

Murugesan Vs. State

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Court : Chennai

Decided On : Oct-27-2006

Reported in : 2007CriLJ1949

Judge : K.N. Basha and ;A. Selvem, JJ.

Acts : Evidence Act - Sections 25; [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304(1); Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 756 of 1998

Appellant : Murugesan

Respondent : State

Advocate for Def. : P.N. Pandithurai, Addl. Public Prosecutor

Advocate for Pet/Ap. : K. Samidurai, Adv. for ;B. Pugalendhi, Adv.

Judgement :

K.N. Basha, J.

1. The sole accused Murugesan has come forward with this appeal challenging the conviction and sentence passed by the learned Sessions Judge, Pasumponmuthuramalingam Thevar District, Sivagangai, in S. C. No. 20 of 1994, dated 12-8-1994 convicting the appellant under Section 302, I. P. C. and

sentencing' him to undergo imprisonment for life.

2. The accused faced the trial under the following backdrop:

(i) P. W. 1 is the son of the deceased. P. W. 2 is the daughter of the deceased and wife of the accused. The deceased is the father-in-law of the accused. P. W. 3 is the wife of the deceased and all of them were residing in a village called Pappakudi. The accused was also residing in the same village nearer to the house of the deceased. Right from the marriage, there were frequent quarrels between the accused and his wife, P. W. 2, who is the daughter of the deceased. P. W. 2 after quarrelling with the accused used to go to her parental house frequently and thereafter, accused used to go to his father-in-law's (deceased) house and bring back his wife. Out of the wedlock of the accused and PW 2, a female child was born and the child was aged about 11 months at the time of the occurrence.

(ii) It is stated by PW 1 that the accused suspect the fidelity of PW 2 and as a result there were frequent quarrels between them. Whenever PW 2, wife of the accused came to the house of her father, the deceased, after quarrelling with the accused, the family members of PW 2 used to convene a panchayat and send her back to her matrimonial house. One day prior to the date of occurrence, there was quarrel between the accused and PW 2 at 7.00 p.m. as the accused questioned the conduct of PW 2 leaving the small child who was suffering from illness and dandruff and going to her father's house. Thereafter PW 2 went to her father's house on the same night. The accused came to the house of the deceased and questioned PW 2 as to how she can leave the small child who was suffering from illness and dandruff and warned her that she should not go to the house of the deceased. PW 1 quarrelled with the accused and as a result the accused beat her.

(iii) On the fateful day of occurrence i.e. on 5-3-1993 at 7.00 a.m., the accused came to the house of the deceased and called his wife, PW 2 in the presence of the deceased, PW 1 and PW 3. But PW 2 refused to come along with the accused. Again, the accused came in the evening at 4.00 p.m. when the deceased, PW 2, PWs. 1 and 3, brother and mother of PW 2, cutting crops in the field and called PW 2 his wife to come and cook food for him and even at that time PW 2 refused

to come and the deceased told that he would send PW 2 only after convening a panchayat. At 7.30 p.m., the deceased, father of PW 2 went to the house of PW 4 and complained about the conduct of the accused. The accused also came to the house of PW 4 which resulted in a wordy quarrel between them. The accused also informed PW 4 that his wife PW 2 has not taken care of his child who was suffering from illness and dandruff. PW 4 pacified the accused and the deceased. Thereafter the deceased and the accused left the house of PW 4. The deceased proceeded towards the Northern Road towards the cattle shed of one Raman and the accused came from East with a knife, MO 1 and the accused stabbed the deceased on his chest repeatedly. The deceased fell down on the spot. PWs 1 and 2, son and daughter of the deceased who were following the deceased at that time said to have witnessed the occurrence. PW 3 also said to have witnessed the occurrence as she was coming on that side for the purchase of milk. PWs. 1, 2 and 3 rushed to the scene of occurrence along with one Rajendran and found the deceased lying with blood stained injury on his chest and they lifted the deceased and placed him into his house. The deceased died within a short time.

(iv) P. W. 1 along with P. W. 4 went to Sivagangai Taluk Police Station and gave a report, Ex. P1 and P. W. 11, the Sub-Inspector of Police, at 11.30 p.m. on 5-3-1993. Ex. P1 was attested by P. W. 4. P. W. 11 registered a case in Crime No. 64 of 1993 under Section 302, I. P. C. Ex. P9 is the First Information Report and the same was sent to the higher Police officials and the Magistrate Court. He has sent P. W. 10, Police Constable to take care of the body of the deceased at the place of occurrence.

