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Crl.A.No.576 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	09.08.2024
<i>Pronounced on</i>	23.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

Crl.A.No.576 of 2021
and
Crl.M.P.Nos.16796 & 16797 of 2023

Nagaraj

...Appellant

Vs.

The State of Tamilnadu,
Rep. by Inspector of Police,
Thenkanikottai Police Station,
Krishnagiri District.

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment dated 27.02.2020 in S.C.No.88 of 2018 on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.

For Appellant : Mr.R.Selva Kumar

For Respondent : Mr.A.Gokulakrishnan,
Additional Public Prosecutor



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JUDGMENT

WEB CO **M.S.RAMESH, J.**

The appellant herein has been convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a period of one year for the offence under Section 302 of the Indian Penal Code (IPC), through the judgment of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, dated 27.02.2020 passed in Sessions Case No.88 of 2018. This judgment is put under challenge in the present appeal.

2. For the sake of convenience, the parties to the appeal are addressed according to their ranks before the trial Court.

3.1. The brief case of the prosecution are as follows:-

3.2. There were frequent quarrels between the accused and the deceased Savithriamma, since the accused did not want his son to pursue education, but rather work as a daily wage coolie. In consequence to these quarrels, on 31.01.2018 at about 05.30 P.M., the accused had attacked the deceased indiscriminately with a machete on her head, face, hands, stomach and toe, owing to which she died on the spot.



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3.3. Based on the complaint given by the son of the deceased, a case in F.I.R.No.49/2018 came to be registered against the accused for the offence under Section 302 IPC. On completion of the investigation, a final report was filed against the accused, charging him of having committed the offence under Section 302 IPC.

3.4. The final report was taken on file by the Magistrate's Court in C.C.No.13/2018 and after compliance of the requirements under Section 207 of the Criminal Procedure Code (Cr.P.C.), it was committed to the Sessions Court, Krishnagiri, where the case was taken on file in S.C.No.88/2018 and transferred to the Fast Track Mahila Court, Krishnagiri. On perusal of the documents and after hearing both the parties, the trial Court had framed charges against the accused for the offence under Section 302 IPC. Thereafter, when the charges were read over and explained to the accused, he denied the same claiming that he was “not guilty”. The case then proceeded for trial.

4. Before the trial Court, the prosecution had examined 18 witnesses P.W.1 to P.W.18 and marked 13 documents Exs.P.1 to P.13, apart from material objects M.O.1 to M.O.8. No witnesses or documents were marked on the side of the accused.



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5.1. The evidences let in by the prosecution before the trial Court are as follows:-

5.2. P.W.1, namely Marappa, is the son of the deceased and the accused. According to him, on 31.01.2018 at about 06.00 A.M., there was a wordy quarrel between his parents, after which he had left to college. On the same day, at about 05.45 P.M., P.W.2, namely Mathesh, had informed him over phone that the accused had murdered his mother and on hearing the news, he came back to his house at 05.50 P.M., and saw the dead body of his mother. Thereafter, he gave a written complaint (Ex.P.1) to the Police, which was registered in Crime No.49/2018 on the file of the Thenkanikottai Police Station, Krishnagiri District.

5.3. Mathesh (P.W.2) and Sennamma (P.W.3), who are the villagers where the deceased and the accused were residing, were projected by the prosecution as eye witnesses to the crime. However, both P.W.2 and P.W.3 did not support the case of the prosecution and were treated as hostile witnesses.

5.4. P.W.4 to P.W.7 are the close relatives of the deceased and the accused, who are hearsay witnesses.

5.5. Sivaraj (P.W.8) and Venkatesh (P.W.9) are the witnesses to the observation mahazar (Ex.P.2) prepared by the Investigating Officer and



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in their presence, soil with blood stains (M.O.1), soil without blood stains (M.O.2) and a money purse (M.O.3) were seized under a seizure mahazar (Ex.P.3).

5.6. Gaurammal (P.W.10) is the Village Administrative Officer, in whose presence the Investigating Officer had recorded the voluntary confession of the accused, the admitted portion of which was marked as Ex.P.4. Based on his confession, the Investigating Officer had seized the machete (M.O.4) used by the accused, through a seizure mahazar (Ex.P.5).

