



Crl. A(MD)No.323 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2022

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

CRL.A.(MD)No.323 of 2019

Rajarathinam

: Appellant

Vs.

The Inspector of Police,
Nachiyarkovil Police Station,
Kumbakonam,
Thanjavur District,
(Crime No.170/2012)

: Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, praying to set aside the judgment made in S.C.No.127 of 2013, on the file of the learned Additional District and Sessions Judge (FTC), Kumbakonam, dated 28.03.2019 and allow this Criminal Appeal.



Crl. A(MD)No.323 of 2019

WEB COPY

For Appellant : Mr.A.V.Rajasekaran
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

[Delivered by P.N.PRAKASH, J.]

This criminal appeal is filed against the judgment and order dated 28.03.2019 in S.C.No.127 of 2013, on the file of the learned Additional District and Sessions Judge (FTC), Kumbakonam.

2.The prosecution story runs thus:

2.1.The deceased Sony @ Mahendran [for brevity “Mahendran”], who hailed from Mathur Village in Thanjavur District was 40 years old at the time of the occurrence. It appears that ten days prior to the occurrence, a quarrel ensued between Mahendran, his friends Rajesh [not examined] and Raman [not examined] on one side and Rajarathinam [A1] and his father Arockiasamy [A2] on the other side, in which, a case was registered by Nachiyarkovil Police in Crime No.170 of 2012, against Mahendran and his friends. This was projected as the motive for the present occurrence.



Crl. A(MD)No.323 of 2019

WEB COPY

2.2.On 07.07.2012, around 08.30 in the night, while Gurusamy [P.W.1], the maternal uncle of Mahendran, was filling fuel for his motor bike in Christopher Raj Petrol Bunk at Mathur, he saw his nephew Mahendran and two of his friends Ilayaraja [not examined] and Chellamuthu [P.W.14] going in a motorcycle in front of him. They stopped the motorcycle a little away in front of the petrol bunk and Mahendran got down from the motorcycle to attend nature's call in a secluded bush near a transformer. His two friends dropped him there and left in the motorcycle. At that time, Gurusamy [P.W.1] heard a hue and cry and witnessed Rajarathinam [A1] and his father Arockiasamy [A2] attacking Mahendran with knives. While he and others rushed to the rescue of Mahendran, the accused ran away with the weapons.

2.3.Thereafter, Gurusamy [P.W.1] carried Mahendran to Sugam Hospital at Thanjavur and since it was a medicolegal case, they did not admit Mahendran in the hospital and therefore, Gurusamy [P.W.1] took Mahendran and got him admitted in the Government Medical College and Hospital, Thanjavur, with injuries. Mahendran was examined by Dr.Sudhakaran [P.W.16] at 11.09 p.m. on 07.07.2012 and



Crl. A(MD)No.323 of 2019

WEB COPY

the injuries found on the body of Mahendran were recorded in the copy of the Accident Register [Ex.P.12]. Mahendran was admitted as an inpatient for treatment. On 08.07.2012, Mahendran succumbed to the injuries at 02.45 a.m.

2.4.Gurusamy [P.W.1] thereafter went to Nachiyarkovil Police Station and gave a written complaint [Ex.P.1], based on which, Ashok Kumar [P.W.22], Special Sub-Inspector of Police, registered a case in Nachiyarkovil Police Station Crime No.170 of 2012, for the offences under Sections 341, 294(b) and 302 IPC, against Rajarathinam [A1] and his father Arockiasamy [A2] on 08.07.2012 at 08.00 a.m. and prepared the printed FIR [Ex.P.15], which reached the jurisdictional Magistrate at 03.00 p.m. on the same day, as could be seen from the endorsement thereon.

2.5.Investigation of the case was taken over by Soundarrajan [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, the investigating officer seized bloodstained soil, soil without bloodstain and asphalt without



Crl. A(MD)No.323 of 2019

WEB CO

bloodstain, which were all marked as M.O.3. Thereafter, the I.O. went to the mortuary at the Government Medical College and Hospital, Thanjavur, where he conducted inquest over the body of Mahendran and the inquest report was marked as [Ex.P.16].