(v) P. W. 12, the Inspector of Police received the FIR on 6-3-1993 at 3.00 a.m. through the Constable, P. W. 9 and took up investigation in this case. He reached the scene of occurrence at 4.00 a.m. and prepared the observation mahazar, Ex. P2 in the presence of P. W, 6 and another. He has prepared the rough sketch, Ex. P10. He made arrangements for taking photograph in the scene of occurrence. He has recovered M. Os. 2 and 3 sample of sand and blood stained sand from the scene of occurrence and M. Os. 4 and 5, sample of sand and blood stained sand from the place where the body of the deceased was lying under Ex. P3 and Ex. P4 respectively in the presence of P. W. 6 and another. At about 8.00 a.m. on 6-3-

1993, he held inquest on the dead body of the deceased and during inquest he examined P. Ws. 1 to 4 and recorded their statements. Ex. P1 1 is the inquest report. He has sent the body for post-mortem through P. W. 10, the Constable to the Government Hospital, Sivaganagai.

(vi) P. W. 8, the Doctor attached to the Government Hospital, Sivaganagai conducted post-mortem on the body of the deceased on 6-3-1993 at 12.00 noon, as per the requisition, Ex. P7. He found the following injuries.

Elliptical punctured wound over right side of chest above the level of nipple right close to mid line 4 cm. x 3 cm. Clear cut edges and sharp angle at two extremities passing obliquely downwards extending into right lung and throaeic cavity right.

(2) Horizontal incised wound over left mediatory region below the level of the nipple 3 cm. x 2 cm. x 2 cm. edge clear cut, well defined.

The Doctor, PW 8 is of the opinion that the deceased would have died due to shock and haemorrhage caused due to injuries sustained in his lungs, 16 to 18 hours prior to the post-mortem. Ex. P. 8 is the postmortem certificate.

(vii) P. W. 12, in continuation of his investigation, searched for the accused. On 7-3-1993 he has examined P. Ws. 4, 5 and one Rajendran. On 17-3-1993 at 3.00 p.m. he arrested the accused at Salur Village Road junction, Melur. In pursuance of the confessional statement of the accused, the admissible portion of which is Ex. P6, he recovered the knife, M. O. 1 under Ex. P. 5 in the presence of witnesses. Thereafter, he has remanded the accused to judicial custody on 18-3-1993 and sent M. O. 1 to the Court. He has examined the Doctor, P. W. 8 and also recorded the statements of P. Ws. 9 to 11, He made arrangements through the Court to send the Material Objects for chemical examination under requisition, Ex. P12. After receiving the post-mortem certificate, Ex. P8 and after completing the investigation he filed the charge sheet against the accused on 10-7-1993 under Section 302, I. P. C.

3. The prosecution in order to bring home the charges against the accused examined P. Ws. 1 to 12, filed Exs, P1 to P12 and also marked M. Os. 1 to 8.

4. When the accused was questioned under Section 313, Cr. P. C. in respect of the incriminating circumstances found against him during the evidence adduced by the prosecution witnesses, the accused has come forward with the version of total denial and he has not chosen to examine any witness on his side.

5. Mr. K. Samidurai, learned Counsel appearing for the appellant meticulously taken us through the entire evidence available on record and made the following two fold submissions:

(1) The evidence on the alleged eye-witnesses, PWs 1 to 3 are interested witnesses as they are closely related to the deceased and further their evidence suffers from infirmities and inconsistencies. In the absence of any independent witness, the evidence of the eye-witnesses, P. Ws. 1 to 3 cannot be placed reliance for convicting the accused.

(2) Even assuming and if not admitting that the prosecution has proved its case against the accused the offence under Section 302, I.P.C. is not made out. The entire occurrence took place due to sudden quarrel without any premeditation and therefore, the accused is entitled to the benefit of Exception 4 to Section 300, I.P.C.

6. The learned Additional Public Prosecutor contended that the prosecution has proved the offence against the accused/appellant by clear and cogent evidence. It is submitted by the learned Additional Public Prosecutor that the evidence of eye witnesses P. Ws. 1 to 3 is quite natural and their evidence does not suffer from any infirmities. He further contended that their evidence is also corroborated by the medical evidence through the Doctor, P. W. 8 who conducted the post-mortem. Therefore, it is submitted that the prosecution has proved its case beyond all reasonable doubts.

