

**A. Devarajan Vs. State Rep. By The Inspector of Police, Salem District**

**A. Devarajan Vs. State Rep. By The Inspector of Police, Salem District**

**SooperKanoon Citation :** [sooperkanoon.com/1189554](http://sooperkanoon.com/1189554)

**Court :** Chennai

**Decided On :** Jul-27-2016

**Judge :** S. Nagamuthu & V. Bharathidasan

**Appeal No. :** Criminal Appeal No. 568 of 2011

**Appellant :** A. Devarajan

**Respondent :** State Rep. By The Inspector of Police, Salem District

**Judgement :**

(Prayer: This Criminal Appeal has been preferred to set aside the conviction and sentence passed by the Additional District and Sessions Judge (Special Judge for EC Act case), Salem, by judgment dated 17.04.2006 made in S.C.No.310 of 2004.)

**S. Nagamuthu, J.**

1. The appellant is the first accused in S.C.No.310 of 2004 on the file of the learned Additional District and Sessions Judge (Special Court under the Essential Commodities Act) Salem. There were three other accused by name Maveeran @ Venkatachalam, Sundaram and Kannan @ Chinnakannu, who were arrayed as Accused 2 to 4. All the four accused stood charged for offence under Section 302 r/w 34 IPC. In addition, the first accused was charged for offence under Section 3 r/w 25(1-B) (a) of the Indian Arms Act, 1959 and Section 307 IPC. The 4th

accused stood charged for offence under Section 5 r/w 25(1)(a) of the Indian Arms Act, 1959. By judgment dated 17.04.2006, the Trial Court acquitted the 4th accused from the said charge, however, convicted A1 to A3 and sentenced them as detailed below:

| Accused | Section of law                                                                                   | Sentence                                                                                                                                                           |
|---------|--------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A.1     | 302 r/w<br>34 IPC                                                                                | To undergo<br>Life<br>Imprisonment                                                                                                                                 |
|         | 3 r/w<br>25(1-<br>B)(a) of<br>the<br>Indian<br>Arms Act                                          | Rigorous<br>imprisonment<br>for three<br>years and to<br>pay a fine of<br>Rs.1000/- in<br>default to<br>undergo<br>rigorous<br>imprisonment<br>for 3 months.       |
|         | Instead<br>of 307<br>IPC, he<br>is<br>convicted<br>for<br>offence<br>under<br>Section<br>326 IPC | Rigorous<br>imprisonment<br>for four years<br>and to pay a<br>fine of<br>Rs.1000/- in<br>default to<br>undergo<br>rigorous<br>imprisonment<br>for three<br>months. |

|                |                      |                                    |
|----------------|----------------------|------------------------------------|
| A.2 and<br>A.3 | 302 r/w<br>34 I.P.C. | To undergo<br>Life<br>Imprisonment |
|----------------|----------------------|------------------------------------|

Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:-

The deceased in this case was one Mr.Sakthivel. There was a long standing enmity between the first accused and the deceased on account of a local panchayat election. It is alleged that on 28.09.2002, around 4.00 a.m., the deceased loaded coconuts in his jeep. He drove the jeep to the market at Kannankurichi. P.W.1, a neighbour of the deceased went along with him in the jeep. At 5.00 a.m., the jeep reached Kannankurichi market. The deceased parked the jeep near a building known as Thangavel Complex and unloaded the coconuts. When he was selling the coconuts, the first accused came to the place of occurrence. Accused 2 and 3 are the associates of the first accused. On reaching the deceased, they started quarreling with him. Suddenly, the first accused took out a country made gun and made a shot aiming at the deceased. The deceased fell down. Then, Accused 2 and 3 cut the deceased with knives indiscriminately. When P.W.1 tried to rescue the deceased, they brandished the weapon against him and threatened to kill him. Then, all of them fled away from the scene of occurrence. One Subramani, P.W.4, who was at the place of occurrence also sustained a pellet injury. The deceased died on the spot. P.W.1 immediately went to Kannankurichi Police Station and made a complaint at 5.45 a.m. on 28.09.2002. P.W.18, the then Sub-Inspector of Police, on receipt of the

said complaint registered a case in Crime No.436 of 2002 under Sections 302 and 307 IPC and Section 25(1-B-) of the Indian Arms Act against all the accused. Ex.P27 is the FIR. He forwarded both the documents to the Court, which were received by the learned Magistrate on 10.00 a.m. on 28.09.2002.

