

Sivakumar Vs. the State

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Court : Chennai

Decided On : Mar-05-1996

Reported in : 1996CriLJ4229

Judge : Rengasamy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304 and 324; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Criminal Appeal No. 926 of 1989

Appellant : Sivakumar

Respondent : The State

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

Advocate for Pet/Ap. : S.E. Victor, Adv.

Judgement :

1. The appellant stands convicted for the offences under Sections 304(II) and 324 I.P.C. by the learned II Additional Sessions Judge, Tiruchirappalli in S.C. No. 110/89 to undergo rigorous imprisonment for five year and six months respectively. The occurrence took place on 17-7-1988 at 11.00 p.m. in Manamedu village in the house of the appellant itself. The victim of the occurrence is the paramour of the appellant's mother.

2. The case of the prosecution as spoken to by the witnesses is as follows :-

P.W. 3 is the mother of the appellant and she lost her husband about ten years prior to the occurrence. Subsequent to the death of her husband she had chosen to live with the deceased Thekkan. The appellant who was a student in a school is the only Son of P.W.3. The deceased was an addict to drinks and used to frequently quarrel with P.W. 3 and the appellant. A few days before the occurrence he had sold away the Cycle, vessels and books of the appellant. P.Ws. 1 and 2 who are the husband and wife were residing Opposite to the house of the appellant. On 17-7-1988 at about 11.00 p.m. when P.Ws. 1 and 2 heard the voice of the deceased shouting not to cut him, they ran out to the house of the appellant and saw the appellant cutting the deceased with M.O. 1. Aruval. There was light in the house of the appellant and P.Ws. 1 and 2 were able to see the occurrence in that electric light, while the appellant was inflicting injuries on the deceased, P.W.3 his mother intervened and she also sustained a cut injury. After delivering the cuts, the deceased fell down and the appellant ran away with M.O. 1 aruval in his hands followed by him mother P.W.3. P.W. 1 informed about this occurrence to the neighbours and he went to Thottiyam Police Station where he lodged complaint Ex. P.1 to the Sub Inspector of Police, P.W. 10, who registered the same in Crime No. 185/88 for the offences under Sections 302 and 324, I.P.C. Ex. P.12 is the F.I.R. sent by him to the Judicial II Class Magistrate, Musiri and its copies were sent to his superior officers. The appellant and his mother went to the tea shop of P.W. 4 while he was closing his shop and was departing to his residence. The appellant was having M.O. 1 aruval in his hand with blood stains on his shirt. They told him that the deceased was creating problem for the last 10 or 15 days and he also had sold the cycle of the appellant and therefore the appellant cut the deceased with the aruval. Thereafter both of them went towards north. P.W. 11 the Inspector of Police received the F.I.R. at 3.45 a.m. on 18-7-1988 and came to the scene of occurrence. He prepared a rough sketch Ex. P.13 and observation Mahazar Ex. P.12 for occurrence place in the presence of P.W. 5 the Village Administrative Officer and another. The Inspector recovered the blood stained mud M.O. 2, the sample mud M.O. 3, saree M.O.4 and the bed sheet M.O. 5 from the body of the deceased under Ex. P.3 Mahazar in the presence of the witnesses. In the presence of Panchayatdars he conducted inquest and prepared the inquest

report Ex P. 4. The body of the deceased was handed over to P.W.8 for being taken to the hospital for post-mortem. P.W. 6 the Medical Officer attached to the Government Hospital, Musiri, on receipt of the request from the Inspector of Police commenced the post mortem at 4.00 p.m. on 18-7-1988. He found the following injuries on the body of the deceased.

1. A cut injury 5 cms. x 3 cms. x bone deep.
2. An incised wound 2 cms. x 1 cm x 0.5 cm. over left index finger.
3. A cut injury over the flexor aspect of Wrist Joint correspondent to left thumb 1 cm x 1 cm x muscle deep.
4. An elliptical cut injury 5 cms. x 5 cms x bone deep lacerating the muscles and tendons with cut injury to acromioclavicular joint on left axilla.
5. An incised wound of 2 cms x 2 cms x muscle deep lacerating the left carotid artery.
6. An incised wound of 2 cms. x 2 cms muscle deep lacerating the right carotid artery on right side of neck.
7. An incised wound 5 cms x 2 cms. x bone deep on left shoulder.
8. A cut injury extending from right angle of mouth upto middle of right mandible measuring 4 cms. x 2 cms x teeth deep lacerating buccal mucosa.
9. An incised wound 6 cms x 2 cms x 0.5 cm. beneath the chin.
10. A cut injury 3 cms x 2 cms x bone deep with fracturing of radius bone of Lower end.
11. An incised wound of 3 cms. x 2 cms x tendon deep over dorsum of right hand.

