

In Re: Vadivel Padayachi

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Court : Chennai

Decided On : Oct-27-1971

Reported in : 1972CriLJ1641

Judge : Venkataraman and ; Maharajan, JJ.

Appellant : In Re: Vadivel Padayachi

Judgement :

1. This is an appeal by the accused against the judgment of the learned Sessions Judge. South Arcot. convicting him under Section 302 I. P.C. two counts of double murder and sentencing him to imprisonment for life on each of the two counts the sentences to run concurrently.

2. The case of the prosecution was that on the night of 5th March 1970 at Thirukkandeeswaram the accused. Vadivel Padavachi murdered his wife. Anjalai and her paramour Pichai Mohammed by cut-tine their necks with an axe while they were lying together in the southern room of his house.

3. The accused who is a woodcutter by profession married Anjalai, who was no other than the daughter of his paternal aunt. Pattammal PW. 8. The marriage took place about ten years ago. For about three years after the marriage the couple lived together happily at Keezhachavadi the native village of the accused. Then they shifted to Mulligiram-battu which is the village of PW. 8 They lived there in amity till a Muslim by name Pichai Mohammed the deceased crossed their lives.

This man belonged to Nellikuppam 11¼ miles from Mulligirambattu village and was married to Zohara Bee PW. 7 and had many children through her. He was a stamp holder conducting daily and weekly chits. Hp canvassed subscribers from the villagers around Nellikuppam. Anjalai the deceased wife of the accused became a subscriber to the weekly chit conducted by Pichai Mohammed about four months before the occurrence. Under the pretext of collecting subscription Pichai Mohammed started visiting Anjalai frequently and was carrying on an illicit intrigue with her. The relationship between Anjalai and Pichai Mohammed became the subject of village gossip PW. 8 the mother of Anjalai admonished her and asked her to go out of the village because of the village gossip. About two months before the occurrence the accused and Anjalai left Mulligirambattu for good and started living in a portion of a house in Thirukkandeeswaram a nearby village. The house belonged to one Gnanambal the maternal aunt of PW. 1 Sundaramurthi who lives four houses off in the same street. on behalf of Gnanambal. PW. 1 rented out to the accused and Anjalai the southern portion of the house on a monthly rent of Rs. 6. The portion rented out has been marked in Ex. P. 14. the investigating officer's sketch and it consists of a room in the south and an adjacent corridor in the north. Even after the couple shifted their residence to Thirukkandeeswaram, Pichai Mohammed persisted in visiting Anjalai. This aroused the curiosity of the villagers who started gossiping about it.

4. About 15 days prior to the occurrence at about 2 p. m. PW. 1 Sundaramurthi found the accused the deceased Anjalai and Pichai Sahib quarrelling with one another inside the house Thereupon PW. 1 went inside the house and told all the three that the villagers were commenting upon the illicit intimacy between Anjalai and Pichai Mohammed and therefore, it was better that they vacated the house. About ten or fifteen days prior to the occurrence presumably after the quarrel spoken to by PW. 1. the accused met PW. 6 Palaniswami. the accountant of Pichai Mohammed and told him. 'Your boss is visiting Anialai frequently. You should warn him against such visits. He is a man of many children and I cannot say what would happen if hp continues his visits to Anjalai.' That very night PW. 6 went to the house of his boss Pichai Mohammed and told him in the presence of his wife Zohara Bee (P. W. 7) that he should discontinue his connection with Anjalai. Zohara Bee PW. 7 reprimanded her husband and appealed to him to give

up his visits to Anjalai. Pichai Mohammed paid no heed to these warnings. According to P. W. 6 Pichai Mohammed asked him to mind his own business. A few days later that is to say a week before the occurrence the accused came to the house of Zohara Bee P. W. 7 while her husband was away and told her 'My stomach is burning. I will see that your stomach burns likewise.' All this shows that at all relevant times the accused far from conniving at the adulterous relationship between his wife and Pichai Mohammed as the learned Sessions Judge wrongly thinks resented the relationship and exercised admirable self-control in the teeth of continuing provocation.

