



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.03.2022

DELIVERED ON : 23.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.A.(MD)No.123 of 2019

K.Saravanan

... Petitioner/ Appellant

-Vs-

State Through

The Inspector of Police,

Kovil Patti East Police Station,

(In Crime No.675 of 1995)

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to call for the entire records connected to the case in S.C.No.123 /1996 by the learned Additional Sessions Judge and Fast Track Court Judge No.1, Thoothukudi dated 30.04.2003 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor.

JUDGMENT

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

This Criminal Appeal has been filed by the appellant / accused, aggrieved over the conviction and sentence, dated 30.04.2003, made in S.C.No.123 of 1996, by the learned Additional Sessions Judge and Fast Track Court Judge No.1, Thoothukudi.

2.The brief facts of the prosecution case is as follows:-

(i)The deceased Gnanamuthu is the son of P.W.1 and P.W.2. The accused called P.W.3 for selling liquor, which was refused by P.W.3, therefore, he was beaten by the accused and the same was reported to the deceased by P.W.3. The deceased has questioned the accused 1 and 2 as to why they beat P.W.3, which culminated into the animosity between them. On 17.09.1995 at about 4.30 p.m., when P.W.1, P.W.2 and the deceased were watching TV in the house of the sister-in-law of P.W.1, one Lingadurai / third accused came there and took the deceased out under the pretext that the accused 1 and 2 wanted to speak to him. On suspecting, P.W.1, his sister-in-law, P.W.2 and P.W.3 followed the accused. While talking in the street, the accused 1 and 2 caused multiple injuries with knife and the third accused caught hold the deceased, which was witnessed by P.W.1 and P.W.2. Immediately, P.W.1 and others took the deceased to the



hospital with the help of P.W.7 in his auto.

(ii) P.W.13 Sub-Inspector of Police went to the hospital and recorded the statement (Ex.P.1) of P.W.1 and registered the case in Crime No.675 of 1995 for the offences punishable under Sections 341 and 302 of IPC, prepared First Information Report Ex.P.17 and sent the same to the Court and copy has also been sent to the Investigation Officer.

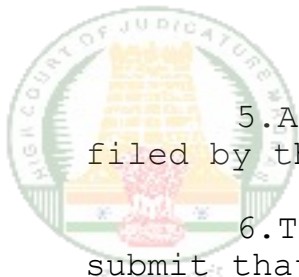
(iii) P.W.14 Investigation Officer took up the case for investigation, went to the place of occurrence, prepared observation mahazar Ex.P.2 in the presence of witnesses, drew rough sketch Ex.P.18 and also collected material objects. He conducted inquest over the dead body, prepared inquest report Ex.P.19 and forwarded the dead body for autopsy with requisition to the medical officer.

(iv) P.W.8 Medical Officer attached to the Kovilpatti Government Hospital, conducted autopsy over the dead body and found several external injuries on vital parts. He issued Ex.P.6 Postmortem Certificate and also opined that the deceased died due to the injuries, shock and hemorrhage.

(v) P.W.14 in continuation of the investigation, recorded the statement and handed over the case files to P.W.15 and P.W.15 took the accused 1 and 2 from custody, also arrested the third accused and recorded confession statement of the first accused in the presence of P.W.9. The admissible portion of the confession of the first accused is Ex.P.7 and the admissible portion of the confession of the second accused is Ex.P.8. In pursuance of the same, he seized the material objects in the mahazar. After seizing the material objects, he gave a requisition to the Court to send all the materials for Forensic examination. After completing the investigation, he laid a final report.

3. Before the trial Court, on the side of the prosecution, P.W.1 to P.W.15 were examined, Exs.P1 to 20 and M.O.1 to M.O.5 were marked. On the side of the appellant, none was examined and no document was marked. On questioning under Section 313 of Cr.P.C., the accused denied charges.

4. Based on the evidences and materials, the trial Court had found the accused 1 and 2 guilty, however, acquitted the third accused. The trial Court has convicted the accused 1 and 2 for the offence punishable under Section 302 r/w 34 of IPC and sentenced them to undergo life imprisonment and to pay fine amount of Rs.1000/-, in default to undergo six months rigorous imprisonment. The trial Court set off the period of sentence already undergone by the accused 1 and 2 under Section 428 of Cr.P.C. As the second accused was already convicted in another case and sentenced to undergo life imprisonment, it is directed that the two sentences



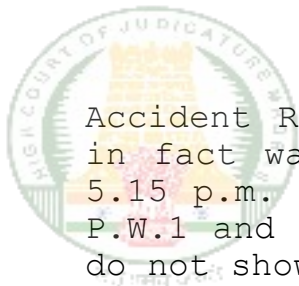
5.Assailing the same, the present Criminal Appeal has been filed by the second accused.

6.The learned counsel appearing for the appellant would submit that though many eyewitnesses shown in the final report, only P.W.1 and P.W.2, father and mother of the deceased alone, have supported the prosecution. Hence, they are interested witnesses and their evidence cannot be given much importance. The motive alleged by the prosecution has not been established. P.W.3 has never spoken that he has informed the deceased about the alleged attack caused by the accused. Further, it is his contention that though P.W.1 said to have given first aid to the injured in the place of occurrence, the shirt used by the father has not been seized by the Investigation Officer. Further, there is a contradictory statement made by P.W.1 and P.W.2 in respect of the place of occurrence. The prosecution has not established the guilt of the accused beyond all reasonable doubt. Hence, he seeks to set aside the judgment and conviction of the trial Court.

7.In support of his contention, he also relied upon the judgment in the case of ***Jagtar Singh and another Vs. State of Punjab*** reported in ***(1999) 2 Supreme Court Cases 174*** to modify the sentence for lesser punishment.

