



**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.181 of 2019**

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K.Saravanan

... Appellant / Petitioner

-Vs-

State Through

The Inspector of Police,

Kovil Patti East Police Station,

(In Crime No.879 of 1993)

... Respondent / Respondent

**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.58 /1995 by the learned Chief Judicial Magistrate Cum Additional District Sessions Judge, Thoothukudi dated 12.09.2000 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 12.09.2000, made in S.C.No.58 of 1995, by the learned Chief Judicial Magistrate Cum Additional District Sessions Judge, Thoothukudi.

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

(i)The deceased was running a tea stall, wherein P.W.1, who is the son of the deceased's elder brother, was working. P.W.2 is the younger brother of the deceased. He was also working in the same shop run by the deceased. On 09.01.1993 at about 09.00 p.m., the accused along with others came to the shop of the deceased and after taking food, they did not pay for it. This was objected by the deceased. Thereafter, on the same date at about 12.30 p.m., the accused and others caused damage to the shop owned by P.W.4. On 10.11.1993, the accused came to the shop of the deceased and took the deceased out side of the shop under the pretext of meeting with some political persons. P.W.1 and P.W.2 had followed the deceased and the accused from the distance of 50 ft. from the shop. Suddenly, the deceased had removed billhook M.O.1, which was



concealed in the body and cut the deceased repeatedly on the left side of the neck. P.W.1 and P.W.2 also witnessed the occurrence and immediately, P.W.1 went to the police station and gave a statement, which was marked as Ex.P.1.

(ii)P.W.3 was also working under the deceased shop at the relevant point of time. According to him, P.W.1 and P.W.2 followed the deceased and the accused. After sometime, they rushed to the shop and informed about the death of the deceased. P.W.4 has stated that on one occasion the accused destroyed his shop.

(iii)P.W.11 Head Constable at the relevant point of time, has recorded the statement of P.W.1 and registered the case in Crime No.879 of 1993 for the offence punishable under Section 302 of IPC under Ex.P.13 First Information Report and the same has been sent to the Court and copy also sent to the Investigation Officer.

(iv)P.W.12 Investigation Officer took up the case for investigation, went to the place of occurrence and prepared observation mahazar Ex.P.2 and also drew rough sketch Ex.P.14. He conducted inquest over the dead body on the next day morning, prepared inquest report Ex.P.15 and sent the body to autopsy with requisition.

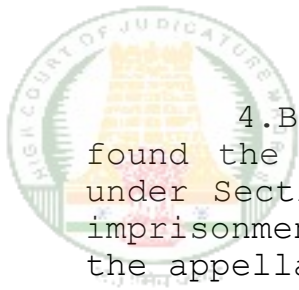
(v)P.W.7 Medical Officer conducted autopsy over the dead body and found the following injuries:-

- "1.10x1x4 cut injuries on the left neck.*
- 2.10x2x5 inch cut injury on the centre of left neck.*
- 3.3x1.1/2\*2 inch cut injury on the neck severing food pipe.*
- 4.10x4x1 cut injury on the left jaw.*
- 5.1x1 inch cut injury on the left shoulder."*

and issued Postmortem Certificate Ex.P.7 and also opined that the deceased died due to the injuries Nos.1 to 4 and hemorrhage.

(vi)P.W.12 in continuation of the investigation, on 19.11.1993 remanded the accused, who surrendered before the learned Judicial Magistrate, Sankarankovil, and at about 2.30 p.m., recorded the confession of the accused in the presence of witnesses. In pursuance of the same, he seized material objects and finally laid final report against the accused.

3.Before the trial Court, on the side of the prosecution, P.W.1 to P.W.12 were examined, Exs.P1 to 15 and M.O.1 to M.O.7 were marked. On the side of the appellant, none was examined, however, one 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 guilty, convicted the appellant for the offence under Section 302 of IPC and sentenced him to undergo rigorous life imprisonment. However, the trial Court had not imposed any fine, as the appellant / accused was in jail for long time.

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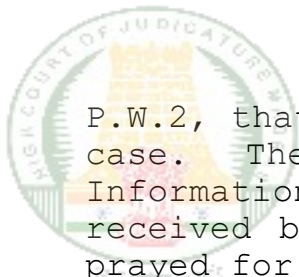
5. Assailing the same, the present Criminal Appeal has been filed.

