

In Re Govindan

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Court : Chennai

Decided On : Jan-24-1974

Reported in : 1975CriLJ114

Judge : Venkataraman and; K.N. Mudaliyar, JJ.

Appellant : In Re Govindan

Judgement :

Venkataraman, J.

1. Govindan has filed this appeal against his conviction of the murder of his brother Gopal. He is alleged to have inflicted injuries on his brother on 23-10-1972 (Monday) about 5 A.M. near a hut in Athipattu village in Jnw-athi hills. The victim succumbed to the injuries on 4-11-1972, at 12-55 P.M.

2. Even the prosecution case is that Gopal, the younger brother, was having sexual intimacy with P.W. 1, the wife of the accused and that it is because the accused discovered them lying together, he inflicted the cuts on Gopal.

3. We must say that the prosecution has been quite fair to the accused. On these facts themselves, accepting the Drosecution case, Exception 1 to Section 300, I.P.C. should have been applied and the conviction should have been under Section 304, Part I. I.P.C. Somehow, even the learned Public Prosecutor, at the end of the case, seems to have told the learned Sessions Judge (vide para 21 of

the lower Court's judgment) that the accused followed Gopal chasing him for a considerable distance and that, therefore, though the provocation was grave, it was not sudden. This is very unfortunate, because we are satisfied that the distance for which the accused chased his brother was only 45 yards. The place of occurrence was 'A' in the sketch Ex. P-17, and the place where Gopal and the accused's wife had been sleeping was 'B'. The distance is mentioned as 45 yards in the observation mahazar Ex. P-7 which is reproduced in the plan Ex. P-17 drawn by the Police. That is conceded before us in all fairness by Sri Kolandaivelu who represents the learned Public Prosecutor.

4. Unfortunately, this central fact got mixed up because of the curious defence that the accused was not the person who inflicted the injuries on Gopal and the case was further complicated by the witnesses like P.Ws. 1, 2 and 3, who seem to have been truthful before the police, but resiled from their statements even in the Committal Court, and, of course, in the Court of Session - that is, of course, understandable, because of their anxiety to save the accused who is related to them. Yet, the learned Sessions Judge has chosen to act on their prior statements to the Police, though they are totally inadmissible in view of Section 162, Cr.P.C.

5. The statement of P.W. 1 to the Police was that when she had been sleeping in the hut with her husband's brother. Gopal (deceased), the accused came; Gopal ran, and the accused chased him with a Kaduval and cut him. Her cries attracted the neighbours P.Ws. 2 and 3 and also Vellachi, mother of P.W. 1. P.W. 6, another neighbouring ryot, saw the accused running westwards. He questioned the accused. The accused, however, merely told him that he had beaten his wife. He wriggled out of the hold of P.W. 1 and ran away. P.W. 6 went to the hut and P.W. 1 told him that the accused had inflicted cuts on Gopal. That, again, would only be a prior statement of P.W. 1 and would not be substantive evidence.

6. We are, however, mentioning these facts only to show how the first information report Ex. P-6 came into existence. Vellachi, mother of P.W. 1, sent P.W. 3 to the village headman. P.W. 8. P.W. 3 informed P.W. 8 that the accused had delivered cuts on Gopal and ran away. P.W. 8 secured the assistance of his previous matter(?) P.W. 7 and got the report Ex. P-6 drafted. It recites that P.W. 3 told him

(P.W. 8) that the accused had cut Gopal. P.W. 8 presented this report at the Police Station to the station-writer P.W. 13 at 9 A.M, (on 23-10-1972).

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The Sub-Inspector, P.W, 15 on returning to the station, took up the investigation. He arrested the accused on 24-10-1972 at 10 A.M. at the Athipattu junction road and sent him for remand. He went to the Government Pentland Hospital, Vellore, and examined Gopal and recorded the statement Ex. P-15 from him.

