

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	30.04.2019
Date of Judgment	29.07.2019

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.A.(MD)No.307 of 2009**

Chitravelu : Appellant/Sole Accused

Vs.

State: The Inspector of Police,
Thirupachethi Police Station,
Sivagangai District : Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment made in S.C.No.51 of 2008, dated 17.09.2009 on the file of the Sessions Judge, Sivagangai.

For Appellant : Mr.V.Kannan

For Respondent : Mr.A.Robinson,
Government Advocate (Crl.side)**J U D G M E N T**

This Criminal Appeal is directed against the judgment made in S.C.No.51 of 2008, dated 17.09.2009 on the file of the Sessions Judge, Sivagangai.

2.According to the prosecution, on 16.12.2007 at about 5.30 pm, the appellant attacked the deceased Jayalingam with Velkampu and caused grievous injuries and due to the sudden quarrel about looking after the health of the wife of the appellant and subsequently, the deceased died in the place of occurrence. The Inspector of Police attached to Thirupachethi Police Station has filed a final report against the accused examining the witnesses.

3.In the trial court, 12 witnesses were examined and 18 Exhibits and 6 material objects were marked. When the accused was questioned about the incriminating circumstances, he denied the same. On the side of the accused, no witness was examined and no document was marked. The trial court convicted the appellant/accused for the offence under Section 304(II) IPC and sentenced him to undergo 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year RI. Aggrieved by the judgment passed by the trial court, the appellant/accused is before this court.



4. The learned counsel appearing for the appellant submitted that the trial court erred in convicting the accused on the basis of the evidence of PW1, PW3, PW4 and PW8 and PW11 and in this case, the eye witness PW2 turned hostile and the trial court failed to see the credible evidence of independent persons and alleged place of death, the place where body found the seizure of the weapon the delay arrival of the respondent police to the occurrence spot and the trial court erred in coming to the conclusion that the motive between the accused and the deceased has not mentioned even in the FIR, Charge Sheet or in the judgment order and the trial court failed to note that the weapon was seized in a private land owner, but the respondent police did not take case to enquire the land owner, survey number of the land etc and hence, the seizure of the weapon is a drama executed by the respondent police and in this case, the deceased had several criminal case against him and the same of his rivals might have been murdered the deceased, but the respondent police falsely dropped the innocent appellant into the case and the trial court failed to note that a mere wordy quarrel that too his health of his wife, the accused need not be murdered his own brother-in-law the deceased and therefore, the prosecution case is a concocted story of the respondent and the trial court failed to note that the time of death is not mentioned in the post-mortem report and hence, the deceased may be killed in some-where place and there were possibilities that the corpus might have been brought or the respondent police might have been written this story that the deceased was murdered in the said occurrence place. In view of the above circumstances, the judgment of the trial court has to be set aside and the criminal appeal has to be allowed.

5. On the other hand, the learned Government Advocate (Criminal side) appearing for the respondent/State submitted that trial court appreciated the evidence in a proper manner and believed the evidence of the eye witnesses and having regard to the nature of the offences, convicted the appellant and passed proper sentence, which do not require any interference by this court and the accused is not entitled for acquittal and prays that the criminal appeal may be dismissed.

6. Heard both sides and perused the materials available on record.

7. The contention raised on the side of the appellant/ accused is that there was no corroboration in the evidence of PW1 to PW4, PW8 and PW11 and no independent person nearby the place of occurrence was examined and the motive between the accused and the deceased was not mentioned in the FIR and in the charge sheet and there was contradiction in respect of the place of occurrence and the deceased had several criminal cases against him and only due to his enemies, the deceased was murdered and the respondent police falsely foisted the case as against the accused and prays that the accused is entitled to acquittal.



