

V. Raja Vs. State

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Court : Chennai

Decided On : Feb-05-1999

Reported in : 1999CriLJ3918

Judge : M. Karpagavinayagam and ; V. Bakthavatsalu, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304; Code of Criminal Procedure (CrPC) , 1974 - Sections 313

Appeal No. : Crl. Appeal No. 570 of 1988

Appellant : V. Raja

Respondent : State

Advocate for Def. : N.R. Elango, Govt. Adv.

Advocate for Pet/Ap. : A.A. Selvam, Adv.

Judgement :

M. Karpagavinayagam, J.

1. Raja, the appellant herein, challenging the conviction imposed upon him for the offence under Section 302, I.P.C., has filed this appeal.

2. The prosecution case is as follows :-

(a) P.W.1 Alif Raja is residing in Kurumbapatti village in Palani. P.W.2, Chinnadurai is living in Madhanapuram in Palani. P.W. 3 Thandapani is residing at Palani Adivaram. All the three witnesses are friends. They used to play cards for stakes in poramboke land under a Karuvelan tree near Vaiyapuri Tank.

(b) The occurrence took place on 15-3-87 at about 3.00 p.m. The appellant along with P.Ws. 1 to 3 gathered in the said place for playing cards on the fateful day. P.W.2 Chinnadurai spread a green cloth M.O.1 for playing cards. Thereafter, all the persons were gambling with playing cards M.O. 2 series. The deceased Rajendran, one of the players, was winning in all the games, whereas the appellant Rajendran was losing. Ultimately, the appellant lost all his money in the game. So, he could not gamble further and he requested the deceased Rajendran to allow him to participate in the free cards. However, the deceased Rajendran refused to give him free cards and asked to get out.

(c) So, the appellant got annoyed at this and in a bid of rage, he took out a knife M.O. 3 from inside his banian and inflicted a single stab injury on the left side of the chest of the said Rajendran. On receipt of the said injury Rajendran fell down. All the witnesses and others attempted to catch the appellant. He threatened them with the knife and took to his heels. The witnesses came near the deceased and found that he already died. So, Kulanthaivelu, the brother of the deceased along with P.W.1, went to the police station.

(d) P.W. 8, the Writer received a complaint from the said Kulantaivelu, which was attested by P.W.1. The same was registered in Crime No. 75/86 under Section 302, I.P.C. The F.I.R. is Ex. P-9. These documents were sent to the Court as well as to the higher officials.

(e) P.W.II, the Inspector of Police, on receipt of the copy of the F.I.R., took up investigation at 6.15 p.m. on 15-3-87. He came to the scene and prepared the observation mahazar Ex. P-4 and Rough Sketch Ex. P-14 in the presence of P.W.5. He recovered green cloth M.O.1, one 50 paise coin M.O. 5, 4 Beedies M.O. 6 series, a match box M.O. 6, playing cards M.O. 2 series and blood stained earth M.O. 8 from the scene of occurrence. He also recovered Rs. 27/- M.O. 4 series under 'Athatshi' Ex. P-6. Thereafter, he conducted inquest and examined

witnesses P.Ws. 1 to 3. Ex. P-15 is the inquest report. Thereafter, he sent the body for post-mortem to the hospital.

(f) P.W.5, the Medical Officer attached to the Palani Government Hospital, conducted postmortem on 16-3-87 at 10.30 a.m. He found the following external injury :-

An elipitcal transversely placed wound over left side of chest 3' below left clavicle close sternum over the second intercostal space measuring 2 1/2 x 1' exposing the subcutaneous tissue intercostal muscles and rib. Depth of the wound by probing measures 3 1/2.

He found that the deceased died due to fatal injury to the great vessel ascending aorta causing haemorrhage.

(g) On 17-3-87, P.W.11 went to Kodaikanal Branch Road and arrested the accused in the presence of P.W.6. When the arrest was resisted by the appellant/accused, the police used force to apprehend him.

(h) Thereafter, the appellant gave a confession, the admissible portion of which is Ex. P-7. In pursuance of the said confession, M.O. 3 knife was recovered from the place on being pointed out by the accused. Since the accused had injury on his body, he was sent to the hospital. P.W.4 examined the accused on 17-3-87 and issued the wound certificate Ex. P-3.