7. We have given our careful and thoughtful consideration to the rival contentions put forward by either side and also perused the entire evidence available on record.

8. The prosecution placed reliance on the evidence of the eye witnesses, P. Ws. 1 to 3. Of course, P. Ws. 1 to 3 are close relatives to the deceased, P. W. 1 is the son of the deceased. P. W. 2 is the daughter of the deceased, P. W. 3 is the wife of the deceased. But on that score alone their evidence cannot be viewed with suspicion, but the only requirement for this Court is to scrutinise their evidence with care and caution. We find that there is absolutely no serious infirmities in the prosecution evidence of P. Ws. 1 to 3 as contended by the learned Counsel for the appellant. There may be some minor discrepancies in the evidence of PWs. 1 to 3 and those discrepancies not affected the main case of the prosecution. A perusal of the evidence of P. Ws. 1 to 3 clearly shows that they have come forward with clear, cogent and consistent version in respect of the occurrence and also in respect of the quarrel that took place between the deceased and the accused prior to the occurrence. The overt acts attributed against the accused as per their evidence are corroborated by the medical evidence given by Doctor P. W. 8, who conducted post-mortem. The Doctor found that the deceased died due to haemorrhage and shock due to injury to the lung. Therefore, it is very clear that the deceased died due to homicidal violence at the hands of the accused.

9. Now, we are left with the only consideration of the nature of offence said to have been committed by the accused. The learned Counsel for the appellant contended that the accused is entitled to invoke the Exception 4 to Section 300, I.P.C. and placed reliance on the decision of the Hon'ble Supreme Court in Sandhya Jadhav v. State of Maharashtra reported in 2006 (2) SCC (Cri) 394 : 2006 Cri LJ 2111.

10. The Hon'ble Supreme Court held in the decision cited supra that.

Thus, the help of Exception 4 can be invoked if death is caused (a) without premeditation; (b) in a sudden fight; (c) without the offender having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found.

11. In the very same decision, the Apex Court also held that.

Both in Exception 1 and in Exception 4 there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4. there is only that heat of passion which clouds men's sober reasons and urged them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the Injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1.

Though, the learned Counsel for the appellant placed reliance on the decision of the Apex Court, as cited supra, with the plea of invoking Exception 4 to Section 300, the Apex Court also laid down the principle regarding distinction between Exception 1 and Exception 4.

1SJ. In the above said decision, the Apex Court has held that under Exception 1, there is total deprivation of self-control and under Exception 4 there is only with heat of passion which clouds men's sober reasons and urges them to deeds which they would not otherwise do. It is also held by the Apex Court that there is provocation in Exception 4 as well as in Exception 1; but the injury done is not the direct consequence of that provocation. In both the exceptions viz., Exception 1 and Exception 4, there is absence of premeditation for the application of Exception 4 it is not sufficient to show that there was a sudden quarrel and there was no premeditation but it must be shown that the offender has not taken undue advantage or acted in cruel or unusual manner.

13. The facts of the instant case and the sequence of events, as stated by the eyewitnesses, P. Ws. 1 to 3 makes it crystal clear that the Exception more appropriately applicable would be Exception 1 to Section 300, I.P.C.

14. Before proceeding further it is also relevant to note at this stage that PWs. 1 to 4, though categorically stated that a wordy quarrel preceded the occurrence, their evidence not disclosed what provocative words exactly used by the deceased against the accused. It is well settled by a number of decisions of the Apex Court as well as this Court that confession given by the accused before the police under Section 25 of the Evidence Act though cannot be used against the accused, it is quite permissible in rarest of rare cases to use the same in favour of the accused in the interest of justice and for the purpose of deciding the nature of the offence which he had committed as held in the following decisions:

