

(1996) 01 MAD CK 0073

Madras High Court

Case No: Criminal Appeal No. 481 of 1988

Vairamuthu

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Jan. 25, 1996

Citation: (1996) 1 LW(Cri) 9

Hon'ble Judges: T.S. Arunachalam, J; M. Karpagavinayagam, J

Bench: Division Bench

Advocate: Mrs. Premavathi Sugamaram, for the Appellant; R. Raghupathi, Additional Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

M. Karpagavinayagam, J.

This criminal appeal is filed by the Appellant against the judgment of the Principal Sessions Judge, Ramanathapuram in Sessions Case No. 45 of 1988, dated 23.8.1988, convicting him u/s 302 of the Indian Penal Code and sentencing to undergo life imprisonment.

2. The charge against the Appellant is that on 11-9-1987 at or about 4.30 p.m., in front of Nava India Saw Mill, situate at Srivil-liputhur Madurai Road, the Appellant Vaira-muthu with intention of causing death, stabbed one Vijayakumar with soori knife (M.O. 2) on his back and chin, with the result the said Vijayakumar died at 7.30 p.m., while he was taken from Srivilliputhur Government Hospital to Rajaji Government Hospital at Madurai; thereby he committed an offence u/s 302, I.P.C. When the charge was read over to him, he pleaded not guilty and claimed to be tried.

3. The Appellant-Vairamuthu is the sole accused. P.W. 1 Chandra is the wife of the deceased-Vijayakumar. Both P.W. 1. Chandra and her husband, the deceased were residing at Mangapuram, Srivilliputhur. The deceased-Vi-jayakumar was working in Anusuya Tinkering works. P.W. 2 Pechiammal is the younger sister of the

deceased-Vijayakumar. She is residing at Devar Street, Srivilliputhur. The deceased-Vijayakumar used to go to his working place at 7.00 a.m., and come home for lunch at 1.00 p.m.

4. On the fateful day, i.e., on 11-9-1987-Friday, as usual, the deceased-Vijayakumar went for work, but he did not turn up for lunch. So P.W. 1-Chandra took the food and went to his working place. On the way, she saw both her husband-Vijayakumar and the Appellant Vairamuthu quarrelling with each other. P.W. 1. Chandra questioned the Appellant. Vairamuthu as to why he picked up quarrel with her husband- Vijayakumar. The Appellant replied that her husband-Vijayakumar daily used to tease him and that therefore, he would not leave him simply. At that time, the Appellant-Vairamuthu had M.O. 3-yellow bag with him. Then, the Appellant pushed the deceased-Vijayakumar aside. P.W. 1. Chandra cried and took the deceased-Vijayakumar and walked near Nava India Saw Mill, on her way back to home. At that juncture, the Appellant came by their right side and suddenly shouted "M*Qmqfi gjOprp QfKm&fai Oumur and stabbed on the left side back of me deceased by means of soori knife. M.O. 2. The deceased cried. The Appellant with the same soori knife-M.O. 2, again stabbed on the chin of the deceased. P.W. 1. Chandra then shouted. At that time, one Kattu Raja also came there. P.W. 2-Pechiammal, the sister of the deceased also came that side for purchasing rice. On seeing this incident, she also shouted. P.W. 1. Chandra asked P.W. 2. Pechiammal, to go and fetch a rickshaw. P.W. 2. Pechiammal went in search of a rickshaw. P.W. 1. Chandra requested one Marimuthu Chettiar, who came there, to inform this incident to her mother-in-law Lakshmi Ammal. In the meantime, the Appellant ran away with M.O. 2. Soori knife towards south. Few minutes later, P.W. 1. Chandra's mother-in-law Lakshmi Ammal came there and P.W. 1. Chandra narrated the incident to her. At that time, a rickshaw came. P.W. 4.-Shanker is the rickshaw man. Both P.W. 1-Chandra's mother-in-law, Lakshmi Ammal and the Victim-Vijayakumar got into the rickshaw and the rickshaw proceeded towards the General Hospital, Srivilliputhur. P.W. 1. Chandra also accompanied the rickshaw.