6. The learned counsel appearing for the appellant would submit that the entire prosecution is based on the evidence of P.W.1 and P.W.2. Their evidence is highly contradictory. P.W.2 has stated in his cross-examination that the dead body was sent to the hospital on the date of occurrence, whereas the evidence of the Investigation Officer P.W.12 shows that inquest has been conducted on the next day. Further, the evidence of Investigation Officer P.W.12 clearly shows that observation mahazar was prepared with petromax light, whereas, P.W.1 and P.W.2 denied the usage of petromax light by the police. It clearly shows that P.W.1 and P.W.2 could not have been eye witnesses. Further, there is a contradiction in their evidence with regard to the time of recording the statement.

7. He would further submit that the motive has not been proved and the First Information Report has been sent to the Court with delay, which has not been explained. The evidence of the Head Clerk of the learned Judicial Magistrate shows that the First Information Report has been sent to his house, instead of Judicial Magistrate Court. The learned Judicial Magistrate has signed in the passport only on 13<sup>th</sup> day, without mentioning the month and year, whereas the Court seal shows that 13.12.1993. Therefore, his contention is that there is a delay in sending the First Information Report, which creates serious doubt about the entire prosecution. The Medical Officer has also stated that the injury Nos.1 to 3 and 4 and 5 may be caused by different weapons. Therefore, his contention is that other persons also should have been involved in the present case, hence, the prosecution case is unreliable. Therefore, the judgment of the trial Court has to be set aside.

8. 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.

9. The learned Additional Public Prosecutor appearing for the respondent would submit that P.W.1 and P.W.2 have clearly spoken about the nature of the injuries caused by the accused and there was no motive whatsoever for them to implicate the accused. Merely because some inconsistencies as pointed out by the learned counsel for the appellant, which are found in the evidence of P.W.1 and



P.W.2, that may not be a ground to disbelieve the entire prosecution case. The statement of P.W.1 was recorded in time and the First Information Report has been sent to the Court, which has been received by the Court in time and there was no delay. Hence, he prayed for dismissal of the appeal.

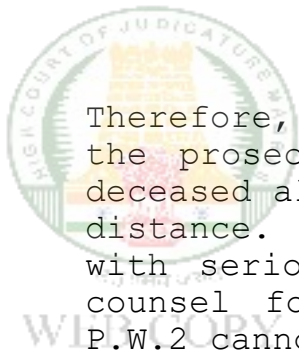
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10.We have perused the entire materials. It is the case of the prosecution that the accused in one occasion came to the shop of the deceased and did not pay charges for the food taken by him. Thereafter, he has also destroyed the shop of P.W.4 and thereafter, on 10.11.1993 i.e., the date of occurrence, he came to the shop, took the deceased out and caused death. P.W.1 and P.W.2 were working under the deceased. Their evidence show that on the date of occurrence at about 7.30 p.m., on seeing that the accused taking the deceased out, P.W.1 and P.W.2 immediately followed the deceased and the accused. At that time, the accused caused cut injuries on the neck of the deceased repeatedly. On seeing P.W.1 and P.W.2, he fled away from the place.

11.It is relevant to note that P.W.1 and P.W.2 in one voice stated that on seeing the accused taking the deceased out, they followed the deceased and the accused. It is relevant to note that the specific evidence of P.W.1 is that in previous occasion also, the accused created some problem not only in the shop of the deceased but also in the shop of P.W.4. P.W.4 though has not fully supported the prosecution, his evidence also substantiated the version of P.W.1 that the accused along with others came to his shop on 09.01.1993, purchased certain items and did not pay the amount. When questioned the accused, he caused injury on P.W.4. This fact clearly established the conduct of the accused. Therefore, following the deceased and the accused by P.W.1 and P.W.2 at this circumstance is quite natural. It is their evidence that they saw the occurrence under a street light. It is not even the case of the accused that there was no light available at the relevant point of time, though it is stated that the investigation officer has prepared observation mahazar with petromax light therefore, P.W.1 and P.W.2 would not have seen the occurrence.

12.It is relevant to note that merely because the observation mahazar was prepared with the use of petromax light at the later time after investigation had commenced, that does not mean that at the time of occurrence, there was no light at all. The evidence of P.W.1, P.W.2 and P.W.12, investigation officer clearly shows that there was a light in the street at the relevant point of time. Therefore, merely because at the later point of time, the police used some other light, it cannot be presumed that there was no light at all.

13.It is also to be noted that P.W.1 and P.W.2 saw the accused in the tea shop from where he took the deceased out and immediately they followed and found the dead body of the deceased.

