

**P.Antro Vs. State Rep By**

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**SooperKanoon Citation :** [sooperkanoon.com/64908](http://sooperkanoon.com/64908)

**Court :** Chennai

**Decided On :** Aug-19-2015

**Judge :** S.Nagamuthu

**Appellant :** P.Antro

**Respondent :** State Rep By

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

19. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRL A(MD).No.377 of 2013 P.Antro : Appellant Vs. State rep by The Inspector of Police, Rajamangalam Police Station, [Eathamozhi Police Station, Crime No.98 of 2011]., Kanyakumari District. : Respondent PRAYER Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 11.12.2012 made in S.C.No.67 of 2012, on the file of the District and Sessions Court, Kanyakumari Division at Nagercoil. !For Appellant : Mr.S.Durairaj ^For Respondent : Mr.A.Ramesh Additional Public Prosecutor :

JUDGMENT

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of the Court was delivered by S.NAGAMUTHU, J. The appellant is the sole accused in S.C.No.67 of 2012, on the file of the learned District and Sessions Judge, Kanyakumari Division at Nagercoil. He stood charged for the offence punishable under Section 302 of the Indian Penal Code. By Judgment dated 11.12.2012, the Trial Court has convicted the appellant 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. Challenging 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.P.Mariadhasan. He was the elder brother of the accused. One Mr.P.Rajan was yet another brother. Their parents were also alive. All of them were living in a joint family in Periyakadu Village, Agastheeswaram Taluk, Kanyakumari District. The accused was a bachelor. All the male members of the family were involved in fishing activities to eke out their livelihood. 2.1. The deceased - Mr.P.Mariadhasan used to come home often fully drunk and to quarrel with his wife. On several occasions, the accused intervened, pacified him and prevented him from further abusing his wife. The other family members also, on many occasions, similarly, pacified them. Almost, this became a routine affair for the deceased to quarrel with his wife in drunken state. 2.2. On 14.04.2011, at 02.10 PM, the deceased, who was fully drunk, came home and quarreled with his wife. He used all kinds of abusive words. The accused, who was in the house, intervened and tried to pacify them. But, the deceased was not in a mood to get pacified. He started quarrelling with the accused also. He questioned as to how the accused could interfere in the family affair between him and his wife. In culmination of the said wordy quarrel, there was a scuffle between them. They caught hold each other and rolled on the floor. The wife of Mr.P.Rajan, PW-2, the wife of the deceased and others separated them. Thereafter, it is alleged that the accused took a knife, which was lying near the bathroom and stabbed the deceased twice. The deceased fell down. The accused ran away from the scene of occurrence. 2.3. The deceased was immediately taken to the Siva Hospital at Eathamozhi, Kanyakumari District. Dr.T.Sivakumar, PW-5, examined him and found a stab injury, measuring 3 X2CM on the left side of the abdomen and

another stab injury measuring 3 X2X4CM on the left hand. He admitted him as an in-patient and conducted surgery for the abdominal injuries. During surgery, he found four litres of fluid blood in the abdominal cavity. One major blood vessel was found cut. There were injuries to the colon and intestine. Surgery was completed and he was taken to the Emergency Ward. But, at 11.05 PM, on the same day, he breathed his last. An intimation regarding the admission of the deceased and his death was sent to the police by the Hospital Authorities. Thereafter, at 12.30 AM, on 15.04.2011, PW-1 came to the police station and preferred a complaint. PW-11 registered a case in Crime No.98 of 2011 under Section 302 of the Indian Penal Code. EX-P1 is the complaint and EX-P23 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. 2.4. Taking up the case for investigation, PW-13 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence. He recovered bloodstained earth and sample earth from the place of occurrence and also a stone under EX-P25, a mahazer. Then, he conducted inquest on the body of the deceased at 04.00 AM and prepared an Inquest Report, under EX-P26. On the same day, he recovered bloodstained cloth materials worn by the deceased at the time of occurrence, at 05.00 PM. He arranged for a photographer to take photographs of the place of occurrence and the dead body. Then, he forwarded the dead body for postmortem. 2.5. PW-6, Dr.R.Rajesh, conducted autopsy on the body of the deceased at 10.55 AM, on 15.04.2011. He found the following injuries:- "1. Sutured vertical midline 25 CM long incised surgical seen over the abdomen. Another horizontal sutured 18 CM long incised surgical wound seen over the left side and middle of the upper abdomen, crossing the previous wound.

