



Crl.A(MD)No.354 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.07.2022
DELIVERED ON : 26.07.2022

CORAM :

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

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Saravanan

.. Appellant/Accused

Vs.

The State, through
The Inspector of Police,
Mathur Police Station
(Crime No.88/2012)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, against the judgment and order dated 25.04.2019 in S.C.No.148 of 2014 passed by the learned Principal District and Sessions Judge, Pudukkottai.

For Appellant : Mr.S.Muniyandi

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



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JUDGMENT

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

The appellant has filed the present appeal against the judgment and order dated 25.04.2019 passed by the learned Principal District and Sessions Judge, Pudukkottai in S.C.No.148 of 2014, wherein the appellant was convicted for an offence punishable under Section 302 IPC and sentenced to undergo Life Imprisonment and pay a fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for a period of six months.

2. The prosecution theory runs as follows:

2.1. Tmt.Jagathambal is the wife of the deceased Subramanian. Subramanian and Jagathambal had two children by name, Sasikala [P.W-2] and Manikandan [P.W-3]. They were all residing in Vivekanandha Nagar, Mathur. Sasikala [P.W-2] and the appellant herein loved each other and eloped for which, a complaint was lodged by the deceased on 27.05.2012 with Thiru.Thiyagarajan [P.W-6] Sub-Inspector



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of Police, Mathur Police Station and the same was registered in C.S.R.No.84/2012. P.W-6 conducted an enquiry, after securing the presence of both P.W-1 and the appellant. P.W-1 and the appellant informed P.W-6 that they got married to each other. Since Sasikala [P.W-2] was aged 15 years and a minor, she was sent back to her parents' house by the police. Enraged over this, on 09.07.2012 at about 2.15 p.m., when the family P.W.1 to P.W.3 and the deceased, after cleaning their house at Vivekanandha Nagar, were about to leave for Trichy, where they shifted their residence, the appellant came over there armed with a bill hook [M.O-1] and attacked Subramanian on his neck, head and above the left ear. This was witnessed by P.W-1 to P.W-3. The appellant fled the scene of occurrence with the bill hook. Subramanian was immediately rushed to Government Hospital, Thiruchirapalli for treatment.

2.2. Dr.Premalatha [P.W.9] examined the victim and found the victim Subramanian in semiconscious stage and his blood pressure 100/50 and pulse rate 102. He had also sustained the following injuries

1) Lacerated injury measuring 8 x 5 cm x bone deep with the



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temporal occipital region

2) Lacerated 4 x 3 x 3 cm over left parietal temporal region

3) A cut injury 10x3x3 cm from the left hand side of his head till the back side of his head.

Dr.Premalatha, admitted him in Intensive care unit for treatment. A copy of the Accident Register was marked as Ex.P9. However, Subramanian succumbed to injuries at about 06.00 p.m., on the same day.

2.3. P.W.1 went to Mathur Police Station at about 07.30 p.m., on the same date and gave a statement [Ex.P1] before the police which was reduced into writing by Thiru. Rajendran [P.W.16], Sub Inspector of Police. He then registered an FIR [Ex.P.12] in Crime No.88/2012 against the appellant for an offence punishable under Section 302 IPC and placed the records before the Inspector of Police for investigation. He also sent FIR to the Judicial Magistrate, Keeranur thorough Thiru.Rajkumar [P.W.15], the Sub Inspector of Police. The FIR was placed before the Judicial Magistrate, Keeranur, at about 03.00 a.m., on 10.07.2017.



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2.4. Thiru.Manohar [P.W.17], Inspector of Police took up investigation in Crime No.88/2012, went to the scene of offence and prepared an observation mahazar [Ex.P3] and a Rough Sketch [Ex.P13] in the presence of Thiru.Palanisamy [not examined] and Thiru.Anbarasan [P.W-7]. He then recovered the bloodstained earth [M.O.10] and ordinary earth [M.O.11] from the place of occurrence under the cover of mahazar [Ex.P4] in the presence of the same witnesses. Thereafter he proceeded to the mortuary of the Government Hospital, Trichy, where the body of the deceased was kept, and conducted an inquest [Ex.P14] on the body of the deceased in the presence of the witnesses. Subsequently, he sent the body for post-mortem through Thiru.Rajagopal [P.W-14], Head Constable of Police, Mathur Police Station.

2.5. Dr.Ravikumar [P.W-10] conducted autopsy on the body of the deceased and found the following injuries:-

“1.A transverse sutured wound 13 cm in length on the lower part of left occipital region of scalp. On removal of the sutures, edges are clean cut, 0.5 cm in length and bone deep.



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on examination cut fracture of occipital bone present.

2.An oblique sutured wound 11 cm in length on the back of neck. On removal of the sutures, edges are clean cut 0.5 cm in breadth and muscle deep.

3.A vertical sutured wound 5 cm in length on the right side of occipital region of scalp. On removal of the sutures, edges are clean cut, 0.5 cm in breadth x bone deep. On examination, cut fracture of right parieto occipital bone present.

