



Bail slip

Crl.A(MD).234/2019

The Sole Accused/Appellant by name Pandiarajan, son of Nagalingam, in the above Criminal Appeal was directed to be released on bail vide order of this Hon'ble Court dated 10.06.2019 made in Crl.MP(MD)No.4680/2019 in Crl.A(MD)No.234/2019.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.06.2022**

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Crl. A(MD)No.234 of 2019

Pandiarajan M/32/2019 : Appellant / Sole Accused
S/O Nagalingam
Vs.

The State through the
Deputy Superintendent of Police
Kenikarai Police Station,
Ramanathapuram District,
Under Cr.No.501 of 2009. : Respondent / Complainant

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, to call for the records of the case in Special S.C.No.59 of 2013 on the file of the Principal Sessions Court, Ramanathapuram dated 27.04.2019 and set aside the conviction and sentence passed by the Principal Sessions Court, Ramanathapuram and acquit the appellant / sole accused.

For Appellant : Mr.G.Vishnuram

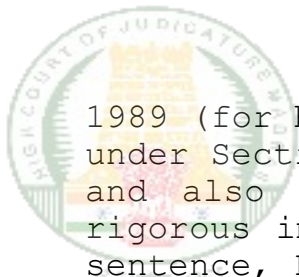
For Respondent : Mr.S.Ravi,
Additional Public Prosecutor

J U D G M E N T

(Delivered by P.N.PRAKASH, J)

This criminal appeal is filed against the judgment and order dated 27.04.2019 passed in Special S.C.No.59 of 2013 on the file of the Principal Sessions Court, Ramanathapuram.

2. The trial Court, by judgment and order dated 27.04.2019, acquitted the accused from the charge under Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act,



1989 (for brevity "the SC/ST Act") and convicted him for the offence under Section 302 IPC and sentenced him to undergo life imprisonment and also to pay a fine of Rs.50,000/-, in default, to undergo rigorous imprisonment for two years. Challenging the conviction and sentence, Pandiarajan (appellant herein) is before this Court.

3. The prosecution story runs thus:

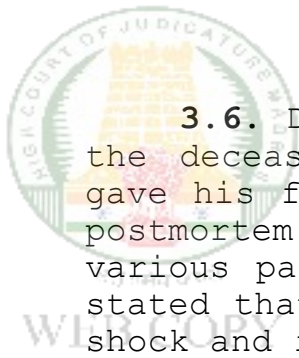
3.1. The deceased in this case is one Arumugam, a Dalit leader in Jawahar Nagar, Ramanathapuram Town. It is stated that, whenever he finds any youth astray, he would advise and upbraid him. He also used to be active in preventing the illegal sale of intoxicants in the area, on account of which, it appears that he had lot of enemies. The incident in this case is said to have occurred around 7.00 p.m. on 18.10.2009 in front of Bala Mechanic shop in Jawahar Nagar. It is alleged that, three months prior to the incident, the appellant was strolling in that area and on seeing him, the deceased is said to have questioned him and slapped him. This was projected as the motive for the murder.

3.2. It is alleged by the prosecution that on 18.10.2009 around 7.00 p.m., while the deceased was proceeding to his house along with one Kalanjiyam (P.W.7) and Mahadevan (P.W.19), the appellant intercepted him and belabored him with a knife (M.O.3) and caused his death. Soon, people gathered in the area and information was sent to Indira Gandhi (P.W.1), the wife of the deceased.

3.3. On a written complaint (Ex.P.-1) given by Indira Gandhi (P.W.1), Jeevaratnam (P.W.13), Sub-Inspector of Police, registered a case in Kenikarai Police Station Crime No.501 of 2009 under Section 302 IPC on 18.10.2009 at 19:45 hours and prepared the printed FIR (Ex.P.-7), which reached the jurisdictional Magistrate at 10.00 p.m. on the same day, as could be seen from the endorsement thereon. In the complaint (Ex.P.-1), Indira Gandhi (P.W.1) has stated that, she had earlier seen the appellant coming to her house twice and even threatened her once and that on the fateful day, while she was at her home, she received news that her husband was attacked and so, when she went to the place of occurrence, she was informed by Kalanjiyam (P.W.7) and Mahadevan (P.W.19) that the appellant had attacked her husband and caused his death.

3.4. The investigation of the case was taken over by Ganesan (P.W.23) Inspector of Police, who went to the place of occurrence and prepared the observation mahazar (Ex.P.-17) and rough sketch (Ex.P.-18). From the place of occurrence, Ganesan (P.W.23), Inspector of Police, seized bloodstained soil and soil without bloodstain (M.O.1 and M.O.2 respectively).

