



Crl. A(MD)No.326 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 29.06.2022

CORAM:

**THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr. JUSTICE R.VIJAYAKUMAR**

Crl. A(MD)No.326 of 2019

Bala @ Balasubramaniyan : Appellant/A2

Vs.

State represented by
The Inspector of Police
Thalamuthunagar Police Station
Tuticorin District
in Crime No.104 of 2001 : Respondent

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the judgment dated 28.03.2003 in S.C.No. 304/2002 on the file of the Additional Sessions Judge and Chief Judicial Magistrate, Thoothukudi.

For Appellant : Mr.R.Alagumani
For Respondent : Mr.S.Ravi
Additional Public Prosecutor



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JUDGMENT

P.N.PRAKASH, J.

This criminal appeal is filed against the judgment and order dated 28.03.2003 in S.C.No.304 / 2002 on the file of the Additional Sessions Judge, and Chief Judicial Magistrate, Thoothukudi.

2.The prosecution story runs thus:

The deceased Marimuthu was the younger brother of Mariselvam [P.W.-1] and they were residents of Mappillaioorani Village; the brothers were running a grocery shop in the market; on 21.03.2001, Marimuthu left the grocery shop around 6 in the evening saying that he is going to the saloon for haircut; however, he did not return home; therefore, Mariselvam [P.W.-1] and other family members started searching for Marimuthu throughout the night, but in vain; however, on the next morning (22.03.2001) around 6.30 a.m., Mariselvam [P.W.-1] found the body of Marimuthu with numerous cut injuries amongst bushes in the land



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belonging to one Srinivasa Nadar abutting Ettayapuram main road. On a written complaint [Ex.P-1], given by Mariselvam [P.W.-1], Sudalaimuthu, Sub Inspector of Police [P.W.-14], registered a case in Thalamuthu Nagar Police Station Crime No.104/2001 under Section 302 IPC on 22.03.2001 at 6.30 a.m. against unknown accused and prepared the printed FIR [Ex.P-17].

2.1. Investigation of the case was taken over by Rajendran, Inspector of Police, [P.W.-16], who went to the place of occurrence and prepared the observation mahazar [Ex.P-6] and rough sketch [Ex.P-18]. During the course of investigation, it came to light from the statements of Saravanakumar [P.W.-2] and Madhan [P.W.-4], the friends of Marimuthu, that Marimuthu was attacked brutally on the previous night by Sudalaimuthu [A-1], Bala @ Balasubramaniyan [A-2] and Christopher [A-3]. Inquest was conducted by the investigating officer and the inquest report was marked as Ex.P-19. Even in the inquest report, the names of the three accused find a place. The body of Marimuthu was sent to the Government Hospital, Tuticorin, where Dr.Densil [P.W.-10] performed autopsy on the body of Marimuthu and issued the postmortem certificate



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WEB COM [Ex.P-12], wherein, 12 cut injuries have been recorded.

2.2. Sudalaimuthu [A-1] and Bala @ Balasubramaniyan [A-2] were arrested by the police on 23.03.2001 in the presence of [P.W.-11] Village Administrative Officer and Christopher [A-3] was arrested on 02.04.2001. Pursuant to the police confession of Sudalaimuthu [A-1], a bill hook was recovered under the cover of a mahazar [Ex.P-14].

2.3. After the transfer of Rajendran [P.W.-16], investigation was continued by Bommaiyaamy [P.W.-15], who filed a final report in P.R.C.No.103/2001 in the Court of the Judicial Magistrate, No.II, Tuticorin, against Sudalaimuthu [A-1], Bala @ Balasubramaniyan [A-2] and Christopher [A-3] for the offences under Sections 341, 302 and 506(II) IPC.

3. On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Tuticorin in S.C.No.304/2002 and was made over to the Additional District and Sessions Court, Tuticorin for trial. The trial Court framed



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charges under Sections 341, 302 and 506(II) IPC against the accused and when questioned, they pleaded “not guilty”.

4. To prove the case, the prosecution examined 16 witnesses and marked 19 exhibits and 16 material objects. When the accused were questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against them, they did not offer any explanation. No witness was examined from the side of the accused nor any document marked. After considering the evidence on record and hearing either side, the trial Court, by judgment and order, dated 28.03.2003 in S.C.No.304/2003, convicted A-1 to A-3 as under:

Accused	Section of Law	Sentence of imprisonment	Fine amount
A1 to A3	341 IPC	--	Rs.100/- each, in default to undergo simple imprisonment for one week.
A1 to A3	302 r/w 34 IPC	To undergo imprisonment for life	--
A1	506(II) IPC	To undergo rigorous imprisonment for two years	--

Challenging the same, Bala @ Balasubramaniyan [A-2] is before this Court.



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5. Sudalaimuthu [A-1] and Christopher [A-3] filed Crl.A.Nos.860 and 1365 of 2003 in the Principal Seat at Chennai (since the Madurai Bench was established only in the year 2004). However, Bala @ Balasubramaniyan [A-2] did not prefer any appeal. A Division Bench of this Court heard the appeals of Sudalaimuthu [A-1] and Christopher [A-3] and by a common judgment and order dated 06.09.2006, dismissed the appeals and confirmed the conviction and sentence imposed on them by the trial Court. After the establishment of the Madurai Bench in the year 2004, Tuticorin District was brought within the territorial jurisdiction of Madurai Bench. It appears that Bala @ Balasubramaniyan [A-2] faced five murder cases apart from the present one, in which, he has been acquitted in four cases and has been convicted and sentenced in this case.

6. Bala @ Balasubramaniyan [A-2] filed the present appeal before this Court with a delay of 5,803 days, which was condoned by a Division Bench of this Court in Crl.M.P.(MD) No.4794/2019 on 05.07.2019 and thereafter, the present appeal was numbered.



