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CRL A No.754 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	16.09.2022
Pronounced on	:	04.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.754 of 2019

and

Crl.M.P.No.15945 of 2019

Kuppan @ Sathishkumar

... Appellant

Vs.

1.The State, represented by
Inspector of Police
Vellore North Police Station
Vellore District
(Crime No.545 of 2015)

2.Bommiravi

(R2 impleaded as per order in Crl.M.P.No.8090 of 2022
in Crl.A.No.754 of 2019 dated 24.06.2022)

... Respondents

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the conviction and sentence imposed in S.C.No.124 of 2018 dated 17.10.2019 on the file of the Additional District and Sessions Judge, Vellore, Vellore District.

For Appellant : Mr.B.Mohan

For Respondents : Mr.S.Sugendran
Additional Public Prosecutor for R1
Mr.R.Thamaraiselvan for R2



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JUDGMENT

This Criminal Appeal has been filed seeking to set aside the conviction and sentence imposed in S.C.No.124 of 2018 dated 17.10.2019 on the file of the Additional District and Sessions Judge (FTC), Vellore, Vellore District.

2.The respondent police registered the case in Crime No.545 of 2015 initially against the appellant and two others for the offence punishable under Sections 307 IPC and during the course of investigation, altered the offence into Section 307 read with 120(B) IPC and impleading other accused. The respondent police, after completing the investigation, laid charge sheet for the offences under Sections 307 IPC read with 120 (B) IPC. The Additional District and Sessions Judge (FTC), Vellore, Vellore District, taken up the charge sheet on file in S.C.No.124 of 2018 and after completing the formalities, framed charges against A1/appellant herein for the offence under Section 307 read with 120(B) IPC and as against A2 and A3 for the offences under Section 307 read with 120(B) and 109 IPC.



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3. After framing the charges, in order to prove the case of the prosecution during trial before the trial Court, totally 12 witnesses were examined as P.W.1 to P.W.12 and 18 documents were marked as Exs.P.1 to P18 and 4 material objects were exhibited.

4. After completing the examination of the prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the accused by questioning under Section 313 Cr.P.C. However, the accused denied the same as false and pleaded not guilty. On the side of the defence, no oral or documentary evidence were produced.

5. On conclusion of trial and after hearing the arguments advanced on either side and also considering the materials, the learned Sessions Judge, acquitted A2 and A3 from all the charges and acquitted A1/appellant herein for the offence under Section 120(B) however, convicted A1/appellant herein for the offence under Section 307 (2 counts) IPC and sentenced to undergo rigorous imprisonment for seven



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years for each counts and to pay fine of Rs.1000/- for each counts in default to undergo, rigorous imprisonment for another period of six months for each default in payment of fine. Challenging the Judgment of conviction and sentence, the A1 has filed the present appeal before this Court.

6. The case of the prosecution is that on 05.09.2015 at about 7.45 p.m., the Krishnajayanthi function was celebrated under the head of one G.G.Ravi/the defacto complainant. After attending the said function, the defacto complainant was chatting with one A.K.S.Ravi/P.W.1. At that time, three persons came there stating that they wanted to see the defacto complainant and all of a sudden, one Maha @ Mahalingam (since died) took a knife from his hip and attacked the defacto complainant with knife (Vettu Kathi) and when P.W.1 prevented the same, he received injury on his middle finger and another accused namely Kuppan/the appellant herein, assaulted with knife (Vettu Kathi) due to which, the defacto complainant sustained injury on his left side head. When public gathered to the spot, the accused Maha @ Mahalingam tried to escape



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from the place. At that time, his Dhoti clipped in the barricade and therefore, he fell down. Immediately, the defacto complainant and P.W.1 were admitted in the hospital. The Sub Inspector of Police/P.W.11 on receipt of information from C.M.C. Hospital on 05.09.2015, rushed to the hospital. In the mean time, the defacto complainant had gone to his house after taking treatment. Hence, the Sub Inspector of Police/P.W.11 went to the house of the defacto complainant and obtained the complaint/Ex.P.1 and registered the case for the offence under Section 307 IPC against the said Maha @ Mahalingam, Kuppan/the appellant herein and one unknown person. Subsequently, the police arrested the accused Kuppan/the appellant herein on 09.09.2015 at about 03.00 hours and he gave voluntary confession statement in the presence of Village Administrative Officer/P.W.8 which was marked as Ex.P.12. On the basis of said confession statement, the Inspector of Police/P.W.12 recovered two knives and two vehicles bearing Regn. No.TN 23-BF-3856 and TN 23-E-8587. Subsequently, the police arrested one Shenbagavalli and based on her voluntary statement/Ex.P.14, it came to the knowledge, that she abetted to commit the offence and one Anandanarayanan was also



