

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
03.04.2019	24.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A. (MD) No.547 of 2018

Kumar @ SelvaKumar

... Appellant / Sole Accused

-VS-

State through

The Inspector of Police

The Inspector Police Station

Puthiamputhur Police Station

Tuticorin District

(in Crime No.5 of 2017)

... Respondent / Complainant

PRAYER: Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the entire records connected to the judgment in S.C.No.263 of 2007 On the file of the Principal Sessions Court, Tuticorin District dated 26.06.2008 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.R.Anandharaj

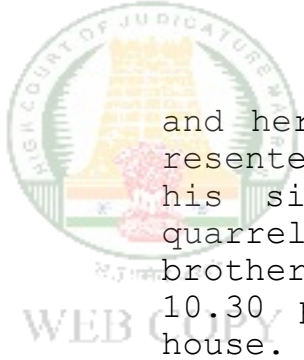
Additional Public Prosecutor

J U D G M E N T**P.N.PRAKASH, J.,**

The sole accused is on appeal against the judgment of conviction and sentence, dated 26.06.2008, in S.C.No.263 of 2007, on the file the Principal Sessions Court, Thoothukudi.

2. The case of the prosecution lies in a very narrow compass:

2.1. Anandha Jothi (deceased) was married to Mariappan and the couple was blessed with three children. They were living separately and not in joint family household. Calamity struck their family with the untimely death of Mariappan due to illness. Hence, Anandha Jothi and her children moved into Mariappan's natal home, wherein, Guruvammal (P.W.8), widowed mother of Mariappan, Muthuraj (P.W.9) and Kumar @ Selvakumar (accused), younger brothers of Mariappan lived. The entry of Anandha Jothi



and her children into the house of Guruvammal (P.W.8) was resented by Kumar, as he did not want to give any share to his sister-in-law Anandha Jothi. There were frequent quarrels in the family between Anandha Jothi and her brother-in-law Kumar and ultimately, on 26.01.2007, around 10.30 p.m., Kumar hacked Anandha Jothi to death in his house. This was witnessed by Anandha Murugan (P.W.1), brother of Anandha Jothi, and others. Anandha Jothi was rushed to the Government Hospital, Thoothukudi and was examined by Dr.Sankar Ganesh (P.W.14), at 11.15 p.m., on 26.01.2007. In his evidence as well in the Accident Register (Ex.P2), two injuries have been referred to, namely, (a) a deep cut injury measuring 20 cm X 4 cm X 5 cm on the left side of her back, through which, bones and lungs were visible and (b) a cut injury measuring 10 cm X 4 cm X 2 cm on her right leg through which, bone was visible. Anandha Jothi died within 15 minutes thereafter and the death intimation (Ex.P3) was sent by Dr.Sankar Ganesh (P.W.14) to the Police. Anandha Murugan (P.W.1) gave a statement (Ex.P1) to the Police, based on which, Neelakandan (P.W.20), Sub Inspector of Police, registered a case in Crime No.5 of 2007, on 27.01.2007, at 2.30 hours, for the offence under Section 302 I.P.C. and prepared the printed F.I.R. (Ex.P12). Investigation of the case was taken over by Ayyathurai (P.W.21), Inspector of Police, who went to the place of occurrence and prepared the Observation Mahazar (Ex.P4) and Rough Sketch (Ex.P13). From the place of occurrence, bloodstained mortar piece (M.O.2) and mortar piece without bloodstain (M.O.3) were recovered under the cover of mahazar (Ex.P5). The Investigating Officer conducted inquest over the body of the deceased at the Government Hospital, Thoothukudi and prepared the Inquest Report (Ex.P14). A requisition was given for postmortem and Dr.Krishnamoorthi (P.W.23) performed autopsy on the body of Anandha Jothi and issued the Postmortem Certificate (Ex.P20). Dr.Krishnamoorthi (P.W.23), in his evidence as well in the Postmortem Certificate (Ex.P20), has stated as follows:

1) A cut injury on the left side of back measuring 18cm x 6cm x 3cm crossing the midline, about 22 cm below the nape of neck and 15cm above the L23 intervertebral space.

2) An incised wound on the back of left arm measuring 5cm x 2cm with tailing about 3 cm.

3) A cut injury in the back of right leg 9cm x 5cm oblique 8 cm deep.

4) A linear contusion in the upper part of left arm (deltoid region) measuring 6cm x 5cm.

5) A fracture of right rib in the back side within wound No.1.

6) A fracture of the T9 vertebra in the wound No.1.



7) A linear fracture in the lower border of left scapula within wound No.1.

