

**Sekhar Vs. State**

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**Court :** Chennai

**Decided On :** Mar-10-1994

**Reported in :** 1994CriLJ2479

**Judge :** J. Kanakaraj and ;Janarthanam, JJ.

**Appeal No. :** C.A. No. 1146 of 1986

**Appellant :** Sekhar

**Respondent :** State

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

**Advocate for Pet/Ap. :** V. Srinivasan, Adv.

**Judgement :**

**Janarthanam, J.**

1. The appellant was the accused in S.C. No. 44 of 1986 on the file of Court of Session, Trichirapalli Division, Trichirapalli. He faced trial for offences under sections 302 as well as 364 of the Indian Penal Code. He was found not guilty of the offence under S. 364 of the Indian Penal Code and consequently, he was acquitted thereof. He was, however, found guilty of the offence under S. 302 of the Indian Penal Code, convicted thereunder and sentenced to imprisonment for life. The aggrieved appellant-accused resorted to the present action against the

abovesaid conviction and sentence.

2. Brief facts are -

(a) One Kalidoss (since deceased) was a resident of Malavannarapettai situate within the jurisdictional limits of Woraiyur Police Station. The accused also hails from the same place.

(b) Some 15 days prior to the occurrence, which event happened on the 15th December, 1985, the accused was sleeping over a hollock in the vicinity of Melavannarapettai. At that time, he was in possession of an amount of Rs. 150/-. Whilst he was fast asleep, somebody picked up his pockets, knocked away the money. Somehow or other, the accused was entertaining a suspicion that the person responsible for committing theft of cash of Rs. 150/- from his person was the deceased. Consequently, he was going on proclaiming that somehow or other, he would see that one day or other, he would be murdered.

(c) On the day of the occurrence at about 5.30 p.m. while the deceased was in his house, the accused came there and took him away. Both the accused and the deceased thereafter went to Ondimuthuthurai. While they were there, suspicion revolving in the mind of the accused that the deceased was the culprit of the theft of the cash amount of his the other day got corrupted and as a consequence, a wordy altercation ensued between them. Such wordy altercation was going on for sometime. PW 1, brother of the deceased, taking bath at Oyyakondan river, situate close to the scene of occurrence, was informed of the quarrel and consequently, he rushed to the place.

(d) By the time PW 1 went there, the wordy altercation reached the ecstatic height and it so happened that the accused gave a stab by means of a knife and the same fell on the throat of the deceased. Thereafter, the accused ran away from the scene, along with the knife. M.O. 4 is the knife. PWs 2 and 3, spouses, - dhobis by profession and residing very near the place of occurrence, had the fortuitous opportunity of witnessing the occurrence. Apart from PWs 2 and 3, the occurrence had also been witnessed by PW 4, a chance witness, who had been there, to give his clothes for washing with the dhobi, by name Kettu, residing in

that locality. Likewise, PW 5, a chance witness, who had been to Ondimuthurai for washing his clothes, had the fortuitous opportunity of witnessing the occurrence.

(e) PW. 10 was the then Sub-Inspector of Police, Control Room, Trichy and he was in charge of the vehicle No. 2 after about the time of occurrence; he along with the vehicle, was available at Bazaar Street, Market, Puthur, Trichy. At about 6.15 p.m. PW 1 came and reported to him as to the occurrence. He immediately, through mike, informed PW 11, the Sub-Inspector of Police Vorrailur.

(1) The message was received by PW 11 at about 6.20 p.m. He immediately rushed and reached the spot at 6.45 p.m. He recorded from PW 1, who was there, a statement, as per his dictation. Exhibit P.1 is the statement. He then returned to the police station, registered the case in Crime No. 1185/85 for the alleged offence under S. 302 of the Indian Penal Code. Exhibit P.11 is the printed FIR. He prepared express reports and sent the same to the concerned officials. Exhibit P.7 is the express FIR sent to the Judicial Second Class Magistrate, Trichy through the Constable, PW 12.

(g) PW 14, Inspector of Police, Ponmalai Police Station, then in charge of the Inspector of Police, Vorrailur, received the information about the occurrence through phone at about 7.30 p.m. He immediately rushed and reached the scene at 8 p.m. From PW 11, who was there, he took up further investigation of the case. He inspected the scene and prepared the observation mahazar, Exhibit P.2. He recovered from the scene, the bloodstained earth (MO 2) sample earth (MO 3) and a torn piece of cloth stained with blood (MO 4) under Exhibit P.3 mahazar. Exhibits P.2 and P.3 were attested by PW 6. He also prepared a rough sketch of the scene, Exhibit P.12. Between 8.30 and 11 p.m. he held inquest over the body of the deceased. Exhibit P.13 is the inquest report. During inquest, he examined PWs 1 to 5. He also examined PW 6 and one Srinivasan. He then sent the body through the Constable, PW 13, along with the requisition for the purpose of autopsy.

