

In Re: Dorasamy Servai

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Court : Chennai

Decided On : Sep-20-1943

Reported in : AIR1944Mad157; (1943)2MLJ660

Appellant : In Re: Dorasamy Servai

Judgement :

Vere Mockett, Officiating C.J.

1. The appellant, the first accused, was the son of the second accused and they were together charged with the murder of Palanichami Pillai on the 26th August, 1942, at Kottayur. The first accused was also charged with the attempted murder of Ponniah Servai. The second accused was charged with abetting the first accused in the attempted murder of Ponniah Servai. The second accused was acquitted, the first accused has been sentenced to death.

2. The eye-witnesses in the case were P.Ws. 8, 9, 10 and 11 and their evidence was accepted by the learned trial Judge. P.W. 8's evidence is representative of the rest. It amounts to this. On the evening in question, about 6 o'clock, P.W. 8, the deceased whose name was Palanichami Pillai, and who was the village munsiff, and P.W. 9 whose name is also Palanichami, went out to the fields for the purpose of nature. Near the cattle-pound were standing accused 1 and 2. On their return from the field near the village chavadi, 'the first accused' ran from behind and cut the deceased on the back of the neck with a vettaruval. The second accused was standing by holding a stick. P.W. 8 noticed P. Ws. 10 and 11 in the vicinity. He

cried out and tried to stop the first accused, but the first accused persisted and cut the deceased four or five times more all over the body. P.W. 8-again tried to prevent him doing this, whereupon the first accused cried out, 'will you go away or shall I cut you also?' The second accused cried out, ' What concern is it of his? ' Cut him also.' The first accused then cut P.W. 8 on the neck with the amval, the blow falling on his right shoulder. P.W. 8 caught hold of the first accused, but he escaped with the assistance of the second accused. P.W. 12, P.W. 13 and another ran up and P.W. 8 and the deceased man were removed to the latter's house. After some delay in getting a bus the deceased and P.W. 8 finally boarded one and went to the hospital at Uttamapalayam and a statement was recorded from Palanichami. That statement was recorded by P.W. 16, a head constable, and was attested by P.W. 8 and is marked as Ex. D-I. It gives very precise details of the affair and of the injuries, and this has been criticised as suggesting that it was inspired by some,., third party. The Public Prosecutor's explanation that this was a ' village munsiff used to recording statements and therefore likely to give one in the from he would expect a statement to be given to himself, is not unlikely. It is of no importance in this case where the facts are all too clear. That statement was given shortly after midnight. On the 27th at 11-35 a.m. another statement was taken before the Sub-Magistrate, P.W. 6. It is marked Ex. D and is consistent with Ex. D-I.

3. The deceased died on the nth September. The appellant surrendered to the Court on the 16th October, the second accused on the 4th December.

4. The appellant's learned Counsel has contended, first, that the prosecution evidence has not brought home the guilt to the appellant and, secondly, that assuming that the acts alleged had been proved he is not guilty of murder but of a lesser offence--section 304 or Section 326, Indian Penal Code. With regard to the first contention I am satisfied beyond any doubt that the learned Judge rightly concluded that it was the first accused who inflicted these injuries on the deceased man. I am not impressed by one of the main arguments put forward, namely, that his finding is weakened by the fact that he did not accept the evidence relating to abetment by accused 2. It is enough with regard to that to say that accused 2 may well have been fortunate in the result of this case. So far as accused 1 is

concerned, P.W. 8's evidence to which I have referred is corroborated by P. Ws. 9, 10 and 11 who saw the occurrence and by P. Ws. 12 and 13 who, though not witnesses of the occurrence, were attracted to the scene by cries and saw the two accused running away, accused I having an aruval in his hands,. They then went straight to the chavadi where they found the deceased on the chavadi lying wounded and they say P. Ws. 9, 10 and 11 were there. The learned Judge did not rely on the evidence of P.W. 14 who states that he supplied milk to a coffee shop and overheard the first accused describe the affair to a man called Ramaswami. The learned Judge, however, states that he is unable to see how P.W. 14 was in any way interested in the case. The rest of the evidence is however more than enough. The statements of the accused are of no assistance to us. Before the Magistrate he denied the offence. Before the learned Sessions Judge when asked what he had to say about the prosecution evidence he denied that he had anything to do with it and denied his presence on the scene on that evening. He explained his absconding by the fact that having heard that he had been falsely implicated in the case he was afraid. The learned Judge quite rightly accepted the evidence of the witnesses to whom I have referred. There was ample light for them to see and there is not a shadow of doubt that they accurately described what they saw. The second point taken by the defence rests on the following evidence. P.W. 1, the Sub-Assistant Surgeon who saw the deceased at 2 a.m. on the 26th-27th August night at Uttamapalayam, says that his injuries were as follows : an incised wound on the left cheek 3 1/2 inches long, an incised wound over the left eyebrow, an incised wound on the upper lip, an incised wound on the right cheek and on the right side of the neck 5 inches long, a lacerated wound 8 1/2 inches long on the left shoulder cutting the portion of the collar bone underneath, an incised wound on the left forearm fracturing the ulna, incised wounds on the middle, ring, and index fingers of the left hand, an incised wound on the right forearm and an abrasion on the back. Of the four upper incisor teeth one was missing and the other three were shaky. It is convenient here to mention that P.W. 8, Ponniah Servai, had a long incised wound 6 1/2 inches by 3 inches on the top of the right shoulder cutting the bone underneath, an incised wound above the right eyebrow and an incised wound on the left palm. With regard to the deceased he says ' Palanichami had serious injuries, but there was no immediate danger to his life.'

