

Nagaraj Vs. the State, Represented by the Inspector of Police

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Court : Chennai

Decided On : Sep-09-2005

Reported in : 2006CriLJ3724

Judge : M. Karpagavinayagam and ;M. Thanikachalam, JJ.

Acts : Indian Penal Code (IPC) - Sections 301, 302, 304I and 304II; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 292 of 2003

Appellant : Nagaraj

Respondent : The State, Represented by the Inspector of Police

Advocate for Def. : E. Raja, Addl. P.P.

Advocate for Pet/Ap. : R. Srinivasan, Adv.

Disposition : Appeal dismissed

Judgement :

M. Karpagavinayagam, J.

1. Nagaraj, the appellant herein, has been convicted for the offence under Section 301 read with 302 IPC, and sentenced to undergo life imprisonment and to pay a fine of Rs. 1,000/= in default to undergo further Rigorous Imprisonment for a

period of one year. Challenging the same, he has filed this Appeal.

2. The brief facts, leading to the conviction of the appellant, are as follows:

(a) P.W.1 Soundararajan, had contested the election for the post of President of the Oorkudi village Panchayat, as an independent candidate. On 14.10.2001, P.W.2 Arumugam, P.W.3 Anbazhagan, the deceased Vedayan and others were canvassing in support of P.W.1 Soundararajan.

(b) At about 7.00 p.m., when P.W.1, the deceased and others were canvassing in the village, the accused, who belong to the Left Community Party, came in front of the witnesses and the deceased and heckled the deceased as to why he had to canvass for a candidate, who is going to be defeated in the election. Then, a wordy quarrel ensued between the deceased and the accused and they both were beating each other with the hands. P.W.1 Soundararajan, who was then going ahead of them, on hearing the sound, came back and pacified them. Then, the accused took out a knife from his hip and proclaiming that 'I expect you only', attempted to stab P.W.1. On noticing this, the deceased intervened, to save P.W.1. Unfortunately, the stab, aimed at P.W.1, fell on the right chest of the deceased and the deceased fell down. The crowd gathered there cried and the accused thereafter, ran away from the scene.

(c) P.W.1 took the deceased, in a taxi, to Thiruvarur Hospital. P.W.9 Doctor declared the deceased dead and issued Ex.P.6 Accident Register. He also sent death intimation to the Police.

(d) P.W.1, then went to the Police Station, gave the complaint-Ex.P.1 to P.W.11, Head Constable. The same was registered by P.W.11 at about 11.30 p.m. in Cr. No. 348/2001, for the offence under Section 302 IPC.

(e) P.W.14, the Inspector of Police, on receipt of the message, took up investigation and came to the spot at 1.00 a.m. on 15.10.2001. He prepared observation mahazar Ex.P.2 and rough sketch Ex.P.15. He recovered bloodstained earth and controlled earth. At about 7.00 a.m., P.W.14 went to the Hospital and conducted inquest. Ex.P.16 is the inquest report. Thereafter, a

requisition was given to the Doctor for conducting Post-Mortem.

(f) P.W.13 Doctor conducted Post-Mortem and issued Ex.P.14 Post-Mortem Certificate. He gave opinion that 'the deceased would appear to have died due to haemorrhage and shock following injury to vital organs namely heart and lung 14-15 hours prior to Post-Mortem.'

(g) Then, on the same day, the accused was arrested and M.O.1 knife, which was concealed in his hip was recovered. Thereafter, he was sent for judicial remand.

(h) P.W.14 conducted the investigation by examining all the other witnesses. The material objects were sent for chemical examination. After completion of investigation, he filed the charge-sheet for the offence, referred to above.

(i) During the course of trial, on behalf of the prosecution, P.Ws.1 to 14 were examined, Exs.P.1 to P.17 were filed and M.Os.1 to 5 were marked.

(j) The plea of the accused, when he was questioned under Section 313 Cr.P.C., is one of total denial. But, he examined one Moorthy, as D.W.1.

(k) The trial Court, after analysing the evidence available on record, concluded that the prosecution has established its case beyond reasonable doubt and convicted the accused for the offence under Section 301 read with 302 IPC. Challenging the same, this appeal has been filed.'

3. Mr. R.Srinivasan, the learned counsel appearing for the appellant, while assailing the judgment of conviction, by pointing out various portions of the judgment, would contend that the evidence adduced by the eye-witnesses, P.Ws.1 to 3, is not reliable, especially when there is unexplained delay in lodging the complaint. It is also pointed out that when P.W.1 was surrounded by P.Ws.2 and 3 along with ten others, who are the supporters of P.W.1, it could not be said that the deceased would have attacked with the knife, without any provocation. Further, a suggestion has been put to all the eye-witnesses that since the accused was beaten by the witnesses and others who are supporting P.W.1, the accused, in exercise of his self-defence, had attacked the deceased and as such, the accused cannot be convicted for the offence under Section 301 read with 302 IPC.

and at the most, he could be convicted for the offence under Section 304(I) or 304(II) IPC.

