



Crl. A(MD)No.361 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
30.08.2022	02.09.2022

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mrs. JUSTICE R.HEMALATHA

Crl. A. (MD)No.361 of 2019

Nachimuthu @ Mayavan

: Appellant/
accused

Vs.

State represented by
The Inspector of Police
Keeranur Police Station
Dindigul District
Crime No.18 of 2011

: Respondent

PRAYER: Criminal Appeal is filed under Section 378 (2) of the Code of Criminal Procedure, against the judgment and order dated 17.07.2018 in S.C.No.41/2014 on the file of the Additional District & Sessions Judge, Palani.



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For Appellant

: Mr.Gopalakrishna Lakshmana Raju
Senior Counsel for
Mr.R.Venkateswaran

For Respondent

: Mr.A.Thiruvadikumar
Additional Public Prosecutor

JUDGMENT

P.N.PRAKASH, J.

This criminal appeal is filed against the judgment and order dated 17.07.2018 in S.C.No.41/2014 on the file of the Additional District & Sessions Judge, Palani.

2. The prosecution story runs thus:

2.1.The appellant and Ramesh (deceased) hailed from Kottathurai Village in Palani Taluk, Dindigul District. The appellant got married to one Karthigai Jothi [Not examined] and through the wedlock, he has two children. Ramesh was having illicit intimacy with Karthigai Jothi for over two years prior to his death. Everyone in the village, including Kuppammal [P.W.-1], the aunt of Ramesh and Kamala [P.W.-2] the mother of Ramesh,



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had heard about it. Of course, none had directly seen this because, obviously such things would happen only clandestinely and not in public gaze.

2.2. Around 9.00 a.m. on 30.01.2013, while collecting water from the village tap, Kamala [P.W.-2] the mother of Ramesh and Karthigai Jothi came face to face and quarreled with each other. In the said quarrel, both of them freely accused each other touching upon the other's character. Kamala [P.W.-2] is said to have assaulted Karthigai Jothi.

2.3. On the same day evening, around 8.30 p.m., while Ramesh was sleeping in his house, the appellant came to his house, dragged Ramesh from inside and hacked him to death saying that, “Only if you are alive, you will have relationship with my wife and so, you die”. Ramesh died on the spot. People in the street, who saw the incident, raised a hue and cry, seeing which, the appellant escaped. Seeing this incident, Kamala [P.W.-2] fainted.

2.4. Ambulance was called to take Ramesh to the hospital, after



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which, Kuppammal [P.W.-1] went to the police station and gave a statement [Ex.P.-1], which was recorded, based on which, a case in Keeranur Police Station Crime No.18/2013 was registered at 21.30 hrs. on 30.01.2013 under Section 302 IPC against the appellant. The complaint [Ex.P.-1] and the printed FIR [Ex.P.-11] reached the jurisdictional Magistrate at 4.00 a.m. on 31.01.2013, as could be seen from the endorsement thereon.

2.5. Investigation of the case was taken over by Manikandan [P.W.-17], who went to the place of occurrence and prepared the observation mahazar [Ex.P.-4] and rough sketch [Ex.P.-13]. From the place of occurrence, the Investigating Officer [P.W.-17] seized soil with bloodstain [M.O.-6] and soil without bloodstain [M.O.-7] under a cover of mahazar [Ex.P.-15]. The Investigating Officer [P.W.-17] conducted inquest over the body of Ramesh in the Government Hospital, Palani and the inquest report was marked as Ex.P-7.

2.6. Dr.Kodees [P.W.-8] performed autopsy on the body of Ramesh and in his evidence as well in the postmortem certificate [Ex.P-7], he has



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“Internal Examination:

A spindle shaped cut injury measured about 16 cm x 8 cm x 5 cm present on the right side of the neck. Extending from the nape of the neck to the midline of the neck. Soft tissue (muscles) of the neck severed. All major vessels on the right side cut. Right side clavicle bone – medial 1/3rd was cut. Cervical vertebra C5, C6 bone are seen through the wound. All teeth present.

Internal Examination: Heart chambers empty c/s. Pale. Lungs c/s pale. Hyoid bone intact. Stomach empty. Liver c/s pale. Kidney c/s pale. Intestines distended with gas. Bladder – empty. Brain c/s pale. Viscera preserved and sent for chemical analysis. Time of death 14 to 16 hrs prior to autopsy. Cause of death. Reports pending for chemical analysis report.”

