

**D.Chelladurai Vs. State Rep By**

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**Court :** Chennai

**Decided On :** Sep-03-2015

**Judge :** S.Nagamuthu

**Appellant :** D.Chelladurai

**Respondent :** State Rep By

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

03. 09.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRL.A(MD).No.181 of 2011 D.Chelladurai : Appellant Vs. State rep by The Inspector of Police, Kovilpatti West Police Station, Kovilpatti, Tuticorin District. [Crime No.485 of 2005].. : Respondent PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction, dated 26.04.2007, made in S.C.No.120 of 2006, on the file of the learned Additional District Sessions Judge [Fast Track Court No.I]., Tuticorin Division, Tuticorin. !For Appellant : Mr.S.Durairaj ^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.120 of 2006, on the file of the learned Additional District Sessions Judge [Fast Track Court No.I]., Tuticorin Division, Tuticorin. He stood charged for the offences punishable under Sections 302 and 506(ii) of the Indian Penal Code. By Judgment dated 26.04.2007, the Trial Court has convicted the appellant, as detailed below:- Convicted under Sections Sentence imposed Fine amount 302 IPC To undergo imprisonment for life. Rs.1,000/- in default to undergo rigorous imprisonment for one year. 506(ii) IPC To undergo rigorous imprisonment for one year - The sentences have been ordered to run concurrently. 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 Mrs.Veerammal. She had a sister, by name Karuppayee Ammal. The said Mrs.Veerammal and Mrs.Karuppayee Ammal were residing in the adjacent houses in Kovilpatti. Mrs.Karuppayee Ammal is the second wife of one Mr.Xavier Pandian. At Kadambur Kuppanapuram Village, Mr.Xavier Pandian appears to have left behind a house, in which Mrs.Karuppayee Ammal was residing. The accused, one of the legal heirs of Mr.Xavier Pandian, was demanding a share in the said house. Mr.Karuppayee Ammal did not relent to the said request. This resulted in frequent quarrels between the accused and Mrs.Karuppayee Ammal.

2.1. Two days prior to the occurrence, Mrs.Karuppayee Ammal and the deceased - Mrs.Veerammal were sitting just in front of the house of the deceased. PW-1 is the son of the deceased. While they were so sitting, the accused came there from his village and wanted Mrs.Karuppayee Ammal to give share in the house. This resulted in quarrel between the two. The deceased - Mrs.Veerammal intervened and she quarreled with the accused in support of her sister - Mrs.Karuppayee Ammal. The accused went away at the end of the quarrel. On 24.06.2005, at 06.30 PM, it is alleged that the deceased and Mrs.Karuppayee were again sitting in front of the house of PW-1. The accused came there. PW-1 and his sister, by name, Mrs.Mariammal, were in the house. The accused again demanded a share in the house. This resulted in a quarrel between Mrs.Karuppayee Ammal and the accused. Again, the deceased - Mrs.Veerammal intervened. Enraged over the same, the accused took out a knife and stabbed on the abdomen of the deceased.

She fell down. The accused, then, brandished the knife against PW-1 and his sister and intimidated them not to disclose anything about the occurrence to anybody else. Then, he ran away from the scene of occurrence. PW-1, immediately, rushed the deceased in an auto to the Government Hospital at Kovilpatti. 2.2. PW-4, Dr.M.Prakatheeshwaran, examined the deceased, at 07.00 PM, on 24.06.2005, at the Government Hospital at Kovilpatti. When he enquired, PW-1 told him that at 06.30 PM, on 24.06.2005, at her house, when the deceased was cutting the vegetables, she fell down accidentally and sustained injuries. EX-P3 is the Accident Register. He noticed a stab injury measuring 21/2 X212 cm on the abdomen. PW-4, then, referred the deceased to the Government Medical College Hospital at Palayamkottai, Tirunelveli. 2.3. PW-11, Dr.B.Narayana Srinivasan, examined the deceased at the Government Medical College Hospital, at Palayamkottai, Tirunelveli, on 24.06.2005, at 09.00 PM. When he enquired, PW-1 told him that while cutting the vegetables, the deceased fell down and sustained injury. He noticed a stab injury on her abdomen measuring 4 X4cm. He admitted the deceased as an in-patient in the hospital. EX-P14 is the Accident Register and EX-P15 is the wound certificate. 2.4. On receiving intimation from the Hospital Authorities, PW-12, the Head Constable, attached to the Kovilpatti West Police Station, proceeded to the Government Medical College Hospital, Palayamkottai, Tirunelveli, at 04.00 AM, on 25.06.2005. Since the deceased was not in a position to speak, PW-12 recorded the statement of PW-1. EX-P1 is the said statement. On returning to the Police Station, PW-12 registered a case in Crime No.485 of 2005, under Sections 324 and 506(ii) of the Indian Penal Code. EX-P1 is the complaint and EX-P16 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Sub-Inspector of Police. 2.5. PW-13, the then Sub-Inspector of Police, proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of PW-3 and another witness. He examined PW-1, PW-2, Mrs.Mariamammal - the sister of PW-1 and recorded their statements. He could not examine the deceased, as she continued to be unconscious. The deceased regained consciousness, on 30.06.2005. Immediately, he rushed to the hospital and recorded her statement. Unfortunately, the said statement has not been marked as evidence, though it is a