The defence counsel did not cross-examine with regard to this statement, preferring perhaps to leave it where it was. He was more concerned apparently to ascertain whether the wounds could have been caused by an aruval when the deceased was standing up. P.W. 4, the Civil Assistant Surgeon at Madura where the deceased died in hospital, conducted the postmortem examination. His evidence adds little to the description of the wounds given by P.W. 1. P.W. 1 considered that three of the deceased's injuries were grievous and the rest simple. P.W. 4's evidence as to the cause of death was as follows:

Death was due to septicaemia and pysemia resulting from the multiple injuries. None of the injuries could each by itself have caused the death of Palanichami. But cumulatively the injuries should prove necessarily fatal in the case of a normal man. The deceased appeared to have had a physique above the normal; he was well built. So in his case the injuries need not have been necessarily fatal. But they were sufficient in the ordinary course of nature to cause death; None of the internal organs were injured.

5. On this the learned Counsel for the defence has argued that the death was due to blood poisoning rather than to the acts of the accused.

6. He relied on decision of the High Court of Allahabad in *Emperor v. Rama Singh* I.L.R.(1920) All. 302. In that case, the appellant struck the deceased three blows with a lathi. One fractured the deceased's bones on the left forearm, another a bone in the right hand and the third both bones of the left leg. In the case of the third injury gangrene supervened and Ghura Singh, the deceased, died. It was contended that the conviction by the learned Sessions Judge of murder was bad in law. The learned Judges discussing the main topic say:

The question which has been really argued before us is the nature of offence thereby committed by Rama Singh. The learned Sessions Judge says that he must, by some presumption of law, be considered to have known that in inflicting these injuries he was likely thereby to cause death. That finding, as it stands, might suffice for the definition of culpable homicide in Section 299, Indian Penal Code, but it is not quite sufficient for the more stringent definition of murder contained in clause 4 of Section 300. As a matter of fact, Ghura Singh died

because gangrene supervened in consequence of the injury to the left leg. We have no doubt that his death was caused by Rama Singh. We also agree with the learned Sessions Judge in holding that there is no warrant in the evidence for a finding that Rama Singh, when he struck Ghura Singh, intended to cause his 'death, or intended to cause such bodily injury as he knew to be likely to cause death. The most serious points in the case against the appellant are the fact that after the first dispute he went away to his house to fetch the lathi with which he committed the assault, and, secondly the fact that Ghura Singh was an old man, apparently of feeble constitution. On the other hand, the evidence does show that Ghura Singh carried a bamboo lathi of some sort and that he defended himself with it.

7. The deceased man apparently did defend himself when attacked. The learned Judges thought that the Sessions Judge had ' gone a little too far ' in bringing the case within the definition of murder. They thought that an English jury would unhesitatingly have convicted him of manslaughter. I may here remark that a Bench of this High Court in *King-Emperor v. Venkota Nari* : AIR1937 Mad634 have expressed the view that considerations with regard to the possible conclusion of jurors are hardly a safe guide when arriving at a conclusion in a criminal case. The learned Judges thought it was very arguable that the conviction should be recorded as one of culpable homicide not amounting to murder under Section 304, Indian Penal Code or the simple one of causing grievous hurt under Section 325, Indian Penal Code. They ultimately decided to record a conviction in the alternative under Section 304 or Section 325, Indian Penal Code and sentenced the appellant to seven years. Mr. K.S. Jayarama Aiyar has relied very strongly on the observation of the learned Judges, ' As a matter of fact, Ghura Singh died because gangrene supervened in consequence of the injury to the left leg.' Mr. Jayarama Aiyar relied on a decision of the Lahore High Court, *Gajjan Singh v. Emperor* A.I.R. 1931 Lah. 103. In that case the accused struck the deceased one blow with a thakwa. The exact dates are not given, but it would appear that the deceased died of septicaemia after a considerable time, five or six weeks after he received the blow. The conclusion of fact by the learned Judges was that the blow was not likely to cause death and that as a matter of fact the accused could not be presumed to have known that it was likely to cause death. This decision which is

