

**Tamilmani Vs. the State**

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**Court :** Chennai

**Decided On :** Aug-08-1995

**Reported in :** 1996(1)ALT(Cri)501; 1997CriLJ144

**Judge :** A.R. Lakshmanan and ;J. Kanakaraj, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304, 323, 326 and 341;  
[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

**Appeal No. :** Criminal Appeal No. 154 of 1989

**Appellant :** Tamilmani

**Respondent :** The State

**Advocate for Def. :** R. Raghupathi, Addl. Public Prosecutor

**Advocate for Pet/Ap. :** B. Ullasavelavan, Adv.

**Judgement :**

**A.R. Lakshmanan, J.**

1. The accused in Sessions Case No. 23 of 1987 on the file of the Principal Sessions Judge, Tiruchirapalli, who has been convicted under Section 302, I.P.C., and sentenced to undergo Imprisonment for Life, is the appellant herein. She has preferred this appeal from the Special Prison for women, Madurai. Hence, this

Court has appointed one Mr. B. Ullalsavelavan, Advocate of this Court, as Amicus Curiae to assist the Court and defend the appellant.

2. The prosecution case is as follows :- P.W. 1 Appavu along with his wife Chellammal is residing at Sanappiratti Pathiyur village. The appellant along with her brother Karuppiyah was residing at Pathaiyur, which is one kilo metre away from Sanappiratti. On the morning on 20-7-1986 at about 6.00 a.m. when P.W. 1 Appavu returned from his field, he was informed by his wife Chellammal the goat which was tied in his house was stolen away by somebody. P.W. 1 searched for the goat in vain till that evening. P.W. 5 Palraj used to steal goats. Suspecting P.W. 5, P.W. 1 went to the house of P.W. 2 Anbalagan at about 5.00 p.m., on 20-7-1986 and informed him about the theft of goat from his house and also his suspicion over P.W. 5. At about 5.30 p.m., P.W. 2 along with one Kumaraswami, Pichaimuthu, Lakshmanan and Mohankumar enquired P.W. 5. At the enquiry, P.W. 5 admitted having stolen the goat from the house of P.W. 1 along with the appellant's brother Karuppiyah and sold the same to one Pondhu Kounder at Puliyyur for Rs. 170/- Thereafter, they all went to the house of Karuppiyah, brought him to the house of P.W. 1 and enquired him in front of his house. Karuppiyah confessed to them that he had stolen the goat from the house of P.W. 1 and sold the same at Puliyyur. For the purpose of handing over P.W. 5 and Karuppiyah at the police station, they first tied the hands of P.W. 5. P.Ws. 1 and 2 caught hold of the hands of Karuppiyah and deceased Umanath tied the same from behind. At that time, the appellant stabbed the deceased Umanath with the knife (M.O. 1), which she concealed, on his stomach stating that the hands of her brother should not be tied and he could not be taken to the police station. In view of the cut, the intestine of Umanath came out. On seeing the attitude of the appellant, one Kumaraswami beat her twice on her back. On seeing the incident, one Mohankumar went to Pasupathipalayam, brought an auto-rikshaw and took the injured Umanath to the Government Hospital, Karur. The others who were present at the scene of occurrence, caught hold of the appellant and kept her at the scene place itself.

3. Dr. R. Kanagasabai, P.W. 3, Civil Asstt. Surgeon, Govt. Hospital, Karur, examined injured Umanath at 10.40 p.m., on 20-7-1986 for injuries said to have been caused by the stabbing with a knife at Pathaiyur road at about 9.30 p.m. on

20-7-1986, and found in the abdomen omentum and loops of intestine over an area of 10 kms., were protruding out. He was admitted as in-patient in the hospital. Ex. P-3 is the copy of the Accident Registrar. Ex. P-4 is the intimation sent by the hospital to Karur Police Station. Ex. P-5 is the intimation sent to Judicial Magistrate Court, Karur.

4. On 20-7-1986 at 11.05 p.m., on receipt of Ex. P-4 from P.W. 3, P.W. 8 Head Constable attached to Pasupathipalayam Police Station, went to the Government Hospital, Karur, examined injured Umanath and obtained 'Ex. P-13 statement from him, wherein he had put his thumb impression. P.W. 8 returned to the police station and registered Ex. P-13 as Crime No. 216 of 1986 under S. 326, I.P.C., and sent express reports to higher authorities. P.W. 8 took up investigation, visited the scene of occurrence at 12.30 a.m., on 21-7-1986 and prepared Ex. P-1 observation mahazat attested by P.Ws. 1 and 2. Thereafter, he prepared a rough sketch Ex. P-15. At 2.30 a.m., P.W. 8 arrested the appellant from the scene of occurrence, took her to police station, wherein the appellant gave a complaint. P.W. 8 registered the same as Crime No. 247 of 1986 under Sections 341 and 323, I.P.C. Since the appellant had injuries, P.W. 8 sent her to the Government Hospital, Karur, for examination.

