

**1.Kumaresan Vs. State Rep. by The**

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**SooperKanoon Citation :** [sooperkanoon.com/65809](http://sooperkanoon.com/65809)

**Court :** Chennai

**Decided On :** Aug-27-2015

**Judge :** S.Nagamuthu

**Appellant :** 1.Kumaresan

**Respondent :** State Rep. by The

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

27. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU and THE HONOURABLE MR. JUSTICE V.S.RAVI CrI.A(MD)No.123 of 2008 1.Kumaresan 2.Esakki 3.Ramesh .. Appellants/ Accused 1 to 3 Vs. State rep. by the Inspector of Police, Shenkottah Police Station, (Crime No.830 of 2007) Tirunelveli District. .. Respondent/ Complainant PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence, dated 31.01.2008, made in S.C.No.194 of 2007, by the learned Additional Sessions Judge (FTC No.I), Tirunelveli. For appellants 2 & 3 : Mr.V.Kathirvelu, Senior Counsel for Mr.A.Balaguru (A2) Mr.S.Devasena (A3) For respondents : Mr.C.Mayilvahana Rajendran Additional Public Prosecutor :

**JUDGMENT**

(Judgment of the Court was made by S.NAGAMUTHU, J.) The appellants are the accused 1 to 3 in S.C.No.194 of 2007 on the file of the Additional Sessions cum

Fast Track Court No.I, Tirunelveli. There were as many as five charges framed against the accused by the trial Court as follows; Charge Nos. Accused Offences U/s. 1 A1 & A2 U/s.294(b) IPC2A1 to A3 U/s.323 IPC3A1 & A2 U/s.341 IPC4A3 U/s.302 IPC5A1 & A2 U/s.302 r/w 34 IPC By judgment dated 31.01.2008, the trial Court convicted and sentenced all the three accused as detailed below: Accused Nos. Conviction U/s. Sentence imposed A1 & A2 294(b) IPC To pay a fine of Rs.1,000/- each, in default to undergo simple imprisonment for three months. A1 & A2 341 IPC To pay a fine of Rs.500/- each, in default to undergo simple imprisonment for one month. A1 & A2 323 IPC To pay a fine of Rs.1,000/- each, in default to undergo simple imprisonment for three months. A1 & A2 302 r/w 34 IPC To undergo imprisonment for live and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for three months. A3 323 IPC To pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months. A3 302 IPC To undergo imprisonment for live and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for three months. Challenging the said conviction and sentence, the appellants have filed this appeal. The first appellant - Mr.Kumaresan died, during the pendency of this appeal and thus, this appeal has become abated, insofar as the first appellant/A1 is concerned. 2.The case of the prosecution in brief is as follows; (a) The deceased in this case was one Mr.Iyyappan. He was a resident of Nainanagaram Village, in Tirunelveli District. PWs.1 and 2 are the brothers and PW3 is the mother of the deceased. These three were residing at Puthiyavan Street, Shencottah Town. On 15.03.2007 the deceased had come to Shencottah Town. By about 5.30 p.m., on the said day, PWs.1 & 2 and the deceased were sitting by the side of a public tap and they were talking among themselves. The first accused was in his grocery shop, situated near the public tap. There was a public telephone booth attached to the said shop. The first accused, at that time, wanted PW2 to make a complaint to the Chairman of Shencottah Municipality by using the coin box (telephone box) that there were irregularities committed in the matter of distribution of free gas cylinders to the consumers. PW2 declined to do so. Enraged over the same, it is alleged that the first accused abused PW2 in filthy language. This resulted in a quarrel. PW3 - the mother of the deceased had also come to the said place. Then, the first accused hold the neck of PW1 and pushed him against the pipe. The third accused

