

**T.Senthamaraikannan Vs. The State Rep. By**

**T.Senthamaraikannan Vs. The State Rep. By**

**SooperKanoon Citation :** [sooperkanoon.com/65801](http://sooperkanoon.com/65801)

**Court :** Chennai

**Decided On :** Sep-07-2015

**Judge :** S.Nagamuthu

**Appellant :** T.Senthamaraikannan

**Respondent :** The State Rep. By

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 07.09.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU and THE HONOURABLE MR.JUSTICE V.S.RAVI CrI.A(MD)No.449 of 2010 T.Senthamaraikannan .Appellant/ Sole Accused versus The State rep.

by The Inspector of Police, Gudalur South Police Station, Theni District.

(Crime No.348 of 1994).Respondent/ Complainant PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction passed by the learned Additional District and Sessions Judge, Fast Track Court, Periyakulam, in S.C.No.102 of 2008, dated 30.06.2010.

!For Appellant : Mr.A.Velan for M/s.Ajmal Associates ^For Respondent :Mr.C.Mayilvahana Rajendran, Addl.

Public Prosecutor.

:

## JUDGMENT

(Judgment of the Court was made by S.NAGAMUTHU, J.The appellant is the sole accused in S.C.No.102 of 2008, on the file of the learned Additional District and Sessions Judge, Fast Track Court, Periyakulam.

He stood charged for the offence under Section 302 I.P.C.By Judgment, dated 30.06.2010, the Trial Court convicted him under Section 302 I.P.C.and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months.

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

2.The case of the prosecution, in brief, is as follows: (i)The deceased in this case was one Mr.Kumaran @ Krishnakumar.

P.W.1 is his father.

The sister of the deceased had been given in marriage to the accused.

After the marriage, the accused and the sister of the deceased (P.W.9) were living together as husband and wife.

After some time of the marriage, there arose frequent quarrels between the accused and P.W.9.

There were also panchayats held in the village in respect of the same, so as to settle the dispute.

P.W.9 had deserted the accused and came down to the house of P.W.1.

At the time of marriage, P.W.1 had given Rs.2,000/- to the accused.

During the panchayat held for settling the matrimonial dispute, the accused had returned the said sum of Rs.2,000/-.

However, the same was till kept only by the panchayatdaRs. While things stood thus, on 18.08.1994, at about 08.10 p.m., P.W.1 had gone to the shop of one Mr.Karnan, for purchasing some provisions.

The deceased also accompanied him.

At that time, it is alleged that the accused came to the same shop.

On seeing P.W.1, the accused questioned him as to why P.W.1 was not sending the wife of the deceased to his house to continue the matrimonial life and as to why he was retaining her at his house.

This resulted in a quarrel between P.W.1 and the accused.

At that time, the deceased intervened and questioned the accused as to why he was quarrelling with P.W.1.

For that, the accused told that the deceased and P.W.1 were not sending his wife also to the matrimonial home and retaining her.

So saying, he took out a knife and stabbed the deceased on his right side of the neck.

At once, the accused fled away from the scene of occurrence.

The deceased fell down with a single stab on his neck.

The deceased breathed his last immediately.

Thereafter, P.W.1 went to the Police Station and made a complaint.

P.W.12, the then Head Constable, attached to Kudalur South Police Station, reduced the statement of P.W.1 under Ex.P.1.

On the basis of the same, he registered a case in Crime No.348 of 1994 under Section 302 I.P.C.He forwarded Ex.P.1 and the FiRs.Information Report (Ex.P.6) to the Court and handed over the Case Diary to the Inspector of police for investigation.

(ii)P.W.17 took up the case for investigation at 01.00 a.m.He proceeded to the place of occurrence and prepared an Observation Mahazer and a Rough Sketc.in the presence of witnesses.

Then, he conducted inquest on the body of the deceased and forwarded the body for postmortem.

(iii)P.W.10, Dr.Manimohan, conducted autopsy on the body of the deceased on 19.09.1994 at 11.00 a.m.He found the following injuries on the body of the deceased: ?.External Injury: An incised wound 3 cm x 2 cm x Depth 10 cm on probing on left side of neck 2?.

below angle & Mandible.

On probing the wound directed towards medially.

Internal Examination: Neck on dissection on left side of neck, left internal carotid artery and external carotid artery and left internal jugular vein severed.

Completely oesophagus cut and opened.

Injury extends position medially.

Hyoid bone intact.

Ribs normal.

Heart 4 chambers empty.

Lungs congested.

Abdomen: Stomach contains about 300 ml of blood was present.

Liver, spleen and kidney congested.

Bladder empty.

Skull No fracture membrane intact, brain substance pale.