8. PW1 is the mother of the deceased and the accused is the brother-in-law of the deceased. PW1 gave complaint in respect of the occurrence. PW1 in her complaint and evidence stated that prior to two years at 5.30 pm, the deceased was standing in the field to irrigate water and at that time, her daughter Jayalakshmi came and fell down and she become unconscious and hence, the deceased sprinkled water on the face of his sister Jayalakshmi and the accused came there and the deceased advised the accused to take care of his sister and for that, the accused used filthy language and then wordy quarrel arose between the accused and the deceased and then the accused went to his house and took Velkambu from his house and suddenly inflicted a stab injury on the left chest of the deceased and due to sudden attack, her son died on the spot and after the arrival of her husband, she went to the police station and gave Ex.P1 complaint.

9. PW1 during her cross examination categorically stated that when there was wordy quarrel arose between the accused and the deceased and she, her husband Karuppaya and her daughter Kuppavanam went and attempted to resist the wordy quarrel between the accused and the deceased, but it was went in vain and afterwards, the accused assaulted the deceased with Velkambu and caused injuries.

10. PW1 during her cross examination stated that her son Jeyalingam sold his property to one Sanmugavel and his son has right to irrigate in the above property and on the date of occurrence, his son Jeyalingam came to the above field to irrigate water. Hence, from the evidence of PW1, it reveals that his son Jeyalingam has right to irrigate in the property already sold by him to Shanmugavel and on the date of the occurrence, the deceased came to the above field to irrigate.

11. PW2 is the wife of the accused. PW2 turned hostile and did not support the case of the prosecution. PW4 is the daughter of PW1. PW4 deposed that prior to one year at 5.30 pm, her sister Jayalakshmi become unconscious and fell down in the field of the accused and at that time, her brother Jayalingam rushed to the place to regain her position for such condition, at that time the accused came there and the deceased pointing out the incident and advised the accused to take care of the health of his sister Jayalakshmi. But the accused dislike such advise and wordy quarrel arose between the accused and the deceased and then the accused picked up Velkambu from his house and suddenly inflicted the stab injury on the left side of her brother Jayalingam and due to such attack her brother Jayalingam died immediately and then her mother went to police station and gave a complaint.

12. PW4 during her cross examination stated that wordy quarrel arose between the deceased and the accused and she and her mother attempted to resist it. But the accused went to his house and took the Velkambu and assaulted the deceased with Velkambu and further,



she stated during her cross examination that the accused stabbed the deceased and due to it, he fell down on the bank of the paddy field. Hence, the evidence of PW1 is corroborated with the evidence of PW4.

13. PW5 is the father of the deceased. PW5 deposed that after hearing the occurrence, he came to the place of occurrence and saw that his son was found dead and his body was on the bank of the paddy field and his wife went to the police station and gave Ex.P1 complaint. PW5 is only a hearsay witness and hence, no much importance can be given to the evidence of PW5.

14. The Doctor, who conducted post-mortem on the body of the deceased was examined as PW8. PW8 found the following internal and external injuries on the body of the deceased:-

External Injury:

An incised wound of 4 cm X 2 cm X 10 cm present 2 cm below the medial aspect of left clavicle.

Internal Examination:-

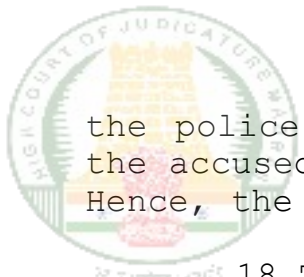
Opening of Thorax - Ribs normal. No fracture. 2nd Intercoastal muscle lacerated about 2cm X 2 cm with congestion of muscle with blood clot. Clotted blood of about 1000 ml present in the thoracic cavity. In incised wound of about 1 cm X 1 cm present in the ascending aorta running transversely. 2 cm above the root of aorta. Both lungs severely congested. Heart pale and all chambers empty. Hyoid Bone intact.

Opening of abdomen - Stomach contains 100 gm of partially digested food. Mucosa pale. All other organs pale. Bladder empty opening of skull scalp normal. Skull Normal. No fracture. Brain Normal. Pale base of skull Normal. Atlas and axes normal. Spinal column normal.

15. PW8 stated that the deceased would appear to have died of shock and haemorrhage due to the injury in the vital organ of the deceased.