8.The learned Additional Public Prosecutor appearing for the respondent would submit that the prosecution has clearly established the complicity of the accused to the crime. P.W.1 and P.W.2 clearly spoken about the role played by the accused in causing death. P.W.1 and P.W.2 in their evidence have clearly spoken about the nature of injuries caused by the accused 1 and 2 with M.O.1 and M.O.2. Their evidence is natural and does not suffer from any infirmity. The offence is committed in the presence of the parents. Hence, it is his contention that merely because they are the parents of the deceased, they cannot be termed as interested witnesses. There was no motive for P.W.1 and P.W.2 to implicate the accused falsely. Therefore, the trial Court has rightly appreciated the evidence and the charges have been clearly attracted against the accused. Hence, he prayed for dismissal of the appeal.

9.We have perused the entire evidence placed on record. P.W.1 and P.W.2 father and mother of the deceased in their evidence in one voice stated that on 17.09.1995 at about 4.30 p.m., when P.W.1 along with his son and wife P.W.2 were watching TV in his sister-in-law's house, the accused came there and took the deceased out. P.W.1 and P.W.2 followed them immediately. At that time, the first accused caused stab injuries and the second accused also caused injury on the thigh repeatedly. P.W.1 took the deceased immediately to the hospital with the help of P.W.7, who is the auto driver. The presence of P.W.1 is also clearly established by his presence in the hospital at the earliest point of time. Ex.P.20



Accident Register Copy also established the fact that the deceased in fact was brought to the hospital immediately by P.W.1 at about 5.15 p.m. Therefore, we have no reason to reject the testimony of P.W.1 and P.W.2, whose evidence otherwise appears to be natural and do not show any artificiality.

WEB COPY

10. Interested witnesses means one has a motive to get the conviction by false implication. Therefore, merely because the victims happened to be relative of the witnesses, those witnesses cannot be termed as interested witnesses to implicate the accused falsely. In fact, the relative witnesses are the best witnesses, who normally do not allow the culprit to escape from the clutches of law.

11. The occurrence took place around 4.30 p.m.. P.W.7, who is an independent witness took the deceased in his auto. P.W.1 has also accompanied the deceased to the hospital and they reached to the hospital at about 5.15 p.m. The statement of P.W.1 was recorded immediately at the hospital on the same date. The First Information Report has been registered immediately at 19.15 hours by P.W.13 and the same is sent to the Court on the same date. It was received by the learned Judicial Magistrate on the same date at about 20.15 hours.

12. The chain of events will lead to the only inference that there is no delay in lodging the First Information Report and the First Information Report is arising out of spontaneous reaction and no deliberation or interpolation or alteration could be seen from Ex.P.1.

13. In such view of the matter, we have no reason to discard the evidence of P.W.1 and P.W.2. The evidence of Medical Officer clearly shows the nature of injuries sustained by the deceased, which resulted homicidal death of the deceased.

14. The First Information Report has been launched promptly and there is no other circumstance brought on record to discard the evidence of P.W.1 and P.W.2. Though P.W.3 has not stated that he has informed the deceased about the attack caused by the accused, his evidence also clearly indicates that on 13.09.1995, the accused have fought with him. According to him, though he has not informed separately the deceased, the deceased came to know about the incident. Be that as it may, even assuming that the motive has not been established, when eyewitnesses clearly established the violence caused by the accused, the motive part becomes insignificant. Therefore, merely because the motive has not been established, the same cannot be a ground to disbelieve the entire prosecution. With regard to the place of occurrence, P.W.1 has clearly stated that the place of occurrence is around 35 to 45 ft. from the house. P.W.2 also clearly stated that the occurrence took place within 40 ft from the house. P.W.3 also clearly stated that the occurrence took place within 40 ft from the same street. From the evidence, the contention of



the learned counsel for the appellant that there were contradictions in the evidence of P.W.1 and P.W.2 with regard to the place of occurrence, cannot be countenanced.

15. Therefore, we do not see any materials to countenance the submissions of the learned counsel for the appellant that the prosecution has not proved the guilt of the accused beyond all reasonable doubt. We are of the view that the prosecution has proved the charges against the accused beyond all reasonable doubt.

16. With regard to the judgment cited by the learned counsel for the appellant, the Hon'ble Supreme Court of India, in the case cited supra has reduced sentence, taking note of the fact that the deceased died after sometime due to septicemia. The case on hand is a clear case of murder, which has been clearly established by the prosecution. The charge for the offence under Section 302 r/w 34 of IPC is clearly attracted against the accused, since they caused death injuries.

17. In such view of the matter, we do not find any merit in this appeal. In the result, the Criminal Appeal stands dismissed and the conviction and sentence imposed on the appellant / accused, by judgment dated 30.04.2003, made in S.C.No.123 of 1996, on the file of the learned Additional Sessions Judge and Fast Track Court Judge No.I, Thoothukudi, is confirmed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

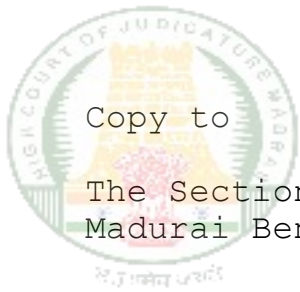
/ /2022

Sub Assistant Registrar(CS)

Myr

To

1. The Additional Sessions Judge and Fast Track Court Judge No.1, Thoothukudi.
2. The Inspector of Police,
Kovil Patti East Police Station.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai

CRL.A. (MD) No.123 of 2019
23.03.2022

WEB COPY

SJ(CO)

KB(31.03.2022) 6P 6C