



CrL.A.(MD) No.330 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
16.08.2022	24.08.2022

CORAM:

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

CrL.A.(MD) No.330 of 2019

Balamurugan

... Appellant

-VS-

State rep.by
The Inspector of Police
Sethubavachathiram Police Station
Thanjavur District
(Crime No.257 of 2003)

... Respondent

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 28.06.2019, in S.C.No.260 of 2013, on the file of the III Additional District & Sessions Court, Pattukottai, Thanjavur District.



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For Appellant : Mr.C.Mayilvahana Rajendran
for Mr.T.Sekar

For Respondent : Mr.T.Senthil Kumar
Additional Public Prosecutor

J U D G M E N T

P.N.PRAKASH, J.

This criminal appeal is filed against the judgment and order dated 28.06.2019, in S.C.No.260 of 2013, on the file of the learned III Additional District & Sessions Judge, Pattukottai, Thanjavur District.

2. The appellant Balamurugan (A1) is the son of Pakirisamy (A2) and brother of Senthil (A3) and cousin of Balachander (A4). They are all fishermen by avocation and they hail from Puthupattinam Village in Thanjavur District.

3. At the outset, for the sake of clarity, it requires to be stated that the appellant in this case, *viz.*, Balamurugan (A1) was in abscondance after he was released on bail and so, the case against him had to be split up and the trial against the remaining three accused was conducted in S.C.No.192 of 2005, about which we have explained in detail in fra.



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4. The prosecution case is as under:

4.1. The deceased in this case is an Pitchai @ Pitchaian, who was also a fisherman and was living with his family comprising his wife Kamalambal (P.W.1), sons Raja (not examined), Chinnaian, Palanivel and daughter Gomathi (P.Ws.1, 2 and 5 respectively in S.C.No.192 of 2005); Pakirisamy's (A2's) daughter Seethaiammal (not examined) married Pitchai's son Raja (not examined) and Pitchai's daughter Gomathi (P.W.5 in S.C.No.192 of 2005) was given in marriage to Balamurugan (A1); on account of these matrimonial relationships between these two families, frequent quarrels arose. It is alleged that Gomathi (P.W.5 in S.C.No.192 of 2005) was ill-treated in her matrimonial home and used to be sent back to her parental home by her husband Balamurugan (A1) and his family members.

4.2. On 18.10.2003, around 07.00 in the night, Gomathi (P.W.5 in S.C.No.192 of 2005) was assaulted by her husband Balamurugan (A1) and his father Pakirisamy (A2). On



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WEB COPY coming to know of this, Pitchai and his sons Chinnaian (P.W.1 in S.C.No.192 of 2005) and Palanivel (P.W.2 in S.C.No.192 of 2005) questioned Balamurugan (A1) and his father Pakirisamy (A2), which resulted in a fracas each side assaulting the other.

4.3. On 19.10.2003, about 05.00 a.m., while Pitchai, his wife Kamalambal (P.W.1), his sons Chinnaian and Palanivel (P.Ws.1 and 2 in S.C.No.192 of 2005) were going towards the sea for fishing, they were intercepted by Balamurugan (A1), Pakirisamy (A2), Senthil (A3) and Balachander (A4) and were attacked. It is alleged that Balamurugan (A1) attacked Pitchai with a knife (M.O.1) and his father Pakirisamy (A2) attacked Pitchai with a wooden log (M.O.2). Senthil (A3) and Balachander (A4) attacked Chinnaian and Palanivel (P.Ws.1 and 2 in S.C.No.192 of 2005) with a knife (M.O.3) and sickle (M.O.4) respectively, resulting in bleeding injuries to them. However, the attack mounted on Pitchai by Balamurugan (A1) proved to be fatal as he (Pitchai) died soon thereafter. Pitchai and the two injured, namely, Chinnaian and Palanivel (P.Ws.1 and 2 in S.C.No.192 of 2005), were carried to



