

**Selvakkodi Vs. State**

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**Court :** Chennai

**Decided On :** Nov-18-1992

**Reported in :** 1993CriLJ675

**Judge :** Rengasamy and;T.S. Arunachalam, JJ.

**Appeal No. :** Criminal Appeal No. 1047 of 1986

**Appellant :** Selvakkodi

**Respondent :** State

**Advocate for Def. :** B. Sriramulu, Public Prosecutor

**Advocate for Pet/Ap. :** Mr. N.T. Vanamamalai, Sr. Adv.

**Judgement :**

**Arunachalam, J.**

1. This appeal is directed against the judgment of the Principal Sessions Judge, Madurai, in S.C. No. 82 of 1986, convicting appellant Selvakkodi, under S. 302, Penal Code, and sentencing him to undergo imprisonment for life. The appellant is also charged under S. 324, Penal Code, for having caused hurt to P.W. 2, Annakodi, with a dangerous weapon. However, after trial, he was acquitted of the said charge.

2. Prosecution case, he brief, is as follows :- Occurrence which led to this prosecution is alleged to have taken place at or about 6.30 p.m., on 11-6-1985, near the manthai, in East Street at Poochampatti village. Appellant is alleged to have stabbed deceased Doraiswami with a knife on his left flank, leading to the victim succumbing to the injury sustained, when he was in the process of transit, to Government Rajaji Hospital, Madurai.

3. P.W. 1, Rajavadivu, is a resident of Poochampatti village. Appellant is the son of the elder sister of P.W. 1. Deceased Doraiswami was the brother-in-law of P.W. 1. Jayakodi is the wife of the appellant. Deceased was her maternal uncle. Deceased was a resident of Oorappanur, whereas the appellant was a resident of Ariyapatti village. P.W. 2, Annokodi, resides just south of the house of P.W. 1, in Poochampatti village. Seven or eight months prior to occurrence, deceased Doraiswami had gone over to Ariyapatti village as a guest. When Jayakodi, wife of the appellant, was alone in her residence, deceased was found talking merrily with her. Appellant who saw both of them together, entertained flame of suspicion, against their conduct. About a month prior to occurrence, P.W. 1 in the company of the appellant, were over to P.W. 7, Ammavasai. P.W. 1 told P.W. 7 that the deceased had teased Jayakodi and, therefore, the deceased must be asked to swear, that in further he would not have any connection with Jayakodi. To this suggestion of P.W. 1, appellant was not agreeable.

4. It is, in this background, that the alleged occurrence had taken place. One Mokkaichi, wife of the uncle of the deceased, had expired sometime prior to 11-6-1985 at Poochampatti. On 11-6-1985, the date of occurrence, there was some function in connection with the death of Mokkaichi. At or about the time of occurrence, appellant was residing with his wife at Poochampatti, in a portion of the house belonging to the elder brother of P.W. 1. P.W. 1 was also residing in another portion of the same house. At or about 5-30 p.m., deceased who had participated in the ceremony at the residence of Mokkaichi, went over to the house of P.W. 1, and engaged himself in conversation with P.W. 1 for a short while and thereafter accompanied by him went towards the manthai. P.W. 2 was proceeding behind P.W. 1 and the deceased. On the east west street, opposite to the house of Karuppanna Asari (not examined), appellant was found seated on a granite bench.

As soon as the deceased neared him, appellant suddenly stabbed the deceased with a knife on his left flank. Shouting that the appellant had stabbed him, injured Doraiswami fell down. When P.W. 2 attempted to catch hold of the appellant, and in such process caught hold of the latter's hand, appellant resisted and ran away. In that transaction, P.W. 2 sustained a simple injury on his left little finger. P.Ws. 1 and 2 chased the appellant. They noticed P.W. 6, Sunthan, coming towards them from the opposite direction. When P.W. 6 attempted to apprehend the appellant, the appellant threatened to stab any one who neared him. Hence, P.W. 6 desisted from catching hold of the appellant. P.W. 1 and P.W. 2 enquired Doraiswami as to the cause of the attack to which injured Doraiswami replied that since the appellant had seen him boisterously engaged in conversation with his wife, he had chosen to stab him. Injured Doraiswami was taken in a bullock-cart to Chekkanoorani police station at or about 8 p.m. He was not in a position to talk. P.W. 1 narrated the occurrence to P.W. 12, the then Sub-Inspector of Police. The narration of P.W. 1 was reduced into writing by P.W. 12 and on Ex. P. 1 so recorded the signature of P.W. 1 was obtained P.W. 2 attested Ex. P. 1. On Ex. P. 1, P.W. 12 registered Crime No. 173 of 1985 under S. 324, Penal Code. Ex. P. 17 is the printed first information report, which he forwarded to the concerned Magistrate and his superior officers. P.W. 12 also forwarded injured Doraiswami and P.W. 2 with medical memos, Exs. P. 2 and P. 4, to the Government Rajaji Hospital, Madurai, for examination and treatment.

