

**Jeyashankar @ Johnson Vs. State Represented By**

**Jeyashankar @ Johnson Vs. State Represented By**

**SooperKanoon Citation : [sooperkanoon.com/65716](http://sooperkanoon.com/65716)**

**Court : Chennai**

**Decided On : Sep-02-2015**

**Judge : S.Nagamuthu**

**Appellant : Jeyashankar @ Johnson**

**Respondent : State Represented By**

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

02. 09.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL (MD).No.451 of 2010 Jeyashankar @ Johnson : Appellant Vs. State represented by The Inspector of Police Thalamuthu Nagar Police Station Tuticorin District. in Crime No.154 / 2009 :Respondent PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the Additional Sessions Judge, Fast Track Court No.II, Tuticorin District, in S.C.No.111 of 2010 dated 22.11.2010. !For Appellant : Mr.V.Kathirvelu Senior counsel for Mr.K.Prabhu ^For Respondent : Mr.A.Ramar Additional Public Prosecutor :Judgment (Judgment of the Court was delivered by S.NAGAMUTHU, J.) The appellant is the sole accused in S.C.No.111 of 2010 on the file of the learned Additional District and Sessions Judge, Fast Track Court, No.II, Tuticorin. He stood charged for offences under Sections 450, 302 and 309 IPC. By judgment dated 22.11.2010, the trial Court convicted him under all the charges and sentenced him to undergo rigorous

imprisonment for ten years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one year for the offence under Section 450 IPC, to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for one year for the offence under Section 302 IPC and to undergo simple imprisonment for one year and to pay a fine of Rs.100/- , in default, to undergo simple imprisonment for one month for the offence under Section 309 IPC. 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 Mrs.Jansi Rani and she was a Christian. The accused was originally a Hindu and his name was Jeyashankar. When the deceased was working in a private concern, the accused met her, developed love to her. In culmination of the said mutual love, they decided to marry. The parents of the deceased, therefore, wanted the accused to convert to Christianity. Accordingly, he converted himself as a Christian and married the deceased. After the marriage, the accused and the deceased lived together as husband and wife and out of the said wedlock, three children were born. They were residing in a rented house belonging to one Mrs.Muthammal at Muthukrishnapuram Village. In course of time, there arose misunderstanding between the husband and wife and as a result, there were frequent quarrels between them. On one occasion, the deceased had even gone with a complaint to All Women Police Station at Thalaimuthu Nagar against the appellant. 2.1. On 27.03.2009, the deceased had returned to her parental home along with her children, after a quarrel between her and the accused. On 28.03.2009, the deceased took the children with her and went to the house of the accused for the purpose of taking the cloth materials for the children. One Mr.Perculin, the brother of the deceased also accompanied her. Within a short while, Mr.Perculin gave a telephone call to P.W.1, namely the mother of the deceased and informed her that there was fight going on between the deceased and the accused at the house of the accused. Therefore, P.W.1 sent her husband (P.W.2) to go and fetch the deceased and the children back to her house. Accordingly, P.W.2 went to the house, persuaded the accused by saying that he would send back the deceased and the children within 10 days. Then, he brought the deceased and the children to his house. Thus, on 29.03.2009, the deceased