3. P.W.19 took up the case for investigation. He proceeded to the place of occurrence at 6.30 a.m., and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.11 and another witness. He recovered blood stained earth, sample earth and few more material objects from the place of occurrence. Then, he conducted inquest on the body of the deceased and forwarded the same for post-mortem.

4. P.W.20 - Dr.Ravi Sankar conducted autopsy on the body of the deceased on 28.09.2002 at 11.30 a.m. He found the following injuries:

"1. Transversely placed, widely grappling cut injury with sharp margins and acute ends, 6x1.5 cms, bone deep involving the base of nose and whole of right eye brow. On exploration by reflecting the scalp the base of the nasal bone was found that through and through and the right half of frontal bone was also found clean cut involving both tables. On removal of the skull vault there was comminuted fracture involving the whole of right anterior cranial fossa and cybriform plate of base of skull. There was thin subdural and sub-arachnoid hemorrhage over the entire surface of right cerebral hemisphere without any involvement of the dura.

2. Transversely placed widely gaping cut injury with sharp margins 5x1.5 cms bone deep over the upper part of left cheek.

3. Obliquely placed widely gaping cut injury with sharp margin 6x1.5 cms bone deep from the right alae of nose to the left angle of mouth.

4. Obliquely placed widely gaping cut injury with sharp margins 6x1.5 cms bone deep over the left side of chin.

5. Two obliquely placed, parallel widely gaping cut injuries. 1 cm apart, each 6x1 cms bone deep over the middle of chin.

6. Obliquely placed widely gaping cut injury with sharp margins 7x1.5 cms bone deep over the right side of chin on exploration of injury Nos. 2 to 6. (a) corresponding to injury No.(2) the left zygomatic arch was found broken into pieces. (b) corresponding to injury no.3. The hard plate was found cut obliquely from a, point between the left upper central and latter incisor teeth to a depth of 5 cms with loosening of the above said teeth (c) corresponding to injury Nos. 4 to 6 the body of the lower jaw was found cut through and through into 5 bits with loosening of all the teeth in the lower jaw.

There was obvious extravasation of blood into the muscles and soft tissues surrounding the injuries 2 to 6 and their corresponding internal injuries.

7. Obliquely placed cut injury with sharp margins 3x0.5 cms muscle deep over the outer aspect of upper 1/3 rd of right upper arm directed from above downwards and outwards.

8. Obliquely placed cut injury with short margins 6x2 cms joint deep over the back of right elbow without any joint or bony involvement.

9. Abrasion 2x1 cms over the middle of dorsum of left hand.

10. Four transversely placed scratch abrasions. One below the other 1 cm apart each 12 cms in length and all directed from right to left over the front of chest on the right side above the level of right nipple.

11. A circular punched out gun shot entrance wound of 3 cms diameter, with slightly irregular and inverted edges, seen over the back of chest on the right side 15 cms below C7 spine and 9 cms to the right of mid line the upper and inner 2/3<sup>rd</sup> of the edge of the above wound was surrounded by a rim of hyperemia to a width of 0.3 cms. Blackening by smoke was found in a circular area of 15 cms diameter around the above wound. Tattooing lodging in the skin of unburnt and partially burnt gun powder granules was seen over a roughly circular area of 12 cms diameter around the above wound more concentrated in the upper half of the circular area. The fine, downy hairs around the wound were found partially burnt and partially singed.

