

Sivanandi Vs. State by Public Prosecutor

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Court : Chennai

Decided On : Mar-25-1996

Reported in : 1996CriLJ4469

Judge : Janarthanam and;Rengasamy, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 30, 300, 302, 304 and 324; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173(2) and 313

Appeal No. : Crl. Appeal No. 110 of 1989

Appellant : Sivanandi

Respondent : State by Public Prosecutor

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

Advocate for Pet/Ap. : A. Muralidharan, Adv. ;for P. Sankaran

Judgement :

Janarthanam, J.

1. The appellant was accused in S.C. No. 111 of 1987 on the file of Court of Session, Madurai Division, Madurai.
2. On trial, he was found guilty under section 302, IPC, convicted thereunder and sentenced to imprisonment for life. He was, however, acquitted of the charge

under section 324, IPC, as relatable to the causation of injuries to one Lakshmi, as a consequence of non-examination of the said victim of assault.

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

4. Brief facts are :-

(a) The scene of occurrence, viz., Kuyavarpalayam, Bodi is situate within the jurisdictional limits of Bodi Town Police Station. The accused was originally residing in a house at Kuvayarpalayam of Bodi along with his wife by name Lakshmi. He had been eking out his livelihood by doing cooli work. One pappathi is the daughter of the accused. The house in which the accused had been living along with his wife and daughter Pappathi belongs to P.W. 1, whose wife is P.W. 4, P.W. 1 was stated to have othied the house in favour of the accused for a sum of Rs. 400/- for three years.

(b) Some time prior to the occurrence, which event happened on 27-11-1986 the accused, along with his wife went to Kerala and he had been doing cooli work in an Estate known as Thalaikulam. While he was so doing cook work, he celebrated the marriage of his daughter Pappathi with one Chellaiah (since deceased). The said chellaiah had been eking out his livelihood at Bodi as a loadman. The marriage in fact between pappathi and chellaiah was stated to have taken place some 10 days prior to the occurrence. After her marriage, they were allowed to reside in the house of P.W. 1 taken on 'Othi' by the accused. While the newly weds were so residing in the said house, the accused, along with his wife Lakshmi, returned to Kuvayarpalayam some two days prior to the occurrence. The accused demanded his son-in-law Chellaiah and his daughter pappathi to vacate the house and reside elsewhere. But his wife Lakshmi was stated to have requested her husband-the accused to allow the newly weds to live in the house for some more time till they were able to find a new accommodation. But to such a course, the accused was not at all agreeable. Consequently, there are wordy skirmishes and altercations that came to prevail between the accused and his wife Lakshmi.

(c) On the day of occurrence at about 7.00 p.m. the accused, his wife Lakshmi, his daughter pappathi, son-in-law Challaiah, the house owner P.W. 1 and his wife P.W. 4 and their daughter Baggiyam and certain others were stated to be sitting in a lane situate on the east of the house underneath a lamp post and conversing with each other. The bulb in the lamp post was then stated to be burning. When they were conversing, it appears that the accused again demanded his son-in-law and daughter to find alternative accommodation and vacate the house. His wife Lakshmi requested her husband again to allow them sometime to search for a new accommodation. The accused on such a request emerging from his wife Lakshmi, caught hold of her had he, in fact, was stated to have whipped out M.O. 1. Soori knife from his waist and inflicted two stabs on her left hand and chest. It was exactly at the juncture his son-in-law Chellaiah intervened by saying that it was not proper for him to stab his own aunt who is none else than the wife of the accused. In the Process of such interference, the accused was stated to have inflicted a stab on him with M.O. 1 and the stab so inflicted was stated to have landed on the chest of the said Chellaiah his son-in-law. On receipt of the said stab, the said Chellaiah fell down dead. Thereafter, the accused was stated to have run away from the scene, along with M.O. 1 soori knife.