on special facts does not seem to assist us. There was no finding by the Court that the accused intended to cause death and it does not appear that he did. I do not understand that in the matter before us there is any distinction between the law of England and the law of India and I propose to refer to two decisions of the British Courts which seem to me directly in point. *Reg. v. Flym* 16 W.R. 319 is a decision of the Irish Court for Crown Cases Reserved. In that case, the deceased, after being struck by the accused, walked two miles to the police barrack and rode home a distance of four miles the next day. The medical evidence was to the effect that the reaction caused by the walking and riding accelerated the death of the deceased, that but for such exertion the deceased would have had a better chance of recovery, that the deceased died of compression of the brain and that the blow was alone sufficient to cause such compression but that the deceased was more likely to have recovered if the deceased had not so walked and ridden. The trial Judge directed the jury that if they believed the doctor's evidence they should find the prisoner guilty. The case came before Pigot, C.B., O'Brien, O'Hagan and Morris, JJ., and Fitzgerald, B. The judgment of the Court delivered by Pigot, G.B., quoted with approval a passage from 1 Hale P.C. 428 in *Edwards Rew's* case, *Keyling's Reports* 26. The Court observed:

These authorities seem to lay down the rule to this effect, that if a man who has received a serious blow or hurt does not alter his ways on that account, but continues to go through the ordinary course of life which he has been accustomed to pursue, that shall not exonerate the giver of the blow from his liability if such conduct has had the effect of causing death. But if, on the other hand, his acts subsequent to the blow have been so far out of his ordinary course as to give rise to a distinct set of circumstances causing a new mischief, there the new mischief will be regarded as the *causa causati*, and not the original blow.

8. The conclusion of the Court was that the cause of death was clearly referable to the blow and that the subsequent consequence of death was not such as to excuse the prisoner for the result of such act. The Court affirmed the conviction. In a workmen's compensation case, *Brinton, Ltd. v. Turvey* (1905) A.C. 230 the respondent's husband died of anthrax, a disease caught by him while sorting wool in the appellant's factory. The question was whether he died as a result of

accident. Halsbury, L.C., in his judgment makes the following observation:

But when some affection of our physical frame is in any way induced by an accident, we must be on our guard that we are not misled by medical phrases to alter the proper application of the phrase ' accident causing injury ', because the injury inflicted, by accident sets up a condition of things which medical men describe as disease.

9. Suppose in this case a tack or some poisoned substance had cut the skin and set up tetanus. Tetanus is a disease; but would anybody contend that there was not an accident causing damage?

10. Then Lord Halsbury continues,

An injury to the head has been known to set up septic pneumonia, and many years ago I remember, when that incident had in fact occurred, it was sought to excuse the person who inflicted the blow on the head from the consequences of his crime because his victim had died of pneumonia and not, as it was contended of the blow on the head. It does not appear to me that by calling the consequences of an accidental injury a disease one alters the nature of the consequential results of the injury that has been inflicted.

11. Lord Robertson in the dissenting judgment seems to have taken the view that anthrax was a disease having no relation to the accident. But at page 236 he accepted the position that tetanus pneumonia, or erysipelas ensuing on accident were in a different category,

for in the illustrations there is postulated an accident distinct from the disease.

12. In my view, the test is whether the cause of death is to be directly associated with the act. Whether it be a deliberate act in criminal cases or an accident in cases of workmen's compensation, if is, I think, well known that the ultimate cause of death in a large number of cases is pneumonia. It would be a strange position if a man who inflicts a wound causing almost immediate death should be guilty of murder, whilst a man who inflicts a very similar wound from which pneumonia supervenes should not. On the facts of this case it is clear to me that the deceased

man, in spite of his physique which is said to have been exceptionally robust, died as a direct result of the injuries inflicted upon him by the appellant; and that the appellant intended his death is evident from the facts. The result was not as immediate as he intended and not perhaps quite in the manner that he intended. But in the processes of nature, in spite of medical attention one of the well-known perils from a wound supervened, namely, blood poisoning, and the deceased died. The chain of causation is in my view direct. I must add that in view of the injuries inflicted, even had the intention to cause death not been clear I should still have affirmed his conviction. I must record my respectful doubt as to the correctness of the decision of the learned Judges in *Emperor v. Rama Singh* I.L.R.(1920) All. 302. on the facts as reported. I am constrained to do this as there is very little authority in India on this topic and it seems that this decision is cited as an Authority in the Madras Presidency. In the Allahabad case there were inflicted upon ' a feeble old man ' blows which fractured the bones of his left arm, the bone in his right hand and both bones on the left leg. He did not die at once. The actual cause of death was gangrene, but it was directly related to the injuries inflicted upon him and the nature of the act which caused the injuries seems to me to come within the second clause of Section 300, Indian Penal Code. A person who inflicts such injuries especially upon ' a feeble old man ' must in my opinion be presumed to know that he is likely to cause death. In the *Jesuit*, I am of opinion that the learned Sessions Judge rightly convicted the appellant before us and under the circumstances rightly sentenced him to death, there being nothing which can be urged in extenuation. I would confirm the conviction and sentence and dismiss the appeal.

Shahabuddin, J.

13. I agree.