

Narasinga Nadar and anr. Vs. the State

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Court : Chennai

Decided On : Jul-11-1984

Reported in : 1985CriLJ1397

Judge : Singaravelu and ;S.A. Kader, JJ.

Appellant : Narasinga Nadar and anr.

Respondent : The State

Judgement :

S.A. Kader, J.

1. The appeal is against the judgment of the Sessions Judge, Tirunerveli in S.C. No. 10 of 1981 finding the first appellant/first accused guilty under Section 302 read with Section 34 of the I.P.C., convicting him thereunder and sentencing him to suffer imprisonment for life and finding the second appellant/second accused guilty under Section 302 of the I.P.C., convicting him thereunder and sentencing to imprisonment for life.

2. The facts of the case are these : - The first accused is the father and the second accused is his son. The third accused in the court below is the brother-in-law of the first accused, P.W.I is the son of the elder brother of the first accused and the deceased Chelladurai. The first accused and his younger brother, the deceased Chelladurai owned 3 acres of agricultural lands each cultivated with the water from

a common well in which an electric motor and pumpset were installed. There were frequent quarrels between the first accused and the deceased in the drawing of water and the deceased was unable to cultivate and realise the produce from his lands. Consequently he leased out his lands to P.W.9's father Sudalaimadan, one Muthusami and one Maharaja Nadar. The first accused was aggrieved thereby. On the day prior to this occurrence i.e., on 28-5-1980, when the lessee Maharaja Nadar went to draw water from the well, he found the fuse carrier missing. P.W.9, Muthusami and Maharaja Nadar went to the first accused and quarrelled with him and got back the fuse carrier.

3. On 29-5-1980 at about 8.30 a.m., the deceased was proceeding along Pudhiyamputhur-Tuticorin Road with M.O.1 green bag in his hand. P.W. 1 was at that time proceeding to his shop and saw the deceased ahead of him at a distance of 50 feet. Suddenly the accused 1 and 2 came from the west, the first accused armed with a sun knife. The third accused came from the lane and instigated the accused 1 and 2 to attack the deceased. The accused 1 and 2 surrounded the deceased, who went near the tea stall of P.W.2. Then, the first accused stabbed the deceased on the right side of the chest on the left flank, on both the shoulders repeatedly with his bichuva knife. When the deceased tried to ward off, he was injured in his hands. The second accused stabbed him on the back of the right ear, on the right shoulder, on the left hip and on the back with his suri knife. The deceased Chelladurai fell on M.O.2 bench in the tea-stall of P.W.2. His M.O.1 bag and his M.O.3 chappalslipped away. M.O.4 towel of the first accused and M.O.5 sheathe of the second accused also fell at the spot. The deceased then got up and with very great difficulty walked to the nearby house of P.W.4. The accused 1 and 2 with their weapons ran eastwards. P.W.4, who came out of his house on seeing the deceased and P.W.5, who was then going to take tea in the tea stall of one Pandian, saw the accused ran away. P.W. 5 immediately came to the house of P.W.4 and found the deceased lying on a cot. The deceased was murmuring and P.W.5 bandaged the wounds with M.O.6 and M.O.7 clothes from the house of P.W.4. Meanwhile P.W.1 went straight to the house of the village munsif and came to the house of P.W.4 along with village munsif. The deceased was then found dead by P.W.5.

4. P.W.I and the village munsif went to Ottapidaram and gave Ex.P.14 complaint to P.W. 11, the Inspector of Police, Ottapidaram. P.W.11 came to the scene at 10-30 a.m., along with P.W.I and the village munsif. He prepared an observation, mahazar under Ex. P10 and a sketch under Ex. P. 15. He recovered near the .tea shop of P.W.2, M.O.1 bag, M.O.2 plank of the bench, M.O.3 chappal, M.O.4 bloodstained towel and M.O.5 sheathe of knife under Ex.P.11 mahazar. He also seized M.O.10 bloodstained earth in between the tea stall of P.W.2 and the house of P.W.4 under Ex.P.12. He then conducted inquest over the body of the deceased from 2 p.m., under Ex.P.16. He also seized M.O.8 blood-stained palmyra fibre from the cot on which the deceased was lying and M.O.16 blood-stained earth and M.O.17 chappal under Ex.P.13. The body was then sent to the mortuary.

