

Rajamani Nadar Vs. the State

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Court : Chennai

Decided On : Mar-27-1996

Reported in : 1997CriLJ911

Judge : Janarthanam and;Rengasamy, JJ.

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

Appeal No. : Crl. Appeal No. 124/1989

Appellant : Rajamani Nadar

Respondent : The State

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

Advocate for Pet/Ap. : Miss Sundarakanchani, Adv.

Judgement :

Janarthanam, J.

1. The appellant was accused in Sessions Case No. 189 of 1987 on the file of the Court of the Session, Tirunelveli Division, Tirunelveli. On trial he was found guilty under Section 302 I.P.C., convicted thereunder and sentenced to imprisonment for

life.

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

3. Brief facts are :

(a) The scene Village Paulnagar, a segment of V. M. Chatram, is situate within the jurisdictional limits of Tirunelveli Taluk Police Station, 5 Kms. South-East. The accused is a resident of Paulnagar. His wife is P.W. 1. The spouses were blessed with three male off-springs. Their eldest son is by name Davidoss. One Jebamani Christopher (since deceased) is their second son. P.W. 3. Jayakumar is their third son. The first son Davidoss is married to P.W. 2. Gnanam. He is blessed with two children. All of them lived together in two portions of the house, one on the south and the other on the north, situate adjacent to each other, as members of the joint family.

(b) The accused was more or less leading a vagabond life. He did not evince any interest in the welfare of the family members. He did not engage himself in any sort of avocation to support the family members. Though he was not earning anything, his wants rather appeared to be manifold and he was very often pestering the members of the family for payment of adequate amount to meet out his demands. His demands came very often. Therefore it appears there were frequent skirmishes and quarrels between himself and the members of the family.

(c) The deceased and the eldest son Davidoss, it is said, had been transacting business in grocery. The grocery shop, it is said is situate one mile away from Paulnagar, where the members of the family had been residing. From the income the two sons got from the grocery business, the entire family members, including the accused, were ecking out their livelihood.

(d) The accused, it appears, somehow or the other developed the habit of addiction to liquor and he was very often found in an inebriated mood. On the day of occurrence, that is, on 23-12-1986, at or about 6.30 p.m. the accused, as usual came to the house in an inebriated mood. In such a mood he was quarrelling with

his wife, P.W. 1. At that time the deceased was present in the house. He questioned the propriety of the accused, his father, in quarrelling with the mother P.W. 1. The egoistic father-accused took it as an affront and insult to himself and entered into a wordy quarrel or duel with his son, the victim-deceased. The wordy altercation or duel somehow or the other developed into a mutual fight with each other, in the sense of each beating the other. In the process of such quarrel and mutual fight, the enraged father-accused went to the southern portion of the house and returned with M.O. 1 knife. The accused did in fact make an attempt to stab the deceased, his son. P.W. 1 wife of the accused somehow or the other made an attempt to ward off such an attack. Her efforts proved futile. The accused with the aid of his left hand pushed aside his wife P.W. 1 and attempted to stab on the deceased, his son. The stab so attempted to be inflicted on the person of the deceased was stated to have landed on his left chest. The accused, no sooner than he did inflict a stab, ran away from the scene without inflicting any further stab.

(e) On receipt of the stab, the victim deceased fell down and profuse bleeding oozed out of the wound. P.W. 1 seeing the blood gushing from the wound, took steps to arrest the bleeding. She was stated to have bandaged the wound with torn pieces of cloth. This occurrence was stated to have happened, when all the family members were available in the house. P.W. 2, the daughter-in-law of the accused and P.W. 3 his other son, studying in a Polytechnic, were present in the house. P.W. 3, in an attempt to save his brother, the victim deceased, ran out and hired a taxi for the victim-deceased being taken to the hospital. The victim-deceased was put into the taxi brought by P.W. 3 and while he was being transported to the hospital, he breathed his last on the wheels. Any how, the victim-deceased had been taken to the Tirunelveli Medical College Hospital with the fond hope to save the life of the victim-deceased, if there is any lingering life in him.

(f) P.W. 10, was the then Assistant Professor in Paediatrics attached to Tirunelveli Medical College Hospital. At or about 7.15 p.m. while he was in charge of the Casualty Department, the victim-deceased had been brought to the casualty department by P.W. 1, P.W. 10, on examining the victim-deceased, found him to be dead. Consequently, he sent Ex.P. 12, death intimation to the outpost police

station situate inside the hospital. He then kept the corpse of the deceased in the mortuary.

