

## Supreme Court Of India

Criminal Appeal No. 396 of 1980

Judgment Date:

13-01-1993

Ramaswamy

..Petitioner

State of Tamil Nadu

..Respondent

Bench :

{ HON'BLE JUSTICE K. JAYACHANDRA REDDYHON'BLE JUSTICE N. P.  
SINGH }

Citation :

1994 Supp (3) SCC 680 ; (1993) CRILJ 3253 ; (1994) 1 RCR (CRIMINAL) 568  
; 1993 (99) CRLJ 3253 ; 1995 SCC (CRI) 143 ;

### Judgment

This is an appeal under the provisions of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act. The sole appellant was tried for an offence punishable under section 302, IPC and was acquitted by the trial Court. The State preferred an appeal and a Division Bench of the High Court reversed the order of the acquittal and convicted the appellant under section 302, IPC and sentenced him to imprisonment for life. The prosecution case is as followsThe deceased Pinna Thevar, the accused and the material witness, namely, PWs. 1 to 4 were residents of village Aryapatti One Kruppiah Thevar, PW 14, mortgaged with possession an extent of 52 cents of land to Kalichi Ammal, the maternal aunt of the deceased for a period of 3 years and borrowed a loan of Rs. 5, 000/- PW 14 wanted to dispose of the land on behalf of Kalichi Ammal and the accused competing with the deceased manoeuvred to get the land sold to one Jayabarathi Ammal. Therefore, there was enmity between the two. There was an incident where PW 7, son of the deceased, bear Poonuswami, brother of the accused and in that connection there was a panchayat. The panchayatdars threatened to deal with the culprits. Since then the accused and the deceased were not on cordial terms and relations were strained very much. On 10-8-1977 the accused and PWs 1 to 4 had sent their cotton to the Theni Cotton Market. The accused and PWs 1 to 3 sent their cotton to the shop of K. Rathinasami Nadar and K. Nagarajan who were the commission agents. On 11-8-1977 PW 4 sent his cotton to the shop of S.S.K.P. Commission Merchants in Theni. They arrived at Theni by about 11.00 a.m. and the price of cotton was not fixedtill 6.00 p.m. on that date. Meanwhile the accused, PWs 2 and 3 went over there. The price was fixed at about 6.00 p.m. PW 18 who was employed as an accountant in the shop of K.R.K.N. told them that the cotton sent by them could be weighed only on the next day and the price due to each of them could be paid. He requested them to stay overnight. PW 4 took the deceased with him to the shop of S.S.K.P. in which P.W. 11 is employed in order to get the sum of Rs. 5, 000/- due to him towards the price of the cotton he had sent. The deceased and PW 4 waited in the shop of S.S.K.P. Commission merchants till about 6.15 p.m. Thereafter the sum of Rs. 5, 000/- payable to PW 4 was paid at about 7.00 p.m. Receiving the money P.W. 4 and the deceased went to the bus stand at Theni at about 7.15 p.m. and waited there till about 8.15 p.m. to get a seat in the bus proceeding to their village. However, they could not get seats and therefore P.W. 4 told the deceased that some residents of their village might have gone over to the shop of K.R.K.N. and that they might have to go there, meet them and stay with them that night and return to the village the next morning by the first bus. So the deceased and PW 4 went to the shop of K.R.K.N. The accused, PWs 1 to 3 were already there. PWs 1 to 4, the deceased and the accused waited in the shop till

about 10.00 p.m. chit chatting. In the meantime PWs 1 to 3 the deceased and the accused went to the Woodland Hotel in Theni Cumbam Road. After taking supper all the six proceeded towards the north in order to go to K.R.K.N. commission Mandi. The accused suddenly turned to Pinna Thevar and asking him "Are you not the person who is creating ill feelings and enmity?" So saying whipped out a knife from his waist and stabbed him on the right side of his abdomen near the flank and ran away. A report was given. The injured was taken to the hospital and was treated. On 12-8-1977 at 12.30 a.m. PW 5, Dr. A Rajan Babu who was a Medical Officer attached to the Govt. Hospital Theni examined Pinna Thevar who was sent to him by the police with a memo and found on him a stab wound on the right side of the upper abdomen 1 1/2 x 1" entering into the abdomen. He was then sent to Erskine Hospital Madura. He was treated but he died 3 days later. The post mortem was conducted and the doctor found sutured stab and incised wound. On the opening of the abdomen the sutured wound over the anterior wall of the stomach 2.5 cm in length through and through with purulent material with pus cells (sic). The posterior wall of the stomach showed a perforation 1 cm x 5 cm through and through with congested margine and purulent material at that time. Peritoneal cavity contained 250 m.l. of turbid fluid with pus cell. The stomach contained 15 m.ks. of grey coloured turbid fluid with pus like material. Cut sections of all other organs were pale. Lungs and small intestines were congested. The PW 8, Dr. Thagarajan found that the deceased would appear to have died due to complication of injury sustained by him due to peritonitis. After completion of the investigation a charge-sheet was led. Accused was examined under section 313 and he pleaded not guilty. The prosecution relied on the evidence of PWs 1 to 4 the eye-witnesses. The trial Court on the basis of surmises rejected the evidence of eye-witnesses<sup>2</sup>. We have scrutinised the reasons given by the trial Court and there is no doubt that they do not stand judicial scrutiny. The High Court having once again considered the entire evidence held that there is evidence of independent witnesses which is fully corroborated by other testimony. In this view of the matter the High Court set aside the order of acquittal and convicted the appellant under section 302, IPC<sup>3</sup>. Since this is a regular appeal we have gone through the evidence of PWs 1 to 4 and the judgment of the trial Court. Obviously judgment given by the trial Court is erroneous and the reasoning given by it cannot be sustained and therefore there is no question of two views being possible and we are satisfied with the view taken by the High Court<sup>4</sup>. Now coming to the nature of the offence we find that the accused inflicted only one injury on the abdomen of the deceased. No doubt that even single injury hit in the ordinary course is sufficient to attract clause 3 of Section 300 resulting conviction under section 302, IPC. In the instant case the question is whether the accused intended to cause that injury. The Doctor noticed one injury in the abdomen but he opined that the complications may set in some cases. They may be complications but from that it cannot be said that the persons who received such injury would necessarily die. The Doctor further opined that the complications may be after the injured is admitted in the hospital. In these circumstances we find it difficult to hold that the accused intended to cause that particular injury. It is not a case where clause (3) of Section 300 is attracted. Therefore, the offence committed would be culpable homicide not amounting to murder. Accordingly we convict him under section 304 Part II, IPC and sentence him to suffer RI for 7 years<sup>5</sup>. Subject to above modification the appeal is dismissed. Appeal dismissed.