

**Pandi Vs. State**

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**Court :** Chennai

**Decided On :** Oct-12-2006

**Reported in :** 2007CriLJ1850

**Judge :** S.R. Singharavelu and ;K.N. Basha, JJ.

**Acts :** Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(2)(5); [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 300, 302, 304, 304(II), 323, 324 and 325; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** Crl. A. No. 59 of 2005

**Appellant :** Pandi

**Respondent :** State

**Advocate for Def. :** N. Senthurpandian, Addl. P.P.

**Advocate for Pet/Ap. :** S. Nagamuthu, Adv.

**Judgement :**

**K.N. Basha, J.**

1. Pandi alias Pandian is a sole accused in this case has come forward with this appeal challenging his conviction and sentence passed by the learned First Additional Sessions Judge, Thanjavur, made in S.C. No. 31 of 2002 dated 29-11-

2004 convicting him for the offence under Section 302, IPC and sentencing him to undergo life imprisonment and also imposing a fine of Rs. 5.000/-, in default, to undergo six months rigorous imprisonment and also convicting him under Section 323, IPC and sentencing him to 15 days simple-imprisonment. The learned Trial Judge acquitted him in respect of the charges framed against him under Section 324, IPC (two counts) and under Section 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act').

2. The accused faced trial under the following backdrop:

(a) It is the case of the prosecution that the accused hails from Vadipatti village of Madurai District. On the date of occurrence i.e. on 1-7-2001 he went to the scene village viz. Pachapillayar Kovil Kulam village in Nagapattinam District as a guest to the house of one Maya Thevar. P.W. 3 is a resident nearer to the house of Maya Thevar and the villagers used to go to the house of P.W. 3 for watching T.V. On the date of occurrence i.e. on 1-7-2001 while P.W. 1 and others were watching T.V. there was a wordy quarrel between the deceased Pappa and her husband P.W. 2 and both of them were shouting which is said to have caused disturbance to the persons who were watching T.V. in the house of P.W. 3 and as a result the accused who has also come to watch T.V. questioned P.W. 2 and the deceased as to why they are shouting and causing disturbance to the persons who were watching T.V. For that P.W. 2 stated that it is a family problem between himself and his wife and questioned him as to why he is interfering. Immediately the accused stated that P.W. 2 is not giving respect to him and thereafter slapped P.W. 2's cheek. On seeing this, the deceased questioned the conduct of the accused as to why he has slapped P.W. 2, her husband and also cursed the accused by throwing sand on him. Thereafter the accused took a stick, M.O. 1 lying on the spot and beat the deceased on his head and the deceased swooned and fell down. P.Ws. 2 and 3 prevented the accused and the accused also assaulted them. Thereafter P.W. 1 and other took the injured/deceased to the Government Hospital, Nagapattinam.

(b) P.W. 6, the Doctor, attached to the Government Hospital, Nagapattinam, examined the injured deceased on 1-7-2001 at 11.15 p.m. It is stated by the Doctor, P.W. 6 that he was informed that the injured was assaulted by four persons with a stick. The Doctor found that the deceased was semiconscious stage and also found two injuries on her. The first injury is on the right side of the head, a lacerated wound and another lacerated wound said to have found by the Doctor on the left forehead. Thereafter the Doctor sent a Memo to the Velipalayam police station under Ex. P.5.

(c) P.W. 12, the Head Constable attached to Velipalayam police station received the intimation, Ex. P.5 from the hospital on 2-7-2001 at 1.00 a.m. and thereafter he went to the Government Hospital, Nagapattinam and found that the deceased was not in a position to talk and she was found unconscious. P.W. 12 recorded the statement from P.W. 1, the daughter-in-law of the deceased under Ex. P.1. P.W. 12 reached the police station at 2.00 a.m. and registered a case in Crime No. 361 of 2001 under Section 325, IPC Ex. P. 11 is the FIR. He sent the FIR to the Judicial Magistrate, Nagapattinam, on 2-7-2001. Thereafter he went to the Government Hospital, Nagapattinam, and examined P.W. 1 again and recorded her statement. He also went to the scene of occurrence and examined P.W. 3 and his wife one Latha and recorded their statements.