5. At about 5.00 p.m., the victim-Vijayakumar was admitted in Government Hospital, Srivilliputhur. P.W. 10. Doctor Johnsibai, found the following two injuries on the body of the victim:

(1) A stab injury of 3 cm. x 2 cm. x 2 cm. on the left infra scapular region.

(2) A stab injury of 2cm x 1cm x 1 cm on the chin.

She gave first aid to the victim and issued the wound certificate -Ex. P 16.

6. At 5.15 p.m., on receipt of intimation-Ex. P 8 from the General Hospital, Srivilliputhur, P.W. 7. Meerangani, Sub-Inspector of Police, attached to Srivilliputhur Town Police Station went along with the Head-Constable to the General Hospital, Srivilliputhur. There, the victim was found unconscious. So, P.W. 7-Sub-Inspector of Police obtained a statement from P.W. 1. Chandra, wife of the

deceased-Vijayakumar, which was reduced into writing and read over to her and she admitted the contents to be correct and signed the same. The statement of P.W. 1. Chandra is Ex. P1. At 6.15 p.m., P.W. 7 - Sub-Inspector of Police came to Town Police Station, Srivilliputhur and registered a case in Crime No. 553/1987 for an offence u/s 307, I.P.C. The printed F.I.R. is Ex. P 6. P.W. 7 - Sub-Inspector of Police at 7.45 p.m., sent the copies of F.I.R. to the higher officials and the concerned Magistrate through P.W. 6 - Palanisamy, the Police Constable.

7. In the meantime P.W. 10 - Doctor referred the victim-Vijayakumar to Madurai Rajaji Government Hospital from Srivilliputhur Government Hospital. P.W. 3 - Govindaraj, who is residing in Mangapuram Devar Street, along with Lakshmi Ammal, the mother-in-law of P.W. 1. - Chandra and another took the victim-Vijayakumar in an ambulance and left for Madurai. On the way the deceased died. So they brought back the dead body of the deceased to Srivilliputhur Government Hospital at 8.30 p.m.,

8. P.W. 7 - Sub-Inspector of Police received the death intimation, Ex. P9 at 8.45 p.m. Then he altered the F.I.R., into one u/s 302, I.P.C, and sent the express report-Ex. P7 to the Court. In the meantime on 11-9-1987 at 7.00 p.m., P.W. 11 - Chidambaram, the Inspector of Police, Srivilliputhur, received the copy of F.I.R., registered in Cr. No. 553/87 for the offence u/s 307, I.P.C., from P.W. 6 - Police Constable and straightaway came to the Government Hospital, Srivilliputhur. He was informed in the hospital, that the victim-Vijayakumar was already referred to Madurai Rajaji Government Hospital. Then he went to the scene of occurrence at 7.30 p.m., and prepared observation mahazar- Ex. P2 attested by P.W. 5 - Ssiren-garaja, the village Thalayari. At 8.30 p.m., he recovered M.O. 5 - blood stained earth and M.O. 6 - sample earth under Ex. P3 mahazar. During that time at about 9.15 p.m. he received the express report, altering the case into Section 302, I.P.C. P.W. 11 - Inspector of Police went to the Government Hospital, Srivilliputhur. He conducted inquest between 10 p.m., and 12 midnight. He examined P.W. 1. - Chandra, P.W. 2 - Pechiammal, P.W. 3 - Govindaraj, the mother-in-law of P.W. 1 and one Kasi. Ex. P18 is the inquest report. He also recovered from the mother- in-law of P.W. 1. - Chandra, the blood stained saree - M.O. 4. Then he prepared the rough sketch Ex. P19. He handed over the dead body with the requisition, Ex. P10 to P.W. 8 - Police Constable, asking him to hand over the same to the Doctor for post-mortem.