5. P.W. 3 Dr. R. Kanagasabai of Government Hospital, Karur, Examined the appellant at about 5.30 a.m. on 21-7-1986 for injuries said to have been caused on 20-7-1986 at about 9.30 p.m. at Sanappiratti Pathaiyur due to dashing her head against a rock and found on her the following injuries :

1. A lacerated injury 1 c.m. x 1/2 c.m. on the right eye-brow with dried blood.
2. A contusion 3 c.m. x 3 cms over the right cheek.
3. An abrasion 2 cms x 2 cms over the right knee.
4. Upper lip swollen.

P.W. 3 is of opinion that the injuries are simple in nature. Ex. P-6 is the wound certificate.

6. P.W. 8, Head Constable visited the scene place again at 6.00 a.m. on 21-7-1986 and since the appellant had thrown the knife into a well, he recovered the same with the help of one Mathi under Ex. P-2 mahazar. At 12.00 Noon, he recovered the clothes worn by injured Umanath viz., M.Os. 2 to 8. On 22-7-1986 at 4.45 a.m. injured Umanath died at the Government Hospital, Karur. Ex. P17 is the death intimation sent from the hospital to Pasupathipaliayam Police Station. On receipt of Ex. P-17. P.W. 8 informed the Inspector of Police, Karur Town. At 6.30 a.m. on 22-7-1986, P.W. 9, Inspector of Police altered the crime into one under Section 302, I.P.C. and sent express reports to higher authorities. He took up further investigation and examined witnesses. From 7.30 a.m., to 10.45 a.m. he held inquest over dead body of Umanath Ex. P. 19 is the inquest report. Thereafter, he sent the dead body of Umanath for post-mortem examination through Constable P.W. 6 with Ex. P-7 requisition to the doctor.

7. P.W. 4, Dr. A. Santhakumari, Civil Asstt. Surgeon, Government Hospital, Karur, on receipt of Ex. P-7 requisition from P.W. 9 through P.W. 6 Constable, commenced the post-mortem examination at 11.30 a.m., on 22-7-1986 and found the following external injuries :

1. A vertical sutured wound 12 cms length in the abdomen on the left side.
2. Two drainage punctures on both flanks.
3. On dissection. 200 ml. of scroanguinous fluid present in the peritoneal cavity. Bowels distended. Eight sutured wounds in small intestines and one sutured wound in the transverse colon and four sutured wounds in the mesentery.

P.W. 4 is of the opinion that the deceased would appear to have died of shock and haemorrhage due to injuries to vital organs and that the injuries found on the deceased could have been caused by stabbing with a weapon like M.O. 1 once. P.W. 4 has further opined that the injury is sufficient in the ordinary course of nature to cause death. Ex. P-8 is the post mortem certificate.

8. P.W. 9 Inspector of Police sent Ex. P-9 requisition to the Judicial Magistrate Court No. I, Karur, for sending the material objects for chemical examination.

Accordingly, they were sent for chemical examination. Ex. P-11 is the report of the Chemical Examiner and Ex. P-12 is the report of the Serologist. After investigation, P.W. 9, Inspector of Police, referred the complaint given by the appellant as mistake of fact and filed charge-sheet in the complaint given by P.W. 1 against the appellant under Section 302, I.P.C. on 6-11-1986.

9. On being committed by the Judicial Magistrate No. 1, Karur, the learned Sessions Judge, Tiruchirappalli, framed a charge under S. 302, I.P.C., against the appellant. On her pleading not guilty, the prosecution examined P.Ws. 1 to 9 and marked Exs. P-1 to P-19 besides marking M.Os. 1 to 8.

10. The appellant, when examined under S. 313, Cr.P.C., with reference to the incriminating piece of evidence appearing against her, denied the same as false. However, she filed a written statement wherein she stated that on the date of occurrence at about 7.00 p.m., P.W. 2, one Kumaraswami and deceased Umanath came to her house and called her brother Karuppiah. They refused to accede to her request to examine him at her house itself. Then, she went along with Karuppiah. For nearly two hours they insisted her brother Karuppiah to accept the guilt but he refused to do so. By stating that if the hands of Karuppiah are tied and kept in the house of P.W. 1, the father of Karuppiah will come and take him back by paying the cost of the goat, deceased Umanath tried to tie the hands of Karuppiah. The appellant prevented him from doing so. Immediately, the deceased caught hold of the tuft of the appellant and dashed in a nearby rock. Thereafter, deceased Umanath tied the hands of Karuppiah and dragged him to the house of P.W. 1. At that time, a knife was seen by the appellant on the floor near the deceased and she took the same and stabbed Umanath on his hand and since he turned, the stab fell on his stomach. Thereafter, they caught hold of her and tied. She did not examine any witness on her side or mark any document.

