

MUTHU

v.

STATE BY INSPECTOR OF POLICE, TAMIL NADU

NOVEMBER 2, 2007

[A.K. MATHUR AND MARKANDEY KATJU, JJ.]

Penal Code; 1860; Exception 1 and 4 to Section 300, Ss. 302 and 304 Part-II:

Culpable Homicide not amounting to murder—Deceased throwing rubbish into shop of accused—Accused stabbed knife in chest of deceased—Deceased succumbed to injury—Trial Court found accused guilty of committing offence punishable u/s.302 IPC and sentenced him to life imprisonment—Affirmed by High Court—On appeal, Held: Accused deprived of power of self-control due to grave and sudden provocation given by deceased—Accused picked up knife from table in the shop and was not carrying it, thus, accused had no intention/motive to cause death of the deceased—In the facts and under the circumstances of the case, accused entitled to benefit of Exception 1 and 4 to Section 300—Hence, offence covered under Part-II of S.304 IPC—Accordingly, sentence reduced to simple imprisonment of five years—Sentencing.

According to the prosecution, on the fateful day, accused-appellant who was working in a waste paper merchant shop was arranging the articles inside the shop. The deceased, who used to collect waste papers from the roadside threw the waste-papers inside the shop. On seeing this, the accused got angry and shouted at the deceased and pulled his hair. The deceased thereupon pushed the accused. Then the accused picked up a knife from the table in the shop and stabbed the deceased in the chest, who fell down and succumbed to the injury. The trial court found the accused guilty of committing offence punishable under S. 302 IPC and sentenced him to life imprisonment. The conviction and sentence was upheld by

A the High Court. Hence the present appeal.

Partly allowing the appeal, the Court

HELD: 1.1. The case comes under Exception I to Section 300 IPC. [Para 5] [914-H; 915-A]

B 1.2. The accused was deprived of the power of self-control by grave and sudden provocation which led him to commit the offence.

[Para 6] [915-C]

C 1.3. It is evident that the accused had no motive or intention to cause the death of the deceased since the accused was not carrying the knife from before, and only picked it up during the scuffle with the deceased. [Para 6] [915-C]

D *Kunhayippu v. State of Kerala*, [2000] 10 SCC 307 and *Masumsha Hasanasha Musalman v. State of Maharashtra*, [2000] 3 SCC 557, relied on.

E 1.4. There is a clear distinction between a case of pre-meditated attack with intention to cause death and a case where there was no such pre-meditated intention and death was caused in the heat of the moment or fit of anger during an altercation or quarrel.

[Para 10] [916-B]

Pulicherla Nagaraju v. State of A.P., [2006] 11 SCC 444, referred to.

F 1.5. No doubt, even in the heat of the moment or fit of anger one should not attack somebody since human beings are different from animals inasmuch as they have the power of self-control. Nevertheless, the fact remains that in the heat of the moment and in a fit of anger people some times do acts which may not have been done after premeditation. Hence the law provides that while those who commit acts in the heat of the moment or fit of anger should also be punished, their punishment should be lesser than that of premeditated offences. It is for this reason that Exceptions I and 4 have been inserted in Section 300 IPC. [Para 11] [916-C-D]

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1.6. The present case also comes under Exception 4 to Section 300 IPC since the ingredients of Exception 4 are all satisfied in the facts of the present case. [Para 13] [916-G]

Pappu v. State of M.P., [2006] 7 SCC 391, referred to.

1.7. Throwing waste and rubbish inside the house or shop of somebody is certainly a grave and sudden provocation. Everyone wishes to keep his premises neat and clean, and is likely to lose his self-control in such a situation. The incident in question occurred in a sudden fight and a heat of passion by a sudden quarrel without the appellant having taken undue advantage or acted in a cruel or unusual manner. Hence the appellant is entitled to the benefit of Exceptions I and 4 and the case comes under Part-II of Section 304 IPC. The instant case will come under the second part of Section 304 IPC. [Para 14] [916-H; 917-A-B]

