

**Kullan Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/1169728](http://sooperkanoon.com/1169728)

**Court :** Chennai

**Decided On :** Aug-29-2013

**Judge :** V.Dhanapalan

**Appellant :** Kullan

**Respondent :** The State

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

29. 08-2013 CORAM THE HONOURABLE MR.JUSTICE V.DHANAPALAN AND THE HONOURABLE MR.JUSTICE R. SUBBIAH CRIMINAL APPEAL No.766 of 2011 Kullan ..Appellant ..vs.. The State, rep.by the Inspector of Police, Kotagiri Police Station, Kotagiri, Nilgiris District. ..Respondent Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, against the judgment of the learned Sessions Judge, Nilgiris at Udthagamandalam, made in S.C.No.21 of 2010, dated 28.10.2010. For Appellant : Mr.P.Sam Jeba Singh For Respondent : Mr.V.M.R.Rajendran Additional Public Prosecutor

**JUDGMENT**

R.SUBBIAH, J., Challenge is made to a judgment of the Sessions Division, Nilgiris at Udthagamandalam, made in S.C.No.21of 2010, whereby the single and sole accused stood charged, tried and found guilty under Section 302 I.P.C.and awarded the life imprisonment and not imposed fine since the accused is in judicial

custody.

2. In order to bring home the guilt of the accused, the prosecution examined witnesses P.Ws.1 to 11, marked documents as Exs.P-1 to P-18 and produced M.Os.1 to 5.

3. Short facts, necessary for the disposal of the appeal, can be stated thus: (a) The deceased Muniakari, his son Arjunan (P.W.1) and his wife Vimala (P.W.2) are residing at Banagudi Solai within the limits of Kotagiri Police Station. Accused Kullan is also the resident of Banagudi Solai. On 23.10.2009 at about 2.30 PM., P.W.1 was talking with his father (deceased) and his wife P.W.2 in front of his house and one Vasanthi (P.W.3), the neighbour was also standing nearby. At that time, the accused came with an Aruval (M.O.1) and caused two cut injuries on the neck of Muniakari by saying that only because of the family of the deceased, his wife eloped with another person. On receiving the injuries, Muniakari fell down and died on the spot. The said occurrence was witnessed by P.W.3. Then the accused ran away from the place of occurrence with the Aruval. (b) Thereafter, P.W.1 proceeded to the respondent Police Station and gave a complaint Ex.P-1 to the then Sub-Inspector of Police P.W.8 and on the strength of the said complaint, a case came to be registered in Crime No.401 of 2009 under Section 302 IPC against the appellant/accused and the first information report is marked as Ex.P-9 and the same was forwarded to the Court and the copies of the same were forwarded to the officials. (c) P.W.10, the Inspector of Police, on receipt of the first information report, took up investigation, proceeded to the spot, made an inspection, prepared an observation mahazar Ex.P-2 and rough sketch Ex.P-16 and recovered blood stained earth and sample earth M.Os.2 and 3 under Mahazar Ex.P-3 in the presence of witnesses Nagaraj and Lakshmanan. Then, he conducted inquest on the dead body of Muniakari in the presence of witnesses and recorded their statements. The inquest report is marked as Ex.P-17. Thereafter, he sent the dead body to the hospital for the purpose of post-mortem along with his requisition. (d) On receipt of the requisition, P.W.5 Dr.Shobia attached to the Government Hospital, Kothagiri conducted autopsy on the dead body of Muniakari and gave post-mortem certificate, Ex.P-5, wherein she opined that the deceased would appear to have died of vital organs injuries (spinal cord).

(e) Thereafter, on 24.10.2009 at about 10.00 AM, the accused was arrested by P.W.10, the Inspector of Police and he came forward to give a confessional statement, which was recorded and the admissible portion of which was marked as Ex.P-6. Pursuant to which, he produced M.O.1 Aruval and M.O.4 shirt and the same were recovered under a cover of mahazar Ex.P-7. Thereafter, the accused was sent for judicial remand. P.W.10 sent the material objects for chemical analysis and he received Exs.P-12 to P-15, serology reports in this regard. After examination of the witnesses and on completion of investigation, P.W.10 filed the final report under section 302 I.P.C. (f) The case was committed to the Sessions Court, Nilgiris at Uthagamandalam and necessary charge was framed. In order to substantiate the charge, the prosecution examined 11 witnesses and also relied on 18 exhibits and 5 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found against him in the evidence of prosecution witnesses, which he flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced and scrutinized the materials. On doing so, the trial Judge took the view that the prosecution has proved the case beyond reasonable doubt and found the appellant/accused guilty and awarded the punishment of life imprisonment, which is the subject matter of challenge before this Court.

