



Crl.A.No.735 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :05.07.2022

Pronounced on :14.07.2022

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.735 of 2012

1.Allapitchai @ Jakir Hussain
2.Sekar

.. Appellants

/versus/

State rep.by
Inspector of Police,
Ponneri Police Station,
Thiruvallur District.
(Crime No.517 of 2009)

.. Respondent

Prayer: Criminal Appeal has been filed under Section 374 (ii) of Cr.P.C., against the judgment of the learned IV Additional District and Sessions Judge, at Ponneri, Thiruvallur District in S.C.No.156 of 2011 by judgment dated 25.09.2012 convicting them under Section 304 (ii) of IPC and sentencing them to undergo five years RI and fine amount Rs.2,000/- default six months RI.

For Appellant

:Mr.R.Rajan

For Respondent

:Mr.S.Udayakumar
Govt. Advocate (Crl.Side)



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JUDGMENT

The appellants herein Allapitchai (A1) and Sekar (A2) faced trial for charge under Section 302 of IPC in connection with the homicide death of Pachimuthu on 21.07.2009 at about 21.00 hours.

2.The prosecution to prove the charges marshalled 16 witnesses, marked 12 documents and 5 material objects.

3.On appreciation of evidence, the trial Court held both the accused 1 and 2 are guilty of offence punishable under Section 304 (ii) IPC and sentenced them to undergo five years RI and pay a fine of Rs.2,000/- each, in default 6 months RI.

4.The conviction and sentence is the subject matter of this appeal.

5.The brief facts of the case as spoken by the prosecution witnesses:-

PW-1(Mr.Rajendran) is the brother of the deceased Pachimuthu. He



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knows the accused persons. On 21.07.2009, at about 6.30 p.m., he saw his brother sitting in between Allapichai and Sekar going in the two wheeler driven by Allapitchai. That night, his brother did not return to home. On the next day, he heard his brother body lying in the Ponneri River. He went there and saw his brother dead with injuries on head and stab injuries in his private part. He then went to the police station and gave complaint marked as Ex.P1.

6.PW-2(Mr.Nagalingam) has deposed that on that day at about 08.30 p.m., while he was going to the Bazaar to have tea, near the river bed, he was attending his nature's call. At that time, he saw the accused and the deceased together going towards the river. After some time, he heard scream. Next day, there was a crowd in the river. He saw Pachimuthu lying dead.

7.PW-3(Mr.Thoppai @ Tamilarasu) and PW-4(Mr.Baggiya @ Baggiyaraj @ Prakash) are witnesses known to the accused as well as the deceased. PW-3 had deposed that on that, he saw A1 and A2 were standing



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with a bike on the road proceeding towards NGO Nagar. A1 stopped him and told that he had murdered Pachimuthu (அல்லா பிச்சை என்னிடம் பேச்சு முத்துவை நான் போட்டுத் தள்ளிவிட்டேன் என்றார்) and took away Rs.500/- from his pocket. Similarly, PW-4 had deposed that while he was returning home after his work, he saw the accused persons at 09.00 p.m., standing with a bike on the road proceeding towards NGO Nagar. A1 told him that they had murdered Pachimuthu and asked money and took Rs.150 from him. PW-5 (Mr.Murali) is the witness to the mahazar (Ex.P2) for the recovery of material objects at Ponneri River on 22.07.2009 between 11.15 a.m and 11.30 a.m.

8.P.W-6(Mr.Marimuthu), the Village Administrative Officer of Ponneri Village and PW-10(Ms.Lakshmi) the Ponneri Revenue Divisional Inspector had witnessed the recording of the confession given by the accused narrating the reason for murdering Pachimuthu and the manner in which they committed the murder. Based on their confession statements, the blood strained knife, reaper wood were recovered in the presence of the witness examined as PW-7 and PW-11. The prosecution examined PW-9 as



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the witness to the observation mahazar. PW-8 and PW-12 treated as hostile witnesses.