5. P.W. 3, Dr. Jayaraman, examined on 11-6-1985 at 8.50 p.m. injured Doraiswami, and found him dead. On him an incised wound over the left side abdomen 2 1/2 cm x 1 cm x depth not probed just below the left costal margin was noticed. The dead body was sent to the mortuary. Ex. P. 3 is the extract of accident register. On the same day, he examined P.W. 2 at or about 9 p.m. He found on him an abrasion over the left little finger 2 cm., in size. The said injury was simple. Ex. P. 5 is the wound certificate. P.W. 3 forwarded death intimation, Ex. P. 6, to the outpost police station. Headconstable, Govindan (not examined) on receipt of Ex. P. 6, handed over in person at Chekkanoorani police station, the death intimation along with his report, Ex. P. 18. Soon thereafter, crime was altered into one under S. 302, Penal Code. P.W. 12 prepared express altered report, Ex. P. 19, and forwarded the same to the higher hierarchy of police officials

and the Magistrate.

6. P.W. 13, Mohammed Basheer, Inspector of Police, on receipt of copy of Ex. P. 19, took up investigation and reached Poochampatti village on the same night. At 6 a.m., on 12-6-1985, in the present of P.W. 9 village Administrative Officer, he prepared observation mahazar, Ex. P. 9 and the rough sketch of the scene place, Ex. P. 20. At 7 a.m., he seized blood-stained earth M.O. 6 and sample earth M.O. 7 under mahazar, Ex. P. 10.

7. At the Government Hospital mortuary, he conducted inquest over the corpse of Doraiswami between 8.30 a.m., and 11 a.m., during the course of which he examined P.Ws. 1 and 2 Ex. P. 21 is the inquest report.

8. After inquest, he despatched the dead body through police constable, Kamatchi (P.W. 5) with requisition (Ex. P. 7) to Dr. Thiagarajan, (P.W. 4), for the conduct of post-mortem.

9. P.W. 4, Dr. Thiagarajan, commenced autopsy at 11.15 a.m., on 12-6-1985. He found the following injury on the corpse. A vertically oblique stab injury with regular margins and both ends pointed on upper part of the left side of the abdomen 3 cm x 1 cm, entering into the abdominal cavity downwards and towards the midline, upper end of the wound 17 cm., below and towards the inner side from the left nipple, lower and 16 cm. above and outer side of the umbilicus. Internally wound was found piercing through the abdominal muscles, cutting the lower margin of the left lobe of the liver through and through 1.5 cm. x 1 cm., piercing the pancreas 2 cm x .5 cm x 1.5 cm., and perforating the mesentry 1 cm, with cutting the mesentry and underlying vessels.

In the opinion of the doctor, deceased would appear to have died of shock and haemorrhage due to stab injury No. 1 correlated to internal injuries. Death should have occurred about 16 to 18 hours prior to post-mortem. Injury found on the victim could have been caused by a knife like M.O. 1. Injury found on the deceased was sufficient to cause death in the ordinary course of nature. Ex. P. 8 is the post-mortem certificate.

10. P.W. 13 arrested the appellant at 6 a.m., on 16-6-1985 at the junction of Muthalaikulam bye-pass and Madurai Usilampatti road in the presence of P.W. 10. On arrest, the appellant volunteered a statement, the admissible portion of which is Ex. P. 11. In pursuance of his statement, appellant took P.W. 13 and his party to a nearby bridge, and produced from concealment, M.O. 1 knife and M.O. 8 sheath, which were seized under mahazar, Ex. P. 12. Material objects seized during investigation, inclusive of the apparel of the deceased were forwarded to the Magistrate with a request to despatch them for chemical analysis. Exs. P. 15 and P. 16 are the reports of the chemical analyst and serologist respectively. After completion of investigation, P.W. 13 laid the charge-sheet on 31-8-1985.

11. When the appellant was examined under S. 313, Cr.P.C., to explain the incriminating circumstances appearing against him in evidence, he chose to deny his complicity in the crime. He went on to add that P.W. 1 was aggrieved against him since he refused to give his younger sister in marriage to him. P.W. 2 also was inimically disposed towards him. His uncle had purchased a piece of land from P.W. 2 insisted that the said property should be reconveyed which of course was refused by his uncle. In short, the claim of the appellant was that this was a false prosecution. However, he did not choose to adduce any evidence in defence.