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the Government Hospital, Peravurani, where Pitchai was declared “brought dead” and the injured [Chinnaian and Palanivel (P.Ws.1 and 2 in S.C.No.192 of 2005)] were examined by Dr.Baskar (P.W.7) at 04.00 a.m. on 19.10.2003. Both of them [Chinnaian and Palanivel (P.Ws.1 and 2 in S.C.No.192 of 2005)] were admitted as inpatients and their (P.Ws.1 and 2 in S.C.No.192 of 2005) wound certificates (Exs.P1 and P2 respectively) show that the injuries sustained by them [Chinnaian and Palanivel (P.Ws.1 and 2 in S.C.No.192 of 2005)] were simple in nature.

4.4. While Chinnaian (P.W.1 in S.C.No.192 of 2005) was in the hospital, intimation was sent to Sethubavachathiram Police Station, based on which, Devadoss (P.W.9), Sub Inspector of Police, came to the hospital and recorded the statement (Ex.P4) of Chinnaian (P.W.1 in S.C.No.192 of 2005), based on which, he (P.W.9) registered a case in Sethubavachathiram Police Station Crime No.257 of 2003 under Sections 341, 323, 324 and 302 I.P.C., against Balamurugan (A1), Pakirisamy (A2), Senthil (A3) and Balachander (A4) and prepared the printed



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first information report (Ex.P5), which reached the jurisdictional Magistrate at 12.00 noon on 19.10.2003, as could be seen from the endorsement thereon.

4.5. Investigation of the case was taken over by the Inspector of Police of Sethubavachathiram Police Station, who went to the place of occurrence and prepared an observation mahazar (Ex.P7) and rough sketch (Ex.P8). He conducted inquest over the body of Pitchai and the inquest report was marked as Ex.P6.

4.6. Dr.Jawahar (P.W.8) performed autopsy on the body of Pitchai and issued postmortem certificate (Ex.P3). In the postmortem certificate (Ex.P3), the following antemortem injuries have been recorded:

- “1) A cut injury about 1 ½" breadth x 2 cm length x 1 cm depth present over the centre of the Fore head. Bleeding from the above wound present.*
- 2) Abrasion over the left side of the chest close to left Nipple present.*



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- 3) *Abrasion present over the ventrical side of the middle of the upper arm.*
- 4) *Abrasion over the post aspect of upper arm present.”*

4.7. After obtaining the viscera report (Ex.P14), Dr.Jawahar (P.W.8) has given the final opinion as to cause of death of Pitchai as under:

- “a) *Reserved pending report of death wound have occurred.*
- b) *The deceased would appear to have died of probably due to shock due to head injury.”*

4.8. Balamurugan (A1), Pakirisamy (A2), Senthil (A3) and Balachander (A4) were arrested by the police on 20.10.2013 and based on the confession statement of Balamurugan (A1), a knife (M.O.1) was recovered under a cover of mahazar (Ex.P9). Similarly, other weapons were also recovered from the confession statement of the other accused.



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4.9. After examining various witnesses and collecting reports from the experts, the Investigating Officer completed the investigation and filed a final report in P.R.C.No.75 of 2004, before the learned Judicial Magistrate, Pattukkottai, against Balamurugan (A1), Pakirisamy (A2), Senthil (A3) and Balachander (A4), for the offences under Sections 341 r/w 34, 302 and 324 I.P.C.

5. Balamurugan (A1) was released on bail on 13.01.2004 and thereafter, he absconded. Therefore, the case against him (A1) was split up as P.R.C.No.40 of 2005.

6. The case of the other three accused [Pakirisamy (A2), Senthil (A3) and Balachander (A4)] in P.R.C.No.75 of 2004, on their appearance, was committed to the Court of Session, Thanjavur, in S.C.No.192 of 2005 and was made over to the Additional Sessions Court (Fast Track Court-II), Pattukkottai, where, they were tried for the offences under Sections 341 r/w 34, 302 and 324 I.P.C. The Trial Court framed charges against them [Pakirisamy (A2), Senthil (A3) and Balachander (A4)] for the aforesaid penal provisions.