and the children were at the house of P.W.1. Around 10 pm., on the day, the father of the deceased had gone to sea for the purpose of fishing. P.W.1, the deceased and the children were all sleeping in the house. 2.2. Early in the morning by about 5 a.m., P.W.1 went out to go to the Church. Thus, the deceased and the children, namely, P.Ws.4 and 5 alone were there in the house. It is further alleged that at that time, the accused came to the house and tapped at the door. The deceased did not open the door. The accused, by force, opened the backside door of the house and entered into the house. On seeing him, the deceased started crying. Virtually, she shouted at the accused. The accused wanted her to return to his house along with the children. The deceased was so reluctant. At one stage, the accused pulled the hand of the deceased also with a view to take her to his house. This resulted in a scuffle between the accused and the deceased. In the said process, the glass bangles worn by the deceased were broken and they caused injuries on her hand. In culmination of the said fight, both physical and verbal, the accused took out a knife and stabbed the deceased. Having received the said injury, the deceased wanted the children to go and fetch P.W.1. Accordingly P.Ws.4 and 5 rushed towards the Church, by the time, P.W.1 was just walking on the street. P.Ws.4 and 5 informed her about the incident. P.W.1 immediately rushed towards her house along with P.Ws.4 and 5. When she entered into the house, she found the accused still stabbing the deceased repeatedly. P.W.1 shouted at him. Immediately, the accused stopped stabbing the deceased and instead he took out a bottle and consumed poison from the same. At once, he fell unconscious. 2.3. P.W.1, thereafter, went to the Thalaimuthu Nagar Police Station to make a complaint. P.W.1 presented a written complaint Ex.P1 to P.W.11 ? the Special Sub Inspector of Police, at 6.00 am on 29.03.2009. P.W.11 registered a case in Crime No.154 of 2009 under Section 302 IPC. Ex.P8 is the FIR. He forwarded both the documents to Court and handed over the case diary to the Inspector of Police for investigation. The FIR and the complaint had reached the hands of the learned Magistrate at 11 am on the same day. 2.4. P.W.17 took up the case for investigation on 29.03.2009. At 7.15 am., he inspected the place of occurrence and found the accused lying unconscious. He made arrangement for shifting the accused to the hospital through P.W.8. In the presence of P.W.6 and another witness and prepared an observation mahazar and a rough sketch. He

recovered bloodstained earth, sample earth, bloodstained knife, metal container from the place of occurrence under a mahazar. He conducted inquest on the body of the deceased between 8 a.m. and 10 a.m. Then he forwarded the body for postmortem. 2.5. In the meanwhile, P.W.8 rushed the accused to the Tuticorin Government Hospital. At 8.05 a.m., P.W.10 ? Dr.Kavitha Senthil examined the accused. At that time, he was conscious. The accused told her that he had consumed pesticide. P.W.10 admitted him in the said hospital for treatment. Ex.P.6 is the Accident Register. She intimated about the same to the police under Ex.P7. 2.6. Reverting back to the investigation, the dead body of the deceased was taken by P.W.16 to the Government Hospital at Tuticorin for postmortem. P.W.9 ?. Dr.Selvaraj received the body at 11.15 am on 29.03.2009 and commenced the postmortem at 11.30 am on 30.03.2009. He found the following injuries:

1. 3 stab injuries on the front of arm each 5 cms x 1 + cms width x 3 cms depth (about 10 cms above left elbow)
2. 3 stab injuries on the back of left forearm (8 cms below left elbow) each 5 cms x 1 + cms x 3 cms depth.
3. Two stab injuries front of upper art of chest 7 cms below left collar bone area. 5 cms x 1 cm x lung deep.
4. Two stab injuries below the left breast each 5 cms x 1 cm x 1 + cms.
5. Two stab injuries upper part of right breast each 5 cms x 1 cm x lung deep.
6. Two stab injuries on the right side of back each 5 cms x 1 cm x liver deep.
7. Two stab injuries nape of the neck each 5 cms x 1 cm x 4 cm depth.
8. A stab injury in the left side of neck in front 5 cms x 1 cm x 4 cms depth. It has served the greater vessel of neck.
9. Transverse incised wound 1 cm below adam's apple prominence with sawed appearance. The margin shows 3 tags above & below. It is 10 cms x 1 cm x wind pipe depth. Ex.P5 is the postmortem Certificate. He gave opinion that the deceased would have appear to have died of shock and hemorrhage due to

