

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM

THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Crl.A.No.384 of 2017

& Crl.M.P.No.8272 of 2017

Guruchitthan ... Appellant/Accused

versus

State by  
Inspector of Police,  
Kadambur Police Station  
Erode District.

... Respondent/complainant

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, to call for the records and set aside the conviction and sentence imposed against the appellant on 15.12.2015 in S.C.No.137 of 2014 on the file of the III Additional District and Sessions Judge, Gobichettypalayam, Erode District and acquit the appellant.

For Appellant : Mr.P.Pugalenthir

For Respondent : Mr.K.Madhan,  
Government Advocate (Crl.Side)

J U D G M E N T

The accused is the appellant.

2. This appeal is directed against the conviction and sentence imposed in S.C.No.137 of 2014, on the file of the learned III Additional District and Sessions Judge, Gobichettypalayam, Erode District, ordering the accused to undergo Rigorous Imprisonment for two years for the offence under Section 506(2) IPC and to undergo Rigorous Imprisonment for ten years and also to pay a fine of Rs.1,000/-, in default, to undergo further period of 1 year Simple Imprisonment for the offence under Section 304(1) IPC.

3. The facts necessary for the disposal of the appeal,

are as follows:-

[i] Mani [P.W.1] is the son of Thiruman [deceased]. Thiruman is uncle of Srirangan [P.W.2]. They are all residents of Pasakuttai Village, Sujilkarai, Kadupasuvanpalayam [Post], Kadambur. Thiruman was a Poojari of a local temple. He was also a Tantrik. He used to tie casket containing amulet [dayath] to children. The father of the accused took a land on lease, which is adjoining the farmland of Marasamy @ Ilango [P.W.3]. The father of the accused put up a hut on his farm land. P.W.3 was also residing in his farm land. The sister of the accused, who had separated from her husband also lived with her father in the said hut.

[ii] On 07.01.2014, Thiruman accompanied by P.W.2 went to Kajanur, Karnataka State, in pursuit of his tantrik profession. On their way back home, they happened to see the accused and his sister sitting around a campfire in front of their father's hut. The accused and P.W.2 went near the hut of the father of the accused to get warm by the campfire. The deceased brought liquor from Karnataka. He gave one pocket of liquor to the accused. The accused after consuming the liquor started scolding his sister, as she has not prepared food for him. Thiruman and P.W.2 tried to calm him. The accused retorted saying “ப சாயத்து பன்னுவதற்கு இங்கு வந்தீர்களா” and placed M.O.1 knife on the neck of P.W.2. P.W.2 left the place and stood 10 feet away from the place of occurrence. The accused asked some more liquor from the deceased. As Thiruman refused to give liquor, the accused threatened him and picked up a wooden log [M.O.2] lying nearby and beat him on his shoulder and back. The accused then dragged him near the campfire and attacked him with knife [M.O.1]. P.W.3 witnessed the occurrence from his hut. P.W.2 after the occurrence ran away from the scene out of fear.

[iii] Mani [P.W.1] enquired P.W.2 about his father. P.W.2 narrated the incident that had happened to his father. As it was late night and there was wild animal movement near the place of occurrence, they had decided to go to the scene of occurrence in the morning. P.W.1 and P.W.2 visited the scene of occurrence at about 9.00 a.m. on 08.01.2014 and found the dead body of Thiruman. P.W.1 and P.W.2 met Marasamy @ Ilango [P.W.3], whose hut was located near the place of occurrence and P.W.3 also narrated the incident to P.W.1 and P.W.2. Thereafter, P.W.1 went to Kadambur Police Station and reported the matter.

[iv] The then Special Sub Inspector [P.W.14], Kadambur Police Station had recorded the statement of P.W.1 and registered a case in Crime No.2 of 2014 on 08.1.2014 at about 11.00 a.m. for the offence under Section 302 IPC. Ex.P.15 is the

First Information Report. P.W.14 sent the First Information Report to the Court through Head Constable / Chandran [P.W.15] and he has also sent a copy of First Information Report to the higher officials.