dying declaration. Then, he recovered bloodstained cloth materials of the deceased. 2.6. On 09.07.2005, the deceased died in the hospital. PW-5, Dr.S.Sivanupandian, declared her as dead and informed the same to the Police Station. EX-P4 is the death intimation. Based on the same, PW-13 altered the case into one under Section 302 of the Indian Penal Code. Then, he handed over the investigation to the Inspector of Police. 2.7. PW-14, the then Inspector of Police, took up the case for investigation and conducted inquest on the body of the deceased, on 09.07.2005, between 12.00 noon and 02.00 PM. EX-P21 is the inquest report. Then, he forwarded the dead body for postmortem. 2.8. PW-10, Dr.V.Paramasivam, conducted autopsy on the body of the deceased. He noticed the following injuries:- "Hospital bandage seen on the abdomen. On removal of necrotizing, ulcerated wound 7 X7cm on the right side of the abdomen and pus is pouring out through the wound. On dissection, it communicates with the visceral cavity. [Laparotomy]. sutured wound 24 cm in length over the center of the abdomen. On dissection of chest and abdomen: Abdominal muscles show evidence of necrosis and sutures. Extensive area of necrosis and pus formation seen along the mesentery. Evidence of surgical intervention along the large intestine with necrosis and dehiscence of sutures. Capsule of the left kidney shows evidence of surgery and pus formation. Spleen appears to be removed surgically. Peritoneal and pleural cavities: Empty, Heart: Normal, Coronaries: Patent. Lungs: Congested, Hyoid bone: intact, Stomach: Empty, Liver and Kidneys: Congested, small intestine: Nil specific. Bladder: Empty". EX-P13 is the postmortem certificate. According to PW-10, the single stab injury found on the body of the deceased would have been caused by a weapon, like knife. 2.9. During the course of investigation, PW-14 came to know that the accused had surrendered before the learned Judicial Magistrate No.II, Madurai, on 04.07.2005. On 15.07.2005, PW-14 took police custody of the accused. On 19.07.2005, at 06.30 AM, while in custody, in the presence of PW- 9, the accused gave a voluntary confession, in which he disclosed the place, where he had hidden a knife. In pursuance of the same, he took PW-14 and PW-9 to Kovilpatti Inam Maniyachi Bye-pass Road and from the bush, he produced MO- 1, knife. PW-14 recovered the same under a mahazer and handed over the material objects to the Court with a request to the Court to forward the same for chemical examination.

