

Shanmugham Vs. State

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Court : Chennai

Decided On : Oct-25-1994

Reported in : 1995CriLJ1588

Judge : Janarthanam and ;Thangamani, JJ.

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

Appeal No. : Criminal Appeal No. 120 of 1987

Appellant : Shanmugham

Respondent : State

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

Advocate for Pet/Ap. : K.N. Basha, Adv.

Judgement :

Janarthanam, J.

1. The appellant is the accused in S.C. No. 1 of 1896 on the file of Court of Session, The Nilgiris Division, Uthagamandalam. He was found guilty of an offence under Section 302, IPC, convicted thereunder and sentenced to imprisonment for life. Aggrieved by the conviction and sentence, the present action

had been resorted to.

2. Brief facts are :-

(a) The accused, being a barber by profession, is a resident of Jagathara village, situate within the limits of Aravankadu police station. P.Ws. 1 to 4, 7 and one Vasudevan (since deceased) are the residents of Karaikorai, situate adjacent to the village of the accused. They belonged to Paduga community. The accused, somehow or other, was stated to have developed illicit intimacy with P.W. 4. This became a talk of the village. Such illicit intimacy was also known to P.Ws. 3, 4 and 7 and the deceased. It appears, the illicit connection between a Paduga community woman, like P.W. 4 and the accused, a barber, had been resented to by the villagers.

(b) Some three months prior to the occurrence, which event happened on 15-9-1985, a panchayat was convened in the village to enquire about the illicit connection the accused had with P.W. 4. P.W. 7 one of the panchayatdars. In the said panchayat, the accused and P.W. 4 were summoned. The deceased also participated in the panchayat. After enquiry, the panchayatdars decided that the accused should not have any sort of a connection with P.W. 4 any further. They also directed the deceased to have a watch over the movements of the accused, so as to see that he is not at all making a visit to the house of P.W. 4.

(c) There is a temple, going by the name Ranganathasamy Kovil situate in the village. On 15-9-1985 at about 7 p.m., uriyadi thiruyizha was celebrated. In the said festival, the deceased Vasudevan also participated. As a consequence, the clothes he wore got drenched. At about 7-30 p.m. he went to his house situate very near the temple, that is to say, 200 yards away from the temple to change his clothes. P.Ws. 1 and 2 also followed him. Adjacent to the house of the accused, there is a school. By the side of the school, firewood had been stocked. Near the place where the firewood had been stocked, the accused was then standing. A wordy altercation arose between the accused and the deceased. In the process of the wordy altercation that took place, the accused was stated to have inflicted a incisions out with the barber's knife (MO 1) on the left cheek of the deceased. That apart, he was also stated to have inflicted two more incisions on his neck. One

Bommi Ammal alias Lakshmi was also stated to have been present there. She was stated to have raised a hue and cry as to inflicting incisions on the accused. On hearing the hue and cry, the villagers also rushed to the scene. The accused escaped from there, taking away the knife (MO 1) with him.

(d) As a result of the incised injuries, there was profuse bleeding from the injuries sustained by the deceased. In a bid to save the life of the victim - the deceased, he had been bodily lifted by P.Ws. 1 and 2 to a nearby Cordinate Factory Hospital. In such a process, the clothes of P.Ws. 1 and 2, apart from Bommi Ammal alias Lakshmi got drenched with blood.

(e) P.W. 8 was the then Civil Assistant Surgeon attached to the Cordinate Factory Hospital. At 8-15 PM, the victim-deceased had been examined by him. At that time, he was thoroughly unconscious and within 15 minutes of his examination, the victim-deceased died. Exhibit P. 6 is the wound certificate he issued.

(f) Subsequent to his death, P.W. 1 prepared Exhibit P. 1 complaint and presented before P.W. 11 then writer, Aravankadu police station. On receipt of the same, P.W. 11 registered it as a case in Crime No. 97/85 for an offence under Section 302, IPC. Exhibit P. 13 is the printed FIR. He prepared express reports and sent the same to the concerned officials.

