



Crl.A(MD)No.223 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.06.2022

DELIVERED ON : 04 .07.2022

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

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Nagarajan

.. Appellant/Accused

Vs.

State represented by
The Inspector of Police
Nagamalai Pudukottai Police Station,
Madurai District.
(Crime No.403/2013)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, against the judgment and order dated 23.04.2019 in S.C.No.44 of 2016 passed by the learned Principal District and Sessions Judge, Madurai.



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For Appellant : Mr.G.Karuppasamy Pandian

For Respondent : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **R.HEMALATHA, J.**]

This criminal appeal is filed against the judgment and order dated 23.04.2019 passed by the learned Principal District and Sessions Judge, Madurai, in S.C.No.44 of 2016, wherein the appellant was convicted for an offence under Section 302 IPC and sentenced to undergo Life Imprisonment and to pay a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for three months.

2. Facts of the case as presented by the prosecution flows as follows:

- i. The deceased Muthu @ Thuppakkikarar Muthu was a resident of Nagamalai Pudukottai village, Madurai. He was



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owning a goat shed in the same village and it is the case of the prosecution that the accused used to consume alcohol near the goat shed for which the deceased reprimanded him. On the fateful day, i.e., on 31.10.2013, Sathiya (P.W.1), the grandson of the deceased accompanied his grandfather, Muthu @ Thuppakkikarar Muthu to the goat shed, around 11.00 a.m. Ganesan (P.W.2), who is the son-in-law of the deceased had also come over to the goat shed. Both P.W.1 and P.W.2 were conversing with each other near the road side, when there was a scream from the victim. On hearing the scream, both P.W.1 and P.W.2 rushed towards the goat shed and found the victim being attacked by the accused with a wooden log(M.O.1). On seeing them, the accused fled the scene and the victim was found dead on the floor. Hearing the loud cries, the neighbours gathered at the scene of occurrence.

- ii. P.W.1 and P.W.2 went to Nagamalai Pudukkottai police station and gave a written complaint (Ex.P1) signed by P.W..1



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at about 12.30 p.m., on the same day, based on which FIR(Ex.P8) was registered by Thiru. K.P.Ganesan (P.W.10), the then Inspector of Police, Nagamalai Pudukkottai police station in Crime No.403 of 2013 against the accused for an offence punishable under Section 302 IPC. He sent the express FIR to learned Judicial Magistrate No.VI on the same day at about 4.00 p.m.

iii. Thereafter Thiru.K.P.Ganesan (P.W..10) went to the scene of occurrence and prepared an observation mahazar (Ex.P2) in the presence of Solaimalai(P.W.6) and Ramasubramanian(not examined) and also a Rough Sketch(Ex.P9). P.W.10, conducted inquest on the body of the deceased at the scene of occurrence in the presence of panchayatdhars. Thereafter, the body of the deceased was sent for postmortem through Thiru.Rajendran(P.W.9) Special Sub Inspector of Police to Government Rajaji Hospital, Madurai.



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iv. Dr.G.Natarajan(P.W.8) conducted autopsy on the body of the deceased and found the following injuries:

"(i) Linear contusion measuring 30 cm x 2 cm extending from front of upper part of left side of chest to front of right shoulder.

(ii) Linear contusion measuring 24cm x 2 cm extending from front of left side of upper part of chest to front of upper part of right side of chest 5 cm below the injury No.1.

(iii) Laceration measuring 3 cm x 2 cm x muscle deep noted on left index finger.

(iv) Abrasion measuring 2 cm x 1 cm noted on left index finger

(v) Contusion measuring 11 cm x 2 cm noted over front of middle of neck."

Dr.Natarajan(P.W.8) opined that the deceased would appear to have died of multiple injuries, 4 to 6 hours prior to autopsy. Postmortem certificate was marked as Ex.P7.

v. P.W.10 arrested the accused at about 4.30 p.m., on the same day and recorded his confessional statement, based on which



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a wooden log (M.O.1) was seized from behind a thorny bush near a channel in the same village under a cover of a mahazar (Ex.P4). P.W..10 sent M.O.1 to Court under Form-95 (Ex.P11). The accused was thereafter produced before the learned Judicial Magistrate No.VI, Madurai, who remanded him to judicial custody.

vi. P.W.10 examined the witnesses and recorded their statements and after completing investigation, filed the final report against the accused on 22.01.2014 under Section 302 IPC before the Judicial Magistrate No.VI, Madurai, in P.R.C.No.XLVI of 2014. After furnishing copies of records to the accused under Section 207 of the Code of Criminal Procedure, the learned Judicial Magistrate No.VI, Madurai, committed the case to the Court of Sessions. The Principal District and Sessions Judge, Madurai, framed a charge under Section 302 IPC against the accused. Since the accused



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pleaded not guilty, the case was posted for trial.

vii. In order to establish the guilt of the accused, the prosecution examined ten witnesses and marked eleven exhibits and one Material Object(wooden log).

viii. The appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313 of the Code of Criminal Procedure, for which the accused simply denied of having committed any offence. However, no witness was examined on his side.

ix. The learned Principal District and Sessions Judge, Madurai, after analysing the oral and documentary evidence adduced on both sides, held that the prosecution had established the guilt of the accused beyond reasonable doubts and convicted the accused for the offence under Section 302 IPC and



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sentenced him to undergo Life Imprisonment and pay a fine of Rs.1,000/- in default, to undergo Simple Imprisonment for three months. Challenging the same, present appeal is filed by the accused.

