Sundaramurthy

Vs

State of Tamil Nadu

Criminal Appeal No. 132 of 1975

(K. Jayachandra Reddy, S. Ratnavel Pandian JJ)

23.08.1990

JUDGMENT

S. RATNAVEL PANDIAN, J. –

1. This appeal is directed against the judgment rendered in Criminal Appeal No. 740 of 1973 on the file of the High Court of Madras confirming the conviction of the appellant under Section 302 IPC but modifying the extreme penalty of law namely the sentence of death inflicted by the trial court into one of imprisonment for life.

2. The facts of the prosecution case are quite simple and are not in serious dispute. The only controversy relates to the question whether the accused did cause the injury in exercise of his right of self-defence or not.

3. The synoptical resumption of the case of the prosecution is as follows :

> There had been disputes between the appellant and the deceased Ganesan ever since the general election held in 1962 in which the brother of the deceased contested and became successful. The deceased was the Munsif of village Vallur to which village the appellant belongs. On August 25, 1972 i. e. the date of occurrence there was a festival in the Sadayamman Temple in Athipattu Village. The appellant went to the temple. On seeing the deceased in the temple the appellant profaned and abused him in filthy language. PW 1, 9 and 15 tried to pacify the appellant and asked him to leave the temple. The appellant while leaving the temple swore that he would sacrifice the deceased at the alter of the temple on that day itself. At about 10 or 10.30 p, m. the deceased was returning to his house accompanied by PW 1, 9 and 10. When all of them were nearing a lamp past, the appellant suddenly came from behind a live fence and stabbed the deceased on the left side of his chest with a soori knife. At about 12.15 a. m. the deceased was taken to the police station where he gave a statement Ex. P-2 PW 20 the Sub-Inspector of Police of Minjur registered a case on the basis of Ex. P-2 under Section 325 IPC and took up the investigation.

4. PW 8, a Medical Officer attached to the Primary Health Centre, Minjur came to the police station and rendered first aid to the injured who was thin sent for further treatment to the General Hospital, Madras. PW 17, the casualty Medical Officer found on the person of the injured Ganesan an incised wound on the left side of his chest 1" in length. An X-ray of the chest was taken and the injured was admitted as an in-patient. However, the injured Ganesan succumbed to the injuries in the hospital on September 5, 1972 at about 11.00 p. m. PW 2, an Assistant Surgeon of the said hospital has deposed

with reference to the records that the deceased died of chest injury, empyema, gramnegative-septicemic shock, toxic myocarditis, toxic ileus and cardiac arrest.

5. Meanwhile, PW 20 arrested the appellant on the morning of August 26, 1972 and recorded his statement leading to the recovery of the weapon of offence, M. O. 1. The appellant gave a report, Ex. P-29 to PW 20, who registered the same as a case in Crime No. 202 of 1972 against the injured Ganesan. As the appellant was having injuries on his person, he was sent to the Government Hospital, Ponneri. PW 6, the Medical Officer attached to the Government Hospital, Ponneri examined the accused and found on his person the following injuries :

(1) Lacerated wound lift frontal region of the scalp 3" X 1" bone deep;

(2) Lacerated wound centre of the frontal region of the scalp 3 1/2" X 1" bone deep;

(3) Contused abrasion over the left side of the back 4" X 1".

(4) Abrasion over the upper lip 1" X 1/2 ".

The Medical Officer was of the opinion that the injuries were simple in nature. Ex. P-13 is the wound certificate relating to the injuries found on the deceased. The appellant was remanded to the judicial custody, but he came out on bail on August 28, 1972 and continued the same till September 6, 1972. According to PW 4, on august 28, 1972 the appellant attended the out-patient ward in the Stanley Hospital and got treated. Thereafter when the appellant came to the O. P. on September 1, 1972 he was examined by a Medical Officer who noticed certain lacerated infected wounds over the left parietal region of scalp besides a contused swelling and admitted him as an in - patient till September 5, 1972. The X-ray revealed no fracture.

6. PW 20 in the course of his investigation examined some witnesses and seized certain material objects. After receiving the death intimation, PW 21, the Inspector of Police held inquest over the dead body of the deceased, during the course of which he examined PWs 1, 9 and 10. PW 5, the Professor of Forensic Medicine and Police Surgeon, Madras on a requisition from PW 21 conducted the post-mortem examination on the dad body of the deceased and found an oblique sutured wound 2 cms. long over the left side of the chest. The wound was 2 cms. above the left nipple and it was directed oblique downwards and inwards. He also found 3 other surgical wounds. Ex. P-10 is the post-mortem certificate. According to the Medical Officer, the injury described by him as Injury No. 1, namely, the injury found on the left side chest of the deceased was sufficient in the ordinary course of the nature to cause death and that injury could have been caused by a weapon like M. O. 1.

7. PW 21 after completing the investigation filed the challan under Section 302 of the Indian Penal Code against the appellant in Crime No. 201 of 1972 (which has been registered on the statement of the deceased Ex. P-2) and referred Crime No. 202 of 1972 registered on the report of the appellant against the deceased as false.