(h) PW 8 is the doctor attached to the Govt. Headquarters Hospital, Trichirapalli. On receipt of the requisition from PW 14, he conducted autopsy over the body of

the deceased at 9 a.m. on 16-12-1985. Exhibit P.6 is the post-mortem certificate. He opined that the injury, he described in Exhibit P.6, could have been caused by a weapon like MO 4. He further opined that the deceased would appear to have died of shock bend haemorrhage about 15 to 20 hours prior to autopsy.

(i) After the autopsy was over, the Constable PW 13 seized from the body shirt (MO 5) lungi (MO 6) and underwear (MO 7) and handed over the same at the police station, which appeared to have been seized under Form No. 95.

(j) On 16-12-1985 at 6.30 a.m. PW 14 arrested the accused at the Central Bus Stand, Trichy, where Thiruvalluvar Transport Corporation buses were stationed, in the presence of PW 7. On interrogation, the accused gave a confessional statement under S. 27 of the Indian Evidence Act, the admissible portion of which is Exhibit P.4. Pursuant to the confession statement, the accused took PWs 7 and 14, took out and produced MO 4 knife kept buried near a Nanal bush near the northern bank of Oyyakondan river. The time was then 7.30 a.m. and MO 4 had been seized under Exhibit P.5 mahazar attested by PW 7 and another. Clothes of the accused were stained with blood. PW 14 seized the clothes of the accused, namely, shirt (MO 8) and lungi (MO 9) under Form No. 95. On the same day, the accused had been sent to Court for remand, He also sent Exhibit P.7 requisition to the Judicial Second Class Magistrate No. I's Court, Trichy for the despatch of the incriminating material objects to the Chemical Examiner for the purpose of examination. He then examined PW 7 and the doctor PW 8.

(k) PW 9 was the then Head Clerk, Judicial Second Class Magistrate No. I's Court, Trichy. On receipt of the requisition, Exhibit P.7, he separately packed and sent the material objects, as per the directions of the Magistrate to the Chemical Examiner for the purpose of examination under the original of Exhibit P.8, office copy of the letter. Exhibits P.9 and P.19 are respectively the reports of the Chemical Examiner and the Serologist.

(1) PW 14, on completion of the investigation, laid a final report under S. 173(2) of the Code of Criminal Procedure on 21-12-1985 before the Judicial Second Class Magistrate No. 1, Trichy against the accused for offences under sections 364 and 302 of the Indian Penal Code.

3. On committal, learned Sessions Judge, Trichirapalli framed charges against the accused under sections 364 and 302 of the Indian Penal Code. The accused, when questioned as respects the charges framed against him, denied the same and claimed to be tried.

4. In proof of the charges framed against the accused, the prosecution examined PWs 1 to 14, filed Exhibits P.1 to P.13 and marked MOs 1 to 9.

5. The accused, when questioned under S. 313 of the Code of Criminal Procedure, with reference to the incriminating circumstances appearing in evidence against him, denied his complicity in the crime. He did not choose to examine any witness on his side.

6. On consideration of the materials placed, learned Sessions Judge rendered the verdict as above.

7. From the submissions of learned counsel for the defence as well as learned Public Prosecutor, the point that arises for consideration is as to whether the conviction and sentence, as had been imposed by the Court below on the appellant-accused are sustainable in the facts and circumstances of the case.

8. Of the five witnesses, namely, PWs 1 to 5 examined by the prosecution, PW 5 turned hostile wholesale. Consequently, though the prosecution elicited what all he has stated during the course of investigation and proved the same in the manner allowed by law, yet the evidentiary value to be attached to such a proved statement is practically nil and therefore, we are not placing any reliance upon the testimony of PW 5.

9. No doubt true it is that PW 1 is noneelse than the brother of the deceased. At or about the time of occurrence, he was stated to be taking bath in the river situate very close to the scene of occurrence. Only on hearing the wordy altercation, that was going on between his brother, the deceased and the accused, he got attracted to the scene and at that time, he had the fortuitous opportunity of witnessing the accused giving a stab on the person of the deceased, which unfortunately fell on his throat. The fact that he is related to the deceased as

brother is not, by itself, sufficient to eschew his testimony out of consideration, unless and until infirmities of grave nature are available in his testimony to doubt his version, as regards the occurrence. We are unable to see any sort of a material contradiction or circumstance to doubt about his presence in the scene. From his evidence, we rather feel it rings the bell of truth.

