



Crl.A(MD)No.252 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.08.2022

DELIVERED ON : 23.08.2022

CORAM :

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

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Alexpandian @ Pandian

... Appellant/Sole Accused

Vs.

State represented by,
The Inspector of Police,
Gudalur North Police Station,
Theni District.
(Crime No.126/2016)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, against the judgment and order dated 06.02.2019 made in S.C.No.173 of 2016 on the file of the Additional District and Sessions Judge(FTC), Theni, Theni District.



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For Appellant : Mr.G.Karuppasamy Pandian
for Mr.A.Sivakumar

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

JUDGMENT

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

This criminal appeal has been filed against the judgment and order dated 06.02.2019, in S.C.No.173 of 2016 passed by the Additional District and Sessions Judge (FTC), Theni, Theni District, in and by which, the appellant was convicted for the offences punishable under Sections 302 and 506(ii) IPC and sentenced as under:

Section of Law	Sentence of imprisonment	Fine amount
302 IPC	Life Imprisonment	Rs.2,000/- in default, to undergo simple imprisonment for six months.
506(ii) IPC	Rigorous Imprisonment for two years	NIL

The sentences were ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up with this Criminal



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

- i. Manikandan(P.W-1) is a resident of Surulipatti, Uthamapalayam Taluk, Theni District and employed as Supervisor in a grape orchard situated in Vandiperiyar village, Gudalur, belonging to one Shabeer. The deceased Rajan, who was also an employee used to spray pesticides in the grape orchard. There appears to be a dispute between Rajan (the victim) and Alex Pandiyan (the appellant) since the latter firmly believed that he lost his job as a night watchman in the grape orchard only due to the victim. According to the appellant, the victim had influenced P.W-1 by giving an impression that the appellant always used to drink and never performed his duty diligently. Subsequently, after his removal from service, ie., six months before the occurrence, the appellant got employed in another grape orchard belonging to one Abbas.



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ii. On 22.04.2016 at about 1.30 p.m. when the appellant and the victim were in conversation with each other, the appellant, who was armed with a bill hook (M.O1) started attacking the victim Rajan abusing him and stating that the victim was responsible for the loss of his job. This incident is said to have happened near 18th canal, which separated the two orchards belonging to Shabeer and Abbas. This attack was witnessed by Manikandan (P.W-1), Sivakumar (P.W-2), Saravanan (P.W-3), Satheesh (P.W-4), Prakash(P.W-5) and Karnan (P.W-6), who were all present in the vicinity of the scene of occurrence. The injured victim was immediately carried by Satheesh(P.W-4) and Karnan (P.W-6) in a two wheeler to Kumuli Government Hospital.

iii. The victim was examined by Dr.Mohammed Ali Jinnah(P.W-14), who prepared the Accident Register



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(Ex.P6) and noted several cut injuries. Later on, the victim was shifted to Theni Government Hospital where Dr.Felsi Melba (P.W-15) examined the victim at 6.35 p.m., on the same day, and admitted him as an inpatient. Subsequently, he was shifted to the Government Rajaji Hospital, Madurai, for further treatment.

iv. Dr.Gowri Shankar(P.W.19), Assistant Medical Officer, Government Rajaji Hospital, Madurai, examined the victim and admitted him as an inpatient. The information regarding the attack and consequent treatment in Cumbum, Government Hospital were already passed on to the Police by the Cumbum Government Hospital.

v. Thiru.Alphonse Raja (P.W.18), Sub-Inspector of Police, went to Cumbum Government Hospital and received a written complaint (EX.P.1) from Manikandan (P.W.1) which was countersigned by Prakash (P.W.5) and registered



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FIR (Ex.P.10) in Gudalur North Police Station Crime No. 126 of 2016 against the appellant for the offences under Sections 294(b), 324, 307, and 506(ii) IPC.