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arrested on the same day (09.09.2015) at about 16.15 hours and recovered original R.C. Book of the vehicle T.N. 23-E 8587 with photo original lamination book and at about 16.30 hours, recovered a Maruthi 800 car bearing Regn.No.TN 23-B-3066 under seizure mahazar/Ex.P.15 and Ex.P.16. Subsequently, the case was altered into Section 307 read with 120(B) IPC. It is alleged that while escaping, the accused Maha @ Mahalingam got struck in the Barricade and fell down in the road and to safeguard himself he went beneath the route town bus. On the same day, he was pulled out by torching fire balls and thereafter, he was alleged to have been attacked by the surging crowd which includes the accused in this case and the said event was witnessed by the eye witnesses to the occurrence. Therefore, two set of criminal act, two fold of investigation took place. One case is registered as against the rowdy Maga @ Magalingam, Kuppan and others. Another case is registered as against one Gokul, Tamilmani and others and separate trial was held in S.C.No.8 of 2018.



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7. The learned counsel for the appellant would submit that the occurrence is said to have taken place on 05.09.2015 whereas the FIR was registered only on 06.09.2015. The inordinate delay in sending the FIR and the statements recorded under Section 161 Cr.P.C. was not properly explained. Further, in order to suit their case, the prosecution withheld the A.R.Copy of the injured witnesses and produced only the documents which are all after thought. He would further submit that the injury sustained by P.W.1 is not proved as the evidence of P.W.2 contradicts the same in respect of the overt-act of the appellant and that the prosecution has failed to prove the injury of P.W.1 with admissible medical evidence. Further, the place mentioned in the FIR/Ex.P.1 is contradictory to the evidence of P.W.1 and P.W.2. In the evidence, P.W.1 deposed that the appellant attacked the defacto complainant and during intervention, he sustained injuries, whereas the recitals in FIR and the evidence of P.W.2 disproved the same. He would further submit that P.W.1 and P.W.2 are interested witnesses and they are the employers of the defacto complainant and their presence at the time of occurrence is doubtful and the same requires corroboration and in the absence of the



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same, their evidence is liable to be rejected. He would further submit that the case is foisted to cover up the murder of Maha @ Mahalingam by the sons of G.G.Ravi. The evidence of P.W.1 and P.W.2 who were examined as P.W.18 and P.W.24 in the counter case, are totally different from the present case with regard to the place of occurrence and the injuries sustained by the victims.

8. The learned Additional Public Prosecutor appearing for the 1st respondent police would submit that based on the complaint given by the defacto complainant/G.G. Ravi, the case was registered in Crime No.545 of 2015 and subsequently, he was murdered. Hence, the complaint was marked as exhibit through his friend A.K.S.Ravi/P.W.1 and he has deposed about the handwriting of G.G.Ravi. P.W.1 and P.W.2 are injured eyewitness. P.W.1 has clearly deposed that on the date of occurrence, when the defacto complainant G.G.Ravi was about to get into his car, one Maha @ Mahalingam attempted to attack the defacto complainant with Knife and when P.W.1 resisted him, he sustained injury in his right hand middle finger and when P.W.1 turned, one Kuppan attempted to attack with knife and the same was also prevented by P.W.1 during



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which, P.W.1 sustained injury in his index finger and that the defacto complainant sustained injury on the left side of his head. He has further deposed that when another accused who was wearing Red Banian came to attack with knife, P.W.1 raised alarm and on hearing the same, public gathered. On seeing the public, the accused escaped from the place. Further, P.W.1 clearly identified one of the accused as Kuppan before the trial Court. The learned Additional Public Prosecutor would submit that P.W.2 is the Assistant of the defacto complainant G.G. Ravi and he has also spoken about the attack made by the said three accused and the injuries sustained him and also by the defacto complainant and P.W.1 and that the evidence of P.W.2 is corroborated with the evidence of P.W.1 except some minor discrepancies. However, the major portion of occurrence and the overt-act of the accused are corroborated. Though some of the witnesses have turned hostile, the Doctor/P.W.9, who was also with Dr.Noor Roy while giving treatment to the defacto complainant/G.G.Ravi, has spoken about the injuries sustained by the defacto complainant and the wound certificate issued to the defacto complainant G.G.Ravi was marked Ex.P.3. Further, the Orthopedic



