

**T.Manikandan Vs. The State, Rep By**

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**SooperKanoon Citation :** [sooperkanoon.com/64144](http://sooperkanoon.com/64144)

**Court :** Chennai

**Decided On :** Aug-10-2015

**Judge :** S.Nagamuthu

**Appellant :** T.Manikandan

**Respondent :** The State, Rep By

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

10. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRL.A(MD).No.260 of 2012  
T.Manikandan : Appellant Vs. The State, rep by The Inspector of Police, Vadasery Police Station, Kanyakumari District, [Crime No.390 of 2009].. : Respondent  
PRAYER Appeal is filed under Section 374 of the Code of Criminal Procedure to set aside the Judgment and conviction of the appellant/accused in S.C.No.19 of 2010, on the file of the District and Sessions Judge, Kanyakumari at Nagercoil, dated 09.07.2012, acquit the appellant and thus render justice. !For Appellant : Mr.V.Kathirvelu Senior Counsel For Mr.K.Prabhu ^For Respondent : Mr.A.Ramar Additional Public Prosecutor :

JUDGMENT

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JUDGMENT

of the Court was delivered by S.NAGAMUTHU, J. The appellant is the sole accused in S.C.No.19 of 2010, on the file of the learned District and Sessions Judge, Kanyakumari at Nagercoil. He stood charged for the offence punishable under Section 302 of the Indian Penal Code. By Judgment dated 09.07.2012, the Trial Court has convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for four years. As against the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:- The deceased in this case was one Mr.Rajan. PW-1 is his brother. They were residing at Krishnankoil Vathiarvilai Village. On 02.06.2009, at about 08.00 PM, when PW-1 and the deceased were at their home, the accused came there and wanted them to come with him to a Marriage Hall, known as "Sivathanu Kalyanamandapam". Accordingly, all the three were proceeding towards the said Marriage Hall. On their way, there arose quarrel between the accused and the deceased. The accused scolded him. The deceased also, in turn, scolded him. Then, the accused left the place saying that he would not allow the deceased to survive. PW-1 and the deceased went to the said Marriage Hall. Then, PW-1, the deceased and few others started playing Cards at 10.30 PM. While the Game was going on, the accused suddenly came to the Marriage Hall with a knife in his hand. Suddenly, the accused stabbed the deceased once on his neck. PW-1 and the others shouted at him. The accused fled away from the scene of occurrence. 2.1. PW-1, immediately, took the deceased to the Aasaripallam Government Hospital. But, the doctor declared him dead. Thereafter, PW-1 made a complaint to the Sub-Inspector of Police, Vadasery. PW-15, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.390 of 2009 under Section 302 of the Indian Penal Code. EX-P1 is the complaint and EX-P10 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the case diary to the Inspector of Police for investigation. 2.2. PW-16, taking up the case for investigation, proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence. Then, he proceeded to the Aasaripallam Government Hospital and conducted inquest on the body of the deceased in the presence of the witnesses.

On completing the inquest, he prepared inquest report and then forwarded the dead body for postmortem. 2.3. PW-10, Dr.R.Rajesh, conducted autopsy on the body of the deceased, on 03.06.2009, at 2.30 PM. He found the following injuries. "Horizontal punctured incised wound seen over the right side of neck, measuring 2 3/4 X12 CM X wind pipe deep [7 CM].. It has punctured the underlying muscles, carotid vessels and entered into the wind pipe. It is directed downwards and towards the left. One end of the wound is sharp and the other and is blent. The wound is seen 3 CM below the lower end of right ear". 2.4. He preserved the viscera for examination. In the viscera report, it was found that there was no poison in the visceral organs. Therefore, he gave opinion that the deceased would appear to have died of shock and hemorrhage due to stab injury to the neck. On 16.06.2009, the accused surrendered before the Court. Continuing the investigation, PW-16 took custody of the accused. The accused gave a voluntary confession, in which he disclosed the place, where he had hidden the knife. In pursuance of the same, he took PW-16 and the witnesses and produced the knife. PW-16 recovered the same under a mahazer in the presence of the witnesses. Then, PW-16 collected medical records, examined the doctor and on completing the investigation, he laid charge sheet against the accused. 2.5. Based on the above materials, the Trial Court framed appropriate charge, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, the prosecution examined as many as 16 witnesses and 16 documents were exhibited, besides five Material Objects. Of the said 16 witnesses, PW-1 is an eye witness to the occurrence. He has vividly spoken about the occurrence. PW-2 to PW-6 and PW-8 have turned hostile and they have not supported the case of the prosecution in any manner. PW-7 has stated that he carried the dead body to the Government Hospital on 02.06.2009 at 02.30 PM. PW-9, Dr.C.Ananthi, has stated that on 03.06.2009, the deceased was brought to the hospital by PW-1. She found him dead. She declared him dead and transferred the dead body to the mortuary. PW-10, Dr.R.Rajesh, has spoken about the autopsy conducted by him and his final opinion. PW-11 is the witness in whose presence, the Observation Mahazer and Rough Sketch were prepared. PW-12 has stated that the accused was taken into custody by PW-16, on 16.06.2009. He has stated about the confession made by

the accused and the recovery of MO-1, the knife. The others are the police officials. PW-15 is the Sub-Inspector of Police, who registered the case and PW-16 is the Investigating Officer, who has spoken about the investigation done by him. 2.6. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. On his side, one Mr.P.Rajkumar was examined. However, no document was exhibited on his side. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned counsel for the appellant, the learned Additional Public Prosecutor for the respondent and also perused the records carefully.

