

In Re: Thandavan

In Re: Thandavan

SooperKanoon Citation : sooperkanoon.com/818031

Court : Chennai

Decided On : Aug-01-1972

Reported in : 1973CriLJ1041

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

Appellant : In Re: Thandavan

Judgement :

Raghavan, J.

1. This reference from the Court of Sessions, Salem, convicting the accused with the extreme penalty under the law for the charge of intentionally murdering his wife Chhinnathayee at about 4-30 P. M. on 8-12-1971 at Mallagoundanvetu Kadu, Hamlet of Thoramangalam Village by hitting her with a stone pestle on her head and cutting her neck with a barber's knife, and the Criminal Appeal No. 345 of 1972 by the accused have been heard together.

2. The prosecution case is as follows: The accused and the deceased are husband and wife and they were married 15 years ago. The deceased started a tea stall about two years ago near Mariamman Koil in Chinnappampatti Road and the accused and the deceased were looking after the tea stall. There were a large number of customers attending the tea stall for taking tea and the deceased used to talk freely with them. The accused was suspecting her fidelity and there used to be frequent quarrels between the accused and his wife resulting in the wife going

to her mother's house with her children often. A few days after the Deepavali in 1971 the accused closed his tea stall and went away for cultivating his lands and doing business in tapioca. The accused was lazy and not working regularly and he used to stay at home and spend the money given by his mother-in-law (P. W. 2) often in gambling and drinks. On 8-12-1971 (the date of occurrence) the deceased and his wife went to the house of P. W. 2, the mother-in-law of the accused, took food and returned to the accused's shed in his field and were resting there. The accused and the deceased were quarrelling in that field shed at about 4-00 or 4-30 P. M. that day and the deceased was questioning her husband as to how she could maintain the family if he remained idle and did not do any work and earn money for which the accused replied that he would be like that and that she could do what she liked and the quarrel went on resulting in the accused hitting the deceased with, a stone pestle and cutting her neck with a razor procured previously from P. W, 8.

Palani (P. W. 1) Vettian of ThaTaman-galam Village, who was passing through the pathway near the field shed of the accused at about 4 P. M. saw the accused coming out in a highly perturbed mood and on P. W. 1 questioning him the accused told him that he had finished his wife and that he might go and see her in the shed and so saying the accused went away. P. W. 1 went to the field shed and saw the deceased lying dead in front of her shed with a cur injury on her neck and the stone pestle lying near her. P. W. 1 thereafter went to the house of the village Munsif at Jalakandapuram and as the village Munsif was not available, he went to the police station at Jalakandapuram and gave an oral report to P. W. 11 (Palaniswami) H. C. 372, which was recorded by P. W. 11 under Ex. P-1 as narrated by P. W. 1. The Village Munsif of Tharaman-galam, who had gone out for collection work, returned home by 6 P. M. and saw P. W. 1 waiting for him to tell him about the murder of the deceased and also about his giving a report to the Jalakandapuram Police Station. The Village Munsif (P. W. 9) immediately proceeded to the place of occurrence. Meanwhile P. W. 11 who recorded Ex. P-1 at about 5-30 P. M., registered it as Crime No. 278/71 and sent express report to his superiors and proceeded to the scene of occurrence. He prepared observation maha-zar, Ex. P. 3 recovered M. O. 3 (stone pestle), M. O. 5 (Blood stained-earth) and the; mahazar was attested by the village Munsif (P. W. 9) and another. The

investigation was taken up by the inspector of police (P. W. 13). He reached the scene of occurrence at 8.30 P. M., held the inquest between 8.30 P. M., and 11.30 P. M., under Ex. P. 11, the inquest report and during the inquest he examined P. Ws. 1 to 4 and others. He sent the body for post-mortem through P. W. 10, P. C. 1174 to the Government Hospital, Omalur. He searched for the accused and arrested him at 6 A. M. on 9-12-1971 in the cholam field on the eastern side of the salai, which was the place of occurrence. The accused gave a voluntary confession (Ex. P-4) which was recorded by the Inspector of Police (P. W. 13) in the presence of P. W. 9 and others, who attested Ex. P-4, The accused thereupon took P. W. 13 to the hut where he had hidden M. O. 4, (the razor) which was seized by P. W. 13 under a mahazar Ex. P-5 attested by P. W. 9 and another. Material objects 1 to 8 were sent, to the Sub-Magistrate's Court, Mettur at Omalur on 9-12-71.

P. W. 6 Dr. Suthanthira Vanitha, Medical Officer, Government Hospital, Omalur, conducted the post-mortem on the body of the deceased Chinnathayee and she found the following injuries:

(1) Incised cut injury across the neck-extending from the middle of the neck on the left side to the lower end of the right ear. Trachea cut off completely between first and second ring. Oesophagus cut off completely at same level. Muscles of the neck cut off at the same level on both sides. Common carotid artery and ext. Jugular veins cutoff completely on both sides. Clotted bloodt-seen on the wound. Echymosis present on the muscles. Body of 2nd and 3rd vertebrae cut.