(d) Thereafter, P.W. 1 took the injured Lakshmi wife of the accused to Bodi Police Station, obviously for the purpose of launching an information as respects the occurrence. They, in fact, reached the Police Station at 7.15 p.m. At that time, P.W. 8, the Sub-Inspector was in charge of the station. The injured Lakshmi gave an information, which was reduced into writing by P.W. 8 as per her narration. After completing the statement, he read over the same to her and got her thumb impression. Exhibit P. 16 is the Statement. On the strength of Exhibit P. 16 he registered a case in crime No. 391/86 for alleged offences under sections 324 and 302, IPC. He prepared express reports and sent the same to the concerned officials. Exhibit P. 17 is the express report. He sent that injured Lakshmi along with a medical memo Exhibit P. 1 to the Government Hospital, Bodi for her treatment. (e) P.W. 2 was the then civil Assistant Surgeon attached to Government Hospital, Bodi, At 7.40 p.m. she examined the said Lakshmi for certain injuries said to have been caused at 7.15 p.m. on 27-11-1986 due to assault with knife in front of her residence. She treated her for the injuries. Exhibit P. 2 is the wound

certificate she issued. She would opine that the injuries described in Exhibit P. 2 could have been caused by a weapon like M.O. 1 at the time and in the manner alleged and those injuries are simple in nature. P.W. 2 referred the injured-victim Lakshmi for the purpose of further treatment to the Government Rajaji Hospital, Madurai. (f) P.W. 9 was the then Inspector of Police, Thani in charge of the Inspector of Police, Bodi circle. At 9.00 P.M. on receipt of the information relating to the case in crime No. 391/86 of Bodi Town Police Station, he rushed and reached the said police Station at 9.30 P.M. He got a copy of the express F.I.R. and took up further investigation of the case.

(g) At 9.45 p.m. while he was in the said Police Station, the accused before him, along with M.O. 1, soori knife. He arrested him and seized M.O. 1 Soori knife, M.O. 2 dothi, M.O. 3 shirt and M.O. 4 banian, of course after giving alternative clothes under Form 95. Since the accused was having certain injuries on his person, he sent him to the Government Hospital Bodi along with Exhibit P. 3 memo for his treatment.

(h) P.W. 3 examined the accused at 10.30 P.M., for certain injuries said to have been caused due to fall on the ground near bus stand at Bodi at 7.00 p.m. on the said day. She found on him an abrasion of 1 x 1 cm., on the left side of cheek just below the left eye. Exhibit P. 4 is the copy of the accident register. She would opine that the injury is possible due to a fall on the ground. (i) At 10.30 p.m. P.W. 9 went to the scene of occurrence and after inspection, he prepared Exhibit P. 7 observation mahazar in the presence of P.W. 5, the Village Administrative Officer, West Chockanathapuram. He seized from the scene M.O. 5 blood stained earth and M.O. 6 sample earth under Exhibit P. 8 mahazar attested by P.W. 5. He also drew a rough sketch of the scene Exhibit P. 18. Between 11.30 p.m. and 2.00 a.m. on the next day, i.e. on 28-11-1986, he held the inquest over the body of the deceased, Exhibit P. 19 is the inquest report. During inquest, he examined P.W. 4 and others. He sent the accused to court for purpose of remand. After the inquest was over, he sent the body of the deceased for purpose of autopsy through constable P.W. 6 along with Exhibit P. 5 requisition.

(j) P.W. 3 was the then civil Assistant Surgeon attached to the Government Hospital, Bodi. On receipt of Exhibit P. 5 requisition, he commenced the autopsy over the body of the deceased at 9.00 P.M. on 28-11-1986. Exhibit P. 6 is the post mortem certificate he issued. He would opine that the injury described in Exhibit P. 6 could have caused by a weapon like M.O. 1. He would further opine that injury with corresponding internal injuries is necessarily fatal and that the deceased would appear to have died of shock and haemorrhage due to injury to heart 12 to 15 hours prior to autopsy. (k) After autopsy was over, the constable P.W. 6 seized from the body M.O. 7 shirt, M.O. 8 dothi, M.O. 9 Jatti, M.O. 10 Saries a pair of chappals and M.O. 11 waist cord and handed over the same in the police station and all of them appeared to have been seized under form 95. (l) The further investigation of the case was taken up by P.W. 10 Inspector of Police, Bodi. On 28-11-1986 he examined P.Ws. 1, 3, 6 and others. On 3-12-1986, he seized from the injured Lakshmi, who was then admitted as an in-patient at Government Rajaji Hospital, Madurai M.O. 12 Sari, and M.O. 13 jacket under Exhibit P. 20 mahazar. He also seized M.O. 14 saree from papathi. On 4-12-1986 he sent Exhibit P. 9 requisition to the Judicial Second Class Magistrate, Uthamapalayam for the purpose of sending the seized 8 incriminating material objects to the chemical Examiner for the purpose of examination. (m) P.W. 7 was the then Head Clerk attached to the Judicial II Class Magistrate's Court, Uthamapalayam. On receipt of Exhibit P. 9 requisition from the Inspector of Police P.W. 10, he separately packed, sealed and sent the incriminating material objects to the chemical Examiner for the purpose of examination pursuant to the directions of learned Magistrate under the Original of Exhibits P. 10 and P. 11 office copies of the letters. Exhibits P. 12 and P. 13 are the reports of the chemical Examiner, while Exhibits P. 14 and P. 15 are the reports of the serologists, respectively.