9. On 12.9.1987 at 3.45 a.m., P.W. 10 -Doctor received the requisition - Ex. P10 with the dead body of the deceased. On the same day at 8 a.m., she commenced post-mortem examination and found the following injuries:

External: 1) A stab wound of 8 x 2 x 2 cms. on the left infra scapular region.

2) A stab wound of 2 x 1 x 1 cm. on the chin.

On opening the first wound, it extended through the intercostal space.

Internal: On opening the thorax left lung: pale 450 gm. There was a stab wound of 3 x 2 x 2 cms. on the middle of posterior aspect of lower lobe of left lung.

She issued the post-mortem certificate-Ex. P17. The doctor opined that the deceased would appear to have died of shock and haemorrhage due to the wounds sustained.

10. After the post-mortem, P.W. 8 - Police constable recovered M.O. 7 - lungi worn by the deceased and produced the same in the police station.

11. On 13.9.1987 at 7 a.m., P.W. 11 - Inspector of Police arrested the Appellant in the presence of P.W. 5 - Village Thalayari and another, near Srivilliputhur-Rajapalayam Road at Vanniyampatti junction. The Appellant volunteered to give a confession, the admissible portion of which is Ex. P4. Then the Appellant took P.W. 11 - Inspector of Police and others to a dilapidated building near Pattatharasiamman Koil and took out M.O. 3 - yellow bag and M.O. 2 - blood stained soori knife concealed there and produced before P.W. 11 - Inspector of Police. These M. Os. 2 and 3 were recovered under Ex.-P-3 mahazar,-attested by P.W. 5 -Sirengaraja.

12. On 14.9.1987, P.W. 9 - Hariraman, the Head clerk of the Judicial Second Class Magistrate Court No. 1, Srivilliputhur, received requisition-Ex. P11 from the Inspector of Police - P.W. 11 to send M. Os. 1, 2 and 4 to 7 for chemical analysis. As per requisition, P.W. 9 -head clerk sent M.O. 1 - Shirt, M.O. 2 - soori knife, M.O. 4 - saree, M.O. 5 - blood stained earth M.O. 6 - earth and M.O. 7 - lungi for chemical analysis under the original letter of Ex. P12. The reports of the chemical analysis are Ex. P15. After the investigation was over, P.W. 11 - Inspector of Police filed the charge sheet on 24.9.1987, against the Appellant for the offence u/s 302, I.P.C.

13. When the Appellant was questioned u/s 313, Code of Criminal Procedure, to explain the circumstances about the incriminating materials adduced by the prosecution, the Appellant chose to deny his complicity in the crime. However, he admitted that on 13.9.1987 at 7 a.m., he was arrested by P.W. 11 - Inspector of Police and that he produced M.O. 2 - soori knife and M.O. 3 - yellow bag to the police which were kept concealed in the dilapidated building near Pattatharasiamman koil.

14. The question that arises for consideration in this case is whether the conviction and sentence imposed upon the Appellant by the trial court are sustainable or not?

15. In this case, 11 witnesses were examined and 19 exhibits were marked on the side of prosecution. Out of these 11 witnesses, P.W. 1. - Chandra, the wife of the deceased and P.W. 2 - Pechiammal, the sister of the deceased are the eye witnesses. P.W. 4 - Shankar is the rickshaw-man, who deposed that at the request of the wife of the deceased - P.W. 1. - Chandra and Lakshmi Ammal, he took the deceased to the General Hospital, Srivilliputhur. P.W. 10 -Doctor, through her medical evidence, corroborates the ocular testimony afforded by P.Ws. 1 and 2.

16. P.W. 11 - Inspector of Police while investigating the case arrested the accused/Appellant on 13.9.1987 and recovered the blood stained soori knife - M.O. 2

and yellow bag-M.O. 3. This aspect of the evidence adduced by P.W. 11 - Inspector of Police has been admitted to be true even by the Appellant, while he was questioned u/s 313, Code of Criminal Procedure. One more incriminating and clinching circumstance is that the soori knife-M.O.2 recovered from the Appellant contained human blood "B" group, which tallies with the blood contained in M.O. 1-shirt" of the deceased and the earth collected from the scene of occurrence and the saree recovered from Lakshmi Ammal, the mother-in-law of P.W. 1.-Chandra, which was stained with the blood of the deceased, while carrying the deceased to the hospital in a rickshaw.