3.5. The body was sent to the Government Hospital, Ramanathapuram, by an ambulance and an inquest was conducted by Ganesan (P.W.23) Inspector of Police, between 7.00 a.m. and 9.00 a.m. on 19.10.2009. The inquest report was marked as Ex.P.-19.



3.6. Dr.Krishnamurthy (P.W.17) performed autopsy on the body of the deceased and issued the postmortem certificate (Ex.P-12) and gave his final opinion in Ex.P.-13. In his evidence as well in the postmortem certificate (Ex.P.-12), he has noted nine injuries on various parts of the body. In the final opinion (Ex.P.-13), he has stated that the death would have occurred due to multiple injuries, shock and injury to vital organs.

3.7. Since the deceased was a Dalit, investigation was taken over by Murugesan (P.W.24), Deputy Superintendent of Police, who arrested the appellant on 20.10.2009 at 1.45 p.m. and recorded his police confession. Based on the disclosure made by the appellant, the knife (M.O.3) was recovered under the cover of a mahazar (Ex.P.-6) in the presence of Velu (P.W.11), Village Administrative Officer. Thereafter, the accused was sent in judicial custody. The Investigating Officer obtained the community certificate of the accused vide Ex.P.-8, which shows that the appellant belongs to a non-Dalit community.

3.8. After examining various witnesses and collecting the reports from the experts, the Investigating Officer completed the investigation and filed a final report in P.R.C.No.10 of 2010 in the Court of the Judicial Magistrate No.II, Ramanathapuram, for the offences under Section 302 IPC and Section 3(2)(v) of the SC/ST Act, against the appellant.

3.9. On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with and the case was committed to the Court of Session, Ramanathapuram, in Special S.C.No.59 of 2013 and was tried by the Principal Sessions Court, Ramanathapuram (Special Court for SC/ST cases). The Sessions Court framed charges under Section 302 IPC and Section 3(2)(v) of the SC/ST Act, against the appellant and when the appellant was questioned, he pleaded not guilty.

4. To prove the case, the prosecution examined 24 witnesses and marked 22 exhibits and 6 material objects.

5. When the appellant was questioned under Section 313 Cr.P.C., on the incriminating evidence against him, he denied the same. No witnesses examined from the side of the appellant nor any document marked.

6. After considering the evidence adduced on either side, the trial Court by judgment and order dated 27.04.2019, in Special S.C.No.59 of 2013, has acquitted the appellant of the charge under Section 3(2)(v) of the SC/ST Act, but has convicted him of the offence under Section 302 IPC and sentenced him to undergo life imprisonment and also to pay a fine of Rs.50,000/-, in default, to undergo rigorous imprisonment for two years. Challenging the same, the appellant is before this Court.



7. Heard Mr.G.Vishnuram, learned counsel for the appellant and Mr.S.Ravi, learned Additional Public Prosecutor appearing for the State.

8. The prosecution has proved the following facts beyond any doubt:-

- (i) The deceased Arumugam hailed from Jawahar Nagar, Ramanathapuram, and was the husband of Indira Gandhi (P.W.1);
- (ii) The appellant was also from the same locality;
- (iii) The death of Arumugam was a homicide and it occurred on 18.10.2009 around 7.00 p.m.

9. The fact in issue is, whether the appellant was the perpetrator of the offence. The entire prosecution case rests on the eyewitness testimony of Kalanjiyam (P.W.7) and Mahadevan (P.W.19). It may be relevant to state here that, even in the complaint (Ex.P.-1), Indira Gandhi (P.W.1) has stated that, Kalanjiyam (P.W.7) and Mahadevan (P.W.19) had seen the incident and told her that it was the appellant who had attacked her husband. Thus, the names of Kalanjiyam (P.W.7) and Mahadevan (P.W.19) find place in the complaint (Ex.P.-1). However, Mahadevan (P.W.19) completely turned hostile and stated that he does not even know the appellant and that he came to know of the incident only much later.

10. Now, we are left with the solitary evidence of Kalanjiyam (P.W.7) and of course, we also have the testimony of Pandi (P.W.8) and Murugesan (P.W.9), who have stated that they saw the appellant in and around that area at the relevant point of time.

11. Before discussing the evidence of Kalanjiyam (P.W.7), Pandi (P.W.8) and Murugesan (P.W.9), it may be significant to state that all the witnesses including Indira Gandhi (P.W.1), have uniformly stated in the cross-examination that, after the murder of Arumugam, the local people staged dharna demanding the arrest of the offender in the morning of 19.10.2009.