2.6.Dr.Rajkumar [P.W.20], performed autopsy and issued the Postmortem Certificate [Ex.P.14], wherein he has noted nine external injuries on the body of Mahendran. After obtaining the viscera report, Dr.Rajkumar [P.W.20] gave his final report with regard to the cause of death of Mahendran, which reads as under:

“OPINION:

The deceased would appear to have died due to effects and complications of injury involving to vital organ brain. The injuries appear to be ante mortem in nature. The death appear to occur around 24-48 hours before post-mortem. The injury is caused by sharp edged weapon like aruval. (Viscera not preserved as there was no doubt in the cause of death).”

2.7.Rajarathinam [A1] surrendered on 09.07.2012, before the Judicial Magistrate, Pattukottai. Arockiasamy [A2] was arrested on



Crl. A(MD)No.323 of 2019

WEB COPY

10.07.2012 at 10:00 a.m. and based on his police confession, a knife [M.O.2] was recovered under the cover of a recovery mahazar [Ex.P.3]. On coming to know about the surrender of Rajarathinam [A1], the I.O. obtained custody of Rajarathinam [A1] and based on his confession, an Aruval [M.O.1] was recovered under the cover of a recovery mahazar [Ex.P.9].

2.8.After examining various witnesses and collecting various reports, the I.O. completed the investigation and filed a final report in P.R.C.No.44 of 2012, in the Court of the Judicial Magistrate, Kumbakonam, against Rajarathinam [A1] and his father Arockiasamy [A2], for the offences under Sections 341, 294(b) and 302 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, Thanjavur, in S.C.No.127 of 2013 and was later made over to the I Additional District and Sessions Court, Kumbakonam, for trial. The trial Court framed charges under Sections 341, 294(b) and 302 IPC and when questioned, they pleaded “not guilty”.



Crl. A(MD)No.323 of 2019

WEB COPY

4.To prove the case, the prosecution examined 23 witnesses and marked 22 exhibits and 4 material objects. When the accused were questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. It appears that Arockiasamy [A2] died on 09.05.2018 and therefore, the prosecution against him stood abated. No witness was examined nor any document marked from the side of the appellant.

5.After considering the evidence on record and hearing either side, the trial Court by judgment and order dated 28.03.2019, has convicted and sentenced the appellant as under:

Offence Section	under	Conviction and Sentence
341 IPC		To undergo one [1] month simple imprisonment.
294(b) IPC		To undergo three [3] months rigorous imprisonment.
302 IPC		Life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo rigorous imprisonment for six [6] months.



Crl. A(MD)No.323 of 2019

WEB COPY

6.Challenging the said conviction and sentence, Rajarathinam [A1] is before this Court. The present appeal was filed with a delay of 31 days to condone which, Crl.M.P.(MD)No.6177 of 2019 was filed under Section 5 of the Limitation Act, which was allowed by this Court on 08.07.2019 and thereafter, the instant appeal was numbered.

7.Heard Mr.A.V.Rajasekaran, learned Counsel appearing for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent.

8.The prosecution has proved the fact that the death of Mahendran was a homicide. The short question is whether the appellant was involved in the offence. The prosecution case rests on the solitary testimony of Gurusamy [P.W.1]. Gurusamy [P.W.1], in his evidence, has stated *inter alia* that on 07.07.2012, around 8'o clock in the night, while he was proceeding from Natchiyarkovil to Mathur in his motorcycle, he stopped at the Christopher Raj petrol bunk near Mathur for filling fuel; in front of him, he saw Mahendran going with two others in a motorcycle; they stopped the motor cycle near a



Crl. A(MD)No.323 of 2019

WEB COPY

transformer opposite to the petrol bunk and all of them went to attend the nature's call; at that time, he saw Rajarathinam [A1] and his father Arockiasamy [A2] indiscriminately attacking Mahendran and when everyone raised a hue and cry, the accused fled; he took Mahendran to Sugam hospital at Kumbakonam and since they refused to admit Mahendran, he carried him to the Government Medical College and Hospital, Thanjavur, where Mahendran died on 08.07.2012; thereafter, he came to the police station and lodged the complaint [Ex.P.1].