INTERNAL EXAMINATION revealed heart 250 gms. pale. Lungs and the stomach normal. The doctor was of the opinion that the death was due to the shock and haemorrhage due to cut injury to neck and major vessels carotids. Ex. P.6 is the post-mortem certificates issued by him. P.W. 8 Constable recovered M.O. 7 Dhoti

and M.O. 8 underwear from the body of the deceased for being produced before the investigating officer. P.W. 11 the Inspector of Police arrested this appellant on 19-7-1988 at 6.00 a.m. in the path leading to Thirieengoi Hill situated in Trichy Salem Main Road. The appellant gave a confession statement the admissible portion of which is Ex. P.4, in the presence of the witnesses and he took them to the Agakkayi amman temple north of Azhagiri. From the bushes in the temple he took out M.O. 6 shirt and M.O. 1 aruval which were seized by the respector of Police under Ex. P. 5 Mahazar. He sent a requisition to the Judicial Magistrate, Musiri for sending the blood stained articles to the forensic Laboratory for examination. The Judicial Magistrate forwarded the articles under Ex. P. 9 covering letter to the Forensic Laboratory from where the forensic report Ex. P.10 and the Serologist's report Ex. P.11 were received by the Magistrate. After the examination of the witnesses the Inspector of Police filed the Charge sheet against the appellant for the offences under Sections 302 and 324 I.P.C. When the accused was questioned under Section 313 Cr.P.C. to explain the incriminating circumstances found against him in the evidence of the witnesses examined on the prosecution side, he said that the deceased had sold his cycle and books on the date of the occurrence, that when he questioned him he came to cut him with an aruval and for his defence he snatched the aruval from the hands of the deceased and attacked him. No witness was examined on his side. The learned II Additional Sessions Judge on perusing the evidence on record has found that the prosecution has not proved the case for the offence under Section 302 I.P.C. but the guilt of the accused was established for the offence under Sections 304(II) and 324 I.P.C. Therefore, he has inflicted the sentence of 5 years R.I. and six months R.I. respectively. As against this conviction and sentence the appellant has come forward with this appeal.

3. The point for consideration is whether the prosecution has established the guilt of the accused beyond all reasonable doubt. The deceased was living with the mother of the appellant, P.W. 3, for more than ten years after the death of her husband. The appellant has given his statement under Section 313 Cr.P.C. that the deceased had sold his cycle and books on the date of the occurrence and as he questioned about that he was about to be attacked by an aruval by the deceased and, therefore, in his defence, he retaliated the deceased with the same

aroval. Therefore, the appellant would admit the occurrence on 17-7-1988 at 11.00 P.M. and the death of the deceased Thekkan at his hands. So, the only question is whether there are any circumstances to accept the case of private defence taken up by the appellant. As rightly argued by learned Additional Public Prosecutor, when it is the plea of the appellant that he snatched the aruval from the hands of the deceased, the threat to his life had ceased and therefore, it cannot be stated that he had the right of private defence to attack the deceased. The evidence of P.Ws. 1 and 2 would reveal that the appellant attacked the deceased with M.O. 1 aruval and the deceased shouted for help crying not to cut him. P.Ws. 1 and 2 were able to go to the house of the appellant where the occurrence took place only after hearing the shouting voice of the deceased. As it was 11.00 P.M. and the witnesses P.Ws. 1 and 2 were in their bed room, they were not in a position to say the reasons for the attack on the deceased. However, P.W. 1 has narrated about the conduct of the deceased. In the cross-examination P.W. 1 would say that the deceased who was an addict to the liquor was frequently quarrelling with the mother of the appellant P.W.3 and he used to quarrel with the appellant also. He further adds that the deceased had sold away the cycle and the vessels from the house of the appellant. The appellant was a student at the time of the occurrence and he has stated that his books also were sold by the deceased. As his cycle and the vessels including the books were sold by the deceased for consuming alcohol, it appears that he became desperate, unable to face his examination. As he is a fatherless boy and only by the earnings of his mother, the livelihood was carried on, I feel that the atrocity of the deceased had provoked him. It is true that there is no evidence as to what provided that appellant for the occurrence on the fateful night. But the circumstances narrated by P.W. 1 themselves would indicate that the deceased by his conduct of taking away the articles from the house of the appellant for selling them had created anguish and hopelessness in the tender mind of the appellant. As the appellant in his statement would state that when he questioned the deceased for his conduct, he came to attack, it is also possible that the deceased might have picked up a quarrel with the appellant, when he questioned about his conduct of taking away the articles from his house for selling them. Therefore, naturally there might have been a quarrel between them, which might not have been heard by P.Ws. 1 and 2, the only eye-witnesses.

4. We must also understand the difficulties faced by the appellant who was a young boy of 17 years old at that time and was educated by his mother who was making cut a small income in her weaving work. When the family was in such a penury the conduct of the deceased, removing the articles one by one for quenching his drinking urges could have naturally placed the appellant in intolerable situation. No doubt that circumstances will not justify his conduct in taking the weapon in his hand to attack the deceased. But the circumstances under which he was living could have made him miserable and therefore these extenuating circumstances inspire the sympathy on him. While awarding the punishment. The evidence of P.Ws. 1 and 2 certainly prove the guilt of the appellant for the offence under Section 304(II) I.P.C. But, I feel the sentence of five years imposed by the Lower Court under the circumstances mentioned above, seems to be excessive and therefore, it can be brought down to two years R. 1 as a special case. This will satisfy the ends of justice for the conduct of the appellant. Though the conviction is confirmed, the sentence is modified to two years R.I.

5. In the result, subject to the modification of the sentence to two years R.I. the appeal stands otherwise dismissed. Though the appellant has been convicted for the period mentioned above, in view of G.O.Ms. No. 781, Home (PRC) Department dated 11-4-1990, G.O.Ms. No. 279, Home (Prison-C) Department dated 23-3-1992, G.O.Ms. No. 296, Home (Prison-C) Department dated 20-2-1993 and G.O.Ms. No. 205, Home (Prison-IV) department dated 23-2-1994, the entire period of sentence is completely remitted. Therefore, the appellant neither be arrested nor detained. The appeal is disposed of accordingly.

6. Order accordingly.