5. We may next refer to the events that happened on the date of the occurrence. In the evening of 5-3-1970. P. W. 1 while going to his field saw Pichai Mohammed as well as Anjalai and the accused in the rented house of the latter at about 5.30 P. M. P. W. 2 Valliammal who lives in the house south of the accused's house went to take water from a tap in the backyard and saw Anjalai washing dried fish at the tan She also saw the accused and Pichai Mohammed standing in different portions of the backyard without talking to each other a little later. P. W. 3 Rangana than a barber of Thirukandeeswaram was called by Pichai Mohammed to pial of the accused's house and asked to give him a face shave after the shave. Pichai Mohammed gave him 25 paise and sent him away. 'When Pichai Mohammed was having his shave the accused was seen by P. W. 5 Kokilambal sitting on the pial of her house which is north of the accused's house. Evidently the resentful accused did not wish to remain on the pial of his own house while the paramour of his wife was having his shave there.

6. As to what happened subsequently in the night there is no direct evidence except the confessional statement made by the accused to P. W. 15. the judicial Sub Magistrate of Cuddalore on 20-3-1970.

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(after discussing the facts of the case their lordships proceeded.)

7. The more important question that arises for consideration is whether the double murder was committed by the accused, whilst he was deprived of the power of

self-control by grave and sudden provocation and consequently he is entitled to the benefit of Exception 1 to Section 300. I. P.C. That exception is worded as follows:

Culpable homicide is not murder if the offender whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

A hyper-sensitive person who loses his power of self-control at the slightest provocation would not be entitled to the benefit of this Exception. Deprivation of the power of self control must be the result of provocation which is both sudden and grave. Provocation is an external stimulus which can be objectively gauged. But loss of self-control is a subjective phenomenon which is difficult to divine. To peep into the mind of the accused as it was at the relevant time is seldom possible. The state of his mind can only be inferred from the surrounding circumstances from the manner in which he reacted to the circumstances and most important of all, from his own description of the state of his mind. His description of his subjective condition may be true or false but the truth or falsity of his description is fortunately susceptible of verification with reference to relevant objective facts. Before embarking upon process of such: verification the Court must imaginatively reconstruct the psychological situation in which the accused found himself whilst he committed the crime in question and judge his behaviour unhampered by any inflexible rule of thumb.

8. The learned Sessions Judge while refusing to give the appellant the benefit of Exception 1 Section 300. I. P.C. has given three grounds in support of his refusal: (1) that the accused had apparently connived at the intimacy between his wife and Pichai Mohammed: (2) that even prior to the occurrence, the accused had administered warnings to Pichai Mohammed through the latter's accountant and his wife against his illicit intrigue and this showed that he had a desire for revenge and this desire connoted a conscious formulation of an intention to murder and is inconsistent with the theory of loss of self-control: and 3 that the accused knew the illicit relationship between his wife and Pichai Mohammed and consequently the

sight that he saw on the fateful night cannot be regarded as a sudden discovery furnishing grave and sudden Provocation. None of the grounds stated is tenable.

9. Ground No. 1: The charge that the accused apparently connived at the intimacy between his wife and Pichai Mohammed is most unfair to the accused and unwarranted by the evidence on record. There is ample evidence on the contrary to show that the accused has been consistently resenting Pichai Mohammed's intrigue with Anialai. Though the accused was a poor woodcutter and his wife's paramour was a rich stake-holder, the accused had such a keen sense of honour that unable to bear the ignominy of the relationship he left the village of Mulligirampattu about two months before the occurrence and settled at Thirukkandeeswaram with his wife. He resented the continued visits of the Muslim intensely and about 15 days prior to the occurrence he quarreled with Anialai and Pichai Mohammed so noisily that he attracted the attention of P. W. 1. who. on hearing the noise went into the house of the accused, and suggested that he should vacate the house . A few days later the accused went to P. W. 6 Palanisami the accountant of Pichai Mohammed and asked him to warn his master against visiting Anialai after holding out the threat of dire consequences if Pichai Mohammed visited Anialai again. A few days later the accused went to the house of Pichai Mohammed and told his wife Zohara Bee P. W. 7 that his stomach was burning as a result, of her husband's misconduct with Anjalai. In his confessional statement which we accept as natural and spontaneous the accused has laid bare the agony of his mind at the infatuation that had sprung up between Anjalai and Pichai Mohammed. The confession also shows that the accused had admonished his mother-in-law even for taking his wife to the bazar at Nellikuppam. It is true that in his confession the accused has admitted that Pichai Mohammed had secured accommodation for himself and Anjalai at thirukkandeeswaram. It may be that while he was anxious to go out of Mulligirampattu he did not mind occupying the Thirukkandeeswaram house fixed by Pichai Mohammed. But from that single circumstance it is improper to draw the inference that he connived at the intimacy between his wife and Pichai Mohammed, especially in the light of the admissions made by the prosecution witnesses themselves to the effect that he openly and frequently protested against their relationship and that he never winked at it The learned Sessions Judge failed to notice the necessary inconsistency