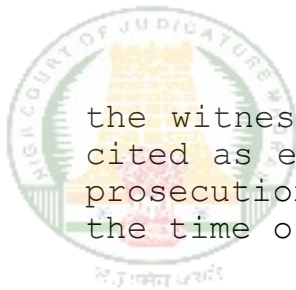


Therefore, even assuming that there was no light, it will not dent the prosecution, since P.W.1 and P.W.2 have lastly seen the deceased alive with the accused and they followed them within 50 ft. distance. Within a short span of time, the deceased was found dead with serious injuries. Therefore, the contention of the learned counsel for the appellant to discard the evidence of P.W.1 and P.W.2 cannot be countenanced.

14.It is also relevant to note that P.W.1 immediately went to the police station and his statement was recorded viz., Ex.P.1 at about 8.30 p.m., on the same date, which culminated the First Information Report and the First Information Report has been sent to the learned Judicial Magistrate on the same date at about 10.10 p.m. Endorsement made by the learned Judicial Magistrate on the First Information Report clearly established the above fact. Therefore, there is no reason to discard the evidence of P.W.1 and P.W.2. Their conduct of going to the police station immediately and giving a complaint assumes significance and there was no delay as contended by the learned counsel for the appellant in despatching the First Information Report also.

15.Much emphasis is made by the learned counsel for the appellant on the evidence of P.W.8, Head Clerk of the learned Judicial Magistrate. P.W.8 in his cross-examination stated that as if he has received the First Information Report. On perusal of the First Information Report, it is seen that the same is not correct. What was signed by the Head Clerk is only a Passport issued to the Constable, who handed over the First Information Report. Only in the passport he signed on 10.10.1993, which was corrected as 10.11.1993, whereas the First Information Report has been signed by the learned Judicial Magistrate on 10.11.1993 at about 10.10 p.m. Therefore, merely because the Head Clerk has endorsed the passport, it cannot be said that there was a delay in filing the First Information Report.

16.Further the evidence of P.W.1 and P.W.2 also shows that on the date of occurrence, there was a drizzling. Though the Investigation Officer stated that inquest was conducted on the next date in the place of occurrence, that will not dent the prosecution case in anyway. May be the evidence of the Investigation Officer suffered from artificiality. But the fact remains that P.W.1 and P.W.2 have seen the occurrence and after seeing the deceased lying dead, immediately they also informed the same to P.W.3, who was also working under the deceased at the relevant point of time. He has also spoken in his evidence that P.W.1 and P.W.2 also followed the deceased and the accused at the relevant point of time. After hearing the news, he rushed to the spot and found the deceased lying dead. At that time street light was burning. His evidence also clearly shows that he also saw the accused and the deceased going together and P.W.1 and P.W.2 also followed them. The evidence of P.W.3 and P.W.4 clearly established the complicity of the accused. If



the witnesses have been falsely planted, P.W.4 also would have been cited as eye witness. Therefore, there is no reason to discard the prosecution version, merely on the basis of some inconsistency over the time of inquest conducted by the investigation officer.

17.The purpose of conducting inquest is only to find out the cause of death. Mere discrepancy in the time of conducting the inquest will not destroy the evidence of eyewitnesses. Hence, the evidence of the eyewitnesses appears to be natural and does not suffer from any artificiality. The law was set in motion immediately and no exaggeration or deliberations could be seen from the First Information Report.

18.We are of the view that the prosecution case cannot be thrown out, merely on the basis of some minor contradictions pointed out by the learned counsel for the appellant. The nature of injuries is also clearly spoken by the Medical Officer, which resulted homicidal death of the deceased. Therefore, merely because some suggestions have been put to the Medical Officer that the injuries are also possible in different weapons, such suggestions would not a proof to show that different weapons have been used by two different persons. Hence, we do not find any merits in this appeal and the prosecution has in fact proved the guilt of the accused beyond all reasonable doubts.

19.With regard to the judgment cited by the learned counsel for the appellant, the Hon'ble Supreme Court of India, in the above case cited supra has reduced sentence, taking note the fact that the deceased died after sometime due to septicemia. The case on hand is a clear case of murder, which has been proved against the accused. Therefore, the said judgment is not applicable to the present case.

20.In the result, the Criminal Appeal stands dismissed and the conviction and sentence imposed on the appellant / accused, by judgment dated 12.09.2000, made in S.C.No.58 of 1995, on the file of the learned Chief Judicial Magistrate Cum Additional District Sessions Judge, Thoothukudi, is confirmed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Chief Judicial Magistrate Cum  
Additional District Sessions Judge,  
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.181 of 2019  
23.03.2022

SJ(CO)  
KB(31.03.2022) 7P 6C