

In Re: Kannan

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Court : Chennai

Decided On : Nov-03-1952

Reported in : AIR1953Mad579; (1953)IMLJ180

Judge : Govinda Menon and ;Basheer Ahmed Sayeed, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 304

Appeal No. : Referred Trial No. 58 of 1952 and Crl. Appeal No. 342 of 1952

Appellant : In Re: Kannan

Advocate for Pet/Ap. : K. Narayanaswami Mudaliar and ;V. Gopala Goundan, Advs.;Public Prosecutor

Judgement :

Govinda Menon, J.

1. This is a case in which there can be no doubt or dispute as to whether the appellant-accused has caused the death of the deceased Kannayiram. But the only point which requires consideration is whether the offence comes within the ambit of Section 302 Penal Code or whether it is reduced to one under Section 304, Penal Code.

2. The prosecution case is short and simple. There have been instances of previous ill-feeling between the accused and the deceased, On 2-4-1952 at about

4 p.m. when the deceased, his mother P.W. 1 and another person P.W. 2 were returning from a shandy along the village street, had passed certain houses and approached the house of the accused, the mother of the accused came out and abused the mother of the deceased, P.W. 1 in a very' vile and foul language. There was exchange of words between the two women. The deceased sat in front of one Arunachala Goundan's house. Thereafter it is stated that the accused's mother advanced with a broomstick and brandished it against the deceased. On hearing this confusion and noise the accused, who was in his shop, came out and there was exchange of words between the accused and the deceased, then P.W. 3, a neighbour, who was there, intervened and separated them. At that time the accused is alleged to have taken out a pen-knife from the pocket of his shorts and given a stab to the deceased on the left chest. The injury, according to the doctor, was & very serious one, which resulted in immediate death. The deceased fell down and died instantaneously. P.W. 5, a brother of the deceased, who came on the scene, straightaway went to the village Munsiff', P.W. 9 and gave him a, complaint at 4-30 p.m. which is marked in the case as Ex. P. 3. The body of the deceased was taken from the place, where he fell down and put on a cot in the vicinity. The accused is also alleged to have gone straightaway to the Village Munsiff and asked him for protection. The Village Munsiff detained him and sent a report to the Police. The Police officer, P.W. 13, arrived on the scene at about 6 a.m. the next day. The accused was in the Village Munsiff's house and was taken into custody. The Sub-Inspector investigated the matter & a charge sheet was filed against the accused which resulted in a committal to the Sessions Court and subsequent trial by the Sessions Judge. The Sessions Judge found him guilty of an offence under Section 302, Penal Code and imposed the extreme penalty of law. Though, according to P.W. 9 the accused admitted the offence of stabbing the deceased and prostrated before P.W. 9 imploring him to save him, both before the Committing Magistrate and the learned Sessions Judge the accused did not admit having stabbed the deceased. He gave a version, which, on the face of it, cannot be accepted. Before the Sessions Judge, he has stated that he was not having any knife and that he did not know what he did in his anger.

3. The question, which we have to consider, is whether first of all, it was the accused that stabbed the deceased. On this aspect of the case, we have the

evidence of the eye-witnesses, P.Ws. 1 to 4, All these witnesses speak about the quarrel and the accused stabbing the deceased. P.Ws. 1 and 2 say that after the deceased was stabbed, he took out a shoe from his foot and tried to beat the accused with it. As against this, we have the evidence of P.W. 13, the Sub-Inspector that at the time of the investigation P.W. 1 told him that the deceased began to beat the accused with a sandal and it was then that the accused took out a knife from his shorts' pocket and stabbed the deceased. P.W. 13 also deposed that a shoe was recovered from the scene of occurrence. P.W. 1 in cross-examination had to admit that she told the Police that her son threw a sandal at the accused after he was stabbed. So far as P.W. 2 is concerned, he also admits that the deceased went a few steps, threw a sandal against the accused, fell down and died. P.W. 3's evidence is to the effect that there was wordy quarrel between the deceased and the accused, and then the accused said that he would beat the deceased with a sandal and that the deceased thereafter took off a shoe and kept in his hands. He further deposed that the deceased attempted to beat the accused with the shoe, but he prevented him from doing so. P.W. 4 in cross-examination had to state that the deceased had a shoe in his hands and went to beat the accused. Though these witnesses now want to say that the incident regarding the attempt to beat with the shoe was after the stab, it seems to us, that portion of the prosecution evidence is not entitled to credence at our hands. It is unlikely that, after the deceased sustained a very serious injury as the one which was inflicted on him, it would have been possible for him to take the shoe from his foot and try to beat the deceased. The Doctor, P.W. 8, says that the injury was an oblique punctured wound 1½ inches by 1 inch on the left side of the chest in the region of the breast, 2 inches internal to the left nipple. According to the doctor the death was due to shock and haemorrhage due to injury of the heart as is evident from the internal examination. When the doctor says that a small portion of the left lung was protruding through the wound that the pectoral muscles were pierced through the costal cartilage of the left fourth rib at the junction of the sternum, which was cut through, and that also the intercostal space obliquely extending from 3 inches costo-condral junction on to the junction of costal cartilage of the fourth rib with the sternum, the injuries were very severe which fact cannot be disputed. After having received such serious injuries, where the heart and lungs were affected we

do not believe that the deceased would have had the strength to attempt to beat the accused with a shoe.

What would have happened is, that on account of the mothers of the accused and the deceased quarrelling with each other the sons joined the fray and when the deceased either beat or attempted to beat the accused with a shoe, he retaliated by stabbing the deceased with a penknife, which he was carrying in his shorts' pocket. It may also be remembered that it was the deceased, according to the evidence, that threw out the first challenge. He should have been considered to be the aggressor. In such circumstances, we are of opinion that the accused had not only provocation, but such provocation was grave and sudden. In this country if a person were to beat another with a shoe, that is considered to be the height of shame and particularly in the midst of a number of villagers right in the street, We are inclined to hold that the attempt to beat a man with a shoe would give sufficient provocation to the man intended to be beaten. The accused must, therefore, be said to have had not only grave provocation but sudden provocation as well. There is no evidence to show that the accused came there with the object of causing anybody any injury. The knife which had been produced and which is found stained with human blood is a small pen knife which is usually carried by persons. It is not the prosecution case that there was any premeditation so far as the offence is concerned. In such circumstances, we do not feel justified in agreeing with the Sessions Judge that the offence is one of murder for the reasons stated by us above, but we are of opinion that the accused can be found guilty only of an offence under Section 304, Penal Code, Part I. We, therefore, set aside the conviction under Section 302, Penal Code and sentence to be hanged by neck; but convict the accused of an offence under Section 304, Penal Code and sentence him to rigorous imprisonment for seven years.

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