vi. Thiru.Muthumani (P.W.20) Inspector of Police took up investigation, went to the place of occurrence at 04.00 p.m., on the same day of occurrence, prepared an observation mahazar (Ex.P.3) in the presence of Paraman (not examined) and Nandhakumar (P.W.10) and also a rough sketch (Ex.P.12). He then recorded the statement of the victim at Theni Government Hospital. The appellant was arrested on 26.04.2016 near Gudalur Pudhu Bus Stand. His police confession was recorded, based on which, the investigation officer recovered a blood stained bill hook(M.O.1) behind a bush near 18th canal in the presence of Jaggaiyan (P.W.9) and Gunasekaran (not examined).

vii. Since the victim succumbed to injuries on 30.04.2016 at



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9.50 a.m., in the Government Rajaji Hospital, Madurai, he altered the sections of law to Sections 294(b), 302 and 506(ii) IPC and sent the alteration report (Ex.P.13) to Court through Tmt.Ambika(P.W.11), a Constable attached to the Gudalur North Police Station. He conducted inquest on the body of the deceased on 01.05.2016 in the mortuary of Government Rajaji Hospital, Madurai, in the presence of Panchayathars. Thereafter, he sent the body of the deceased for postmortem through Thiru.Vijayaraj(P.W.12) a Constable.

viii. Dr.Chandrasekar (P.W-17) conducted autopsy on the body of the deceased on 01.05.2016 at about 2.35 p.m., and found the following injuries:

- i. sutured cut injury measuring 9 cm in length x 0.5 cm x bone deep noted on right frontal to right parietal region.
- ii. sutured cut injury measuring 4 cm x 0.5 cm x bone deep noted on mid parietal region.



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- iii. sutured cut injury measuring 8 cm x 0.5 cm x bone deep noted on left parieto occipital region.
- iv. sutured cut injury measuring 8 cm x 0.5 cm x bone deep noted on mid occipital region.
- v. sutured cut injury measuring 4 cm x 0.5 cm x bone deep noted 2.0 cm above previous injury.
- vi. sutured cut injury measuring 7 cm x 0.5 cm x bone deep noted 3.0 cm below the previous injury.
- vii. sutured cut injury measuring 5 cm x 0.5 cm x bone deep noted on right parietal region.
- viii. superficial incised wound noted on back of left side chest measuring 8 cm.
- ix. sutured cut injury measuring 3 cm x 0.5 cm x muscle deep noted on back of right wrist.
- x. sutured cut injury measuring 8 cm x 0.5 cm x muscle deep noted on back of left fingers (all four fingers).
- xi. On dissection of Scalp, Skull & Dura : Two burr holes noted on left parietal region and right parietal region.



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Subscalpal contusion measuring 10 cm x 8 cm on right parieto occipital region and 10 cm x 8 cm noted on left parieto occipital region. Diffuse subdural hemorrhage and subarachnoid hemorrhage noted both cerebral hemispheres. Intra ventricular Hemorrhage noted.

xii. Other Findings : Peritoneal Cavity – empty; Pleural cavities- empty; Pericardium- contains 15 ml of straw color fluid; Heart – right side fluid blood, left side empty; Coronaries -patent; Lungs- cut section congested; Larynx & trachea – normal;; Hyoid bone - intact; Stomach-contains 100ml of brown colour fluid, with nil specific smell, mucosa-normal; Liver, Spleen & Kidneys – cut section congested; Small intestine – contains 15ml of bile stained fluid, with nil specific smell, mucosa-normal; Bladder-empty; Brain-described in injury column.

Dr.Chandrasekar, (P.W.17) opined that “*the deceased would appear to have died of cut injury to head*”



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The postmortem certificate was marked as Ex.P.9.

ix. Thereafter, Thiru.Muthumani (P.W-20), Sub Inspector of Police, examined the witnesses and recorded their statements and also collected various reports from experts. After completing investigation, he filed a final report against the appellant for the offences under Sections 294(b), 302 and 506(ii) IPC before the Judicial Magistrate, Uthamapalayam, in P.R.C.No.XXXII of 2016, who in turn, committed the case to the Court of Sessions after furnishing copies of documents to the accused under Section 207 of the Code of Criminal Procedure. The learned Additional District and Sessions Judge(FTC), Theni, took up the case on file in S.C.No.173 of 2016. To the charges framed under Sections 294(b), 302 and 506(ii) IPC, the appellant pleaded not guilty. Hence, the case was posted for trial.