[v] The Inspector of Police [P.W.16], Pangalaputhur Police Station took up the investigation. He visited the scene of occurrence at about 1.00 p.m and prepared a Rough Sketch [Ex.P.16] and Observation Mahazar [Ex.P.7] in the presence of Palanichamy, Village Administrative Officer [P.W.8] and his Assistant. P.W.5 took photographs [M.O.3] of the dead body at the instance of the Police. He seized blood stained earth and sample earth [M.O.5 and M.O.6] under the cover of Mahazar [Ex.P.8]. The Inspector [P.W.16] held inquest over the dead body, in the presence of Panchayators. Ex.P.17 is the Inquest Report. He sent the body for postmortem to the Government Hospital, Sathyamangalam through D.Kumar, Grade-II Police [P.W.13]. He removed the body for causing Postmortem. He seized M.O.7 to M.O.13 from the body before Postmortem and produced them at the Police Station under Special Report [Ex.P.14].

[vi] Dr.Devaraj [P.W.5], Chief Medical officer, attached to the Sathyamangalam Government Hospital, received the body and kept it at Mortuary. On 09.01.2014, he along with his colleague, examined the body and found external injuries over the dead body. As they felt that postmortem should be conducted by an expert, they sent the body to the Medical College Hospital, Coimbatore, with a request under Ex.P.2.

[vii] Dr.Jaisingh [P.W.12], Head of the Department of the Government Medical College, Coimbatore, conducted Postmortem on the dead body of the deceased Thiruman at 2.25 p.m. on 09.01.2014 and Viscera and Blood preserved were sent for chemical analysis and issued Postmortem Certificate [Ex.P.11]. He opined that the deceased would appear to have died of Multiple Injuries and the death would have occurred 24 to 36 hours, prior to the autopsy.

[viii] Dr.K.Nalina [P.W.6], Scientific Officer, attached to Forensic Sciences Department, examined the samples and she found A group blood on the dhoti recovered from the dead body and gave Reports under Ex.P.4 and Ex.P.5. The articles were further examined by Dr.S.Kala [P.W.7], Assistant Director, attached to the Forensic Sciences Department and found that they were similar to each other with respect to their density distribution pattern and gave Report [Ex.P.6]. Dr.Jayasingh [P.W.12], after receipt of reports, gave his final opinion and he opined that the deceased was appeared to have died of multiple injuries and the death would have occurred 24 to 30

hours, prior to autopsy.

[ix] The Inspector of Police [P.W.17], who succeeded Inspector [P.W.16], took up investigation of the case on 07.03.2014. He arrested the accused on 07.03.2014 at 11.00 a.m in the presence of witnesses Sadayappan [P.W.9] and Thiruman [P.W.10]. He interrogated the accused with the assistance of one Mathayyan [P.W.11], who knew Kannada, as the accused gave answers in Kannada language. In pursuance of his statement, the accused took the Investigating Officer and the witnesses to a place called Puttumadhithattu and produced knife [M.O.1] and wooden log [M.O.2] and Investigating Officer seized them under the cover of Mahazar [Ex.P.9] in the presence of witnesses. He sent them to Court under Form-95 [Ex.P.20].

[x] Muthusamy [P.W.18], who succeed P.W.17, conducted further investigation of the case and he added Sections 294(b), 506(2) IPC and sent the alteration report [Ex.P.22]. After completing the investigation, P.W.18 filed the Final Report. He did not examine any witnesses.

[xi] The Trial Court has accepted the case of the prosecution and found the accused guilty of the offences under Sections 304(1) and 506(2) of IPC. Aggrieved by the said order of conviction and sentence, the present Criminal Appeal has been filed by the accused.

4. The learned counsel appearing for the appellant would submit that the presence of P.W.2 and Pw3 at the place of occurrence was doubtful. He has also pointed out that there was an inordinate delay in lodging the complaint as the occurrence had taken place on 07.01.2014 at about 7.00p.m. P.W.1 lodged the compliant only on 08.01.2014 at about 10.30 a.m. The First Information Report reached the Court only on 08.01.2014 at 9.00p.m. According to the learned counsel appearing for the appellant, the delay vitiates the case of the prosecution.

5. The learned Government Advocate [Criminal Side] would submit that the prosecution mainly relied on the eye witnesses [P.W.2 and P.W.3] and their evidence is sufficient to convict the accused.