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7. When questioned, Pakirisamy (A2), Senthil (A3) and Balachander (A4) pleaded "not guilty". To prove the case, the prosecution examined 12 witnesses and marked 18 exhibits and 07 material objects in S.C.No.192 of 2005. When they [Pakirisamy (A2), Senthil (A3) and Balachander (A4)] were questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against them, they denied the same and did not come forward to give any plausible explanation. No witness was examined from the side of the accused nor any document marked.

8. The Trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 07.01.2006 in S.C.No.192 of 2005, acquitted Pakirisamy (A2) of the charge under Sections 302 and 341 I.P.C.; acquitted Senthil (A3) and Balachander (A4) of the charge under Section 341 I.P.C.; however, convicted Senthil (A3) and Balachander (A4) as detailed below:



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Section of Law	Sentence of imprisonment	Fine amount
324 I.P.C.	To undergo one (1) year rigorous imprisonment	Rs.1000/- in default to undergo rigorous imprisonment for three (3) months.

9. Challenging the acquittal of Pakirisamy (A2), Palanivel (P.W.2 in S.C.No.192 of 2005) filed CrI.R.C.No.819 of 2006 and challenging their conviction and sentence, Senthil (A3) and Balachander (A4) filed CrI.A.No.428 of 2006 before this Court.

10. A learned Single Judge of this Court, by separate judgments and orders of even date *viz.*, 28.04.2018, allowed CrI.A.No.428 of 2006 filed by Senthil (A3) and Balachander (A4) and acquitted them of the charges framed against them and dismissed CrI.R.C.No.819 of 2006 filed by Palanivel (P.W.2 in S.C.No.192 of 2005).

11. Balamurugan (appellant herein), after coming to know about acquittal of Senthil (A3) and Balachander (A4), took his own time to surrender and faced trial in P.R.C.No.40 of 2005, which was committed to the Court of



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Session, Thanjavur, in S.C.No.260 of 2013 and was tried by the III Additional District & Sessions Court, Pattukkottai.

12. The Trial Court framed charges against Balamurugan (appellant herein) under Sections 341 and 302 I.P.C., as the allegation against him was in respect of murder of Pitchai. When questioned, he (Balamurugan) pleaded “not guilty”.

13. In the meanwhile, several important witnesses, including the injured witness, namely, Chinnaian (P.W.1 in S.C.No.192 of 2005), who was the author of the complaint (Ex.P1 in S.C.No.192 of 2005) and the Investigating Officer died and another injured witness, namely, Palanivel (P.W. 2 in S.C.No.192 of 2005) went abroad for employment. Therefore, in our opinion, the prosecution should have resorted to the procedures under Section 299 Cr.P.C., and recorded the statement of these witnesses even during the earlier trial in S.C.No.192 of 2005. This was not done. However, the prosecution, to prove the present case, examined 09 witnesses and marked 14 exhibits and 04 material objects in S.C.No.260 of 2013.



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14. When Balamurugan (A1) was questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied the same and did not come forward to give any plausible explanation. No witness was examined from the side of the accused nor any document marked.

15. The Trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 28.06.2019 in S.C.No.260 of 2013, convicted and sentenced Balamurugan as detailed below:

Section of Law	Sentence of imprisonment	Fine amount
341 I.P.C.	NIL	Rs.500/- in default to undergo simple imprisonment for one (1) week.
302 I.P.C.	To undergo imprisonment for life	Rs.5000/- in default to undergo simple imprisonment for six (6) months.

The period of sentence already undergone was directed to be set off under Section 428 of the Code of Criminal Procedure



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16. Challenging the conviction and sentence, Balamurugan (A1) has filed the present criminal appeal.

17. Heard Mr.C.Mayilvahaja Rajendran, learned counsel appearing for Mr.T.Sekar, learned counsel on record for the appellant and Mr.T.Senthil Kumar, learned Additional Public Prosecutor appearing for the respondent and perused the written submission filed by the learned counsel for the appellant.