Ramesh Vithalrao Thakre and Anr. v. State of Maharashtra, AIR (1995) SC 1453; *Sarup Singh v. State of Haryana*, AIR (1995) SC 2452; *Mavila Thamban Nambiar v. State of Kerala*, AIR (1997) SC 687; *Sudhir Samanta v. State of West Bengal and Anr.*, AIR (1998) SC 289; *K. Ramakrishnan Unnithan v. State of Kerala*, AIR (1999) SC 1428; *Tholan v. State of Tamil Nadu*, [1984] 2 SCC 133; *Jagpati v. State of Madhya Pradesh*, AIR (1993) SC 1360; *Tarsem Singh and Ors. v. State of Punjab*, AIR (2002) SC 760; *Hari Ram v. State of Haryana*, AIR (1983) SC 185; *Randhir Singh v. State of Punjab*, AIR (1982) SC 55; *Kulwant Rai v. State of Punjab*, AIR (1982) SC 126 and *Shankar v. State of Madhya Pradesh*, AIR (1979) SC 1532, relied on.

2. On the facts of the case the act committed was done with the knowledge that it is likely to cause death but without any intention to cause death or cause such bodily injury as is likely to cause death. Hence the offence comes under the Part II of Section 304 IPC. Accordingly, the sentence awarded by the courts below is substituted by the sentence of five years' simple imprisonment and any period of incarceration in jail which the accused has already undergone shall

A **be deducted from the aforesaid period of five years.**

[Paras 16 and 17] [917-E-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1511 of 2007.

B From the final Judgment and Order dated 20.07.2005 of the High Court of Judicature at Madras in Criminal Appeal No. 818 of 1999.

K.K. Mani, C.K.R. Lenin Sekar and Mayur R. Shah for the Appellant.

C V.G. Pragasam, S. Joseph Aristotle and S. Prabhu Ramasubramanian for the Respondent.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J. 1. Leave granted.

D 2. This appeal has been filed against the final judgment and order dated 20.7.2005 of a Division Bench of the Madras High Court in Criminal Appeal No. 818 of 1999.

E 3. The prosecution case is that on 9.4.1998 at about 8.A.M., PW1 Radhakrishnan, PW3 Sakthivel and PW4 Arumugam went to a shop for taking tea. Next to the tea shop, a waste paper merchant shop was situated. Muthu, the accused (appellant herein) was working in that shop and after opening the shop he was arranging the articles kept inside the shop. At that time, the deceased Siva who used to collect waste papers from the roadside, collected the waste-papers and cardboard boxes and threw them inside the shop of the accused. On seeing this the accused got angry and shouted at Siva "why do you do this everyday?" and pulled his hair. The deceased thereupon pushed the accused. Then the accused took a knife from the top of a table in the shop and stabbed Siva in the chest. Siva fell down due to this injury and died.

G 4. The trial court found the appellant guilty under Section 302 IPC and sentenced him to life imprisonment. The aforesaid conviction and sentence was upheld by the High Court in appeal. Hence this appeal.

H 5. We are of the opinion that the case comes under Exception I to

Section 300 IPC which states as under:

“Exception 1. When culpable homicide is not murder. Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

6. We are satisfied that the accused was deprived of the power of self-control by grave and sudden provocation which led him to commit the offence. If rubbish is thrown into one's house or shop one would naturally get very upset. It is evident that the accused had no motive or intention to cause the death of the deceased since the accused was not carrying the knife from before, and only picked it up during the scuffle with the deceased.

7. We find support in our view from the decisions of this Court in *Kunhayippu v. State of Kerala*, [2000] 10 SCC 307 as well as in *Masumsha Hasanasha Musalman v. State of Maharashtra*, [2000] 3 SCC 557.

8. The position may have been different if right from the beginning the appellant accused had been carrying a knife with the intention to attack the deceased. But that is not the case here.

9. Learned counsel for the State relied on the decision in *Pulicherla Nagaraju v. State of A.P.*, [2006] 11 SCC 444. In that decision itself it has been mentioned in paragraph 29 that whether there was an intention to cause death is to be gathered from several circumstances, and one of the circumstances mentioned in the said paragraph is whether the weapon was carried by the accused or was picked up from the spot. If it was carried by the accused right from the beginning that may be a circumstance to indicate that there was an intention to cause death if it was used for attacking the deceased on a vital part of the body. However, when the weapon was not initially in the hand of the accused, but was picked up from the spot during the altercation, then it cannot be said that it is a case under Section 302 IPC, rather it is only a case of culpable homicide not amounting to murder which comes under Section 304 IPC and not under Section 302 IPC.

