



Crl. A(MD)No.342 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRL.A.(MD)No.342 of 2019

R.Balamurugan

: Appellant

Vs.

State through
The Inspector of Police,
Sawyerpuram Police Station,
Thoothukudi District.
(Crime No.113/2016)

: 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.237



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of 2017, on the file of the learned II Additional District and Sessions Judge, Thoothukudi, dated 02.07.2019 and allow this Criminal Appeal.

For Appellant : Mr.G.Karnan
For Respondent : Mr.S.Ravi,
Additional Public Prosecutor

JUDGMENT

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

This Criminal Appeal is filed against the judgment and order dated 02.07.2019 in S.C.No.237 of 2017, on the file of the learned II Additional District and Sessions Judge, Thoothukudi.

2. The Trial Court framed as many as three charges against the appellant, as detailed below:

Charge	Penal Provisions
1	341 I.P.C.
2	294(b) I.P.C.
3	302 I.P.C.



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3. By judgment and order dated 02.07.2019, the Trial Court acquitted Kumaran [A2] and Ilayaperumal [A3], but, convicted Balamurugan / appellant [A1] and sentenced him, for the offences, as detailed below:-

Sl.No.	Offence under Section	Conviction and Sentence
A1	341 and 302 IPC.	Life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three [3] months.

The period of incarceration was ordered to be set off under Section 428 Cr.P.C.

4.The prosecution story runs thus:

4.1.The dead body of one Ramesh with injuries all over, along with his motorcycle bearing Registration No.TN-74-W-2552 [M.O.6], was found around 05.00 a.m. on 27.08.2016 on the Perumpadai Sastha Kovil to Palayakayal Road in Pudukottai Village in Thoothukudi District by

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Selvakumar [P.W.2] of Pethanatchi Amman Nagar in that area. Since Selvakumar [P.W.2] knew Ramesh, he immediately informed Jeyaraman [P.W.1] - brother of the deceased, who was in Thoothukudi.

4.2. On hearing the news, Jeyaraman [P.W.1] came to the place and by then, his other brothers, public as well the police had gathered there. On a complaint [Ex.P.1] given by Jeyaraman [P.W.1], Aatham Ali [P.W.20] the Sub Inspector of Police registered a case in Sawyerpuram Police Station Crime No.113 of 2016 at 08.00 a.m. on 27.08.2016 under Section 302 I.P.C. against unknown accused and prepared the printed FIR [Ex.P.22] which reached the jurisdictional Magistrate at 02.30 p.m. on the same day, as could be seen from the endorsement thereon.

4.3. Investigation of the case was taken over by Vijayakumar [P.W.21] who went to the place of occurrence and prepared an Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.23]. From the place, where the body was lying, he seized the soil with bloodstain and without bloodstain under the cover of Mahazar [Ex.P.3 and Ex.P.5]. The motorcycle bearing



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Registration No.TN-74-W-2552 [M.O.6] was lying near a channel, which was recovered under the cover of Mahazar [Ex.P.4 and Ex.P.6]. Apart from the motorcycle [M.O.6], the Investigating Officer also recovered certain parts and number plates of a car and those parts have been marked as M.O.3 to M.O.5. In the number plate [M.O.5], the number “1401” was found painted.

4.4. Inquest was conducted over the body of Ramesh by Vijayakumar [P.W.21] the Investigating Officer and the inquest report was marked as Ex.P.24. Even during the inquest, none knew either the motive for the offence or about the perpetrator of the crime.

4.5. Dr.Manoharan [P.W.19] performed autopsy on the body of Ramesh and issued the Postmortem Certificate [Ex.P.19] and Final Opinion [Ex.P.20]. In the Postmortem Certificate [Ex.P.19], the following ante mortem injuries have been noted :

"1. An oblique cut wound of size 17 cms x 5 cms x vertebra deep extending from right



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eyebrow along the right ear to the middle of back of neck.

2. A cut wound of size 16 cms x 3 cms x vertebra deep seen 1 cm below the injury No.1.

3. A cut wound of size 18 cms x 6 cms x vertebra deep seen in the left side of neck 2 cms below the left ear. It extends from back of neck to the left side of neck. The underlying major vessels, nerves, muscles and vertebra (C1, C5) found cut."

4.6. In the final opinion [Ex.P.20], Dr.Manoharan [P.W.19] has stated as follows :

"Final Opinion :-

The deceased would appear to have died of shock and haemorrhage due to multiple cut injuries to the face and neck. Death would have occurred 6-12 hrs. prior to the autopsy. No poison was detected in the viscera analyzed."



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4.7. Vijayakumar [P.W.21] the Investigating Officer, arrested Balamurugan [A1] and Ilayaperumal [A3] on 28.08.2016 at 09.30 a.m. and based on their police confession [Ex.P.10], a Tata Sumo Car bearing Registration No.TN-55-AA-1401 [M.O.12] was recovered under the cover of Mahazar [Ex.P.9]. That apart, the Investigating Officer [P.W.21] recovered a bloodstained bill-hook [M.O.8], a bloodstained shirt [M.O.9] that was allegedly worn by Balamurugan [A1], a bloodstained shirt [M.O. 10] that was allegedly worn by Kumaran [A2] and a T-shirt [M.O.11] that was allegedly worn by Ilayaperumal [A3]. The seized items were sent to the Tamil Nadu Forensic Sciences Department along with the bloodstained clothes of Ramesh that was received after post-mortem, for serological examination and the serology report [Ex.P.15] shows the presence of human 'A' group blood in the apparel of Ramesh as well in M.O.9 to M.O.11. On 08.09.2016, Kumaran [A2] surrendered before the Judicial Magistrate, Tiruchendur and he was taken into police custody on 14.09.2016.