12. Learned Sessions Judge, on appraisal of the oral and documentary evidence, accepted the prosecution case and dealt with the appellant in the manner stated earlier.

13. Mr. N. T. Vanamamalai, learned Senior Counsel appearing on behalf of the appellant, contended that the oral evidence of P.Ws. 1 and 2, who were interested and inimical witnesses cannot be accepted without corroboration to safely find the appellant guilty of murder. He further argued that there was delay in the despatch of the first information report. In any event, he contended that the offence, if any, committed by the appellant will not be punishable under S. 302, Penal Code.

14. On these contentions, we have heard Mr. B. Sriramulu, learned Public Prosecutor. He submitted that the evidence of P.Ws. 1 and 2 was cogent and convincing and there was no reason to discredit their versions. He then urged that the evidence of P.Ws. 1 and 2 was fully corroborated by medical evidence. There

was no substance in the argument that there was delay in despatch of the first information report to the Magistrate, on the peculiar facts available. He contended that this was a case of a single stab and on facts, if we hold that Clause 3 to S. 300, Penal Code will not be applicable, the appellant may have to be convicted for a lesser offence.

15. We have scrutinised the evidence available with great care and caution in the light of the submissions made by the opposing counsel. It is apparent that the appellant and the deceased were related. Appellant's wife was the niece of the deceased. It is not seriously disputed that about 7 or 8 months prior to occurrence, appellant had seen his wife in the boisterous company of the deceased, at his residence. Such a meeting kindled suspicion in the mind of the appellant which led to his informing P.W. 1 about the conduct of the deceased. P.W. 1 in his turn complained to P.W. 7 Ammasi and suggested that an undertaking may be obtained from the deceased not to misbehave any more with Jayakodi. Appellant was not agreeable for obtaining a mere undertaking. It can, therefore, be safely, taken that the appellant was aggrieved against the deceased. In between the occurrence and the prior meeting between the deceased and the appellant's wife, nothing untoward appears to have happened. Appellant who was originally residing at Ariyapatti had chosen to live at Poochampatti village some two months prior to occurrence. There is nothing surprising in the appellant having chosen to live with his wife in a portion of the house belonging to his maternal under Doraiswami, elder brother of P.W. 1. P.W. 1 has admitted in his evidence that the appellant was residing in the house of his mother-in-law at or about the time of occurrence. Mother-in-law of the appellant is none other than the wife of Doraiswami, the elder brother of P.W. 1. Obviously, appellant was residing in the house of the elder brother of P.W. 1. P.W. 1 has further admitted that in the same house, he was residing in the northern portion while his elder brother, the father-in-law of the appellant, was residing in the southern portion with the members of his family. It is thus clear that the deceased who had gone over to Poochampetti village to participate in a ceremony connected with the death of the wife of his uncle, had chosen to step into the house of P.W. 1 around 5-30 p.m., on the occurrence day after the ceremony was over. At that time, admittedly, the appellant was not available at his residence. It appears probable that the appellant

who was seated only a few feet away near the house of Karuppanna Asari was able to witness the deceased entering into the house of P.W. 1 where his wife was also residing. Sometime later, when P.W. 1 and the deceased went towards manthai appellant is stated to have inflicted one stab on the left flank of the deceased with a knife. 16. P.Ws. 1 and 2 have been examined as ocular witnesses. If P.W. 1 could be characterised as an interested witness, he is equally interested in the appellant. For both of them are close relations. After perusing the evidence of P.W. 1, we are unable to comprehend as to why P.W. 1 should falsely implicate the appellant in this grave crime unless he had witnessed the attack proper. We cannot overlook the fact that P.W. 1 went in support of the appellant to P.W. 7 and suggested that the deceased must furnish an undertaking that he would not have any relationship with Jayakodi in future. P.W. 2 cannot be christened as an interested witness just because he was a neighbour of P.W. 1. The presence of P.W. 2 at the time of occurrence cannot also be doubted. Both P.W. 1 and 2 are natural witnesses. When P.W. 1 and deceased were proceeding together, followed by P.W. 2, this unfortunate occurrence had taken place. Both of them in unison, have stated that the appellant suddenly stabbed the deceased with a knife on his left flank, leading to the victim falling down shouting that the appellant had stabbed him. As one would normally expect, P.W. 2 had attempted to snatch the knife from the appellant in which process he sustained a simple injury. Appellant was acquitted of the charge under S. 324, Penal Code, in respect of the injuries sustained by P.W. 2 for the appellant cannot be stated to have voluntarily caused hurt to P.W. 2, since he had sustained it, in his attempt to snatch away the knife from the appellant. When the appellant was running away, P.Ws. 1 and 2 and P.W. 6 coming from the opposite direction had attempted to apprehend him. Since the appellant was armed with a knife, they were unable to succeed in their mission. That the appellant was running away with a knife has been spoken by P.W. 6 and his version is in the form of *res gestae* evidence, lending assurance to the ocular version of P.Ws. 1 and 2. When P.W. 1 questioned the deceased, the latter is stated to have made an oral dying declaration that stabbing was a result of the appellant having seen him talking and laughing with his wife Jayakodi. The learned Sessions Judge was not inclined to accept the oral dying declaration on the ground that if P.W. 1 had seen the