On opening of throx and an exploration of the track of the shots. The lower half of 2<sup>nd</sup> whole of 3<sup>rd</sup> and upper half of 4<sup>th</sup> ribs on the right side in their back aspect, away from third joint with the spinal column were found shattered.

The lower half of upper lobe and the middle lobe of right lung were found disintegrated into a spongy mass in which pieces of shattered ribs were found impregnated. The right internal jugular vein and the right common carotid artery were found split into two halves irregularly. The interior thyroid veins split irregularly and the isthmus and the left lateral lobe of thyroid gland were found disintegrated into a spongy mass.

The above described areas were found completely immersed in a pool of dark fluid blood. By a through search in the above area two deformed black shots each roughly of 1cms diameter could be recovered one wedged between the right common carotid artery and the other in the disintegrated spongy mass of left lateral lobe of thyroid gland. One circular intact wad of 1.8 cms diameter and 0.3 cms thickness and a part of another damaged wad were also recovered from the depth of the tissues.

Over a roughly circular area of 9 cms diameter involving the lower part of right half of front of neck, right side of neck and upper part of right side of chest above the level of right nipple. There found seven separate shot exit wounds with everted irregular edges, each of different diameters but none exceeding 0.6 cms.

From above, it could be concluded that the fire arm was used a smooth bored one using a 12 bore shell with nine buck shots. The range of fire being from little less than 30 cms. Definitely not more than 60 to 90 cms. The shot track was directed from back to front, below upward and to the left. Signs of decomposition- Nil.

Heart chambers and valves normal. Cavities empty. Coronary vessels. Patent. Lungs. Left lung on u/s. Pale. Hyoid bone intact. Stomach contained 150 gms of undigested cooked ragi rangi with no specific smell mucosa pale, liver. Both kidneys, on c/s. Pale. Duodenum contained yellow's shyme. Mucosa pale. Bladder empty. Pelvis membranes spinal column intact brain. o/s. Pale."

Ex.P35 is the post-mortem certificate. He gave opinion that the death of the deceased was due to pellet injuries found on the body of the deceased. He further gave opinion that the shots would have been made from a distance of 30 to 90 cms from the body of the deceased. He further opined that the pellets, which caused injury on the body of the deceased could have been shot from a weapon like M.O.1. He also opined that the other injuries on the body of the deceased could have been caused by a weapon like knife.

5. The other injured in the occurrence viz., Subramani (P.W.4) was taken to the hospital. P.W.10 - Dr.Murugavel examined him at 7.30 a.m. on 28.09.2002. He found a pellet injury measuring approximately 3 cms depth on the forehead. The bone was exposed. A metal piece was found embedded. Another injury was found on the parital region of the head and in that also a metal piece was embedded. P.W.10 conducted surgery and removed both the metal pieces. Ex.P7 is the wound certificate and Ex.P8 is the Accident Register, pertaining to P.W.4.

6. P.W.19 during the course of investigation recovered blood stained cloth from the body of deceased and forwarded the same to Court. He came to know that the first accused had surrendered before the Court on 03.10.2002. On 04.10.2002, he secured order from the jurisdictional magistrate granting police custody of the first accused. On 06.10.2002, he took police custody of the first accused. While in custody, on 06.10.2002 at 7.00 a.m., the first accused gave voluntary confession in the presence of P.W.11 and another witness, in which, he disclosed the place where he had hidden the explosives. In pursuance of the same, he took the Police and the witnesses to the place of hide out and produced M.O.1 and M.Os.17 to 25. P.W.19 recovered the same under a Mahazar. Then, he recovered the motorcycle bearing Registration Nos.TN-28-D-8501 and No.TAS-4828 under M.Os.27 and 28 respectively. On 08.10.2002, he arrested the 4th accused in the presence of P.W.11 and another witness. From him, a gun license was recovered. On 09.10.2004, he arrested one Kumar @ Krishnakumar in connection with the said case. He came to know that the second accused had surrendered before the Court. He took Police custody of him on the orders of the Magistrate on 18.10.2002. While in custody, he gave voluntary confession, out of which, an Aruval and blood stained cloth were recovered. Then investigation was taken over

by P.W.21. He collected all the medical records, examined few more witnesses and filed charge sheet against all the accused.

7. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. All the accused denied the charges. In order to prove the case of the prosecution, on the side of the prosecution, as many as 21 witnesses were examined and 35 documents were exhibited, besides 38 Material Objects.

8. Out of the said witnesses, P.Ws.1 to 4 have spoken about the occurrence. P.Ws.1 to 3 have stated that the first accused shot the deceased with the gun and other accused cut the deceased with Aruval. P.W.4 has stated that he was standing in the market near the place of occurrence. He also sustained gun shot injuries. But he had not seen the accused shooting him. P.W.5 has stated that around 6.00 a.m., on 28.09.2002 , he found all these accused fleeing away from the scene of occurrence. At that time, they were found in possession of knives and gun. P.W.6 has spoken about the motive between the first accused and the deceased. P.W.7 has also spoken about the motive. P.W.8 has stated that he witnessed the Inspector recovering two metal pellets removed by the doctor by means of surgery from P.W.4. P.W.9 has stated about the arrest of one Kumar @ Krishnakumar and the consequential recovery made out of the disclosure statement. The said Kumar died before the trial. P.W.10 has spoken about the treatment given to P.W.4. P.W.11 has spoken about the preparation of Observation Mahazar and Rough Sketch and the recovery of material objects from the place of occurrence. He has also spoken about the arrest of the first accused, the confession made by him and the consequential recovery of Material Objects. P.W.12 has spoken about the arrest of the second accused, the disclosure statement made by him and the consequential recovery of M.Os.2, 30 and 31. P.W.13 is an official from the District Collectorate. He has stated that license for the gun in question was issued to one Kannan @ Chinnakannan (A4) P.W.14 - the clerk of the Magistrate Court has stated that he forwarded the material objects for chemical examination. P.W.15 has spoken about the photographs taken at the place of occurrence. P.W.16 has spoken about the fact that he handed over the dead body to the doctor for postmortem. P.W.17 - the Ballistic expert, who

examined the gun and the pellets in question gave opinion that the same could have been shot from the gun (M.O.1). P.W.18 has spoken about the registration of the case on the complaint of P.W.1. P.W.19 has spoken about the major part of the investigation done by him. P.W.20 has spoken about the postmortem conducted and the final opinion regarding the cause of death. P.W.21 has spoken about further investigation done by him and the final report filed.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness on their side. Their defence was a total denial.

10. Having considered all the above materials, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how the appellant is before this Court with this Criminal Appeal.

11. It is brought to our notice that earlier, the other convicts in this case had filed an appeal in CrI.A.No.583 of 2006 challenging the conviction and sentence. It is also brought to our notice that the said appeal was dismissed by this Court by confirming the conviction and sentence imposed on them. For hearing the said appeal in CrI.A.No.583 of 2006, original records from the Trial Court were called for. Accordingly, they were received. After the disposal of the said appeal, the records were returned by this Court and were received by the Trial Court on 23.08.2007. The present appeal was filed by the first accused only in the year 2011, that was long after the disposal of the appeal filed by the other accused. After the present appeal was admitted, the Trial Court records were called for. But it was informed to this Court by the Trial Court that the original depositions of P.Ws.1 to 21 were not available in the case records. In this regard, there were correspondences between this Court and the Trial Court. Since the original depositions of P.Ws.1 to 21 could not be traced either in the Trial Court or this Court, this Court ordered for reconstruction of the same from out of the certified copies, which were already available. After due notice to the learned counsel for the appellant on record, such order was passed. As a matter of fact, the certified copies of the depositions of these witnesses were available in the hands of the learned counsel for the appellant. In pursuance of the said order, from out of the

said certified copies of those depositions, typed set of papers were prepared by this Court and thereafter, this appeal was listed for final hearing. The learned counsel for the appellant has got no dispute regarding the correctness of the reconstructed depositions of P.Ws.1 to 21 from out of the certified copies of depositions of those witnesses submitted by the learned counsel.

12. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

13. The learned counsel for the appellant would submit that the evidences of P.Ws.1 to 4 cannot be believed. He would take us through those depositions to point out some discrepancies. But we find no force at all in the said argument. P.W.1 had accompanied the deceased to the market in the jeep. P.Ws.2 and 3 were also there in the market. There is no dispute regarding their presence. Their presence at the place of occurrence was quite natural. They have categorically stated that it was this accused who shot the deceased with the gun and they have further stated that the other accused cut the deceased and the deceased died on the spot. The medical evidence clearly establishes that the death of the deceased was due to the gun shot injuries and the cut injuries. The opinion of the ballistic expert is that the M.O.1 gun could have been used to make the shots at the deceased. Thus, the evidence of Ballistic expert and the medical evidence also duly corroborate the eye witness account. P.W.4, the injured witness has stated that when he was standing there, there was a bang sound and something hit his head and he fell down. He had not actually seen the first accused shooting. But his evidence would clearly go to show that the occurrence had taken place in the market around 6.00 a.m., as it is projected by the prosecution. The medical evidence also duly corroborates the eye witness account of P.W.4. P.W.5 has stated that he found all the accused fleeing away from the scene of occurrence in two motorcycles. The material objects such as the magazines would also go to support the case of the prosecution further. From these evidences, the prosecution has proved the guilt of the accused beyond reasonable doubts. In fact, this was the view taken by another Division Bench while dealing the appeal filed by the other accused. We do not find any reason to take a different view. Thus, we hold

that the Trial Court was right in convicting this accused also.

14. The learned counsel for the appellant would submit that so far as the appellant is concerned, he made a single shot with the gun and therefore, he had no intention to cause the death of the deceased. We are not all impressed by the said argument. The very fact that the accused had come to the place of occurrence with the gun, loaded with magazines would go to show that he had gone there to do away the deceased. He was accompanied by other accused also. After single shot was made, the deceased fell down. In order to ensure that the deceased did not survive, the other accused immediately mounted attacking the deceased with knives. Thus, all the accused ensured that the deceased was no more. Thus, undoubtedly, the common intention of all the accused was only to cause the death of the deceased. Therefore, the act of the accused would squarely fall within first limb of Section 300 IPC. His act shall not fall under any of the exceptions to Section 300 IPC and therefore, he is liable to be punished only for the offence under Section 302 r/w Section 34 IPC.

15. The learned counsel for the appellant has made reliance on the judgment of the Hon'ble Supreme Court in Sanjay v. State of Uttar Pradesh [(2016) 1 SCC (Cri) 712], wherein, the Hon'ble Supreme Court has held that in case, where there was a single shot made by the accused by the gun, the inference of intention of causing the death cannot be had. In our considered view, the view expressed by the Supreme Court in the said judgment has got nothing to do with the present case. The Supreme Court, going by various facts and circumstances of the case, took a view that the accused had no intention to cause the death of the deceased. Here in this case, as we have already discussed, there was a clear intention on the part of the first accused to cause the death of the deceased. Therefore, we hold that the Trial Court was right in convicting the accused under Section 302 r/w 34 IPC for having caused the death of the deceased. Similarly, for having caused injury on P.W.4, the Trial Court was right in convicting the accused under Section 307 IPC and the Trial Court was also right in convicting him under the Arms Act. We do not find any reason to interfere with the same. The Trial Court has imposed only reasonable punishment. We do not find any merit at all in the appeal.

In the result, the appeal fails and accordingly, the same stands dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**