

**Muthusamy @ Krishnan Vs. State**

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**Court :** Chennai

**Decided On :** Feb-22-1996

**Reported in :** 1996(1)CTC693

**Judge :** Arunachalam and ;Karpagavinayagam, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304

**Appeal No. :** Crl. Appeal No. 432 of 1987

**Appellant :** Muthusamy @ Krishnan

**Respondent :** State

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

**Advocate for Pet/Ap. :** A. Packiaraj, Adv.

**Judgement :**

ORDER

**Arunachalam, J.**

1. In Sessions Case No. 110 of 1984, on the file of the Court of Session, Madurai North at Dindigul Appellant Muthusamy alias Krishnan was charged under Section 302 I.P.C. alleging that at or about 6,30 p.m. on 14th June, 1984 at Semmanampatti, he caused the death of deceased Ayyavu, by cutting him once,

on his right neck with an aruval, M.O.1 on conclusion of an elaborate trial, appellant was found guilty as charged and sentenced to undergo imprisonment for life.

2. Prosecution case, in brief, can be summarised as follows: Appellant Muthusamy alias Krishnan and deceased Ayyavu were cousins. Both of them were unmarried. However, deceased was maintaining intimacy with one Pommakkal, while the appellant was keeping, as his permanently kept concubine, one Muthammal, elder sister of P.W.5 Thimmayan. About a month prior to occurrence, appellant requested P.W.4, Raju Gounder, for a loan of Rs. 200 P.W. 4 stated that he had no money. Appellant replied that he will be able to repay the loan if given by selling some property of Muthammal, his concubine. Deceased, who was present then, questioned the appellant as to how he could sell away the property belonging to P.W.5. So Saying, deceased beat the appellant once. Deceased and the appellant were separated by P.W.4 and others. Appellant is alleged to have vowed vengeance that he would not take it lying down and that he would teach a lesson to the deceased and P.W.5. The evidence of P.W.5 discloses that the appellant and Muthammal were living together for about ten years. He has also deposed that his father had settled his garden land in favour of Muthammal and that the appellant and Muthammal were carrying on agricultural operations in the said land. Naturally, P.W.5, a friend of the deceased, must have been aggrieved about the manner in which his father had ignored him and settled the garden land in favour of Muthammal.

3. For about a month, there was a total lull and we do not have any evidence of any further misunderstanding between the appellant and the deceased. However, at or about 6.30 p.m. on 14.6.1984, P.W.1, Kaliappan was seated opposite to Durgai Amman Temple in Semmanampatti. P.W.2, Kamakshi, and Pommakkal, concubine of the deceased, and another were with him then. Deceased Ayyavu arrived at that place from the western direction. On his arrival, P.W.3, Ramesh, a Helper in the Electricity Department, questioned the deceased as to why he had chided his children. Deceased appears to have replied, - , that his children had falsely alleged, that he had thrown stones at the house of Muthammal, though he did not do so. P.W.3 replied, that his children did not make any such allegation.

There was a wordy altercation between the deceased and P.W.3 initially, during the course of which, the deceased beat P.W.3 with his hands. It was at or about that time that Muthammal, concubine of the appellant, came out of her house and questioned the deceased, as to why he had beaten P.W.3. This questioning is understandable, because the allegation on which the wordy altercation had occurred, appears to be on the basis of the children of P.W.3, having levelled a charge against the deceased, that he had thrown stones at the house of Muthammal. As soon as Muthammal questioned the deceased, the latter beat her. On receipt of the beating, Muthammal fell down, shouting Appellant, who was hear by in his house not able to bear the conduct of the deceased in having pushed down his permanently kept concubine, came running armed with an arrival and gave a single cut on the right neck region of the deceased, from behind. In a trice, appellant took to him heels from the scene of crime. Ayyavu fell down shouting in pain. P.W.1 tied his towel on the neck of the victim to prevent gushing of blood. P.W.2, Kamakshi, Pommakkal and others lifted the fallen down victim. P.W.2 brought a bullockcart and P.W.5, Thimmayan, arrived on his cycle. P.W.5 went over to procure a taxi from Reddiarchatram. At. 8.30 p.m., a taxi arrived, in which the injured victim was taken to Oddanchatram Police Station. At that point of time, deceased was not in a position to talk. P.W. 1 narrated about the occurrence to P.W. 13, Natarajamoorthy, Sub- Inspector of Police. P.W. 13 recorded the complaint of P.W.1 and on Ex. P. 1 so written he obtained the thumb impression of P.W.1 and registered Crime No. 115 of 1984 under Section 307, I.P.C. and on that basis prepared Ex. P. 11, printed first information report, Exs. P. 1 and P. 11 were forwarded to judicial Second Class Magistrate, Vedasandur, while copies of Ex. P. 11 were despatched to superior police officials.