6. It is not in dispute that the deceased / Thiruman is the father of Mani [P.W.1] and uncle of P.W.2 [Seerangan]. It is seen from their evidence that they are residents of Pasakuttai Village. The evidence of Marasamy @ Ilango [P.W.3] reveals that, he is a resident of Kottapalam and he owned agricultural land, adjoining the land cultivated by the father of the accused. He resided in a hut on his land. It is also

seen from the evidence of P.W.3 that the father of the accused had lived in a hut put up on the said land and the accused used to visit his father. The sister of the accused has also lived with her father in the said hut. It is also his evidence that, he knew P.W.1 and P.W.2 and the deceased.

7. The evidence of P.W.1 and P.W.2 would reveal that Thiruman was a Poojari of a local temple and he used to tie Dayath to children, that on the day of occurrence, Thiruman accompanied by P.W.2 went to Kajanur, Karnataka State, in pursuit of his Tantrik profession. It is seen from the evidence of P.W.2 that on their way back home, he along with Thiruman happened to see the accused and his sister in front of a campfire near their father's hut. The accused and P.W.2 went near the hut of the father of the accused to get warm by the campfire. The deceased brought liquor from Karnataka. He gave one pocket of liquor to the accused.

8. The prosecution case primarily rests on the direct evidence of the two witnesses, namely, P.W.2 and P.W.3. As already seen P.W.2 accompanied the deceased was on their way back home from Kajanur, Karnakata State. P.W.3 was residing in a hut situated near the place of occurrence. It is the evidence of P.W.2 and P.W.3 that the accused picked up a quarrel with the deceased and attacked him. He has also criminally intimidated P.W.2 by placing knife on his neck.

9. The graphic description of P.W.2 and P.W.3 is clear and cogent as regards the manner, in which the occurrence had taken place. Their evidence would clearly show that the accused attacked the deceased using knife and wooden log. It is also clear from their evidence that the accused dragged the deceased near the campfire. They have amply corroborated each other in essential features of the case. They have no axe to grind against the accused. They were not shown to be partisan witnesses to invent a story of their own. Therefore, there is no difficulty in coming to the conclusion that the occurrence had taken place in the manner spoken to by P.W.2 and P.W.3.

10. The medical evidence given by Dr.Jaisingh lends great support to the prosecution case. He found the following ante mortem injuries noted over the body:

- "- Superficial burns noted over back of both side chest, upper abdomen, left gluteal region, back of left leg and back of right lower leg.
- Multiple reddish abrasions and reddish contusions of varying sizes and shapes noted over entire back of both side chest.
- Reddish abrasion three in number of varying sizes and shapes noted over top of right shoulder.

- Reddish abrasion 6x0.5 cm, 2x0.5 cm, 1.5x0.5 cm noted over back of neck, 2x0.5 cm noted over back of left mastoid region, 4x0.25 cm and 2x0.25 cm noted over front of right shoulder.
- Laceration 1x0.5 cm x skin deep noted over back of left mid arm with underlying surrounding reddish abrasion 4x2 cm.
- Incised wound 1x0.5 cm x skin deep noted over medial aspect of left lower forearm.
- Reddish contusion 15x10 cm x muscle deep noted over front and lateral aspect of right arm, 12x6 cm x muscle deep noted over back of right lower forearm and 20x10 cm x muscle deep noted over back of left arm.
- Right wrist found deformed, on dissection the underlying wrist joint found fractured and dislocated with surrounding tissue contusion reddish in colour."

The oral testimonies of P.W.2 and P.W.3 were amply corroborated by medical evidence.

11. The Investigating Officer [P.W.16], who visited the scene of occurrence collected blood stained earth from the place of occurrence, that is in front of the hut of the father of the accused. His evidence is supported by Palanichamy [P.W.8]. The blood stains were scientifically examined by P.W.6 and P.W.7 [Scientific Officers]. Therefore, it is clear that the occurrence had taken place in front of the hut of the father of the accused. It is seen from the evidence of the investigating officer [P.W.17] that knife [M.O.1] and wooden log [M.O.2] were recovered pursuant to the disclosure statement of the accused. The Investigating Officer [P.W.17] evidence is supported by the evidence of P.W.9 and P.W.10. In their presence, the accused was arrested and his statement was recorded and properties [M.O.1 and M.O.2] were recovered. These circumstances show that there could not have been any false implication of the accused in the case.

