



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06.09.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Cr1.A(MD)No.428 of 2009

Maruthan .. Appellant/Accused

Vs.

The Inspector of Police,
Tiruchulli Police Station,
Virudhunagar District.
Crime No.8 of 2008

.. Respondent/Respondent

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code to call for the records pertaining to the judgment passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur, in S.C.No.93 of 2008 dated 21.08.2009 and set aside the same.

For Appellant : Mr.C.Suresh Kannan
(Legal Aid Counsel)

For Respondent: Ms.S.Bharathi
Government Advocate (Cr1. Side)

JUDGMENT

This appeal is arising out of the conviction imposed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur in S.C.No.93 of 2008, dated 21.08.2009.

2. The appellant is the sole accused. He was charged for the offence punishable under Sections 302 and 324 IPC (2 counts) and the learned trial Judge, after full fledged trial, found him guilty, convicted and sentenced him as follows:

Section of Law	Sentence of imprisonment
304(ii) IPC	To undergo rigorous imprisonment for five years.
324 IPC (2 counts)	To undergo rigorous imprisonment for six months, each count.

The above sentence was ordered to run concurrently.

3. The background facts, as projected by the prosecution, in a nutshell, are as follows:



3.1. The accused and the deceased are close relatives. The accused's daughter, namely, Muniyammal, was married to the deceased's son, namely, Maduraiveeran, three years prior to the occurrence. They were living separately and five months prior to the occurrence, due to a stove accident, the deceased's daughter, Muniyammal, sustained injury and was admitted in a Hospital and succumbed to the injuries after six days. They were having a female child and she was taken care of by the deceased and his wife [PW1]. The accused also often visited the deceased's house to pay visit to his granddaughter.

3.2. On 02.01.2008, the accused went to the deceased's house to meet his granddaughter, but, he was not permitted and there was a quarrel between the parties and the deceased had also assaulted the accused with his cheppal. On hearing the noise, PW2 & PW3, who are neighbours to the deceased, have also gone to the place of occurrence and attempted to pacify the accused and the deceased. But, all of a sudden, the accused took a knife and stabbed on the Chest and Thigh of the deceased. During the scuffle, PW2 & PW3 have also sustained some simple injuries. PW1, along with PW2, lodged a complaint before the Tiruchulli Police Station on 02.01.2008 at about 09.00 pm and the Sub Inspector of Police [PW11] registered the complaint [Ex.P1] in Tiruchulli Police Station Crime No.8 of 2008 for the commission of offence punishable under Sections 324 and 302 IPC. The printed First Information Report is marked as Ex.P17.

3.3. On receipt of the intimation about the case, the Inspector of Police [PW12] went to the place of occurrence around 10.00 pm, prepared the observation mahazar [Ex.P18] and rough sketch [Ex.P19] in the presence of PW4 & PW5. He also conducted inquest on the body of the deceased and the inquest report is marked as Ex.P20. He recorded the statements of PWs 1 to 3 and also collected the earth with and without blood [MOs 3 & 4 respectively] from the place of occurrence under the cover of mahazar Ex.P21. Thereafter, he sent the body of the deceased for postmortem through the Constable [PW10]. He also sent PW2 & PW3 along with medical memo for treatment.

3.4. The Doctor at Tiruchulli Government Hospital [PW7] treated PW2 & PW3 on 02.01.2008 at 10.00 pm and recorded the injuries in Exs.P9 & P10, respectively. According to the Doctor [PW7], PW2 sustained the following injuries:

- "i) a lacerated wound of 7 x 3 x 2 cm at Right Palm;
and
- ii) Abrasion of 1 x 0.5 x 0.5 cm, 4cm below the previous injury."

and PW3 sustained the following injuries:



- "i) A lacerated wound of 3 x 1 x 0.5 cm at left thumb medial side palm region; and
ii) A lacerated wound of 0.5 x 0.5 x 0.5 cm near left thumb nail medial side."

The Doctor [PW7] further opined that the aforesaid injuries are simple in nature.

3.5. The Doctor [PW7] also conducted the postmortem on the body of the deceased on 03.01.2008 at about 12.30 pm and noted down the following injuries:

"External injuries:

- 1) A stab injury 3 cm below the left nipple measuring 1 x 1 x 12 cm.
- 2) A stab wound in the left thigh measuring 3 x 6 x 6 cm.

