

Tholan

Vs

State of Tamil Nadu

Criminal Appeal No. 28 of 1984

(D. A. Desai, R. B. Misra JJ)

13.01.1984

ORDER

1. Special leave granted.

2. Appellant Tholan was convicted by the learned Sessions Judge, Salem, in Sessions Case No. 134/78 for committing murder of Sampat, son of Marimutba Pathar on September 2, 1978 and was sentenced to suffer imprisonment for life. His appeal to the High Court of Madras was dismissed by a Division Bench on February 4, 1981.

3. Few facts relevant for the disposal of this appeal are that one K. G. Rajan was running a chit with the help of PW 4 Chinnu. The profit derived by this venture was being utilised to help needy school children by giving them free slates and such other articles of everyday use for school children. The balance available for this activity at the relevant time was Rs. 600. It appear that the appellate and his brother Raman gave a bid at the auction for a chit in the amount of Rs. 30 and were paid the chit amount. Appellant thereafter approached Raman with a request for a loan of Rs. 100 but PW 4 Chinnu informed him that it was not possible to grant loan. Some altercation took place in which the appellant is said to have used abusive language. PW 1 Subramanian and deceased Sampat are brothers. They were residing in adjacent houses in Boyar Street. On September 2, 1978 around 7 p.m. appellant came near the house of deceased Sampat complaining against the organisers of the chit. At that time he was in front of the house of one Palaniammal, who on hearing the shouts of the appellant asked him to go away. The appellant in turn abused Palaniammal. At that time deceased Sampat came out of his house and cautioned appellant not to indulge in abusive language, as the ladies were present and told him to go away. The appellant questioned the authority of the deceased to ask him to go away. Both were remonstrating with each other when appellant took out a knife from his waist and stabbed deceased Sampat on the right side of his chest and pushed the deceased to a distance of 25 feet and left him there and went away. Sampat succumbed to his injury which in course of post-mortem examination was found to be an incised gaping wound obliquely placed over the front of right side of the chest 1 cm. away from the right aternal box dox on the fourth intercostal space and 5 cm. medial to the right nipple of size 3 cm. x 1 cm. at the maximum point. Depth was not probed. The external wound was spindle shaped with clear-cut edges on both sides and sharp point on either ends with blood clot. On internal examination fracture of fifth and sixth ribs were noticed. The depth of the wound was probed up to middle lobe of the right lung and proceeding up to right atrial cavity. The cause of death was stated to be shock and heamorrhage on account of the stab injury and the corresponding internal injury to vital organs like the heart and the lung. This injury, in the opinion of the Medical Officer, was sufficient in the ordinary course of nature to cause death.

4. In his statement under Section 313 of the Code of Criminal Procedure, the appellant stated that he and his brother-in-law took chits of Rs. 30 each and received the amount when he demanded accounts, PW 4 Chinnu and Shri K. G. Rajan accompanied by others came to beat him and therefore, he ran away and did not know what happened. He denied having a knife blow to deceased Sampat and also denied having pointed out the place from which knife was recovered.

5. The learned Sessions Judge after taking into consideration the evidence of eye-witness PW 1 Subramanian, PW 2 and PW 3 and other evidence held the appellant guilty of committing murder of deceased Sampat and convicted and sentenced him as hereinabove stated.

6. The High Court broadly agreed with the findings of the learned Sessions Judge and dismissed the appeal and confirmed the conviction.

7. When the petition for special leave to appeal came up at the admission stage, notice limited to the question of nature of offence and sentence was ordered to be issued. Thereafter, this matter came up for hearing today when we granted limited leave and with the consent of the learned counsel appearing for the appellant and for respondent proceeded to hear the appeal.

8. The fact that appellant gave a blow with a knife to deceased Sampat which landed on the front of the right side chest and this injury resulted on death of Sampat is not open to dispute and not questioned before us.

9. Learned counsel for the appellant contended that having regard to the genesis of the occurrence and the surrounding circumstances and the fact that one blow with a knife was given which happened to land on the chest, it cannot be said with reasonable certainty that appellant intended to commit murder of deceased Sampat of appellant intended to cause the particular injury and the injury intended to be inflicted was sufficient in the ordinary course of nature to cause death.

10. Keeping in view the submission, it is necessary to recapitulate the genesis in which the occurrence took place and the surrounding circumstances.