According to the chemical analysis report, there was human blood of AB group on the dress materials of the deceased. The knife [MO-1]. did not contain the human blood at all. On completing the investigation, he laid charge sheet against the accused, on 09.08.2005. 2.10. 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, 14 witnesses were examined, 21 documents and one material object was marked. Out of the said 21 witnesses, PW-1 is the son of the deceased. He is an eye-witness to the occurrence and he has spoken about the entire occurrence in a vivid fashion. PW-2 is the sister of the deceased. She is also an eye-witness to the occurrence. She has also spoken very vividly about the entire occurrence. PW-3 has spoken about the preparation of the Observation Mahazer and the recovery of the Material Objects from the place of occurrence. PW-4, Dr.M.Prakatheeshwaran, has spoken about the admission of the deceased in the Government Hospital, at Kovilpatti, at 07.00 PM, on 24.06.2005. 2.11.PW-5, Dr.S.Sivanupandian, has spoken about the death of the deceased. PW-6 is the Head Clerk of the Court, who has spoken about the forwarding of the Material Objects for chemical examination. PW-7 is the Head Constable, who carried the death intimation from the Government Medical College Hospital, Tirunelveli, to the Kovilpatti West Police Station. PW-8 is yet another Head Constable, attached to the Kovilpatti West Police Station. He has spoken about the handing over of the First Information Report to the learned Judicial Magistrate, No.II, Kovilpattai, at 02.00 PM, on 09.07.2005. PW-9 has spoken about the disclosure statement made by the accused and the consequential discovery of MO-1. 2.12. PW-10, Dr.V.Paramasivam, has spoken about the postmortem conducted by him and his final opinion. PW-11, Dr.B.Narayana Seenivasan, has spoken about the treatment given by him to the deceased at the Government Medical College Hospital at Tirunelveli. PW-12 has spoken about the registration of the case. PW-13 has spoken about the initial investigation done by him and the alteration of the case, after the death of the deceased. PW-14 has spoken about the investigation conducted by him and the filing of the final report. 2.13. 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 appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

4. The learned counsel for the appellant would submit that the evidences of PW-1 and PW-2 cannot be believed, in view of the contradictory statements made by PW-1 to the doctors, when he took the deceased to the Government Hospital at Kovilpatti as well as to the Government Medical College Hospital, at Palayamkottai, Tiruenveli. The learned counsel would further submit that the occurrence would not have taken in the manner, as it is projected by the prosecution. He would further submit that even assuming that it was this accused, who caused injury on the deceased, which resulted in her death, the act of the deceased would not fall within the ambit of Section 302 of the Indian Penal Code and the same would fall within the ambit of Section 304(i) of the Indian Penal Code.

5. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, there is no reason to reject the evidences of PW-1 and PW-2, who are the natural witnesses to the occurrence. The very fact that PW-1 took the deceased to the Government Hospital at Kovilpatti and then to the Government Medical College Hospital at Palayamkottai, Tirunelveli, would go to fortify that PW-1 and PW-2 were present at the scene of occurrence. He would further submit that the evidences of PW-1 and PW-2 are duly corroborated by the medical evidence. Thus, according to the learned Additional Public Prosecutor, the prosecution has proved that it was this accused, who caused the injury on the deceased, which resulted in her death. Thus, according to the learned Additional Public Prosecutor, the act of the accused would fall within the ambit of Section 302 of the Indian Penal Code as well as Section 506(ii) of the Indian Penal Code and

the Trial Court was right in convicting the accused under both charges, which does not warrant any interference at the hands of this Court.

6. We have considered the above submissions.

7. In our considered view, the presence of PW-1 and PW-2 cannot be doubted, as the occurrence had taken place just in front of the house of PW- 1. Though PW-1 and PW-2 have been subjected to lengthy cross-examination, nothing has been brought on record so as to disbelieve their evidences. Apart from the above, it was PW-1, who took the deceased to the Government Hospital at Kovilpatti as well as to the Government Medical College Hospital at Palayamkottai, Tirunelveli. Of course, PW-1 told the doctor that the deceased had sustained injury while cutting vegetables and by falling, but it is too difficult to believe the same. Going by the nature of the injury, which is a deep injury on the abdomen, through which omentum was also protruding, in our considered view, it is not at all possible to hold that this injury would have been caused by a mere fall. Probably, PW-1 would have made such a statement, because the accused is closely related to him. Above all, PW-1 was not contradicted by the defence by using the above statement. Under Section 145 of the Indian Evidence Act, 1872, the statement made by PW-1 to the doctor, being a former statement of PW-1, should have been used by the defence to contradict him. The said statement cannot be treated as a substantive evidence. In view of the above, we cannot attach any importance to the said statement allegedly made by PW-1 to the doctors. We are convinced that PW-1 and PW-2 are eye-witnesses to the occurrence and according to them, it was this accused, who caused the fatal blow on the deceased.