On opening of thorax: the cut injury extending upto the pleural cavity measuring inside about 3cm x 2cm x 1cm in the Right side, fracture of 7th rib on right side noted mentioned in injury No.5.

Lungs: A cut injury present in the dorsal aspect of Right lower lung measuring 3cm x 2cm, Left lung normal, c/s pale External genitalia normal, Hyoid bone, intact

Heart - Normal coronaries patent

Stomach - distended, About 1 litre of half digested food particles present, mucosa pale.

Liver, spleen, both kidneys - normal, c/s pale.

Intestines - about 50 ml of mucosal fluid present, mucosa pale.

Bladder - Empty, Uterus - Normal & Empty.

Skull - Intact, Membranes, Brain - Normal.

OPINION : THE DECEASED WOULD APPEAR TO HAVE DIED, ASPHYXIA DUE TO HEAVY CUT INJURY TO THE RIGHT LUNG. INJURY NUMBER 1 IS FATAL IN NATURE. DEATH WOULD HAVE OCCURED 12 TO 24 HOURS PRIOR TO AUTOPSY.

2.2. After postmortem, the bloodstained clothes of Anandha Jothi, namely, saree (M.O.4), inskirt (M.O.5), jacket (M.O.6) and innerwear (M.O.7) were obtained and sent to the Tamil Nadu Forensic Science Laboratory, for examination.

2.3. Ayyathurai (P.W.21), the Investigating Officer, arrested Kumar on 28.01.2007 and recorded his confession statement. Pursuant to the disclosure made by Kumar, the Investigating Officer, seized a bloodstained billhook (M.O.1) and the bloodstained clothes worn by Kumar, namely, shirt (M.O.8) and lungi (M.O.9). These items were also sent, through the Court, to the Tamil Nadu Forensic Science Laboratory, for examination. All these articles were examined and human blood was detected in the billhook (M.O.1), clothes (M.Os.4 to 7) worn by Anandha Jothi and clothes (M.Os.8 and 9) worn by Kumar, vide Biology Report (Ex.P18). The Serology Report (Ex.P19) shows that the blood group found in the aforesaid examined articles as "Human B".

2.4. After examining the witnesses and collecting various reports, Rengasamy (P.W.22), the subsequent Investigating Officer, completed the investigation and filed final report in P.R.C.No.25 of 2007, before the Judicial Magistrate No.I, Thoothukudi, for the offence under Section 302 I.P.C. against the appellant.



3. 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.263 of 2007 and made over to the learned Principal Sessions Judge, Thoothukudi, for trial.

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4. The Trial Court framed a charge, under Section 302 I.P.C., against the accused and when questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 23 witnesses and marked 20 exhibits and 9 material objects. No witness was examined nor any document marked on the side of the accused. When the accused was questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same.

5. After considering the evidence on record, by judgment dated 26.06.2008, the Trial Court convicted the accused for the offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and pay a fine of Rs.2,000/- (Rupees two thousand only), in default, to undergo three (3) months rigorous imprisonment. Challenging the conviction and sentence, the accused is before this Court.

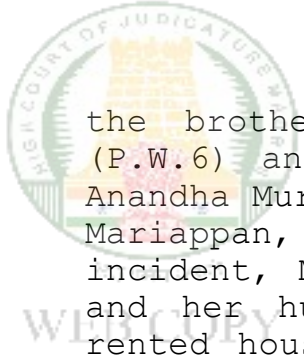
6. Heard Mr.R.Alagumani, learned counsel appearing for the appellant and Mr.R.Anandharaj, learned Additional Public Prosecutor for the State.

7. Mr.R.Alagumani, learned counsel, appearing for the accused submitted that Anandha Murugan (P.W.1) and Mariammal (P.W.2) were not eyewitnesses and they came to the house of Kumar only after the incident had taken place and therefore, no reliance can be placed on their evidence. He also contended that even in the Inquest Report (Ex.P14), there is no reference to Anandha Murugan (P.W.1) and Mariammal (P.W.2). He further contended that there was a wordy quarrel between Anandha Jothi and Kumar and in a heat of passion, Kumar had attacked Anandha Jothi and therefore, the case would fall within the fourth exception of Section 300 I.P.C.

8. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor refuted the contentions of Mr.R.Alagumani, learned counsel appearing for the accused.

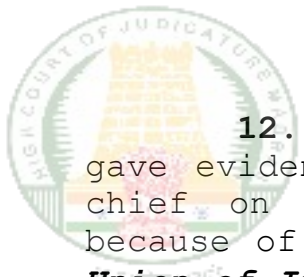
9. This Court gave its anxious consideration to the rival submissions.

