SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

In Re: Thangavelu and ors.

In Re: Thangavelu and ors.

SooperKanoon Citation : sooperkanoon.com/812061

Court : Chennai

Decided On : Jun-23-1971

Reported in : (1971)2MLJ403

Appellant : In Re: Thangavelu and ors.

Judgement :

1. The five appellant seek to question their convictions and sentences under Sections 147, Indian. Penal Code (A-1 to A-5), 148, Indian Penal Code (A-1 and A-2) 302, Indian Penal Code (A-1) 448, Indian Penal Code (A-1 and A-2) and 324, Indian Penal Code (A-1 and A-2).

2. Appavu (deceased), is the brother of Ammasai, P.W. 2, and P.W.4 is the wife of the former. Thangavelu (A-1) and Vetrivelu (A-2) are brothers. Kaliaperumal (A-3) is their half brother. Kaliaperumal (A-4) and Sothukatti alias Thiagarajan (A-5) are the associates of the other accused. These prosecution witnesses and the accused belong to the village of Pullianthurai. There has been some amount of factious enmity subsisting between Appavu and Thangavelu (A-1) since Appavu demanded from the latter, accounts for the collections and expendie ture relating to the village kaman templ-festival. The first accused questioned Appavu's right to demand accounts and he refused to account. Appavu and his brother Ammasai (P.W. 2) did not make any further contributions to the festival. They even refrained from going to the temple. Just a month prior to this occurrence (19th July, 1970) the concubine of Thangavelu (A-1) by name Vembu, suddenly disappeared from the village after having lived with A-1 for nearly a year. The first accused

suspected Appavu in regard to the disappearance of Vembu and had been indulging in abuses. He complained to the village headman who sent for Appavu and enquired. Appavu did not admit any connection with Vembu. The matter remained at that stage.

3. On 19th July, 1970, at about 8 P.M., one Sundararaja Reddiar (P.W.

1) was coming back from his field. He met Appavu in the betel shop of Kesavan (P.W. 7). Both P.W. 1 and Appavu walked together on their way to their respective houses. The five appellants were standing in front of the house of the deceased Appavu. Thangavelu (A-1) was having a short aruval M.O. 1 in his hand. The second accused, Vetrivelu was having a long aruval in his hand and the other three accused each had a stick in his hand. As soon as Thangavelu (A-1) got sight of Appavu he shouted in vulgar language that he had been expecting him and saying so, he inflicted a cut with the aruval, M.O. 1, on the right elbow of the deceased Appavu. Sundararaja Reddiar (P.W.

1) questioned them as to why they had cut Appavu. Since P.W. 1 was threatened by the appellants, he ran to some distance, about 25 feet an d watched the other stages of the occurrence. P.W. 2 who was in his house at that time heard the voice of his brother Appavu when Appavu shouted that Thangavelu had cut. He naturally rushed up to the spot with the stick M.O. 2 and saw his brother Appavu walking towards his house and with a deep cut on his right elbow, and nearby Thangavelu with M.O. 1 in his hand, Vetrivelu (A-2) with a long aruval and the other accused each with a stick all were standing. Ammasai (P.W.

2) questioned them as to why they had cut his brother and the first accused, Thangavelu cut P.W.

2. Ammasai with the aruval, M.O. 1, on his left upper arm saying that he would not be left out. P.W. 2 attacked Thangavelu (A-1) with his stick M.O. 2 and hit him on his hand, with the result the aruval M.O. 1 was knocked off from theh and of Thangavelu (A-1) and M.O. 1 fell down. The second accused inflicted a cut on the head of Ammasai, P.W. 2, with the aruval which he had in his hand but in the course of warding off the attack, P.W. 2 sustained a cut on his left palm. P.W. 2

inflicted 2 or 3 blows with the stick M.O.2 on Vetrivelu (A-2). Thereafter P.W. 2 took the aruval M.O. 1 and threw it away along with his stick, M.O. 2, and ran into the house of Kaliaperumal (P.W.

3) and made good his escape. He proceeded straight to the house of the village headman, P.W.

