



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE **T.RAJA**

and

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.A.(MD)No.226 of 2018

R.Uthandi

... Appellant /Sole Accused

versus

The State of Tamil Nadu,
The Deputy Superintendent of Police,
Thiruthuraipundi Sub Divison,
Tanjavur District.
(Cr.No.162/2009)

... Respondent

Appeal filed under Section 374 (2) of Criminal Procedure Code, against the Judgment dated 06.10.2010 made in Special Sessions Case No.1 of 2010 on the file of the I Additional Sessions Judge (Protection of Civil Rights), Thanjavur.

For Appellant : Mrs.M.Krishnaveni

For Respondent:: Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **T.RAJA, J.**]

The appellant is the sole accused in Special S.C.No.1 of 2010 on the file of the First Additional Sessions Judge (Protection of Civil Rights), Thanjavur and he stood charged and tried and convicted for the commission of offences under Sections 341, 302 IPC and 302 IPC r/w. Section 3(2)(v) of SC/ST Act 1989 and also for the offences under Section 302 IPC r/w. 3(2)(v) of SC/ST Act. The trial Court, vide judgment dated 06.10.2010, has found him guilty for the commission of the above said offences and for the offence under Section 341 IPC, sentenced to undergo simple imprisonment for one month and for the offence under Section 302 IPC, to undergo life imprisonment and to pay a fine of Rs.2,500/-, in default to undergo rigorous imprisonment for one year and for the offence under Section 302 IPC r/w. Section 3(2)(v) of SC/ST Act 1989, to undergo life imprisonment and to pay a fine of Rs.2,500/- in default, to undergo rigorous imprisonment for one year, which were ordered to run concurrently. The appellant/sole accused, aggrieved by the impugned judgment of conviction and sentence passed by the Trial Court, came forward with this Criminal Appeal.

2. The case of the prosecution are as follows :-

(i) P.W.1 Saminathan is the brother of the deceased Uthirapathy. On 26.07.2009 at about 8.00 p.m., when P.W.1 and P.W.3-Ganesan and their family members were returning after attending the temple festival the accused waylaid the deceased and questioned him as to why he dashed and pushed his son down on

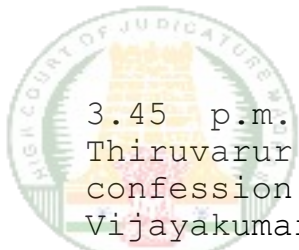
25.07.2009 and subsequently, a quarrel arose between them. The accused abused the deceased in filthy language by using his caste name and drew a knife from his waist and stabbed on the right thigh portion of the deceased on the backside and ran away from the occurrence place. The deceased fell down. P.W.1 and others brought him to G.H. Mannargudi in ambulance, in which, P.W.6 Kamaraj was a driver. On the advice of doctors, they took the deceased to TMCH, Thanjavur and admitted him at about 11.00 p.m. and on the next day morning at about 5.00 a.m., he died in the hospital. Thereafter, P.W.1 went to Kottur Police Station and gave Ex.P1 complaint.

(ii) P.W.2 - Valliammal is the wife of the deceased. On the date of occurrence, when she returned back to the house after attending temple festival, she heard about the occurrence and immediately, she went to the occurrence place and saw the deceased lying in a pool of blood.

(iii) P.W.4-Murugaiyan and P.W.5-Govindaraj are the residents of same village. On the previous date of occurrence, at about 4 p.m., when they were going on Muthupettai main road, they saw that the wife of the accused was quarrelling with the deceased in front of her house for falling his child. On the next day P.W.4 heard about the occurrence. P.W.14-Veeramani is the Lineman. There was no complaint of power cut in the occurrence place on the date of occurrence.

(iv) P.W.17-Pitchaiya received the complaint from P.W.1 on 27.07.2009 at about 10.00 a.m. and registered a case in Crime No.162/09 for the offences under Section 302 IPC r/w. 3(2)(v) of SC/ST Act. Ex.P13 is the printed form of FIR. He sent the original complaint and FIR to the Court and also sent a copy of the complaint and FIR to DSP through P.W.15-Head Constable, Senthilkumar.