(d) The Doctor, P.W. 9, attached to the Government Hospital stated that the deceased died on 2-7-2001 at 5.55 p.m. and she sent the death intimation under Ex. P. 7.

(e) The Inspector of Police P.W. 13, attached to Velipalayam police station received the death intimation, Ex. P. 7 on 2-7-2001 at 7.15 p.m. and altered the offence in this case from Section 325, IPC to one under Section 302, IPC and prepared the Express FIR, Ex. P. 12 and took up investigation in this case. He went to the scene of occurrence at 7.30 p.m. and examined some witnesses and prepared the observation mahazar, Ex. P. 2 in the presence of P.W. 4 and another. He also prepared the Rough sketch, Ex. P. 13. Thereafter he examined one Latha one Muniappan, one Pakkirisami, one Mayakrishnan and Sasikumar P.W. 4 and recorded their statements. He also received the information that the

accused belongs to S.C. S.T. community he altered the FIR on 3-7-2001 and included the offence under Section 3(2)(5) of the Act along with the offence under Section 302, IPC. He also sent the express FIR, Ex. P. 14 to the Deputy Superintendent of Police, P.W. 14.

(f) The Deputy Superintendent of Police took up further investigation in this case. He went to the scene of occurrence and examined P.Ws. 1 to 3, one Kumar, one Srinivasan, one Ramaian, one Latha and one Muniammal and recorded their statements. He went to the Government Hospital, Nagapattinam, and there he examined some witnesses and recorded their statements. He held inquest on the dead body of the deceased. Ex. P. 15 is the Inquest report. On 4-7-2001 at 4.00 p.m. P.W. 14 arrested the accused near Nagapattinam Tamil Nadu Hotel in the presence of P.W. 5 and another. In pursuance of the admissible portion of the confessional statement of the accused, Ex. P. 3, he recovered M.O. 1, Stick as produced by the accused in the presence of the witnesses under Ex. P. 4. On 9-8-2001 he obtained the community Certificates in respect of the deceased and the accused, Exs. P. 9 and P. 10, from the Tahsildars and also recorded their statements. Thereafter he made arrangements for sending the body for post-mortem.

(g) The Doctor, P.W. 9 attached to the Government Hospital, Nagapattinam, conducted post-mortem on the dead body of the deceased on 3-7-2001 at 12.30 noon. He found the following injuries:

1. A sutured wound with three sutures over the right parietal region 5 c.m. in length.
2. Contusion over the occipital parietal region 10 c.m. x 8 c.m.
3. Abrasion with brownish discoloration on the left side of the face over the left eye on the lateral aspect.
4. Single sutured wound over the forehead above the eye brow. On reflecting the scalp clotted blood seen on the under surface of scalp and over the cranium blackish red in colour. Fracture lines seen over the cranium one over the left

parietal bone and two fracture lines over the right parietal bone.

Ex. P. 8 is the Post-mortem Certificate. The Doctor is of the opinion that the injuries could have been caused by using the weapon, M.O. 1. He further opined that the deceased would appear to have died of shock due to injury to the vital organ the brain and membranes following fractures of skull bones and death would have occurred 18 to 24 hours prior to post-mortem.

(h) In continuation of his investigation, P.W. 14, recovered the saree, M.O. 2, Jacket, M.O. 3, Petty Coat, M.O. 4 under Ex. P. 16 as produced by the Constable which were recovered from the body of the deceased. P.W. 15 took up further investigation in this case. He perused the case diary on 25-9-2001 and found that the investigation was already over as conducted by the D.S.P., P.W. 14. He filed the charge sheet against the accused under Sections 324 (two counts), 323 and 302, IPC and under Section 3(2)(5) of the Act.

3. The prosecution, in order to bring home the charges against the accused examined P.Ws. 1 to 15, filed Exs. P. 1 to P. 16 and marked M.Os. 1 to 4.

4. The accused was questioned under Section 313, Cr. P.C. by putting each and every incriminating circumstances against him and the accused denied his complicity with the crime and stated that he has been falsely implicated in this case and he has not chosen to examine any witness on his side.

5. Mr. S. Nagamuthu, learned Counsel appearing for the appellant contended that the prosecution has miserably failed to establish the guilt of the accused by adducing clear and cogent version, the learned Counsel for the appellant put forward the two fold submissions viz.