5. While running he heard Appavu shouting that he had been murdered.

4. Appavu (deceased) went into the house of Ammasai (P.W. 2) and all the five accused followed him inside. P.W. 3 Kaliaperumal and P.W. 4, the wife of the deceased heard Appavu shouting from inside the house that he was being murdered. P.W. 5, the village headman and his son Ramaswamy (P.W. 6) came to the house of Ammasai (P.W. 2) after learning from the latter about the occurrence. They found Appavu lying with a cut injury on his right elbow at the front entrance of the house of Ammasai (P.W. 2). There was profuse bleeding from the injury. But Appavu was concious and was able to make a statement. His statement was recorded by Ramaswamy (P.W. 6), then and there, and in the presence of P.W. 5 as the statement was made to the village headman P.W. 5. Appavu affixed his thumb impression to the statement, Exhibit P-1. P.W. 5 collected M.O. 1 and the stick M.O. 2 (both bloodstained) and took the injured Appavu and Ammasai in a cart to Anaikaranchatram Police Station. P.W. 11, the Sub-Inspector registered a case and recorded a statement from Appavu who was in full possession of his senses and was able to talk coherently. The Sub-Inspector after recording a statement from Ammasai sent both the injured to the Sirkali hospital. On the way Appavu died. Subsequently the inquest was held over the body of Appavu by the Inspector of Police, P.W. 13.

5. P.W. 8 is the doctor (Dr. Thiagarajan) who conducted autospy over the body of Appavu. He found the following:

1. A clean cut oblique wound about 6' x 4', bone deep, over the right elbow extending from the outer end of the right elbow to the inner border of the upper third of the right forearm. The muscles were cut and the elbow joint was exposed. There was a horizontal oblique cut over the articular surface of the bone of the

right upper arm.

2. Irregularly oblique wound, about 4' long. The wound gaped about 1/4', only at its centre and in other areas it was only a scratch mark, about 2-1/2' above the right outer melleolus melleous (ankle).

3. A skin deep cut wound, with irregular margin and with peeled skin covering it, over the palmar aspect of the base of the left little finger. 1/2' x 1/4' in size.

There was no internal injury and all organs were found to be normal. In his opinion, the deceased died of shock and bleeding, consequent on the deep cut on his right elbow, which could have been caused by the aruval, M.O. 1. His certificate is Exhibit P-10.

The said doctor examined P.W. 2 and expressed his opinion that the two injuries sustained by P.W. 2 are simple. The first and second accused also were examined by the doctor and the doctor expressed the opinion that the three injuries found on the first accused are simple. He described the injuries on A-1 and A-2 thus:

6. On A-1:

1. Old horizontal wound about l' x 1/4,' skin deep, over the left cheek, about 1-1/2' below the left eye. Scab and oedima around the left eye present.

2. Vertically irregular old abrasion, about 3' long, over the back of the right forearm.

3. Oedima of the right hand, outer side, on the back of the hand, about 3/4' in diameter. No tenderness. There was no evidence of any fracture.

7. On A-2:

1. Infected closed wound, about 2' x 1/2' over the innerside of the left parietal area of the scalp.

2. Old horizontal abrasion, with scab formation about 2'x 1/4' over the left side of the back.

8. In the statutory explanation given by the first accused under Section 342, Criminal Procedure Code, the first accused admitted that he had a concubine by name Vembu but he denied the other evidence regarding the prosecution case adduced against him. According to the first accused, Appavu (deceased) beat him as a result of which he sustained the injuries and he did not know what happened thereafter. The second accused Vetrivelu had stated that the entire evidence appearing on the prosecution side was false and that when he went to lift his brother Thangavelu (A-1), P.W. 2 Ammasai hit him on his head. The plea of the other accused is one of denial. The first accused denied that he was armed with aruval at the time of the occurrence and had claimed that P.W. 2 Ammasai had beaten him. In fact, according to A-1, his brother A-2 called him for taking his food and that when he was on his way, Appavu questioned him as to why he was making a fuss relating to the girl and cut him severely with an aruval. Ammasai, P.W. 2, beat him and the first accused snatched the aruval from Appavu and inflicted a severe cut with it. But he did not notice where the cut fell. Ammasai. (P.W. 2) beat him and the aruval fell from his hand. The first accused then said that heran away to the house of his brother Vetrivelu and went to the village headman sometime later. The plea of the second accused also was one of denial but he stated that when he called his brother Thangavelu, A-1, to take his food, Appavu cut Thangavelu with a knife saying: 'why are you talking ill of that woman' and that Ammasai P.W. 2 came running and inflicted two or three blows and he ran away.

9. The learned Sessions Judge accepted the motive for the occurrence as proved by P.Ws. 2 and 4 and also by P.W. 1. The learned Sessions Judge accepted the testimony of P.W. 1, Sundararaja Reddiar stating:

In my opinion, this witness is an entirely truthful witness who has not been shown to have any special interest, either in the deceased or in the accused, to make any false statement, either in favour of the prosecution or against any of the accused.