4.A transverse sutured wound 2 cm in length on the centre of occipital region of scalp. On removal of the sutures, edges are clean cut 0.5 cm in breadth and bone deep.

5.Bruising of occipital, right temporal region of scalp and right temporalis muscle-Dark red.”

He collected blood samples from the body and sent blood samples and the visceral organs to the Forensic Science Laboratory, Chennai, for analysis. The viscera report [Ex.P.18] stated that no alcohol or poison was



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detected in the organs. Thereafter, P.W-10 gave his final opinion that the deceased “died of head injury due to cut wounds”. The postmortem certificate was marked as Ex.P-10.

2.6. P.W-17 arrested the accused on 10.07.2012 near Arms Factory bus stop, Thiruverumbur and recorded his confessional statement (admissible portion of which was marked as Ex.P-7) in the presence of Thiru.Sekar [P.W-12] and Thiru.Mani [P.W-8] based on which, he recovered the bill hook [M.O1], blood stained pant [M.O.12] and a blood stained T.Shirt [M.O.13] under the cover of a mahazar [Ex.P8] in the presence of the same witnesses which were hidden by the appellant under a bridge near Arms Factory. Thereafter, P.W-17 sent the appellant to Judicial Magistrate, Keeranur, for judicial custody. He also recovered the blood stained clothes (M.O4 to M.O9) worn by P.W.1 and P.W2 on the date of occurrence and sent all the material objects through Court to Forensic Laboratory, Chennai, for analysis.



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2.7. The chemical analysis report (Ex.P19) showed the presence of human blood in all the material objects except ordinary earth (M.O11). In continuation of the same, another chemical analysis report Ex.P-20 was issued by the Assistant Chemical Examiner stating that the earth mixed with small stones and vegetative matter, on which dark brown stains were found and the earth mixed with small stones and vegetative matter were further examined and they were found to be similar to each other with respect to their density and distribution pattern.

2.8. The blood grouping test showed the presence of the human blood 'Group-O' in M.O2, M.O3, M.O5, M.O6 and M.O15. After completing the investigation, P.W-17 filed the final report before the Judicial Magistrate, Keeranur in P.R.C.No.11 of 2013, who in turn, committed the case to the Court of Sessions after furnishing copies of the documents to the appellant under Section 207 of the Code of Criminal Procedure. The learned Principal District and Sessions Judge, Pudukkottai, took up the case on file in S.C.No.148 of 2014. To a charge framed under Section 302 IPC, the appellant pleaded not guilty. Hence,



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the case was posted for trial.

2.9. In order to establish the guilt of the appellant, the prosecution examined 17 witnesses and marked 22 documents and 15 material objects.

2.10. 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 witness on his side.

2.11. The learned Principal Sessions Judge after analyzing the oral and documentary evidence adduced on both sides found the accused guilty of the offence under Section 302 IPC and sentenced him to undergo Life Imprisonment. Now, the present appeal is filed by the appellant against the said conviction and sentence.



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3.The appellant, who is a major, was in love with Sasikala [P.W-2], when Sasikala was just 15 years of age and was a minor. Both of them eloped. The nature of offence committed by the appellant in C.S.R.No.84/12 of Mathur Police Station directly falls under POCSO Act. But the date of enactment of the said Act was later in the same year. The father of the girl had rightly made a complaint to the police, when his minor daughter went missing. The police also acted swiftly to trace the missing girl [P.W.2] and both the appellant and the minor girl stated that they married each other. However, it is not known as to why the police did not register FIR against the appellant for kidnapping the minor girl from the lawful custody of her parents. She was nevertheless sent with her parents by the police keeping her age in mind. The police, who thought that peace has prevailed, was in for a rude shock, when the infuriated appellant avenged his defeat by attacking the father of his girl friend, whom he claimed to have married.

4.On the fateful day, the family consisting of the deceased, his wife [P.W.1] and children [P.W.2 and P.W-3] were about to leave for Trichy



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when the attack took place. The Accident Register [Ex.P9] and the postmortem report [Ex.P.10] indicate the intensity of the attack. P.W.1 to P.W.3 have clearly narrated the sequence of events.

5.Mr.S.Muniyandi, learned counsel for the appellant contended that the prosecution had failed to establish the guilt of the appellant beyond reasonable doubts as required in criminal jurisprudence. According to him, the prosecution theory itself has glaring inconsistencies. He also pointed out that

(i) P.W-1 to P.W-3 are interested witnesses and they did not try to prevent the attack by the appellant.

(ii) Injuries found in the postmortem certificate did not tally with the version of the eyewitness account

(iii) While Dr.Premalatha [P.W-9] had deposed that she gave intimation to the police immediately after admitting the victim, Thiru.Rajendran [P.W16], Sub Inspector of Police, who recorded the statement of P.W-1 and registered FIR, deposed that he did not receive any intimation from the police. Hence, the registration of FIR itself is



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doubtful.