(g) P.W. 7 was the then Sub-Inspector of Police, Tirunelveli Taluk Police Station. At 8.00 P.M. while he was in charge of the station, he received a telephone message from the outpost police station situate inside the Tirunelveli Medical College Hospital regarding the occurrence, besides the receipt of Ex.P. 12, death accident intimation. At 2.30 a.m. he reached the hospital and from P.W. 1, who was there, he recorded a statement as per her narration. After reading the same to her and the same being admitted by her to be correct, he got her signature in it. Her eldest son Davidoss attested the said statement. Ex.P. 1 is the statement.

(h) He returned to the police station at 9.00 p.m. along with Ex.P. 1 and on the strength of Ex.P. 1, he registered the case in Crime No. 498/86, for an alleged offence under S. 302, I.P.C. Ex.P. 13, is the printed F.I.R. He despatched Ex.P. 1 and Ex.P. 13 and express reports to the officers concerned through the Constable P.W. 8. Ex.P. 14 is the passport given to P.W. 8.

(i) P.W. 11, the then Inspector of Police, Perumalpuram Circle, in charge of Tirunelveli Circle, on receipt of the information respecting the occurrence over telephone at 9.30 p.m. He rushed to Tirunelveli Taluk P.S. He secured a copy of the express report there and took further investigation of the case. He immediately rushed to Daulnagar at 10.30 p.m. and inspected the scene in the presence of P.W. 5 the Village Administrative Officer and his Thalayari Sankarapandian and prepared Ex.P. 4. Observation Mahazar. He drew a rough sketch of the scene of occurrence (Ex.P. 15). He did not further proceed with the investigation. At 5.30 a.m. on the next day i.e., 24-12-1986 he seized from P.W. 1 who was in the hospital, blood-stained saree (M.O. 2) besides the blood-stained torn pieces of cloth (M.Os. 3 and 4) stated to have been used for bandaging the wound of victim-deceased under Ex.P. 5. Ex.P. 4 and Ex.P. 5. were attested by P.W. 5. Between 6.00 a.m. and 6.00 a.m. he conducted an inquest over the body of the deceased in the mortuary of the hospital. Ex.P. 16 is the inquest report. During inquest he examined P.Ws. 1 to 3. After inquest, he despatched the body of the deceased through Constable P.W. 9, along with requisition Ex.P. 2, for the purpose of

autopsy. He also examined P.W. 5 and others.

(j) P.W. 4 was the then Tutor in Forensic Medicine attached to Tirunelveli Medical College Hospital. On receipt of Ex.P. 2, requisition, he commenced the autopsy at 12.30 p.m. Ex.P. 3 is the post-mortem certificate, he issued. He would opine that the injury described in EX.P. 2, could have been caused by a weapon like M.O. 1. He further opined that the said injury was necessarily fatal and the victim - deceased, after the receipt of the injury, could have been alive for half-an hour.

(k) After the autopsy was over, the Constable P.W. 9, seized from the body blood-stained lungi (M.O. 5), blood-stained green colour banian (M.O. 6) blood-stained half-sleeve shirt (M.O. 7), Men's brief Jatti (M.O. 8) and waist - chord (M.O. 10) and all these seized material objects had been handed over to the police station.

1. P.W. 12 was the then Inspector of Police, Tirunelveli Taluk Police Station. He returned from leave on 24-12-1986 and took up further investigation in the case from P.W. 11. He verified the investigation done by P.W. 11. At 4.00 p.m. he arrested the accused at Tirunelveli Tiruchendur Road adjacent to a silk-worm farm in the presence of P.W. 5 and his menial Sankarapandian. On interrogation, the accused was stated to have given a voluntary confession under Section 27 of the Indian Evidence Act. Ex.P. 6 is the admissible portion of the confession statement. P.W. 11 was also stated to have been present at the time when P.W. 12 secured the arrest of the accused and his giving the confession statement under Section 27 of the Indian Evidence Act. Pursuant to Ex.P. 6, confession statement, the accused took P.W. 12, P.W. 5 and others to the east of silk-worm farm and about 150 feet away on the north of the farm and took out and produced M.O. 1, knife from the place where M.O. 8 torn cloth was found lying. He seized M.O. 1 and M.O. 8 under Ex.P. 7, Ex.P. 6 and Ex.P. 7 were attested by P.W. 5 and another. He examined P.W. 5. He returned to the Police Station along with the accused and the seized articles. He sent the accused to Court for remand on the next day. On 30-12-1986 he examined P.W. 4, P.W. 9 and others. On 12-1-1987 he examined P.W. 8. On the same day, he also sent Ex.P. 8 requisition to Judicial Magistrate II, Tirunelveli for sending the incriminating material objects to the Chemical Examiner for the purpose of chemical analysis.