Hyoid bone - Intact.

On opening the thorax:

1) Right lung (wt) 520 gms. No injury.

2) Left lung - no injury. (wt) 520 gms

Heart weighing 350 gms. There is a stab wound in the left ventricle measuring 6 x 2 x 10 cm contain fluid blood.

On opening the abdomen : The stomach contains partly digested food particles.

Liver - Weight 1500 gms. No injuries.

Gall bladder - empty.

Spleen weight - 200 gms. No injuries.

Right kidney - 180 gms congested. No injuries.

Left kidney - 180 gms. No injuries.

Urinary bladder - Normal.

On opening the head - brain wt.1400gms. No injuries."

After obtaining the chemical analysis report, the Doctor [PW7] gave his final opinion that the deceased appears to have died of cardiac arrest due to injury to the left ventricle.

3.6. PW12 arrested the accused on 04.01.2008 at 12.00 noon in the presence of the Village Administrative Officer [PW6]. He also recorded his confession statement and pursuant to the same, the knife [MO1] was recovered under the cover of mahazar Ex.P8. Thereafter, further investigation was taken over by the Inspector of Police [PW13] and he proceeded with the investigation from 08.01.2008 and recorded the statements of other witnesses and also collected the wound certificate and postmortem certificate from the Doctor [PW7] and filed the final report before the learned Judicial Magistrate, Aruppukottai on 30.04.2008 and the same was taken on file in P.R.C.No.19 of 2008 and was committed to the Court of Sessions, Virudhunagar District at Srivilliputhur in S.C.No.93 of 2008.



3.7. On the side of the prosecution, as many as 13 witnesses were examined; 21 documents were marked and 4 material objects were produced.

4. The available evidences from the prosecution side are as follows:

i) PW1 is the wife of the deceased, who speaks about the motive; marriage between her son and the accused's daughter; the manner in which the accused's daughter died; the occurrence took place on 02.01.2008; and the injuries sustained by PW2 & PW3.

ii) PW2 & PW3 are husband and wife and also are neighbours to the deceased and they came to the place of occurrence on hearing the noise and also attempted to pacify the quarrel between the accused and deceased, on account of which, they also sustained simple injuries.

iii) PW4 & PW5 are examined as witnesses to the observation mahazar, but, they have not supported the case of the prosecution and they were treated as hostile.

iv) PW6 is the Village Administrative Officer, who was present at the time of arrest and he speaks about the arrest and recovery of the knife [MO1] from the accused.

v) PW7 is the Doctor, who conducted the postmortem and also treated PW2 & PW3.

vi) PW8 is the Forensic Assistant and he was examined for the purpose of serological report.

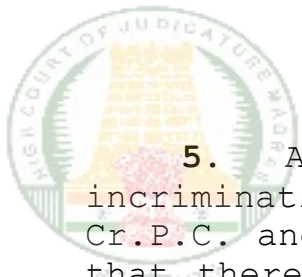
vii) PW9 is the Head Clerk, who forwarded the material objects for chemical analysis.

viii) PW10 is the Head Constable, who handed over the body of the deceased along with requisition letter to the Medical Officer for postmortem and after postmortem, collected the material objects and handed over the dead body to the relatives of the deceased.

ix) PW11 is the Sub Inspector of Police and he speaks about the receipt of the complaint and the registration of the First Information Report.

x) PW12 is the Inspector of Police, who speaks about the conducting of the preliminary investigation.

xi) PW13 is the Inspector of Police, who speaks about the further investigation as well as the filing of the final report.



5. After the prosecution evidence was closed, the incriminating materials were put to the accused under Section 313 Cr.P.C. and the accused denied the same. Though the accused stated that there are witnesses to support his case, no defence witness was examined. In conclusion of the trial, the learned trial Judge has convicted the appellant as stated above. As against the same, the appellant has filed this appeal.

6. Heard Mr.C.Suresh Kannan, learned Counsel appearing for the appellant (Legal Aid Counsel) and Ms.S.Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent / State.

7. The learned Counsel appearing for the appellant has raised the following grounds for the consideration of this Court:

7.1. PW1 in her chief examination has stated that she along with PW2 went to the police station and lodged the complaint therein. But, during the cross examination, she has stated that they went to the police station and the police took them to the place of occurrence where they have recorded the statement from her and she also signed in the statement. Therefore, according to the learned Counsel, the first complaint recorded from the place of occurrence was not placed before the Court and the suppression of the earlier complaint is a defect on the side of the prosecution and therefore, the benefit of doubt has to be given to the appellant.