(n) On 10-12-1986, P.W. 10 examined P.W. 2. After completing the formalities of the investigation, he laid the final report under Section 173(2) Cr.P.C. before the Judicial II Class Magistrate, Uthamapalayam on 16-2-1987 against the accused for alleged offences under Sections 324 and 302 IPC.

5. On committal, learned Sessions Judge framed charges against the accused for offences under sections 324 and 302, IPC as well.

6. When the accused was questioned as respects the charges so framed, he denied the same and claimed to be tried.
7. The Prosecution in proof of the charges so framed, examined P.Ws. 1 to 10, filed Exhibits P. 1 to P. 20 and marked M.Os. 1 to 14.
8. The accused when questioned under section 313 of the Code of Criminal Procedure, 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 behalf.
9. Learned Sessions Judge, after taking into consideration the materials placed on record and after hearing arguments of learned counsel for the accused as well as learned public prosecutor, however tendered the verdict, as stated above.
10. Mr. A. Muralidharan, learned counsel appearing for the appellant-accused would strenuously contend that assuming for argument's sake that the case, as projected by the prosecution is reflecting the truth and nothing but truth, in the sense of the appellant-accused inflicting a stab by means of MO 1 Soori knife, which unfortunately landed on the chest of the deceased, resulting in his death on the spot, it can, by no stretch of imagination, be stated to be an act done attracting the mens rea prescribed under anyone of the four clauses of section 300, IPC, thereby punishable under section 302, IPC and if at all, such an overt act of the appellant-accused, on the facts and in the circumstances of the case, would squarely fall under Section 304, Part II, IPC and that view of the matter, the conviction and sentence, as had been imposed upon the appellant-accused for the offence under section 302, IPC are not sustainable in law.
11. Mr. K. Raghupathi, learned Additional Public Prosecutor would fairly concede and state that on the facts and in the circumstances of the case, the act of the accused, as rightly pointed out by learned counsel for the appellant-accused, could, if at all, fall only under Section 304, Part II, IPC and will not definitely fall under anyone of the clauses of Section 300, IPC, thereby punishable under section 302, IPC.

12. From the nature of the submission of learned counsel appearing for the appellant-accused, which is not seriously disputed by learned Additional Public Prosecutor as stated above, we cannot take it for granted that the evidence adduced by the prosecution, as relatable to the overt act of the appellant-accused is not at challenged and there as no need at all for us to enter into a discussion on such aspect of the matter.

13. In proof of the overt act of the appellant-accused, the prosecution, apart from relying upon the testimony of P.W. 1 and his wife, P.W. 4 also relied upon the testimony of his wife, Lakshmi and his daughter, Pappathi. The prosecution, somehow or other did not opt to examine the said Lakshmi and Pappathi. It is on account of the non-examination of the said Lakshmi, the overt act of the appellant-accused, as relatable to causation of certain injuries by means of MO 1 Soori knife on her, the Court below acquitted the appellant-accused in relation to the charge under section 324, IPC, as stated above.

14. The fact that the prosecution, for whatever be the reason, had been handicapped in not examining the said Lakshmi and Pappathi is not by itself sufficient to throw out the case of the prosecution back, stock and barrel, when especially the testimony emerging from independent quarters, in the shape of the evidence of P.Ws. 1 and 4 had been placed on record by the prosecution. The question, in such a situation that will arise for consideration is whether the testimony of P.Ws. 1 and 4 is acceptable, as relatable to the overt act of the accused, in causation of the injury to the victim-deceased Chelliah, who was none-else than the son-in-law of the accused, so that their evidence can be safely relied upon.