9.PW-13 is the Doctor, who conducted the autopsy and given the post mortem certificate (Ex.P7) along with her opinion for the cause of death. PW-14(Tmt.Vijaya) is the Assistant Director of Forensic Science Laboratory, who conducted the serology test on the following items and given report that except item No.4, in all other items 1 to 3 and 5 to 8, blood detected.

“Item 1:A30 x 5 x 2 cm broken wooden reaper on which were dark brown stains.

Item 2:Two small broken wooden pieces, on which were dark brown stains.

Item 3:Moist earth mixed with vegetative matter on which were dark brown stains.

Item 4:Earth mixed with vegetative matter.

Item 5:A ragged red silken shirt with black designs on which were dark brown stains.



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Item 6:A lungi with blue, gree, white and black cross stripes on which were dark brown which were dark brown stains.

Item 7:A stainless steel knife with wooden handle and measuring about 27cm in length on which were dark brown stains.

Item 8: A broken wooden piece measuring about 27 cm in length on which were dark brown stains.”

10.PW-15(Mr.Ravi) is the Head Constable took the body of the deceased for post-mortem and received the body and handed over to the relatives. PW-16(Mr.Dhayalan) is the Inspector of Police, who took up the investigation in Crime No.517 of 2009 and filed the final report on completion of the investigation.

11.The trial Court relied upon the evidence of PW-1 and PW-2 who had deposed that they saw Pachimuthu alive along with the accused persons at 06.30 p.m and 08.30 p.m on that date and later, Pachimuthu was found



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dead with injuries in the Ponneri River. Also, relied upon the deposition of PW-3 and PW-4 who had deposed that they saw A1 and A2 around 09.00 p.m, and disclosed that they killed Pachimuthu. The trial Court observing that though the prosecution has proved that A1 and A2 had killed had killed Pachimuthu, it has failed to establish that the murder was due to previous motive or with intention to kill, therefore, the act of the accused fall under Section 304(ii) of IPC.

12.In the appeal, the learned counsel appearing for the appellants submitted that PW-1 had deposed that when his brother did not return home that night, he enquired his mother and then, went to sleep. He searched his brother only on the next day. The said testimony is unbelievable, since it is against the nature of any human conduct. Further, the testimony of PW-3 and PW-4 also not believable since no accused will disclose his act of crime and get money. That apart, PW-3 and PW-4 are friends of the deceased, if anyone inform that his friend is murdered the immediate reaction will be to inform the police, but strangely in this both PW-3 and PW-4 has not reported the matter to the police and they had informed about this incident



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admittedly after one week and only during the course of investigation.

Therefore, they both are unreliable witnesses.

13. Regarding recovery of the weapon allegedly used by the accused, the learned counsel appearing for the appellants contended that there are discrepancies in the description of the knife, its size and colour. The mismatching of the two pieces of the reaper alleged to have been recovered, renders the recovery doubtful. Contradictions between the testimony of the witnesses to recovery and the Investigating Officer put together establishes that the death of Pachimuthu is not in the manner as projected by the prosecution. Therefore, the benefit of doubt to be extended to the accused/appellants.

14. Per contra, the learned Government Advocate (Crl.Side) appearing for the State submitted that the deposition of PW-1 to PW-4 are cojont and clear. These witnesses have deposed about the presence of the deceased in the company of these two accused and their confession about the factum of murdering the deceased. The knife and wooden pieces (M.O.4 and M.O.5)



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which were recovered under mahazar Ex.P4 were detected blood stains as per the analyst report(Ex.P8). These material objects were discovered on the basis of the information given by the accused in their confession statements and the recovery is proved through the independent witnesses PW-7 and PW-11.

15.The case is based on circumstantial evidence. The trial Court applying 'the deceased last seen alive together with the accused' had convicted the accused. The learned counsel appearing for the appellants harp on the improbabilities regarding the presence of PW-2 to PW-4 at the time and place as deposed by them and their conduct after realising the missing of his brother or hearing about the murder of their friend. Also, the non production of all the suspected materials used in the crime and the discrepancies in the materials produced before the Court.