3. Mr.G.Karuppasamy Pandian, the learned counsel for the appellant contended that there are glaring inconsistencies in the deposition of P.W.1 and P.W.2, who were considered as prime eyewitnesses to the occurrence. Particularly, P.W.4, another eyewitness, had deposed that both P.W.1 and P.W.2 had come to the scene of crime much later after even the neighbours had gathered there. It is further contended that the statement of P.W.4 totally weakened the depositions of P.W.1 and P.W.2, who had stated that the murder took place in their presence and the appellant was seen attacking the victim with a wooden log. Further more, there were contradictory versions, according to the learned counsel for the appellant, with regard to the weapon used by the accused. While P.W.1 and P.W.2 stated that the wooden log (M.O.1) was



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left by the assailant in the scene of crime itself the prosecution seizure mahazar (Ex.P4) tells a different story, it was contended. Thus, the contention of the learned counsel for the appellant was that the prosecution case was not even proved and despite the gaping holes in the theory and the evidence, the accused was held guilty of the offence under Section 302 IPC which tantamounts to miscarriage of justice.

4. Per contra, the learned Additional Public Prosecutor was categorical in his contention that it was a open and shut case by solid eyewitnesses account of sequence of events and also the remarkable speed with which the investigation, arrest, examination of witnesses and filing of charge sheet took place and therefore there was no reason for acquitting the accused. It is his further submission that the contradiction in the evidence of P.W.1, P.W.2 and P.W.4 pointed out by the learned counsel for the appellant are all minor in nature and by no stretch of imagination, it can be construed as fatal to the case of the prosecution.



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5. At the outset, it has to be accepted that the FIR was registered at 12.30 p.m. within one hour after the occurrence of the offence and the name of the accused was also mentioned in it. The FIR was also sent to Court immediately and the entire procedure including the arrest and seizure of weapon was completed on the very same day. The prosecution witnesses P.W.1, P.W.2, P.W.4 and P.W.5 were all corroborated while deposing regarding the sequence of events during and after the occurrence of events. Though it has been pointed out by the defense that there were contradictions in the versions of P.W.1 and P.W.2, it is to be observed that when the trial was conducted after a delay of four years, such inconsistencies and contradictions are bound to happen. More over, the key witnesses were cross-examined after a long period of about 1 ½ to 2 years from the date of their examination-in-chief. P.W.1 and P.W.2 were closely related to the victim (deceased) and the mental trauma they have undergone after witnessing such an incident or even undergoing such a loss, cannot be ignored. However, even assuming that P.W.1 and P.W.2 had made contradictory statements, the deposition of P.W.4, who



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was an independent witness and who had also witnessed the attack by the accused on the victim cannot be brushed aside, especially, when he also withstood the testimony of cross-examination. The learned counsel for the defense in the trial had tried to give a new reason for the enmity between the victim(deceased) and the appellant. It was alleged that the victim was earlier in prison for allegedly molesting the daughter of the appellant. However except for the cross-examination of some of the witnesses in this regard, no evidence was provided by the defense.

6. The learned counsel for the appellant had also contended that while the contention of P.W.1 is that there was a single fatal blow on the victim by the appellant, the postmortem report indicated multiple injuries on the body of the deceased causing the death. It is not a valid reason or ground to not validate the eyewitnesses account of P.W.1. In fact as per the deposition of both P.W.1 and P.W.2, they went back to the goat shed only after hearing the victim scream and whatever they saw when they reached the spot could have been the single fatal blow on the



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neck. Nothing much could be deciphered or inferred from the deposition of P.W.1. P.W.2 and P.W.4 had categorically deposed that they saw the appellant beating the victim multiple times. As stated earlier, the doctor in the postmortem certificate had opined that the deceased died of multiple injuries and this is corroborated by the versions of P.W.2 and P.W.4.

7. It was pointed out that there were also inconsistencies regarding the time of offence mentioned by the witnesses. In the instant case, P.W.1 and P.W.2 had deposed that the time of offence is between 11.00 a.m., and 11.30 a.m., while P.W.4 had deposed that it was after 10.30 a.m. The postmortem was conducted at 4.30 p.m., on 31.03.2013 and the doctor has opined that the death would have occurred 4 to 6 hours before the autopsy. In the circumstances, the differences in timing as alleged by the defense is not that significant to take note of.



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8. There was also a suggestion by the learned counsel for the defense/appellant that P.W.1 being a student of the college could not have witnessed the occurrence since the occurrence took place during the working hours (class hours of college). However, no evidence has been produced by the defense to show that P.W.1 was in the college at the time of crime. As already observed, the FIR was registered immediately after the offense and it also reached the Court without any delay. The investigation including the arrest of the accused was completed on the same day.

9. Thus the prosecution has established the guilt of the accused beyond all reasonable doubts by adducing acceptable evidence and we find no reason to interfere with the conviction and sentence passed by the Trial Court and the appeal deserves to be dismissed.

10. In the result,

(i) This Criminal Appeal is dismissed.



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(ii) The conviction and sentence passed by the learned Principal District and Sessions Judge, Madurai, in S.C.No.44 of 2016 dated 23.04.2019, is confirmed.

(iii) The respondent police is directed to secure the accused and produce him before the trial Court and the trial Court is directed to commit the appellant to prison to undergo the remaining period of sentence.

[P.N.P., J.] & [R.H., J.]
04.07.2022

Index : Yes/No
Internet : Yes/No

PJL

To
1.The Principal District and Sessions Judge,
Madurai District.

2.The Inspector of Police,
Nagamalai Pudukottai Police Station,
Madurai District.



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3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



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**P.N.PRAKASH, J
AND
R.HEMALATHA, J**

PJL

Pre-delivery Judgment made in
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04.07.2022