(iv) Moreover, P.W9 corrected the date in the Accident Register [Ex.P-9] from '8' to '9' which is apparent on the face of Ex.P-9.

6.On the contrary, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor would contend that the eye witnesses [P.W-1 to P.W-3] had clearly deposed the ghastly crime committed by the appellant. That the appellant had prior enmity with the deceased was also brought to fore by the prosecution by examining Thiru.Thiyagarajan, Sub Inspector of Police, Mathur Police Station, who conducted enquiry on the complaint of the deceased in C.S.R.No.84/12 [Ex.P2] with regard to his missing daughter Sasikala [P.W-2]. According to him, the discrepancies pointed out by the learned counsel for the appellant are minor in nature.

7.Witnesses play an indispensable role in serving justice which rests on the principles of truth and unbiased. The conclusiveness and truthfulness of the testimony runs in favour of the witness as they are made under oath. Therefore, witnesses play a pivotal role in delivery of



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justice from the very point a criminal trial begins. One should understand the difference between 'Related witness' and 'Interested witness'. A related witness is some one having a relation with the prosecuted person or victim. For example, a husband giving testimony of his wife's death can be regarded as testimony by a related witness. On the other hand, an interested witness refers to some one having direct interest in the result of the litigation, expecting to gain some benefit out of it. The general presumption is that a related witness would not falsely testify against an innocent person as they would prefer to see the real culprits getting punished. It is settled law that relationship of the witness cannot be a ground to determine the credibility of the testimony.

8.In the instant case, the deceased Subramanian was attacked by the appellant in the presence of his Wife [P.W-1] and children [P.W.2 and P.W.3]. If after careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible and there is no good ground to discard their evidence. Even Sasikala [P.W.2], who admitted in her evidence that she was in love with the



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appellant, had clearly deposed that the appellant attacked her father with M.O1 on his neck and near his ear. P.W-1 to P.W-3 withstood the testimony of cross examination. Though the counsel for the appellant contended that both P.W-1 and the deceased victim were not in good terms with the appellant that therefore had falsely implicated the latter, it was not the line of cross-examination in the trial Court. In the cross-examination, it was suggested to P.W-1 that she had only sent her daughter P.W-2 with appellant. Apart from P.W.1 to P.W.3, Thiru Suresh [P.W.11], who is working in a hotel had deposed that when he was about to have his lunch at his house on 09.07.2012 at about 2.15 p.m., he heard a scream from outside and when he went near the house of the deceased, he saw the deceased lying on the ground in a pool of blood and the appellant flee from the scene of occurrence with a bill hook. His evidence remains unrebutted as he was not cross examined.

9.In the instant case P.W-1 went to Mathur Police Station at about 7.30 p.m on 09.07.2012 after the death of her husband Subramanian and gave her statement before P.W16, who registered FIR against the



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appellant for an offence under Section 302 IPC. In the circumstances, whether PW-16 received intimation from the hospital or not is not material and is insignificant.

10.The correction in the date in the Accident Register [Ex.P.9] is also not fatal to the case of the prosecution as it is the consistent versions of P.W-1 to P.W-3 that the appellant attacked the victim only on 09.07.2012 at about 2.15 p.m. The attested copy of Accident Register also shows that the appellant was admitted in ICU at about 3.15 p.m., on 09.07.2012.

11.Another contention of the learned counsel for the appellant is that injuries shown in the Accident Register copy [Ex.P.9] do not tally with the injuries found in the postmortem report [Ex.P-10]. Dr.Premalatha [P.W-9] after examining the victim noted down the injuries and admitted him in ICU and the cut injuries were sutured. A close scrutiny of the injuries found in Accident Register copy and Postmortem report does not show any glaring difference.



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12.Yet another contention is that P.W-1 to P.W-3 did not try to prevent the appellant from attacking the victim. Normally, at the scene of crime whether a person is a victim or not, he will be under high stress. High stress puts one's mind and body to survival mode. The appellant all of a sudden appeared and attacked the victim with M.O1 and in the circumstances, it is too much to expect a boy [P.W-3] who was aged just 15 years on the date of occurrence and P.W-1 and P.W-2, who were ladies to prevent the commission of crime.

13.As already observed, P.W-1 to P.W-3 have deposed clearly and cogently the offence committed by the appellant and they also withstood the testimony of cross examination. In the circumstances, the appeal fails and is to be dismissed.



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14. In the result,

(i) This Criminal Appeal stands dismissed.

(ii) The conviction and sentence passed by the learned Principal District and Sessions Judge, Pudukkottai, against the appellant in S.C.No. 148 of 2014 dated 25.04.2019, is hereby confirmed.

[P.N.P., J.] & [R.H., J.]
26.07.2022

Index : Yes/No

Internet : Yes/No

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To

1.The Principal District and Sessions Judge,
Pudukkottai.

2.The Inspector of Police,
Mathur Police Station.

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



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

cp

Judgment made in
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