7.2. There are contradictions between the evidences of PW1 & PW2. According to PW1, they went to the place of occurrence after lodging the complaint, whereas, PW2 would state that after lodging the complaint, they went to the Hospital.

7.3. Relying upon the evidence of the Village Administrative Officer [PW6], the learned Counsel would contend that according to the Village Administrative Officer [PW6], who stood as a witness for the arrest and recovery, there was no bloodstain in the weapon recovered. But the knife [MO1], which was recovered, contains bloodstains and was also sent for chemical analysis. Therefore, according to the learned Counsel, some other weapon has been inserted at a later point of time to strengthen the case of the prosecution.

7.4. As per the evidence of PW1, while she caught hold of the deceased, she also sustained bloodstains in her cloth. But, those bloodstained clothes have not been recovered from PW1 and therefore, the presence of PW1 at the place of occurrence on the date of occurrence is highly doubtful. He has also drawn the



Exs.P9 & P10 with regard to the date recorded in the Accident Registers.

8. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent / State would submit that the prosecution has established their case beyond any reasonable doubt. The evidence of the eye witnesses [PW1 to PW3] is very cogent and natural. PW2 & PW3 are the neighbours and they are natural witnesses and also injured witnesses. Their injuries have also been established through the evidence of the Doctor [PW7]. It is only out of a quarrel, the accused, on a sudden provocation, has committed the offence and therefore, the trial Court has rightly convicted the accused and there is no ground to interfere with the impugned judgment and therefore, prays for dismissal of this appeal.

9. This Court has paid it's best attention to the rival submissions and also to the documents placed on record.

10. The accused has gone to the place of occurrence on the date of occurrence to meet his granddaughter. The accused's daughter, who was married to the deceased's son, died some six months prior to the occurrence, due to a stove accident and since then, his granddaughter was with the deceased and his wife [PW1].

11. On the date of occurrence, the accused was not allowed by the deceased and PW1 to see his granddaughter. On frustration, the accused abused the deceased and the deceased, in turn, has also assaulted the accused with cheppal and there was a wordy quarrel for some time. PW2 & PW3, who are neighbours to the deceased, on hearing the noise, went to the place of occurrence and attempted to pacify them. During the scuffle, they had also sustained simple injuries. The accused, upon a sudden provocation, has caused injury on the deceased. But the deceased died due to cardiac arrest due to the injury and out of the shock arising out of the incident.

12. The case of the prosecution is elucidated through the evidences of PW1 to PW3. PW1 in her cross examination would state that after reporting the incident to the Police, the Police took her to the place of occurrence and from there, the statement was recorded. By relying upon this evidence, the learned Counsel for the appellant attacked the case of the prosecution that the complaint which was recorded from the place of occurrence is the initial complaint and the same has been suppressed and therefore, the case of the prosecution cannot be relied upon. But, it is the consistent case of PW1 & PW2 that immediate to the occurrence, they went to the Tiruchulli Police Station and lodged a complaint and thereafter, according to PW1, she was taken to the place of



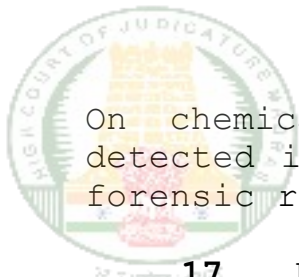
occurrence. It is the case of the prosecution that PW12 has also gone to the place of occurrence on the same day and after preparing the observation mahazar and the sketch, he recorded the statements of PW1 to PW3 at the place of occurrence itself, on the same day. Therefore, the examination of Police, which was referred to by PW1 in the cross examination cannot be taken that it was a complaint, more particularly, the first complaint which was prepared at the place of occurrence and that it was suppressed.

13. Similarly, PW2 would state that after lodging the complaint, they went to the Hospital. But the fact remains that PW12 has examined PW2 & PW3 also at the place of occurrence around 11.00 pm on the date of occurrence itself. The fact remains that PW2 & PW3 have also sustained injuries in this case and after lodging the complaint, they have also gone to the Government Hospital, Tiruchulli and they have been treated by the Doctor [PW7] at about 10.00 pm. Therefore, this contradiction which was referred to by the learned Counsel for the appellant cannot be taken as a ground to disbelieve the evidence of PW2 & PW3.