2.7. After getting the viscera report [Ex.P-10], he gave his final opinion as to the cause of death, which is as under:

“The deceased would appear to have died of Hemorrhage and shock due to the injury sustained.”



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2.8. After postmortem, the body of Ramesh along with his bloodstained apparel, namely bloodstained purple colour vest [M.O.2] and black colour Lungi [M.O.3] were handed over to Muthiah [P.W.-16] Head Constable, who in turn, handed over the bloodstained clothes to the Investigating Officer.

2.9. The appellant was arrested by the police on 31.01.2013 and based on his confession statement, the clothes worn by him namely, bloodstained white colour vest [M.O.-4], a bloodstained orange colour dhoti [M.O.5] and a bill hook [M.O.-1] were recovered under a cover of mahazar [Ex.P-3].

3. The bloodstained apparel of Ramesh along with bloodstained clothes and bill hook that were seized by the police were sent for chemical examination and the report [Ex.P-16] shows that human blood 'A' was found in all the items.

3.1. After examining various witnesses and collecting the reports of



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the experts, the Investigating Officer [P.W.-17] completed the investigation and filed a final report in PRC No.22/2013 in the Court of the Judicial Magistrate, Palani under Section 302 IPC against the appellant.

4. On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Dindigul in S.C.No.41/2014 and was made over to the Additional District and Sessions Court, Palani, for trial. The trial Court framed a charge under Section 302 IPC and when questioned, the appellant pleaded “not guilty”.

5. To prove the case, the prosecution examined 19 witnesses and marked 18 exhibits and 10 material objects. When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined from the side of the appellant nor any document marked.

6. After considering the evidence on record and hearing either side,



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the trial Court, by judgment and order dated 17.07.2018 in S.C.No.41/2014, has convicted the appellant under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for three months. Challenging the same, the appellant is before this Court.

7. Heard Mr.Gopalakrishna Lakshmana Raju, learned Senior Counsel, for the appellant and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor, for the State.

8. The learned Senior Counsel made the following submissions:

(a) The incident in this case did not take place at 8.30 p.m., on 30.01.2013, but must have taken place in the day time, when Kuppammal [P.W.-1] and Kamala [P.W.-2] would have been away for work. Therefore, Kuppammal [P.W.-1] and Kamala [P.W.-2] were not the eyewitnesses;

(b) The postmortem report [Ex.P-14] shows that there was no digested food either in the stomach or intestine, whereas, Kamala [P.W.-2] had stated that Ramesh had his food and went to bed;



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(c) The prosecution had failed to prove the alleged quarrel that took place in the morning of 30.01.2013;

(d) No one had seen the appellant having an affair with Karthigai Jothi and therefore, the motive has not been proved;

(e) Karthigai Jothi was not examined as a witness in this case;

(f) The evidence of Palaniammal (grandmother of Ramesh) [P.W.10] destroys the evidence of Kuppanmmal [P.W.-1] and Kamala [P.W.-2];

(g) The prosecution has not adduced any evidence to show as to who took the body of Ramesh to the hospital;

(h) The love letters, exchanged between Karthigai Jothi and Ramesh that were recovered and marked as M.O.-8, M.O.-9 and M.O.-10 have not been proved to be in the handwriting of either Karthigai Jothi [not examined] or Ramesh. There is a discrepancy in the evidence of Karthick [P.W.-14] and the Investigating Officer [P.W.-17] as to who had handed over the love letters to the police.

