



WEB COPY



Crl.A.No.194 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2022

PRONOUNCED ON: 23.12.2022

CORAM

THE HONOURABLE MR. JUSTICE **P.N.PRAKASH**

AND

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

Crl.A.No.194 of 2019

1. Balaji

2. Soundararajan

.. Appellants/A1 & A2

Vs.

State By

The Inspector of Police,
Thanipadi Police Station,
Tiruvannamalai District.
(Crime No.441 of 2012)

.. Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, praying to set aside the judgment of conviction and sentence awarded by the learned Principal District and Sessions Judge, Tiruvannamalai, in S.C.No.78 of 2013 dated 05.03.2019.

For Appellants : Mr.V.Raja Mohan (for A1)
Mr.L.Mahendran (for A2)

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor



CrI.A.No.194 of 2019

JUDGMENT

WEB CO **RMT.TEEKAA RAMAN, J.**

Convicted Accused 1 and 2 are the appellants herein.

2. The learned Principal District and Sessions Judge, Thiruvannamalai, by judgment dated 05.03.2019 in S.C.No.78 of 2013, convicted the appellants/accused 1 and 2 and sentenced them as hereunder:

<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1	302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo two years rigorous imprisonment.
A2	302 r/w 34 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo two years rigorous imprisonment.

3. Pending appeal, the 2nd accused [Soundararajan] was granted bail and the suspension of sentence petition filed by the 1st accused [Balaji] has been dismissed.

4. Brief facts leading to the filing of the appeal, are as follows:

(i) The case of the prosecution is that the 1st Accused-Balaji and 2nd accused-Soundararajan belongs to Melamanjannor Pudur, Thandarampattu Taluk, Tiruvannamalai District. One Gandhi



(Deceased) S/o.Ramachandran, belonged to the same village. The deceased Gandhi has gone to his relatives marriage, where the accused 1 and 2 were dancing in front of the bridegroom procession party. The said act of dancing by the accused 1 and 2 in front of the bridegroom procession party, was disturbed by the deceased-Gandhi and there arose a quarrel between the deceased and both the accused.

(ii) It is the further case of the prosecution that with that in mind and with an intention and motive, the accused 1 and 2 decided to commit the murder of the deceased and hence, between 17.10.2012 to 18.10.2012 at midnight 1 'O' Clock, at Malamanchanur Pudur Village, nearby the water tank of Chinnathambi, while the 2nd accused-Soundararajan caught hold of the deceased from moving, the 1st accused-Balaji, stabbed with knife on the back of the deceased and on the left side of the chest, thereby, the accused persons have committed the offence under Section 302 r/w 34 of IPC.

(iii) PW1-Sundar, son of the deceased, set the criminal law into motion by filing a complaint [Ex.P1] before the Thanipadi Police Station on 18.10.2012 at about 6.30am and the same was received by the Sub



Crl.A.No.194 of 2019

Inspector of Police, J.Sankar-PW16 and was registered as Cr.No.441 of 2012 for the offence under Section 302 of IPC against both the accused and then, the same was placed before R.Chinnaraj, Inspector of Police [PW17].

(iv) The express FIR has reached the learned jurisdictional Magistrate on 18.10.2012 at 8.55pm as could be seen from the endorsement in Ex.P12. The said Chinnaraj [PW17] while working as Inspector of Police, took the case for further investigation and proceeded to the scene of occurrence and prepared Ex.P2, Observation Mahazar and Ex.P13, Rough Sketch in the presence of Sakthivel [PW7] and Sivakumar [PW8] and recorded their statement and seized the plastic pipe 12 cm length [M.O.2], blood stained soil [M.O.3] and sample soil without blood stain [M.O.4] under Ex.P3-Seizure Mahazar.

(v) Based upon the discreet information, PW17 arrested both the accused in the presence of Palanisamy [PW9] and Pachamuthu [PW10] and recorded the confession statement given by the 1st accused. The admissible portion of his confession statement is marked as Ex.P4. Based upon the said admissible portion, the Investigation Officer [PW17]



seized the Knife [M.O.1], under the Seizure Mahazar [Ex.P5] and he prepared the inquest report in the presence of the witnesses and the same is marked as Ex.P15.