(m) P.W. 6 was the then Head Clerk attached to Judicial Second Class Magistrate Court No. II, Tirunelveli. On receipt of Ex.P. 8 requisition, he separately packed the material objects, sealed and sent the same, pursuant to the directions of learned Magistrate to the Chemical Examiner for the purpose of chemical analysis under Ex.P. 9, Ex.P. 10 and Ex.P. 11 are the reports of the Chemical Examiner and Serologist respectively.

(n) After completing the formalities of investigation, P.W. 12 laid a final report under Section 173(2) CrI.P.C. against the accused for an alleged offence under Section 302, I.P.C. before the Judicial Second Class Magistrate II, Tirunelveli on 31-3-1987.

4. On committal, learned Sessions Judge Tirunelveli Division, Tirunelveli framed a charge against the accused for an alleged offence under Section 302, I.P.C.

5. To the charge so framed, he denied the same and pleaded not guilty.

6. The prosecution, in proof of the charge so framed, examined P.Ws. 1 to 12, filed Ex.P. 1 to Ex.P. 16 and marked M.Os. 1 to 10.

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

8. Learned Sessions Judge, after taking into consideration the relevant materials placed on record and after hearing the arguments of learned Counsel for the accused and also learned Public Prosecutor, rendered the verdict, as stated above.

9. Mrs. J. Sundarakanchani, learned counsel appearing for the appellant-accused would, with all force and vehemence, contend the materials on record placed by the prosecution in the shape of materials - oral and documentary if perused with a little bit of care, caution and circumspection, would point out that the act of the accused in inflicting a stab which landed on the chest of the deceased at or about the time of occurrence in the process of a quarrel or duel that ensued between him

and his father, the accused, even assuming for argument's sake, to be reflecting the truth and nothing but the truth, he would say that the act of the accused can by no stretch of imagination, be stated to be one done with the necessary and requisite mens rea, attracting any one of the clauses of Section 300, I.P.C., thereby punishable under-Section 302, I.P.C. and if at all the act of the accused, on the facts and in the circumstances of the case relied upon by the prosecution, would fall only under Sec. 304 Part II, IPC and in such state of affairs, it goes without saying that the criminal liability that had been fastened upon the accused - appellant by the Court below for the offence under Section 302, IPC is not at all sustainable, to which course, Mr. R. Regupathy, learned Addl.P.P. though initially was a little bit reluctant to strike a concordant note he however, descended to strike such a note in the course of his further submissions.

10. From the nature of the submissions, projected by learned Counsel for the appellant, we can rather infer or presume that no challenge emerges as relatable to the overt act attributed to the appellant-accused in causation of the injury on the person of the deceased, as projected by the ocular witnesses. The fact that no challenge emerges on such aspect of the matter is not without any reason. The reason is rather obvious, on the facts and in the circumstances of the case. The occurrence took place within the house of the deceased. The deceased is none other than the son of the accused. The ocular witnesses to the occurrence are none else than P.W. 1, P.W. 2 and P.W. 3 who are respectively wife, daughter-in-law and son of the accused. They are natural witnesses. The occurrence had also happened at or about 6.30 p.m. on the day of occurrence. The ocular witnesses had spoken to the aspect of the visible factor, in the sense of there being sufficiency of light available for them to notice the manner and methodology of occurrence. Even assuming for arguments sake that there could not have been adequacy of visible factor, as stated by the ocular witnesses inasmuch as the occurrence took place in the month of December, even then there cannot be any sort of an insurmountable obstacle for the witnesses like P.Ws. 1 to 3 to have pitched upon the assailant, who is none else than the accused himself. The reason is rather obvious. Even in pitch of darkness the ocular witnesses like P.Ws. 1 to 3, the closest relations of the accused and also living together and seeing him day in and day out in the concourse of dealings could have with ease and grace,

identified the assailant as none else than the accused. These things, apart there is no reason why such close relations of the accused should falsely implicate him in a heinous crime of murder, leaving out the real assailant, top of all, no material, worth the name emerged to the surface, by hurling of questions during the course of cross-examination to point out that their version as respects the manner and methology of occurrence is not above reproach and beyond suspicion. Realising all these difficulties, the astute learned counsel appearing for the appellant straight away projected the submission as above in the sense of canvassing the nature of the offence said to have been committed by the accused-appellant.