(i) P.W.11 sent the material objects for chemical analysis. Thereafter, P.W. 11 after completing the investigation, filed the charge sheet against the appellant on 23-4-87.

3. During the course of trial, on the side of prosecution, P.Ws. 1 to 11 were examined, Ex. P-1 to P-16 were filed and M.Os. 1 to 15 were marked. On questioning under Section 313, Cr.P.C., the accused denied having participated in the commission of offence.

4. On a careful scrutiny of the materials placed by the prosecution, the trial Court concluded that the appellant caused the death of the deceased and convicted him

for the offence referred to above. This verdict is being challenged in this appeal.

5. Mr. Selvam, the learned Senior Counsel, took us through the entire evidence. He would submit that the case of the prosecution bristles with several infirmities, inasmuch as the person, who gave the F.I.R. was not examined, that the motive aspect as projected by the prosecution is quite flimsy, that the medical evidence has not established the case as put forward by the ocular evidence, that the recovery cannot be believed, since the same is said to be recovered after the accused was arrested and beaten and it cannot be said to be a voluntary confession, that the very fact that the injuries found on the accused were appeared to be brown colour would go to show that the injuries would have been caused during the course of quarrel between the accused and the victim on the date of occurrence and the said thing has not been placed before the Court by the prosecution and that therefore, the conviction imposed upon the appellant is not proper and the same is liable to be set aside.

6. Per contra, the learned Government Advocate, would resist the same stating that the evidence of P.Ws. 1 to 3 is cogent and consistent and nothing has been elicited in the course of their cross-examination so as to discredit the credibility of those witnesses and the medical evidence adduced by the Doctor would clearly corroborate the ocular testimony adduced by the witnesses and that therefore, the trial Court has correctly concluded that the appellant is liable to be convicted for the murder.

7. We have given our anxious consideration to the divergent contentions urged by the counsel on either side.

8. The occurrence took place in a day light. According to the prosecution, the witnesses and the deceased as well as the accused were playing cards from 3.00 p.m. to 4.00 p.m. When the deceased refused to allow the accused to play free cards, since the accused lost all his money, this occurrence had taken place. According to the prosecution, all the three eye witnesses examined in this case had participated in the game.

9. No doubt, it is true that one of the persons, who played the cards and who gave the F.I.R. is none other than the brother of the deceased and he has not been examined. So, when the author of the F.I.R. has not been examined, as correctly pointed out by Mr. Selvam, the learned senior counsel appearing for the appellant, no importance could be attached to the contents of the F.I.R.

10. But, it must be noticed that the said F.I.R. has been attested by P.W. 1, who is one of the eyewitnesses. Though we need not act upon Ex. P-1, the fact that the brother of the deceased has given the complaint attested by P.W.1 could be relied upon, in the light of the evidence adduced by P.W. 1 in the Court. The evidence of P.W. 1, in our view, is fully corroborated by the evidence of P.Ws. 2 and 3. The consistent version with regard to the occurrence as given by P.Ws. 1 to 3 is further established by the medical evidence adduced by the Doctor.

11. No doubt, it is true that though the occurrence took place on 15-3-87, the accused was arrested only on 17-3-87 by the police applying mild force. Therefore, it cannot be contended that the knife was recovered in pursuance of a voluntary confession. Therefore, in our view, the evidence relating to the recovery of the weapon cannot be given much credence, in view of the admission made by the Inspector of Police that the accused was arrested after applying mild force, since his arrest was resisted by him.

12. So, in the light of the above things, we have to necessarily eschew the F.I.R. as well as the evidence relating to the recovery of the weapon. But, it does not mean that the materials in relation to the occurrence placed by the ocular witnesses P.Ws. 1 to 3 are to be rejected in toto.

13. The reading of the deposition of these witnesses would clearly show that the occurrence could have taken place as alleged by the prosecution. The injuries found on the accused were treated by Doctor P.W.4 to whom the accused told that he was beaten by the police considerably on 17-3-87 at 4.00 a.m.