17. P.W. 7, the Sub-Inspector of Police deposed that statement of P.W. 1.-Chandra (Ex.PI) was recorded between 5.15 p.m., and 6.15 p.m., on 11.9.1987 at General Hospital, Srivilliputhur, and then he registered the case

18. The evidence of P.Ws. 1 and 2 is clear, cogent and convincing and nothing has been elicited from them in the course of cross-examination to discredit them. Their evidence cannot be rejected, merely on the ground that they are close relations of the deceased. There is no reason for these witnesses to speak falsehood against the Appellant. The evidence of the

19. The most clinching evidence is that of P.W. 4, who specifically deposed that both the wife of the deceased. P.W. 1. - Chandra and her mother-in-law Lakshmi Ammal brought the victim and put him in the rickshaw. So the presence of P.W. 1. - Chandra has been proved through the evidence of P.W. 4, who is an independent witness and who has no axe to grind against the Appellant. Furthermore the evidence of P.W. 1, has been clearly corroborated by P.W. 10 - the Doctor, who promptly sent intimation to P.W. 7 - the Sub-Inspector of Police, who came to the hospital immediately thereafter and obtained the statement - Ex. P1 from P.W. 1. - Chandra.

20. The peculiar aspect of the evidence in this case is that the arrest of the Appellant and recovery of the blood stained soori knife-M.O. 2. by P.W. 11 - Inspector of Police has been admitted by the Appellant himself, while he was questioned by the trial court u/s 313 Code of Criminal Procedure. As stated earlier, the blood group of the deceased tallies with the blood contained in the M.O. 2 - knife.

21. As per the evidence of P.W. 1. Chandra, occurrence took place in front of Nava India Saw Mill. Both the Exhibits P19 and P2, the rough sketch and observation mahazar respectively, coupled with the evidence of P.W. 11 - Inspector of Police would clearly prove that the occurrence took place in front of the saw mill, from which the blood stained earth - M.O. 5 and sample earth - M.O. 6 were collected. M.O. 5 - Blood stained earth also contained the same group of human blood. So the place of occurrence has also been proved beyond doubt by the tangible materials adduced by the prosecution. Learned Counsel for the Appellant while submitting her arguments referred that there is some discrepancy with regard to the alleged place of occurrence. According to the counsel, once set of prosecution witnesses say that

the occurrence took place at Mangapuram and the other set of witnesses say that the occurrence took place at Nava India Saw Mill. There is no such discrepancy whatsoever available in the record to substantiate this argument. This is nothing but a brain wave of the counsel who made a vain attempt to create a doubt over the place of occurrence.

22. For the reasons mentioned above, there are enough materials available on record to come to the conclusion that the Appellant alone has committed the crime causing death of the deceased - Vijayakumar.

23. The next question that arises for consideration is, what is the exact offence that has been committed by the Appellant?

24. As referred to in the earlier paragraphs, it has been established that the Appellant by means of soori Kathi - M.O. 2 stabbed on the deceased on his left side back and when the deceased cried, the accused again stabbed for the offence of murder. For the purpose of deciding this point, four factual aspects have got to be taken into consideration. These four are as follows:

(1) As per the evidence of P.W. 1. - Chandra, both the deceased - Vijayakumar and the Appellant - Vairamuthu were found quarrelling with each other and then P.W. 1. - Chandra questioned the Appellant, for which the Appellant told her that the deceased-Vijayakumar always used to mock at him and so he would not simply leave him anymore and so saying the Appellant just pushed the deceased aside, though he was having M.O. 3 - yellow bag contained M.O. 2 -knife with him even at that time.

(2). Then P.W. 1. - Chandra in order to avoid further quarrel, took the deceased-Vijayakumar and walked along the road near Nava India Saw Mill, the Appellant accompanied them and suddenly took out the knife-M.O. 2 and stabbed on the left side back of the deceased and then the deceased shouted, the Appellant again chose to stab on the chin of the deceased.