4. P.W. 13, sent injured Ayyavu with police constable Pandi (P.W.12) to Government Hospital, Dindigul, P.W.7 Dr. Selvaraj, Examined injured Ayyavu at 10.25 p.m. on 14.6.1984 and found that he was already dead. He noticed an cliptical wound on the right side of neck, over sterno mastoid region of the deceased, measuring 6 x 3 x 1 c.m. Clotted blood was seen over the wound. Ex. P.3 is the copy of the accident register. He forwarded death intimation, Ex. P. 4, to the concerned police station. On receipt of Ex.P.4, P.W.13, altered the crime into one under Section 302, I.P.C. and prepared express altered report, Ex. P.12,

which was duly forwarded to the Magistrate, Copies of Ex.P.12 were forwarded to superior police officers. P.W.15 Arumaiturai, Inspector of Police, Oddanchatram, received the express report initially under Section 307, I.P.C. and later under Section 302, I.P.C. and took up the case for investigation. He was at the venue of crime at 1.00 a.m. On 15.6.1984. He prepared Ex.P.6, observation mahazar, and Ex. P. 17 rough scene sketch. He recovered from the crime spot M.O.5, bloodstained earth, and M.O.6, sample earth, under mahazar, Ex.P.7, attested by P.W.9, Timmaya Gounder, and another. Thereafter, P.W.15 proceeded to Government Hospital, Dindigul, and held inquest to over the dead body of Ayyavu between 6.00 a.m. and 9.00 a.m. During inquest, he examined P.Ws.1 2,5 and others Ex.P.18, is the inquest report. After inquest, he sent the dead body for conduct of postmortem, through police constable Pandi (P.W.12).

5. P.W.8 Dr. Jaganathan, on receipt of a requisition through P.W. 12, to conduct post-mortem on the dead body, commenced his job at 1.45 p.m. on 15.6.1984. He found an elliptical incised wound over the right side of the neck of the deceased, just below the angle of the mandible 6 x 3 x 3 c.m. On dissection, he found the underlying blood vessels-carotid vessels severed and stained with clots of blood. In the opinion of the doctor, the deceased would appear to have died of shock and haemorrhage, due to the single injury sustained by him about 17 to 19 hours, prior to conduct of post-mortem. Ex.P.5, is the post-mortem certificate. The single injury, coupled with the corresponding internal injuries, was necessarily fatal. He has deposed, that M.O.1 could have caused the injury found on the deceased.

6. P.W. 11, Shanmugam, a resident of K. Pudukottai, has given evidence, that the appellant had handed over M.O.1 aruval, to him at or about 10.00 p.m. on a Thursday, six months prior to his deposition in Court. Appellant had ostensibly told P.W. 11 that he was then proceeding to Vedasandur and on his return, he would take back the aruval. On 18.6.1984, at or about 7.00 a.m. on information, P.W.15 arrested the appellant near Nataraj Theatre, Vedasandur, in the presence of P.W.10, Kannan, and another. Appellant volunteered a statement, the admissible portion of which is Ex.P.8 P.W.15 seized M.Os.7 to 9, shirt, lungi and towel of the appellant, under mahazar, Ex,P.9. Thereafter, the appellant escorted P.W. 15 and his party to the house of P.W. 11. Appellant obtained, bloodstained M.O.1, from

P.W.11 and produced it before P.W.15, to be promptly seized under mahazar, Ex.P.10, P.W.11 has attested Ex. P.10 by affixing his thumb impression. P.W.15 forwarded the material objects seized during investigation to the Judicial Second Class Magistrate, Vedasandur, who, in his turn, despatched them to the Laboratory for Chemical analysis. P.W. 14, Balakrishnan, Court Head Clerk, has proved Exs. P. 15 and P. 16, which are respectively the reports of the Chemical Analyst and the Serologist respectively. Ex.P.16 reveals that M.O.1 seized at the instance of the appellant, contained AB group of human blood, the same blood group as that of the deceased. After completing investigation, P.W.15, laid the charge-sheet on 31.8.1984.

7. When the appellant was examined under Section 313, Cr.P.C. to explain the incriminating circumstances appearing against him in evidence, while denying his complicity in the crime, he went on to add that P.W.3 was not living in the scene area and he did not know P.Ws. 10 and 11. His further case is that the witnesses had falsely deposed at the instance of the investigating Inspector of Police and one Mysami Thevar. However, no evidence was adduced in defence.

8. The learned trial Judge, on assessment of the oral and documentary evidence, accepted the prosecution case, rejected the defence, and dealt with the appellant as stated earlier.

9. Mr.A. Packiaraj, learned counsel representing the appellant, submitted very fairly, that he will not be able to get out of the brass fact, proved overwhelmingly by evidence brought on record, that it was the appellant and the appellant alone, who had caused the injury found on the deceased. However, he added that, in spite of such a stand taken by him, the Court may have to still consider, on the recorded evidence, the nature of offence committed by the appellant. He urged that on acceptance of the prosecution case in its entirety, the offence allegedly committed by the appellant, would fall only under Section 304 Part I, I.P.C. and not under Section 302, I.P.C.

10. On these contentions, we have heard Mr. B. Sriramulu, learned Public Prosecutor. He contended that the weapon used by the appellant (M.O.1) was quite formidable and on that ground, it must be even possible to maintain the

conviction for murder.