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- x. In order to establish the guilt of the accused, the prosecution examined 20 witnesses and marked 14 documents and 2 material objects.
- xi. When the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313 of the Code of Criminal Procedure, he denied of having committed any offence. However, he did not examine any witnesses on his side.
- xii. The learned Additional District and Sessions Judge(FTC), Theni District, after analyzing the oral and documentary evidence adduced on both sides, found the appellant guilty of the offences under Sections 302 and 506(ii) IPC, and convicted and sentenced him as stated in paragraph No.1. Challenging the conviction and sentence passed by the trial Court, the appellant filed the appeal along with a petition to condone the delay of 44 days in preferring the appeal, in



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Crl.M.P(MD)No.4677 of 2019. The delay was condoned by this Court vide orders, dated 22.05.2019.

3. Heard Mr.G.Karuppasamy Pandian, learned counsel for the appellant and Mr.S.Ravi, learned Additional Public Prosecutor for the respondent.

4. This is a case of a deadly assault on the victim by the appellant, who was armed with a bill hook (M.O1). There are as many as six eyewitnesses to the incident which took place in broad day light near a busy grape orchard. Mr.G.Karuppasamy Pandian, learned counsel for the appellant had raised many doubts and also pointed out the deficiencies in the theory of the prosecution. One of the major contentions of the learned counsel for the appellant is that the enmity was between P.W-1 and the victim and it was not between the victim and the appellant. This suggestion was put forth during the cross-examination of the eyewitnesses and some other prosecution witnesses too. According to this theory, P.W-1 being the manager of the grape



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orchard owned by Shabeer had misappropriated funds about which the deceased victim knew. P.W.1, accordingly, to eliminate the victim set up his own men to murder the victim and falsely implicated the appellant in the crime. This suggestion was firmly refuted by the prosecution witnesses in the cross-examination. Besides this contention, the counsel had also raised doubts as to why the statement of the deceased recorded by the Investigation Officer(P.W-20) did not find a place in the documentary evidence adduced on the side of the prosecution. He had also doubted the veracity of the depositions of the eyewitnesses by contending that the scene of occurrence was not in sight from the place where the eyewitnesses were working. According to him, the orchard belonging to Abbas and that belonging to Shabeer were distantly located and were not adjacent to each other. It was also contended that even to the doctor, who first attended the victim and prepared the Accident Register (Ex.P6) it was only mentioned as assault by a known person and that the name of the appellant was not mentioned. Another contention which was put forth by the counsel for the appellant is that the act of the appellant would fall under exception IV to Section 302



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IPC, even assuming that he was guilty of the offence. According to him, the appellant's act was not premeditated and as narrated by P.W-2 to P.W-6, there was a wordy quarrel between the appellant and the victim, which escalated into fury and the appellant had not acted in a cruel or unusual manner. It was also pointed out that the II charge under Section 302 IPC framed against the appellant did not mention the date and time as envisaged under Section 216 Cr.P.C., and therefore became vague.

5. Per contra, the learned Additional Public Prosecutor argued that it was an open and shut case with as many as six eyewitnesses to the incident and all of them withstood the testimony of cross-examination. His further contention was that the incident took place in a broad day light, that too, in a grape orchard, where many people were found working during day time and there was no reason for the prosecution to falsely implicate any one not related to the crime. He, therefore, prayed for dismissal of the appeal.