2. 3 CM long oblique sutured incised punctured wound seen over the left hypochondrium. It is 28 CM below the anterior axillary fold. It is directed inwards and backwards. It is 15 CM deep. [Peritoneal cavity deep].. It has pierced the 8th intercostal space and 9th rib on left side. It has pierced the transverse colon and had cut multiple mesenteric and other vessels. 3/12 CM long incised sutured punctured wound seen over the outer aspect of middle of left arm. It was muscles deep. O/D. Abdomen:- Abdominal cavity contains about 1 litre of blood with clots. Mesenteric vessels were found ligated at two places and the transverse colon was

found sutured. Two mop-pads were found packed at that sites". According to PW-6, the death was due to shock and hemorrhage due to the cumulative effect of all the injuries. 2.6. Continuing the investigation, PW-13 arrested the accused on 15.04.2011, at 10.00 AM at Eathamozhi Junction, in the presence of PW-7 and another witness. On such arrest, he gave a voluntary confession, in which he disclosed the place, where he had hidden the knife. In pursuance of the same, he took PW-13 and the witnesses to the said place and produced the knife, [MO)-1]. which was recovered under a mahazer. On returning to the Police Station, he forwarded the accused to the Court for judicial remand. Then, he handed over the material objects to the Court with a request to forward the same for chemical examination. Since he was transferred on 30.08.2011, he handed over the investigation to his successor. PW-14 took up the case for investigation on 09.12.2011. He collected the report from the Forensic Lab, examined the doctor, collected the postmortem certificate and finally, on completing the investigation, he laid charge sheet against the accused, on 09.12.2011. 2.7. Based on the above materials, the Trial Court framed appropriate charges, 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 14 witnesses and exhibited 26 documents, besides seven Material Objects. 2.8. Out of the said 14 witnesses, PW-1 is the wife of the brother of the deceased. She was present at the time of occurrence. She has spoken vividly about the entire occurrence. PW-2 is the wife of the deceased. She has also spoken about the same. PW-3 has not stated anything incriminating against the accused. PW-4 is the doctor, who treated the accused in the hospital, on 14.04.2011, at 03.00 PM. He noticed a laceration on the left eye brow, measuring 5 X5Cm. EX-P2 is the Accident Register. PW-5 has spoken about the treatment given to the deceased, the surgery conducted and his death. PW-6 has spoken about the autopsy conducted by him and his final opinion. 2.9. PW-7 has stated that in his presence the accused was arrested. On such arrest, he gave a voluntary confession and in pursuance of the same, MO- 1 was recovered. PW-8 is the Assistant Director of Forensic Lab. He has stated that there were bloodstains on the material objects including the knife. PW-9 is the Head Clerk of the Court, who forwarded the material objects for chemical examination. PW-10 is

the Head Constable, who received the death intimation from the hospital. He has spoken about the forwarding of the First Information Report to the jurisdictional Magistrate from the Police Station. PW-11 has spoken about the registration of the case. PW-12 has spoken about the photograph taken by him. PW-13 has spoken about the investigation done by him and PW-14 has spoken about the final report filed by him. 2.10. 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. However, he did not choose to examine any witness nor to exhibit any document. 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 counsel appearing for the appellant would submit that PW-1 and PW-2 would not have seen the occurrence at all. He would submit that the very fact that there were no bloodstains on the dress materials of PW-1 and PW-2 would go to show that they would not have seen the occurrence. He would further submit that assuming that it was this accused, who caused the death of the deceased, the act of the accused would not fall within the ambit of Section 302 of the Indian Penal Code. The learned counsel would further submit that the accused had acted in right of private defence of his body. He would further submit that even assuming that the accused had no right of private defence of his body, there are materials to infer that the accused had caused the death of the deceased driven by sudden and grave provocation. Thus, the offence committed by the accused would squarely fall within the ambit of Section 304(1) of the Indian Penal Code, he submitted.

5. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, the presence of PW-1 and PW-2 cannot be doubted, because they belong to the same family residing together. He would further submit that there is no motive for PW-1 and PW-2 to falsely depose against the accused.

He would further submit that the very fact that the deceased was taken to the hospital by PW-1 and PW-2 would go to show that they were present at the time of occurrence. Thus, he would further submit that the act of the accused would not fall within the ambit of the general exception under Section 100 of the Indian Penal Code, as well as the First Exception to Section 300 of the Indian Penal Code. Thus, the learned Additional Public Prosecutor would submit that the offence committed by the accused would fall within the ambit of Section 302 of the Indian Penal Code. The Trial Court has rightly done so, which, according to the learned Additional Public Prosecutor, does not require any interference at the hands of this Court.

