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Crl.A(MD)No.333 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2022

CORAM :

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH**

Crl.A(MD)No.333 of 2020

Anbarasu

.. Appellant / 2nd Accused

Vs.

The State represented by,
The Inspector of Police,
Aralvaimozhi Police Station,
Kanyakumari District.
(Crime No.218 of 2009)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 378(4) of Criminal Procedure Code, 1973, against the judgment and order, dated 06.02.2018 in S.C.No.76 of 2010 passed by the learned Principal Sessions Judge, Kanyakumari at Nagercoil.



CrI.A(MD)No.333 of 2020

WEB COPY

For Appellant : Mr.M.Jegadeesh Pandian
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

J.NISHA BANU,J.
and
N.ANAND VENKATESH, J.

This criminal appal has been filed by the appellant/A2 against the order and judgment of the Principal District and Sessions Court, Nagercoil, made in S.C.No.76/2010, dated 06.02.2018, convicting the appellant for an offence under Section 302 IPC and sentencing him to undergo Life Imprisonment and to pay a fine of Rs.1000/- and in default, to undergo one year simple imprisonment.



Crl.A(MD)No.333 of 2020

WEB COPY

2. The case of the prosecution runs as follows:

2.1. One Krishnaperumal set the law in motion by lodging the complaint (Ex.P-19) and he is the maternal uncle of the deceased Nagaraj. The mother of the said Nagaraj died long back and the deceased was in the custody of the defacto complainant Krishnaperumal. The deceased Nagaraj was also a friend of one Vettu Murugan @ Arumugam, who was running a petty shop near to the shop of this appellant / first accused. The electricity connection for the appellant's shop was taken from the Arumugam Shop and all of a sudden, Arumugam disconnected electricity supply to the appellant's shop, which leads to a dispute between Arumugam and the appellant. At the instigation of Arumugam, the deceased Nagaraj assaulted the appellant with an Aruval on 24.06.2009 and caused a grievous injury and on account of which, a case was registered as against the deceased Nagaraj on the file of Aralvaimozhi Police Station for the offence under Section 307 IPC. In view of the registration of the case against him, the deceased Nagaraj



Crl.A(MD)No.333 of 2020

WEB COPY

was absconding and the defacto complainant Krishnaperumal supported him by giving some money.

2.2. On the date of occurrence, on 05.07.2009, Krishnaperumal along with his son Sudhan (P.W.-1) went to Beemanagar cremation yard to meet the deceased and to give him some money. When they were talking in front of the graveyard, this appellant, along with the second accused, came in a TATA SUMO car bearing Registration No. TN41D5499 to the place of occurrence. On seeing the accused, the deceased Nagaraj, in order to escape from them, ran inside the graveyard. But the second accused caught hold of him and therefore, the deceased fell down and when he attempted to get up, this appellant / first accused attacked him indiscriminately with an Aruval on his head and neck. After the occurrence, the accused fled away from the place of occurrence and thereafter, Krishnaperumal went to Aralvaimozhi Police Station and lodged the complaint (Ex.P.19).



Crl.A(MD)No.333 of 2020

WEB COPY

2.3. On receipt of the complaint, the sub-Inspector of Police (P.W.-13), Aralvaimozhi Police Station, registered a case in Crime No. 218 of 2009 on 06.07.2009 at about 03.00 a.m. as against the accused Nos.1 and 2 for the offence under Section 302 IPC. The FIR (Ex.P-20) was also sent to the Judicial Magistrate Court, Boothapandi through the Head Constable (P.W.-11) and the same was received by the learned Judicial Magistrate, Boothapandi, on 06.07.2009 at about 12.05 p.m.

2.4. The Inspector of Police, Aralvaimozhi Police Station (P.W.-15) on receipt of the case in Crime No.218 of 2009 went to the place of occurrence on 06.07.2009 at about 00.30 hrs. and prepared an observation mahazar (Ex.P-1) and a rough sketch (Ex.P-24) in the presence of Nagarajan (P.W.-2) and one Boopalan. He also recovered a bloodstained gold flake cigarette box (M.O.-4), earth with and without bloodstains (M.O.-6 and M.O.-7 respectively) and cement mortars with and without bloodstains (M.Os.-8 and 9 respectively) and two pairs of



Crl.A(MD)No.333 of 2020

WEB COPY

beedi (M.O.-10) from the place of occurrence in the presence of the said witnesses. He conducted inquest over the body of the deceased in the Government Hospital, Asaripallam on 06.07.2009 at about 09.30 a.m. and the inquest report is marked as Ex.P-25. Then, he forwarded the dead body for autopsy to the Government Hospital, Asaripallam through the Constable (P.W.-9).