4. Learned counsel appearing for the appellant/accused, at the outset, has submitted that the case of the prosecution was not clearly established by the prosecution. The occurrence took place at 2.30 PM whereas the complaint was lodged at 7.00 PM and there was a delay of 4-1/2 hours and the delay was not properly explained.

5. P.Ws.1 and 2, who had spoken about the occurrence, are the son and daughter-in-law of the deceased respectively and they are the interested witnesses. Therefore, reliance placed by the trial court for convicting the accused is not legally sustainable. Except P.W.3, no other independent witness was examined. It is the further case of the prosecution that the accused had inflicted injuries on the neck of the deceased with M.O.1, Aruval, whereas P.W.2 in her evidence has described M.O.1 as knife. This contradiction would clearly show that

P.W.2 might not have witnessed the occurrence and her evidence was purposely pressed into service.

6. In addition to the above submissions, the learned counsel for the appellant pleaded an alternative argument that the offence, in the background of the motive, leading to sudden provocation, would become punishable under section 304(i) of IPC., but not under section 302 IPC. Thus, the learned counsel vehemently contended that the infirmities found in the evidence of the prosecution would go to show that the prosecution witnesses might not have been present at the place of occurrence and the occurrence would not have happened in the manner as put forth by the prosecution. Under such circumstances, it could easily be inferred that the prosecution has miserably failed to establish its case beyond reasonable doubt and accordingly, the appeal may be allowed or in case, this Court does not agree with the submissions, alternative submissions of the appellant may be accepted and accordingly, the sentence may be modified.

7. The learned Additional Public Prosecutor has made his submissions supporting the sentence awarded by the trial court and he relied on the decision reported in (2008) 3 MLJ (Cri) 351 (Chinnappan @ Karuppusamy .vs. State).

8. This Court has paid its anxious consideration on the submissions made by both sides and perused the materials available on record.

9. It is not in controversy that one Muniyakari, the father of P.W.1 was dead on 23.10.2009. Pursuant to the complaint given by P.W.1, the case was directly registered under section 302 I.P.C. by P.W.8 and following the inquest made by the investigator, the inquest report Ex.P-17 was prepared and the dead body was subjected to post-mortem by P.W.5, who gave a categorical opinion that he died due to the injuries on his vital organs. Thus, the cause of death, as put forth by the prosecution, was never challenged before the trial court or before this Court and hence, no impediment is felt in recording that Muniyakari died out of homicidal violence.

10. In order to substantiate that it was the accused, who attacked Muniyakari with M.O.1 Aruval, the prosecution marched three witnesses. It is true, they are son

and daughter-in-law of the deceased and another is the neighbour of the deceased. It is the well settled principle of law that merely because the eye witnesses happened to be the relatives of the deceased, their evidence cannot be discarded but before acceptance, the Court must apply the principles of scrutiny test. In the instant case, apart from the evidence of P.Ws.1 and 2, one Vasanthi was examined as P.W.3, who is the neighbour of the deceased. The evidence of P.W.3 clearly corroborates the evidence of P.Ws.1 and 2. Moreover, the occurrence took place in front of the house of the deceased himself, where P.Ws.1 and 2 are residing. Therefore, their presence in the place of occurrence is very much possible.

11. With regard to the submission of motive, on a perusal of P.Ws.1 to 3, we find that the accused was under the impression for three years that because of the deceased and his family members, his wife had eloped with another person. According to the prosecution, the accused inflicted cut injuries by saying that the deceased was responsible for his wife's elopement. In his confession statement, the accused has stated that, @/////gy ehl;fshf Kdpafhhpia btl;Intz;Lk; vd;W epidj;Jf; bfhz;oUe;njd;/ vdf;F re;jh;g;gk; fpilf;ftpy;iy/ mjdh; ,d;W ,e;j re;jh;g;gj;ij gad;gLj;jptplntz;Lk; vd;W epidj;J ehd; tPl;oy; itj;jpUe;j mhpthis vLj;Jf;bfhz;L Mf;nuhc&j;Jld; Xo te;njd;/////@/ Therefore, we are of the opinion that the motive for the occurrence has been strongly established by the prosecution.