between his theory of connivance and his subsequent finding that the accused issued warnings through P. Ws. 6 and 7 calling upon Pichai Mohammed to desist from his relationship with Anjalai.

10. Grounds Nos. 2 and 3: Once the accused is exonerated of the charge of connivance at the illicit intimacy the occurrence can be scrutinised in its proper psychological context. In spite of the warnings issued by the accused. Pichai Mohammed came to his house in the evening before the occurrence. The evidence shows that the accused resentfully stood at a distance from Pichai Mohammed when he came into the backyard of his house and that the accused went away to a neighbour's house when Pichai Mohammed was having a face-shave on his pial. The confession shows that the accused was so much upset by the visit of Pichai Mohammed that he went thrice to the arrack shop that night and drank arrack. Evidently he tried to drown his sorrow in liquor. When he came back from the arrack shop at 9 P. M. his wife served him food spread out his bed in the corridor outside the living room and went into the room to sleep with her paramour. According to the confession the accused laid himself down on the corridor and was weeping for a lone time in the night till he slept away. The knowledge that his wife and her paramour had gone into the room leaving him to lie outside on the corridor was provocative enough and if immediately after they went inside the room the accused had hacked them with the axe he would certainly be entitled to the benefit of the Exception 1 to Section 300. I. P.C. The circumstance that he did not do so showed that he exercised commendable self-restraint. If after seeing the lovers go into the room the accused had kept quiet till the next morning and without receiving any further provocation had murdered both of them it might be said that his temper had enough time to cool and he had sufficient opportunity to deliberate and ponder and therefore he committed the offence deliberately and not in a moment of anger whilst deprived of the power of self-control. But that is not what happened in his case. When the accused woke up from his slumber at 2 A. M. he received a fresh provocation which would have shocked any reasonable man belonging to the same social stratum as the accused. He saw with his own eyes his wife of whose person he must have desired to be in exclusive possession lying almost completely naked with her bared breasts and her thighs exposed side by side with her Muslim paramour whose private parts were visible and whose

caressing right arm lying softly upon the left arm of Anjalai. The Photographs taken by the investigating officer from two different angles give a vivid presentation of the scene with which the accused was confronted at 2 A. M. a scene which is sufficient to disturb the equanimity of any husband. The moment he saw this preposterous sight the accused acted suddenly on the impulse of the moment. He did not have to go anywhere to search for a weapon.

11. The axe which he usually carried as a wood-cutter was lying by his side and taking it he rushed into the room and hacked the couple to death. In these circumstances we are satisfied that the accused killed the two whilst deprived by Brave and sudden provocation of the power of self-control. We therefore give the appellant the benefit of Exception 1 to Section 300. I. P.C. We set aside the conviction of the appellant of the offence under Section 302. I. P.C. two counts and convict him instead of the offence under Section 304. Part 1 I. P.C. two counts. The appellant had been in custody, for over one year and seven months. We therefore reduce the sentence imposed upon the appellant to the period of imprisonment already undergone by him on each of the two counts. The appeal is allowed to the extent indicated above and the appellant directed to be set at liberty forthwith.