(1) the evidence of the alleged eye-witnesses, P.Ws. 1 and 2, is unbelievable and unacceptable. It is the admitted version of the prosecution that the accused was holding a child in his left hand at the time of the occurrence and therefore it is improbable for the accused to attack the deceased with the weapon, M.O. 1, stick. The earliest version given to the Doctor, P.W. 6 who has examined the deceased is that the deceased was assaulted by four persons with stick, the Doctor, P.W. 6,

found two injuries on the injured/deceased and opined that two injuries could not have been caused by one single blow which falsifies the version of the alleged eye-witnesses, P.Ws. 1 and 2. Therefore it is submitted by the learned Counsel for the appellant that the occurrence could not have taken place in the manner as alleged by the prosecution.

(2) The learned Counsel for the appellant without prejudicing his first contention submitted that the categorical version of P.Ws. 1 and 2 right from Ex. P. 1 is that the entire occurrence took place due to a sudden quarrel between the deceased and the accused and as a result the accused took casuarina stick which was lying on the spot and gave a single blow on the head of the deceased. Therefore, the accused could not have had intention to cause the death and his act comes squarely under Section 304(II) IPC.

6. The learned Additional Public Prosecutor contended that the prosecution has come forward with clear and cogent version by adducing acceptable evidence. It is further submitted by the learned Additional Public Prosecutor that the evidence of P.W. 1, daughter-in-law of the deceased and P.W. 2, husband of the deceased are quite natural and there are no serious contradiction in their evidence. It is further pointed out by the learned Additional Public Prosecutor that out of two eye-witnesses, P.W. 2 also sustained injury and therefore it is clear that the presence of P.W. 2 cannot be disputed by the defence. It is further pointed out by the learned Additional Public Prosecutor that P.W. 3 has not supported the prosecution case fully but P.W. 3 also stated to the extent about the quarrel preceded to the occurrence between the accused and the deceased and her husband P.W. 2 and therefore it is submitted by the learned Additional Public Prosecutor that the prosecution also proved the motive and the presence of the accused at the time of the occurrence. The learned Additional Public Prosecutor also contended that the evidence of the eye-witnesses viz., P.Ws. 1 and 2 also corroborated by the medical evidence through the Doctor, P.W. 9 and the Post-mortem Certificate, Ex. P. 8, as it discloses the corresponding injuries found on the deceased. Therefore, it is submitted by the learned Additional Public Prosecutor that the prosecution has proved its case beyond reasonable doubt.

7. We have given our careful and anxious considerations to the rival contentions put forward by either side.

8. The prosecution has chosen to examine P.Ws. 1 to 3 as eye-witnesses to speak about the occurrence. P.W. 3 has not supported the prosecution case and he has turned hostile. Therefore, the entire case rests on the testimony of P.Ws. 1 and 2 who are the daughter -in-law and husband of the deceased and as such they are the interested witnesses. Therefore, we have to scrutinize the evidence of P.Ws. 1 and 2 with great, care and caution.

9. The evidence of P.Ws. 1 and 2 is clear and cogent in respect of the wordy quarrel took place between P.W. 2 and his wife the deceased and the accused. It is the categorical version of P.Ws. 1 and 2 that the accused questioned P.W. 2, husband of the deceased as to why P.W. 2 and the deceased were quarrelling and shouting and causing disturbance to the persons watching T.V. and for that P.W. 2 said that it is a family problem and the accused should not interfere. It is further stated by P.Ws. 1 and 2 that thereafter the accused said to have slapped on the cheek of P.W. 2 and as a result the deceased, wife of P.W. 2 questioned the conduct of the accused slapping P.W. 2 and the deceased cursed him by throwing sand on him and being provoked, the accused took a casuarina stick lying on the spot and beat the deceased by giving a single blow on her head. Therefore there is no contradiction between the evidence of P.Ws. 1 and 2 in respect of the actual occurrence.