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WEB COPY 7. Heard Mr.R.Alagumani, learned counsel for the appellant and Mr.S.Ravi, learned Additional Public Prosecutor for the respondent.

8. Though this Court has accepted the evidence of Saravanakumar [P.W.-2] and Madhan [P.W.-4] in the appeals filed by Sudalaimuthu [A-1] and Christopher [A-3], we independently analyzed the evidence of these witnesses in this appeal.

9. The entire prosecution case rests on the eyewitness account of Saravanakumar [P.W.-2], Madhan [P.W.-4] and Santhanaraj [P.W.-5]. Saravanakumar [P.W.-2], in his evidence, has stated that he is doing business in iron in Mappillaioorani and knows Mariselvam [P.W.-1] and Marimuthu; he also knows the accused; on 21.03.2001, after dinner, he came to the new bus stand to buy sweets; at that time, he met Madhan [P.W.-4]; when both of them were talking, Marimuthu came by his bicycle; Marimuthu was having gunny bags for purchasing groceries in his cycle; while all the three were proceeding to their village, the accused armed with deadly weapons, intercepted Marimuthu and Sudalaimuthu [A-1] questioned



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Marimuthu as to why he had teased his niece Mallika; after saying so, all the three started indiscriminately attacking Marimuthu; when a hue and cry was raised, 10 to 15 people rushed there, but they were threatened by the accused and so, they did not come to the rescue of anyone; the accused also threatened them; therefore, they ran away with their cycles from the place; they [accused] further threatened that if anyone gives evidence against them, their houses will be burnt.

10. Madhan [P.W.-4] has substantially corroborated Saravanakumar [P.W.-2]. In the cross examination of Saravanakumar [P.W.-2] and Madhan [P.W.-4], questions were asked with regard to the presence of light in that area, for which, they stated that there was light, though it was dark. Further, in the cross-examination, both of them have stated that the accused were known to them. When they were asked as to how they got their acquaintance, they had explained that the accused used to come to market where they had seen them.

11. The prosecution has proved beyond any doubt that the death of



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Marimuthu was a homicide (we have the evidence of Saravanakumar [P.W.-2] and Madhan [P.W.-4]). The defence was not able to make any serious dent in the testimony of Saravanakumar [P.W.-2] and Madhan [P.W.-4]. That apart, though Santhanaraj [P.W.-5] turned hostile, yet, in the evidence, he has stated that on 21.03.2001, around 10 in the night, he heard a person crying for help near Srinivasa Nadar lane and so, he and others went there and saw under the street light the three accused standing with deadly weapons. However, this witness, who was required to speak about the attack on Marimuthu by the accused, did not say anything about that. He was declared hostile and was cross-examined by the Public Prosecutor. It is trite that evidence of hostile witness cannot be rejected in *toto* and those portions that are in conformity with the case of the prosecution can be relied upon.

12. Mr.R.Alagumani, learned counsel for the appellant, contended that Saravanakumar [P.W.-2] and Madhan [P.W.-4] did not inform the family of Marimuthu, immediately after the incident and therefore, they would not have been present at the scene of occurrence. Saravanakumar [P.W.-2] and



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Madhan [P.W.-4] have stated that they were threatened by the three accused, who were armed and therefore, they ran away after they witnessed the brutal attack. Therefore, just because they did not have the courage to come over to the house of Marimuthu and inform his family members immediately, it cannot be stated that they would not have been present during the attack. In their cross-examination, no motive has been suggested by the defence for falsely implicating the accused.

13. Mr.R.Alagumani, learned counsel, placed reliance on the rough sketch [Ex.P-18] and submitted that the place of occurrence in this case is not a main road, but amongst bushes and therefore, the eyewitness testimony should be rejected. We are unable to accept the said submission for the reason that, what is shown in the observation mahazar [Ex.P-6] and rough sketch [Ex.P-18] is the place, where the body was found. According to Saravanakumar and Madhan [P.Ws.2 and 4], the attack began in the road and naturally, Marimuthu would have attempted to flee and must have gone into the bushes, where his body was later found.



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14. Mr.R.Alagumani, learned counsel, contended that though two knives were recovered very near the body, there were no bloodstains in them. Just because, there were no bloodstains in the two knives that were recovered from the place, where the body was found, it would not lead to the inference that the said knives were not at all used for the attack. Presence of blood in the knives would add corroboration to the case of the prosecution, but absence of blood would not lead to a negative inference.

15. The learned counsel further contended that Saravanakumar [P.W.-2] and Madhan [P.W.-4] have stated that they do not know about the names of the fathers of the three accused, whereas, the investigating officer has stated that the names were given by these witnesses. This discrepancy between the assertion of Saravanakumar [P.W.-2] and Madhan [P.W.-4] with the statement of the investigating officer with regard to the name of the fathers of the accused is too trivial to disbelieve the eyewitness account of Saravanakumar [P.W.-2] and Madhan [P.W.-4].



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16. In the result, we do not find any merit in the appeal. Accordingly, the criminal appeal fails and the same is dismissed. However, we direct that the sentences imposed in S.C.Nos.288 and 304 of 2002 shall run concurrently and the appellant would be entitled to set off under Section 428 Cr.P.C.

[P.N.P., J.] & [R.V., J.]
29.06.2022

Index : Yes/No
Internet : Yes
RR

To

- 1.The II Additional Sessions Judge
and Chief Judicial Magistrate
Tuticorin.
- 2.The Inspector of Police
Thalamuthunagar Police Station
Tuticorin District
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.
- 4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.



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**P.N.PRAKASH, J
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R.VIJAYAKUMAR, J**

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Judgment made in
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