18. Though Chinnaian (P.W.1 in S.C.No.192 of 2005), who was an injured witness and son of Pitchai, had died, nevertheless, his mother Kamalambal has been examined as P.W.1 in S.C.No.260 of 2013. Kamalambal (P.W.1), in her testimony, has stated *inter alia* about the strained relationship between her (P.W.1) and accused families. She (P.W.1) has stated that on 18.10.2003, her daughter Gomathi (P.W.4 in S.C.No.192 of 2005) was assaulted by her husband Balamurugan (appellant herein) and his family members and therefore, her son went to their house to question them and at that time, a fight ensued; on 19.10.2003, around 05.00 in the morning, when she (P.W.1), along with her husband Pitchai and sons Chinnaian and Palanivel (P.Ws.1 and 2 in S.C.No.192 of 2005), were going for fishing, they were



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intercepted by Balamurugan (A1), Pakirisamy (A2), Senthil (A3) and Balachander (A4); Balamurugan (A1) stabbed her (P.W.1's) husband Pitchai with a knife (M.O.1) on his head and caused injuries; Pakirisamy (A2) attacked her (P.W.1's) husband Pitchai with a wooden log (M.O.2); Balachander (A4) stabbed her (P.W.1's) son Palanivel (P.W.2 in S.C.No.192 of 2005) with a knife (M.O.3) and Senthil (A3) attacked her (P.W.1's) son Chinnaian (P.W.1 in S.C.No.192 of 2005) with a sickle (M.O.4); they [Pitchai (deceased), Chinnaian and Palanivel (P.Ws.1 and 2 in S.C.No.192 of 2005)] were all taken to Peravurani Government Hospital, where, her (P.W.1's) husband was declared “brought dead”, however, her two sons (Chinnaian and Palanivel (P.Ws.1 and 2 in S.C.No.192 of 2005)] were admitted as inpatients and given treatment.

19. It is pertinent to state here that for the incident that took place on 19.10.2003, Kamalambal (P.W.1) was examined only on 05.03.2018, after a lapse of fifteen years, despite which, the defence was not able to make any serious dent in her cross-examination. However, she (P.W.1) has stated that after the incident, police came to the place of occurrence within a short time. It was suggested to her (P.W.1) that her (P.W.1's) husband was attacked by some unknown persons, which suggestion was denied by her (P.W.1).



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20. It is true that several witnesses have turned hostile in this case. But, of course, we have the evidence of Matchendiran (P.W.3) and Dharmalingam (P.W.4), who have substantially corroborated the evidence of Kamalambal (P.W.1). They [Matchendiran (P.W.3) and Dharmalingam (P.W.4)] have stated *inter alia* that while they were going for fishing in the morning, the family of Pitchai was also going towards the sea and at that time, they [Matchendiran (P.W.3) and Dharmalingam (P.W.4)] saw the appellant and his family members attacking Pitchai and his family members.

21. Mr.C.Mayilvahana Rajendran submitted that even in the complaint (Ex.P4) of Chinnaian (P.W.1 in S.C.No.192 of 2005), it is stated that these two witnesses [Matchendiran (P.W.3) and Dharmalingam (P.W.4)] came to the spot on hearing the hue and cry that was raised by his [P.W.1's (in S.C.No.192 of 2005)] mother Kamalambal (P.W.1) and on seeing them (P.Ws.3 and 4) and others, the accused fled with their weapons. Therefore, the learned counsel for the appellant contended that these witnesses [Matchendiran (P.W.3) and Dharmalingam (P.W.4)] could not have witnessed the occurrence.