10. There are four eyewitnesses in this case, namely, Anandha Murugan (P.W.1), Mariammal (P.W.2), Renuka (P.W.6) and Vijayaraj (P.W.7). Though Guruvammal (P.W.8) and Muthuraj (P.W.9) were also eyewitnesses, they, however, turned hostile. One cannot expect the mother and the brother of the appellant to support the prosecution case. Anandha Murugan (P.W.1) and Mariammal (P.W.2) are



the brother and mother respectively of Anandha Jothi. Renuka (P.W.6) and Vijayaraj (P.W.7) are the children of Anandha Jothi. Anandha Murugan (P.W.1) has stated that Anandha Jothi was married to Mariappan, elder brother of Kumar; three months prior to the incident, Mariappan died due to illness; until then, Anandha Jothi and her husband Mariappan were living with their children in a rented house; after the death of Mariappan, Anandha Jothi and her children moved into the family house of Mariappan, where, Guruvammal (P.W.8), Muthuraj (P.W.9) and Kumar (appellant) were residing; there were frequent quarrels between Kumar and Anandha Jothi, since Kumar did not want to accommodate Anandha Jothi and her children; mediation talks were held by the village elders, namely, Muniandi (P.W.3), Subramani (P.W.4) and Ayyanar (P.W.5), pursuant to which, Guruvammal (P.W.8), Mariappan's mother agreed to accommodate Anandha Jothi and her children in her house; however, Kumar was insisting that Anandha Jothi should vacate the house; on 26.01.2007, at 10.30 a.m., Kumar threatened Anandha Jothi and asked her to move out of the house and so, Anandha Jothi came to her natal home situated in the next street; after the children returned from the school, in the night, he (P.W.1) and his mother Mariammal (P.W.2) took Anandha Jothi and her children to Guruvammal's (P.W.8's) house in order to leave them there; after reaching Guruvammal's (P.W.8's) house, they were all discussing in the hall and at that time, Kumar took out a billhook (M.O.1) that was available on the almirah and hacked Anandha Jothi on her back; when Anandha Jothi fell down, Kumar hacked again on her leg; he (P.W.1) and his mother Mariammal (P.W.2) raised alarm and asked Kumar to stop the attack; as people started coming on hearing the noise, Kumar ran away from the place of occurrence; he (P.W.1) and his mother Mariammal (P.W.2) took Anandha Jothi to the Government Hospital, Thoothukudi, where she was given treatment, but, within fifteen minutes thereafter, she died; subsequently, he (P.W.1) gave a statement (Ex.P1) to the Police, who came to the hospital; he (P.W.1) identified the billhook (M.O.1) as the weapon, which was used by Kumar to hack Anandha Jothi. The evidence of Anandha Murugan (P.W.1) has been substantially corroborated by Mariammal (P.W.2) also. We have no reason to disbelieve the evidence of Anandha Murugan (P.W.1) and Mariammal (P.W.2) nor is there good reason to hold that Anandha Murugan (P.W.1) and Mariammal (P.W.2) were not present in the place of occurrence at the relevant point of time.

11. It is on record that Anandha Murugan (P.W.1) and Mariammal (P.W.2) were living in the street next to the street where the house of Guruvammal (P.W.8) was located. However, Mr.R.Alagumani, learned counsel, took this Court through the evidence of Vijayaraj (P.W.7), son of Anandha Jothi, who has stated in his cross-examination that he was sleeping in the house when the incident was taking place and on hearing the noise, he woke up and awoke his younger brother and elder sister Renuka (P.W.6) and all of them went to their grandmother Mariammal's (P.W.2's) house and brought her to the occurrence place.



12. Vijayaraj (P.W.7) was studying third standard, when he gave evidence before the Trial Court. He (P.W.7) was examined in chief on 25.02.2008 and he was not immediately cross-examined because of boycott of Court by lawyers. In **Ex-Cap. Harish Uppal vs Union of India and another, 2003 (2) SCC 45**, the Constitution Bench of the Supreme Court has held that boycott of Courts by lawyers is illegal and unconstitutional and therefore, it is not necessary for the Trial Courts to recall the witnesses for the failure of the defence to cross-examine the witnesses on the ground of boycott of Courts by lawyers. In **Vinod Kumar vs. State of Punjab**, reported in **2015 (3) SCC 220**, the Supreme Court has categorically held that cross-examination of the witnesses should be done on the day they are examined in chief.

