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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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|-------------|---------------|
| Reserved on | Pronounced on |
| 24.04.2019  | 30.04.2019    |

CORAM

THE HON'BLE MR. JUSTICE P.N.PRAKASH  
AND  
THE HON'BLE MR. JUSTICE B.PUGALENDHI

CRL. A. (MD) NO. 299 OF 2018

Sekar .. Appellant/Sole Accused  
- Vs -

The State, through  
The Inspector of Police  
Thirumayam Taluka  
Namanasamuthiram Police Station  
Pudukottai, Pudukottai District.  
(Cr.No.17/2008)

.. Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment of conviction dated 15.07.2008 passed by the learned Addl. District & Sessions Judge, Fast Track Court, Pudukottai, in S.C. No. 78/2008.

For Appellant  
For Respondent

Mr. Haja Mohideen  
Mr.R.Anandharaj, APP

### JUDGMENT

**P.N. PRAKASH, J.**

This appeal is filed by the appellant in S.C. No.78/2008 challenging the conviction and sentence imposed on him by the learned Addl. District & Sessions Judge, Fast Track Court, Pudukottai.

2. The case of the prosecution falls within a very narrow compass :-

Sekar (appellant) is the younger brother of Panayan (P.W.2) and the deceased Vellathi was Panayan's wife. Apart from Sekar, Panayan has two younger brothers and two sisters. The two younger brothers are Chinnaiyan and Kumar (P.W.3). Panayan (P.W.2), is a peasant with a small land holding. With great difficulty, he sent his brother Chinnaiyan to Singapore for work. Sekar (appellant) also wanted to go to Singapore and so Panayan (P.W.2) borrowed money from persons in the village and sent Sekar (appellant) to Singapore. Sekar (appellant) stayed in Singapore for sometime and did not go to work properly. He returned home and was an economic parasite on Panayan (P.W.2), which was resented by the deceased, Vellathi.



Sekar was taking money from Panayan (P.W.2) frequently, which was objected to by Vellathi. Therefore, Panayan (P.W.2) shifted Sekar from the joint family unit to a separate hut nearby. This is projected as the motive for the occurrence.

3. On 30.01.08, around 2.00 p.m. in the afternoon, when Vellathi was grazing cattle in the land, Sekar came there, armed with a billhook and indiscriminately attacked Vellathi, which was witnessed by Panayan (P.W.1), the owner of the adjacent land. It is necessary to state here that there are two Panayans in this case, viz., P.W.1 and P.W.2. After the attack, Sekar went away and Panayan (P.W.1) informed the villagers. The body of Vellathi was taken in the car of Rajendran (P.W.5) driven by his driver Pandi (P.W.7) to the Government Hospital, Pudukottai, where Vellathi was declared 'brought dead'.

4. On the statement (Ex.P-1) given by Panayan (P.W.1), Vanitha (P.W.15), the Sub Inspector of Police registered a case in Namanasamudram Police Station Crime No.17/08 at 1645 hours on 30.01.08 and prepared the printed FIR (Ex.P-15), which reached the jurisdictional Magistrate at 6.00 p.m. as could be seen from the endorsement.

5. Periyasamy (P.W.16), the Inspector of Police, took over the investigation of the case and went to the place of occurrence and prepared the observation mahazar (Ex.P-6) and drew the rough sketch (Ex.P-11). At the place of occurrence, he seized hay with bloodstains (M.O.4), hay without bloodstains (M.O.5) and a pair of chappals (M.O.6) under the cover of mahazar (Ex.P-7) in the presence of witnesses Sugumaran (P.W.12) and Veeraiya (not examined). Further investigation was continued by Sundaravadivelu (P.W.17), Inspector of Police, who went to the Government Hospital and conducted inquest over the body of the deceased in the presence of panchayatdars and witnesses and prepared the inquest report (Ex.P-12). The Investigating Officer despatched the body for post-mortem.

