

CASE NO.:
Appeal (crl.) 1511 of 2007

PETITIONER:
Muthu

RESPONDENT:
State by Inspector of Police, Tamil Nadu

DATE OF JUDGMENT: 02/11/2007

BENCH:
A.K. Mathur & Markandey Katju

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 1511 OF 2007
[Arising out of Special Leave Petition (Crl.) No. 1242 of 2007]

MARKANDEY KATJU, J.

1. Leave granted.
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.
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.
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.
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 vs. State of Kerala 2000 (10) SCC 307 as well as in Masumsha Hasanasha Musalman vs. 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 vs. 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.

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 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.

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 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.

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

"Exception 4. \026 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".

13. The difference between Exception I and Exception 4 to Section 300 has been explained by this Court in Pappu vs. State of M.P. 2006 (7) 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 in the facts of the present case.

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.

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

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.

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.

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.