(g) P.W. 13 was the then Inspector of Police, Aravankadu Circle. On receipt of the express FIR, he took up further investigation in the case. He went to the police station, where he seized from P.W. 1 MO 2 bloodstained banian and MO 3 bloodstained shirt, under Form No. 95. He also seized from P.W. 2 MO 4 bloodstained shirt, MO 5 banian and MO 6 dhoti, besides the bloodstained clothes from Bommi Ammal alias Lakshmi. He then proceeded to Cordinate Factory Hospital. Between 10 PM and 1-30 AM (on 16-9-1985), he held inquest over the body of the deceased. Exhibit P. 14 is the inquest P.Ws. 1 and 2 were examined during inquest. After the inquest was over, he handed over the body of the deceased to P.W. 12, along with a requisition for postmortem.

(h) He then searched for the accused and he was not available. On 16-9-1985 at 4-30 AM, he arrested the accused at Coonoor Vottuppattari junction. On

interrogation, he voluntarily gave a confession under Section 27 of the Evidence Act. Exhibit P. 2 is the admissible portion of the confession. Pursuant to the said confession, The accused produced M.O. 1 barber's knife and M.O. 7 Jerkin, which had been recovered under Exhibit P. 3 mahazar. Exhibits P. 2 and P. 3 had been attested by P.W. 5. He then proceeded and reached the scene at 6-30 AM. After inspecting the scene, he prepared Exhibit P. 4 observation mahazar. He also drew Exhibit P. 15, rough sketch of scene. He recovered from the scene. He recovered from the scene M.Os. 8 to 10 grass with earth under Exhibit P. 5 mahazar. Exhibits P. 4 and P. 5 were attested by P.W. 6. He then returned to the station, along with accused. Since he found certain injuries on the person of the accused, he had been sent, with a medical memo, to the hospital for examination and treatment.

(i) P.W. 9 was the then Medical Officer attached to the Government Lawly Hospital, Coonoor. On receipt of requisition from P.W. 13, he had autopsy over the body of the deceased at 9-10 AM. Exhibit P. 7 is the postmortem certificate. He would opine that all the injuries, as found described in Exhibit P. 7, could have been caused by a weapon, like MO 1. He would further opine that injury No. 3 is fatal.

(j) After the autopsy was over, the Constable P.W. 12 seized from the body, M.O. 11 banian with full sleeves, M.O. 12 torn shirt, M.O. 13 sleeveless banian; M.O. 14 torn jatti and M.O. 15 lungi and handed over the same at the police station, which appeared to have been seized under Form No. 95.

(k) At 10-15 PM, the doctor P.W. 9 examined the accused and found on him certain abrasions and a contusion. Exhibit P. 8 is the wound certificate he issued. He would opine that the injuries he found on the person of the accused could have been caused by a fall. The accused had been subsequently sent to Court for remand, by P.W. 13.

(l) P.W. 13 sent Exhibit P. 9 requisition to the Judicial First Class Magistrate, Coonoor for despatching the incriminating material objects seized to the Chemical Examiner for the purpose of examination. On receipt of Exhibit P. 9 requisition, P.W. 10, the Headclerk attached to the Judicial First Class Magistrate's Court,

Coonoor despatched all the incriminating material objects to the Chemical Examiner, as per the directions of the Magistrate for the purpose of examination, under the original of Exhibit P. 10, officer copy of the letter. Exhibits P. 11 and P. 12 are respectively the reports of the Chemical Examiner and the Serologist.

(m) After completing the investigation, P.W. 13 laid a final report under Section 173(2) of the Code Criminal Procedure against the accused for an offence under Section 302, IPC on 30-11-1985 before the Judicial First Class Magistrate, Coonoor.

3. On committal, learned Sessions Judge framed a charge under Section 302, IPC, against the accused. The accused, when questioned as respects the charge so framed, denied the same and claimed to be tried.

4-5. In proof of the charge so framed, the prosecution examined P.Ws. 1 to 13, filed Exhibits P. 1 to P. 15 and marked M.Os. 1 to 15.

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. This apart, he would also specifically state that the case had been foisted upon him by the villagers. He did not choose to examine any witness on his behalf.

7. Learned Sessions Judge, on consideration of the material placed and after hearing the arguments of learned counsel for the appellant-accused and learned Public Prosecutor, rendered the verdict, as above.