12. The learned counsel appearing for the appellant pointed out that there is delay in lodging the compliant. The occurrence had taken place on 07.01.2014 at about 7.00p.m. P.W.1 lodged the compliant only on 08.01.2014 at about 10.30a.m. The First Information Report reached the Court only on 08.01.2014 at 9.00p.m. The delay in lodging the complaint was properly and sufficiently explained by P.W.1. It is seen from the evidence of P.W.2 that he has left the place of occurrence after the incident and when P.W.1 enquired about Thiruman, he narrated the incident to him. They have explained, that since it was late night and there was wild animal movement and they had visited the place of occurrence in the morning. It is seen from the Observation Mahazar [Ex.P.7] and the Rough sketch [Ex.P.16] prepared by the Investigating Officer that the occurrence has

taken place in a forest-like area. Therefore, the explanation offered for the delay cannot be brushed aside.

13. The case was registered at 11.00a.m. on 08.01.2014. The place of occurrence is situated 30 kms away from the Police Station. The Magistrate received the First Information Report at 9.00pm on 08.01.2014. The First Information Report was sent to the Court through Constable Chandran [P.W.15]. He has explained that he took the First Information Report to the learned Judicial Magistrate, Gopichettypalayam and due to landslide on 08.01.2014, vehicle movement was stopped through ghat road and that, he was able to reach the Court at 9.00p.m. The evidence of P.W.15 remained unchallenged. Therefore, the prosecution case cannot be doubted on the ground of delay in lodging the First Information Report and sending it to the Court. The criticism of the appellant cannot be countenanced.

14. On an analysis of the entire materials on record, I am of the considered view that the Trial Court was justified in convicting the accused of the offence under Sections 506(2) and 304(1) IPC.

15. The learned counsel appearing for the appellant prayed for leniency. It bears out on evidence that the incident had taken place all of a sudden. There was no previous enmity and no premeditation. The accused is a rustic. Taking all these factors into consideration, I feel that the ends of justice will be met by awarding 5 years Rigorous Imprisonment of the offence under Section 304(1) IPC.

16. In the result, this Criminal Appeal is partly allowed. The conviction of the accused of the offences under Section 506(2) and 304(1) IPC is confirmed. The sentence awarded by the learned III Additional District and Sessions Judge, Gobichettypalayam, Erode District, in S.C.No.137 of 2014 on 15.12.2015, for the offence under Section 506(2) IPC is also confirmed. However, the sentence of Rigorous Imprisonment of 10 years of the offence under Section 304(1) IPC is reduced to 5 years Rigorous Imprisonment. The sentence of fine is maintained. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mst / sri

To

1. THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
GOBICHETTIPALAYAM, ERODE DISTRICT.

2. THE PRINCIPAL SESSIONS JUDGE,  
ERODE.

3. THE JUDICIAL MAGISTRATE NO.1,  
GOPICHETTIPALAYAM ERODE DIST,

4. THE CHIEF JUDICIAL MAGISTRATE  
GOPICHETTIPALAYAM ERODE DIST.

5. THE SUPERINTENDENT CENTRAL PERISON,  
COIMBATORE,

6. THE INSPECTOR OF POLICE  
KADAMBUR POLICE STATION, ERODE DIST.

7. THE SUPERINTENDENT OF POLICE,  
GOBICHETTIPALAYAM.

8. THE DISTRICT COLLECTOR,  
GOBICHETTI PALAYAM.

9. THE DIRECTOR GENERAL OF POLICE,  
MYLAPORE.

10. THE PUBLIC PROSECUTOR,  
HIGH COURT, CHENNAI 104.

11. THE SECTION OFFICER,  
CRIMINAL SECTION, HIGH COURT,  
CHENNAI 104.

+1cc to Mr.P.PUGALENTHI Advocate, S.R.No. 69732

Crl.A.No.384 of 2017

PVS(CO)  
TR(21/11/2017)

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