6. We have considered the above submissions.

7. Admittedly, PW-1, PW-2, the deceased and the accused were residing in the same house. After all, PW-2 is the wife of the deceased. The husband of PW-1, the deceased and the accused were brothers. They were residing as a joint family. To this extent, there is no dispute. Therefore, quite naturally, PW-1 and PW-2 would have been present at the time of occurrence. They had no axe to grind against the accused to depose falsely. Thus, there is no reason to doubt their version. From this, it is clear that it was this accused, who caused injury on the deceased, which resulted in his death.

8. Now, let us take up the plea of right of private defence of body. During cross-examination, PW-1 and PW-2 have admitted that when the deceased was quarrelling with PW-2, the accused, out of good will to pacify them, intervened. Immediately, the deceased started quarrelling. In culmination of the said quarrel, the accused and the deceased caught hold of each other and rolled on the floor. PW-1 and PW-2 were trying to separate them. After they were separated, the deceased took up a stone and hit the same on the accused. The accused sustained an injury. After this part of occurrence, the deceased was still there, but the accused went into the house. The knife in question was just lying by the side of the bathroom. He returned with the knife and stabbed the deceased twice.

9. It is clear from the narration of the facts, during cross-examination of PW-1 and PW-2, that after the deceased had hit him with stone, he did not make any more

attempt to attack the accused. When the accused went into the house, the deceased did not even follow him. Therefore, after the accused was hit by the stone on his head, there was no more apprehension of any danger to his life. He could have run away from the place of occurrence at once. But, instead, he went into the house, returned with knife and caused injury on the deceased. Thus, at the time when the accused caused injury on the deceased, there was no apprehension for any danger to his body. Thus, the act of the accused was not in exercise of right of private defence of his body. Thus, he is not entitled for the general exception under Section 100 of the Indian Penal Code.

10. As we have narrated above, certainly, due to the quarrel and hit by stone, the accused would have got provoked. The deceased was fully drunk and he continued to abuse him. At that time, the accused went into the house, where he found a knife lying. He took out the knife, returned back and stabbed the deceased twice. The whole occurrence happened after they were separated, that too, within few minutes. The narration of the above facts would clearly go to show that the accused was provoked only by the deceased and such provocation was sudden and grave, which, in our considered view, was grave enough to make the accused to lose his self-control. Actuated by the loss of self-control, the accused had taken the knife, which was lying just by the side of the bathroom and stabbed the deceased. Thus, the act of the accused, in our considered view, will squarely fall within the ambit of First Exception to Section 300 of the Indian Penal Code. The weapon used and the situs of injuries would go to show that the injuries caused on the deceased were an intended ones, which are sufficient in the ordinary course of nature to cause death. Thus, the offence committed by the accused will squarely fall within the ambit of the third limb of Section 300 of the Indian Penal Code. Since it falls within the ambit of first exception Section 300 of the Indian Penal Code, the offence committed by the accused is not murder and it is only a culpable homicide, falling within the ambit of second limb of Section 299 of the Indian Penal Code and thus, he is liable to be punished under Section 304(1) of the Indian Penal Code.

11. Now, turning to the quantum of punishment, the learned counsel for the appellant would submit that the appellant is a young man and he is a poor,

having no means. He was doing fishing activities to eke out his livelihood. Even this occurrence was not a premeditated one. The accused had gone to pacify the deceased not to quarrel with his wife only out of goodwill. But, unfortunately, the deceased provoked him to act in such a manner, which resulted in the death of the deceased. The accused had not committed any offence either prior or subsequent to this occurrence. Having regard to all these facts and circumstances of the case, we have to strike a balance between the aggravating circumstances and the mitigating circumstances so as to arrive at an appropriate quantum of punishment. Thus, we are of the view that imposing sentence of rigorous imprisonment for five years and to pay a fine of Rs.1,000/- will meet the ends of justice.

12. In the result, this 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 five years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one month. The period of sentence already undergone by the accused/appellant shall be set off under Section 428 of the Code of Criminal Procedure. To 1.The Inspector of Police, Rajamangalam Police Station, [Eathamozhi Police Station, Kanyakumari District. 2.The District and Sessions Court, Kanyakumari Division at Nagercoil. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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