stamped the deceased. Then, the third accused rushed into the shop, came with a knife and caused a single blow on the left side of the chest of the deceased. It is further alleged that after the deceased had fallen, all the three accused stamped him. The third accused is none else than the son of the first accused. The second accused is a relative of the accused 1 & 3. PWs.1 to 3 cried for help. Immediately, all the three accused ran away from the scene of occurrence. (b) Then, PWs.1 and 2 took the deceased to the Government Hospital, Shencottah, at 7.00 p.m. PW13 - Dr.Krishnan examined the deceased and on examination, he found that the deceased was already dead and accordingly, he declared the deceased as dead. On the same day, he examined PW1 as well as PW2 at 8.00 p.m. and found that there were no external injuries, except a small abrasion on PW1. (c) On 15.03.2007, at 7.30 p.m., when PW23 - the then Sub Inspector of Police, was at Shencottah Police Station, PWs.1 & 2 appeared before him. PW1 gave an oral statement, which was reduced to writing by PW23. Ex.P1 is the said statement. W23 registered a case in Crime No.105 of 2007 under Section 294-B, 341, 323, and 302 IPC at 7.30 p.m. He forwarded Ex.P1 and P14 ?. FIR to the Court and handed over the Case Diary to the Inspector of Police for investigation. (d) PW24 ?. the Inspector of Police took up the case for investigation at 8.00 p.m. on 15.03.2007. On reaching the place of occurrence, at 9.15 p.m., he prepared an observation mahazar and a rough sketch in the presence of witnesses. Then, he proceeded to the hospital, where he conducted inquest on the body of the deceased at 9.30 p.m. Ex.P17 is the inquest report. Then, he forwarded the body for postmortem. (e) PW13 ?. Dr.Krishnan conducted autopsy on the body of the deceased at 11.30 a.m. on 16.03.2007. He found a single stab wound measuring 2 cm x 2 cm x 1 cm over the left nipple. On opening the thorax, he found fracture on 9th, 10th and 11th ribs. Haematoma was seen in muscle layer and in epigastric region. He gave opinion that the deceased would appear to have died of stab wound piercing the chest wall on the epigastric region. (f) During the course of investigation, PW24 arrested all the three accused at 11.00 a.m. On 16.03.2007, at Siluvai Muthu Bus Stop in the presence of PW11 and another witness. On such arrest, the third accused gave a voluntary confession in which he disclosed the place where he had hidden the knife. He took PW11 and PW24 to the said place and produced a knife from the hide out. PW24 recovered the same under a

mahazar. Then, on returning to the Police Station, he forwarded all the three accused to the Court for judicial remand. On completing the investigation, he laid charge sheet against all the three accused. (g) Based on the above materials, the trial Court framed the 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 24 witnesses were examined and 20 documents and 7 material objections were marked. (h) Out of the said witnesses, PWs.1 to 3 are the eyewitnesses to the occurrence. They have vividly spoken about the entire occurrence. PW4 is not an eyewitness and he has not spoken anything in favour of the prosecution. He has spoken only about the hearsay information. PWs.5 to 8 have turned hostile and they have not supported the case of the prosecution in any manner. PW9 has spoken about the observation mahazar and the rough sketch prepared by PW24. PWs.10, 14, 15, 16, 17, 18 and 20 have also turned hostile and they have not supported the case of the prosecution in any manner. PW11 and PW12 have spoken about the disclosure statement made by the first accused and the consequential recovery of the knife. PW13 - Dr.Krishnan has spoken about the treatment given to PWs.1 & 2 and the fact that he declared the deceased as dead and also about the postmortem conducted by him and his final opinion regarding the cause of death. PW19 is an employee of the BSNL Office, who has stated that a coin box for public telephone service was available at the shop of the first accused. PW21 is the constable, who carried the FIR to the Court. PW22 is another constable, who carried the dead body to the hospital for postmortem. PW23 has spoken about the registration of the case. PW24 has spoken about the investigation done. (i) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor to mark any document on their side. (j) Having considered all the above materials, the trial Court has convicted the accused, as detailed in the first paragraph of this judgment and accordingly, punished them. That is how they are before this Court with this appeal. 3.We have heard the learned senior counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully. 4.As we have already mentioned, the first accused is no more and thus, this appeal stands abated, so far as the first

appellant/A1 is concerned. So far as the other two accused are concerned, the learned senior counsel appearing for them would submit that PWs.1 to 3 would not have seen the occurrence at all and their very presence is highly doubtful. He would further submit that it has been admitted by many witnesses that over the distribution of free gas cylinders to the consumers, there was a commotion between the people belonging to two different political parties at the spot. He has further submitted that it was in the commotion, PW1, PW2 and the deceased would have been pushed by somebody and some unidentified person would have caused stab injury on the deceased. Thus, absolutely, there is no acceptable evidence to accept the case of the prosecution, the learned counsel submitted. He would further submit that the prosecution has not come forward with the true version of the occurrence and they have suppressed the material part of the occurrence, inasmuch as the prosecution has not stated anything about the commotion between two groups. He would further submit that there was no motive for the accused to cause the death of the deceased. Thus, according to him, the prosecution has failed to prove the case beyond reasonable doubts and therefore, the accused 2 & 3 are entitled for acquittal.