11. K. G. Rajan with the help of PW 4 Chinnu was running a chit. Appellant and his brother Raman participated in the auction and took one chit for Rs. 30 each. Appellant then approached PW 4 Chinnu with a request for loan but PW 4 Chinnu replied that he had no power or authority to grant loan for more than Rs. 30. Some altercation took place between the accused and PW 4 Chinnu. This part of the occurrence which is relied upon as motive for the offence took place in the office of the Panchayat of which K. G. Rajan was at the relevant time the President. It was transpired from the evidence that K. G. Rajan and PW 4 Chinnu belonged to one political party and the appellant belonged to a different political party. Now we fail to see any connection between K. G. Rajan and PW 4 Chinnu on the one side and PW 1 Subramanian and his deceased brother Sampat on the other side. The inter-connection is not established save and except saying that on September 2, 1978 around 7 p.m. appellant came near the house of deceased Sampat and started remonstrating about the conduct of the organisers of the chit. How deceased Sampat was interested in the chit conducted by K. G. Rajan and PW 4 Chinnu is not established and the link is tenuous. It appears that the appellant while remonstrating about the conduct of the organisers of the chit started using filthy language whereupon one Palaniammal who was in the courtyard of the house told the accused to move away from the place in front of her house. Accused objected to Palaniammal asking him to move away and abused her. It is at this stage deceased Sampat came from his house which appears to be situated near the house of Palaniammal and told the accused not to use vulgar language

because the ladies were present and asked him to move away from that place. The appellant questioned the authority of deceased Sampat to ask him to move away and an altercation ensued between them. Appellant is supposed to have threatened deceased Sampat that he would settle a score with him and immediately thereupon he took out what is described as M.O. 1 Soori knife from his waist and gave one blow to Sampat which landed on his right side of chest. Eye-witnesses also alleged that thereafter appellant put his hand on the neck of deceased and pushed him to a distance of 25 feet and thereafter the deceased Sampat fell down and appellant ran away. This is the version of the prosecution as to the origin of the occurrence and we would proceed on the basis that that represents a true and accurate account about the genesis of the occurrence because both the courts have accepted the same and there is nothing to depart from this concurrent finding of fact.

12. It is equally not in dispute that appellant gave only one blow with a knife. Appellant had no quarrel or dispute with deceased Sampat. It is not shown that deceased Sampat had anything to do with the chit organised by K. G. Rajan. No malice has been alleged to have been entertained by the accused towards deceased Sampat. The incident occurred on the spur of the moment. It appears that the house of the deceased Sampat was somewhere near the house in which the organisers or at least one of them was residing. Appellant had his dispute and grievance with the organisers of the chit. It is the prosecution case that accused abused organisers of the chit. Deceased Sampat is not shown to be the organiser of the chit. Probably when the deceased Sampat told the accused not to misbehave in the presence of ladies and not to use vulgar and filthy language, the appellant retorted by questioning the authority of Sampat to ask him to leave the place. Presence of Sampat is wholly accidental. Altercation with Sampat was on the spur of the moment, even the meeting was accidental. There arose a situation in which appellant probably misguided by his own egocentric nature objected as to why Sampat should ask him to leave the place and in this background he gave one blow with a knife which landed on the right side chest of the deceased, which has proved fatal. Could the appellant be said to have committed murder? In other words, whether Part I or Part III of Section 300, IPC would be attracted in the facts of this case. Even Mr. Rangam learned counsel for the State of Tamil Nadu could not very seriously contend that the appellant intended to commit murder of Sampat. His submission was that at any rate appellant, when he wielded a weapon like a knife and gave a blow on the chest, a vital part of the body, must have intended to cause that particular injury and this injury is objectively found by the medical evidence to be fatal and therefore Part III of Section 300 would be attracted. On this aspect, the decisions are legion and it is not necessary to recapitulate them here merely to cover idle parade of familiar knowledge. One can profitably refer to *Jagrup Singh v. State of Haryana* ((1981) 3 SCC 616 : 1981 SCC (Cri) 768 : AIR 1981 SC 1552 : 1981 Cri LJ 1136), *Randhir Singh v. State of Punjab* (AIR 1982 SC 55 : (1981) 4 SCC 484 : 1981 SCC (Cri) 856), *Kulwant Rai v. State of Punjab* (AIR 1982 SC 126 : (1981) 4 SCC 245 : 1981 SCC (Cri) 826) and *Hari Ram v. State of Haryana* (AIR 1983 SC 185 : (1983) 1 SCC 193 : 1983 SCC (Cri) 159 : 1983 Cri LJ 346). To this list two more cases can be added : *Jagtar Singh v. State of Punjab* ((1983) 2 SCC 342 : 1983 SCC (Cri) 459) and *Ram Sunder v. State of U. P.* (Criminal Appeal No. 555/83, decided on October 24, 1983) Having regard to the ratio of each of these decisions, we are satisfied that even if Exception I is not attracted, the requisite intention cannot be attributed to the appellant. But in the circumstances herein discussed he wielded a weapon like a knife and therefore he can be attributed with the knowledge that he was likely to cause an injury which was likely to cause death. In such a situation, he would be guilty of committing an offence under Section 304 Part II of the Indian Penal Code. Having regard to the circumstances of the case, a sentence of 5 years would be quite adequate.

13. Accordingly, this appeal is allowed and the conviction of the appellant for an offence under Section 302, IPC and the sentence of life imprisonment are set aside and the appellant is convicted

for having committed an offence under Section 304 Part II, IPC and he is sentenced to suffer RI for 5 years. The appeal is allowed to the extent herein indicated.

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