14. It is contended by the learned counsel for the appellant that since the injuries were found to be brown, those injuries must have been caused one or two days prior to that and therefore, the possibility of the accused sustaining injuries during

the course of occurrence cannot be ruled out.

15. In our view, this contention does not merit acceptance. Further, those things have not been culled out from the Doctor during the course of cross-examination. Whatever it is. Since we are convinced by the evidence of P.Ws. 1 to 3, we have no hesitation to hold that the deceased died only due to the injury caused by the appellant. Therefore, the conclusion of the trial Court with reference to the act played by the appellant in having caused the injury, which resulted in the death of the deceased, is perfectly justified and proper.

16. Coming to the nature of offence said to have been committed by the appellant, the learned counsel for the appellant would submit that even assuming that the entire facts are true, it cannot be concluded that the conviction can be sustained under Section 302, I.P.C., but it could fall either under Section 304, Part-I or 304 Part-II, I.P.C. in view of the fact that the act attributed to the appellant would come under First and Fourth Exception of Section 300, I.P.C.

17. Mr. Elango, the learned Government Advocate, in opposing the said submission, would cite the decision in *State of Karnataka v. Vedanayagam* (1994) 3 Cri 1017 stating that if the injury inflicted by the accused caused to death of the deceased, then naturally, eventhough the person inflicted single stab or single injury, he shall be convicted for murder only under First or Fourth Exception of Section 300, I.P.C.

18. We have carefully considered the rival contentions made by either side.

19. This is a case where the occurrence had taken place when the appellant requested the deceased to allow him to play free cards, as he lost the entire money in the game. However, the deceased, who was winning in all the games not only refused to allow the appellant to participate, but also asked him to get out of the place. In such a situation, the appellant took out the knife, which he was keeping inside his banian and gave a single stab and ran away.

20. So, in our view, the exception firstly to Section 300, I.P.C. would apply in the instant case, since this act has been committed by the appellant, while he was

deprived of the power of self-control by grave and sudden provocation.

21. In the decision in *Muthusamy v. State by Inspector of Police* (1994) 1 MLW (Cri) 44 the Division Bench of this Court, relying upon the various decisions of the Supreme Court including the decision of *K. M. Nanavati v. State of Maharashtra* : AIR 1962 SC605 , has laid down the following principles:-

(1) The test of grave and sudden provocation is whether a reasonable man, belonging to the same class of society as the accused, placed in the situation in which the accused was placed would be provoked so as to lose his self-control.

(2) In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception of Section 300, I.P.C.

(3) The mental background created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence.

(4) The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

22. In the light of these principles, if we assess the materials placed before this Court, we are satisfied that the act has been committed by the appellant by suddenly taking the knife from his banian, since the words uttered by the deceased asking the appellant to go out, in spite of the fact that the appellant did not have any money and he lost the entire money in the playing of cards, would definitely cause grave and sudden provocation because we have to see the mental background, of the appellant created by the previous act of the deceased by asking him to go out of the place which shall be taken into consideration in ascertaining as to whether the act has been committed under grave and sudden provocation, though P.Ws. 1 to 3 have not given the details about this aspect.

23. The evidence of P.W. 1 is very clear to the effect that the appellant/accused having lost ten times, on the 11th time, he requested the deceased Rajendran to

allow him to play free cards. The deceased not only did not allow him to play free cards and distributed the cards to others by ignoring the appellant, but also shouted at the appellant asking him to get out.

24. In these circumstances, it can be concluded that the act of removing the knife which he had kept inside his banian and stabbing on the chest and causing a single injury and running away from the place would definitely fall under First Exception of Section 300, I.P.C. which is liable to be punished under Section 304, Part-I, I.P.C. In view of the matter, we deem it fit to convert the conviction under Section 302, I.P.C. into 304, Part II, I.P.C.

25. In the result, the conviction and sentence imposed upon the appellant under Section 302, I.P.C. are set aside. Instead, the appellant is convicted for the offence under Section 304, Part-I, I.O.C and sentenced to undergo R.I. for 7 years. With this modification, the appeal is dismissed. The trial Court is directed to take steps to commit the accused to judicial custody to undergo the remaining period of sentence. The bail bond, if any, executed by the appellant stands cancelled.

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