clinic going by the name 'Palaniammal Nursing Home' at 10 a.m. The doctor felt that surgery was necessary and he requisitioned the services of P.W. 8, Civil Assistant Surgeon attached to Govt. Hospital, Chidambaram. He, in turn, came and treated the Victim-child, but none-the-less, the child breathed its last on the next day (that is on 2-11-1986).

(d) In the meanwhile, P.W. 4, then village Administrative officer, Vaylamoor village, came to know of the occurrence through his menials on 2-11-1986. He went to the

house of P.W. 1 and recorded her statement, Exhibit P. 1. He read over the same to her and she, in turn, accepted the same to be correct. P.W. 4, in turn, got her thumb impression in it. He prepared his special report, Exhibit P. 2. He then went to Puduchatram Police Station, taking along with him, Exhibits P. 1 and P. 2 and handed over the same to P.W. 10, then Sub-Inspector of Police, The time was then 4 p.m. P.W. 10, in turn, registered the same as a case in Crime No. 210/86 under Section 307, I.P.C. Exhibit P. 11 is the printed FIR. He then went to the scene village. He examined P.W. 1. While he was in the process of examining her, the child which died in the hospital, was brought to the scene village. He immediately went to the police station and altered the case into one under Section 302, I.P.C. He prepared express reports and sent the same to the concerned officials. Exhibit P. 12 is the express FIR sent to Court.

(e) P.W. 12 was the then Inspector of Police, Chidambaram Taluk Police Station. At 12 midnight, he received the express copy of the FIR and took up further investigation of the case. He went and reached the scene village at 5.30 a.m. on 3-11-1986. He inspected the scene of occurrence and prepared Exhibit P. 4 observation mahazar attested by P.W. 5. He drew a rough sketch of the scene, Exhibit P. 14. Between 6 and 8 a.m., he held inquest over the body of the deceased. Exhibit P. 15 is the inquest report. During inquest, he examined P.Ws. 2 and 4. After inquest, he handed over the body of the deceased to one Ganapathy, Constable, with a requisition for the purpose of autopsy. He then examined P.Ws. 1, 3, 5 and others.

(f) One Dr. Angayarkanni was the then Medical Officer attached to the Government Hospital, Portonovo. She held autopsy over the body of the deceased. Exhibit P. 13 is the post-mortem certificate she issued. At the time of trial, she was bedridden at the hospital and consequently, she was unable to come to Court to give evidence. The doctor P.W. 11 then Medical Officer attached to the Government Hospital, Portonovo, acquainted with her handwriting and signature had been examined and through him, Exhibit P. 13 post-mortem Certificate had been marked. He would opine that the injury he found described in Exhibit P. 13 Post-mortem Certificate could have been caused by a weapon like M.O. 3 hacksaw blade. He would further opine that the deceased would appear to have

died due to injury to the vital organ haemorrhage.

(g) On 5-11-1986 at 9.30 a.m., P.W. 12 arrested the accused at Madharakuppam in the presence of P.W. 6. On interrogation, the accused appeared to have given a voluntary confession-statement under Section 27 of the Evidence Act, the admissible portion of which is Exhibit P. 5. He also recovered the inland letter, Exhibit P. 6 under Exhibit P. 7 mahazar. Exhibits P. 5 to P. 7 were attested by P.W. 6. He obtained from the accused his specimen handwriting, marked as exhibit P. 9, He caused the same and Exhibit P. 6 to be sent to the Document Expert for the purpose of examination. The Accused took P.W. 12 to Viyalmoor village. The time was then 5 P.M. The accused took out MO 3 hacksaw blade and MO 4 series, keys with chain kept concealed in a bush near the house of one Ramadoos Pillai and they were seized under Exhibit P. 3 Mahazar attested by P.Ws. 4 and 5. On 6-11-1986, he appeared to have seized MO 1 shirt and MO 2 dhoti worn by the accused from the accused. On that date itself he sent the material objects to Court with a requisition, Exhibit P. 16 for sending them to the Document Expert for the purpose of Examination. On 9-11-1986, he examined P.Ws. 7 and 8.

(h) P.W. 9 was the then Scientific Assistant Grade 1, Forensic Science Department, Madras-4. On receipt of the requisition, Exhibit P. 8 from the then Judicial Second Class Magistrate, Porto Novo, he examined the specimen handwriting of the accused under Exhibit P. 9 with his handwriting under Exhibit P. 6. On examination, he found that the person, who wrote Exhibits P. 6 and P. 9 was one and the same and to that effect, he gave a report exhibit P. 10.

(i) After completing the formalities of the investigation, P.W. 12 laid a final report under Section 173(2) CrI. P.C. before the then Judicial Second Class Magistrate's Court, Portonovo against the accused for an offence under Section 302, I.P.C.