14. Insofar as the overwriting in the Accident Registers is concerned, though at one place, the date has been overwritten, it has been specifically written by the Doctor [PW7] that the Accident Registers were prepared on 02.01.2008 at 10.00 pm and therefore, on this ground, the case of the prosecution cannot be disbelieved.

15. With regard to the other discrepancy referred to by the learned Counsel for the appellant by placing relying upon the evidence of the Village Administrative Officer [PW6] that in the weapon which was recovered from the accused, no bloodstains were available, it is seen that the arrest and recovery was made on 04.01.2008 and in the mahazar [Ex.P8], it is specifically mentioned that a steel knife with bloodstains was recovered. The mahazar [Ex.P8] was also signed by the Village Administrative Officer [PW6]. But, PW6, in his cross examination which was taken place on 09.06.2009 has stated that the knife which was recovered was a new knife without any bloodstains. When the Village Administrative Officer [PW6] has accepted that the knife which was recovered on 04.01.2008 is with bloodstains and also signed in the mahazar [Ex.P8], his contradictory statement during his evidence which was recorded after 1 ½ years cannot be given effect to disbelieve the arrest and recovery.

16. Moreover, the knife [M01] was also produced before the Judicial Magistrate Court with a requisition to send the material object for chemical analysis and the prosecution has examined the Head Clerk [PW9] of the Judicial Magistrate Court and also the Constable [PW10] who took the knife [M01] for chemical analysis.



On chemical analysis also, the presence of human blood was detected in the knife [MO1]. The chemical analysis report and the forensic report are marked as Ex.P13 & Ex.P14 respectively.

17. From the available evidence, it appears that the prosecution has established their case beyond any reasonable doubt and therefore, this Court is not inclined to interfere with the impugned judgment.

18. At this juncture, the learned Counsel for the appellant has pointed out that the appellant / accused was in frustration, who lost his daughter on a Stove accident and though the accident took place in the deceased's house, he did not foist any false complaint, even for demand of dowry, as against the deceased. Even then, the deceased and PW1 did not permit the appellant / accused to have a visit to his granddaughter and on that day, the accused went to the deceased's house to see his granddaughter, but he was insulted and was also beaten up with a cheppal by the deceased. With frustration and on sudden provocation, the accused committed the offence and therefore, as an alternative prayer, sought for modification of sentence.

19. Considering the nature of offence, this Court is inclined to modify the sentence and accordingly, the sentence of five years rigorous imprisonment for the offence punishable under Section 304 (ii) IPC is modified to four years rigorous imprisonment. Insofar as the sentence imposed for the offence under Section 324 IPC is concerned, the same stands confirmed.

20. While entertaining this appeal, this Court vide order dated 25.02.2010, has suspended the substantive portion of sentence and pending appeal, due to the continuous non-appearance on the part of the appellant, this Court, vide order dated 19.01.2019, has revoked the suspension of sentence and directed the respondent Police to secure and confine the accused at Central Prison, Madurai. It is represented by the prosecution that pursuant to the said direction, they had secured the appellant / accused and he is presently confined at the Central Prison, Madurai. The said submission, on instructions, is placed on record.

21. In the result,

- the criminal appeal is partly allowed;
- the impugned judgment of conviction passed by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur in S.C.No.93 of 2008, dated 21.08.2009, stands confirmed;



- the sentence of imprisonment ordered for the offence punishable under Section 304(ii) IPC is modified and the appellant / accused shall undergo rigorous imprisonment for four years;

- the sentence of imprisonment ordered for the offence punishable under Section 324 IPC (2 counts) is confirmed; and

- the above sentence shall run concurrently.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The Principal Sessions Judge,
Virudhunagar District at Srivilliputhur.

2.The Judicial Magistrate, Aruppukottai

3.Do Through
The Chief Judicial Magistrate
Virudhunagar District at Srivilliputhur

4.The Superintendent,
Central Prison, Madurai

5.The Inspector of Police,
Tiruchulli Police Station,
Virudhunagar District

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. -2 copies

+1 CC to M/s.C.SURESH KANNAN, Advocate (SR-85669[F] dated 06/09/2019)

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