5.7. Dr.Sanjay Kumar (P.W.11) had conducted the postmortem on the body of the deceased and through him, the postmortem report (Ex.P.7) was marked. As per the said report, the following external injuries were found on the body of the deceased:-

“1.தலையில் வெட்டு காயம் 14x2x2 செ.மீ அளவில் இடதுபுறமாக இருந்தது.
2.சைக்கோமா என்ற எலும்பு முகத்தில் முறிந்திருந்தது. 3.இடதுபுற காதின் கீழ் பகுதி வெட்டப்பட்ட நிலையில் இருந்தது. 4.14x3x3 செ.மீ. அளவில் வெட்டு காயம் தலையின் இடதுபுறமும் நீளவாக்கில் இருந்தது. அந்த இடத்தில் எலும்பு முறிந்திருந்தது. 5.5x2x1 செ.மீ. அளவில் வெட்டு காயம் தலையின்



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முன் பகுதியில் இடதுபுறமும் நீளவாக்கில் இருந்தது. 6.வலது கையில் 10x3x3 செ.மீ. அளவில் வெட்டு காயம் எலும்பு மற்றும் நரம்புகள் தெரியும் அளவில் இருந்தது. 7.6x2 செ.மீ அளவில் வெட்டு காயம் வலது ஆட்காட்டி விரலில் இருந்தது. 8.4x3x2 செ.மீ. அளவில் வெட்டு காயம் இடது கை பெருவிரலில் கீழ் பகுதியில் இருந்தது. 9.இடது பக்க நெஞ்சு கூடு பகுதியில் 11x3x3 செ.மீ. அளவில் வெட்டு காயம் 10-வது விலா எலும்பில் இருந்தது. 10.இடது பக்க நுரையீரலின் கீழ் பகுதியில் 4x1.5 செ.மீ. அளவில் வெட்டு காயம் இருந்தது..... 16.இடதுபுற மேல் புற மண்டை ஒரு பகுதியில் 3x2 செ.மீ. அளவில் கன்றிய காயம் இருந்தது.”

According to the final opinion of P.W.11, the deceased may have died due to the injuries on the vital organs, brain, lungs and massive loss of blood and intra cranial haemorrhage.

5.8. Vannila (P.W.12) is the Head Constable, who had accompanied the body of the deceased, when taken for conducting postmortem. The requisition letter given by the Inspector of Police to the Doctor for conducting the postmortem was marked as Ex.P.6. Through a special report (Ex.P.8), a saree (M.O.5), an inskirt (M.O.6) and a shirt (M.O.7),



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which were taken from the body of the deceased, were handed over to the Investigating Officer.

5.9. Mahalingam (P.W.13) is the Sub-Inspector of Police, who registered the FIR (Ex.P.9). The photographs taken by Lingoji Rao (P.W.14) of the body of the deceased were marked as M.O.8 series.

5.10. In order to prove the frequent quarrels between the accused and the deceased, two panchayatars, namely Muniyappa (P.W.15) and Uchappa (P.W.16), whom the prosecution claim had pacified the quarrels, were examined. However, both of them did not support the case of the prosecution and were treated as hostile witnesses.

5.11. The initial investigation was conducted by Lakshmanan (P.W.17), Inspector of Police, who, on receiving the FIR, had gone to the place of occurrence and prepared the rough sketch (Ex.P.10). Thereafter, he had conducted an inquest over the body of the deceased and prepared the inquest report (Ex.P.11). Through Form-91 (Ex.P.12), he had sent M.O.1 to M.O.3 to the Magistrate's Court. He also confirms receipt of M.O.5 to M.O.8 from P.W.12, which he had sent to the Magistrate's Court under Form-91. Based on some secret information, he had arrested the accused on 03.02.2018 at 10.00 A.M. and in the presence of P.W.10, he had recorded his voluntary confession. On his confession, he had



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seized the machete (M.O.4) from the property of one Ramesh. Thereafter, he could not continue the investigation, since he was transferred.

5.12. After P.W.17 was transferred, the investigation was handed over to Subramani (P.W.18), Circle Inspector, who had further examined the witnesses, but did not record their statements. He had given a requisition letter (Ex.P.13) to the Judicial Magistrate, seeking for forwarding the blood stained items, namely M.O.1, M.O.4 to M.O.7, together with the blood sample taken from the body of the deceased, to the Forensic Science Laboratory for analysis.

6. On conclusion of the trial, when the incriminating circumstances reflected in the oral testimonies of the witnesses were read over and questioned under Section 313(1)(b), the accused claimed it to be as false case. On the strength of these oral and documentary evidences, the trial Court had found the accused guilty and sentenced him to imprisonment, as stated above.