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22. Though at the first blush the aforesaid submission did appear probable, but, on a closer scrutiny of the evidence of Matchendiran (P.W.3) and Dharmalingam (P.W.4) in the backdrop of the complaint (Ex.P4) of Chinnaian, it could be discerned that the family of Pitchai was going in front of them towards the sea and these witnesses [Matchendiran (P.W.3) and Dharmalingam (P.W.4)] and others, who were all fishermen, were following them and therefore, Chinnaian (P.W.1 in S.C.No.192 of 2005), while giving complaint (Ex.P1 in S.C.No.192 of 2005), would have stated only about the people rushing towards Pitchai and would not have personally known that they [Matchendiran (P.W.3) and Dharmalingam (P.W.4)] had witnessed the occurrence from behind. His (P.W.1 in S.C.No.192 of 2005) attention would have been only on the attackers and not on the others coming behind him. Even in the complaint (Ex.P4), the presence of Kamalambal (P.W.1) has been clearly stated and therefore, we cannot say that Kamalambal (P.W.1) was a later introduction. It may be pertinent to state here that Kamalambal (P.W.1) was examined as P.W.3 in S.C.No.192 of 2005. It is a custom in some fishing hamlets of south districts, for the womenfolk to accompany their husbands and sons upto the sea, and after brief prayers, they would see their menfolk off and thereafter return home. Therefore, the presence of Kamalambal



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WEB C (P.W.1), whose name figures in the F.I.R. (Ex.P5), at the time of the occurrence was natural.

23. As regards the acquittal of Pakirisamy (A2) in the earlier trial i.e. S.C.No.192 of 2005, he was acquitted on the ground that Chinnaian (P.W. 1 in S.C.No.192 of 2005) had stated that Pakirisamy (A2) attacked his father (Pitchai) on the back of his head with a wooden log (M.O.2), but in the postmortem certificate (Ex.P3), no corresponding injury was found.

24. As regards the conviction of Senthil (A3) and Balachander (A4), they were convicted under Section 324 for having caused injuries to Chinnaian and Palanivel (P.Ws.1 and 2 in S.C.No.192 of 2005) as they were charged only under Section 324 I.P.C., in S.C.No.192 of 2005 and not under Section 302 I.P.C., whereas, Balamurugan (A1) was charged under Section 302 I.P.C., for having fatally attacked Pitchai with a knife (M.O.1) on his head and causing injuries.

25. Mr.C.Mayilvahana Rajendran submitted that Dr.Jawahar (P.W.8) has stated, in his evidence, that the injury found on the deceased was simple in nature and therefore, the conviction of Balamurugan (A1) under



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Section 302 I.P.C., is unsustainable. We are unable to appreciate this submission, because, injury No.5 sustained on the middle of the head measured 1½" breadth X 2 cms length X 1 cm depth and his final opinion clearly shows that the death would have occurred due to the head injury. The postmortem certificate (Ex.P3) shows that the deceased Pitchai was aged 48 years and not an old man. The fact remains that the appellant Balamurugan absconded for several years and the trial commenced only in the year 2018. Hence, we have no reasons to disbelieve the evidence of Kamalambal (P.W.1), Matchendiran (P.W.3) and Dharmalingam (P.W.4) as their presence in the place of occurrence has been satisfactorily explained.

26. For all the aforesaid reasons, we find no merits in this appeal and the conviction and sentence recorded by the Trial Court warrant no interference.

27. In the result,

- The criminal appeal is dismissed.
- The judgment and order dated 28.06.2019, in S.C.No.260 of 2013, passed by the learned III Additional District & Sessions Judge, Pattukottai, Thanjavur District, is upheld.



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- Suspension of sentence granted by this Court on 26.03.2021 in CrL.M.P.(MD) No.1126 of 2021 stands cancelled.
- Since the appellant is on bail, the respondent police is directed to secure the appellant and produce him before the Trial Court forthwith and to commit him to prison to serve out the period of sentence.

[P.N.P., J.]

[R.H., J.]

24.08.2022

Index : Yes / No

Internet : Yes / No

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To:

- 1.The III Additional District & Sessions Judge,
Pattukottai, Thanjavur District.
- 2.The Inspector of Police,
Sethubavachathiram Police Station,
Thanjavur 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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and
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JUDGMENT
IN
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