



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2021

CORAM

**THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

CRL.A (MD)No.520 of 2018

Gnanavelpandian .. Appellant/Sole Accused

-vs-

State rep. by
The Inspector of Police,
Avaniyapuram Police Station,
Crime No.2502 of 2016,
Madurai.

.. Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment of the learned I Additional District and Sessions Judge, Madurai, in S.C.No.291 of 2017, dated 31.07.2018.

For Appellant	::	Mr.N.Ananthapadmanaban for APN Law Associates
For Respondent	::	Mr.S.Ravi Standing Counsel for State

JUDGMENT

(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)

The appellant is the sole accused in S.C.No.291 of 2017, on the file of the learned I Additional District and Sessions Judge, Madurai, stood charged and convicted for the offences under Sections 294(b), 302 and 506(ii) I.P.C. and sentenced to undergo 3 months Rigorous Imprisonment and to pay a fine of Rs.200/-, in default to undergo one week Rigorous Imprisonment for the offence under Section 294(b) I.P.C.; further sentenced to undergo Life Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo one year Rigorous Imprisonment for the offence under Section 302 I.P.C. and also sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.200/-, in default to undergo one month Rigorous Imprisonment for the offence under Section 506(ii) I.P.C. Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.



2.The case of the prosecution in brief as follows:

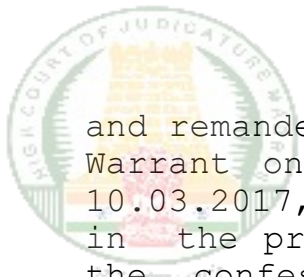
The deceased Paneerselvam is an auto driver, husband of P.W.1 and son-in-law of P.W.2. On 24.12.2016, at about 8.30 p.m., while the deceased was returning back to his house in his auto, the accused came in a two-wheeler in the opposite direction and the auto slightly dashed against the two-wheeler, due to the same, the accused abused the deceased. While the deceased was trying to pacify him, the same was questioned by the deceased, the accused took a knife and stabbed him in his chest, left hand and left stomach. The occurrence has taken place in front of the house of the deceased, where P.Ws.1 and 2 were standing. Immediately, they rushed there and begged the accused not to attack the deceased. The accused criminally intimidated them and ran away from the scene of occurrence. Immediately, they called the ambulance and took the accused to the Government Rajaji Medical Hospital, Madurai. P.W.10, Duty Doctor in the Hospital received the body of the deceased and declared him brought dead, thereafter, P.W.1 went to the respondent Police and filed a complaint (Ex.P.1).

3.At about 12.30 a.m., P.W.16, Sub-Inspector of Police, working in the respondent police station received the complaint and registered the F.I.R. (Ex.P.12) in Crime No.2502/2016 for the offence under Sections 294(b), 302 and 506(ii) I.P.C. and immediately sent the same to the Judicial Magistrate through P.W.14, Head Constable and the copies of the same to higher officials, and sent a copy to P.W.17, Inspector of Police, for investigation.

4.P.W.17, Inspector of Police, after receipt of the F.I.R., commenced the investigation and went to the scene of occurrence at about 1.30 a.m. on 25.12.2016 and prepared Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.13) and also took photographs of the scene of occurrence. He recovered blood-stained concrete slap and ordinary concrete slap (M.O.5 and M.O.6) in the presence of the witnesses. At about 7.00 a.m., he conducted inquest on the dead body in the Government Hospital in the presence of Panchayatars and the witnesses and prepared Inquest Report (Ex.14). Then, he sent the body for postmortem through P.W.15 constable.

5.P.W.13, Assistant Professor, in the Government Medical College Hospital, Madurai, conducted postmortem autopsy on the dead body and issued postmortem certificate Ex.P.11 and he was of the opinion that the deceased appeared to have died of shock and haemorrhage due to injury Nos.1 and 2 and the corresponding internal injuries.

6.P.W.17, continued the investigation and recovered the blood-stained track suit, banian, trouser of the deceased and sent all the material objects to the concerned Magistrate Court. Since the accused has already been arrested in connection with two other cases



and remanded to Judicial custody, he arrested the accused under P.T. Warrant on 06.03.2017. He took the accused to Police Custody on 10.03.2017, and the accused voluntarily gave a confession statement in the presence of witnesses and based on the admitted portion of the confession statement, he recovered a two-wheeler bearing registration No.TN 64 L 2923 and also blood-stained knife, thereafter, he sent the accused to judicial custody. He recorded the statements of witnesses including the postmortem doctor and after completion of investigation, he has filed a final report on 28.04.2017.