13. Be that as it may, in this case, Vijayaraj (P.W.7) was recalled and cross-examined on 10.06.2008. In the examination in chief, Vijayaraj (P.W.7) has clearly stated that his uncle Anandha Murugan (P.W.1) and grandmother Mariammal (P.W.2) were also present when the incident took place and only in the cross-examination that was done on 10.06.2008, he (P.W.7) had stated otherwise. The Public Prosecutor, who cross-examined Vijayaraj (P.W.7), should have declared him (P.W.7) as a hostile witness, but strangely, that was not done. However, we have the evidence of Renuka (P.W.6), daughter of Anandha Jothi, who has stated that after the death of her father Mariappan, her mother Anandha Jothi vacated the rented house and shifted to her (P.W.6) paternal grandmother, Guruvammal (P.W.8)'s house, where her two junior paternal uncles, namely, Muthuraj (P.W.9) and Kumar were living. She (P.W.6) has further stated that her junior paternal uncle Kumar was refusing to accommodate her mother Anandha Jothi in the joint family house and was frequently quarrelling with her; on the date of incident, he quarrelled with her mother Anandha Jothi in the morning and so, she went to the house of her mother Mariammal (P.W.2); on the same day at 10.15 p.m., Anandha Murugan (P.W.1) and Mariammal (P.W.2) brought Anandha Jothi and the children to the house of Guruvammal (P.W.8) and all of them were discussing in the hall; at that time, Kumar took out a billhook (M.O.1) and hacked her mother to death. Even Renuka (P.W.6) was not cross-examined on 25.02.2008, the date on which she was examined in chief, but, she (P.W.6) was recalled and cross-examined on 01.04.2008. She (P.W.6) withstood the cross-examination and the defence was not able to make any dent in her evidence, except suggesting to her that she is falsely implicating Kumar. It may be relevant to state here that Renuka (P.W.6) was ten years old and was studying in the fifth standard, when she gave evidence. Her (P.W.6's) evidence indubitably inspires the confidence of this Court and it adequately corroborates the evidence of Anandha Murugan (P.W.1) and Mariammal (P.W.2). It is apparent that Kumar was not willing to accommodate his widowed sister-in-law Anandha Jothi and her children in the joint family house nor was he willing to give them any share in the joint family property.



14. Mr.R.Alagumani, learned counsel, submitted that even according to the evidence of Renuka (P.W.6), there were heated discussions in the hall for about fifteen minutes. He built up his case by contending that Kumar was not readily armed with any weapon and that in a heat of anger, he took the billhook (M.O.1), which was available on the almirah and attacked Anandha Jothi. Hence, the learned counsel contended that Kumar will be entitled to the fourth exception of Section 300 I.P.C. We are unable to persuade ourselves to agree with this submission, because, Kumar has been constantly creating trouble to Anandha Jothi as could be seen from the evidence of Renuka (P.W.6) and Vijayaraj (P.W.7), children of Anandha Jothi. Anandha Jothi was an unarmed and defenceless lady, who was only seeking either accommodation in the joint family house of her deceased husband or for a share in the joint family property, which was being consistently denied by Kumar.

15. Mr.R.Alagumani, learned counsel, contended that Kumar and his younger brother Muthuraj (P.W.9) were bachelors and that is why they did not want a young widow to be accommodated in their house as that would spark rumours. Had that been the intention of Kumar, then he could have as well moved out of the house and taken a place elsewhere than using violence on a hapless lady. The injuries noted in the Accident Register (Ex.P2) and Postmortem Certificate (Ex.P20) show the intensity with which Kumar had belaboured Anandha Jothi. The evidence on record militates against the contention of the learned counsel that the attack was in a fit of rage. We find no good reasons to interfere with the judgment of the Trial Court.

16. In the result, this Criminal Appeal is devoid of merits and it is dismissed.

Sd/-

Assistant Registrar (W)

/ True Copy /

Sub Assistant Registrar (CS)

Krk

To:

1.The Principal Sessions Judge,
Tuticorin District.

2.The Judicial Magistrate No.I, Tuticorin.

3.-Do-Thro-The Chief Judicial Magistrate,
Tuticorin.

4.The Superintendent, Central Prison,
Palayamkottai.



5. The Inspector of Police,
Puthiamputhur Police Station,
Tuticorin District.
6. The District Collector,
Tuticorin District.
7. The Director General of Police,
Mylapore, Chennai-4.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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Madurai Bench of Madras High Court,
Madurai **(2 Copies)**

JUDGMENT IN
Cr1.A. (MD) No.547 of 2018
24.04.2019

ES/14.05.2019/8P/11C