8. From the submissions of Mr. K. N. Basha, learned counsel for the appellant-accused and Mr. R. Raghupathy, learned Additional Public Prosecutor representing the prosecution, the only point that arises for consideration is as to whether the conviction and sentence, as had been imposed upon the appellant-accused by the Court below, are sustainable in law.

9. Admittedly, the accused is a barber by profession and hails from a neighbouring village Jagathara. Karaikorai village mainly consists of Paduga community. It so happened that the accused somehow or other developed some sort of illicit

intimacy with P.W. 4, a married woman belonging to Paduga community. The deceased admittedly resided in the same street, in which P.W. 4 had been residing. One has to pass the house of the deceased before ever going to the house of P.W. 4. Since the accused had been frequenting to the house of P.W. 4, that too, especially when she is alone in the house, the said abominable conduct of the accused irked the villagers, especially the deceased. Consequently, a panchayat was convened in the village, so as to see that the illicit connection the accused had with P.W. 4 was once and for all severed and to make P.W. 4 to come to the path of rectitude and virtue and have a blissful matrimonial life. This apart, if appears, Paduga community people in the village took it a sham disgrace for a person like the accused emerging from barber community, having illicit connection with P.W. 4, a married woman and that too, belonging to Paduga community.

10. Some three months prior to the occurrence, a panchayat was convened, in which the accused and P.W. 4 were summoned. In the said panchayat, the deceased also actively participated. He even went to the extent of questioning the accused, whether it was proper for him to have illicit connection with P.W. 4, a married woman. In the said panchayat, a verdict had, however, been rendered that the accused had illicit connection with P.W. 4 and he was further directed that he should sever his connection once and for all with P.W. 4, in the interest of one and all concerned. There was a further direction by the panchayatdars that the deceased should keep a strict watch and vigil over the conduct of the accused in seeing that he was not restoring him clandestine and illicit connection with P.W. 4. It appears that even subsequent to the panchayat, the accused did not sever his connection with P.W. 4 and he was very often frequenting to her house. The deceased, in turn, watching his movements, happened to complain to the villagers and also the panchayatdars that the deceased did not at all cease his illicit connection with P.W. 4 and that sort of a complaint appeared to have irritated the accused, who entertained a grievance against the deceased. All these aspects of the matter had been spoken to, in rather a cogent and convincing fashion by P.Ws. 3 and 7.

11. An argument however, had been advanced that the testimony of those two witnesses should not at all be taken as gospel truth, when especially no muchalika had been recorded as respects what transpired in the panchayat. No doubt, such an argument appears credible, on the face of it. But, if a little bit of probe is made into such a submission, the ugliness taking shelter thereunder would get exposed. In a rustic atmosphere, it is common for the villagers to convene a panchayat in respect of any untoward incident or any other matter required to be mediated in the village, in which the panchayatdars congregate and arrive at a decision and the decision so put, was implemented in the normal and routine course. It cannot be expected that the dispute settled in such a village panchayat would get reduced into writing in the form of a muchalika, so as to be utilised at the later point of time, as and when any dispute arises between the same parties, to be produced before Court. What is relevant, in such a situation is as to whether the oral testimony of those witnesses regarding the panchayat convened in the village is acceptable and consequently safely relied upon.

12. So far as P.Ws. 3 and 7 are concerned, no materials, worth the name, had been elicited during the course of cross-examination to point out that they are having any sort of an embittered relationship with the accused or are they interested in the cause and welfare of the deceased. The fact that they belong to Paduga community, as that the deceased, is of no consequence, when especially, as already pointed out, there is no want of cordial atmosphere between them and the accused so as to impel them to say something falsely so as to implicate the accused in a heinous crime.