8. According to the medical evidence, the death was not due to the direct cause of the injury. The postmortem certificate and the evidence of PW-10 would reveal that almost all the internal organs were highly infected. Pus was extensively found almost in all the internal organs. The doctor has opined that the death was due to the septicemia.

9. Now, the question is as to whether the injury found on the abdomen caused by the accused would have been sufficient to cause death in the ordinary course of nature, as dealt with in limb III of Section 300 of the Indian Penal Code. As per

limb 3 of Section 300 of the Indian Penal Code, what is to be established is that the intended injury was sufficient in the ordinary course of nature to cause the death. [See the Judgment of the Hon'ble Supreme Court in Veerla Satyanarayana Vs. State of Andhra Pradesh reported in (2009) 16 SCC316 and the Judgment of this Court in Ganesan Vs. State, reported in 2013 1 CTC372 In the instant case, the death was due to septicemia, which was the direct result of the injury caused by the accused. It is common knowledge that if any deep injury is caused on the abdomen, resulting in protrusion of the omentum, death is more probable. Thus, in our considered view, the said injury found on the deceased was sufficient to cause death in the ordinary course of nature. Though PW-10 has opined that the death was due to the septicemia, it cannot be stated that the injury caused by the accused was not sufficient to cause death. Even in the absence of septicemia, the deceased would have died, because of the said injury. But for the treatment given, the deceased would have succumbed to the injury soon after the occurrence. The death was only postponed due to the treatment given. Thus, the death was caused only by the accused by causing the injury on the abdomen, which, as we have already pointed out, is sufficient to cause the death in the ordinary course of nature. Therefore, we have no hesitation to hold that the act of the accused would squarely fall within the ambit of the third limb of Section 300 of the Indian Penal Code.

10. Next, we have to examine as to whether the act of the accused would fall under any one of the Exceptions to Section 300 of the Indian Penal Code. The learned counsel for the appellant would submit that the act of the accused would squarely fall within the ambit of the First Exception to Section 300 of the Indian Penal Code. We find force in the said argument. Admittedly, there was no enmity between the accused and the deceased. The accused was demanding property only from Mrs. Karuppayee Ammal. The quarrel was between the accused and Mrs. Karuppayee Ammal. The deceased appears to have intervened and provoked the accused. Such provocation need not, always necessarily, be by words. Even by gesture or by act or by conduct, one can provoke the other. In this case, somehow the deceased had provoked the accused, but for that, there would have been no reason for the accused to stab the deceased at all. There was no premeditation for the accused to commit the crime. It was purely sudden. This

provocation, in our considered view, was also grave, which had made the accused to lose his self-control. Thus, the act of the accused would squarely fall within the ambit of First Exception to Section 300 of the Indian Penal Code. Thus, the act of the accused in causing death of the deceased would not amount to murder, but it is a culpable homicide, not amounting to murder, falling within the second limb of Section 299 of the Indian Penal Code. Thus, the accused is liable to be punished under Section 304(i) of the Indian Penal Code.

12. So far as the criminal intimidation allegedly made by the accused is concerned, we are not convinced of the evidences of PW-1 and PW-2. Therefore, he is entitled for acquittal from the charge under Section 506(ii) of the Indian Penal Code.

13. Now, turning to the quantum of punishment, the accused was hardly 24 years of age at the time of occurrence. He was married and he had two children at the time of occurrence. He has no bad antecedents. He had no record of any crime after the occurrence also. There are lot of chances for him to reform. He has to take care of the entire family. The occurrence was not premeditated.

14. Having regard to all the mitigating as well as the aggravating circumstances, we deem it appropriate to sentence him to undergo rigorous imprisonment for six years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks, which, in our considered view, would meet the ends of justice.

15. In the result, this Criminal Appeal is partly allowed in the following terms:- The conviction and sentence imposed on the accused/appellant under Section 506(ii) of the Indian Penal Code is set aside. The conviction and sentence imposed on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, he is convicted under Section 304(i) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks. The Trial Court shall take steps to secure the accused/appellant to commit him in prison to serve out the remaining period of sentence. 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, Kovilpatti West Police Station,

Kovilpatti, Tuticorin District. 2.The Additional District Sessions Judge [Fast Track Court No.I]., Tuticorin Division, Tuticorin. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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