16. PW1 and PW4 categorically stated that after wordy quarrel between the deceased and the accused, the accused went to his house and took Velkambu and stabbed on the left chest of the deceased. PW8 also found an incised wound of 4 x 2 x 10 cm present 2 cm below the medial aspect of left clavicle. Hence, the evidence of PW1 is corroborated with the evidence of PW8.

17. PW6 is the arrest and recovery witness. PW6 deposed that on 17.12.2013 at 11.00 am, the police arrested the accused near Vellikurichi turning and the accused gave confession and on the basis of the confession, the accused handed over one Velkambu and



the police recovered Velkambu by way of Athachi. PW1 also deposed the accused with Velkambu stabbed on the left chest of the deceased. Hence, the PW1 evidence is corroborated with the evidence of PW6.

18. The learned counsel for the appellant/accused submitted that there are contradictions in respect of place of occurrence and it is fatal to prosecution.

19. PW1 in her complaint and evidence stated that the place of occurrence is the field of Jayalingam. PW4 also deposed that the place of occurrence is the field of Jayalingam. PW1 and PW4 categorically stated that the body of deceased was found on the bank of the field of Jayalingam. PW1 stated during her evidence that even though the deceased sold his property to Shanmugavel, he has to right to irrigate in the above property. Hence, in this case, the place of occurrence is shown as paddy field of the deceased Jayalingam

20. PW3 is the mahazar witness. PW3 stated that the police came to the place of occurrence and prepared the mahazar and rough sketch and recovered the blood stained soil and non- blood stained soil from the place of occurrence by way of Athachi and he signed in the Athachi.

21. PW3 during his cross examination stated that when he, the Sub Inspector of Police and the Inspector of Police saw the body of the deceased on the bank of the field of deceased Jeyalingam and in the rough sketch also, the place of occurrence is shown as the bank of the field of deceased Jeyalingam.

22. In this case, PW11 is the Investigating Officer. PW11 during his cross examination stated that PW1 and PW4 told him that the occurrence took place on the bank of the field of Shanmugavel, which was sold by the deceased Jeyalingam. Hence, from the evidence of PW1, PW3, PW4 and PW11, it reveals that the place of occurrence is on the bank of the field of Shanmugavel, which was already sold by the deceased, who has right to irrigate in the above property.

23. The learned counsel for the appellant/accused argued that the blood group on the blood found on the weapon recovered from the accused was not stated in the chemical report and hence, the blood in the Velkambu was not the blood of the deceased and hence, it is fatal to prosecution.

24. In this case, already the Velkambu was sent for chemical analysis. But the blood group was not found by the Forensic Lab and it does not mean that the blood in the Velkambu is not in the blood of the deceased. But from the evidence of PW1 and PW4, it reveals that the accused only with Velkambu assaulted the deceased and due to it, the deceased died. Hence, it is held that the non identification of the blood group of the blood found in the Velkambu will not any way affect the case of the prosecution.



25. For all the reasons stated above, this court is of the considered view that the trial court, after proper appreciation of the entire materials available on record, has given a correct finding, which does not require any interference by this court. However, considering the facts and circumstances of the case and also considering the age of the appellant/accused, the punishment imposed on the appellant/accused requires modification.

26. In the result, this Criminal Appeal is **partly allowed**. The punishment imposed on the appellant for the offence under Section 304(II) IPC is reduced to **5 years RI**. In other aspects, the findings of the trial court is confirmed. The period of sentence, if any already undergone by the appellant shall be given set off under Section 428 of Cr.P.C. The appellant, after adjusting the period of imprisonment already undergone, shall undergo imprisonment for the remaining period.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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1. The Sessions Judge,
Sivagangai.
2. The District Munsif Cum Judicial magistrate, Manamadurai.
3. Do through the Chief Judicial Magistrate, Sivagangai.
4. The Inspector of Police,
Thirupachethi Police Station,
Sivagangai District
5. The Superintendent of Central Prison,
Madurai.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
Crl.A. (MD) No.307 of 2009
29.07.2019