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6. As regards the exception IV to Section 302 IPC, it has not been established that the act was committed without premeditation, without undue advantage to the offender and the offender not having acted in a cruel and unusual manner. It is true that there was a wordy quarrel between the appellant and the victim as could be discerned from the version of the eyewitnesses. But, the appellant was carrying a bill hook (M.O1), which he used to attack the victim indiscriminately. Therefore, it can be clearly observed that on all the three pre-requisites, for an act to fall under the said exception, the appellant had failed. Possession of bill hook was not incidental, since the appellant was only a watchman and had no reason to carry a bill hook. Similarly, the appellant was having an undue advantage of carrying a weapon against an unarmed victim and also acted in a cruel manner as is evidenced from the Accident Register and also from the postmortem certificate. Having addressed to this aspect, another technical aspect of the second charge not mentioning the date of the occurrence is not acceptable as per the provisions of Section 216 Cr.P.C., it can be seen from the charges that the date of incident is mentioned in the first charge. In the



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II charge, it is mentioned as “மேற்படி தேதி, மேற்படி சம்பவம்”, which clearly means that the II charge is regarding the same incident, which was mentioned in the first charge and therefore, the same date and time as mentioned in the first charge. It is not as if no date at all has been mentioned in Charge No.II.

7. Manikandan (P.W-1), in his evidence, has *inter alia* stated that he is working as a Supervisor in the grape orchard of Shabeer; he knows the deceased Rajan since the latter used to be engaged for spraying insecticide in the orchard; he knows the accused who was working as a security guard in the orchard six months prior to the incident; the deceased complained to him (P.W-1) that the accused consumes alcohol and does not properly do the security duty; so, he (P.W-1) terminated the services of the accused; on 22.04.2016, the accused was in conversation with the deceased near channel No.18 in the farm; at that time, he heard a hue and cry and when looked, he saw the accused indiscriminately hacking the deceased with a billhook saying "You are only responsible for my dismissal from service"; they, viz., Sivakumar (P.W-2), Sathish



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(P.W-4), Prakash (P.W-5) and Saravanan (not examined) rushed towards the deceased and on seeing them, the accused left the place; they saw the deceased falling to the ground with multiple injuries; their owner was informed about this; Karnan (P.W-6) and Satish (P.W-4) carried the deceased to the Government Hospital, cumbum and from there, the deceased was admitted in Ka.Vilakku Hospital; he identified the signature in the complaint (Ex.P.1).

8.In the cross-examination, he has inter alia stated that he had not written the complaint and it was written by the police on the statement given by him and that he and Prakash (P.W-5) have signed in the complaint. In the cross-examination, he has clearly reiterated that when he heard the sound and looked, he saw the accused hacking the deceased and thereafter, the accused ran away on seeing them. When asked as to what colour shirt the accused was wearing, he has stated that he did not notice that. He has further stated that he was standing 30 metres away from the place where the deceased was hacked.



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9.Sivakumar (P.W-2), Saravanan (P.W-3), Sathish (P.W-4), Prakash (P.W-5) and Karnan (P.W-6), who were all working in the orchard, had also witnessed this incident and they have substantially corroborated the evidence of Manikandan (P.W-1).

10.The fact that the deceased was carried to the Government Hospital, Cumbum, for treatment has been established through the evidence of Karnan (P.W-6) and also Dr.Mohamad Ali Jinnah (P.W-14), who, in his evidence, has stated that while he was on duty at 02.05 p.m. on 22.04.2016, one Rajan was brought to the hospital by his brother Karnan (P.W-6) with multiple injuries and on enquiry, it was stated to him that he was attacked by a known person with a billhook in Shabeer's orchard around 01.30 p.m. This also finds a place in the copy of the Accident Register (Ex.P-6). At that time, the deceased was alive. He was found with seven injuries and thereafter, after giving first aid, he was sent to the Government Hospital, Theni, for better treatment. While he was in treatment at the Government Hospital, Cumbum, intimation was sent to the police, based on which, Alphonse Raj (P.W-18), Sub



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Inspector of Police, came to Kambam Hospital and obtained the complaint (Ex.P.1).