(v) P.W.18-Srinivasan, Deputy Superintendent of Police, took up the case for investigation and visited the occurrence place on 27.07.2009 at 1.00 a.m., in the presence of witnesses, namely, P.W.8-Murugesan, Balasubramanian and prepared Ex.P5- observation mahazar and Ex.P15-rough sketch. He recovered the bloodstained earth-MO2 and ordinary earth in the presence of witnesses under cover of mahazar Ex.P6. Thereafter, he went to TMCH and conducted inquest over the body of the deceased in the presence of Panchayatdars and witnesses and prepared Ex.P16 inquest report. He examined the occurrence witnesses and recorded their statements and sent the body for the purpose of postmortem through the Head Constable P.W.16-Velayutham. Subsequently, he went to the occurrence place and examined and recorded the statement of witnesses. He recovered the underwear-MO3, waist chord-MO4, which were handed over by the Head Constable after postmortem with a special report under cover of seizure mahazar and sent them to Court under Form 95. He sent requisition to Tahsildar to issue Community Certificate for burial of the deceased and accused. On 28.07.2009 at about



3.45 p.m. he arrested the accused near the lower bridge in Thiruvavur bus stop at Mannargudi and recorded his voluntary confession in the presence of witnesses P.W.7 Arulraj and Vijayakumar and on the basis of the said confession, he recovered the bloodstained knife-MO1 under cover of mahazar from the Korai bush near Chitheri Rajavaikkal Mada Street. Thereafter, he sent the accused for the purpose of remand. He sent the MOs. through From 95 to Court and he examined the mahazar witnesses and recorded their statements.

(vi) P.W.9-Dr.Manjula, on 26.07.2019 at about 9.30 p.m. examined the deceased and found a stab injury on his right thigh and gave first aid and issued Ex.P7-A.R.Copy and referred him to TMCH, Thanjavur. P.W.10-Dr.Rajakumar attached to TMCH, Thanjavur on 27.07.2009 at about 10.45 p.m. examined the deceased, at that time, the patient was unconscious. He gave Ex.P8-A.R.Copy. P.W.11-Dr.Jeraid Parisutham conducted postmortem on 27.07.2009 at about 3.35 p.m and found the following injuries:

1. Abrasion of size 0.5 x 0.5 cm. over the occipital region of scalp.
2. Abrasion 1 x ½ cm. in the right infra-orbital region.
3. Abrasions 1 x ½ cm. in the back of right elbow, flexor aspect of right wrist.
4. Blood stained surgical gauze dressing found over the right thigh noted.
5. On removing the bloodstained surgical gauze, a through and through stab injury seen over the right thigh. Transversely placed entry wound of size 3 x 2 cm. with wound margin inverted and clear cut seen in the posterior aspect of middle of right thigh 10cm. above the popliteal fossa. On dissection and exploring of above said stab wound the passage of wound is through and passing through the muscles tendons, fascia injuring all major and minor blood vessels, nerves, scratching the right femur bone with surrounding contusion and exit through the medial aspect of right thigh. The wound margin of exit wound is everted clean cut with size 1 ½ x ½ cm.

(vii) He finally gave opinion under Ex.P9-Postmortem certificate that the deceased would appear to have died of shock and haemorrhage due to stab injury in right thigh. P.W.12-Tmt.Vasuki, Scientific Assistant, examined the viscera and issued Ex.P10-analysis report. P.W.13-Elangovan, Tahsildar issued Ex.P11-Community Certificate to the effect that the deceased belongs to scheduled case and also issued Ex.P12 Community Certificate to the effect that the accused belongs to Hindu Ambalakarar, a backward class.

(viii) On 29.07.2009, P.W.18 examined the police officials and recorded their statements. He obtained opinion from the postmortem doctor by showing M.O.1 knife. On 30.07.2009, he examined the doctors, Tahsildar and other witnesses and recorded their statements. On 06.08.2009 obtained postmortem certificate and

examined the doctors. He sent requisition to Court to send the articles to Laboratory for analysis. On 10.09.2009, after completion of his investigation laid a charge sheet against the accused for the offence under Section 302 IPC r/w.3(2)(v) of SC/ST Act before the learned Judicial Magistrate No.2, Mannargudi, who took it on file in P.R.C.No.30 of 2009.

