

In Re Andi thevan

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SooperKanoon Citation : sooperkanoon.com/813487

Court : Chennai

Decided On : Jun-10-1940

Reported in : AIR1941Mad251

Appellant : In Re Andi thevan

Judgement :

Gentle, J.

1. The appellant was tried and convicted by the learned Additional Sessions Judge of Madura upon five counts in an indictment, the first three counts being for murder under Section 302, Penal Code, the fourth count for attempting to murder under Section 307, Penal Code, and the fifth count voluntarily causing hurt with a dangerous weapon under Section 324, Penal Code. He was sentenced to transportation for life for the offence of murder in the first count, to death in respect of the second and third counts, rigorous imprisonment for a term of ten years under the fourth count and rigorous imprisonment for eighteen months under the fifth count. The offence is alleged to have been committed in Madura on the evening of 3rd October 1939. The occurrence took place in a lane in a block of houses which are owned by P.W. 1 who lives in a large house in the block himself and lets the others out to tenants, which tenants include P.Ws. 2, 3, 4, 9 and the accused, P.W. 4 being a subtenant of the accused who is himself the immediate tenant of P.W. 1. The three deceased persons are Muthukaruppan, Masanan, and Dorairaj. Muthukaruppan and Dorairaj together with P.W. 9 are brothers. P.W. 8 is

the wife of P.W. 9. Three or four days before the occurrence, a quarrel arose between the son of P.W. 9 and the son of the accused. The respective mothers of these children seem to have intervened, naturally supporting their own offspring, and the offices of P.W. 1 were obtained for him to terminate the quarrel. P.W. 2, another tenant of the building, seems to have supported the side of P.W. 9's son and wife, P.W. 8 and the matter ended by pacifying the parties although P.W. 2 and the accused seem to have exchanged hot words.

2. On the evening of the occurrence, the two deceased Muthukaruppan and Dorairaj, together with P.Ws. 5 and 6 were playing cards together about two furlongs from the block of houses, the deceased Masanan went to them and told Muthukaruppan that it was necessary in the interests of peace that a reconciliation should be effected between the wife of the accused and P.W. 8. Thereupon all the above five persons went to the house of the accused being No. 8 in the block and adjacent to a lane running east to west. The case for the prosecution is as follows : The accused was in a sullen and resentful mood. Muthukaruppan asked him to accompany them to the house of P.W. 1 in order that the difference between the women could be composed. One criticism made upon this part of the evidence is that P.W. 9, the husband of P.W. 8 was at the time away from the village and comment has been made of the unlikelihood of the suggestion that anything in the nature of a panchayat, would take place involving differences in which P.W. 8 was concerned in the absence of P.W. 9. The accused said that he was not prepared to go to any panchayat and Muthukaruppan then caught hold of him by the hand and pulled him again asking him to go to the proposed panchayat. At this time the accused is said to have been sitting on some steps which lead from the passage communicating with his house into the east to west lane. When Muthukaruppan pulled him by the hand, the accused suddenly whipped out a knife (M. o.l) which was in his waist, opened it so that it formed a dagger and stabbed Muthukaruppan in the chest. Muthukaruppan ran down the lane in an easterly direction followed by the accused. P.W. 5 followed and attempted to prevent the progress of the accused whereupon the accused stabbed him three times in the head, arm and shoulder, Masanan tried to snatch the knife from the hands of the accused who stabbed him two or three times and then the accused entered a lane leading from east to west lane which was on his right, into which Muthukaruppan had gone.

Accused immediately emerged from this second lane back into first lane. Masanan again caught hold of the accused, tried to wrench the knife from his hand and pushed him with some force. The accused was flung against the wall of the house opposite the entrance to the second lane and then re-covering himself, the accused stabbed Masanan twice, once in the back and once in the thigh. Masanan fell down and died. At this point, it is relevant to indicate that when P.W. 5 was giving evidence about this in the committing Magistrate's Court, he said that Masanan snatched the knife from the accused. This he denied before the learned Sessions Judge. The accused then turned back in the direction of his house. P.W. 6 next tried to obtain possession of the knife from him and was stabbed by the accused in the hand and abdomen. Dorairaj then went towards him and tried to get hold of the knife. The accused plunged it twice into his chest and abdomen and Dorairaj dropped down dead at that spot.