In fact, the learned Sessions Judge characterises Sundaraja Reddiar, P.W. 1, as an absolutely independent and truthful witness who has no motive whatsoever to speak anything false against any of the accused. The learned Sessions Judge

further believed the evidence of P.W. 1 that he was within 6 feet of Appavu, when Thangavelu (A-1) cut him and that since it was a day previous to the full moon day, there was moonlight for him to identify persons involved. The learned Judge further accepted the evidence of P.W. 6 and P.W. 5 and gave a finding that Exhibit P-1 is a statement made only by Appavu when he was quite capable of making such a statement. The learned Judge accepted the testimony of P.W. 2, as corroborated by the testimony of P.W. 6. The learned Judge after noticing some variations in the two dying declarations of Appavu, Exhibits P.1 and P.23, concluded that the material parts of Exhibits P-1 and P-23 are substantially identical. The learned Judge further held that the version given in Exhibit P-1 is fully substantiated by the evidence of Sundraraja Reddiar, P.W. 1, P.W. 2, P.W. 3, P.W. 5, P.W. 6, P.W. 7 and P.W. 8, the doctor. The learned Judge ultimately gave a finding that the first accused caused the death of Appavu by cutting him with the deadly weapon, M.O. 1, with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely to cause death by such act, within the meaning of Section 299, Indian Penal Code The learned Judge in paragraph 43 of his judgment notices the fact that Thangavelu (A-1) has stated in the Sessions Court that he delivered a violent cut with the aruval, which he snatched from Appavu and that he ran away. The learned Judge also notices that Vertivelu, the second accused, has stated nothing at all about either he or Thangavelu (A.1) having cut anybody, but only refers to Appavu having cut Thangavelu (A-1) with an aruval.

10. It was suggested to Ammasai P.W.2, that since A.1 was abusing him and his brother Appavu on the day of the occurrence, Appavu assaulted A-1 and A-2 with a knife and that P.W.2 assaulted them with a rod. Such a suggestion had been refuted by P.W. 2. This is not either the plea of the first accused or the second accused in the statements made by them under Section 342, Criminal Procedure Code. The further suggestion is that in order to escape from such an attack, the first accused wrestled the aruval from Appavu and attacked Appavu. This suggestion also had been refuted by the witness, P.W. 2. Even these two suggestions are not consistent, the earlier suggestion referring to knife and the later suggestion referring to aruval. In the Court of the Sub-Magistrate, Sirkali, the plea of the first accused was that Appavu (deceased) cut him. The first accused

claimed that he did not know what happened subsequently. He says that he went to the police station. In the Court of Sessions, the first accused stated:

11. The second accused stated in the Court of the committing Magistrate that when Thangavelu (A-1) was being lifted P.W. 2 hit him on his head. In the Court of Sessions, the second accused stated:

12. Considering the pleas of the accused 1 and 2, it would emerge clearly that these five accused stationed themselves near the house of the deceased for this murderous attack. Even accepting the plea of the first accused that he wrested the aruval from Appavu and cut him, it is not possible to hold that after having disarmed Appavu he could really apprehend such bodily injury as would cause death or grievous injury to him. Suffice it for our purpose to characterise these various pleas of accused 1 and 2 as totally inconsistent and grotesquely irreconcilable. In view of the plea of the first accused who states that he wrested the aruval and cut Appavu, the only question that arises for our determination would be whether the facts and circumstances of this case would justify the plea of self-defence. In fact, the learned Counsel did not make any vigorous attempt to show that the benefit of right of private defence would enure to these accused. The trial Judge Was perfectly justified in rejecting this theory of self-defence put forward on behalf of the accused. The learned Judge was right in stating that the theory does not even hold any water on the basis of the probabilities and in the light of the medical testimony. This theory is rejected in toto by the learned Sessions Judge whose finding is reaffirmed by us.