1. Thandavan, In Re reported in 1972 LW (Cri) 244 : 1973 Cri LJ 1041 : ;

2. Ganesan, In Re reported in 1973 LW (Cri) 42 : 1974 Cri LJ 381 : .

15. This Court further taken a similar view in the following decisions:

1. Chandran, In Re reported in 1988 LW (Cri) 113;

2. Muthuswamy v. State reported in 1994 (1) LW (Cri) 44;

3. Vairamuthu v. State reported in 1996 (1) LW (Cri) 9.

16. The confession of the accused/appellant has been recorded under Section 25 of the Indian Evidence Act by the Investigating Officer, P. W. 12, is marked under Ex. P. 6. This confession contains both non-admissible portion as well as admissible portion leading to the recovery of M. O. 1, knife. A perusal of Ex. P. 6 shows that P. W. 2, wife of the accused frequently quarrelled with him and she used to go to her parents' house and the deceased, Ayyavu, father-in-law of the accused, refused to send her back to the house of the accused. It is further disclosed that the accused having hatred and grievance against the deceased who was spoiling his life. It is stated in the confession that only the accused was looking after the agricultural work of the deceased and even that job was given up a year prior to the occurrence. It is further stated that the deceased not only quarrelled with the accused frequently but also attempted to attack him which caused provocation to the accused. A day prior to the date of occurrence, P. W. 2 quarrelled with the accused and left her father's house and when the accused

called her stating that she was not taking care of the child who was suffering from illness and dandruff and even at that time the deceased supported P. W. 2. It is also stated by the accused that on the date of occurrence on 5-3-1993, he went to the house of the deceased in the morning at 7.00 a.m. and again at 4.00 p.m. and at that time the deceased refused to send P. W. 2 along with the accused and also scolded the accused by using filthy language. It is further stated that again at 7.30 p.m. as the accused heard that the deceased was complaining about him to P. W. 4. The accused went there and again a wordy quarrel took place between the deceased and the accused which caused grave provocation to the accused and as a result, the accused rushed to his house with his child and after leaving the child with his father, he came running towards the deceased with the knife, M.O. 1 and stabbed the deceased in front of the cattle shed of one Raman. It is pertinent to be noted that the sequence of events, as narrated by the accused in his confessional statement made before the police, also categorically spoken by PWs. 1 to 4 except the deceased abusing the accused in a filthy language and made attempt to attack the accused.

17. As already stated, that as per the version of P.Ws. 1 to 4 that there were quarrels between the accused and his wife P.W. 2 and P.W. 2 used to go to her father's house frequently and during such occasions father of P.W. 2, the deceased in this case, always supported P.W. 2 and insulted the accused. Their evidence also disclosed that P.W. 2 is not even taken care of her child of tender age of 11 months as she has deserted the child in spite of illness and dandruff suffered by the child and when the accused questioned her even then P.W. 2 refused to come back to the house of the accused and during such occasions also the deceased bluntly supported P.W. 2 and refused to send P.W. 2 along with the accused stating that he would convene a panchayat.

18. While the accused made the efforts to bring back his wife P.W. 2 by going to the house of the accused in the morning 7.00 a.m. and also meeting P.W. 2 in the field along with P.Ws. 1 and 3 and the deceased at 4.00 p.m. and even at that time the deceased stood in the way of sending P.W. 2 along with the accused who was nurturing sustained provocation in view of the above said sequence of events and all his efforts to bring back his wife, P.W. 2 proved futile in view of the conduct of

the deceased. Again, at 7.30 p.m. the accused heard that the deceased was complaining about him to P.W. 4 and, therefore, he also went to the house of P.W. 4 which resulted in a wordy quarrel between the deceased and the accused. Thereafter, P.W. 4 said to have pacified both of them and both the deceased and the accused left the house, of P.W. 4 and the deceased was proceeding towards north side and the accused came running with knife, M.O. 1, from his east side and stabbed the deceased in front of the cattle shed of one Raman. At this stage, it is relevant to note that right from the time of the wordy quarrel took place in the house of P.W. 4 culminating into the act of the accused stabbing the deceased with knife, M.O. 1, there is no sufficient time gap for the accused to cool down giving room and scope for premeditation and calculation. The evidence of P.Ws. 1 to 3 makes it crystal clear that the wordy quarrel between the accused and the deceased which took place in the house of P.W.4 and thereafter the incident of the accused stabbing the deceased has taken place immediately without any time gap.