occurrence, there was no need to question the deceased. We are unable to agree with the learned trial Judge. It is not as though P.W. 1 was not an ocular witness, but all that the deceased had stated to him was the cause for which he was stabbed. We are able to visualise that P.W. 1 was aware of the estrangement between the appellant and the deceased due to the latter's conduct in moving freely with the former's wife. Even then it is possible to comprehend that the appellant who was already in great anguish at the conduct of the deceased had again see him entering into his house in the company of P.W. 1. Disgust coupled with suspicion cropped up again and the appellant simmering with pangs of anger had stabbed once on the left flank of the deceased. We are unable to distrust the evidence of P.Ws. 1 and 2 who have spoken cogently and clearly about the role played by the appellant. Soon thereafter, a complaint was preferred before the Sub-Inspector of Police, Chekkanoorani Police Station, situated at a distance of 5 kms., from the scene of occurrence. We cannot overlook that the crime was initially registered under S. 324, I.P.C. Injured Doraiswami and P.W. 2 were sent away to Government a Rjaji Hospital, Madurai, situated 19 kms. away from the police station. Only after the death of the deceased was made known to the investigating agency, crime was altered to murder and thereafter altered express report was forwarded to the concerned Magistrate. As soon as the crime was altered at 10 p.m., prompt steps were taken to despatch express report with Ex. P. 1 to the Magistrate who had received them at 4.30 p.m. The residence of the Magistrate was at Usilampatti within whose jurisdiction the offence has been committed. Taking note of the fact that it was night time, we are unable to find any sinister delay in the receipt of the first information report by the Magistrate.

17. In Ex. P. 1 first information report, P.W. 1 has stated the presence of P.W. 2 at the scene, the manner in which the occurrence had taken place and the motive as well. The present evidence of P.Ws. 1 and 2 is fully in tune with the averments made in the first information report. We further have medical corroboration of the ocular evidence, furnished by P.W. 3, Dr. Jayaraman and P.W. 4, Dr. Thiagarajan. The evidence of P.W. 2 has an additional advantage since he was injured in the course of the same occurrence. When we have such overwhelming evidence, it is not possible to accept the argument advanced by the defence that there were pronounced infirmities which cast a suspicion in the case of the prosecution. After

careful survey of the evidence, we find it totally blemishless. The evidence is credible, clinching and straightforward.

18. Having arrived at the conclusion that the appellant is the assailant of the deceased, the question which still looms large is the nature of offence committed by the appellant. We are unable to agree with the learned trial Judge that the offence committed by the appellant will be punishable under S. 302, Penal Code. There is evidence to show that the deceased had visited Poochampatti even on a prior occasion after the appellant had taken residence with his parents-in-law. The proximate cause for the incident appears to be the appellant having seen the deceased in the company of P.W. 1 entering into his house. The appellant was already simmering with anger at the prior conduct of the deceased. Obviously being unable to tolerate yet another visit by the deceased to his residence, he had chosen to inflict one stab, but not on the vital region of the victim. It is not possible to hold that the appellant in such a state of mind had intended to cause the very injury that was found on the victim. It is easily possible to comprehend that the appellant should have known that by his act of stabbing, he was likely to cause the death of the deceased. If that be so, the appellant will be guilty under S. 304, Part II, I.P.C. In that view, we set aside the conviction and sentence imposed on the appellant under S. 302, Penal Code, and, instead, convict him under S. 304, Part II, Penal Code, and sentence him to undergo rigorous imprisonment for five years for the altered conviction. Subject to the modification in the nature of offence and the consequent sentence, this appeal shall otherwise stand dismissed.

19. Order accordingly.