multiple stab injuries. 2.7. On 03.04.2009, P.W.17 arrested the accused in the presence of P.W.15 and another witness near Murugan Theatre at Lourdhammalpuram. On such arrest, he gave a voluntary confession, in which, he disclosed the place, where he had hidden the pant and shirt. In pursuance of the same, he took P.Ws.17 and 15 to the said place and produced M.O.10 ?. shirt and M.O.9 ?. Pant. On returning to the police station, P.W.17 forwarded the accused to Court for judicial remand and forwarded the material objects for chemical examination. On his request, material objects were sent for chemical analysis. The reports are Exs.P12 and 13. According to the chemical analyst report, human blood of 'A' Group was found on all the material objects including the knife. P.W.17 examined the doctor, collected the postmortem certificate and finally on concluding the investigation, he laid charge sheet against the accused on 10.06.2009 under Sections 450, 302 and 309 IPC. 2.8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 17 witnesses were examined, 20 documents and 10 material objects were marked. 2.9. Out of the said witnesses, P.W.1 is the mother of the deceased, who has stated that lastly in the house, the deceased was in the company of P.Ws.4 and 5. She has further stated that when she went out of her house to the Church, P.W.4 came to her and told her that the deceased was stabbed by the accused. She has further stated that when she returned to the house, she found the accused still stabbing the deceased. She has further stated that when she shouted at the accused, he took poison and consumed the same. She has also spoken about the complaint made by her. P.W.2 is the neighbour and he is the sister's husband of P.W.1. He has not stated anything incriminating against the accused. 3.0 P.W.3 is the father of the deceased. He has stated that he has brought the deceased and the children from the house of the accused on 28.03.2009. He has further stated that at the time of occurrence, he was not available at the house, as he had gone for fishing. He heard about the occurrence, he has stated. P.W.4 is the son of the sister of the deceased and P.W.5 is the son of the deceased. Both have vividly spoken about the entire occurrence. P.W.6 has spoken about the observation mahazar and the recovery of material objects from the place of occurrence including the knife and the metal container. P.W.7 has

turned hostile and he has not supported the case of the prosecution in any manner. P.W.8, is the Constable, who took the accused from the place of occurrence to the hospital for treatment. P.W.9 is the Doctor, who conducted autopsy on the body of the deceased. He has stated about the same and also his opinion regarding cause of death. 3.1. P.W.10 is the Doctor, who admitted the accused in the hospital for treatment. She has stated that she was told by the accused that he had consumed pesticide. P.W.11 is the then Special Sub Inspector of Police, who has stated that he registered a case on the complaint of P.W.1. P.W.12 is the Constable, who has stated that he carried the FIR and the complaint from the police station and handed over the same to the learned Judicial Magistrate at 11.00 a.m. P.W.13 was the then Sub Inspector of police at Tuticorin All Women Police Station. She has stated about the earlier complaint given by the deceased against the accused on 10.12.2008. She has further stated that the matter was amicably settled, during enquiry, since the parties agreed to move for divorce by mutual consent. P.W.14 is the Head Clerk of the Court, who has stated that he forwarded the material objects on the orders of the learned Judicial Magistrate for chemical analysis. P.W.15 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.16 is the Constable, who carried the dead body to the hospital for postmortem and P.W.17 ? Investigating Officer has spoken about the entire investigation done by him. 3.2. When the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness on his side nor marked any documents. His defence was a total denial. Having considered all the above, the trial Court has convicted him under all the charges and accordingly, punished him. That is how, he is now before this Court with this appeal. 3.3. We have heard the learned senior counsel for the appellant, the learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

4. The learned senior counsel for the appellant would assail the judgment of the trial Court by making a submission that P.Ws.4 and 5 are child witnesses and their evidences should not be believed as obviously, they have been tutored by somebody. The learned senior counsel would further submit that P.W.1 would not have witnessed the occurrence at all, as even according to her, she had gone to

the Church at the time of occurrence. He would further submit that according to the Doctor, who conducted autopsy, there was rigor mortis all over the body at 11.30 a.m. when postmortem was commenced. The learned senior would submit that in normal course, it takes 19 hours for a rigor mortis to set in. Therefore, according to him, the occurrence would not have taken place, as it is projected by the prosecution.

