

(2003) 01 MAD CK 0002

In the Madras High Court

Case No : Criminal Appeal No. 247 of 1999

Kozhi @ Karuppasamy

APPELLANT

Vs

State Of Tamil Nadu

RESPONDENT

Date of Decision : 08-01-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 102, 300, 302, 304, 506(ii)

Citation : (2003) 01 MAD CK 0002

Hon'ble Judges : R. Balasubramanian, J;N. Dhinakar, J

Bench : Division Bench

Advocate : N. Doraisamy, for the Appellant; M.K. Subramanian, Govt. Advocate, for the Respondent

Judgement

N. Dhinakar, J.—The appellant, who in the judgment will be referred to as the accused", was tried before the learned 1 Additional Sessions

Judge cum Chief Judicial Magistrate, Thoothukudi, on a charge of murder with an allegation that at 7.00 p.m. on 30.12.1991, he caused the death

of Esakkimuthu by cutting him with aruval and that during the course of same transaction, he also threatened P.Ws. 1 to 3 and others. The learned

Sessions Judge, sentenced the accused to imprisonment for life for the offence of murder and also to four years rigorous imprisonment for the

offence punishable u/s 506(ii) I.P.C. Hence, the appeal.

2. The case of the prosecution is as follows:-

P. W. 1 is the younger brother of the deceased and they were residents of Thalaiyal Nadanthan Kulam. The accused was also related to the

deceased and was a resident of the same village. Six months prior to the date of incident, the deceased was staying in the house adjacent to the

house of the accused and as there were quarrels between the accused and the deceased, the deceased shifted his residence. On 29.12.1991, one

Poul, of the same village, was arrested in connection with a prohibition offence. On 30.12.1991, the deceased. Mariammal, P.W.2. P.W.3 and

others went to the tea stall of Baluchamy and were waiting for the tea to be served. Baluchamy went out to purchase sugar and while the deceased

and the witnesses were standing in front of the tea stall, the deceased made a remark that the accused has given information to the police regarding

Poul and therefore. Poul was arrested. He also sarcastically stated that they should also give information to the Police about the conduct of the

accused in committing theft of fowl and goat in the village. The accused, who was standing there, took the deceased to task as to how he will go

over to the Police station to give such a complaint. A quarrel ensued between the parties and during the quarrel, the accused took an aruval and

cut the deceased on the head and thereafter, on the neck. He ran away from the place after threatening the witnesses. When the witnesses

examined, Esakkimuthu was found dead. P.W.I, accompanied by P.W.2. went to Kayatharu Police station, where the complaint. Ex.P. 1. was

given to P.W. 10. the Sub-Inspector, who, on the basis of the said complaint. Ex.P.I. registered a case in Crime No.715 of 1991 against the

accused u/s 102 I.P.C. by preparing express reports. Ex.P. 15 is a copy of the printed first information report. The investigation in the crime was,

thereafter, taken up by P.W.8, the Inspector of Police.

3. P. W.8. on taking up investigation in the Crime, reached the scene of occurrence and prepared an observation mahazar and drew a rough

sketch, which were marked as Exs.P.4 and P.8 respectively. He conducted the inquest between 3.00 a.m. and 6.00 a.m. on 31.12.1991 over the

body of Esakkimuthu in the presence of panchayatdars and at the time of inquest. P.Ws.2. 3 and others were examined and their statements were

recorded. Ex.P. 13 is the inquest report. After the inquest, a requisition was issued to the doctor for conducting autopsy.

4. On receipt of the requisition. P.W.9. the Medical Officer, Primary Health Centre. Kayatharu. conducted autopsy on the body of Esakkimuthu

and found the following injuries:-

1. A deep incised wound over the right occipital region of the scalp extends upto

frontal region, running in the longitudinal direction to 6''' x 1''' x 2'''.

The scalp layer is peeled off at the site of injury. This injury incised the scalp layer, fracture the skull bone over the entire length. Brain at the site is

also incised. The injury is filled with blood clot.

2. A transversely running deep incised wound start from the right side of the lower jaw running transversely to left side of the lower jaw extends

upto the left side of the middle of the neck to 10'''x 2''' x 3''' and the injury is filled with blood clots. This injury incised the bone of lower jaw & the

deep injury over the left side of the neck incised the vital blood vessels, nerves, trachea esophagus of the neck.

3. Just below the injury No.2 over the left side of the neck, multiple transversely running deep incised wounds to the area 4''' x 3''' x 3''' and the

injury is filled with blood clot. The vital blood vessels, nerves, trachea esophagus are cut into multiple pieces at that site.