(vi) In order to find out the cause of death, PW17 sent the dead body through the Head Constable Gobi along with requisition to PW13- Dr.Mobeen, Medical officer, Government Hospital, Thanipadi and he conducted the Postmortem and opined that the deceased would appear to have died of shock, haemorrhage, blood loss to all vital organs due to the injury sustained and the viscera of the deceased was sent to the Forensic Science Department. The Postmortem certificate [Ex.P9] reads as follows:

“Opening of the chest: Ribs intact both anterior & posterior. Lungs congested both side (Lt) & (Rt). On opening, the neck, Hyoid is intact. (Lt) side thoracic cavity about 3500ml of clots of blood (+) black in colour, with heart cavity normal. On the posterior aspect, the (Lt) lung lower lobe a lacerated wound 2cm x 0.5cm x 3 cm present. Colour of the wound is black, margins regular. It is a penetrated wound from the posterior chest wall. The injury occupies the skin, deep fascia, subcutaneous tissue, posterior musculature and at last inside the (Lt) lung. The depth of the wound is around 10 - 12 cms.”



Crl.A.No.194 of 2019

(vii) Mr.Jeganathan [PW11] as a Chemical Analyst, Forensic

Science Department, has examined the articles given by the investigation officer and gave a report under Ex.P6, wherein he has detected blood on the sample earth mixed with small stones, plastic pipe and knife with blue plastic handle measuring 22cms in length, torn silken brown half trouser and green lungi with pink and orange colour floral design.

(viii) Mr.Ashok Kumar [PW12], Assistant Director of Forensic Science Department on analysis of viscera, has given the report under Ex.P7. According to the Viscera Report, no alcohol or other poisonous substance is found in the internal organs of the deceased.

(ix) Dr.Nirmala Bai [PW14], the Scientific officer, Forensic Science Department, Madurai, had examined the blood of the deceased Gandhi and issued the Chemical Analysis Report [Ex.P10].

(x) Mr.Parasakthi [PW15], Director of Chengalpet Medical College Hospital, has opined that the Hyoid bone was intact and the Hyoid bone report was marked as Ex.P11.



Crl.A.No.194 of 2019

WEB COPY (xi) After examination of the private prosecution witnesses, the Investigation Officer [PW17] has filed a final report in the above said Crime Number, before the learned District Munsif-cum-Judicial Magistrate, Chengam. The same was taken on file in P.R.C.No.13 of 2013 and the case was committed to sessions and numbered as S.C.No.78 of 2013.

(xii) During the trial, the above stated charges were framed against the accused 1 and 2 and were explained to them in Tamil and they denied the charges and claims to be tried. Accordingly, the prosecution examined 17 witnesses [PW1 to PW17] and marked 15 exhibits [Ex.P1 to Ex.P15] and 4 material objects [M.O.1 to M.O.4].

(xiii) On the conclusion of the trial, the learned Principal District cum Sessions Judge, Tiruvannamalai, by judgment dated 05.03.2019 convicted both the accused as stated in paragraph No.2 of this judgment and hence, this appeal.



5. The respective learned counsel for the 1st accused and the 2nd accused were heard. The learned Additional Public Prosecutor appearing on behalf of the respondent State was also heard.

6. Learned counsel for the 1st accused could contend that the seizure of M.O.1-Knife, as spoken to by PW1 and the Investigation Officer [PW17] runs contrary to each other and non marking of Accident Register, causes doubt on the case of the prosecution. He could finally contend that due to sudden altercation between the accused and the deceased, an act has been committed and hence, the charge under Section 302 of IPC, is not made out.

7. Learned counsel for the 2nd accused could contend that the presence of PW1 is doubtful and also could contend that even as per the evidence of the private prosecution witnesses, 1st accused alone has caused the stab injury and hence, lesser punishment may be considered.

8. Both the learned counsel for the appellants/accused 1 and 2 could contend that even as per the case of the prosecution, the occurrence said to have been taken place due to the wordy quarrel between the



deceased and the accused/appellants herein, without any motive and without any intention and hence, charge under Section 302 of IPC, is not sustainable.

9. The learned Additional Public Prosecutor made submissions in support of the judgment of the trial Court.

10. After heard both sides and on perusal of the records and material objects that are marked, we find that 1st accused was charged for offence under Section 302 of IPC, while, the 2nd accused has been charged for offence under Section 302 r/w 34 of IPC.