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Doctor/P.W.10 has deposed that he is well versed with the handwriting of Dr.Om Prakash who had given treatment to A.K.S. Ravi/P.W.1 and as per his medical report/Ex.P.2, A.K.S.Ravi's Index Finger was almost amputated and surgery was done fix the same. P.W.3 has spoken about taking the defacto complainant to the hospital. The trial Court rightly appreciated the evidence of the injured eyewitness, doctors' evidence and also the medical evidence and convicted the appellant and there is no merit in the appeal and the appeal is liable to be dismissed.

9. Heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the first respondent police and the learned Counsel appearing for the 2nd respondent/wife of the defacto complainant and also perused the materials available on record.

10. In order to substantiate the charges, on the side of the prosecution as many as 12 witnesses were examined as P.W.1 to P.W.12



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out of which, P.W.1 and P.W.2 are the injured as well as eyewitness to the occurrence.

11. P.W.1 has clearly spoken that one Maha @ Mahalingam attempted to attack the defacto complainant with Knife and when P.W.1 resisted him, he sustained injury in his right hand middle finger and when P.W.1 turned, one Kuppan attacked with knife and P.W.1 also resisted the same due to which, he sustained injury in his index finger and that the defacto complainant sustained injury on the left side of his head. He has further deposed that when another accused who was wearing Red Banian came to attack with knife, P.W.1 raised alarm and on hearing the same public gathered and on seeing the public, the accused Maha @ Mahalingam tried to escape. At that time, his Dhoti got struck in the Barricade and he fell down during which, a town bus came there. Further, P.W.1 has clearly identified one of the accused before the Court as Kuppan.

12. P.W.2 in his evidence, has spoken about the attack made by the



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accused and the injuries sustained by him and also by the defacto complainant G.G.Ravi and also by P.W.1.

13. The doctor/P.W.9 has spoken that on 05.09.2015 when G.G.Ravi came to hospital for treatment, he had told that unknown persons attacked him with Machete (Aruval) and he had sustained laceration wounds on left cheek, lip, scalp and the right index finger was found dislocated and the wound certificate issued to the G.G.Ravi was marked as Ex.P.3.

14. The doctor/P.W.10 has spoken about Ex.P.2/Wound certificate issued to A.K.S. Ravi/P.W.1 in which it is stated that the right hand Index Finger of the A.K.S. Ravi was found near total amputated and thereby, surgery was done and the finger was fixed.

15. Since, the Appellate Court is the final Court of fact finding, it has to re-appreciate the entire evidence independently and to give its



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findings independently. Accordingly, this Court perused the entire materials and the Judgment of the trial Court.

16. A reading of the evidence of P.W.1 and P.W.2 are corroborated with the evidence of the doctors/P.W.9 and P.W.10 and except some minor discrepancies, the major portion of occurrence and the overt-act of the accused are corroborated.

17. Though the learned counsel for the appellant contended that from the very same evidence and materials, the trial Court convicted acquitted A2 and A3 however, convicted the appellant/A1 which is against law, the specific overt-act of the appellant has been attributed from the evidence of P.W.1 and P.W.2. Further, the medical evidence show that the defacto complainant had sustained injury in the vital part of his body and deadly weapons had been used to cause the injury. If at all, the injured did not prevent the attack, it would have caused further injuries or otherwise, caused the death of the defacto complainant.



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18. Therefore, from the evidence of P.W.1, P.W.2, doctors' evidence/P.W.9, P.W.10 and Wound Certificates/Ex.P.2 and Ex.P.3, the prosecution proved the guilt of the appellant for the offence under Section 307(2 counts).

19. Therefore, this Court finds that the appellant has committed the charged offences and there is no perversity, illegality or infirmity in the order passed by the trial Court. Hence, there is no merit in the appeal and the appeal is liable to be dismissed.

20. Accordingly, this Criminal Appeal is Dismissed. Consequently, connected Miscellaneous Petition is closed.

04.11.2022

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Index:Yes/No



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To

1. The Additional District and Sessions Judge,
Vellore, Vellore District.
2. Inspector of Police
Vellore North Police Station
Vellore District
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.



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P.VELMURUGAN, J

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**Pre-Deliver Order in
Criminal Appeal No.754 of 2019**

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