7. The learned counsel appearing for the accused submitted that P.W.2 and P.W.3, who are the only witnesses projected by the prosecution as eye witnesses to the occurrence, had turned hostile and there is



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absolutely no other evidence to fix the culpability of the crime on the accused. The learned counsel also submitted that though the Investigation Officer had collected the blood samples from the body of the deceased, apart from sending a requisition letter to the Court, seeking for analysis by the Forensic Science Laboratory, the report of the experts were not produced before the trial Court to substantiate the blood stains on the machete (M.O.4), as well as on the dresses of the deceased (M.O.5 & M.O.6) to match the blood samples collected from the body of the deceased and therefore, the prosecution has failed to establish that the offence was committed only by the accused. Since all the other witnesses, namely P.W.1, P.W.4 to P.W.7, are very close relatives of the deceased and being hearsay witnesses, they cannot lend any support to the prosecution's case.

8. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that the motive to the occurrence has been clearly spoken to by P.W.1, P.W.4 to P.W.7 about the frequent quarrels between the accused and the deceased, touching upon P.W.1's education. Since the accused was a drunkard and had been picking up frequent quarrels, which was well established by the aforesaid witnesses,



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his culpability is a result of such motive. By referring to the medical evidence of P.W.11 and Ex.P7, he would submit that the prosecution has clearly matched the injuries on the body of the deceased to that of the machete (M.O.4), which was recovered at the instance of the accused and such a recovery was witnessed by P.W.10.

9. We have given our careful consideration to the submissions made by the respective counsels and have gone through the original records.

10. P.W.11 is the Doctor, who conducted postmortem on the body of the deceased and had given his report (Ex.P.7). In his report, he had noted 11 external injuries on the head, face, arms, stomach and toes and had given his final opinion that the death of the deceased could have been caused due to injuries to the vital organs, brain, lungs and massive blood loss and intra cranial haemorrhage. P.W.11 has also confirmed that the injuries found on the body of the deceased could have been caused by M.O.4. Thus, from the evidence of P.W.11, it can be seen that the deceased suffered homicidal death.



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11. In this case, initially, the prosecution approached the crime to be a case of ocular witness. As per the evidence of P.W.1 and the complaint (Ex.P1), on 31.01.2018, when P.W.1 was in College, he had received a phone call from P.W.2, stating that his father/accused had murdered his mother using a machete and that P.W.2 and P.W.3 had witnessed the occurrence. However, during the course of his oral testimony, P.W.2 had stated that when he was in his house after 4.30 P.M., P.W.3 had come there and informed him that the body of some person was lying about 50 feet from P.W.2's house. The relevant portion of the statement reads as follows:-

“கடந்த ஒரு வருடத்திற்கு முன்பு 31.01.2018ம் தேதி நான் என்னுடைய வீட்டில் இருந்தேன். 4.30 மணிக்கு என்னுடைய பசங்கள் ஸ்கூலிருந்து வீட்டிற்கு வந்தார்கள். என் பசங்களுக்கு நான் சாப்பாடு கொடுத்துவிட்டு நான் வீட்டில் இருந்தேன். அப்போது சென்னம்மா பாட்டி வந்து எங்கள் வீட்டிற்கு 50 அடி தூரத்தில் யாரோ ஒருவர் விழுந்து கிடப்பதாக தகவல் சொன்னார். நான் அந்த இடத்திற்கு போய் பார்த்தேன். சாவித்திரியம்மா விழுந்து கிடந்தார். சாவித்திரியம்மாவை வெட்டியிருந்தார். நான் அவரது மகன் மாரப்பாவிற்கு 5.30 மணிக்கு போன் போட்டு தகவல் சொன்னேன்.”



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12. P.W.3, who was also projected as an ocular witness, has totally expressed ignorance of the occurrence. Her statement in this regard reads as follows:-

“சாவித்திரியம்மா ஒரு வருடத்திற்கு முன்பு இறந்துவிட்டார். சாவித்திரியம்மாவிற்கு என்ன நடந்தது என்பது எனக்கு தெரியாது. இந்த வழக்கு பற்றி எனக்கு வேறு ஒன்றும் தெரியாது.”

13. Both P.W.2 and P.W.3 were thereafter treated as hostile witnesses by the prosecution. Apart from P.W.2 and P.W.3, there are no other eye witnesses to the occurrence. The other witnesses, namely, P.W.1, P.W.4 to P.W.7, are very close relatives of the deceased and the accused and are only hearsay witnesses and therefore, their testimonies do not gain much significance to establish the case of the prosecution, without any other corroboration.