5. P.W.3, Dr. Muniyandi, attached to the Government Hospital, Ottapidaram, conducted autopsy on the body of the deceased at 3-20 p.m., on 29-5-80. He found on the body the following injuries;

1. An incised (stab) wound 4' X 1' X 1' on the back of the right ear;
2. An abrasion (curved) 1 1/2' X 1/8' X just 2' above the injury No. 1.
3. A wound 1' X 1' X 1/3' above the right nipple.
4. A scratch 3' X 1' above the right nipple.
5. An incised wound on the right middle of the shoulder 1 1/2' X 1/2' X 1'.
6. An abrasion on the right elbow joint with irregular edge having the diameter of 2mm.
7. A long abrasion on the right forearm 7' X 1/4'
8. An oval shaped (stab) wound opened back of the right ambit 1' X 3/4' X 6'.
9. A wound on the tip of the left shoulder 1 1/2' X 1' X 6'.
10. An abrasion on the left elbow 1' X 1/2'.

11. Round shaped abrasion diameter 2 mm., on the elbow joint.
12. An incised wound 1' X 1/2' X 1' on the left fore arm.
13. An injury in the palmar region of the left upper limb in the index and middle finger. In the middle finger 3/4' X 1/2' X 1/4'. In the index finger 3/4' X 1/2' X 1/4' bone not fractured.
14. An abrasion on the left knee ovalshaped 2 mm. diameter.
15. 1' X 1/2' X 2' incised wound in between the renal and splenic area.
16. An injury 2' X 1/4' X 1/4' on the back 4' above the hip joint.
17. An injury 1' X 1/4' X 3' on the left back.

On dissection he traced injury No. 1 to the base of the neck 7' depth cutting the carotid artery. In the opinion of the medical officer this injury No. 1 is sufficient to cause death and the deceased would appear to have died of shock and haemorrhage as a result of injury No. 1. Ex. P3 is the post-mortem certificate. After autopsy, M.Os. 6 and 7 blood-stained towels, M.O.9, blood-stained dhoti, M.O.10, blood stained shirt, M.O.11 blood-stained underwear, M.O.12 bloodstained banian, M.O.13 wrist watch and M.O.14 paper were recovered.

6. On 3-6-1980 the accused 1 and 2 surrendered before the Magistrate at Madurai. On 15-9-80, P.W.12, who succeeded P.W.11, the Inspector of Police, filed the charge-sheet after completion of the investigation.

7. The plea of the appellants was one of denial.

8. The learned Sessions Judge found the third accused not guilty of the charge under r Section 302 read with Section 109 of the I.P.C. and acquitted him. He found the first appellant/first accused guilty under Section 302 read with Section 34 of the I.P.C. and the second appellant/second accused guilty under Section 302 of the I.P.C. and convicted and sentenced them as stated above. Hence this appeal by the accused 1 and 2.

9. The deceased and the first accused were brothers. They owned 3 acres of lands each and those lands were irrigated from a common well. According to P.W.1, who is the son of the elder brother of the first accused and the deceased, there were frequent quarrels between the deceased and the first accused in the matter of drawing water from the common well. Consequently, the deceased leased out his lands to P.W.1, his father one Muthusami and Maharaja Nadar. On the day prior to the occurrence, the first accused has removed the fuse carrier from the electric installation in the common well and consequently P.W.9, Muthusamy and Maharaja Nadar have gone to the house of the first accused, quarrelled with him and got back the fuse carrier. It is obvious therefore that there was enmity between the first accused whose son is the second accused and the deceased.

10. This criminal episode has taken place at 8.30 a.m., on 29-5-1980 in front of the tea stall of P.W.2 on the east-west road. The deceased was proceeding westwards with M.O.I bag and P.W.1 who is his brother's son and who was going to his shop has seen the deceased 50 feet ahead of him. It was at that time the accused 1 and 2, who came from the west, armed with a bichuva knife and the second accused with a suri knife surrounded the deceased and as the deceased went near the tea stall of P.W.2 they have attacked him. The first accused has inflicted stabs repeatedly on the right side of the chest, left flank and on the shoulders while the second accused has stabbed the deceased on the back of the right ear on the left shoulder and on the back. As the deceased fell on the bench in front of the tea stall of P.W.2, the accused have run away with their weapons, the first accused leaving behind his towel and the second accused the sheathe of the knife. The deceased struggled his way to the house of P.W.4 and fell on a cot there. P.Ws.4 and 5 have seen the accused run eastwards. P.Ws. 1 and 2,6 are the eye-witnesses to this occurrence and P.Ws.4 and 5 have seen the accused run away.