11. On the basis of the evidence let in by the prosecution, the learned Sessions Judge held that the prosecution has proved the guilt of the appellant beyond all reasonable doubt. Accordingly, he convicted and sentenced the appellant as stated at the out-set. Hence the present appeal from the jail.

12. In the memorandum of appeal sent from jail, the appellant reiterated the same thing which she stated in her statement filed when examined under Section 313, Cr.P.C., by the trial court. She further stated that she pleaded with them to wait till her father comes. In spite of that, they began to beat her brother Karuppiah and dragged him. Unable to bear the cruelty caused to her brother, the appellant pleaded with them. One of them came with a knife to stab the appellant. Since she turned aside, the stab fell on the deceased. According to the appellant, she has been falsely implicated in this case.

13. We have heard the arguments of Mr. B. Ullasavelavan, learned counsel for the appellant and Mr. R. Raghupathi, learned Addl. Public Prosecutor for the State.

14. Learned counsel for the appellant pointed out several infirmities in the prosecution case. According to him, Ex. P-5 is the requisition dated 20-7-1986 sent by the Duty Medical Officer (P.W. 3) to the judicial Magistrate, Karur, to record the dying declaration of injured Umanath, who was admitted in the hospital with a stab injury in his abdomen. This was received by the Court at 11.35 a.m., the same day. Injured Umanath died at 4.45 a.m. on 22-7-1986 at the Government Hospital, Karur, as could be seen from Ex. P-17, death intimation sent from the hospital to Pasupathipalayam Police Station. We fail to understand as to why the police did not take any action to record the dying declaration of injured Umanath, who was alive for nearly two days after the occurrence. According to the learned counsel for the appellant, a complaint was given by the appellant to the police and the same was registered as Crime No. 247 of 1986 under Sections 341 and 323, I.P.C., but the same was referred by the Inspector of Police (P.W. 9) as mistake of fact.

15. According to, the prosecution, the stolen goat was sold to one Pondhu Kounder. For the reasons best known to the prosecution, he was not examined to prove the motive part of the case. Further, according to prosecution, the knife (M.O. 1) was recovered from a well by one Mathi, who dived into the well and took out the same. He was also not examined P.W. 1, who is the owner of the goat, admittedly did not give any complaint to the police about the theft. P.W. 2 was not examined at the time of inquest by the Investigating Officer (P.W. 9). According to

the learned counsel for the appellant, by the non-examination of P.W. 2 at the inquest, the prosecution has miserably failed to discharge its onus. He would submit that the prosecution has also miserably failed to prove the intention of the appellant and also the fact that the appellant carried the knife with her.

16. Even though the learned counsel for the appellant has pointed out the above infirmities in the prosecution case, we are of the opinion that they are trivial in nature and that the prosecution has proved the fact that it was the appellant who stabbed the deceased with M.O. 1 Knife. P.Ws. 1 and 2, who are the eye witnesses to the occurrence, have clearly stated that the appellant stabbed the deceased with the knife on his abdomen. In fact, the appellant also in her written statement filed when she was examined under Section 313, Cr.P.C., by the trial court, stated that she took out the knife which was lying on the floor and stabbed the deceased on his hand but since he turned, the stab fell on his stomach. P.W. 4 Dr. Santhakumari, who conducted autopsy on the dead body of Umanath has opined that the injury is sufficient in the ordinary course of nature to cause death and that a weapon like M.O. 1 would have caused the injury. Therefore, it is crystal clear that the appellant inflicted the injury on the deceased.

17. Learned counsel for the appellant pointed out that the appellant had no intention of causing even the injury to the deceased with the knife and that therefore, the case would squarely fall within the ambit of Part II of Section 304, I.P.C. He therefore, requested this Court to alter the conviction from Section 302, I.P.C., to one under Section 304, Part II, I.P.C., and reduce the sentence of Imprisonment for Life to Rigorous Imprisonment for seven years.

18. On the above contentions of the learned counsel for the appellant, the question that arises for our consideration in this appeal is, whether the conviction can be sustained on the basis of the evidence on record and the facts and circumstances of the case. In other words, the only point which merits consideration in this appeal, is, as to what is the exact nature of the offence committed by the appellant.