7. Based on the above materials, the trial Court framed the charges as mentioned above. However, the accused denied the charges. In order to prove the case, the prosecution examined as many as 17 witnesses and marked 19 documents and 7 material objects.

8. Out of the witnesses examined, P.W.1 is the wife of deceased. According to her, on 24.12.2016, at about 8.30 p.m., when P.Ws.1 and 2 were standing in front of their house, the deceased came in his auto, and near their house, the accused came in a two-wheeler in the opposite direction and the auto slightly dashed against the two-wheeler, and hence, the accused abused the deceased. When the deceased was trying to pacify him, the accused took out a knife and stabbed the deceased in his chest and stomach. P.Ws.1 and 2 rushed there and begged him not to attack the deceased, he has criminally intimidated them and ran away. Then they took the deceased to Hospital, where it was declared that he was brought dead.

9. P.W.2 is the father-in-law of the deceased. He corroborated the evidence of P.W.1. He went to Police Station along with P.W.1 to file the complaint (Ex.P.1) and he has also identified M.Os.1 to 4. P.W.3, mother of P.W.1, is a hearsay witness. P.W.4 is witness to the Observation Mahazar and Rough Sketch and recovery of M.Os.5 and 6. P.W.5 is the witness to the confession of the accused and also recovery of knife (M.O.1) and two-wheeler (M.O.7). P.W.6 is an Assistant working in the Madurai Forensic Laboratory, he received the Material Objects and sent them for chemical analysis. P.Ws.7 to 9 are residents of Padma Theatre Colony, where the deceased was residing and they have turned hostile. P.W.10 is the Doctor, working in Madurai Government Rajaji Hospital, who received the body of the deceased and declared brought dead. P.W.11 is the Junior Engineer in Tamil Nadu Electricity Board and according to him, at the time of occurrence, there was no power cut in the area. P.W.12 is the Assistant Manager in a private finance institution, in which, M.O.7, two-wheeler, driven by the accused was hypothecated in the name of one Jahir Usain.

10. P.W.13, Assistant Surgeon, Department of Forensic Medicine, Madurai Medical College, Madurai, conducted postmortem on the dead body and issued postmortem certificate (Ex.P.11), which reads as



follows:

"Appearances found at the postmortem:

Moderately nourished body of a male aged about 30 years. Finger and toe nails are pale.

The following ante mortem injuries are noted on the body:

1.A oblique stab injury measuring 6cm x 2cm x cavity deep noted on back of upper part of the abdomen, 12cm below the inferior angle of right scapula.

On dissection: The wound passes forwards, inwards, downwards and piercing through the 7th inter costal space and piercing the underlying muscles, vessels, nerves and measuring 5cm x 1cm x through and through piercing the underlying lower part of liver near gall bladder measuring 4cm x 1cm x 1cm and end as a point. Peritoneal cavity contains 500ml of fluid blood with clots.

2. An oblique stab injury measuring 3cm x 2cm x cavity deep noted on front of right lower chest, 12cm below the right nipple.

On dissection: The wound passes back wards, inwards, downwards piercing the underlying 7th inter coastal space and entering in to right pleural cavity. Right pleural cavity contains 150ml of fluid blood with clots. Left pleural cavity empty.

3. An oblique cut injury measuring 6cm x 0.5cm x muscle deep noted on inner aspect of left upper part of forearm.

4. An oblique cut injury measuring 1cm x 0.5cm x muscle deep noted on left side abdomen 8cm away from umbilicus.

5. Abrasion measuring 3cm x 2cm noted on left elbow.

6. Abrasion measuring 2cm x 2cm noted on right elbow.

Note: 1.All stab injuries are having both end pointed.

2.All cut injuries are having regular margins.

On dissection of Scalp, Skull & Dura: Subscalpal contusion measuring 5cm x 4cm noted on left occipital region.

OTHER FINDINGS: Peritoneal cavity - described; Pleural cavities - described; Pericardium - contains 15ml of straw colour fluid; Heart - Both chamber empty; Lungs - cut section pale; Larynx & trachea - normal; Hyoid bone - intact; Stomach contains 300grams of partially digested food particles, with nil specific smell, mucosa- pale liver Spleen & Kidneys - cut section pale, Small intestine - contains 20ml of bile stained fluid with nil specific smell, mucosa - pale; Bladder - empty; Brain surface vessels & cut section pale.

OPINION;

"THE DECEASED WOULD APPEAR TO HAVE DIED OF SHOCK AND



HAEMORRHAGE DUE TO INJURY NO.1, 2 AND ITS CORRESPONDING INTERNAL INJURIES, 12 TO 16 HOURS PRIOR TO AUTOPSY."