16.The scrutiny of the chief and cross examination of PW-1 and PW-2 who claim to have seen Pachimuthu alive in the company of the accused, this Court does not find any reason to doubt their reliability. The accused



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and the deceased are friends and the witnesses PW-1 to PW-4 are known to the accused as well as the deceased. There is no reason to suspect or attribute motive to implicate the accused falsely.

17.As far as the material objects M.O.4 and M.O.5 though certain discrepancies highlighted and sought for benefit of doubt, it is noted that the recovery of these two objects were based on the confession given by the accused. In these two objects, blood stains deducted. 12 injuries are found on the deceased body as per the post mortem report. There is not even a suggestion to the witnesses that with these weapons, it is not possible to cause these injuries. The analysis of the post mortem report Ex.P7, this Court finds incised wounds on the head, above right side ear, back of the left side ear, multiple small incised wounds on head and above the right side ear. Multiple fractures on the face and fracture of right arm. Tip of the penis burned and loss of right side upper and lower primordial tooth.

18.Thus, from the post mortem report, it is clearly established that it is a gruesome murder of Pachimuthu by causing multiple injuries. The



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prosecution has proved beyond doubt through PW-1 and PW-2 that these appellants were seen taking Pachimuthu in the motor bike at about 06.30 p.m and 07.30 p.m towards the river. Few hours later, these two accused alone were seen by PW-3 and PW-4. The next day the body of Pachimuthu found with multiple injuries in the Ponneri River. Later, M.O.4 and M.O.5 with blood stains were recovered on the confession statement given by the accused.

19.The trial Court though post-mortem indicates, there was multiple injuries on the victim body, has convicted the accused not under Section 302 of IPC but for Section 304(ii) of IPC observing that intention to kill or knowledge that these injuries will likely to cause death not proved.

20.The learned counsel for the appellants submitted that if the Court is not convinced on his arguments, the sentence imposed on the appellants may be reduced taking note of the fact that both the appellants have now settled with the family and living peacefully and no bad antecedents.



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21.It is a case of murder tried for offence under Section 302 of IPC, the trial Court found that it is not a pre-motive murder and due to sudden provocation it has happened. Hence, the appellants were punished for offence under Section 304(ii) of IPC and sentenced them to undergo 5 years Rigorous Imprisonment and fine of Rs.2,000/-, in default 6 months of R.I

22.The occurrence took place in the year 2009. The accused/the appellants are known to each other and the incident has occurred when they all went together to the river side and subsequent there was the fight between them. In the confession statement of one of the accused he has stated that the accused who was the 1st assailant got provoked. Taking note of the fact that the trial Court has rightly convicted them for culpable homicide amount to murder. Taking note of the other facts and the submissions made by the learned counsel for the appellants, the sentence of 5 years of Rigorous Imprisonment is modified as 3 years Rigorous Imprisonment with fine of Rs.2,000/-, in default 6 months of R.I.



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23. Accordingly, **the Criminal Appeal is partly allowed.** The sentence of 5 years of Rigorous Imprisonment imposed on the accused/appellants is modified as 3 years Rigorous Imprisonment with fine of Rs.2,000/-, in default, 6 months of R.I. The trial Court is directed to secure the accused 1 and 2/appellants 1 and 2 to undergo the remaining period of sentence imposed on them. The suspension of sentence granted earlier to the appellants 1 and 2/accused 1 and 2 by this Court is cancelled.

14.07.2022

Index:yes

Speaking order/non speaking order
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To:

- 1.IV Additional District and Sessions Judge, Ponneri, Thiruvallur District.
- 2.The Inspector of Police, Ponneri Police Station, Thiruvallur District.
- 3.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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Delivery Judgement made in
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