14. P.W.15 and P.W.16 are the panchayatars, whom the prosecution claim to have acted as mediators, when both the accused and the deceased fought earlier, also did not support the case of the prosecution



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and were treated as hostile witnesses. Apart from these witnesses, there were absolutely no other materials before the trial Court to substantiate that the accused had any culpability in the death of his wife.

15. To establish that M.O.4 was the weapon used in the crime, P.W.17 had collected two samples of soil with and without blood stains (M.O.1 and M.O.3) under Ex.P3. Likewise, on the confession of the accused, he had seized blood stained machete (M.O.4), through a seizure mahazar (Ex.P5). He further confirmed that he had received the blood stained clothes (M.O.5 to M.O.7) from P.W.12, which he had sent to the Court under Form-91. Thereafter, the investigation seems to have come to a complete hiatus, when P.W.17 was transferred.

16. P.W.18, who stepped into the shoes of P.W.17, commenced the investigation by examining the same witnesses, who were already examined by P.W.17 and since there was no additional information given by them, he had not recorded their statements. The only additional step he had taken in the investigation is that he had sent a requisition letter (Ex.P.13) to the Court for sending the blood stained articles for forensic analysis. In Ex.P13, there is a reference to the blood sample collected



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from the body of the deceased, apart from the reference to M.O.1 to M.O.7. However, it is not known as to what transpired thereafter and what was the fate of the letter that was claimed to have been given by P.W.18, after it was sent to the Court. In the cross examination of P.W.12, the Constable who had accompanied the body of the deceased to postmortem and had sent the blood stained clothes (M.O.5 to M.O.7) to the Investigating Officer, there is no reference of any blood sample having been collected from the body of the deceased. Likewise, during cross examination, P.W.18 had admitted that blood samples were not taken from the body of the deceased, in the following manner:-

“இறந்துபோன சாவித்திரியம்மாவின ரத்த மாதிரி தனியாக ரசாயன பரிசோதனைக்காக சேகரிக்கப்படவில்லை.”

17. It is relevant to note that the defence had made a suggestion to P.W.13 that he had 'not sent' the requisition letter (Ex.P.13) to the Court for sending the blood stained articles for forensic analysis. P.W.17, who had received the blood stained articles from P.W.12, also does not mention about the receipt of any blood sample of the deceased. Thus, the presence of blood on M.O.1, M.O.4 to M.O.7 is of no avail to the claim of the prosecution that these blood stains belong to that of the deceased.



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In the absence of the same, the recovery of M.O.1, M.O.4 to M.O.7, will not in any way support or substantiate the theory of the prosecution.

18. On an overall appraisal of the evidences, as aforesaid, there is absolutely no material to confirm the place of occurrence, the weapon that is alleged to have been used for the crime, or any other evidence to confirm the presence of the accused in the scene of occurrence, or to otherwise implicate him of having committed the offence of murder. Thus, in our considered view, the prosecution has totally failed to establish their case.

19. The trial Court, in its judgment, had not taken note of the aforesaid lacuna in the evidences let in by the prosecution and had simply placed reliance on the evidences of P.W.1, P.W.4 to P.W.7, who are all hearsay witnesses and had narrated the information received by them that the accused had murdered his wife. Such an appreciation, in the absence of any other corroboration through other witnesses, may not be creditworthy. Thus, the finding of guilt and the consequential conviction and sentence imposed by the trial Court cannot be legally sustained.



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20. For all the foregoing reasons, the judgment of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, dated 27.02.2020 passed in S.C.No.88 of 2018, is set aside. Consequently, the appellant is acquitted of all the charges and is directed to be released forthwith, unless his presence is required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded and the bail bonds, if any, executed shall stand discharged.

21. In the result, the Criminal Appeal stands allowed. Consequently, connected miscellaneous petitions are closed.

[M.S.R., J] [C.K., J]
23.08.2024

Index:Yes
Neutral Citation:Yes
Speaking order
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Note: Issue order copy on 23.08.2024



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To

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1. The Sessions Judge,
Fast Tract Mahila Court,
Krishnagiri.
2. The Superintendent of Prisons,
Central Prison, Vellore.
3. The Inspector of Police,
Thenkanikottai Police Station,
Krishnagiri District.
4. The Public Prosecutor,
High Court of Madras.



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M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

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