5. The learned senior counsel would further submit that in order to prove the offence under Section 309 IPC, the prosecution has not chosen to examine any witness including the Doctor to prove as to what was allegedly consumed by the accused. He would further submit that even the medical records pertaining to the treatment given to the accused have not been seized. Thus, according to the learned senior counsel, the prosecution has failed to prove the case beyond reasonable doubts. He would further submit that assuming that this accused was the one, who caused the injury on the deceased, even then, the offence committed by him would not fall under Section 302 IPC at all and the same would only fall under Section 304(i) IPC.

6. The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, though P.Ws.4 and 5 are child witnesses, there is no reason to reject their evidences. So far as P.W.1 is concerned, even according to her, she rushed back to the house, at the time, she found the accused still stabbing the deceased. He would further submit that from the fact that the accused lying by the side of the deceased, would go to show that he was present at the time of occurrence. He would also submit that P.W.1 had seen him taking poison. He would add that there was no delay in the FIR so as to create any doubt in the case of the prosecution. Thus, according to the learned Additional Public Prosecutor, absolutely, there is no reason to disbelieve P.Ws.1,4 and 5. He would further submit that the medical evidences duly corroborate the eye witness account. He would lastly submit that the offences committed by the accused would fall under Sections 450, 302 and 309 IPC.

7. We have considered the above submissions.

8. Admittedly, P.Ws.4 and 5 are child witnesses. It is not the law that child witnesses should be straight away disbelieved, as the children are prone to tutoring. Prudence requires that since children are prone to tutoring, their evidences require only close scrutiny. In this case, the presence of P.Ws.4 and 5 cannot be doubted at all, because their presence was quite natural, as the occurrence had taken place in their house. Since the occurrence had taken place at 5.00 a.m., one may say that the children would have been sleeping. But, the evidence of P.W.1 would go to show that she wanted to go to the Church and accordingly, she left and after she had left, it is the evidence of P.Ws.4 and 5 that somebody knocked at the door of the house. The deceased did not open. Then the accused removed the back door and entered into the house. P.Ws.4 and 5 have stated that when the door was violently knocked, they were awakened by the said noise. Therefore, the evidence of P.Ws.4 and 5 that they witnessed the occurrence cannot be disbelieved at all. After entering into the house, according to P.Ws.4 and 5, there arose a quarrel. On seeing him, the deceased shouted at him. The accused also mutually shouted at her. There was also fight both physically and verbally between them. The accused pulled her to go home. She refused. According to P.Ws.4 and 5, it was at that stage, the accused took out a knife and started stabbing her. P.Ws.4 and 5 therefore, rushed out to inform the same to P.W.1. After information, P.W.1 also returned. She also saw the part of the occurrence. Absolutely, there is no reason as to why the evidences of these three witnesses should be rejected. A perusal of their evidences would clearly go to show that they are very cogent and convincing.

9. Apart from that it is the admitted case that the accused was lying by the side of the deceased. P.W.1 has stated that he took poison from a container. Though the learned senior counsel for the appellant would submit that there is no evidence to prove that he took poison, he made a statement to the Doctor, when he was taken by P.W.8, that he had taken pesticide. But at the same time, we are conscious of the fact that this statement made by the accused to the Doctor is not admissible in evidence, as it is hit by Section 25 of the Evidence Act, since at the time when he made the statement, he was in the custody of the police, namely, P.W.8. The said statement is undoubtedly a confession. Therefore, that part of the statement made by the accused is eschewed from consideration. Thus, the evidence of P.Ws.1 and

17 would go to show that the accused was lying by the side of the deceased. This fact has not been denied by the accused at all. If that be so, it is his burden to explain to the Court as to what made him to go to the house, what happened in the interregnum and how he fell by the side of the deceased. The very fact that he has no explanation to offer regarding these vital facts would give rise to a presumption of his guilty mind. The accused was thereafter taken to the hospital, where he was treated. Thus, in our considered view, from these three witnesses, the prosecution has clearly established without any doubt that it was this accused, who caused the injuries on the deceased, which resulted in her death.