11. It was strenuously argued by the learned counsel for the appellant that Manikandan (P.W-1) has stated that he had not written the complaint, but, it was written by the police in which he has signed, whereas, in the complaint (Ex.P1), it has been written by the Sub Inspector *"Sir, Received the complaint on dated 22.04.2016 and registered a case at 15.30 hrs. in Gudalur North P.S. Cr.No.126 of 2016 under Sections 294(b), 324, 307 and 506(II) IPC"*.

12. Based on this endorsement, the learned counsel for the appellant contended that there has been a suppression of the actual complaint by the prosecution. He further contended that Manikandan (P.W.1) has stated that the complaint was not written by him, but, by the police, in which he had signed, whereas Alphonse Raj (P.W.18), Sub Inspector of Police has stated that Manikandan (P.W.1) had given a written complaint. Expatiating on this discrepancy, the learned counsel



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attacked the complaint (Ex.P.1).

13. Be it noted, the complaint (Ex.P1) is not a substantive piece of evidence. It can be used either to corroborate or contradict Manikandan (P.W-1) whilst he is in the witness box. Though the deceased had suffered multiple injuries, he was alive while he was in the Government Hospital, Cumbum and that is why, the police registered the case initially under Section 307 IPC. Dr.Mohamad Ali Jinnah (P.W-14) has clearly stated that he was informed that Rajan was attacked by a known person at 01.30 p.m. Even if we keep aside the complaint (Ex.P.1) for a moment, the eye-witness account of P.W-1 to P.W-6 clearly implicates the appellant. The defence has not been able to make any serious dent in their testimony. Their presence in the farm at that point of time is natural because they were all workers of the orchards in that area. They have no personal axe to grind against the appellant. The deceased was shifted from the Government Hospital, Cumbum to the Government Hospital, Periyakulam, where, he was treated by Dr.Felsi Melba (P.W.15). Again, from the Government Hospital, Periyakulam, the deceased was shifted



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on the same day to the Government Rajaji Hospital, Madurai, which, we all know, has the state-of-the-art medical facilities. At the Government Rajaji Hospital, Madurai, the deceased was treated by Dr.Gowri Shankar (P.W.19) and only thereafter, he had died on 30.04.2016 at 19.30 hrs. In the meantime, the FIR in this case was registered for the offence under Section 307 IPC and the FIR reached the jurisdictional Magistrate on 26.04.2016 itself at 7.40 p.m. After the death of Rajan on 30.04.2016, the case was altered to one under Section 302 IPC vide alteration report (Ex.P.13). It is true that the investigation officer has stated in his evidence that he has recorded the statement of Rajan while he was in the hospital, but the same was not filed. This is a remissness on the part of the Investigation Officer for which the eyewitness account of P.W.1 to P.W.6 cannot be thrown overboard.

14. As regards the alleged enmity between P.W-1 and the victim, no evidence was produced before the trial Court to support the theory of conspiracy by P.W-1 in falsely implicating the appellant though an impression was given that the place of occurrence was out of sight from



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the area where the eyewitnesses were present. However, the rough sketch (Ex.P12) throws clarity on the proximity of the scene of occurrence as well as the visibility from the place, where the eyewitnesses were present. It was not as if the incident occurred in a remote place far away from the orchard which none of the witnesses working in the orchard could have seen.

15. In the circumstances, we do not find any reason to interfere with the conviction and sentence passed by the trial Court and the appeal therefore deserves to be dismissed.

16. In the result,

(i) This Criminal Appeal is dismissed.

(ii) The conviction and sentence passed by the learned Additional District and Sessions Judge(FTC), Theni, in S.C.No.173 of 2016, dated 06.02.2019, 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



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commit the appellant to prison to undergo the remaining period of sentence.

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

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Index : Yes/No
Internet : Yes/No
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To

1. The Additional District and Sessions Judge (FTC),
Theni,
Theni District.
2. The Inspector of Police,
Gudalur North Police Station,
Theni District.
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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