19. We have already narrated the prosecution case. Even on the face of the prosecution case itself, the occurrence took place without any premeditation. We

do not, therefore, think that the appellant had any intention of causing the particular injury with the knife M.O. 1 on the abdomen of the deceased, a non-vital part of the body. There can, however, be no doubt that she must be deemed to have the knowledge that death may be caused by her act. In the circumstances, we are of the opinion, that the offence committed by the appellant squarely falls under Part II of Section 304, I.P.C.

20. It is established that there was no premeditation or any intention on the part of the appellant to cause any injury on the deceased. The injury has been inflicted on a non-vital part of the body viz., abdomen. The reasons given by the appellant in her statement filed when she was examined under Section 313, Cr.P.C. as to how the injury was inflicted in the abdomen of the deceased appear to be acceptable. Even though the appellant had no intention of causing the death of the deceased, there can, however, be no doubt that she must be deemed to have the knowledge that death may be caused by her act.

21. Learned counsel for the appellant cited the decision reported in *Gokul Parashram Patil v. The State of Maharashtra*, 1981 Mad LW (Cri) 286 : (1981 Cri LJ 1033 : : 1981 CriLJ1033 , which is also a case of a single blow on a non-vital part of the body. In that case, the appellant before the Supreme Court was convicted of an offence under Section 302, I.P.C. for causing the death of the deceased and had been sentenced to imprisonment for life by the trial court as well as in appeal by the High Court. The case of the prosecution was, the appellant attacked the deceased with a knife giving the latter a single blow above the left clavicle where it caused a muscle deep incised wound. The autopsy surgeon while certifying the existence of that wound, also found that the superior vena cava had been cut, the damage so caused being sufficient in the ordinary course of nature to cause death. The counsel for the appellant contended that the case does not fall within the ambit of Section 302, I.P.C. The Supreme Court held as follows (para 3) :-

'The question is whether the particular injury which was found to be sufficient in the ordinary course of nature to cause death in the present case was an injury intended by the appellant. Our answer to the question is an emphatic no. The

solitary blow given by the appellant to the deceased was on the left clavicle - a non-vital part - and it would be too much to say the appellant knew that the superior venacava would be cut as result of that would. Even a medical man perhaps may not have been able to judge the location of the superior venacava with any precision of that type. The fact that venacava was cut must, therefore, be ascribed to a non intentional or accidental circumstances.'

22. Similar view was take in Harjinder Singh v. Delhi Administration, : 1968 CriLJ1023 by Sikri, J., and in Laxman Kalu Nikalje v. State of Maharashtra, : 1968 CriLJ1647 by Hidayatullah, C.J. In the first case, the injury in question was a stab wound on the left thigh which had cut the femoral artery and vessles. In the latter, the damage caused consisted of a cut in the auxiliary artery and veins. It was held that although the injury, which was found to be sufficient in the ordinary course of nature to cause death, had resulted from a blow with a sharp-edged weapon, the same could not be said to have been intended, that the only injury which could be regarded as intentional was the superficial wound resulting directly from the blow, that the assailant could not be held guilty of an offence under Section 302, I.P.C. and that he was, on the other hand, guilty of a lesser offence falling under Part II of Section 304, thereof.

23. In our opinion, the principle laid down in the above three cases will squarely apply to the facts and circumstances of the case on hand. It is not in dispute that the injury caused by the appellant to the deceased is sufficient in the ordinary course of nature to cause death. But, however, the said injury in our view, was caused by the appellant without any intention. Therefore, following the dicta in the decisions of the Apex Court cited supra, we are of the view the offence committed by the appellant would fall only under Section 304, Part II, I.P.C. Therefore, we set aside the conviction of the appellant under Section 302, I.P.C. and instead convict her under Section 304, Part II, I.P.C.

24. Coming to the question of sentence, the appellant being a lady aged about 22 years at the time of occurrence, has committed the offence in a spur of the moment unable to bear the bearings of her brother by the village people. She has no pre-meditation or intention to cause such injury on the deceased. She is

already undergoing imprisonment and is languishing in jail for the last nine years. We, therefore, feel that the sentence of imprisonment already undergone by the appellant is more than sufficient, which will also, in our opinion, meet the ends of justice on the facts and circumstances of the case.

25. For the fore-going reasons, the conviction of the appellant under, Section 302, I.P.C. and the sentence of Imprisonment for Life are set aside and instead, the appellant is convicted under S. 304, Part II I.P.C., and the sentence is reduced to the period already undergone. The appellant shall be set at liberty forthwith if she is not required in connection with any other case. The Criminal Appeal is allowed in part as indicated above.

26. Appeal allowed.

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