11. The son of the deceased viz., Sundar was examined as PW1 and he has set the criminal law into motion by filing Ex.P1-Complaint and the same is registered as Ex.P12-FIR. The FIR has reached the learned jurisdictional Magistrate within the stipulated time. The contents of Ex.P1-Complaint and the oral evidence of PW1, are more or less on the same lines, in respect of the place of the accident, time of the accident and the act of the accused on the body of the deceased.



WEB.COM

12. The chain of events as projected by the prosecution has been clearly spoken to by PW1-Sundar, PW2-Rajesh and PW3-Arumugam. PW4-Malar, widow of the deceased, is only a hearsay witness. PW5-Elumalai, has turned hostile. PW6-Rajendran, is the direct eye witness and he could depose that after the dinner on the said day at around 1.00am, the people are having beetle leaf and at that time, the 2nd accused caught hold of the deceased, while the 1st accused gave a single stab. Though, PW6 has mentioned the accused 1 and 2 by the size of the body viz., lean man and fat man, his evidence is duly corroborated by PW1 and hence, the trial Court has rightly come to the conclusion that the version of the private prosecution witnesses viz. PW1 and PW2 are duly corroborated by the direct independent witness PW6 that the 1st accused stabbed the deceased Gandhi on the chest with the knife and the 2nd accused caught hold of the deceased. After the incident, both the accused 1 and 2 ran away from the place of the occurrence. M.O.1-Knife was seized with blood stain.

13. As per Ex.P6-Forensic Science Report relating to M.O.1-Knife, as well as the plastic pipe, blood stain soil and sample soil without blood stain and the grouping of the report as could be seen from Ex.P8 and



Ex.P10 duly proves the scene of the crime, involvement of the M.O.1-Knife in the offence. The Ex.P7-Viscera Report would show that there is no alcohol or other poisonous substance in the internal organs of Gandhi and the Hyoid Bone Report [Ex.P11] also reflects that the Hyoid Bone is intact and hence, the learned Principal District and Sessions Judge has rightly relied upon Ex.P9-Postmortem Certificate that the death was due to shock, haemorrhage, blood loss to all vital organs, due to the injury sustained. The stab injury which had rooted till lower chest, is the cause of the death as spoken to by the postmortem Doctor [PW13].

14. In the postmortem report [Ex.P9], the depth of the wound is around to 10 to 12 cm as spoken to by PW13-Doctor. The only injury is 3cm x 0.5cm x depth around 10 cm till it reaches the thoracic cavity. Admittedly, it is a single blow.

15. From the version of the private prosecution witnesses viz., PW1 to PW4 and PW6, the deceased was attending his relatives marriage and accused 1 and 2 were dancing in the bridegroom procession and there was a heavy rain. The dancing of accused 1 and 2 was disturbed by the deceased, which has resulted in wordy altercation in that place.



Consequently, after dinner, the 2nd accused caught hold of the deceased, while the 1st accused stabbed the deceased with M.O.1-Knife on the left hand side of the chest. As a consequence, he died.

16. As per the private prosecution witnesses, PW1, PW2, PW3 and PW6 there was a wordy quarrel, just prior to the commission of the alleged offence and enraged by the same, the 1st accused seems to have caused the murder using M.O.1-Knife, while the 2nd accused caught hold of the deceased.

17. As stated supra, as against the 2nd accused, no fatal overtact has been attributed. However, he has effectively prevented the deceased from running away and escaping from the assault made by the 1st accused with M.O.1-Knife. There was a wordy altercation preceding the occurrence.

18. The occurrence is said to have happened on the spur of the moment and there was a wordy altercation, just prior to the commission of offence. The fatal overtact has been attributed against 1st accused and hence, we find that the conviction under Section 302 r/w 34 of IPC as



Crl.A.No.194 of 2019

already undergone by the appellants/accused, shall be set off under

Section 428 of the Code of Criminal Procedure.

(P.N.P.,J.) (TKRJ)
23.12.2022

Index: Yes/No

ars

To

1. The Principal District and Sessions Judge,
Tiruvannamalai.
2. The Inspector of Police,
Thanipadi Police Station,
Tiruvannamalai District.
3. The Public Prosecutor,
Madras High Court, Chennai – 600 104.



WEB COPY



Crl.A.No.194 of 2019

P.N.PRAKASH, J.
and

RMT.TEEKAA RAMAN, J.
ars

Pre-delivery Judgment made in
Crl.A.No.194 of 2019

23.12.2022