5. The learned Additional Public Prosecutor would, however, oppose this appeal. According to him, the occurrence had taken place just by the side of the house of PWs.1 to 3 and the deceased was a resident of a different village and he has come to see these witnesses only. That is how, they were all casually standing near the public tap. Therefore, according to the learned Additional Public Prosecutor, the presence of PWs.1 to 3 cannot be doubted. He would further submit that these three witnesses have very vividly spoken about the entire occurrence and there is no suppression of any fact. He would further submit that the medical evidence duly corroborates the eyewitness account. He would also submit that there was no delay in either preferring the complaint or despatching the same to the Court. Thus, according to the learned Additional Public Prosecutor, on all force, the prosecution has proved the case beyond reasonable doubts and therefore, this appeal is liable to be dismissed. 6. We have considered the above submissions.

7. Admittedly, the occurrence had happened at Puthiyavan Street, Shenchottah. PWs.1 to 3 are the residents of the said street, somewhere near the place of occurrence. The deceased was, admittedly, a resident of Nainanagaram Village. He had come to the house of these witnesses at that point of time. That is how all the four were talking together near the public tap. It is true that there was no motive between the parties. There was no premeditation on the part of the accused. Even PWs.1 to 3 and the deceased would not have anticipated that there would occur quarrel like this. According to the prosecution, the first accused wanted PW2 to give a phone call to the Chairman to complaint about the irregularities committed in the distribution of the free gas cylinders. This triggered the quarrel. It was only in that quarrel, it is stated that the third accused, who was in his tender age, rushed into the shop of the first accused, came back with a knife and stabbed the deceased. The place of the occurrence and the shop are situated within few feet. It is crystal clear from the evidences of PWs.1 to 3 that only from the shop of the first accused, the first accused wanted PW2 to give a phone call to the Chairman and that the occurrence had taken place just in front of the shop of the first accused. Therefore, in our considered view, the presence of PWs.1 to 3 cannot be doubted at all. 8. Now, the question is whether PWs.1 to 3 are fully believable. In our considered view, their evidences are doubtful on many counts. These witnesses did not say anything in their chief examinations about the commotion between two groups of the people, on account of the distribution of free gas cylinders. But, all these three witnesses have admitted during cross examination that in the said quarrel, there was virtually a commotion between two groups of the people. There were more than 15 people present at the time of occurrence. This fact has also been admitted during cross examination by PW1. It is the case of the defence that in that commotion somebody would have pushed the deceased and somebody would have stabbed the deceased. Since PWs.1 to 3 had suppressed the fact that there was commotion between two groups of the people and a large number of people, belonging to two different political parties, were present, we have to say that PWs.1 to 3 cannot be fully believed. But, on that score, we cannot in toto reject the entire evidences of PWs.1 to 3. We have to cull out the truth i.e., grain from the chaff. 9. From the medical evidences and from the evidences of PWs.1 to 3 and also from all the other attendant circumstances, we

find that so far as the injury caused by the third accused is concerned, there can be no difficulty in believing the evidences of PWs.1 to 3 and to that extent, they are believable. Their evidences are duly corroborated by medical evidence also. Therefore, based on the evidences of PWs.1 to 3, we hold that the single stab injury on the deceased was caused only by the third accused. Since there is no evidence that the third accused had caused any injury on any witnesses, he is acquitted of the charge under Section 323 IPC. 10. Now, turning to the accused 1 & 2, we find it difficult to believe the evidences of PWs.1 to 3. Since there was commotion between two groups, numbering more than 15 people and since there were scuffle between two groups, somebody would have pushed the deceased down and the fact that there was no injury found on PW2 and the fact that there was only a scratch found on PW1 would all go to show that they were all involved in the scuffle. In these circumstances, we find it difficult to believe the evidences of PWs.1 to 3 that the accused 1 & 2 had participated in the occurrence and caused injury on PWs.1 and 2 as well as on the deceased. To that extent, we are forced to reject the evidences of PWs.1 to 3. At the same time, the presence of the accused 1 & 2 at the place of occurrence cannot be doubted. But, mere presence of the accused 1 & 2, at the scene of occurrence, in our considered view, would not make them liable for punishment for the offence committed by the third accused. As we have already pointed out, there was no motive between the accused and the deceased. There was no premeditation also on the part of the accused. As we have already highlighted, even the deceased would not have anticipated that a quarrel would ensue. Similarly, the accused also would not have anticipated that a quarrel or commotion would ensue. Thus, the whole occurrence had taken place in the commotion between two groups of people. When the commotion was going on among the crowd of people, the third accused had rushed into the shop, came back with a knife and stabbed the deceased. Mere the presence of the accused 1 & 2 would not go to prove that they had a common intention to cause the death of the deceased. There was no occasion at all for them to share any such common intention. In such view of the matter, for the act of the third accused, the accused 1 & 2 cannot be held constructively liable and as such the third accused alone is liable to be punished. In such view of the matter, we are impelled to acquit the accused 1 & 2.