11.P.W.14 is the Head Constable, who handed over the F.I.R. to the Judicial Magistrate. P.W.15 is the Head Constable, who identified the body for postmortem and recovered the dresses. P.W.16 is the Sub-Inspector of Police, who registered the F.I.R. based on the complaint of P.W.1. P.W.17 is the Inspector of Police, who conducted the investigation and recorded the statements of witnesses and recovered the material objects and after completion of investigation, he filed the final report under Sections 294(b), 302 and 502 (ii) I.P.C.

12.The above incriminating materials were put to the accused under Section 313 Cr.P.C.. The accused denied the same as false and on his side he has neither examined any witness nor marked any document.

13.Having considered the above materials, the trial Court convicted the appellant/accused and sentenced him as stated above. Challenging the aforesaid conviction and sentence, the appellant is before this Court with this Criminal Appeal.

14.Mr.N.Ananthapadmanaban, learned counsel appearing for the appellant submitted that P.Ws.1 and 2 are the only eyewitnesses to the occurrence, who are none other than the wife and father-in-law of the deceased and the other eye-witnesses, namely, P.Ws.7 to 9 have turned hostile. Even in the evidence of P.Ws.1 and 2, there are lot of contradictions. Hence, the evidence of P.Ws.1 and 2 are untrustworthy and unreliable, but the trial Court believing those eye-witnesses convicted the appellants.

15.The learned counsel further submitted that there is a delay of four hours in registering the F.I.R. Even though, the occurrence has taken place at 8.30 p.m., the F.I.R. was registered only at 12.30 a.m., with a delay of four hours. The delay is not properly explained. That apart, there are lot of contradictions between the witnesses with regard to seeing the occurrence and recovering the motor cycle. The prosecution has failed to establish that the motor cycle seized belongs to the accused. He further submitted that there is no independent witness to the occurrence and the occurrence has taken place in a residential area, where number of witnesses were available.

16.Learned counsel for the appellant further submitted that there was a wordy quarrel and out of sudden provocation, losing his control, the accused has caused the injury and he has no intention to cause the death. Hence, the appellant is not liable to be convicted under Section 302 I.P.C. The trial Court without considering the evidence in proper perspective, convicted the



accused. Hence, he prayed for acquittal of the appellant/accused.

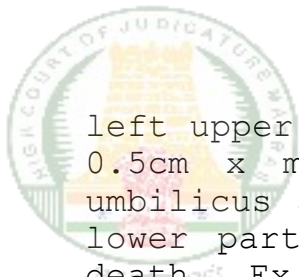
17. Opposing the same, Mr.S.Ravi learned Standing Counsel for the State would submit that the occurrence has taken place in front of the house of the deceased, where P.W.1, wife of the deceased and P.W.2, father-in-law of the deceased were standing and chatting and hence the presence of P.Ws.1 and 2 cannot be doubted. That apart, both P.Ws.1 and 2 having consistently stated about the occurrence and the overtact of the accused; there is no discrepancy in their evidence and there is no reason to disbelieve P.Ws.1 and 2, merely because they are relatives of the deceased. Their evidence need not be disbelieved, when their evidence inspired the Court as trustworthy.

18. Learned Standing Counsel for the State further submitted that the accused attacked the deceased with an intention to cause his death for a minor accident. According to P.Ws.1 and 2, the deceased's auto slightly dashed against the two-wheeler of the accused, immediately, he abused the deceased and he has not engaged in wordy quarrel with the deceased, but attacked the deceased with a weapon he carried and caused instantaneous death. The medical evidence also corroborates the evidence of P.Ws.1 and 2. From this, it is clear that the attack on the deceased is with an intention to cause his death and the trial Court considering all those materials rightly convicted the accused under Sections 294(b), 302 and 506(ii) I.P.C. Hence, he prayed for the dismissal of the Criminal Appeal.

19. We have considered the rival submissions and also perused the records carefully.

20. The deceased is an auto-driver. P.Ws.1 and 2 are the eyewitnesses to the occurrence. They are wife and father-in-law of the deceased. The occurrence has taken place in front of the house of the deceased. P.Ws.1 and 2 were standing out in front of the house and chatting. According to them, when the deceased's auto came near their house, the deceased came in the opposite direction and had slightly dashed against the two-wheeler of the accused. The accused abused the deceased and the deceased tried to pacify the accused and he has not engaged in quarrel with the deceased. But the accused stabbed him on his two vital parts, namely, chest and stomach. When P.Ws.1 and 2 begged him not to attack the deceased, he criminally intimidated them and attacked the deceased in his back and all the injuries are sustained on the vital parts.

