

**(2006) 04 MAD CK 0073**

**Madras High Court**

**Case No:** Criminal Appeal No. 824 of 1997

Joseph Robert

APPELLANT

Vs

State

RESPONDENT

**Date of Decision:** April 7, 2006

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 300, 302, 304

**Citation:** (2006) CriLJ 3345

**Hon'ble Judges:** P.D. Dinakaran, J; M.E.N. Patrudu, J

**Bench:** Division Bench

**Advocate:** T. Lajapathi Roy, for the Appellant; K. Chellapandian, Addl. P.P., for the Respondent

### **Judgement**

P.D. Dinakaran, J.

This appeal by the sole accused arises out of the judgment of the learned Additional Sessions Judge, Dindigul dated

30-7-1997 made in Sessions Case No. 26 of 1996 in and by which the trial Judge convicted the accused for the offence u/s 302, IPC and

sentenced to undergo imprisonment for life.

2. For the sake of convenience, the appellant is hereinafter referred to as accused.

3. The charge against the accused is that on 13-8-1995 at about 9.30 a.m., on the suspicion that the deceased Ganesan was having illicit intimacy

with one Lakshmi, the accused, with the intention to cause the death of the deceased, cut his left shoulder with aruval as a result of which the

deceased died on the spot and thereby committed murder, punishable u/s 302, I.P.C.

4. Factual scenario as described by the prosecution is essentially as follows:

4.1 P.W. 1 is the mother of the deceased Ganesan, who was running a tailoring shop at Mariamman Koil Street, Vedasanthur. The accused, also a tailor, used to visit the deceased often.

4.2 On the date of occurrence, namely, 13-8-1995, at about 8.00 a.m., P.W. 1 went to the tailoring shop of the deceased to get money from the deceased. When she was waiting at the shop, the accused came there and questioned the deceased as to why the deceased was moving with the lady, by name, Lakshmi, with whom the accused was having relationship, which the deceased denied as false. Then, saying, ""you will not heed to my words"", the accused, with M.O.1 knife (aruval) cut the deceased on his left shoulder. Again the accused cut the deceased which was averted by the deceased with his right hand. Then the deceased fell down. P.W. 1 found his son dead.

4.3 P.W.2, Village Headman of Vedasanthur, who was coming out of a hotel, after taking tiffin, also saw the occurrence.

4.4 P.W. 1 and the boy, by name, Kanniappan, who was assisting the deceased in his work, raised alarm. On seeing the crowd, the accused fled from the scene.

4.5 P.W. 1 went to Vedasanthur Police Station and gave Ex.P-1 complaint which was reduced into writing by P.W. 5 Head Constable. P.W.5 registered a case in Crime No. 394 of 1995 u/s 302, I.P.C. P.W.5 prepared Ex.P-9 printed First Information Report and forwarded the same to the jurisdictional Court as well as higher officials.

4.6 P.W. 7 was the Inspector of Police, Vedasanthur. On receipt of copy of first information report, he visited the scene of occurrence on 13-8-1995 at 11.15 a.m. and prepared Ex.P-2 observation mahazar in the presence of P.W. 3, Village Administrative Officer and one Perumal. He also drew Ex.P-10 rough sketch. In between 12.15 p.m. and 1.30 p.m., P.W.7 conducted inquest over the dead body in the presence of panchayatdars and prepared Ex.P-11 inquest report and gave requisition for conducting postmortem.

4.7 P.W.4, Assistant Surgeon attached to the Government Hospital, Dindigul, on receipt of requisition Ex.P-7, conducted postmortem examination

on the dead body of the deceased on 13-8-1995 at 4.00 p.m. and found the following injuries.

1. An incised wound at left shoulder joint front portion in a vertical position about 10 cm. x 5 cm. exposing cut ends of pectoral muscles and

capsules of shoulder joint, all blood vessels from trunk to the left upper arm cut off head at left humerus bone is seen. 2nd and 3rd ribs lateral

margins are seen. Adhered blood clots are seen around the wound.

2. Incised wound 3 x 1 1/2 x 1 cm deep at right palm margin muscles adhered blood clots seen.

3. An abrasion 2 x 1 cm in right wrist medial region.

P.W. 4 opined that the deceased would appear to have died of shock and haemorrhage due to injury to blood vessels and left lung at about 8 to

12 hours prior to the postmortem.

4.8 P.W.7 Inspector of Police on 13-8-1995 at 3.45 p.m. seized the bloodstained earth M.O. 2 and sample earth M.O. 3 in the presence of

witnesses.

4.9 P.W.7 arrested the accused at 5.00 p.m. on the same day near Kaliyamman Koil, Vedasanthur. On the basis of his confession statement, the

admissible portion of which is marked as Ex.P-4, the accused produced M.O. 1 aruval from a bush near the Travellers" Bungalow at Vedasanthur

and P.W.7 seized the same under Ex.P-5 mahazar in the presence of witnesses.

4.10 P.W.7 also seized M.O. 4 bloodstained shirt and M.O. 5 lungi worn by the accused. He examined the witnesses and recorded their

statements. He made arrangements to subject the material objects to chemical analysis and received the chemical analyst"s report and serologist"s

report Exs.P-13 and P-14 respectively. After completing investigation, he laid the final report against the accused on 19-10-1995.

4.11 To prove the charge levelled against the accused, the prosecution examined seven witnesses as P.Ws. 1 to 7, marked Exs.P-1 to P-14 as

well as M.Os. 2 to 8, as referred to above.

5. When the accused was questioned u/s 313 of the Code of Criminal Procedure about the incriminating circumstances found against him in the

evidence of prosecution witnesses, he denied the same. The accused has not examined any witness or marked any document on his side.