Intestine distended filled with gas?.Ex.P.4 is the Postmortem Certificate.

He gave opinion that the cause of death was due to injury causing shock and haemorrhage to left internal carotid, left external carotid and left internal jugular vein.

(iv)Continuing the investigation, P.W.17, recovered the blood stained material objects from the body of the deceased and from the place of occurrence.

After him, one Mr.Asan Bakkir, the successor Inspector of Police, took up the case for investigation on 20.09.1994.

On completing the investigation, final report has been filed against the accused.

3.Based on the above materials, the Trial Court framed a lone charge under Section 302 I.P.C.The accused denied the same.

In order to prove the case, on the side of the prosecution, as many as, 17 witnesses were examined and 19 documents were exhibited, besides 11 Material Objects.

4.Out of the said witnesses, P.W.1 is the sole eye witness to the occurrence.

He has vividly spoken about the same.

P.W.2 and P.W.3 have turned hostile and they have not supported the case of the prosecution in any manner.

P.W.4 has stated that after hearing about the occurrence, he went to the place of occurrence and he found P.W.1 at the place of occurrence and the deceased already dead.

He has further stated that he went to the Police Station along with P.W.1.

P.W.5, a villager, has spoken about the matrimonial dispute between the parties.

P.W.6 and P.W.7 have turned hostile and they have not supported the case of the prosecution in any manner.

P.W.8 is the wife of the deceased and P.W.9 is the wife of the accused.

They have also spoken about the matrimonial dispute between P.W.9 and the accused.

P.W.10 has spoken about the postmortem conducted and his final opinion regarding the cause of death.

P.W.11 has spoken about the fact that there was no electricity failure at the time of occurrence.

P.W.12 has spoken about the registration of the case on the complaint of P.W.1.

P.W.13 has spoken about the preparation of the Observation Mahazer and the Rough Sketc.and also the recovery of the material objects from the place of occurrence.

P.W.14 has spoken about the fact that he carried the dead body to the hospital for postmortem.

P.W.15 has spoken about the photographs taken in the place of occurrence.

P.W.16, the Head Clerk of the Judicial Magistrate's Court, has spoken about the fact that he forwarded the material objects to the Forensic Lab for chemical examination.

The report revealed that there was human blood on all the material objects including the knife.

But, so far as the knife is concerned, the result of grouping test was inconclusive.

P.W.17 has spoken about the investigation done and the final report filed.

5.When the above 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 to mark any document.

6. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the fiRs. paragraph of this Judgment, and sentenced him accordingly.

That is how, the appellant is before this Court with this Criminal Appeal.

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

8. The learned counsel for the appellant would submit that the evidence of P.W.1 is highly artificial, which would go to show that he would not have been present at all at the time of occurrence.

The learned counsel would further submit that there is enormous delay in preferring the complaint, which also creates doubts in the case of the prosecution.

The learned counsel would next contend that the conduct of P.W.1 would also go to show that he is not telling the truth.

The learned counsel would submit that the blood stained clothe said to have been worn by P.W.1 at the time of occurrence, has not been recovered.

The learned counsel would further submit that there was no motive at all for the accused to kill the deceased.

Thus, according to the learned counsel, the prosecution has failed to prove the case beyond reasonable doubts.

In the alternative, the learned counsel for the appellant would submit that the offence committed by the accused would fall only under Section 304 Part I I.P.C.9. The learned Additional Public Prosecutor would however oppose this appeal.

According to him, there are no reasons to reject the evidence of P.W.1.

The learned Additional Public Prosecutor would submit that his evidence is duly corroborated by P.W.4 and P.W.5.

The learned Additional Public Prosecutor would further submit that the medical evidence duly corroborated the eye witness account.

The learned Additional Public Prosecutor would submit that thus the prosecution has clearly proved that it was this accused, who caused the death of the deceased, by stabbing him with a knife and thus the act of the accused would clearly fall only under Section 302 I.P.C.10. We have heard the above submissions.

11. Admittedly, the accused was the son-in-law and the deceased was the son of P.W.1.

According to his evidence, he went to the nearby shop only for the purpose of purchasing some goods.

The deceased also accompanied him.

The occurrence had taken place in front of the said shop.

At that time, according to P.W.1, the accused came there, started a quarrel and at the end of the quarrel, he stabbed the deceased.

It is true that there was no strong motive.

But, according to the prosecution, matrimonial dispute is the motive.

Motive is always a double edged weapon.

It is the case of the defence that because of the said motive, the accused has been falsely implicated in the case of the prosecution.

The case of the prosecution is that because of the said motive, the occurrence had taken place.

Therefore, from out of the motive suggested by the prosecution, one cannot rush to the conclusion that the accused had stabbed the deceased.