11. In such state of affairs, it goes without saying that the prosecution clinchingly established through the ocular witnesses P.Ws. 1 to 3 that it was the hand of the accused-appellant that was responsible for the infliction of a stab by means of M.O. 1 which unfortunately landed on the chest of the deceased culminating in his death, some half-an-hour after the occurrence.

12. In this sort of a submission now posed, the submission, as projected by learned counsel for the appellant, besides being endorsed by learned Addl. Public Prosecutor, would come to its fold. No doubt true it is that the infliction of the stab stated to have been give by the accused landed on the chest of the deceased and such a stab, as is getting revealed by the medical testimony available on record, in the shape of the testimony of the Doctor P.W. 4, coupled with Ex.P. 3, post mortem certificate he issued, had entered into the left chest cavity and had pierced the long, pericardium and partly pierced the left atrium and the deceased, according to the medical opinion, would appear to have died of shock and haemorrhage due to stab injury. The further opinion was that such injury is necessarily fatal. From death having been ensured due to the result of the stab given by the accused, we cannot jump to the conclusion that the act of the accused was done with the requisite mens rea prescribed in any one of the clauses of S. 300, I.P.C. thereby punishable under Section 302, I.P.C. We have to evaluate the facts and circumstances of the case which lead to the occurrence.

13. In the case on hand, the evidence available on record clinchingly points out that the accused is a vagabond. He was not earning anything and supporting his

family members. He was very often demanding money for his expenses in getting himself fully drunk. When money, as demanded by him was not paid, even he went to the extent of stealing the utensils in the house and the sale proceeds of such utensils were stated to have been utilised to quench his thirst for consumption of liquor. On the day in question also he came to the house at about 6.30 p.m. in an inebriated mood and picked up quarrel with his wife P.W. 1. When the quarrel with his wife P.W. 1 went to such an eastatic height, the victim deceased son, unable to bear the treatment given to his mother P.W. 1 by the accused, his father, questioned the propriety of the accused in quarreling with his mother P.W. 1. The egoistic father-accused took it as an affront and insult to himself and entered into a wordy altercation or duel with his son the victim-deceased. The wordy altercation or duel somehow or the other developed into a mutual fight with each other, in the sense of each beating the other. Naturally the father-accused might have been felt wounded by his being beaten by his very son deceased in the midst of his family members. The accused getting enraged, went to the southern portion of the house where he used to reside, took out M.O. 1 knife, obviously with a view to chastise his son by inflicting him with some stab on his person. The mother P.W. 1, who was there, unable to bear such a sight of the father wielding a weapon and making an attempt to cause some injury to his son, the deceased, went to the rescue of her son, the deceased, and the accused, who was wielding M.O. 1 in his right hand, pushed aside his wife P.W. 1 by his left hand and inflicted a stab on the person of the deceased, which unfortunately landed on the chest, culminating in his death half an hour later, while he was being transported to the hospital.

14. Pertinent it is to note at this juncture that the accused did not at all inflict any more stab on the person of the deceased. The moment he inflicted the sole stab, which unfortunately landed on the chest of the deceased, he ran away from the scene. In such a situation it cannot at all be stated that the accused did intend to cause an injury on the chest, which was actually inflicted. In such state of affairs, the act of the accused in inflicting a stab on the person of the deceased cannot at all be stated to be one done with the requisite mens rea prescribed under any one of the four clauses Section 300 IPC, thereby liable to punishment under Section 302, IPC and if at all such an act of his can be constructed to squarely fall under

Section 304 Part II, IPC, inasmuch as it cannot be stated that the act of his was not done with the knowledge that it was likely to cause death but without any intention to cause death or to cause such bodily injury as was likely to cause death. In this view of the matter the conviction and sentence as had been imposed upon the appellant-accused by the Court below for an offence under Section 302, IPC deserve to be set aside and in its place, he is to be found guilty under Section 304 Part II, IPC, and convicted thereunder.

15. In fine the conviction and sentence, as had been imposed upon the appellant-accused by the Court below for the offence under Section 302, IPC are set aside and instead he is found guilty under Section 304 Part II IPC, convicted thereunder and sentenced to rigorous imprisonment for five years.

16. Subject to the modifications as above, the appeal in other respects shall stand dismissed.

17. Order accordingly.