3. The medical officer (P.W. 11) examined the injured persons and in so far as the deceased are concerned, he gave the causes of death, and that the injuries were serious. He said the injuries inflicted upon P.W. 6 were grievous and upon P.W. 5 were simple. The injuries inflicted upon the last two persons are the subject of the charges and convictions under the fourth and fifth counts. He also examined the accused and found a small cut on one finger and an abrasion on one wrist. He expressed the opinion that the cut might be caused by an attempt to wrench a knife from his hands and also that the abrasion in the wrist might be due to contact with a wall such as when he was pushed by Masanan against the wall facing the second lane. The eye-witnesses who have spoken to the whole or parts of the five happenings are P.Ws. 3, 4, 5, 6, 7 and 8, of which P.Ws. 3 and 4 are independent and unconnected with any of the other witnesses. A suggestion was made to P.W. 4 that he was in similar employment as the accused and also that he was his debtor in respect of some rent. This the witness denied. This is the only suggestion or criticism which was made in regard to the witness. P.W. 3 spoke to the second attack upon Masanan and the tussle or struggle which took place at the junction of the second with the first lane. P.W. 4 gave evidence of attacks upon the five injured persons. The learned Sessions Judge has accepted the evidence of these two witnesses and in doing so consequently has believed the story which the other prosecution witnesses, who may be described as interested, have given

and he recorded the convictions which are mentioned above.

4. The defence which the accused put forward can be summarised as follows : He referred to the earlier quarrels put forward by the prosecution and said that on the evening in question the three deceased - and later he included P.Ws. 5 and 6 - went to his house and there beat him and his wife with a stick and a leather strap and at that place he said that he stabbed these five persons. It is not clear, although he says it was in his house, whether he intended to convey that the happening occurred inside the house or within his compound or other part of his premises but it is manifest that he intended to say that the whole affair and episode connected with the five injured persons was in some part of his premises.

5. Immediately after the termination of the occurrence, the accused went to the police station and whilst he was there P.Ws. 5 and 6 also arrived. Exhibit A is the statement of P.W. 5 given to the police officer, P.W. 16, in which he mentions the arrival of Masanan, with the other two deceased, that P.Ws. 5 and 6 were sitting together, and the subsequent visit to the deceased's premises and the attacks upon the three deceased and P.Ws. 5 and 6. P.W. 6 did not make a statement at the police station, he was in perilous condition and was sent to the hospital where he made a dying declaration (Ex. B). At that time apparently it was thought that he would not recover. He gives in this exhibit details of the attacks by the accused upon the five persons. The detail is not entirely in accordance with the detail of the statement by P.W. 5 in Ex. A. But these two statements were given very shortly after the happening of the events. The statement which the accused gave to the police officer is Ex. L. Neither the learned public prosecutor nor learned Counsel on behalf of the appellant has raised any objection to the examination of this document by the Court. After giving in some detail the earlier history which it is not necessary to discuss, he says that the three deceased and P.Ws. 5 and 6 came to his house and beat himself and his wife with their hands and at that place the whole occurrence took place. In the committing Magistrate's Court, the accused said that 10 or 15 persons including the persons who were stabbed beat him (the accused), he does not say with what the beatings were inflicted. In his statement before the learned Sessions Judge he said that the five persons kicked him and beat himself and his wife with a stick and a leather belt.

6. Under Section 105, Evidence Act, when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code or within any special exception or proviso contained therein is upon him and the Court shall presume the absence of such circumstances unless they are proved by the one asserting them. No evidence has been called in support of the story which the accused has put forward. There are merely his three statements which to some extent vary. If the accused's story is true, then the evidence of P.Ws. 3 and 4 must be wrong. There is nothing to justify the rejection of the evidence of these two witnesses. There is nothing to show that they are in any way unfriendly or ill-disposed towards the accused or partisans of any of the prosecution witnesses or the deceased. P.W. 3 stated he witnessed the happening of the second assault upon Masanan and he does not pretend to have seen anything more. A witness who is unfriendly or has been approached to support the story of another is not likely to confine his evidence to one of five episodes. I see no reason whatever to differ from the view to which the learned Additional Sessions Judge arrived, namely that these two witnesses' evidence should be accepted and that they are witnesses of truth. Their evidence being accepted, then it must follow that in substance, the testimony given by the other eye-witnesses, although they are associated with or partisans of the deceased or P.Ws. 5 and 0 must be true. The evidence of the two independent witnesses being truthful and acceptable, then the evidence of others who similarly speak to the happenings of the same events must also be accepted. The result therefore is that in my view the case so far as facts are concerned which the prosecution sought to establish has been proved. The next matter for consideration is what offences have been committed by the accused. I will deal with the charge in respect of the death of Muthukaruppan last. So far as the charge of murder in respect of Dorairaj is concerned, it is shortly this. The accused having already attacked four persons, he was running in the street armed with a knife and Dorairaj attempted to take it from him or to stop him. Thereupon, the accused stabbed him in a vital part of his body in such a way that he died immediately. The only offence which can be committed under these circumstances is that of murder under Section 302.