(2) Lacerated injury about 1'x1/2' lying on the left parietal region of the skull.

The Doctor was of opinion that injury No. 1 was fatal and the death would have occurred as a result thereof and the deceased could have died of shock and haemorrhage due to the cut injury received on the neck and that the death in the case must have been instantaneous. She was further of opinion that injury No. 1 could have been caused by a knife like M. O. 4 and injury No. 2 could have been caused by a stone like M. O. 3. M. Os. 1, 2 and 4 to 8 were sent to the Chemical Examiner and the report Ex. P-9 of the Chemical Examiner was to the effect that M. Os. 1, 2' and 4 to 8 had blood stains and Ex. P-10 is the report of the Serologist

to the effect that the said M. Os. contained human blood. After completing the investigation, P.W. 13 laid the charge-sheet against the accused under Section 302 of the Indian Penal Code. The accused was questioned under Section 342, Cr.PC with regard to the circumstances appearing against him in the evidence and he gave his statement to the committal Court.

3. Before the learned Sessions Judge, Salem, the accused pleaded not guilty and the trial commenced. The point for consideration before the learned Sessions Judge was whether the prosecution had proved beyond reasonable doubt that the death was a homicidal one and whether the accused was responsible for the injury on the neck of the deceased. The learned Sessions Judge, on an appreciation of the entire documentary and oral evidence, came to the conclusion that the accused was guilty of the offence under Section 302 of the Indian Penal Code and convicted him thereunder. The present reference and the Criminal Appeal to this Court arise therefrom.

4. The evidence of P.W. 6, the Medical Officer, is clear that the cut that was found on the neck was more or less a deep cut severing the head from the trunk and excepting a tag of skin that the entire head was severed. Though the Medical Officer is not positive whether the injury No. 1 could have been homicidal and not suicidal, she ultimately gave her definite opinion with reference to the injury caused by M. O. 4 that this injury could have been only homicidal and not suicidal. It is clear from the evidence on record that M. O. 4 (barber's razor), which was used in this case and which was found to contain human blood on chemical examination by the Serologist, has been used for cutting the neck of the deceased. In our opinion the deceased died due to homicidal violence inflicted by the barber's razor (M. O. 4).

5. The evidence of the mother-in-law (P.W. 2) shows that there used to be quarrels between her daughter (deceased) and the accused. The evidence of P.W. 8 clearly establishes that the accused purchased the barber's razor from him. The evidence of P.W. 1 that about 4 P.M. on the date of occurrence while he was passing through the pathway leading near the field shed of the accused, he saw the accused coming in a highly perturbed mood, that he saw him wearing M. O. 1

(banian) and M. O. 2 (underwear) that he questioned him as to why he was coming in such a perturbed mood and the answer of the accused that he had finished his wife and the witness going to the shed seeing the deceased lying dead in front of her shed with a cut injury on her neck and the stone pestle lying near her, is consistent with the First Information Report, Ex. P-I, recorded by P.W. 11. Though there are no eye-witnesses, the evidence of P.W. 1 is entitled to greatest weight and there are no suggestions to discredit his evidence. On the question whether the deceased was of an immoral character, the learned Sessions Judge recorded a finding that the deceased was of a good character and chaste woman. The learned Sessions Judge, in our opinion, is right in coming to the conclusion that the accused is guilty of an offence under Section 302 of the Indian Penal Code.

6. On the question of sentence the view of the learned Sessions Judge that there are no extenuating circumstances to mitigate the offence is not correct. Our attention was drawn to a passage in Ex. P-4 dated 9-12-1971 being the statement of the accused before the police. We extract the following passage therefrom:

(Original script in Tamil omitted.Ed.)

7. The learned Counsel for the appellant contends that her statement referred to above is an extenuating circumstance which should be taken into account in inflicting the sentence. In this connection reference was made to *Mottai Thevan v. State* 1951 Mad WN Cri 274 : 1952 Cri LJ 1240. There Somasundaram, J., after referring to Section 25 of the Indian Evidence Act observed as follows:

Section 25 of the Indian Evidence Act says that 'no confession made to a police officer shall be proved as against a person accused, of any offence.' I underline the word against; the section does not therefrom prohibit the use of it in favour of the accused. In the majority of cases, the confessions are sought to be used only against the accused. The cases in which such confessions would or can be used in favour of the accused will be very few and they will be the exceptions to the general rule.

Applying the above decision to the facts of the present case the above extract in Ex. P-4 is a confession in his favour and can be used in favour of the accused. The audacious manner in which the deceased spoke to the accused 'How long are you going to watch my movements? Even sometime ago I was lying with Nagappa Chettiar. What can you do with me', cannot be pocketed easily by the husband. This in our opinion is certainly an extenuating circumstance which the learned Sessions Judge failed to take into account.

8. In this view we confirm the conviction of the accused and reduce the sentence to one of imprisonment for life.

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