6. Dr.Rajmohan (P.W.11), performed autopsy on the body of the deceased and in his evidence as well as in the post-mortem certificate (Ex.P-5) stated as under :-

"External Appearance :

Female body found lying on back, moderately build. Body is symmetrical. Brown colour skin. Colour of eye - closed.

The hair black, scalp hair around 1 feet length.

Tongue inside mouth. No discharge from nose.

1) Lacerated injury seen in nape of the neck exposing the muscle and bone 10 x 4 cm in size.

2) Lacerated bone injury behind the left ear 2 x 1 cm.

3) Lacerated injury at right chest 5 x 3 cm.

4) Lacerated cut injury in the right arm where muscle, bone vessels, nerve are cut with skin



support.

Chest - No injury.

Abdomen - No injury and flat.

External Genitalia - No discharge and no injury

Both lower limb - No injury

Internal Injury :

Ribs No injury. In tact.

Peritoneal fluid - No free fluid.

Heart - Heart Chamber empty.

Hyoid bone - Intact

Stomach - Undigested food.

Lungs - Pale - Wt. 1300 grams.

Spleen - Pale - Wt. 180 grams.

Kidney - Pale - Wt. 100 grams.

Intestine - Intestine filled with gas.

Bladder - Empty

Uterus - Empty

Head - Intact

Skull - No brain injury

Membrane - Intact

Brain - No brain injury - Wt. 1300 grams.

Spinal Cord - Lacerated injury at the C1 & C2 level involving spinal cord.

Other injury - Lacerated cut injury right arm where muscle, bone, nerve are cut with skin support.

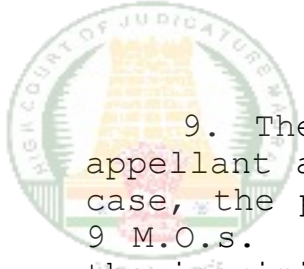
Lacerated injury in right cheek 5 x 3 cm exposing mandible, cheek muscle and glands.

Opinion as to cause of death :

The deceased would appear to have died of injury to vital organ, spinal cord at C1 & C2 level."

7. The Investigating Officer arrested the appellant on 31.1.08 at 1430 hours and recorded the confession statement based on which he recovered the billhook (M.O.1) on the showing of the appellant under the cover of mahazar (Ex.P-9). The bloodstained clothes of the deceased, the bloodstained hay and the billhook (M.O.1) were sent through Court to the Tamil Nadu Forensic Sciences Department for examination and report. Jaya (P.W.10), Assistant Director, Tamil Nadu Foreign Science Laboratory, examined the articles and detected blood in the hay, saree, blouse, inskirt and billhook, vide Biology Report (Ex.P-3). The Serology Report (Ex.P-4) shows that the blood in all the items are of human origin. After obtaining the various reports and examining the witnesses, the Investigating Officer completed the investigation and filed the final report in PRC No.12/08 before the District Munsif-cum-Judicial Magistrate, Thirumaiyam u/s 302 IPC against the appellant.

8. On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C. No.78/08 and made over to the Fast Track Court, Pudukottai, for trial.



9. The trial court framed a charge u/s 302 IPC against the appellant and when questioned, he pleaded not guilty. To prove the case, the prosecution examined 17 witnesses, marked 12 exhibits and 9 M.O.s. When the appellant was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. No witness was examined nor any document marked on the side of the appellant.

10. The trial court, after hearing either side and considering the evidence on record, by judgment dated 15.07.08 convicted the appellant u/s 302 IPC and sentenced him to imprisonment for life together with fine of Rs.3,000/-, in default to undergo rigorous imprisonment for a period of six months. Challenging the said conviction and sentence, the appellant has preferred the present appeal.