15. (a) P.W. 1 is the owner of the house, in which the accused originally had been residing, along with his wife Lakshmi, before ever his daughter Pappathi was married to the deceased Chelliah. P.W. 4 is none-else than the wife of P.W. 1. It is not as if P.Ws. 1 and 4 lived far away from the scene of occurrence. They admittedly live in the vicinity of the scene of occurrence. It is their evidence that at or about 7 PM on the date of the occurrence, the accused his wife Lakshmi, his daughter Pappathi, his son-in-law deceased Chelliah, P.W. 1 and P.W. 4 were

sitting in front of the house underneath a lamp post and were conversing with each other. It is only at that juncture, it appears that the accused wanted his son-in-law, the deceased and his daughter Pappathi to vacate the house and live in a separate accommodation of their own. His wife, Lakshmi, obviously taking pity on her recently married daughter Pappathi, appeared to have remonstrated the conduct of her husband-the accused and told him to give sufficient time for them to find suitable accommodation for their residence. The Accused appearing to be pettyfog minded persisted in his demand for eviction of the his daughter pappathi and his son-in-law the deceased from the house.

(b) His wife Lakshmi, at that juncture, appeared to have hurled certain vile abuses towards the accused and he, in turn, enraged at the conduct of his wife, Lakshmi, whipped out MO 1 Soori knife, which he was stated to have kept in his waist and inflicted two stabs-one on the chest and the other on the left hand of his wife-Lakshmi and in such process the newly found son-in-law, namely Chelliah was stated to have gone to the rescue of his mother-in-law, proclaiming that the act of his father-in-law, namely, the accused, in stabbing his mother-in-law was not proper and at that juncture, the accused was stated to have inflicted a stab on the person of the deceased his son-in-law, which unfortunately landed on his chest, culminating in his death on the spot.

16. On this aspect of the matter, there is the consistent testimony of P.W. 1, ably supported by P.W. 4, his wife. As already adverted to, both P.Ws. 1 and 4 emerged from independent quarters and both of them have nothing to choose or prefer between the accused and the deceased Chelliah. Further, nothing had been elicited during the course of their cross-examination to make it appear that the accused was having any sort of animosity or embittered relationship with the accused. Nor anything was shown that they were actually interested in the cause and welfare of the deceased. Above all, no material, worth the name, has been elicited in the form of a contradiction-vital enough-to make it appear that what P.Ws. 1 and 4 stated as relatable to the occurrence is not above reproach and beyond suspicion. Such being the case, we do not think that we are far wrong in placing safe reliance on the testimonies of P.Ws. 1 and 4 as relatable to the overtact of the accused, in the sense of himself inflicting a stab on the person of

the deceased by means of MO 1 Soori knife, which unfortunately, landed on the chest of the deceased, culminating in his death on the spot.

17. The ocular testimony of P.Ws. 1 and 4 is getting the necessary and requisite corroborative support from the medical testimony available on record, in the shape of the testimony of the doctor, P.W. 3, coupled with Exhibit P. 6 Postmortem certificate to the effect that the injury, namely, incised wound is the fourth intercostal space with a cut in the fifth costochondral joint 3 x 2.5 cms. entering into thoracic cavity could have been caused by a weapon, like M.O. 1.

18. These things part, there is one more signal circumstance of some importance serving as a lending assurance factor as respects the presence and participation of the appellant-accused in the case. It is the testimony of P.W. 5, Village Administrative Officer of West Chokkanthapuram and P.W. 9, Inspector of Police, Thoni, in charge of Bodi Police Station that at about 9.45 p.m. on the day of the occurrence, the accused appeared before the Bodi Police Station, along with MO 1 Soori knife and at that time, clothes worn by the accused, namely, MO 2 dhoti, No. 3 shirt and MO 4 banian were stained with blood and consequently, these clothes and the soori knife (MO 1) were seized under Form No. 95, and the seized clothes, namely, MOs. 2 to 4 were sent to the chemical Examiner and of those clothes MOs 2 and 3 were found to contain 'O' group of blood, which is the same blood group as that of the deceased, as evidenced by the serologist's report, Exhibit P. 14.