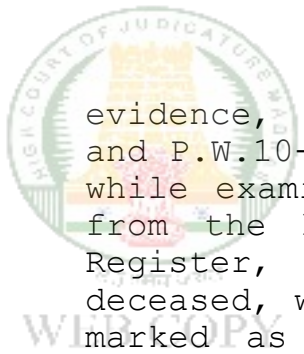
(ix) Pursuant thereto, the Committal Court issued summons to the accused and on his appearance, furnished him copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Special Court, had committed the same to the I Additional Sessions Court (Protection of Civil Rights), Thanjavur, which took it on file in Special S.C.No.1 of 2010. Thereupon, the respondent/accused was issued with summons and on his appearance, charges under Sections 341, 302 and 302 IPC r/w. Section 3(2)(v) of SC/ST Act 1989 have been framed.

(x) The prosecution, in order to substantiate its case, examined P.Ws.1 to 18, marked Exs.P1 to P16 and also marked M.Os.1 to 4. The appellant/accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances made out against him and he denied it as false. The appellant /accused did not examine any witness or marked any document.

3. The trial Court, on a consideration of the oral and documentary evidence, has found the accused guilty for the offences under Sections 341 and 302 and also for the offence under Section 302 IPC r/w.3(2)(v) of SC/ST Act and imposed sentences as stated above. Against the conviction and sentence passed against the accused, the present Criminal Appeal has been preferred.

4. Mrs.M.Krishnaveni, learned counsel appearing for the accused, finding fault with the infirmities found in the way in which the prosecution has projected the case against the appellant/accused, contended that there were contradictions between the evidences of P.W.1-Saminathan and P.W.2-Valliammai. The learned counsel further submitted that P.W.1-Saminathan, brother of the deceased has deposed clearly before the trial Court that while he was going just 30 feet to 40 feet away from the deceased, who was going in front of him, he was assaulted by the accused and fell down in a pool of blood, but, on the other hand, P.W.2, the wife of the deceased, in her evidence, deposed that when P.W.1, P.W.2, P.W.3 and P.W.4 were returning back to their houses after attending the temple festival, she heard about the occurrence that her husband was attacked and stabbed and after hearing the same, they immediately went to see the deceased, who was lying in a pool of blood. It clearly shows that there was a contradiction between the evidence of P.W.1 and P.W.2 and they are not corroborated with each other.

5. The learned counsel for the appellant/accused further submitted as another major contradiction between the medical



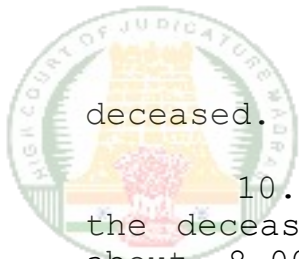
evidence, stating that when two doctors, namely, P.W.9-Dr.Manjula and P.W.10-Dr.Rajkumar, who examined the deceased, also deposed that while examining the deceased, there was smell of alcohol emanating from the body of the deceased and in Ex.P7 and Ex.P8-Accident Register, the smell of alcohol, which was emanating from the deceased, was also indicated, whereas, the Forensic Report, that was marked as Ex.P10, clearly shows that there is no existence of alcohol in the body of the deceased. Since there are contradictions between Ex.P7, Ex.P8 and Ex.P19, the same cannot be relied.

6. Adding further, the learned counsel for the appellant/accused proceeded to indicate yet another contradiction that when Ex.P7 shows that the deceased was brought to the hospital by one Sahadevan (uncle), the prosecution miserably failed to examine the said Sahadevan and further, Ex.P7 also shows that one Banushanker, son of the deceased, signed the Accident Register for taking his father from the hospital for further treatment in Tanjavur, but, the Prosecution has also not examined the said Banushanker. Furthermore, there is no explanation on the side of the prosecution as to why they failed to examine Sahadevan and Banushanker. Therefore, the prosecution has failed to prove their case beyond reasonable doubt.

7. Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent/State would submit that the motive for the occurrence has been proved through the evidence of P.Ws.4 and 5 and the occurrence has been proved through the evidence of eyewitnesses P.Ws.1 and 3. The evidence of P.Ws.9 and 10 are corroborated with the evidence of P.Ws.1 and 3 regarding the injuries sustained by the deceased. The arrest of the accused and recovery of weapon have been proved through P.W.7. Hence, the trial Court on proper appreciation of oral and documentary evidence rightly reached the conclusion to record the conviction and sentence and in the absence of any infirmities in the judgment of the trial Court, in exercise of its appellate jurisdiction, this Court may not interfere with the impugned judgment and prays for dismissal of this appeal.