13. The grievance against the deceased got aggravated at or about the time of the occurrence. The accused was standing near the firewood heap in front of the house of the deceased, obviously anticipating the arrival of the deceased to his house, after the conclusion of the uriyadi thiruvizha. The evidence on record points out that the deceased took active participation in the said thiruvizha and as a consequence, his cloths got drenched. Naturally after such festival, he went to his house, situate 200 yards away from the place, where the festival took place, obviously for the purpose of changing his clothes. P.Ws. 1 and 2 also started proceeding to their house, after the conclusion of the festival. They naturally

happen to follow the deceased. It is only when the deceased was approaching his house, the accused, who was already standing there in a dare-devil way, questioned the deceased as to how dare enough he was going on propogating in the village that he was blissfully continuing his illicit connection with P.W. 4. No sooner than the deceased hurled him so, naturally his blood boiled and when he was advancing towards the accused, the accused quite unexpectedly whipped out MO 1 barber's knife and inflicted an incisions on his left cheek, besides inflicting two more incisions on his neck. Apart from P.Ws. 1 and 2, one Bommi Ammal alis Lakshmi was also present there and they had the fortuitous opportunity of witnessing such a ghastly occurrence.

14. The accused, after inflicting those injuries, obviously feeling that there was every likelihood of his being caught, ran away helter-skelter from the place, in a bid to save himself from the onslaught of attack to be made by the villagers, in case he was caught. The evident of P.Ws. 1 and 2 as to the manner and methodology of the occurrence rather appears to be cogent and convincing. Their presence in the scene at or about the time of the occurrence cannot at all be doubted, on the facts and in the circumstances of the case. Admittedly, uriyadi thiruyizha, just concluded before the time of the occurrence, P.Ws. 1 and 2, being the residents of the village, naturally could be expected to return to their house and in such process of return only, they had the fortuitous opportunity of witnessing the occurrence.

15. The presence of P.Ws. 1 and 2 at the scene is further reinforced by the recovery of the bloodstained clothes from them by P.W. 13 containing the blood group as that of the deceased. The moment the victim-deceased sustained the injuries at the hands of the accused, they acted like good samaritan in carrying him by their shoulders to the nearby hospital in a bid to save his life and in such process, their clothes got drenched with blood and that perhaps was the reason for their clothes containing the same blood group, as that of the deceased. No tangible material had either been placed on record or elicited during the course of their cross-examination to point out that they are inimically disposed of towards the accused. This apart, despite searching cross-examination having been made, no material contradiction, worth the name, had been elicited, pointing out that they

could not have been present in the scene at or about the time of the occurrence. What all had been thrown by way of suggestions to them was that the murder of the deceased had been committed by the villagers and the case had been foisted upon the accused. Such a suggestion thrown to them remained as a shot made in the darkness, in the sense of the same having been categorically denied. Where was the need for persons like P.Ws. 1 and 2 to unnecessarily implicate the accused in a heinous crime like the one on hand, leaving out the real assailant. The theory, as such, trotted out by the defence could not at all be countenanced.

15A. No doubt, P.W. 4, with whom, the accused was stated to be having illicit intimacy did not at all support the case of the prosecution. What all she would state is that the accused happened to be a friend of her husband and during the absence of her husband, the accused used to frequent her house and that is all and nothing more. Consequently, she had been treated as hostile. The fact that P.W. 4, did not support the prosecution as to her having any illicit connection with the accused cannot at all be stated to have made any sort of an impairable dent in the case of the prosecution. It is too much to expect a woman, like P.W. 4, that is to say, married and living with her husband, to say openly in Court proceedings that she was having illicit connection with her paramour, the accused, although, such relationship she had with him. We are, however, fully convinced with the evidence of P.Ws. 3 and 7, when they say that a panchayat in the village had happened some three months prior to the occurrence, enquiring about the illicit connection of the accused with P.W. 4 and rendering a verdict therefor, as already stated.

16. Of course, Section 27 (of the Evidence Act) confession of the accused had not been acted upon by learned Sessions Judge, inasmuch as there was no discovery of fact, pursuant to the information furnished by the accused, when especially MO 1 barber's knife had been recovered from the person of the accused and M.O. 7 Jerkin was also recovered from him. The fact that M.Os. 1 and 7 had been recovered from the person of the accused cannot at all be doubted, on the facts and in the circumstances of the case, inasmuch as nothing had been elicited either from P.W. 5 or P.W. 13 to doubt about such recovery. No doubt, M.Os. 1 and 7 contained human blood, as disclosed by the Serologist's report, Exhibit P.

12. But, there is no indication in the said report as to its blood group, obviously because of insufficiency of blood for the determination of the group. If the blood group had been determined, then it could have served as a lending assurance factor as to the presence and participation of the accused in the crime. But the presence of human blood in those M.Os. is of some significance, though not (Sic) as a lending assurance factor to the case of the prosecution.