(3) As soon as P.W. 1. - Chandra cried, the Appellant, ran away from the scene of occurrence, without causing further injuries.

(4) The confession given by the accused leading to the recovery of M.O. 2 - knife shows, exactly how he got provoked by the abusive and vulgar words used by the deceased Vijayakumar and on the spur of the moment he took out a knife which he always used to carry with him and intended to be used for fleecing the goats' skin, and stabbed on the non-vital parts. Though this confession will not be admissible and cannot be used against the accused, in rare cases it can be looked into in his favour.

25. For making an offence u/s 302 of Indian Penal Code, the prosecution should prove that it comes under any one of the four clauses appearing in the beginning portion of Section 300 I.P.C, and that it does not come under any of the five

exceptions embodied at the end of the same section. The weapon used, the number of injuries inflicted, the parts on which injuries were caused, the depth of the injury and the words uttered by the Appellant would show the actual intention, which was present in the mind of the Appellant. As far as the exceptions are concerned, it is the duty of the prosecution to show that the case does not come under any of such exceptions. This is not something to be proved to the hilt but the case of the prosecution should be such as it excludes necessarily any of those exceptions. In other words, there must be evidence to show that the accused intended to cause that particular fatal injury, which was sufficient to cause death. The offence of murder is the gravest of the offence contemplated in the Indian Penal Code and the law maker has taken care to define it u/s 300, I.P.C.

26. Clause 3 of Section 300, I.P.C. consists of three ingredients. Firstly intention to cause bodily injury. Secondly, the bodily injury should be sufficient in the ordinary course of nature to cause death and thirdly, the intention to cause that bodily injury which is sufficient to cause death. In this case, it is relevant to take note of the fact, that the Appellant did not choose to stab the deceased on any vital part of the body, but only on the back of the deceased and after the deceased shouted the Appellant chose to stab on the chin of the deceased. Further there was no attempt on the part of the Appellant to stab the deceased again. Immediately, when P.W. 1. - Chandra cried, the Appellant ran away from the scene of occurrence, without causing any further harm to the deceased.

27. Clause 3 of Section 300, I.P.C, is in two parts. The first part is subjective which indicates that the injury must be an intentional one and not as an incidental one, the second part is objective, in that looking at the injury intended to be caused, the Court must be satisfied that it was sufficient in the ordinary course of nature to cause death.

28. For culpable homicide to become a murder, two conditions are necessary. Firstly the act should fall within any one of the four clauses indicated in Section 300, I.P.C, and secondly the act should not fall under any of the exceptions contained in the same section.

29. According to the prosecution, on the date of occurrence ,quarrel between the deceased and the Appellant took place because of the reason that the deceased went on mocking at the Appellant day in and day out and on that day too at or about the time of occurrence. The portions of the body chosen by the Appellant to stab viz. back and chin of the deceased can, by no stretch of imagination be stated to be vulnerable portions of the human body. The weapon M.O. 2 - knife is an ordinary knife, usually carried by the Appellant. The Appellant had not chosen to aim on the vital portions of the body. Taking into account the seat of injuries, it cannot be said that the Appellant had the mens rea to cause the death of the deceased.

30. This case must be considered to be a case of a single stab, since the second stab was only a simple injury on the chin inflicted in the course of a sudden quarrel, without premeditation. It is not as though there was any

31. The courts have repeatedly held that when there is no material to show that there was any pre-meditation or malice on the part of the Appellant or the accused intended to murder the deceased and the Appellant stabbed the deceased or attacked at the spur of the moment, the intention to cause death cannot be attributed to the Appellant, but he could be attributed with the knowledge that he was likely to cause injury which was likely to cause death and in such a situation, he would not be guilty for the offence of murder within the court corners of Section 300, I.P.C, punishable u/s 302, I.P.C, but at the most he could be guilty of committing an offence u/s 304, Part II, I.P.C. There is no pale of controversy, that the Appellant while pushing the deceased aside was already having M.O. 3 - yellow bag containing M.O. 2 - knife and at that time he did not choose to attack him. Even when P.W. 1. Chandra and the deceased-Vijayakumar were walking along the road near Nava India Saw Mill, the accused did not come in front of the deceased for stabbing him on the vital part, but he chose to stab only on the back of the deceased and then on the chin, while the deceased shouted.