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

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

5. The prosecution, in proof of the charge so framed, examined P.Ws. 1 to 12, filed Exhibits P. 1 to P. 16 and marked MOs. 1 to 4.

6. The accused, when questioned under Section 313, CrI. P.C. 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 Sessions Judge, on consideration of the evidence available on record and after hearing the arguments of learned counsel for the accused as well as learned Public prosecutor rendered the verdict, as stated above.

8. Mr. V. Sairam, learned counsel, appointed by Legal Aid Board, to appear on behalf of the appellant-accused would strenuously submit that the entire materials available on record, in the shape of evidence oral and documentary - if scanned in broad spectrum analysis, what would emerge is that the act of the accused, in inflicting a tear on the belly of the infant-deceased with MO 3 hacksaw blade can, by no stretch of imagination, be stated to be one falling under anyone of the four classes of Section 300, punishable under Section 302 and if at all, such an act would fall under Section 304 of the Indian Penal Code.

9. Mr. R. Raghupathi, learned Additional Public Prosecutor would, however, such a submission.

10. Leave alone the concession made by learned counsel appearing for the appellant-accused, as respects the overt act of the accused, we may now delve deep into the evidence available on record to find out whether the overtact of the accused, whipping out the hacksaw blade (MO 3) from his waist and ripping open the belly of the infant-deceased on the day in question had been proved beyond any shadow of doubt by the prosecution.

11. P.W. 1 is none-else than the wife of the accused. P.W. 2 is his another sister. Both P.Ws. 1 and 2 would categorically assert that the moment the accused saw the male child, more or less immediately after its birth, he got infuriated by seeing the complexion and he proclaimed that the same was not born to him and so

saying, he whipped out MO 3 hacksaw blade from his waist and inflicted a cut on the abdomen of the infant-male child and ran away from there. The version, as projected by them, stood as a solid rock, despite hurling of questions in cross-examination. There is no rhyme or reason to falsely implicate the accused, in a heinous Crime of murder, leaving out the real assailant. Further, their testimony is corroborated in ample measure by the medical testimony available on record, as stated above.

12. These things apart. Exhibit P. 6 inland letter recovered from the custody of the accused immediately after his arrest throws some light on his having a hand in the dastardly occurrence of cutting the deceased infant. The said letter had been addressed to his father and the said letter was found to have been written by him, by the Scientific Assistant Grade I P.W. 9, by the comparison of the admitted handwriting of the accused in Exhibit P. 9. What is stated in Exhibit P. 6 letter was this. (Matter in Vernacular omitted.) The statement in the letter obviously referred to the dastardly act of his having ripped open the belly of his infant-child on the Deepavali day. Taking all these aspects into consideration, we have no doubt in mind that it was the hand of the accused that was responsible for causing the injury on the abdomen of the infant-deceased by means of a hacksaw blade like MO 3 by ripping open the belly.

13. The next question that crops up for consideration is as to what is the offence that has been committed by the accused. The igniting cause for the occurrence was nothing but the sexual jealousy of the accused. It is not as if the accused never suspected the fidelity of his beloved wife, P.W. 1. A perusal of the evidence of P.W. 1 would suggest that the accused had been suspecting her fidelity very often and she has taken lot of efforts to convince her husband the accused that she never swerved from the path of rectitude. Somehow or other, in the mind of the accused, something was hinging as to his beloved wife P.W. 1, not being loyal to him. The moment he saw the male issue immediately after its birth, he was quite perplexed to see better complexion of the child. He rather felt that such a child could not have been born to him. Enraged at the sight of the child having such a complexion, entertaining a feeling that it is an illbegotten babe by his beloved wife P.W. 1, whipped out MO 3 hacksaw blade and ripped open its belly

and ran away from there. No doubt the accused did not inflict not more than a cut on the person of the infant-deceased. The fact that he did not inflict any more cut on the person of the deceased, at or about the time of the occurrence, did not at all mean that his intention was not to do away the deceased. After all, the male-babe had its existence in the world for a few hours only prior to its being cut. Taking the motive of the accused in ripping open its belly with a lethal and dangerous weapon, like MO 3 hacksaw blade, the intention of the accused for effectuating such an overtact cannot be anyone, other than an act done with the intention of doing away with the infant-deceased, thereby making his act fall under class (1) of Section 300, punishable under Section 302, I.P.C. In this view of the matter, the argument of learned counsel for the appellant has to be rejected and the conviction and sentence, as had been imposed upon the appellant-accused by the Court below, for an offence under Section 302, I.P.C. deserve to be and are accordingly confirmed.

14. In the result, the appeal falls and the same is accordingly dismissed.

15. Appeal dismissed.