10. The only endeavour made by the learned Counsel for the appellant that the earliest information given to the Doctor, P.W. 6 is that the deceased was assaulted by 4 persons. It is relevant to be noted that as per the Doctor, P.W. 6, the deceased was found semiconscious stage and it is also further relevant to note that the deceased was brought by one Anbalagan. Therefore the fact remains that the said Anbalagan is not an eye-witness and as such it is not clear as to who has given the information to the Doctor about the number of assailants. It is further relevant to be noted that the Doctor, P.W. 7, who has treated P.W. 2 has stated in his evidence that he was informed by P.W. 2 that P.W. 2 was assaulted by one person with stick. Therefore, the earliest version of P.W. 2, eye-witness, in this

case to the Doctor, P.W. 7 is that he was assaulted by one single person which proves the prosecution version about the participation of a single accused in this case.

11. It is further pointed out by the learned Counsel for the appellant that the Doctor, P.W. 6 has admitted in his cross-examination that by giving a single blow with M.O. 1, stick, it is not possible to cause two injuries. It is submitted that the Doctor, P.W. 6 found two injuries on the deceased. The fact remains that the Doctor, P.W. 6 has not issued any accident register or wound certificate. He stated only in his evidence mentioning two lacerated injuries on the head one on the right side and the other on the left side. We need not give much importance to the evidence of the Doctor, P.W. 6 in respect of the number of injuries. In respect of this submission that single blow could not have caused two injuries, it is well settled by the Hon'ble Supreme Court of India in a catena of decisions that if there is any conflict between the ocular witness and the medical evidence, the evidence of the ocular witness should be preferred. In this case, the evidence of P.Ws. 1 and 2 is clear, cogent and consistent in respect of the accused giving a single blow on the head of the deceased, Therefore, the contention of the learned Counsel appearing for the appellant is untenable.

12. As pointed out earlier, the evidence of P.Ws. 1 and 2, eye-witnesses is clear and clinching and their evidence is also corroborated by the medical evidence through the Doctor, P.W. 9 who has conducted postmortem and as per his opinion the deceased died due to shock due to injury to the vital organ the brain and membranes and fracture on skull bones and as such the fact remains that the deceased died due to homicidal violence only at the hands of the accused.

13. Now, we are left with the consideration of the second submission of the learned Counsel for the appellant regarding the nature of the offence committed by the accused. The learned Counsel for the appellant rightly contended that the entire occurrence took place due to a sudden quarrel between P.W. 2 and his wife, deceased and the accused. It is also relevant to be noted that the accused was unarmed while he came to the scene of occurrence and even at the time of quarrel with P.W. 2 he was continue to be unarmed and only while the deceased cursed

him by throwing sand on him, the accused said to have been provoked and fetched the casuarina stick, M.O. 1 which was lying on the spot and dealt with a single blow which landed on the head of the deceased. Therefore the entire occurrence took place due to a sudden quarrel without any premeditation and at the spur of the moment. Under such circumstances, it is very clear that the accused could not have been imputed with the intention of causing the death of the deceased and we are of the considered view that Clause (iii) of Section 300 does not cover the case. Inasmuch as death has been caused, the matter must still come within at least culpable homicide not amounting to murder. There again, Section 299 is in three parts. The first part takes in the doing of an act with the intention of causing death. As we have shown above, the accused did not intend causing death and the first part of Section 299 does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death and that also, as we have shown above, was not the intention of the accused, The matter, therefore, comes within the third part as the accused due to a sudden quarrel and due to the deceased cursing him and throwing sand on him provoked and fetched the casuarina stick, M.O. 1 which was lying on the spot and dealt with a single blow which landed on the head of the deceased. The act which was done was done with the knowledge that the accused was likely by such act to cause the death of the deceased and as such the case squarely falls within the third part of Section 299 and will be punishable under the second part of Section 304, IPC as culpable homicide not amounting to murder.

14. In view of the above said findings, the conviction imposed on the appellant under Section 302, IPC is set aside and the appellant is convicted under Section 304(II) IPC and sentenced to five years rigorous imprisonment. It is further pointed by the learned Counsel for the appellant that the appellant was in custody even during the pendency of the trial and he is undergoing imprisonment for the last five years as per the materials available on record before the Court. We are making it clear that the jail authorities are at liberty to look into the records and if the appellant/accused is completed five years of rigorous imprisonment, he should be set at liberty forthwith unless he is required in connection with any other case.

15. With this modification in the conviction and sentence, the appeal is partly allowed.

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