11. The testimony of P.Ws.1 and 2 as to the occurrence is quite clear and does not suffer from any infirmity. In spite of searching cross-examination, the hard core of their evidence has not been shaken to the point of disbelieve. P.W. 1, is related to both the accused and the deceased being the brother's son of the first accused

and the deceased. It is P.W.1 who has gone with the village munsif to Ottapidaram and given Ex. P1 complaint at 10 A.M. on that day and Ex. P1 fully corroborates his testimony in Court. It is suggested on behalf of the accused that the first accused did not attend the funeral of P.W. 1 's father and hence the testimony of P.W.1 should not be accented on its face value. It has however been elicited from P.W. 1 that the first accused attended the . marriage of P.W.1's sister and there was no enmity between them. It is also difficult to believe that P.W.1 who is related to the deceased as well as the accused would falsely implicate the accused in a case of murder. P, W.2 is the natural neighbourly witness, for, it is in front of his shop this tragedy has taken place. His evidence is also quite consistent and convincing. It is urged that on the day of occurrence all the members of the family of P.W.2 had gone to Thiruchendur to see the Visakam festival, that they returned only on the next day and hence P.W.2 could have witnessed the occurrence. But, to the question put by the Court, P.W.2 has answered that he did not go to Tiruchendur and what he meant was only than all the other members of his family had gone to Tiruchendur. Then we have the evidence of P.Ws.4 and 5 who have seen the accused run eastwards. The deceased after sustaining the injuries has walked to the house of P.W.4 and fallen on the cot. On seeing him P.W.4 comes out of the house and finds the accused run away. The testimony of P.W.4 is quite natural and is entitled to acceptance. P.W.5 is a Homoeopathic doctor, who has seen the accused run away when he was going to the tea stall of one Pandiyan. He has immediately proceeded to the house of P.W.4 and examined the deceased. He was then alive, but, some time later he found him dead. It is he who had bandaged the wounds with the clothes taken from the house of P.W.4. There is also nothing to cast aspersion on the testimony of P.W.5. We are satisfied on the testimony of P.Ws.1, 2, 4 and 5, that the accused 1 and 2 who have cornered the deceased, stabbed him repeatedly and inflicted the injuries found on his person on 29-5-1980 at about 8-30 a.m., just in front of the tea stall of P.W.2.

12. Now to the nature of the offence. The autopsy conducted on the body of the deceased has disclosed as many as 17 injuries. Injury No. 1 on the back of the right ear has dived deep into the neck and cut the carotid of the artery. It is this injury which according to the doctor, P. W.3, who has conducted the autopsy is fatal, and has brought about the death of the deceased by shock and

haemorrhage. The testimony of P. Ws. 1 and 2 shows that it is the second accused who has inflicted this injury. The seat of the injury, the nature of the injury and the weapon used give no room for doubt that the intention of the second accused who inflicted this injury was to cause the death of the deceased. The court below has therefore rightly found him guilty under Section 302 of the I.P.C.

13. It is urged by the learned counsel for the appellants that there is no room for holding that there was any common intention on the part of the accused 1 and 2 to cause the death of the deceased, that the fatal injury caused by the second accused was in furtherance of any such common intention, that all the injuries inflicted upon the deceased by the first accused were simple in nature and hence the first accused can be convicted only under Section 324 of the I.P.C. We are unable to agree. 'Common intention' within the meaning of Section 34 of the I.P.C., no doubt, implies a pre-arranged plan and to convict the accused of an offence applying this section, it should be proved that the criminal act was done in pursuance of a pre-arranged plan. It is difficult, if not impossible, to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case. The fact that the father and the son have come together each armed with a deadly weapon, and the fact that on seeing the deceased they have covered him and as the deceased went near the tea stall of P.W.2, they have attacked him with their deadly weapons, lead to the irresistible conclusion that there was a prior concert, a prior meeting of the minds to do the deceased to death. It is then pointed out that according to the prosecution the first accused attacked the deceased and inflicted several injuries and only thereafter the second accused began to attack and in the course of his attack inflicted the fatal injury and in such a case the first accused cannot be imputed with the intention of the second accused to-cause the death of the deceased. An almost identical case came up before the Rangoon High Court in *Maung Twa v. Emperor* (1926) 27 Cri LJ 827 where the accused and his son, who absconded, attacked the deceased, who succumbed to the injuries and it was put forward in defence of the accused that the sole intention of the accused and his son was to cause grievous hurt to the deceased by the use of a spear and a long bamboo and that thereafter when the accused's actions had ceased the son proceeded to stab the deceased to death while the accused stood aside and took

no further part in the matter, it was held that the intention and the actions of the accused and his son could not be divided into two parts and the accused was found guilty of murder. We respectively agree with the aforesaid view and conclude that the actions of the father and the actions of the son herein also could not be split into two watertight compartments and assessed. The existence of common intention before this criminal act was perpetrated is completely satisfied in this case, as the two accused could not but by a prior concert come together, surrounded and attacked the deceased. We are satisfied and we agree with the court below that the offence falls under Section 302 read with Section 34 of the I.P.C. in respect of the first accused.

14. In the result, the appeal fails and is dismissed. The conviction and sentences imposed upon the appellants are confirmed.

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