The doctor issued Ex.P. 14, the postmortem certificate, with his opinion that the deceased died on account of injuries I to 3 about 10 to 14 hours

prior to autopsy.

5. In the meantime, P.W.8, continuing with his investigation, questioned other witnesses in the Crime and record their statements and further

investigation was taken up by P.W. 11. P.W. 11, on taking up investigation in the crime, came to know that the accused has surrendered before

Judicial Magistrate No. I, Kovilpatti, on 31.12.1991. He gave a requisition to the Court and on the orders of Court, took the accused into custody

and brought him to the Police station on 14.1.1992. where he was questioned in the presence of P.W.4. The accused gave a statement. He also

took the Police Party to a bridge and produced an aruval. which was seized under a mahazar attested by P.W.4. The further investigation was

taken up the successor of P. W. 11, who, after completing investigation in the case, filed the final report on 18.7.1992.

6. The accused was questioned u/s 313, Cr. P.C. On the incriminating circumstances appearing against him and he denied all the incriminating

circumstances. He did not examine any defence witness.

7. The prosecution to establish the cause of death, examined P.W.9, the doctor who conducted autopsy and in his evidence, he has stated that on

conducting autopsy, he found the injuries which he noted in the post-mortem

certificate, Ex.P. 14. He has also stated that all the injuries could have been caused with an aruval like M.O.3. On the medical evidence, we. therefore, hold that Esakkimuthu died on account of homicidal violence.

8. The prosecution before the trial Court examined three witnesses to speak about the incident and they are P.Ws. 1 to 3. P.W. 1 is the younger

brother of the deceased and P.Ws.2 and 3 are the residents of the same village. It is the evidence of P.W. I that on the evening of 30.12.1991,

when the deceased and the witnesses were taking tea in front of the tea stall of Baluchamy. the deceased made comments about the accused giving

information to the Police, which led to the arrest of Poul and also made a statement that they should also give information to the Police so that the

accused can be taken into custody for his activities of committing theft of fowl and goat in the village. The accused, who was standing there,

annoyed at the remarks made by the deceased, questioned him as to how he could make such a remark, which resulted in a quarrel. It is the

evidence of the witnesses that during the said quarrel, the accused cut the deceased on the head and thereafter, on the neck and that he ran away

from the place after threatening the witnesses. The evidence of P.W.I is also supported by P.Ws.2 and 3, who are independent in nature and we

have no reason to suspect or doubt the veracity of their evidence. The defence did not succeed in eliciting any answer in favour of the accused for

this Court to disbelieve their evidence. In fact, their evidence is fully supported by medical evidence and we. therefore, accept the evidence and

hold that the accused inflicted injuries on the deceased, which resulted in his death

9. The only question that is to be considered by this Court is the nature of offence committed by the accused, it is the admitted case of the

prosecution as brought out through the evidence that there was absolutely no motive between the accused and the deceased and the occurrence

took place at 7.00 p.m. on 30.12.1991 when the deceased and the witnesses were standing in front of a tea stall on account of a remark made by

the deceased. It is the case of the witnesses that the deceased made certain comments against the accused and the accused asked the deceased as

to how he could make such comments and therefore, there was a quarrel between the accused and the deceased. We are, therefore, of the view

that since the occurrence had taken place in a quarrel, the accused is entitled for the benefit of Exception 4 to Section 300 I.P.C. and the Supreme

Court, in Surinder Kumar Vs. Union Territory, Chandigarh, held that to invoke Exception 4 of Section 300 I.P.C. four ingredients must be

satisfied and they are as follows:-

(i) it was a sudden fight;

(ii) there was no premeditation:

(iii) the act was done in a heat of passion; and

(iv) the assailant had not taken any undue advantage or acted in a cruel manner.

The Supreme Court further held that the cause of quarrel is not relevant nor is it relevant who offered the provocation or started the assault and the

number of wounds caused during the occurrence is not a decisive factor but what is important is that the occurrence must have been sudden and

unpremeditated and the offender must have acted in a fit of anger. When we apply the above principles enunciated by the Supreme Court, we are

fully satisfied that the principles apply with all force to the facts of the present case. We are, therefore, of the view that the accused can be given

the benefit of Exception 4 to Section 300 I.P.C. and accordingly, the said benefit is given to him.

10. In view of the discussion made above, the conviction of the accused u/s 302 I.P.C. is set aside and instead, he is convicted u/s 304 Part 1,

IPC, for which he is sentenced to seven years rigorous imprisonment. The conviction and sentence imposed upon him u/s 506(ii), I.P.C. are

confirmed. With the above modification in conviction, the appeal is disposed of.