17. The medical testimony available in this case also lends corroborative support to the ocular witnesses, in the sense that all the injuries found on the person of the deceased, as described in the postmortem certificate could have been caused by a weapon like M.O. 1.

18. The case of the prosecution gets necessary face-lift and credibility, when especially the occurrence had been reported at the earliest point of time before P.W. 11, the writer of Aravankadu police station. The occurrence admittedly happened at or about 7-30 p.m. The occurrence was reported a few minutes immediately without allowing any loss of time. The victim-deceased had been taken to Cordinate Factory Hospital, in a bid to save his life and in fact, the victim had been placed at the safe hands of the doctor, P.W. 8 even at 8-15 PM. Within ten minutes thereafter, the victim-deceased died in the hospital. The first information, Exhibit P. 1 reached the hands of P.W. 11 within a few minutes thereafter, that is to say, at 8-40 PM. The case of the prosecution, as projected by the eye witnesses, is traceable to the earliest information, Exhibit P. 1 From the time of occurrence, up to the lodging of the first information, Exhibit P. 1, each and every event occurred or happened in a normal flow without any loss of time. In such a situation, can we say that there had been any attempt for manipulation or fabrication of any evidence against the accused. The answer to such a question posed by us cannot be any one else other than an emphatic 'no'. For the reasons above, we are of the view that the hand that was responsible for causing the injuries on the person of the accused cannot be anyone other than the hand of the accused.

19. The next question that arises for consideration is as to what is the offence that had been committed by him, on the facts and in the circumstances of the case. If

we perceive that genesis or origin of the occurrence, it is rather clear that when the accused castigated the deceased as to his making a calculated propaganda of his still continuing his illicit connection with P.W. 4, the deceased obviously irritated by such conduct of the accused advanced before him and only in such process, the accused inflicted all the three injuries on his person, one on his cheek and two on the neck, a vulnerable portion of human anatomy, that too, with a barber's knife, a dangerous weapon. The doctor P.W. 9 found that sternomastoid and strap muscles having been cut to an extent of 20 x 6 x 3 cms.; the injury caused, a cut on the trachea about 3 cms. long besides external and anterior jugular veins having been cut on both sides. It is common knowledge that once jugular veins is cut, blood would be gushing, as if it is coming out from a jet and the doctor had also stated that such an injury is fatal. Taking all these aspects into consideration, we are of the view that the act of the accused, in such circumstances, cannot be anyone other than the one done with the intention of causing the death of the deceased, thereby attracting Clause (1) of Section 300, IPC.

20. Of course, the accused had certain injuries on his person, as found described by P.W. 9, in Exhibit P. 8, which is reflected, as below :

- (1) Abrasion 2 x 2 cm. over the right neck.
- (2) Abrasion 1 x 1 cm. left parietal region of scalp.
- (3) Contusion 10 x 10 cm. over the right lower chest.'

The first two injuries are mere abrasions and the third injury is a contusion. It is not at all the case of the accused that he sustained injuries in the course of the occurrence and what all he would state is that the injuries had been caused on his person by the the ill-treatment meted out to him at the hands of the police personnel. No tangible materials, of course, had been placed to prove such a theory. Even assuming to be so, it is not any way going to advance his case any further. It is not as if he had been ill-treated to extract any sort of a confession from him. Further the plausibility or possibility of his having sustained such minor injuries on his person, by falling on the ground, in the process of his running helter-skelter, in a bid to escape himself from the clutches of the group of villagers, who

attended the village festival on the day in question cannot also be ruled out, when especially, the medical evidence available on record also points out that it is probable that the injuries found on his on his person could have been caused by a fall on the ground.

21. Thus, we are of the view that the act of the accused falls squarely under Clause (1) of Section 300, punishable under Section 302, IPC. In this view of the matter, the conviction and sentence of imprisonment for life imposed upon the appellant-accused by the Court below for an offence under Section 302, IPC cannot at all be stated to be not sustainable in law.

22. The appeal, as such, deserves to be dismissed and the same in accordingly dismissed.

23. Appeal dismissed.

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