12. Further, according to the prosecution, the injuries were caused by the accused with Aruval, whereas P.W.2 in her evidence had stated that the accused had caused injuries with knife. Thus, according to the defence, the contradiction in the description of M.O.1 by P.W.2 would show that she might not have been present at the place of occurrence. In her evidence, P.W.2 had deposed that, @rh/bgh/1l eh';fs; rpy rkak; fj;jp vd;Wk;. rpyrkak; mhpths; vd;W TWtJk; tHf;fk;@/ Under such circumstances, now, no significance could be attached to the minor contradictions pointed out by the learned counsel for the appellant and they would not be sufficient to create a grave doubt in the mind of this Court with regard to the manner of occurrence put forth by the prosecution.

13. Though there was a delay of 4-1/2 hours in lodging the complaint, P.W.1 had clearly explained the same in his cross examination, which reads thus: @ehd; muntD tiu ele;J te;J gpd;dh; g!;!py; brd;W fhty; epiyaj;jpy; g[fhh;bfhLj;njd;/ v';fs; ChpypUe;J muntD tiu g!; fpilahJ/ ele;J tUtjw;F xU kzp neuk; MFk;/ muntDtpypUe;J nfhj;jfphp bry;tjw;F g!; codoahf fpilf;fhjjhy; g!; epiyaj;jpy; fhj;jpUe;njd;@/ We further find that the distance between the place of occurrence and the police station is 6 kms. P.W.1 in his evidence had stated that after the occurrence, he was in state of shock. Further, in their village, there was no bus service and to reach Aravenu, it would take an hour by walk and from there, he has to catch bus to the police station. Therefore, we are of the view that the delay of 4-1/2 hours was properly explained. Moreover, the delay cannot be said to be an inordinate delay. Therefore, we are of the opinion that the evidence of Prosecution witnesses along with medical evidence, strongly corroborate each other which would undoubtedly go to prove that the prosecution has proved the case beyond reasonable doubt.

14. With regard to the alternative submission made by the learned counsel for the appellant, we are of the view that absolutely no evidence is available to show that the occurrence took place in a sudden provocation. As stated above, the accused was having vengeance on the deceased since he was responsible for the elopement of his wife with another person and that too, he caused injuries by saying that ".because of you only, my wife has eloped".. Under such circumstances, the alternative submission put-forth by the appellant cannot be accepted. In this regard, we have gone through the confession statement of the accused in order to decide the nature of offence committed by him. But, even in the confession statement, no material is available to come to a conclusion that the offence was committed by the sudden provocation. The evidence of ocular testimony, put forth by P.Ws.1 to 3, corroborated with the medical opinion given by P.W.5 doctor that the injuries could have been caused by M.O.1 Arival and the death would have been occurred within a short point of time. Yet another circumstance, which is strong in favour of the prosecution and against the appellant accused, was that the recovery of M.O.1, weapon of crime, pursuant to the confessional statement given by him, which was recorded by the police investigator. Since there are abundant evidence in favour of the prosecution, in the considered opinion of the court, the evidence recorded by the trial court, as

discussed above, would suffice to point out the guilt of the accused. Hence, the contention put forth by the learned counsel for the appellant that the factual position has not been considered by the trial court, cannot be accepted and it has got to be rejected and accordingly, rejected.

15. Adverting to the various contentions raised by the learned counsel for the appellant, the motive, the delay of 4-1/2 hours in lodging the complaint, more of the witnesses are interested persons and the discrepancy in the usage of M.O.1, as to knife and Aruval, the weapon used in the commission of offence have all been cogently and convincingly explained. As to the question of motivation, the evidence of P.W.3, who is an independent witness, corroborates the evidence of P.Ws.1 and 2 as to the accused misconstruing the elopement of his wife with the incitement by the deceased and thereby developing enmity towards them. On such proving of case with the live link of evidences by the prosecution beyond all reasonable doubt, the trial Court, taking into account every factor, has come to the definite conclusion and convicted the appellant under Section 302 IPC. Therefore, this Court has no iota reason to disbelieve any of the above factors in order to interfere with the judgment of conviction, rendered by the trial Court. Accordingly, the criminal appeal is allowed and the conviction and sentence of life imprisonment under section 302 IPC awarded by the trial court is confirmed. Index: Yes (V.D.P,J.) (R.P.S.,J.) Internet: Yes 29-08-2013 gl To 1.The Sessions Judge, Nilgiris at Udthagamandalam. 2.The Inspector of Police, Kotagiri Police Station, Kotagiri, Nilgiris District. 3.The Public Prosecutor High Court, Madras. V.DHANAPALAN, J., AND R.SUBBIAH, J., gl Pre-delivery judgment in Crl.Appeal No.766 of 2011 Dt: -08-2013

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