11. Now, turning to the third accused, as we have already stated, the single stab injury on the chest of the deceased, which resulted in the death of the deceased, was caused by him. Now, the question is as to what is the offence the third accused had committed by his act. The learned senior counsel appearing for the appellants would submit that the act of the accused would fall within the fourth limb of Section 300 IPC and also the first exception to Section 300 IPC. Thus, according to him, the offence committed by him would fall only under Section 304(ii) IPC. But, the learned Additional Public Prosecutor would submit that the situs of the of the injury, the nature of the weapon and all the other attendant circumstances would go to prove that the act of the third accused would squarely fall within the third limb of Section 300 IPC. He would further submit that the said act would not fall under any one of the exceptions to Section 300 IPC. Therefore, according to him, the third accused is liable to be punished under Section 302 IPC.

12. As rightly pointed out by the learned senior counsel appearing for the appellants, it is a case of single stab. Had there been any intention on the part of the third accused to cause the death of the deceased, he would not have stopped with a single stab. But, that is not the only matter to be considered. The weapon used is an ordinary pen knife. There was no motive. There was no premeditation. The third accused did not repeat the attack. All these facts would only go to prove that the act of the third accused would squarely fall within the third limb of Section 300 IPC. There can be no doubt that the said injury caused by the third accused was sufficient in the ordinary course of nature to cause the death.

13. The learned senior counsel for the appellants would submit that the doctor has not stated that the said injury is sufficient in the ordinary course of nature to cause the death. In our considered view, the doctor's evidence is only an opinion to assist the Court to arrive at a conclusion about the nature of the injury. But, ultimately, it is the task of the Court only to give a finding as to what is the nature of the injury caused. Even in the absence of medical evidence, from the materials available, the Court can come to a right conclusion regarding the nature of the injury. In this case, it is common knowledge that if an injury is caused on the chest with a knife piercing the heart, the death is the most probable event. Thus, it is sufficient in the ordinary course of nature to cause the death. We conclude so. Thus, we hold that the act of the third accused would squarely fall within the third

limb of Section 300 IPC.

14. At the same time, as submitted by the learned senior counsel for the appellants, the said act of the third accused would squarely fall within the first exception to Section 300 IPC. As we have already pointed out, there was a quarrel which was unanticipated and there was a commotion between two groups of people. From the narration of events, we are able to presume, as required under Section 114 of the Indian evidence Act that the third accused would have been provoked. The third accused was a young boy, at his tender age. It is common knowledge that the young people at their tender age are prone to provocation more than the adults. Because of the provocation that he received at the hands of the deceased or somebody, the third accused had taken a knife, which was there in the shop and caused a single stab. This act, in our considered view, would fall within the first exception to Section 300 IPC. Thus, the act of the third accused is punishable as an offence under Section 304(i) IPC.

15. Now, turning to the sentence, the learned senior counsel would submit that the third accused was a young boy, at his teens and after the occurrence, he got married and he has got a child also, now aged about 1- 1/2 years. His father is no more. He has to take care of the entire family. He has no bad antecedent. He has not involved in any other crime subsequent also. There is likelihood of reformation. Having considered all the above mitigating as well as aggravating circumstances, we are of the view that sentencing the third accused 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 for the offence under Section 304(i) IPC would meet the ends of justice.

16. In the result, this Criminal Appeal is partly allowed in the following terms: (a) This appeal, insofar as it relates to the first appellant/A1, is dismissed as abated. (b) The conviction and sentence imposed on the second appellant/A2 in S.C.No.194/2007 by the Additional Sessions cum Fast Track Court No.1, Tirunelveli, is set aside and the second appellant/A2 is acquitted. Fine amount, if any, paid shall be refunded to the second appellant/A2. The second appellant / A2 is directed to be released forthwith, unless his detention is required in connection

with any other case. (c)The conviction and sentence imposed on the third appellant/A3 in S.C.No.194/2007 by the Additional Sessions cum Fast Track Court No.I, Tirunelveli, under Section 323 IPC is set aside and he is acquitted from the said charge. (d) The conviction and sentence imposed on the third appellant/A3 in S.C.No.194/2007, by the Additional Sessions cum Fast Track Court No.I, Tirunelveli, under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC 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 four weeks. The period of sentence already undergone by him shall be set off under Section 428 Cr.P.C. To 1.The Additional Sessions Judge, (FTC No.I), Tirunelveli. 2.The Inspector of Police, Shenkottah Police Station, Tirunelveli District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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