11. The case of the prosecution squarely rests upon the testimonies of the two Panayans', viz., P.W.s 1 and 2. Panayan (P.W.1), has stated that he is an agriculturist and knows the deceased Vellathi, the appellant and his brother, Panayan (P.W.2); that two years back, the appellant went to Singapore and returned; the appellant was asking money frequently from his brother Panayan (P.W.2) and his brother used to give him money on and off; on 30.1.08 around 2.30 p.m. in the afternoon, when he was working in his lands, Vellathi was grazing cattle in the nearby field; at that time, the appellant came there, armed with a billhook and attacked Vellathi on her left neck, right shoulder and other places and, thereafter, left; Vellathi fell down bleeding; he (P.W.1) went to the village and gave information; the villagers came there and took Vellathi to the Government Hospital, Pudukottai, where the doctor pronounced her 'Brought Dead'. He gave the statement (Ex.P-1). He also identified the billhook (M.O.1) that was used by the appellant to attack Vellathi.

12. Panayan (P.W.2) and his brother Kumar (P.W.3) have stated that the appellant is their brother; that he was sent to Singapore for work; the appellant was with their other brother, Chinnaiyan for some time and returned to the village abruptly; for sending the appellant to Singapore, money was borrowed from various persons and the persons, who gave money, were demanding return of the amounts on account of which there were fissures in the family; the deceased Vellathi was objecting to her husband giving financial assistance to the appellant; the appellant was shifted to a separate hut away from the joint family so that he would fend for himself; all this had fuelled hatred for Vellathi in the mind of the appellant.

13. Mr.Haja Mohideen, learned counsel for the appellant submitted that except the solitary evidence of Panayan (P.W.1), there is no other eye witness in this case. He also submitted that Panayan (P.W.1) has stated that that he went to the police station along with Panayan (P.W.2) to lodge the complaint, whereas Vanitha (P.W.15), the Sub Inspector of Police has stated that she had recorded the statement of Panayan (P.W.1) at the hospital. This



creates a doubt as to the veracity of Ex.P-1 complaint. Panayan (P.W.1) has further stated in his chief examination that Panayan (P.W.2) had signed along with him in the complaint, however, the signature of P.W.2 is not available in the complaint, which creates a doubt about the veracity of the complaint (Ex.P-1). Learned counsel for the appellant further contended that the weapon of offence, viz., billhook (M.O.1) was shown to Dr.Rajmohan (P.W.11) at the close of the post-mortem on 30.1.08 and so, the alleged recovery of the weapon on 31.1.08 at the instance of the appellant after his arrest becomes doubtful and no reliance can be placed on the said recovery.

14. Per contra, learned Addl. Public Prosecutor refuted the contentions and submitted that the prosecution, through cogent and convincing reasons, have proved that it was the appellant, who was the perpetrator of the crime and no dent has been made in the evidence adduced by the witnesses and the trial court, on a careful consideration of the materials has found the appellant guilty and, therefore, no interference is warranted with the well considered findings recorded by the trial court.

15. This Court bestowed its anxious consideration to the rival contentions and also perused the materials available on record.

16. It is trite that quantity of evidence is not the criteria, but quality. We carefully analysed the evidence of Panayan (P.W.1), who had seen the occurrence. It is to be pointed out that P.W.1, being a farmer, would have been harvesting his crop on the incident date, because, post mid January is the harvest season in the State. At that time, Vellathi, the deceased, was grazing her cattle in the adjacent lands. Therefore, the presence of Panayan (P.W.1) at the scene of occurrence cannot be doubted or could be said to be unusual.

17. Once the presence of Panayan (P.W.1) at the scene of occurrence is accepted, a threadbare analysis of the evidence of Panayan (P.W.1), clearly reveals that the same is cogent, convincing and this Court has no hesitation to accept the evidence tendered by P.W.1. In fact, the evidence of P.W.1 is quite natural and there are no embellishments or distortions and interpolations. Further, it is to be pointed out that Panayan (P.W.1) has no axe to grind against the appellant. Therefore, there was no necessity for Panayan (P.W.1) to implicate the appellant in the commission of the offence.

18. The contention of the learned counsel for the appellant that the genesis of the complaint is doubtful does not carry any merit. The occurrence had taken place at 2.30 p.m. and the complaint had been lodged on the same day at 4.45 p.m., which had reached the jurisdictional Magistrate Court at 6.30 p.m. on the same day. Though P.W.1 in cross examination has stated that the complaint was recorded at the police station in the presence of himself and P.W.2 and they have affixed their signatures, which is not in consonance with the testimony of Vanitha (P.W.15) the Sub Inspector of Police, who had deposed that the statement was recorded



in the hospital, mere discrepancy in the place of recording of the complaint would not in toto discredit the testimony of P.W.1 and throw the whole fabric of the prosecution theory into doldrums.