7. I now come to the charge in respect of the death of Masanan. The accused stabbed him in the first instance while he was running in a westerly direction, the injuries then inflicted were slight. After a short interval, Masanan closed with the accused in order to take the knife from him and at that time the accused had already attacked three persons including Masanan himself. There was doubtless some violence used by Masanan. He appears to have thrown or flung the accused against a wall. It is not only right but indeed it would be the duty of Masanan having seen the attacks made by the accused on two others and sustained an earlier attack upon himself, to do his utmost to prevent the accused from continuing the attacks upon himself or upon any other persons. It is not always that persons - sufficiently courageous - unarmed themselves - are prepared to do this. Any violence which Masanan used in wrestling with the accused and throwing him against the wall cannot amount to sudden and grave provocation within the exception to Section 300, Penal Code. The journey which the accused made from his house in the east to west lane and thence into the lane leading from it and then back again shows a continuous intention to inflict hurt, and indeed death, upon those who stood in his way or who tried to impede this progress. Masanan did nothing on that day in any way to justify a Court holding that there was sudden and grave provocation which would reduce the offence committed from murder to culpable homicide. In my view, the offence committed in regard to Masanan was murder and the conviction for that offence is correct. So far as the offences in respect of P.Ws. 5 and 6 which form the subject of the convictions under the fifth and fourth counts are concerned, no argument was addressed to us that those convictions were wrong or the sentences were unduly heavy. Suffice it to say that no interference with the learned Sessions Judge's judgment both as regards conviction and sentence is justified.

8. I now come to the charge in respect of the death of Muthukaruppan. Learned Counsel on behalf of the appellant has argued that, accepting the evidence of the prosecution as given by the witnesses, it shows that after the accused refused to accompany Muthukaruppan and the four others to the panchayat, he dragged him by his hand and pulled him away from the steps of his house where he was then seated. It was then that the accused took out his knife and inflicted the injuries upon the deceased which shortly afterwards proved to be fatal. It was contended

that this amounted to sudden and grave provocation so as to reduce the offence from murder to culpable homicide. That all these five persons were unarmed is a fact which I find from the evidence and no one witness has said to the contrary. Although pulling by the hand is exercising some force and was done in order to make the accused go to some place against his will and may be provocative, this was done by an unarmed man. In my view, such conduct is not what the first exception contained in Section 800, Penal Code, contemplates as being grave and sudden provocation. The question of what is grave and sudden provocation is a question of fact and one must consider the facts of each case and apply the provisions of the section to those facts. The facts in one case are not always of assistance in another case. Accused 1, in my view, was not subjected to such treatment by Muthukaruppan which would reduce the offence committed by the accused to culpable homicide and I am of the opinion that the offence which was committed by the accused in regard to Muthukaruppan is one of murder. Now as to the sentences. I agree with the learned Sessions Judge that the sentences of death which he imposed in respect of the deaths of Masanan and Dorairaj are correct. There is nothing in the facts justifying lesser sentences. The accused made violent attacks upon these two deceased who only tried to prevent him inflicting injuries by attempting to take the weapon from his hands and stopping his wild career. His vicious attacks upon them when they went to prevent further injury can amount only to murder of such a degree that sentence of death is the proper punishment. So far as the conviction regarding Muthukaruppan is concerned, I agree with the view which the learned Sessions Judge has expressed. There was some provocation regarding the circumstances surrounding the episode and the proper sentence is one of transportation for life and not one of death. In my view, the convictions and sentences which the learned Additional Sessions Judge has passed should be confirmed and the appeal dismissed.

Patanjali Sastri, J.

9. I agree with the judgment just pronounced by my learned brother except as regards the offence relating to the deceased Muthukaruppan. I do not recapitulate the facts as my learned brother has referred to them in detail. I am inclined to think that the offence so far as Muthukaruppan is concerned amounts only to culpable

homicide not amounting to murder. It is quite clear from the evidence of P.W. 1 that a few days prior to the occurrence there was an abortive panchayat by P.W. 1 to compose the quarrel between P.W. 9 and his wife on the one hand and the accused and his wife on the other and during that attempt hot words passed between the accused and P.W. 2 who was evidently a partisan of P.W. 9. Subsequently the accused appears to have been smarting under the memory of these happenings and the learned Sessions Judge described his mood on the day of the occurrence as 'sullen and resentful.' While he was in that mood deceased Muthukaruppan and Dorairaj accompanied by P.Ws. 5 and 6 presented themselves in a body at or near the premises of the accused and invited him, according to the prosecution story, for another panchayat by P.W. 1 and what followed is thus described by P.W. 5:

The accused said that Muthukaruppan had no business to call him and that he was not prepared to come for a panchayat. Muthukaruppan caught the accused's hand and pulled him, asking him to come for a panchayat. The accused thereupon whipped out a knife from his waist, opened the blade and stabbed Muthukaruppan with it on the left side of the chest.

10. The learned Judge below took the view that though this was sudden provocation, it was not sufficiently grave to attract the application of exception 1 to Section 300, Penal Code. I am unable to share that view. As indicated in the explanation attached to that provision, whether in a given case, the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact, and in my judgment, having regard to all the circumstances of this case, what Muthukaruppan is said to have done to the accused at the time of the occurrence amounted to such provocation as is contemplated in the provision referred to above. The offence committed by the accused in relation to Muthukaruppan would therefore be only culpable homicide not amounting to murder. This does not however affect the result of the case as I agree with my learned brother that the conviction and sentence for the other offences committed by the accused should be confirmed.