13. In view of the plea of the first accused, it is not necessary for us to elaborately scrutinise the testimony of P.W. 1 Sundararaja Reddiar. The only criticism made against our accepting the testimony of P.W. 1 is that Sundararaja Reddiar who owns 10 acres of land and who is said to be a man of status in the village would not have normally taken a walk in the company of Appavu from the shop of P.W. 7. In villages, we are unable to see that such a difference in social standing of either Appavu or Sundararaja Reddiar should be a bar to walk jointly to go to their respective houses. One does not expect a man of the status of Sundararaja Reddiar to ride home in a motor car after supervising and inspecting the irrigation

of his fields. We are unable to accept this criticism of the learned Counsel that Sundararaja Reddiar would not have been a companion to go along with Appavu before the latter met with his murderous assault in the hands of these accused. Exhibit P-1 has been brought into existence immediately within a short time after the occurrence on the details of the occurrence being intimated by P.W. 2 to P.W. 5 and there is no reason why Appavu should have thought of the name of Sundararaja Reddiar to speak in support of the assault on him by these five accused, if really Sundararaja Reddiar, P.W. 1 were not there. It is not suggested that either the Village Munsif or his son were parties to introduce P.W. 1's name either in Exhibit P-1 or in Exhibit P-23 for the purpose of falsely testifying in the murderous attack of Appavu (deceased). We reaffirm the findings of the learned Sessions Judge in his accepting the testimony of P.W. 1. P.W. 1 is treated as an absolutely independent and truthful witness by the learned Sessions Judge and we find ourselves in total agreement with his finding.

14. The only other argument submitted by the learned Counsel for the appellant is that the first accused who has been convicted for an offence under Section 302, Indian Penal Code may not be guilty of the said offence; for, his argument is that the injury may be one attracting Section 304 or 324, Indian Penal Code.

15. We have noticed that P.W. 8, Dr. Thiagarajan, described the fatal injury as a clean cut oblique wound about 6' x 4' bone deep over the right elbow, extending from outer end of right elbow to the inner border of upper third of right forearm. The muscles were cut, the elbow joint was exposed and there was a horizontal oblique cut over the articular surface of the bone of right upper arm. The doctor expressed the opinion that the deceased would appear to have died of bleeding and shock due to deep cut on the right elbow. The witness (P.W. 8) stated further that since the injury No. 1 has cut the major blood vessel, it is necessarily fatal, and the injury is sufficient to cause shock. In the course of the cross-examination of the said witness, it has been elicited that in Exhibit P-10 that a major blood vessel has been found cut has not been noticed. The witness stated that prompt medical attention could possibly have saved the life of the deceased, and death must have been either because of shock or haemorrhage or both. In this case there was also the shock going into the cavity but the doctor said that he cannot,

however, say precisely whether death should have been because of shock or haemorrhage or both. The learned Counsel severely criticised the omission on the part of P.W. 8 to state in Exhibit P-10 that the major blood vessel had been cut and, therefore, it is argued that the injury may be one which is likely to fall within Clause 3 of Section 299, Indian Penal Code and therefore the offence would not be one of murder.

16. In view of this type of evidence, this Court summoned the post mortem notes recorded by P.W. 8, but inasmuch as the post-mortem notes were not made a part of the recorded evidence and also with a view to get the evidence of an expert, namely, the Professor of Forensic Medicine, Madras Medical College, Dr. C.B. Gopalakrishnan was summoned and examined as C.W. 1. The relevant records on this aspect of the matter were made available for the perusal of the doctor. He was also subjected to cross-examination by the learned Counsel for the appellants. The doctor (C.W.1) states that the injuries are not necessarily fatal but sufficient in the ordinary course of nature to cause death, because those are the main blood vessels of the forearm. If treatment had been given immediately, there was a possibility of saving the life. The doctor states that he agrees with the opinion of P.W. 8, but left to itself, the patient i.e., the injured man, would bleed to death. The injuries are not necessarily fatal, but sufficient in the ordinary course of nature to cause death. He also added that it is not likely to cause death. We are afraid the expression of this opinion in the language is rather unhappy. Probably the doctor meant, after having stated that these injuries are sufficient in the ordinary course of nature to cause death, that the degree of probability is more than likely and when this Court referred to the degree of probability more than likely in view of his evidence that these injuries are sufficient in the ordinary course of nature to cause death, the doctor unhesitatingly expressed 'yes'. The doctor (C.W. 1) had stated that P.W. 8 had mentioned in the postmortem notes that the blood vessels of the forearm have been cut. He further added that the big vessels of the forearm were cut. The doctor in his evidence has stated:

Q. Is it not the tendency of blood vessel as soon as it is cut cleanly to constrict as well as contract

A. Only small blood vessels. But here it is very wide. The diameter is very much. Even if it contracts, there will be free flow of blood.