A 10. The observation of the court in the above decision that “it is for
the courts to ensure that the cases of murder punishable under Section
302, are not converted into offences punishable under Section 304 Part
I/II” cannot, in our opinion, be understood to mean that the court should
B somehow try to find out some way of treating the offence to be under
Section 302 IPC. In our opinion, there is a clear distinction between a
case of pre-meditated attack with intention to cause death and a case
where there was no such pre-meditated intention and death was caused
in the heat of the moment or fit of anger during an altercation or quarrel.

C 11. No doubt, even in the heat of the moment or fit of anger one
should not attack somebody since human beings are different from animals
inasmuch as they have the power of self-control. Nevertheless, the fact
remains that in the heat of the moment and in a fit of anger people some
times do acts which may not have been done after premeditation. Hence
the law provides that while those who commit acts in the heat of the
D moment or fit of anger should also be punished, their punishment should
be lesser than that of premeditated offences. It is for this reason that
Exceptions I and 4 have been inserted in Section 300 IPC.

E 12. We may also refer to Exception 4 to Section 300 IPC which
reads as under:

“*Exception 4.* – Culpable homicide is not murder if it is committed
without premeditation in a sudden fight in the heat of passion upon
a sudden quarrel and without the offender having taken undue
advantage or acted in a cruel or unusual manner”.

F 13. The difference between Exception I and Exception 4 to Section
300 has been explained by this Court in *Pappu v. State of M.P.*, [2006]
SCC 391. In our opinion, the present case also comes under Exception
4 to Section 300 IPC since the ingredients of Exception 4 are all satisfied
G in the facts of the present case.

H 14. In our opinion, throwing waste and rubbish inside the house or
shop of somebody is certainly a grave and sudden provocation. Everyone
wishes to keep his premises neat and clean, and is likely to lose his self-
control in such a situation. The incident in question occurred in a sudden

fight and a heat of passion by a sudden quarrel without the appellant having taken undue advantage or acted in a cruel or unusual manner. Hence the appellant is entitled to the benefit of Exceptions I and 4 and the case comes under Section 304 IPC. A

15. The next question is whether the case will come under the first part or the second part of Section 304 IPC. In our opinion it will come under the second part in view of the decisions of this Court in *Ramesh Vithalrao Thakre and Anr. v. State of Maharashtra*, AIR (1995) SC 1453, *Sarup Singh v. State of Haryana*, AIR (1995) SC 2452, *Mavila Thamban Nambiar v. State of Kerala*, AIR (1997) SC 687, *Sudhir Samanta v. State of West Bengal and Anr.*, AIR (1998) SC 289, *K. Ramakrishnan Unnithan v. State of Kerala*, AIR (1999) SC 1428, *Tholan v. State of Tamil Nadu*, [1984] 2 SCC 133, *Jagpati v. State of Madhya Pradesh*, AIR (1993) SC 1360, *Tarsem Singh and Ors. v. State of Punjab*, AIR (2002) SC 760, *Hari Ram v. State of Haryana*, AIR (1983) SC 185, *Randhir Singh v. State of Punjab*, AIR (1982) SC 55, *Kulwant Rai v. State of Punjab*, AIR (1982) SC 126 and *Shankar v. State of Madhya Pradesh*, AIR (1979) SC 1532. B C D

16. In our opinion on the facts of the case the act committed was done with the knowledge it is likely to cause death but without any intention to cause death or cause such bodily injury as is likely to cause death. Hence the offence comes under the Part II of Section 304 IPC. E

17. For the reasons given above, the sentence awarded by the courts below is substituted by the sentence of five years' simple imprisonment and any period of incarceration in jail which the accused has already undergone shall be deducted from the aforesaid period of five years. The judgments of the courts below are modified accordingly and the appeal stands disposed off. F

18. If the appellant is on bail, his bail bonds shall stand cancelled. He shall surrender forthwith to serve out the remaining part of the sentence. G

S.K.S.

Appeal Partly allowed.