4. We have heard the learned Additional Public Prosecutor on these aspects.

5. We have considered the contentions urged by the counsel for the parties and also gone through the records.

6. According to the prosecution, on 14.10.2001, at 7.00 p.m., P.W.1 Soundararajn, deceased Vedayan, P.W.2 Arumugam and P.W.3 Anbazhagan along with other supporters of P.W.1 were going round the roads of the village for the purpose of canvassing. At that time, the accused, who belongs to the opposite political party, teased and heckled the deceased stating that P.W.1 is a losing candidate and therefore, canvassing for him would be a waste. In that connection, there was a wordy quarrel and both the deceased and the accused were beating each other. When P.W.1 came to pacify them, the accused took out a knife, proclaiming that he expected P.W.1 only, and so saying, he attempted to attack P.W.1 and when the deceased pushed P.W.1 down, in order to save him, unfortunately, the stab fell on the chest of the deceased. When the deceased was taken to the hospital, P.W.9 Doctor declared him dead.

7. To prove the occurrence, the prosecution examined P.Ws.1 to 3-eye witnesses. On a perusal of the evidence of P.Ws.1 to 3, we do not find anything to conclude that the testimony tendered by P.Ws.1 to 3 is unreliable. On the other hand, their evidence is cogent and consistent and the same is corroborated by the evidence of both P.W.9 Doctor, who declared the deceased dead and P.W.13 Doctor, who conducted the Post-Mortem.

8. The main point urged by the learned counsel for the appellant is that there is delay in lodging the complaint, which has not been explained. This contention, in our view, is not tenable for the reason that the occurrence took place at 7.00 p.m., the victim was taken to the hospital at 8.00 p.m. and at that time, it was raining and therefore, P.W.1 went to the Police Station at 11.30 p.m and lodged the complaint. P.W.11 registered the case for the offence under Section 302 IPC, at about 11.30 p.m. and sent the FIR to the Judicial Magistrate, who received the same at 3.00

a.m. on the same night. Therefore, it cannot be said that there is delay in registering the FIR. Even assuming that there is some delay, the same has been explained by P.W.1.

9. The alternate argument advanced by the learned counsel for the appellant is that the occurrence must have taken place only while exercising self-defence by the accused. When P.W.1 and the deceased were there along with their supporters, more than ten persons, and when the accused was attacked by P.W.1 and others, by way of exercising his private defence, he attacked the deceased.

10. We are unable to accept this contention, in view of the fact that admittedly, the accused did not sustain any injury nor in the statement under Section 313 Cr.P.C., he would refer to this defence. Of course, it is settled law that he need not plead self-defence by examining some witnesses on his behalf or by making any statement. If there are materials, culled out from the cross-examination to indicate that the occurrence had taken place, while exercising the self-defence, then, this Court can conclude that it is a case of private defence, in order to decide about the nature of the offence committed by the accused. But, in this case, except the suggestion made to the witnesses, there is no material available on record to indicate that the accused had attacked the deceased, in exercise of his self-defence.

11. Lastly, the learned counsel for the appellant contended that the occurrence took place in a sudden quarrel and there was only a single stab. Therefore, he might be convicted for lesser offence. He would cite the judgment of the Supreme Court in *Krishna Tiwary and Anr. v. State of Bihar* 2004 SCC (Cri) 148.

12. The facts of the said case, in our view, would not be applicable to the facts of the present case. In this case, when the deceased and the accused were fighting with each other, P.W.1 intervened, in order to pacify them. In that context, the accused, saying that he expected only P.W.1, took out a knife and attempted to attack P.W.1, which, unfortunately, fell on the chest of the deceased. Therefore, it cannot be said that there was no intention on the part of the accused to kill the deceased in this case.

13. The intention to kill a person has to be gathered from the nature of the weapon used and the vital part on which the injury was inflicted and the force with which the weapon was used and other attendant circumstances. The intention of the accused to commit the murder of the deceased is clear from Ex.P.14 Post-Mortem Certificate, which would indicate the following injuries:

'Internal examination:

1) ...

2) ...

3) Thorax

(1) On opening the thorax, ecchymosis found beneath the injury extending to the right hemithorax.

(2) Beneath the injury transverse fracture of sternum at the level of 3rd intercostal space seen.

(3) Pericardium Injured - contains blood (dark coloured) about 650 ml. in around pericardium.

(4) Right atrium injured 3 cm. x 1/2 cm. x wall thickness.

(5) Interventricular septum injured 3 x 1/2 x wall thickness leading to left atrium.

(6) Lungs - Right upper lobe injured and collapsed.'

14. The opinion given by the Doctor, on the basis of the above injuries, is that 'the deceased would appear to have died due to haemorrhage and shock following injury to vital organs namely heart and lung 14-15 hours prior to Post-Mortem'.

15. From these injuries and the weapon, which is a knife, which has been recovered in this case as M.O.1, it is clear that the accused had the intention to kill the deceased.

16. Section 301 IPC reads thus:

'If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.'

17. Therefore, it is clear that even though the accused intended to cause the death of P.W.1 and the stab, which was aimed at P.W.1, fell on the chest of the deceased, which resulted in the death of the deceased, as per the principle of 'Transfer of Malice', it must be presumed that the accused had the intention to cause the death of the deceased alone. Hence, the act committed by the accused to commit the murder of P.W.1, which, unfortunately, caused the death of the deceased, in our view, would attract the offence under Section 301 read with 302 IPC and consequently, the conviction imposed on the accused by the trial Court, for the offence under Section 301 read with 302 IPC, is perfectly justified.

In the result, this Criminal Appeal fails and the same is dismissed.

The conviction and sentence imposed on the appellant/accused by the Principal Sessions Judge, Nagapattinam in Sessions Case No. 175 of 2002, dated 21.10.2002, is confirmed.

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