19. Though P.Ws. 1 and 2 stated that the occurrence took place at 8.00 p.m. and the wordy quarrel between the accused and the deceased was at 7.30 p.m. at the house of P.W. 4, the events, as stated by P.Ws. 1 and 2 makes it crystal clear the occurrence is the continuous process of the wordy quarrel took place between the deceased and the accused. It is further relevant to note that the deceased reached at the house of P.W. 4 at 7.30 p.m. and only thereafter the accused reached the house of P.W. 4 and the wordy quarrel might have taken place for another 15 minutes. Therefore it cannot be stated that there is no time gap between the wordy quarrel and the occurrence which took place at 8.00 p.m. The evidence of P.W. 4 discloses even as per his chief examination that soon after P.W. 4 pacified the deceased and the accused and within a short time he heard that the deceased stabbed. In the cross-examination P.W. 4 categorically stated that he heard about the occurrence within five minutes after the deceased and the accused left from his house. As already stated, by placing reliance on the confessional statement of the accused recorded under Section 25 of the Indian Evidence Act that during the wordy quarrel the deceased also abused the accused by using filthy language which added fuel into the fire resulting grave and sudden provocation for the accused to stab the deceased.

20. In *Sankarlal alias Sankarayee v. State* reported in 1989 LW (Cri.) 468 a Division Bench of this Court has held that the term 'self-control' in Section 300, I.P.C. is a subjective phenomenon and it can be inferred from the surrounding circumstances of a given case. In order to find out whether the last act of provocation upon which the offender caused the death was sufficiently grave as to deprive him of the power of self-control, we have to take into consideration the previous act of provocation caused by the deceased person. This principle of sustained provocation has been considered by this Court in a number of decisions following the observations of the Supreme Court in *K.M. Nanavati v. State of Maharashtra* reported in : AIR 1962 SC605 .

21. The theory of sustained provocation was upheld by this Court in *Suyambukani v. State* reported in 1989 LW (Cri.) 86. This decision was followed by this Court in a number of later decisions including a decision in *Ganesan v. State* reported in 2006 2 LW (Cri) 656 : 2007 Cri LJ 10.

22. In a landmark decision in *K.M. Nanavati v. State of Maharashtra* reported in : AIR 1962 SC605 the Hon'ble Supreme Court of India laid down the following principles regarding the Exception 1 to Section 300, I.P.C.:

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 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.

In the above said decision, the Apex Court has held that 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, As far as the instant case is concerned, as already pointed out, regarding the sequence of events took place prior to the actual commission of the offence by the accused as spoken by P.Ws. 1 to 4, which culminated into the appellant doing away with his father-in-law of the deceased is tell-tale of the grave and sudden provocation.

23. At the risk of repetition, evidently, the appellant was subjected to continuous mental torture as not only his wife P.W. 2 deserted him due to frequent quarrels but also deserted the child of tender age ignoring the illness and dandruff and also the deceased refused to send P.W. 2 with the accused and further scolded the accused, The undisputed fact remains that a day prior to the occurrence also there was a quarrel between the accused and P.W. 2 and the deceased, father-in-law of the accused, bluntly refused to send his daughter P.W. 2 with the accused. Even on the fateful day of the occurrence the efforts of the accused to convince and bring back P.W. 2 to his house in the morning 7.00 a.m. and in the evening 4.00 p.m. also proved futile because of the intervention and support of the deceased. The conduct of the deceased by going to the house of P.W. 4 and complaining about the accused just before the occurrence at 7.30 p.m. resulting in a wordy quarrel between the accused and the deceased and the deceased abusing the accused in a filthy language added fuel into the fire. The accused, who was nurturing sustained provocation against the deceased as stated above, lost his power of self-control and due to grave and sudden provocation caused by the deceased, the accused was driven to take the extreme step of putting an end to the life of the deceased by fetching the knife and stabbing. As already pointed out that there is absolutely no time gap by using abusive words in a filthy language by the deceased which culminating into the accused doing away with the deceased.

24. Therefore, in view of the above said reasons and in view of the settled principle of law laid down by the Apex Court and this Court, we have no hesitation to hold that the accused has stabbed the deceased on account of the grave and sudden provocation caused by the deceased by abusing the accused in a filthy

language and also on account of sustained provocation. We, accordingly, hold that the appellant is entitled to Exception 1 to Section 300, I.P.C.

25. For the foregoing reasons, the conviction under Section 302, I.P.C. and sentence of imprisonment for life cannot be sustained as such the conviction and sentence under S, 302 is set aside and instead the appellant/accused has to be convicted only under Section 304(1), I.P.C. and sentenced to undergo seven years rigorous imprisonment.

26. With this modification, the appeal is partly allowed.

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