11. We have carefully scrutinised the divergent contentions. The whole case of the prosecution, falls within a small nucleus. Initially it appears, that the appellant and the deceased, who are cousins, were moving on friendly terms, or in any event, it can safely be stated that there was no animosity between them. It was for the first time, that about a month prior to the instant occurrence, when the appellant had demanded a loan of Rs. 200 from P.W. 4, promising the repay it by selling the property of Muthammal, his concubine, the deceased had chosen to intervene and question the appellant as to how he could deprive the right of P.W.5, younger brother of his concubine, who was entitled to the said property. Deceased apparently had intervened, since he was a close friend of P.W.5. However, the fact remains, that the father of P.W.5, had settled the garden land in favour of his daughter even about 10 years prior to the instant occurrence. Deceased appears to have unnecessarily beaten the appellant on that occasion. Appellant was naturally provoked, but due to intervention of some good people, further clash between the appellant and the deceased stood averted. However, the appellant had thrown a challenge, that the deceased and P.W.5 may have to be paid back in their own coin. It was in this background that the impugned occurrence had taken place.

12. Even from the averments made in Ex.P.1, the first information report, which was given at or about 9.00 p.m. on the same night (within 2 1/2 hours), it is evident, that the deceased who had just then came out of his house, questioned P.W.3, helper in Electricity Department, as to how he could complain that he had thrown stones at the house of Muthammal. Deceased even alleged, that such a rumour spread, was false, Deceased then picked up a quarrel with P.W.3, in spite of the latter affirming, that he did not spread any such information. As is evident from the prior occurrence, which had about a month prior to instant occurrence, deceased was even now rash, in that he beat P.W.3, The children of P.W.3, who were nearby, on seeing their father being beaten, raised a hue and cry. This brought to the scene Muthammal, concubine of the appellant, who questioned the act of the deceased having beaten P.W.3. Again, the deceased acted as a ruffian and beat Muthammal, apart from pushing her resulting in her falling down as well. It was at

this point of time, that the appellant, who was nearby in his house, had come out of his house and on seeing the behaviour of the appellant with his concubine, had chosen to inflict one single cut on the neck of the deceased, from behind. The appellant did not indulge in any further act, for in a trice, he left the scene and made good his escape. It can easily be comprehended, that the act of the deceased in having pushed his concubine down after beating her, had instantly provoked the appellant gravely and suddenly and that was the cause for his infliction, of a single cut on the neck of the deceased. P.Ws.1 to 3 had witnessed this occurrence. As rightly stated by Mr. A. Packiaraj, the versions of these eye-witnesses are cogent and corroborative, pointing out clearly, that the assailant of the deceased was the appellant and none else, Of course, it is fairly certain, that the prosecution has exaggerated its case in court by adding that P.W.3 abused the deceased in vulgar language and Muthammal as well beat the deceased. These two facts are conspicuously absent not only in the first information report, but also in the statements recorded during investigation. In other words, it can be stated, without contradiction, that the deceased had almost acted as a bully in beating P.W.3 and Muthammal, leading to the latter falling down, which instantly brought the appellant to the scene, Appellant, admittedly, was an agriculturist and his having possessed an aruval, is not something uncommon. Learned Public Prosecutor stated that the appellant was having a formidable weapon. But we can take judicial note of a weapon of this nature being used for agricultural operations by villagers like the appellant, whose sole occupation is agriculture. The weapon does not appear to be anything out of the ordinary type of aruvals, which we come across.

13. The versions of P.Ws. 1 to 3 have clear and complete corroboration from the evidence of P.Ws. 7 and 8, the Medical Officers, who had initially seen the victim brought dead and on conduct of postmortem. The motive evidence spoken to by P.W.4 is totally acceptable. We are unable to find anything in the cross-examination of any of the prosecution witnesses, which would affect the credibility of these witnesses, subject, of course to the exaggerations, we have already underlined. There can be no second opinion that it was the appellant and the appellant alone, who had inflicted a single cut found on the deceased. As we have been pointing out in several portions of our judgment earlier, the appellant had

inflicted a single cut found on the neck of the deceased, without any premeditation, on the spur of the moment on being gravely and suddenly provoked by the conduct of the deceased, an erstwhile friend and cousin of his, who had not only beaten his concubine, but pushed her down as well. We are satisfied, that the appellant cannot be convicted under Section 302, I.P.C. At the same time, since it is apparent that the appellant had aimed at the neck of the deceased, he can certainly be imputed with the mens rea, that he had the intention, that he was likely to cause the death of the deceased by his act. We have already mentioned that the cut on the neck of the deceased was aimed from behind. We are of the opinion, that the appellant can be appropriately found guilty under Section 304 Part I, I.P.C. and not under Section 302, I.P.C. In that view, we set aside the conviction and sentence imposed on the appellant under Section 302 I.P.C. and instead, convict him under Section 304, Part I, I.P.C. and sentence him to rigorous imprisonment for seven years.

14. This appeal is partly allowed in the manner stated above.

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