9. Per contra, the learned Additional Public Prosecutor refuted the aforesaid contentions.



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10. Before adverting to the evidence of Kuppammal [P.W.-1] and Kamala [P.W.-2], it must be pertinent to state here that Kuppammal [P.W.-1] and Kamala [P.W.-2] are ordinary Dalit peasants, who know only to write their names in Tamil and nothing more. Kuppammal [P.W.-1], in her evidence, has stated *inter alia* that she is an agricultural coolie; she knows Ramesh and the appellant; Ramesh was her husband's elder brother's son; Ramesh has a sister, who is married; Ramesh was unmarried; the appellant is also her relative; the appellant is married to Karthigai Jothi and has two children; Ramesh was having illicit intimacy with Karthigai Jothi; on account of this, the appellant and Ramesh had problems frequently; on Wednesday, the 10th day of Tamil Month in 2013, around 9 o' clock, Kamala [P.W.-2] and Karthigai Jothi quarreled in the village tap, in which, Kamala [P.W.-2] abused Karthigai Jothi by saying that, “for the last two years, you have been having an affair with my son, but still you are showing face to me”; after this quarrel, she [P.W.-1] and Kamala [P.W.-2] went for work; on that night, around 8.30 p.m., while she [P.W.-1] and Kamala [P.W.-2] were sitting and talking in front of the house of Kamala [P.W.-2], the appellant came there looking out for Ramesh; Ramesh was sleeping inside the house;

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the appellant went inside the house and dragged Ramesh out saying, “only if you are alive, you will have affair with my wife, so die” and hacked him; Ramesh fell on the ground wailing; on seeing this, Kamala [P.W.-2] fainted; the appellant ran away towards Melkaraipatti; this was seen by Rajan [P.W. 5], Karuppasamy [P.W.-4] and Kuppusamy [P.W.-3]; Ramesh died on the spot; She [P.W.-1] went to the police station, gave a statement [Ex.P-1]; she [P.W.-1] identified the billhook that was used by the appellant and the same was marked as M.O.-1.

11. It is pertinent to state here that Kuppammal [P.W.-1] was examined in chief on 26.10.2015 and she was not cross-examined on that date. The learned counsel for the appellant before the trial Court reported, 'no cross'.

12. On 26.10.2015, Kamala [P.W.-2] was examined in chief. In her evidence, she has *inter alia* stated that she knew about her son's [deceased] affair with Karthigai Jothi and on the Tamil month of Thai (தை) in 2013, while taking water in the pipe, she [P.W.-2] quarreled with Karthigai Jothi



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and both of them grappled each other's tresses and fought; on the same day night, around 8.30 p.m., while she [P.W.-2] and her sister-in-law [P.W.-1] were sitting in front of their house, the appellant came there and asked for her son [Ramesh]; so she asked him [appellant], why he wants to know about her son; the appellant went straight inside her house, dragged out her son, who was sleeping, and hacked him; seeing this, everyone rushed there and she [P.W.-2] fainted. This witness, who was examined in chief on 26.10.2015 was not cross-examined on the same day. Both these witnesses [P.W.-1 and P.W.-2] were recalled and cross-examined only on 16.02.2016. In the cross-examination of Kuppammal [P.W.-1], she has stated that they usually go for work in the morning at 8 o' clock and return in the night at 8 o' clock. Based on this, the learned Senior counsel contended that Kamala [P.W.-2] and Kuppammal [P.W.-1] would not have been in the place of occurrence during the morning quarrel. However, in the subsequent portion of the cross-examination, Kuppammal [P.W.-1] has stated that after the quarrel in the morning with Karthigai Jothi, she [P.W.-1] and Kamala [P.W.-2] went for work and came back in the evening at 8 o' clock. Therefore, based on the statement that they would normally go to work at 8



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o'clock and return in the evening at 8 o'clock, it cannot be stated that even on the fateful day, they would have gone to work at 8 o'clock in the morning and would not have been there for the morning incident, which happened around 9.00 a.m.

13. In the cross-examination of Kuppammal [P.W.-1], she has stated as follows:

“ரமேசுக்கும் கார்த்திகை ஜோதிக்கும்
கள்ளத்தொடர்பு இருந்தது எனக்கு நேரடியாக தெரியுமா
என்றால் தெரியாது.”

Based on this, the learned Senior Counsel contended that the illicit intimacy between Ramesh and Karthigai Jothi has not been established. We are unable to countenance the aforesaid submission. What the witness has stated is, that she does not know directly about the illicit intimacy between Ramesh and Karthigai Jothi. As stated by us in Paragraph No.2.1, supra, no person of ordinary prudence would engage himself in an illicit affair with another man's wife in public for everyone to see.



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14. As regards the love letters [M.Os.8 to 10] that were accidentally found in the house of Ramesh, while cleaning, they were handed over to the police. It is true that the police had failed to send the love letters for expert opinion. In *Guljar Ali v. State of Uttarpradesh [1998] 2 SCC 192*, the Supreme Court has propounded a theory called “internal evidence theory”, according to which, the contents of a seized document itself can throw light on the subject matter of the transaction. We called for M.Os. 8 to 10 and read them. They are in Tamil and the expression, “I love you” in English has been copiously employed. This shows the interest of Karthigai Jothi's love for Ramesh.