6. The trial Court, on consideration of the oral and documentary evidence, found the accused guilty and convicted and sentenced him as stated

earlier. Hence, the present appeal.

7. Learned Counsel appearing for the appellant fairly submits that he is not disputing either the occurrence, or the motive behind the attack by the

accused on the deceased resulting in his death. On the other hand, taking advantage of the findings on motive aspect and the nature of the injuries

inflicted, learned Counsel attempts to bring the act of the accused into one u/s 304(Part-I), IPC.

8. In support of his submission, learned Counsel invited our attention to the evidence of P.Ws. 1 and 2 wherein it is stated that on the fateful day,

the accused came to the tailoring shop of the deceased and saying, ""why are you moving with the lady with whom I am having relationship"", cut the

deceased on his left shoulder with M.O. 1 aruval. According to the learned Counsel, it is their further evidence that the accused again cut the

deceased which was averted by the deceased with his right hand. It is, therefore, contended that there is no evidence to prove that the accused

had any intention to commit the murder of the deceased. Drawing our attention to the overt acts attributed to the accused, learned Counsel

contends that the act of the accused gets attracted to Exception-4 to Section 300, IPC and hence, he seeks modification of the conviction and

sentence imposed on the accused.

9. On the other hand, learned Additional Public Prosecutor submits that though the defence is not disputing the prosecution case in respect of

motive and the involvement of the accused in attacking the deceased, the evidence of P.Ws. 1 and 2, as corroborated by the medical evidence,

P.W.4, would clearly bring home the guilt of the accused u/s 302, IPC and therefore, there is no reason to bring the act of the accused under

Exception-4 to Section 300, IPC.

10. We have perused the evidence on record and considered the rival submissions of learned Counsel on either side.

11. The evidence of P. W. 1, the mother of the deceased, is that at the time of occurrence, the accused attacked the deceased with M.O. 1 aruval on his left shoulder. It is her further evidence that the accused again cut the deceased, but the deceased averted the same with his right hand and then, the deceased fell down. P.W. 2, an independent witness, corroborates the version of P.W. 1. The medical evidence of P.W. 4, autopsy doctor, who opined that the deceased would appear to have died of shock and haemorrhage due to the injury on the left shoulder, also corroborates the evidence of eye-witnesses. From the above, we have no hesitation to conclude that the accused caused bodily injury on the deceased which caused his death.

12. The residuary plea is about applicability of Exception 4 to Section 300, IPC.

13. For bringing the act of accused into the operation of Exception-4 to Section 300, IPC, it has to be established that the act of the accused was without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

14. The exception-4 to Section 300, IPC covers acts done in a sudden fight. 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 an 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 could in such cases the whole blame be placed on one side. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. The help of Exception 4 can be invoked if death is caused

- (a) without premeditation, (b) in a sudden fight, (c) without the offenders having taken undue advantage or acted in a cruel or unusual manner, and
- (d) the fight must have been with the person killed. It is to be noted that the ""fight"" occurring in Exception 4 to Section 300, IPC is not defined in

IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in a cruel or unusual manner. The expression ""undue advantage"" as used in the provision means ""unfair advantage"", (vide : Dhirajbhai Gorakhbhai Nayak Vs. State of Gujarat, .

15. The above said ratio has also been followed in Sachchey Lal Tiwari Vs. State of Uttar Pradesh, , whereunder the Supreme Court has held that for bringing in operation of Exception 4 to Section 300, IPC, it has to be established that the act was committed without premeditation, in a sudden fight in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

16. In the instant case, a cursory look of the evidence, let in on the side of prosecution would show that the accused had no intention to cause the death of the deceased, but the attack of the accused on the deceased would be considered to be one blow on the spur of the moment in the heat of passion upon a sudden fight, but not acted in a cruel manner, since the injury on the deceased on his left shoulder, among three injuries found on his body, is grievous, as opined by the autopsy doctor. We are therefore of the considered opinion that there was a sudden fight leading to the attack on the deceased resulting in his death.

17. The infliction of the above injury and its nature prove the intention of the accused but causing of such injury cannot be termed to be either in a cruel or unusual manner for not availing the benefit of Exception-4 to Section 300, IPC. After the injury was inflicted, the injured fell down, but there is no material to show that thereafter any injury was inflicted when he was in a helpless condition. The evidence on record would go to show

that in the sudden fight the accused caused the injury on the deceased, but had not acted in a cruel or unusual manner. That being so, Exception 4

to Section 300, IPC is clearly applicable,

18. However, while attacking the deceased, the accused declared that the deceased would not heed to his words, and cut the deceased with

M.O.1 aruval and inflicted grievous injury which caused his death. We are, therefore, of the opinion that the accused had the intention to cause

death or inflict grievous injury causing the death of the deceased which would satisfy the ingredients that required to convict the accused u/s 304,

Part-I, IPC.

19. In the result, the appeal is partly allowed. The conviction and sentence imposed on the appellant u/s 302, IPC is set aside. Instead, he is

convicted for Section 304 (Part-I), IPC and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs. 1,000/- (Rupees

One thousand only) and compensation of Rs. 20,000/- (Rupees twenty thousand only), which shall be paid to P. W. 1, the mother of the

deceased, within a period of 8 weeks from the date of receipt of copy of this judgment, failing which he shall undergo one year rigorous

imprisonment as default sentence.

The bail bond, if any, executed by the accused shall stand cancelled. Learned Sessions Judge is directed to take steps to secure the presence of

the appellant and send him to prison to undergo the remaining period of sentence.