19. Lapse in the investigation leading to minor discrepancies in the evidence tendered would in no way impeach the credibility of the evidence of the eye witness. In the present case, though there is minor discrepancy with regard to the place at which the complaint was recorded, nonetheless, the complaint was recorded within a span of 2 hours from the time of the occurrence. The complaint has also given a verbatim account of what happened during the occurrence along with the overt acts of the accused on the deceased. The assault perpetrated by the appellant by inflicting the injuries on Vellathi, have been clearly spoken to by P.W.1. The injuries spoken to by P.W.1 have been corroborated by Dr.Rajmohan (P.W.11), in the post-mortem certificate (Ex.P-5). Further, Panayan (P.W.2) and Kumar (P.W.3), who are the brothers of the appellant have spoken to about the motive and their evidence is in unison and in spite of detailed cross-examination, the defence was not able to breach their testimony. The deceased, being the wife of P.W.2 and P.W.s 2 and 3, being the brothers of the appellant, P.W.s 2 and 3 would definitely not try to shield an assailant to the detriment of their brother, viz., the appellant. Therefore, the testimonies of P.W.s 1, 2 and 3 are cogent, convincing and inspire the confidence of this Court and this Court finds no embargo to accept their evidence as it is.

20. Further, it is to be pointed out that the post-mortem certificate (Ex.P-5) issued by P.W.11 reveals four injuries, which are all grave in nature. Dr.Rajmohan (P.W.11) has further opined that the deceased would appear to have died of injuries to the vital organ, viz., spinal cord. It is seen that the injury to the neck coupled with the injury to the spinal cord is not only grave, but also the injury to the hand is more grave, in that, the hand is just resting on skin support and that the muscle, bone and nerves are cut. The enormity of the injuries clearly leads to the irrefutable conclusion as to the severity of the blows executed by the appellant on the deceased.

21. The discrepancies pointed out by the learned counsel for the appellant to assail the conviction and sentence recorded by the trial court cannot be said to be discrepancies, which affects the substratum of the case. Further, in the alternative, it is also submitted that the appellant had acted in a spur of the moment and that there is no premeditation on the part of the appellant to attack the deceased, Vellathi. However, the said submission suffers merit for the simple reason that the appellant had approached Vellathi armed with a billhook, which clearly shows premeditation on the part of the appellant to attack her. Not only the billhook carried by the appellant to attack the deceased shows premeditation, but the severity of the blows, which is evident from the injuries suffered by the deceased Vellathi also reveals the mind of the appellant in causing the death of Vellathi.



22. In the absence of any material supporting the stand of the appellant with regard to perversity in the conviction recorded by the trial court, this Court is left with no other alternative, but to confirm the conviction and sentence recorded by the court below.

In the result, the criminal appeal fails and the same is dismissed.

Sd/-  
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar(CS )

To

1. The Addl. District & Sessions Judge,  
Fast Track Court, Pudukottai.
2. The District Munsif-cum-Judicial Magistrate,  
Thirumayam, Pudukottai.
3. -do- Through  
The Chief Judicial Magistrate,  
Pudukottai.
4. The Inspector of Police,  
Thirumayam Taluka,  
Namanasamuthiram Police Station,  
Pudukottai, Pudukottai District.
5. The Superintendent of Central Prison,  
Trichy.
6. The Addl. Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

Copy to: The Section Officer (Records),  
Criminal Section,  
Madruai Bench of Madras High Court,  
Madurai.

1 CC to M/s.A.HAJA MOHIDEEN, Advocate SR-64366[F] dated 30/04/2019 )

**CRL. A. (MD) NO.299 OF 2018**

CS (MK) : 13/05/2019/8P/9C



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