8.This Court paid its anxious consideration to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record including the impugned Judgment as well as the original records.

9. On a reading of the complaint-Ex.P1 given by P.W.1, it is seen that on 26.07.2009, at 8.00 p.m., when P.W.1 and the deceased, who is the brother of P.W.1, were returning to their home after attending the temple festival, at that time, the deceased was going before P.W.1, at that time, the deceased waylaid the deceased and questioned about the fell down on his son, for which, the deceased answered that he falsely fell down on his son. Thereafter, the accused drew a knife and stabbed on the right thigh portion of the



deceased.

10. Further, in the evidence of P.W.1-Saminathan, brother of the deceased, he also deposed that on the date of occurrence, at about 8.00 p.m. when they were returning to their home after attending the temple, the deceased was going just 30 feet to 40 feet away from P.W.1, at that time, the accused came there and assaulted the deceased and drew a knife from his hip and stabbed the deceased.

11. But, on the contrary, P.W.2, the wife of the deceased, in her evidence, deposed that when P.W.1, P.W.2, P.W.3 and P.W.4 were returning back to their house after attending the temple festival, she heard about the occurrence that her husband was attacked by the accused and stabbed and after hearing the same, they immediately went to the scene of occurrence, where, the deceased was lying in a pool of blood.

12. From the evidence of P.W.1 and P.W.2, it is clear that there was a contradiction between the evidence of P.W.1-brother of the deceased and P.W.2-wife of the deceased.

13. Further, on a reading of the evidence given by P.W.9 and P.W.10, it is seen that P.W.9 and P.W.10, in their evidence, deposed that when they examined the deceased, there was smell of alcohol. Moreover, in the Accident Register, namely, Exs.P7 and P8 given by P.W.9 and P.W.10 respectively, it is also opined by Doctors that there was smell of alcohol. But, on the contrary, in the report given by the Forensic Department, it is seen that alcohol was not detected. It shows that there was a contradiction between the evidence of accident registers and the report of the Forensic Department.

14. Furthermore, as per Ex.P7, the deceased was brought to the hospital by one Sahadevan and thereafter, one Banushanker, son of the deceased, took the deceased from the Mannarkudi hospital to TMCH, Thanjavur. Both Sahadevan and Banushanker have not been examined by the prosecution.

15. Apart from this, P.W.18, the Investigating Officer, has also clearly spoken before the trial Court that when the deceased was attacked by the accused by mentioning his caste, but, he has not mentioned anywhere about the caste to which the deceased belonged.

16. Therefore, the infirmities pointed out as above had shaken the foundation laid by the prosecution and in the considered opinion of this Court, the prosecution has failed to prove the guilty on the part of the appellant/accused beyond reasonable doubt and hence, the accused is entitled to be acquitted.

17. The learned Additional Public Prosecutor submitted that the deceased sustained a single stab injury that led to the cause of death of

the deceased. However, there was no explanation given by the learned Additional Public Prosecutor with regard to the contradictions as indicated by the learned counsel appearing for the appellant. Therefore, we are of the view that the prosecution has also miserably failed to prove the case against the appellant beyond all reasonable doubts and the trial Court also, by believing the case of the prosecution, found the accused guilty and sentenced to life imprisonment. Hence, the Judgment dated 06.10.2010 made in Special Sessions Case No.1 of 2010 on the file of the I Additional Sessions Judge (Protection of Civil Rights), Thanjavur, is liable to be set aside.

18. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant/accused by the learned First Additional Sessions Judge (Protection of Civil Rights), Thanjavur, are set aside and he is acquitted of the charges framed against him. It is reported that the accused is in jail in connection with this case for the past 10 years. Since the conviction and sentence imposed on the appellant/accused by the learned First Additional Sessions Judge (Protection of Civil Rights), Thanjavur, are set aside, the appellant/accused is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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To

1. The learned First Additional Sessions Judge
(Protection of Civil Rights), Thanjavur.
2. The Judicial Magistrate No.II, Mannargudi, Thanjavur District.
3. The Deputy Superintendent of Police,
Thiruthuraipundi Sub Divison,Thanjavur District.
4. The Superintendent, Central Prison, Trichy.
- 5 The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.
- 6.The Section Officer, CrI.Section,(2 copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.KRISHNAVENI, Advocate (SR-104485[F]

CrI.A. (MD) No.226 of 2018

10.12.2019

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