4. The learned Senior counsel for the appellant would submit that there is an inordinate delay in preferring the complaint, which creates doubt in the case of the prosecution. Next, the learned Senior Counsel would submit that the except the evidence of PW-1, there is no other evidence available at all in this case, which creates a lot of doubt. He would further submit that it is highly unbelievable that the accused would have been standing behind PW-1 and the deceased in the presence of the others for about 10 minutes and he would have stabbed the deceased. Thus, the learned Senior Counsel would submit that the presence of PW-1 is highly doubtful. He would further submit that the recovery of MO-1, at the instance of the accused, is also not believable. Assuming that the accused stabbed the deceased and caused injury on his neck, the said act of the accused would not fall within the ambit of Section 302 of the Indian Penal Code.

5. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal, According to him, absolutely, there is no delay in preferring the First Information Report. The alleged occurrence was at 10.30 PM, on 03.06.2009 and the First Information Report was registered at 07.45 AM, which has reached the learned Judicial Magistrate at 08.15 AM. Thus, there is no delay in preferring the complaint and forwarding the same to the Court. He would further submit that the deceased was taken to the Hospital only by PW-1, which would go to show that

PW-1 was very much present at the time of occurrence. He would further submit that the medical evidence duly corroborates the eye-witness account. He would further submit that the accused had gone with weapon, which shows that the occurrence was premeditated one. Thus, the accused had definite intention to kill the deceased and therefore, the said act of the accused would fall within the ambit of Section 302 of the Indian Penal code. Therefore, the conviction and sentence imposed on the accused does not require any interference at the hands of this Court, the learned Additional Public Prosecutor contended.

6. We have considered the above submissions.

7. So far as the argument of the learned Senior Counsel for the appellant that there was an inordinate delay in preferring the complaint, we do not find any force at all. It is not as though the deceased died instantaneously. There was still life. Therefore, PW-1 had taken him to the Government Hospital to save his life. One cannot expect him to rush to the Police Station, without taking the deceased to the hospital to save him. After the deceased was brought to the hospital, the doctor declared him dead. Thereafter, within a reasonable time, he had gone to the Police Station and made the complaint, which cannot be stated to be an inordinate delay. Thus, we do not find any delay in making the complaint and despatching the First Information Report to the Court so as to create any doubt in the case of the prosecution. Thus, the argument of the learned Senior Counsel in this regard is rejected.

8. Next comes the presence of PW-1, at the time of occurrence. In our considered view, the presence of PW-1, at the time of occurrence, cannot be doubted, as PW-9, Dr.C.Ananthi, has stated that the deceased was brought by PW-1 to the hospital. This fact would go to show the presence of PW-1 at the time of occurrence. According to the medical evidence, there was a stab injury on the neck of the deceased. Thus, the medical evidence also duly corroborates the evidence of PW-1. Thus, the prosecution, in our considered view, has clearly proved that the single stab injury was caused only by the accused, which resulted in the death of the deceased.

9. Now, the next immediate question, which arises for consideration, is as to what are all the circumstances under which the accused would have stabbed the deceased. During cross-examination, as rightly pointed out by the learned Senior Counsel for the appellant, PW-1 has admitted that the deceased came to the Marriage Hall and he was standing behind the deceased for about ten minutes, holding the knife in his hands. Had it been the intention of the accused, certainly, he would not have been patiently standing just behind the deceased for about ten minutes. It is also highly unbelievable that when the accused was standing behind the deceased for about ten minutes, holding the knife in his hands, none of the persons, who were playing Cards, including the deceased, did not raise any alarm. Certainly, on seeing the accused holding the knife in his hands, the deceased would have made, by all probabilities, every effort to escape from the scene of occurrence so as to save himself. But, according to the evidence available, he did not make any such effort. From this, it is inferable that the accused was not holding the knife in his hands, when he was standing behind the deceased for about ten minutes. All these ten minutes, it is inferable that the accused had no intention to kill the deceased at all. Though the prosecution has suppressed the actual conversation, which took place between the deceased, the accused and the other persons, who were playing Cards, going by the natural human conduct, it is presumable that there would have occurred some quarrel between the accused and the deceased, in which the accused would have been provoked and because of such provocation, he would have caused a single stab injury on the deceased.

10. In our considered view, the said provocation should have been grave enough to make the accused to lose his mental balance. Since the accused was silently standing for about ten minutes, we have got every reason to hold that the provocation should have been sudden. Had it been the intention of the accused to cause the death of the deceased, he would not have stopped with one stab. From all these circumstances, we hold that the accused had acted driven by the grave and sudden provocation and thus, his act would fall within the ambit of First Exception to Section 300 of the Indian Penal Code. Thus, the offence committed by the accused is not murder and it is only a culpable homicide, falling within the ambit of Section 304(i) of the Indian Penal Code.

11. Now, turning to the quantum of punishment, the learned counsel for the appellant would submit that the Trial Court had not taken into account the mitigating circumstances. The accused is an young boy, having chances for reformation. Either prior to the occurrence or subsequent to the occurrence, he has not involved in any crime. He has got big family to be taken care of. Having regard to the gravity of the offence, as narrated above and these mitigating circumstances, we are of the considered view that sentencing him to undergo rigorous imprisonment for seven years with fine of Rs.2,000/- would meet the ends of justice.

12. In the result, the Criminal Appeal is partly allowed in the following terms:- The conviction and sentence imposed by the Trial Court on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304(i) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for one month. The period of sentence already undergone by the appellant shall be set off under Section 428 of the Code of Criminal Procedure. To 1.The Inspector of Police, Vadasery Police Station, Kanyakumari District. 2.The District and Sessions Judge, Kanyakumari at Nagercoil. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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