32. Apart from this aspect, the confession given by the Appellant-Ex. P4, clearly reveals that during the course of quarrel, the deceased-Vijayakumar called the accused-Viramuthu an eunuch Qumi*(r)* L"u (femine in character). The Courts in so many Judgments have held that the confession given by the accused/Appellant before the police, u/s 25 of the Evidence Act, though cannot be used against the accused/Appellant, it is quite permissible in rarest of rare cases to use the same in favour of the Appellant, for the cause of preservation of Justice and for the purpose of deciding the nature of the offence, which he had committed. (Ref: [Aghnoo Nagesia Vs. State of Bihar](#), , [Khatri Hemraj Amulakh Vs. The State of Gujarat](#), Thandavan, In re.- 1972 L.W. (Cri.) 244, Ganesan, In re.- 1973 L.W. (Cri.) 42). In the confession, the Appellant has clearly stated the provocative words which the deceased has used, prior to the occurrence and the Appellant further confessed that he used to keep the knife always with him for the purpose of fleecing the skin of the goat, which was his profession.

33. of-course in this case, P.W. 1. Chandra has deposed that while attacking the deceased, the accused shouted

Though there was also an injury on the chin of the deceased, it could be said that only a single injury was inflicted by the Appellant on the back with the knowledge that the said bodily injury was likely to cause death. The medical evidence shows that the first injury to the size of 8 x. 2 x 2 cms. On the left infra scapular region alone is a serious injury inflicted on the back of the deceased and the second injury is only simple in nature, of the size 2x1x1 cm. So, literally, this could be considered to be a single stab, in view of the fact that the second injury must have been inflicted

on the chin incidentally without any particular aim. It is also clear from the facts and circumstances of the case, that there was no pre-arranged plan to cause death of the deceased-Vijayakumar.

34. The courts on several occasions have held that Section 304, I.P.C, will apply to the following classes of cases:

(1) When the case does not fall under one or the other of the clauses of Section 300, I.P.C, but is covered by the exceptions to that section.

(2) When the injury caused is not of the higher degree (of likelihood) which is covered by the expression "sufficient in the ordinary course of nature to cause death" but is of lower degree (of likelihood,) which is generally spoken of as an injury "likely to cause death" and the case does not fall under Clause (3) of Section 300, I.P.C.

(3) When the act is done with the knowledge that death is likely to ensue, but there is no intention to cause death, or an injury likely to cause death: In such cases, there may be either no intention to cause an injury at all, or there may be an intention to cause simple or grievous hurt but not an injury likely to cause death.

35. In the light of these facts and circumstances, we are of the opinion that the act of the Appellant was one done with the knowledge that it was likely to cause death, attracting Exception 4 of Section 300. I.P.C., punishable u/s 304, Part II, I.P.C. In this view of the matter, the conviction and sentence as had been imposed upon the accused/Appellant by the lower court are not sustainable. Consequently we feel that the judgment of the trial court deserves to be set aside and instead the Appellant (has to) be found guilty u/s 304. Part II, I.P.C.

36. Accordingly, the criminal appeal is allowed in part. The conviction and sentence u/s 302, I.P.C, as had been imposed upon the Appellant by the Court below are set aside. Instead he is found guilty u/s 304, Part II, I.P.C, Appellant is convicted accordingly and sentenced to undergo rigorous imprisonment for five years.

25.1.1996: We were informed that the accused is in jail even now, and has over-served the term of imprisonment now imposed by us. If that be so, Appellant/accused shall be released forthwith, unless he is otherwise required.