

Thirupathuran Vs. Emperor

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Court : Chennai

Decided On : Aug-21-1934

Reported in : AIR1934Mad722; 155Ind.Cas.408

Appellant : Thirupathuran

Respondent : Emperor

Judgement :

Walsh, J.

1. The accused has been convicted of murder and sentenced to transportation for life. He prefers this Jail appeal. The facts according to the prosecution are these. On 6th November 1933 the accused reported shortly before midnight to P.W. 6 that the deceased had come to his house the previous evening when he was absent at a shandy knocked at his door, pushed his wife and attempted to seduce her. He asked P.W. 6 to convene a panchayat about this and P.W. 6 did so, summoning P.Ws. 7, 9, 10- and others. Deceased was called and accused laid his complaint before the panchayat. Deceased denied the charge and suggested that accused's wife be sent for. This was done' and she stated' that somebody had knocked at her door the previous night, that on opening it she had found nobody there and had not seen the deceased. Deceased then asked accused why he had come forward with a false complaint, on which accused abused him in filthy terms saying that deceased had not only attempted to seduce his wife but was now

telling lies about it. The deceased returned the abuse and caught hold of accused's tuft of hair, and gave him a blow with his fist on the back. The deceased and accused then closed with each other and accused is said to have caught hold of deceased's tuft also. As P.W. 7 and 9 approached with a view to separate them, deceased fell down saying that he was stabbed. Accused ran away. A knife was found sticking in the abdomen of the deceased. P.W. 7 took it out and handed it to P.W. 6. Of the village officers the karnam P.W. 17 was the first to arrive on the scene and he was followed by the Village Munsif, P.W. 16 who lives about a mile from the scene of offence. The deceased was still alive when the latter came and told the Village Munsif that accused had stabbed him. The Village Munsif sent for the accused who admitted that he had committed the offence unknowingly. The Village Munsif despatched his reports which the karnam wrote. (After discussing evidence His Lordship proceeded).

2. The circumstances of the case are such as to render it immaterial whether it was dark at the time or whether there was some starlight, for in view of the statement of the accused in the Sessions Court the highly improbable theory that somebody else came up and stabbed the deceased is not possible or else accused would certainly have known of it. I have no doubt that the prosecution evidence is substantially true. Next I have to consider whether the offence amounts to murder. The learned Sessions Judge says on this point:

No doubt the accused may have received some provocation but it was certainly not of such grave and sudden nature as to deprive him of the power of self-control. Besides the accused was dealing with an unarmed man and he seems to have taken undue advantage over him by stabbing him with a knife and thus acted cruelly. There was really no need for the accused to have used the knife against the deceased in ordinary fight like this.

3. I must say that until Mr. Bewes drew my attention to the case reported in *Nagalu v. Enmperor* 1928 Mad. 136, I was inclined to agree with the lower Court. In that case the facts were very similar. The two Judges who heard the appeal differed, Jackson, J. holding that the offence was of murder and Thiruvengkatachariar, J., holding that it was not. On a reference to a third Judge Wallace, J., the latter

agreed with Thiruvengkatachariar, J., The case is clearly parallel and I am not able to see any real distinction. In that case the deceased (while a fight was going on between some other relations of the parties) ran out of his house calling 'Where is this Nagulugadu?' (the deceased). Accused in that case standing near a tree in front of his house defied the deceased and told deceased to come on. Comparing that with the present case the accused no doubt began the abuse of deceased before the panchayat and then deceased abused him in return. I see no substantial difference at this stage between this case and the case under reference where the deceased 'was provoking a fight' (to quote Wallace, J.) and the accused took up the challenge. The question who first began the abuse does not seem to me to make any material difference. After this the cases are almost exactly parallel. The deceased in that case began the fight by catching hold of the tuft of the accused and giving him blows with his fist exactly as here. Then there was a struggle during which the deceased held the accused firmly by the tuft and then accused stabbed the deceased with a dagger which he had with him. It is true that in the present case there is evidence that after the deceased caught hold of accused's tuft and given him a blow with his fist the accused also caught hold of deceased's tuft. Even that perhaps is open to some doubt (vide the evidence of P W 6 discussed above). But certainly if accused seized hold of deceased's tuft under such circumstances it would be no offence, and could not alter the question as to whether he was justified in stabbing him. The only other difference is in favour of accused in the present case because the accused in that case stabbed with a dagger and here only with a knife.

4. Thiruvengkatachariar, J., held that both Exceps. 1 and 2 of Section 300, I.P.C., applied, i.e., that the deceased seizing accused by the tuft and giving him blows with his fist was grave and sudden provocation (I may note here perhaps the evidence of P.W. 6 in this case 'we did not expect this sudden trouble,') and also that accused in that case exercised the right of self-defence in stabbing his assailant though he exceeded it. Wallace, J., does not appear to have held that the case would come under Excep. 2, at least he does not mention it in his judgment, but he held that it came under Excep. 1. I cannot distinguish that case in essence from the One before me, and as there was an express difference of opinion between the two learned Judges who tried the appeal on the point, and it

was referred to a third Judge for decision, the case carries much more authority than would be the mere opinion of a single Judge sitting alone here. I feel therefore bound to follow it and to reduce the conviction to one of culpable homicide not amounting to murder under the first part of Section 304, I.P.C., on the ground that the case is covered by Excep. 1, Section 300. In that case the sentence given was three years rigorous imprisonment. In the present case the accused began the abuse, but on the other hand he had probably good cause to be angry. It seems unlikely that if his wife had told him nothing more than she told the panchayat he would have made the complaint and have had a panchayat held at all. I reduce the sentence to one of five years' rigorous imprisonment.

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