Similarly, if the theory propounded by the learned counsel for the appellant that there was no motive or there was no ill-feeling between the parties, then it is difficult to explain as to why P.W.1 should falsely implicate his own son-in-law.

At this juncture, we hastened to add that on this surmise, we cannot sustain the conviction.

We only say that this is one of the circumstances against the accused.

Now at the time of occurrence, it is alleged that the accused on seeing P.W.1, questioned him, as to why P.W.1 was not sending the wife of the accused to his house to continue the matrimonial life.

It was only at the end of this quarrel, the accused had stabbed the deceased.

After the occurrence, P.W.1 had gone to the Police Station and made the complaint, in which there is no delay.

Though, it is true that the dress materials worn by P.W.1 have not been recovered, on that score, we cannot disbelieve the evidence of P.W.1.

Apart from that, P.W.4 would say that after the occurrence, when they went to the place of occurrence, he found P.W.1 there and the deceased was lying on the lap of P.W.1.

There is no reason to reject this part of the evidence of P.W.4.

Though, P.W.2 and P.W.3 have turned hostile, they have also stated that they saw the deceased lying on the lap of P.W.1.

From these evidences, it is clear that the presence of P.W.1 at the time of occurrence has been duly proved.

The evidence of P.W.1 draws corroboration from these evidences as well as from the medical evidence.

Thus, in our considered view, absolutely there is no reason to reject the evidence of P.W.1.

It is not the law that the evidence of a solitary witness should not be acted upon.

It is only the rule of prudence that the evidence of solitary witness requires corroboration, if the same is not beyond every reasonable doubt.

Here, in this case, when the evidence of P.W.1 is in the nature of inspiring the confidence of the Court, there is no need for this Court to look for corroboration from any other independent source.

Thus, we hold that the evidence of P.W.1 has clearly established that it was this accused, who caused the stab injury, on the neck of the deceased, which resulted in his death.

12.The next immediate question which arises for consideration is by the said act ?.what is the offence committed??.

As it has been narrated by P.W.1, the meeting of the accused and the deceased itself was by chance.

The accused would have never anticipated that the deceased and P.W.1 would come to the shop at that crucial time.

Similarly, P.W.1 and the deceased also would not have anticipated that the deceased would come to the shop at the crucial moment.

Thus, the meeting of the accused and the deceased and P.W.1 at the crucial point of time itself, was by sheer chance.

This would go to show that the accused would not have had any pre-medidation to do away with the deceased.

On seeing P.W.1, the accused expressed his anguish as to why P.W.1 had not sent his wife to continue the matrimonial life.

This, resulted in the quarrel and quarrel was going on between P.W.1 and the accused.

It was only at that time, the deceased had intervened and he questioned the authority of the accused as to why he was quarrelling with P.W.1.

In our considered view, the conduct of the deceased and the words spoken by him, would have certainly provoked the accused.

That provocation was also unexpected, but sudden.

We are of the view that since there was no motive, since there was no pre-meditation and since the meeting of the parties itself was by chance, we have got every reason to believe that the accused would have lost his self control by the provocation made by P.W.1 and the deceased and it is because of that provocation which was grave enough, the accused had stabbed the deceased once.

Thus, this act of the accused would clearly fall within the ambit of Exception 1 to Section 300 I.P.C. This act would fall under the third limb of Section 300 I.P.C. and since this act would fall within the ambit of Exception 1 to Section 300 I.P.C., the same would not amount to culpable homicide, amounting to murder, but it is only culpable homicide not amounting to murder.

Thus the act of the accused would fall only under the second limb of 299 I.P.C. and so he is liable to be punished under Section 304 Part I I.P.C.13. Now, turning to the quantum of punishment, the accused is a young man.

He has no bad antecedents.

He has got a family to take care of.

There are lot of chances for his reformation.

He does not have the history of bad character.

The occurrence itself was not pre-meditated and it was out of a sudden quarrel.

Having regard to all these mitigating as well as aggravating circumstances, we deem it appropriate to sentence the appellant to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks.

14. In the result, the Criminal Appeal is partly allowed; the conviction and sentence imposed on the appellant under Section 302 I.P.C. by the learned Additional District and Sessions Judge, Fast Track Court, Periyakulam, made in S.C.No.102 of 2008, dated 30.06.2010, is set aside and instead, he is convicted under Section 304 Part I I.P.C. and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks.

The period of sentence already undergone by the appellant/accused shall be set off under Section 428 Cr.P.C. The Trial Court shall secure the appellant/accused and commit him in prison so as to serve out the remaining period of sentence.

To 1. The Additional District and Sessions Judge, Fast Track Court, Periyakulam.

2. The Inspector of Police, Gudalur South Police Station, Theni 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)**