4.8. On account of transfer of Vijayakumar [P.W.21], Kingsley Dev Anand [P.W.22] the Investigating Officer, took over the investigation



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from him and after examining various witnesses and collecting the reports of the experts, he completed the investigation and filed a final report in P.R.C.No.10 of 2017 in the Court of the Judicial Magistrate No.I, Thoothukudi for the offences under Sections 341, 294(b) and 302 I.P.C. against Balamurugan [A1], Kumaran [A2] and Ilayaperumal [A3].

5. 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, Thoothukudi, in S.C.No.237 of 2017 and was later made over to the II Additional District and Sessions Court, Thoothukudi, for trial. The trial Court framed charges under Sections 341, 294 (b) and 302 IPC against Balamurugan [A1], Kumaran [A2] and Ilayaperumal [A3] and when questioned, they pleaded “not guilty”.

6. To prove the case, the prosecution examined 22 witnesses and marked 28 exhibits and 19 material objects. When the accused were questioned under Section 313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. No witness was examined



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nor any document was marked from the side of the appellant.

7. The trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 02.07.2019 in S.C.No.237 of 2017, acquitted Kumaran [A2] and Ilayaperumal [A3], but, convicted and sentenced Balamurugan [A1] as detailed in Paragraph No.3 supra. Challenging the above said conviction and sentence, Balamurugan [A1] has filed the present Criminal Appeal.

8. Heard Mr.G.Karnan, learned counsel appearing for the appellant and Mr.S.Ravi, learned Additional Public Prosecutor appearing for the respondent.

9. It is the case of the prosecution that Ramesh was working under Balamurugan [A1] as a driver and he developed illicit intimacy with Balamurugan's [A1] wife; therefore, Balamurugan [A1], along with Kumaran [A2] and Ilayaperumal [A3], borrowed a Tata Sumo Car bearing Registration No.TN-55-AA-1401 [M.O.12] from Perumal [P.W.7] one day



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before the occurrence; knowing that Ramesh would pass through Perumpadai Sastha Kovil - Palayakayal Road, around 04.30 a.m. for work, in his motorcycle bearing Registration No.TN-74-W-2552 [M.O.6], Balamurugan [A1] Kumaran [A2] and Ilayaperumal [A3] chased him in the Tata Sumo Car bearing Registration No.TN-55-AA-1401 [M.O.12], banged him from behind; when he fell down, Kumaran [A2] and Ilayaperumal [A3] held his hands and Balamurugan [A1] hacked him and thereafter, Kumaran [A2] and Ilayaperumal [A3] hacked him to death. This is the sum and substance of the prosecution case.

10. The entire prosecution case rests on the evidence of Karuvalam [P.W.9]. Karuvalam [P.W.9] in his evidence has *inter alia* stated that around 04.30 a.m. on the fateful day, he was proceeding for work to his farm and at the time, he wanted to ease himself; therefore, he was attending to the nature's call behind a bush on the road side; at that time, he saw a Tata Sumo Car hitting a motorcyclist from behind; thereafter, the inmates of the car got down; two of them held Ramesh and Balamurugan [A1] hacked Ramesh; he knows Ramesh as well Balamurugan [A1] and both of them are



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his relatives; thereafter, they went away in a Tata Sumo Car. In the cross-examination, he stated that after he saw the incident, he went to his village and returned to the place of occurrence and was remaining there when the police and the relatives of Ramesh came.

11. The fact remains that Karuvalam [P.W.9] is a relative of Ramesh as well Balamurugan [A1]. If he had really witnessed the occurrence at 04.30 a.m. as testified by him, he would have definitely informed about this to the family members of Ramesh, namely, Jeyaraman [P.W.1], Muthuselvam [P.W.3] and Chandra [P.W.4]. The Investigating Officer [P.W.21] who has stated that even during the inquest, neither the motive nor the persons committed the crime, came to light.

12. In such view of the matter, we are unable to place much reliance on the testimony of Karuvalam [P.W.9]. As regards the presence of human 'A' group blood in the bloodstained shirt [M.O.9] that was allegedly worn by Balamurugan [A1] at the time of occurrence, we have the evidence of Jeyaraman [P.W.1] and Muthuselvam [P.W.3] who have stated that



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Balamurugan [A1] was taken into custody on the same day i.e. on 27.08.2016 at 8'o clock itself. Therefore, the statement of the Investigating Officer [P.W.21] that he arrested Balamurugan [A1] only at 09.30 a.m. on 28.08.2016 stands falsified. Once it is shown that the accused had already come into the custody of the police much before the alleged time of arrest, then the consequent confession and recovery become suspect. The fact remains that the trial Court has disbelieved these recoveries and acquitted Kumaran [A2] and Ilayaperumal [A3].

13. Of course, Karuvalam [P.W.9] has stated that he does not know Kumaran [A2] and Ilayaperumal [A3] and that he identified them only with their voice. No test identification parade was conducted for Karuvalam [P.W.9] to identify Kumaran [A2] and Ilayaperumal [A3].

14. In such view of the matter, we are of the opinion that the evidence on record is insufficient to sustain the conviction and sentence imposed on Balamurugan [A1].



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

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

25.08.2022

Index : Yes/No

Internet : Yes

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To

1.The II Additional District and Sessions Judge,
Thoothukudi.

2.The Inspector of Police,
Sawyerpuram Police Station,
Thoothukudi District.
(Crime No.113/2016)

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.

and

R.HEMALATHA, J.

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JUDGMENT MADE IN

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