2.5. Dr.Velmurugan of Kanyakumari Government Medical College Hospital (P.W.-12) conducted autopsy on 06.07.2009 at about 2.45 p.m. and he noted down the following external injuries:

"1. 7x3xVisceral depth horizontal cut injury seen over the front of neck. It is 8cm below the symphysis menti. On examination the underlying muscles, vessels, nerves, windpipe and feedpipe out at that sites.

2. 9 x 2 x bone deep horizontal cut injury seen over the right side of back of head just closed to the occipital region.



CrI.A(MD)No.333 of 2020

WEB COPY

3. 17 x 5 cm bone deep horizontal cut injury seen over the back of right side of neck seen 2 cm below the previous injury. On examination, the underlying muscles, vessels and nerves out at that sites."

He gave his final opinion that the deceased would appear to have died of shock and hemorrhage due to cut injuries to the neck. The postmortem certificate is marked as Ex.P-15.

2.6. On 07.07.2009, at about 06.00 a.m., the Inspector of Police (P.W-15) arrested this appellant / first accused near Kandamedu Colony Church in the presence of Kolappapillai (P.W-10), Village Administrative Officer and the Village Assistant. The accused gave a confession statement and pursuant to his confession statement, the TATA Sumo car bearing Registration No.TN 41 D 5499 (M.O-1), a bill hook (M.O.-2) and bloodstained track suit and T.Shirt (M.Os.-15 and 16) were recovered under a cover of mahazar Ex.P-12 and Ex.P-13. He also arrested the fourth accused on 17.07.2009.



Crl.A(MD)No.333 of 2020

WEB COPY

2.7. The further investigation was taken over by Thiru Srikanth (P.W.-16), Inspector of Police, from 20.09.2009 and he arrested the second accused on 22.11.2009 and recovered a bill hook, pursuant to his confession statement. He also examined the Doctor (P.W.-12), who conducted the autopsy and also collected the reports from the Forensic Laboratory and filed a final report as against the appellant and three others before the Judicial Magistrate Court, Boothapandi in P.R.C.No.2 of 2010 and the same was committed to the Court of Sessions, Kanyakumari at Nagercoil and was taken up for trial in S.C.No.76/2010.

2.8. During the course of trial, 16 witnesses were examined on the side of the prosecution and 29 documents were marked, besides 23 material objects.



CrI.A(MD)No.333 of 2020

WEB COPY

3. The Court below questioned the accused persons by putting the incriminating materials that were collected in the course of trial and the same was denied as false. The trial Court, on considering the facts and circumstances of the case and on appreciation of evidence, convicted A1 and A2 for offence under Section 302 IPC and sentenced them to undergo Life Imprisonment. A3 and A4 were acquitted from all charges. Aggrieved by the same, the appellant/A2 has filed the present appeal.

4. Heard Mr.M.Jegadeesh Pandian, learned counsel appearing for the appellant/A2 and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the State.

5. This Court had an occasion to deal with the appeal filed by A1 in CrI.A(MD)No.164/2018. The only evidence that was available before this Court was the evidence of PW1, who is said to be an



Crl.A(MD)No.333 of 2020

WEB COPY

eyewitness. On appreciation of the evidence of PW1, this Court came to a categorical conclusion that his presence in the scene of occurrence is highly doubtful and that apart, his statement recorded under Section 161(3) Cr.P.C., reached the Magistrate Court with an exorbitant delay which was not explained. Hence, this Court gave the benefit of doubt to A1 and found that the prosecution did not prove the case beyond reasonable doubts.

6. The above finding rendered with respect to A1, must equally apply to the appellant/A2 also. This Court cannot give a different twist to the evidence available on record and the same benefit of doubt must be extended to the appellant also.

7. In the result,

- (i) This Criminal Appeal stands allowed.
- (ii) The conviction and sentence passed by the learned



WEB COPY



Crl.A(MD)No.333 of 2020

Principal Sessions Judge, Kanyakumari at Nagercoil against the appellant/2nd accused in S.C.No.76 of 2010 dated 06.02.2018 is hereby set aside.

(iii) The appellant/A2 is acquitted from the charge and he shall be released from the jail forthwith, if his custody is not required in any other case. Fine amount, if any, paid by the appellant/A2 shall be refunded to him.

[J.N.B, J.] & [N.A.V., J.]

17.10.2022

Index : Yes/No

Internet : Yes/No

PJL

To

1.The Principal Sessions Judge, Kanyakumari at Nagercoil.

2The Inspector of Police,
Aralvaimozhi Police Station,Kanyakumari District.

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



WEB COPY



Crl.A(MD)No.333 of 2020

**J.NISHA BANU, J
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Judgment made in
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