21. P.W.13, postmortem doctor, who conducted autopsy has found an oblique stab injury measuring 6cm x 2cm x cavity deep on back of upper part of the abdomen, 12cm below the inferior angle of right scapula; an oblique stab injury measuring 3cm x 2cm x cavity deep on front of right lower chest, 12cm below the right nipple; an oblique cut injury measuring 6cm x 0.5cm x muscle deep on inner aspect of



left upper part of forearm and an oblique cut injury measuring 1cm x 0.5cm x muscle deep noted on left side abdomen 8cm away from umbilicus and also consequential internal injuries piercing through lower part of liver near gall bladder, which caused instantaneous death. Ex.P.11, Postmortem Certificate also clearly states the injuries sustained by the deceased. P.W.13, Doctor, also opined that the deceased appear to have died of shock and haemorrhage due to injury Nos.1 and 2 and corresponding internal injuries. The medical evidence has corroborated the evidence of P.Ws.1 and 2.

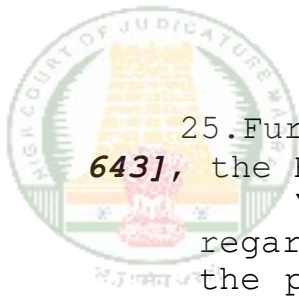
22. Merely because the eyewitnesses are closely related to the deceased, it does not by itself lose its evidentiary value, unless some other factor is brought on record to the discredit of the witnesses. But nothing was brought on record to discredit the evidence of P.Ws.1 and 2 and we are of the considered view that both the eyewitnesses are consistent and inspired trustworthiness and confidence. Hence, we find nothing to disbelieve their evidence. The trial Court rightly believed their evidence and convicted the appellant.

23. Normally any eyewitnesses, who are all close relatives of the deceased, will not try to implicate an innocent person and will not leave the real culprit to escape. However, in some cases, there may be false implications due to anger and frustration. In the instant case the appellant is the sole accused, and there is no reason to implicate the appellant falsely.

24. The Hon'ble Apex Court in ***Dalip Singh & Ors. v. State of Punjab [AIR 1953 SC 364]*** held as follows:

"25. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in ***Rameshwar vs. The State of Rajasthan [1952 AIR 54]***. We find, however, that it unfortunately still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel."

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person....."



25.Further, in **Sucha Singh v. State of Punjab [(2003) 7 SCC 643]**, the Hon'ble Supreme Court held as follows:

"13.We shall first deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect the credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible."

26.Recently, the Hon'ble Supreme Court in **Karulal v. State of M.P. [2020(11) SCALE 677]** held as follows:

"19. It may further be noted that Babu Lal (PW11) is an unrelated witness. His testimony substantially supports the evidence of PW3 and PW12 in all material particulars. In any case, being related to the deceased does not necessarily mean that they will falsely implicate innocent persons. In this context, it was appropriately observed by Justice H.R. Khanna in **State of Uttar Pradesh vs. Samman Dass [(1972) 3 SCC 201]**

"23.....It is well known that the close relatives of a murdered person are most reluctant to spare the real assailant and falsely involve another person in place of the assailant....."

27.The next contention of the appellant is that there was a wordy quarrel between the parties in which due to sudden provocation the occurrence has taken place. The said contention cannot be countenanced for the simple reason that, from the evidence of P.Ws.1 and 2, it could be seen that, it is a minor accident, in which, the auto driven by the deceased has slightly dashed against the two-wheeler driven by the accused, immediately the accused started abusing the deceased; however, the deceased was trying to pacify the accused, but the accused suddenly taken out a knife and attacked him in the vital parts with an intention to cause his death, and hence, the act of the accused clearly attracts the first limb of Section 300 I.P.C. and he is liable to be punished only under Section 302 I.P.C. Hence, that contention is also rejected.

28.In the result, the Criminal Appeal is dismissed and the conviction and sentence imposed on the appellant/Accused, by the learned I Additional District and Sessions Judge, Madurai, in S.C.No.291 of 2017, by the judgment dated 31.07.2018, under Sections 294(b), 302 and 506(ii) I.P.C. are confirmed. The sentences imposed on the appellant shall run concurrently and the sentences already undergone shall be given set off under Section 428 Cr.P.C. After the period of Appeal, M.O.7 shall be returned to the owner on proper



identification and M.Os.1 to 6 shall be destroyed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

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Sub Assistant Registrar(CS)

sj

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The I Additional District and Sessions Judge,
Madurai.
- 2.The Judicial Magistrate No.6,
Madurai.
- 3.The Inspector of Police,
Avaniyapuram Police Station,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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