To say that if treatment had been given immediately there was the possibility of saving the life would lead the accused nowhere in view of the Explanation 2 of Section 299, Indian Penal Code.

17. The learned Counsel for the appellants argued that the first accused would not have possibly known that this is a vital part and that his cut would result in the cutting of the two major blood vessels. In other words, his argument is that the first accused could not have known that his cut would result in the severance of the two major blood vessels and he relied upon the reasoning found in the last paragraph of the judgment of the Supreme Court reported in L.K. Nikalji v. State of Maharashtra : 1968 CriLJ1647 .

That section requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This clause (section 300, thirdly) is in two parts; the first part is a subjective one which indicates that the injury must be an intentional one and not an accidental one; the second part is objective in that looking at the injury intended to be caused, the Court must be satisfied that it was sufficient in the ordinary course of nature to cause death. We think that the first part is complied with; because the injury which was intended to be caused was the one which was found on the person of Rama Rao. But the second part in our opinion is not fulfilled, because but for the fact that the injury caused the severing of artery, death might not have ensued. In other words, looking at the matter objectively, the injury which Laxman intended to cause did not include specifically the cutting of the artery, but to wound Rama Rao in the neighbourhood of the clavicle. Therefore we are of opinion that the thirdly of Section 300 does not cover the case.

In the light of this reasoning we went through the principles of law enunciated in the judgment in Vira Singh v. State of Punjab (1958) S.C.R. 1495 : (1958) S.C.J. 772, which contained more elaborately the principles of law that ought to govern the determination of the question. The first test is a bodily injury must be proved to be fatal. The injury in the instant case, undoubtedly has been proved to be a fatal

injury on the right elbow of Appavu. The nature of the injury also has been proved by the doctor P.W. 8 and also C.W. 1. That is the second test. Thirdly it must be proved that there was an intention to inflict that particular bodily injury. Actually, A-1 armed with M.O.1 was waiting at the house of the deceased for his attacking Appavu and he inflicted the particular bodily injury on his right arm. It is not even pleaded by the first accused that that particular bodily injury is accidental or unintentional or that he intended some other kind of injury on Appavu when the said injury was inflicted. The three elements adverted to above are satisfied. Undoubtedly the medical testimony as spoken to by P.W. 8 and C.W. 1 would constitute proof of the sufficiency of the injury to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the appellant. In our view these four elements are established satisfactorily by the prosecution and the offence is murder under Section 300 thirdly. It does not matter that there was no intention to cause death. It does not even matter that there was no intention to cause an injury of the kind that is sufficient to cause death in the ordinary course of nature. It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found is proved, the only question that remains for the consideration of the Court is whether the bodily injury is sufficient in the ordinary course of nature to cause death. That has been proved by very satisfactory evidence as spoken to by P.W. 8 and C.W. 1. In the decision relied on by the learned Counsel for the appellants, there is no finding that the injury is not (sic) sufficient in the ordinary course of nature to cause death. It does not matter whether the first accused had sufficient knowledge of the anatomy of the forearm of the victim. If he had inflicted the bodily injury on that part of the body he intended the natural consequences that flow from the act resulting in the infliction of such bodily injury, and the accused cannot escape from the consequences resulting from such bodily injuries. We have no hesitation in holding that the offence is one of murder within the meaning of Section 300, thirdly, Indian Penal Code. The conviction of the first appellant for an offence under Section 302, Indian Penal Code is confirmed. So far as the sentence is concerned, we award the lesser sentence of imprisonment for life in the place of the death sentence.

18. The learned Sessions Judge erred in convicting A-1 and A-2 for an offence under Section 147, Indian Penal Code after convicting them for an offence under Section 148, Indian Penal Code. This is not legal. Besides, it is a useless surplusage and an unnecessary addition to the punishment of a more severe offence under Section 148, Indian Penal Code. We set aside the conviction of A-1 and A-2 for the offence under Section 147, Indian Penal Code and we maintain the conviction of A-1 and A-2 under Section 148, Indian Penal Code. There are no other merits in this appeal which is totally devoid of substance. The conviction of the five appellants for the various offences are confirmed and the sentences awarded against them are maintained, save for the modification of the sentence imposed on the first accused for the conviction under Section 302, Indian Penal Code and the setting aside of the conviction and sentence of A-1 and A-2 under Section 147, Indian Penal Code. The sentences on the accused 1 and 2 will run concurrently. The criminal appeal is dismissed with the above modification.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com