9.It is the specific case of the prosecution that Mahendran was dropped near the petrol bunk by his two friends Ilayaraja [not examined] and Chellamuthu [P.W.14] and only thereafter, Mahendran was attacked. However, Gurusamy [P.W.1] has not stated that Ilayaraja [not examined] and Chellamuthu [P.W.14] dropped Mahendran near the transformer and instead, he has stated that Mahendran, with two of his friends, was proceeding in a motorcycle and all the three went to attend to the nature's call, at which time, Mahendran was attacked. Had Mahendran's friends been present at the time of the occurrence, they would have testified in the trial.



Crl. A(MD)No.323 of 2019

WEB COPY

10.On the contrary, Chellamuthu [P.W.14] has stated that he and Ilayaraja dropped Mahendran near the transformer and soon when they returned, they found Mahendran with injuries lying on the road and therefore, he was taken to Sugam Hospital, from where, he was taken to the Government Medical College and Hospital, Thanjavur, for treatment. Though this witness was declared hostile, yet, we cannot lose sight of the evidence of Dr.Sudhakaran [P.W.16], who has stated that Mahendran was brought to the hospital by Ilayaraja and at the time of admission, it was stated that Mahendran was found with multiple cut injuries on the road and therefore, was brought to the hospital for treatment. This is also recorded in the copy of the Accident Register [Ex.P.12]. The name of Gurusamy [P.W.1] has not been referred to by Dr.Sudhakaran [P.W.16], nor does his name find a place in the copy of the Accident Register [Ex.P.12]. In this background, if the case is viewed, the possibility of Gurusamy [P.W.1] being an eye-witness to the incident appears dim.

11.Prabhu [P.W.10], who was an employee in the petrol bunk, has stated that on 07.07.2012, around 08.30 p.m., he saw a crowd



Crl. A(MD)No.323 of 2019

WEB COPY

opposite to his petrol bunk and out of curiosity, when he went there, he saw Mahendran with multiple injuries lying on the road. He has further stated that the generator was running in his petrol bunk, which means that there was no power in that area. He has specifically stated that he does not know Gurusamy [P.W.1]. Had Gurusamy been present in the petrol bunk and had he taken Mahendran to the hospital, this would have been known to Prabhu [P.W.10]. It is pertinent to state that Prabhu [P.W.10] was not declared hostile. Thus, it is apparent that none knew who the assailants were and only thereafter, the names of the accused were fixed and that explains the delay in Gurusamy [P.W.1] giving the complaint [Ex.P.1] and the further delay in the FIR reaching the jurisdictional Magistrate.

12.The prosecution projected yet another circumstance viz., that the clothes worn by Gurusamy [P.W.1] had bloodstains, but however, the serology report [Ex.P.22] states that the grouping test is inconclusive. That apart, the prosecution has not placed any material to show the blood group of Mahendran. Not even the clothes that were worn by Mahendran at the time of the occurrence were sent for serological examination. Based only on the presence of human blood



Crl. A(MD)No.323 of 2019

WEB COPY

in the dhoti of Gurusamy [P.W.1], without anything more, we cannot come to the inference that he was an eye-witness to the occurrence. Thus, we are unable to confirm the conviction, based on the shaky testimony of Gurusamy [P.W.1].

13.In the result, this Criminal Appeal is allowed and the appellant is acquitted of the charges under Sections 341, 294(b) and 302 IPC. Fine amount, if any paid by him, shall be refunded to him. Bail bond shall stand terminated.

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

03.08.2022

Index : Yes/No

Internet : Yes

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WEB COPY



Crl. A(MD)No.323 of 2019

P.N.PRAKASH, J.
and
R.HEMALATHA, J.

MR

JUDGMENT MADE IN
CRL.A.(MD)No.323 of 2019

03.08.2022