19. From what has been stated above, it is crystal clear that it was the hand of the accused that was responsible for infliction of the stab by means of MO 1 soori knife, which in fact landed on the chest of the deceased culminating into his death on the spot.

20. The moot question that arises for consideration, in such a situation, is as to what was the offence that had been committed by the accused. This sort of a question takes in its fold the submission of learned counsel appearing for the appellant-accused - also ably supported by learned Additional Public Prosecutor representing the respondents.

21. No doubt true it is that the radical testimony available on record, in the shape of the testimony of the doctor, P.W. 3, who conducted autopsy and issued Exhibit P. 6 Postmortem certificate reveals that the injury described in Exhibit P. 6 with the corresponding internal injury is necessarily fatal. From the consequence, as reflected by the medical testimony, we cannot jump to the conclusion that the act of the accused is one done with the requisite and necessary mens rea falling under anyone of the clauses of Section 300, IPC, thereby punishable under section 302, IPC. We have to delve deep into the facts and circumstances of the case to find out whether the said overtact of the accused, in such circumstances, falls under anyone of the clauses of section 300, IPC or under anyone of the clauses of Section 304, IPC.

22. It is, after all a wordy altercation that initially took place among the members of the family. To recapitulate here, there was initially a quarrel between the accused and his wife, Lakshmi relating to the eviction of her beloved daughter Pappathi along with her husband Chelliah-the deceased from the house. The accused-husband was somehow or other had a feeling that Pappathi was not at all born through him and as somehow or other appeared to have had some sort of hallucination or obsession in his mind that the said Pappathi was not born to him; but through some other person, namely through one Asari, and on this aspect of the matter, P.W. 1 throws light in his chief-examination, which was not at all challenged by way of hurling any question in cross-examination. Probably having that aspect of the matter in mind, the accused was persistent in his demand for eviction of the said Pappathi and her husband the deceased Chelliah from the portion occupied by them. His wife, Lakshmi however, taking pity on her daughter Pappathi was adamant in requesting her husband to give some sort of breathing time for his daughter and his son-in-law to find alternative accommodation and till such time, they must be allotted to reside in the said house. The accused, however, was not in a mood to accede to the request emanating from his wife, Lakshmi.

23. It is only in such a context, his wife, Lakshmi appeared to have hurled some sort of vile abuses directed towards her husband-the accused. Naturally the husband got irritated and enraged and he, in fact, took out MO 1 soori knife, which

he was keeping in his waist and inflicted two stabs on her person, one on the chest and the other on her left leg. It is only at that juncture, the newly found son-in-law the deceased, taking a good samaritan attitude, went to the rescue of his mother-in-law Lakshmi and in such process, the accused was stated to have inflicted a stab means of MO 1 soori knife, which unfortunately landed on the chest of the deceased, resulting in his death on the spot. It is on the spur of the moment that the accused inflicted such a stab. He did not revel in inflicting any mere stab on the person of the deceased. He was rest content in inflicting such a solo and lone stab. On the facts and in the circumstances of the case, it also cannot at all be stated that he intended to inflict an injury on the chest of the deceased, which was really inflicted on the spur of the moment. As already stated, he inflicted a stab, which unfortunately landed on the chest of the deceased, which culminated in his death on the spot. In such state of affairs, it cannot at all be stated that the act of the accused in inflicting such a stab on the person of the deceased was with the requisite mens rea falling under anyone of the four clauses under section 30, IPC, thereby making him liable for an offence punishable under section 302, IPC and if at all such an act of his could be stated to have been done with the knowledge that it was likely to cause death, but without any intention to cause death or such bodily injury as is likely to cause death, thereby taking his act to squarely fall under part II of Section 304, IPC.

24. In this view of the matter, the conviction and sentence, as had been imposed upon the appellant-accused for the offence under Section 302, IPC deserves to be set aside and instead, he is found guilty under section 304, Part II, IPC and convicted thereunder.

25. 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 of five years.

26. Subject to the modification as above, the appeal, in other respects, shall stand dismissed.

27. Appeal dismissed.

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