10. Now, the next question is to what is the offence that he has committed by his act. The narration of facts by P.Ws.4 and 5 would go to show that the intention of the accused in coming to the house of the deceased was not to quarrel and not to commit murder or not even to cause any injury on the deceased. His intention was a good intention that he wanted to take her back to his house, as she was staying for quite some time on account of some misunderstanding. On seeing the accused, it was the deceased, who shouted at him. The accused also reciprocated. Even after that the accused did not lose his mental balance. He tried to persuade the deceased to come with him, along with the children to his house. But the deceased was very adamant. She was going on quarreling. At one stage, as we have already pointed out, it became a physical fight between them. The accused pulled her hand. She resisted and it went on like this. Only in culmination of this, the accused had taken a knife and stabbed her. From these narrated facts, it can be presumed under Section 114 of the Indian Evidence Act, that the accused had been provoked by the deceased. In our considered view, the said provocation is grave and it came suddenly. Thus, the act of the accused would fall squarely under exception 1 to Section 300 IPC. There can be no doubt that the act of the accused would fall under 3rd limb of Section 300 IPC. Since the act of the accused would fall under exception 1 to Section 300 IPC, it is not culpable homicide amounting to murder, but it is only a culpable homicide, falling within the 2nd limb of Section 299 IPC, punishable under section 304(i) IPC.

11. So far as the offence under Section 450 IPC is concerned, since the intention of the accused to enter into the house was not to cause any harm to the deceased

or to commit any crime, mere entry into the house as the son-in-law into the father-in-law's house, we do not find that any offence under Section 450 IPC has been proved. Thus, he is entitled for acquittal from the charge under Section 450 IPC.

12. So far as the offence under Section 309 IPC is concerned, the only evidence available is that of P.W.1, who has stated that he was lying unconscious. As we have already stated that the statement made by him to the Doctor that he consumed pesticide is not admissible in evidence. Though a metal container was seized from the place of occurrence and the same has not been identified by P.Ws.1, 4 and 5 that the accused took some liquid only from that particular container. The connection between the container and the crime has not been established by the prosecution at all. The medical records pertaining to the treatment given, the result of the stomach wash and other related documents have not been seized at all by the prosecution. The Doctor, who treated the accused, has also not been examined. Thus, it is clear that there is no evidence that the accused had taken poison and attempted to commit suicide. Therefore, he is entitled for acquittal from the charge under Section 309 IPC also.

13. Now, turning to the quantum of punishment, for the offence under section 304(i) IPC, admittedly, he is a poor man and his avocation was fishing. He is a young man, The occurrence was due to some misunderstanding, as a result of some matrimonial dispute between the parties. The very fact that the father of the deceased had gone to the house of the accused, persuaded him and took the deceased back would all go to show that between the two families, there was cordial relationship. The occurrence was not premeditated and it was out of quarrel, in which, the accused had been provoked by the deceased. The accused has children to take care of. Having regard to all these mitigating and aggravating circumstances, by way of striking a balance between these two, we deem it appropriate to impose a sentence of rigorous imprisonment for five years with fine of Rs.1,000/-, which would meet the ends of justice.

14. In the result, the criminal appeal is partly allowed in the following terms: (i) The conviction and sentence imposed on the appellant by the trial Court under

Sections 450, 302 and 309 IPC are set aside and instead, he is convicted under Section 304(i) IPC and he is sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for four weeks. He is acquitted from the charges under Section 450 and 309 IPC.

(ii) The trial shall take steps to secure the accused to commit him in prison to serve out the remaining period of sentence. (iii) It is directed that the period of sentence already undergone by the accused is ordered to be set off under Section 428 Cr.P.C. (iv) Fine amount, if any paid by the accused/appellant, for the offences under Sections 450 and 309 IPC, shall be refunded to him. To 1. The Additional Sessions Judge, Fast Track Court No.II, Tuticorin District 2.The Inspector of Police Thalamuthu Nagar Police Station Tuticorin District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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