10. So far as PWs 2 and 3 are concerned, they appear to be the truthful witnesses. They are dhobis by profession. They are residing in the place where the occurrence took place. They appear to have deposed as to what they had seen. It is not as if both of them deposed to the entirety of the occurrence, inclusive of the stabbing of the deceased by the accused. What PW 2 would say is that both the accused and the deceased were engaged in a wordy altercation and at that time, PW 3 was drying up the washed clothes in the place outside his house and exactly at that point of time, he heard the hue and cry of the deceased being stabbed, whilst he was making an entry into his house with the dried up clothes.

11. So is also the evidence of his wife, PW 3 and what she would say was that when she was drying up the washing clothes, she heard such a hue and cry that immediately she saw the accused stabbing the deceased which fell on his throat and blood quashing out therefrom and also the presence of PW 1. They are the natural witnesses for the occurrence and nothing could be stated against them, that they are either having an interest in projecting the cause and welfare of the deceased; nor are they having any sort of an estranged feeling or animosity towards the accused, so that they resorted to depose falsely against the accused, leaving out the real assailant for no reason whatever.

12. Of course, PW 4 is a chance witness, who had come there to give his clothes for the purpose of washing to a dhobi by name Ketty living there. There is nothing unusual in a rural atmosphere for a person like PW 4 to have gone there to give his clothes for the purpose of washing and it so happened, at that relevant point of time, the occurrence took place and he had the fortuitous opportunity of witnessing the occurrence. Like PWs 2 and 3, he is also a witness neither interested in the cause and welfare of the deceased; nor is he inimically disposed of towards the

accused.

13. Further, the medical evidence also is in accord with the case of the prosecution. The doctor, PW 8, who issued the post-mortem certificate would point out that the injury he found on the deceased would have been caused by a weapon like MO 4, thereby lending corroborative support to the case of the prosecution.

14. These things apart, there is also the evidence of PWs 7 and 14, as respects arrest, confession and consequent recovery of MO 4 knife at the instance of the accused. There is nothing to doubt the version regarding the arrest, confession and consequent recovery of MO 4. The knife MO 4 recovered also was stained with human blood of 'O' group origin, which is the same blood group of the deceased. Further, the clothes worn by the accused, namely, MOs 8 and 9 were also stained with 'O' group of blood, which is the blood group of the deceased. The bloodstains on the knife MO 4 as well as on the clothes of the accused, MOs 8 and 9, with 'O' group of blood as that of the deceased, serve as an incriminating circumstance of a lending assurance character to the testimony, as projected by PWs 1 to 4. From all these, we are of opinion that the accused alone was responsible for causing the stab injury on the throat of the deceased with the aid of MO 4 knife.

15. Then the question that falls for consideration is as to what is the offence that had been committed by him, in the facts and circumstances of the case. There is no denial of the fact that prior to the stabbing occurrence, there was a wordy altercation between the accused and the deceased. It is only during the course of wordy altercation, the accused was stated to have given a stab on the person of the deceased, which unfortunately fell on his throat causing bleeding injury leading to his death, by profuse haemorrhage and shock. The evidence on record does not at all disclose that the accused did anything to cause an injury at the place where the injury was actually inflicted. As already stated, a stab had been given and that stab accidentally fell on the throat of the deceased, leading to his death. In such circumstances, it cannot at all be stated that the accused was necessarily having the requisite intention to cause that injury, which was actually caused at the

throat a vulnerable portion of human anatomy. In such a situation, what all could be stated is that he could have had the knowledge that his act was to cause such bodily injury as was likely to cause the death. In such circumstances, the offence committed by him cannot be stated to be one coming within the four corners of S. 300 of the Indian Penal Code, punishable under S. 302 thereof, as had been done by the Court below and if at all, the offence committed by him could be one falling under S. 304, Part II of the Indian Penal Code.

16. In this view of the matter, the accused is found guilty under Section 304, Part II, instead of under section 302 of the Indian Penal Code. Taking into account the facts and circumstances of the case, we feel that a sentence of rigorous imprisonment for five years, if imposed on him, for the offence under section 304, Part II of the Indian Penal Code would meet the ends of justice.

17. In the result, the conviction and sentence as imposed on the appellant - accused under section 302 of the Indian Penal Code by the Court below are set aside and instead, he is convicted under Section 304, Part II of the Indian Penal Code, and sentenced to rigorous imprisonment for five years.

18. The appeal, with the modification as above, shall stand dismissed.

19. Order accordingly.