12. Learned counsel for the appellant contended that, if according to the prosecution, the name of the appellant was known to the police, there was no question of any dharna being done by the local people demanding arrest of the perpetrators. In fact, two important witnesses, namely, Indira Gandhi (P.W.1) and her brother-in-law Murugesan (P.W.2) have stated in the cross-examination that in the night of 18.10.2009 itself, the appellant was taken into custody by the police and they saw him in the police station. This statement belies the prosecution story that the appellant was arrested only on 20.10.2009. In this background, when the appellant had come into the hands of the police even on 18.10.2009, the question of the local people agitating to arrest the offender appears to be a little bizarre.



13. Bearing this in mind, we shall now analyze the evidence of Kalanjiyam (P.W.7), Pandi (P.W.8) and Murugesan (P.W.9).

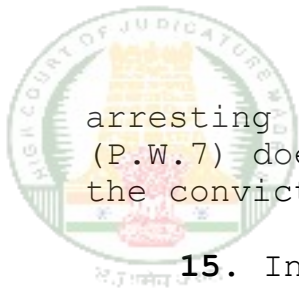
13.1. Pandi (P.W.8), in his evidence, has stated that at 6.00 p.m. on 18.10.2009, while he was with Murugesan (P.W.9), he saw the appellant running with a knife near the Vinayagar Temple.

13.2. Murugesan (P.W.9), in his evidence, has stated that around 7.00 p.m. on 18.10.2009, he and Pandi (P.W.8) saw the appellant running away with the knife in his hand. Though there is a discrepancy in the timing, which need not always be fatal, these two witnesses have not stated to the police the fact that they saw the appellant running with the knife in hand. This contradiction has been put to them in the cross-examination and also to the Investigating Officer as required under Section 145 of Cr.P.C. On the contrary, they have only stated to the Investigating Officer that they saw the appellant going in the eastern direction at the relevant point of time and nothing more. Therefore, the statement of these two witnesses that they saw the appellant running with a knife in hand at 7.00 p.m. on 18.10.2009, appears unbelievable.

13.3. Now, coming to the evidence of Kalanjiyam (P.W.7), his evidence was not corroborated by Mahadevan (P.W.19) as stated above. The fact remains that, both Kalanjiyam (P.W.7) and Mahadevan (P.W.19) are Dalits and they have stated that they are closely related to the deceased. Despite that, Mahadevan (P.W.19) has stated that he was nowhere in the area when the incident had taken place and only when he came to know about the incident, he went there. He has further stated that he does not even know the appellant.

13.4. Kalanjiyam (P.W.7) has stated that on 18.10.2009 about 7.00 p.m., he was walking with the deceased; at that time, he told the deceased that he would go in the front and when he took a few steps forward, the appellant attacked the deceased. He has stated that the attack took place near Bala Workshop. However, in the cross-examination, he has stated that he was 50 metres away and was near S.S Communication Shop when the attack had taken place. If this witness had actually seen the occurrence, it is not known as to why a complaint was not got from him and a case registered and instead, the FIR in this case has been registered based on the hearsay account of Indira Gandhi (P.W.1), who, admittedly, was not anywhere near the place of occurrence. Kalanjiyam (P.W.7) has also stated that there was a dharna on the next day to arrest the actual accused who were involved in the murder of deceased Arumugam.

14. As stated above, when the appellant had come into the custody of the police, even on the date of the occurrence and his name has been shown in the FIR, where was the need for the local people, including the witnesses therein, to conduct dharna for



arresting the actual murderer. Thus, the evidence of Kalanjiyam (P.W.7) does not inspire the confidence of this Court for sustaining the conviction.

15. In the result, this appeal is allowed.

The conviction and sentence imposed on the appellant / accused, by judgment and order dated 27.04.2019 in Special S.C.No.59 of 2013 on the file of the Principal Sessions Court, Ramanathapuram, (Special Court for SC/ST cases) for the offence under Section 302 IPC is hereby set aside.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

Pkn

To

- 1.The Principal Sessions Judge,
(Special Court for SC/ST cases)
Ramanathapuram.
- 2.The Judicial Magistrate No.II, Ramanathapuram.
- 3.Do through the Chief Judicial Magistrate, Ramanathapuram.
- 4.The Deputy Superintendent of Police,
Kenikarai Police Station,
Ramanathapuram.
- 5.The Superintendent,
Central Prison,
Madurai.
- 6.The District Collector,
Ramanathapuram District.
- 7.The Director General of Police,
Mylapore, Chennai.
- 8.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



Copy to:

The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.G.VISHNURAM, Advocate (SR-27400[F] dated 22/06/2022)

Judgment made in
Crl.A. (MD) No.234 of 2019
21.06.2022

SS/05/07/2022/ 7P 12C