8. The prosecution to substantiate this case examined PW 1 to 21, but the appellant did not examine any Witness.

9. When questioned under Section 313 of the Code of Criminal Procedure, the appellant though denied the evidence of the eyewithnesses has come forward with his defence stating that while he was going home at about 8.30 p.m. on the date of occurrence, the deceased met him near the railway

gate of Athipattu and gave him paper bundle; that when he refused to receive the same the deceased fisted him on his face and hit him on the head and and back with an iron pipe several times; that he apprehending imminent danger to his life at the hand of the deceased, stabbed the deceased with a small knife in self-defence; that he then went straight to Minjur Police Station and gave a report on the night of the occurrence itself and that the police sent him to the hospital and thereafter for remand.

10. The learned Sessions Judge disbelieving the defence theory and accepting the evidence of the eye-witnesses convicted the appellant modified by the High Court into one of life imprisonment. Mr. V. J. Francis, the learned counsel appearing on behalf of the appellant though has not seriously disputed the occurrence has vehemently urged that the hands the appellant apprehended imminent danger to his life. In support of the defence, the learned counsel drew our attention to certain relevant portions of the evidence of the eye-witness. PWs 1, 9, 10 and 15 speak about the actual occurrence in question, all deposing that at the time when the deceased was proceeding to his house accompanied by them, the appellant suddenly appeared at the scene and stabbed the deceased and them took to his heels.

11. The essential questions that arise for consideration are whether the appellant intentionally caused the death of the deceased without any justification or whether he was fully justified by law in infliction the fatal injury in the exercise of the right of his self-defence, if not whether he exceeded the right of private defence.

12. The fact that the appellant has sustained had two lacerated wounds over the frontal region and a contusion on the left side of his back cannot be disputed. In fact, PW 20 after the arrest of the appellant got his examined by the Medical Officer, PW 6 on August 26, 1972. The prosecution attempts to explain the injury on the appellant by examining PW 11, according to whom while he was going to the temple by about 7.00 p. m. he saw the appellant at a distance of 150 ft. away from the temple; that the appellant was abusing the deceased ignoring his advice and therefore he took a stick and hit him with it on his head and back. This explanation offered by the prosecution does not appeal to us for more than one reason. Firstly, PW 11 has come forward with this statement to the police only on September 7, 1972 when examined by PW 21. Till then admittedly he did not inform any one about this incident. Secondly, the evidence of PW 11 is not corroborated by any other witness. Thirdly, PW 11 admits that he was a friend of the deceased Ganesan. Fourthly, if the incident of PW 11 beating the appellant had taken place near the temple, some of the persons who were attending the festival should have seen this incident. Fifthly, the appellant came forward with a specific case that he was assaulted by the deceased even in Ex P29.

13. It is not the evidence of the eye-witnesses that the appellant had injuries on person, even before he attacked the deceased. PW 1 in Exs. D 1 and D 2 and PW 9 in Ex. D 7 have stated that they did not know whether the deceased assaulted the appellant with an iron pipe and whether it was only thereafter the appellant stabbed the deceased in self-defence. In the cross-examination, PW 10 states thus :

> "When I was asked in the Committal Court if I knew or not, I answered that I did not know if the deceased assaulted the accused first with an iron rod."

14. If the explanation of the prosecution is to be accepted, then it stands to reason that the appellant, if at all had any grievance it should have been only against PW 11, but not against the deceased. There is no convincing and satisfactory evidence on the side of the prosecution as to why the

appellant attacked the deceased on that day. More so, it is not comprehensible that the appellant attacked the deceased on account of the election motive which election was held 10 years ago. In fact, the High Court itself has made an expository remark on the investigation observing :

".. it cannot be said that the investigation is not without infirmities...."

15. The totality of the facts and circumstances of this case not only compels us not to accept the explanation offered by the prosecution that the appellant received the injuries at the hands of PW 11, but also leads to an irresistible inference that both the incidents took place simultaneously and the accused stabbed the deceased on receipt of the injuries on the person, more likely at the hands of the deceased. In other words, the defence theory is plausible and persuasive. The reasoning of the High Court of disbelieving the defence theory, holding that "it is extremely unlikely that the village Munsif could have carried an iron bar.." is not a sound and acceptable one, especially in view of the impelling circumstances attending the case.

16. From the discussion made above, though we hold that the appellant attacked the deceased in exercise of the right of his private defence, apprehending imminent and threatened danger to his life as he has been attacked on the vulnerable part of his body -namely frontal region, in our considered opinion he has exceeded that right of private defence in inflicting the fatal injury resulting in the death of the deceased.

17. In the result, we hold that the offence would be one not punishable under Section 302 IPC (simpliciter) but under Section 304, Part I, IPC on the ground that the appellant had exceeded the right of self-defence. Hence we set aside the conviction under Section 302 and the sentence of imprisonment for life imposed therefore, instead we convict the appellant under Section 304 Part I, IPC and sentence him to to undergo rigorous imprisonment for a period of 7 years. It is stated by the learned defence counsel that the appellant has suffered the imprisonment for more that 7 years. In fact, it is mentioned in the bail application itself that the appellant has completed 7 years imprisonment even by August 1980. The record reveals that the appellant was released on bail by an order of this Court dated August 29, 1980 from which date onwards he is enjoying the bail. So taking into consideration of the fact that the appellant had already served the sentence for 7 years, we reduce the sentence to of imprisonment already undergone by him. Accordingly the appeal is dismissed subject to the above modification of conviction and sentence.

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