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In addition to Ex. P-15 we must refer to an extra-judicial confession which the accused made to P.W. 7 at 6 A.M on 24-10-1972 before his arrest. xx

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7. We have confined ourselves to the admissible substantive evidence. The maior substantive evidence is as follows-

(i) P.W. 3 has stated that at dawn on the Monday in question, when he was warming himself in the fire, he heard the cry of P.W. 1 that the accused was running after cutting her brother-in-law. This would be relevant evidence under Section 6 of the Evidence Act read with Illustration (a) which says 'A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating or so shortly before or after it is as to form part of the transaction is a relevant fact.' This evidence would certainly fix the time of occurrence at about 5 A.M. on 23-10-1972; and that is sufficient for our purpose. But we feel it right to add that if the 'cry' of P.W. 1 is held to be admissible, under Section 6 read with Illustration (a),' it would be substantive evidence against the accused that he was running after cutting his brother. But the weight of it would be very little in view of the circumstance that P.W. 1 herself does not give evidence in Court against the accused. If P.W. 1 had given such evidence, there would have been opportunity for the accused to cross-examine her. In the absence of such opportunity, the weight to be attached to the 'cry' of P.W. 1, though it was almost contemporaneous with the act of the accused, would be very little; and we leave

that out of account except to fix the time of occurrence as 5 A.M.

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Then there is the statement Ex. P-15 of the victim, to the Sub-Inspector. Here again, that statement is most favourable to the accused, because, if it is accepted, it would straightway show that the accused had grave and sudden provocation, which, in the event of the subsequent death of the victim, would make exception 1 to Section 300, I.P.C, applicable and reduce the offence to one under Section 304, Part 1, I.P.C, from Section Here again, it is surprising that instead of being realistic and practical and trying to do the best for the accused, the learned defence counsel, in the Sessions Court, should have suggested that Ex. P-15 was not genuine. We have no hesitation in accepting Ex, P-15 as a statement recorded from the victim by the Sub-Inspector.

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8. There could have been no difficulty for the victim to identify his assailant, human nature being what it is. He attributed all the injuries only to his brother, the accused. There can be no difficulty in holding that it was the accused who inflicted the injuries on Gopal. The circumstances under which he inflicted the injuries are also clear from Ex. P-15 and the extra-judicial confession made by the accused to P.W. 7. As stated already. Exception 1 to Section 300, I.P.C.-would apply.

9. We alter the conviction to one under Section 304, Part 1,-I.P.C. and sentence the accused to rigorous imprisonment for one year.

K.N. Mudalivar, J.

10. While I am in respectful agreement with the reasoning and conclusion of my learned brother, I am bound to observe that the judgment of the trial Judge is a piece of confusion, worse confounded by the uniaue contribution of the learned Public Prosecutor, the defence counsel and the learned Sessions Judge himself. The learned Public Prosecutor (before the Court below) should not have persuaded the learned Sessions Judge that there is no element of suddenness

attendant on the factor of grave provocation in the act of the accused cutting Gopal to death in the wake of his 'finding his wife in illicit co-habitation with his younger brother viz., the accused?') There is undoubtedly an element of suddenness mixed up with the element of grave provocation, inasmuch as running a distance of 45 yards by the accused would not furnish sufficient time to cool off the indignant passions of the accused. The learned Sessions Judge, after posing a few points for consideration, completely lost sight of the implications of the testimony of P.W. 7 in conjunction with the contents of Ex. P-15 and did not pose the question whether the offence is one that would fall under Section 302. I.P.C. or whether the facts proved by the prosecution would constitute the offence of 'culpable homicide not amounting to murder'. It is the sole responsibility of the Court to have concentrated on the essential ingredients of the prosecution evidence and to have given a finding, irresistible and inescapable, from the nature of the evidence adduced before it, that the offence committed by the accused is only one that would fall under Section 304. Part 1, I.P.C.

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In another part of the recorded evidence, the contents of Ex. P-15 in our view do furnish enough material for mitigating the offence of 'murder' to one of 'culpable homicide not amounting to murder'. But, it is pertinent to observe in this context that the defence went to the extent of suggesting :

Injured Gopal did not give any statement as recorded by P.W. 15 under Ex. P-15.

Fortunately, the Sub-Inspector, P.W. 15, refuted the suggestion and said :

It is not true to say that injured Gopal did not give any statement as recorded by me under Ex. P-15.

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