15. Be that as it may, we do not want to go into these love letters, because we have no good reasons to disbelieve the eyewitnesses, viz., Kuppammal [P.W.-1] and Kamala [P.W.-2].

16. In the cross-examination of Kamala [P.W.-2], which was done on 16.02.2016, she has stated, “என் மகன் சம்பவத்தன்று சாப்பிட்டுவிட்டு தூங்கி கொண்டு இருந்தான்.”Based on this stray statement, the learned Senior



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Counsel contended that this is not in consonance with the postmortem certificate [Ex.P-14] because the latter showed that the stomach of Ramesh and intestine were empty. To be noted, she [P.W.-2] has not stated as to when her son [Ramesh] had taken food. She has merely stated that her son had taken food. For the incident that took place in 2013, she was examined in the year 2016. At this juncture, it is apropos to advert to the following sapient passage of the Supreme Court in *State of Haryana v. Bhagirath and others* [1999 (5) SCC 96]:

“It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal Court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression, 'reasonable doubt' is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge”.

17. The learned Senior Counsel contended that the witnesses had stated that the village temple festival was going on during that time and therefore, there would have been police pickets in the village. The learned



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Senior Counsel contended that the Investigating Officer has denied this. He built up his argument by saying that the complaint itself was an afterthought. We are unable to subscribe to this submission, because, had the body been lying in the village since morning, the villagers would have informed the police and would not have waited for Kuppammal [P.W.-1] and Kamala [P.W.-2] to return from work and give a complaint. It is necessary to state here that Kuppammal [P.W.-1] is closely related to both Ramesh and the appellant and therefore, there is no reason for her to falsely implicate the appellant in the offence.

18. It is true that the police have not placed any evidence to show as to who had taken Ramesh to the hospital, but, that again is a remissness on the part of the Investigating Officer, for which, the evidence of Kuppammal [P.W.-1] and Kamala [P.W.-2] cannot be rejected lock, stock and barrel.

19. Much arguments were advanced on the evidence of Palaniammal [P.W.-10] the grandmother of Ramesh and it was argued that Palaniammal [P.W.-10] had not stated anything about the presence of Kuppammal



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20. We carefully analysed the evidence of Palaniammal [P.W.-10]. Palaniammal is an unlettered sexagenarian, who has clearly stated that she has a very bad vision. In her chief-examination, she has stated that she only heard about the incident and she is not an eyewitness to the occurrence. She has further stated in the cross-examination that the police examined her in the morning of the date of occurrence. Based on this, the learned Senior Counsel contended that the murder must have taken place in the morning and not at 8.30 p.m. From a reading of Palaniammal's [P.W.-10] evidence, we find that on account of her old age and infirmity, she was totally unaware of what was happening in the house. Thus we are at a loss to understand as to why at all the prosecution had examined her as a witness.

21. The learned Senior Counsel contended that Kuppammal [P.W.-1] was not residing in the house of Kamala [P.W.-2] and therefore, she could not have been there along with Kamala [P.W.-2] at the time of incident. In the cross-examination of Kuppammal [P.W.-1], she has stated that her house



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is around 30 feet from the house of her sister-in-law [P.W.-2] and in the

Court, she has stated as follows:

“சாட்சி நீதிமன்றத்தில் தான் இருக்கும் இடத்திலிருந்து ஜன்னல்களை காட்டுகிறார். தோராயமாக 30 அடி இருக்கும்.”

22. As rightly contended by the learned Additional Public Prosecutor, in this case, the serology report [Ex.P-18] clearly shows the presence of Human Blood 'A' in the clothes of Ramesh and the appellant, which is an incriminating circumstance against the appellant. On a careful analysis of the evidence on record, we have no reason to disbelieve the testimony of Kuppammal [P.W.-1] and Kamala [P.W.-2].

23. In the result, we find no merit in this appeal and the same is dismissed. The respondent police is directed to secure the presence of the appellant and commit him to prison to undergo the remaining period of sentence.

[P.N.P., J.] & [R.H., J.]
02.09.2022

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To

- 1.The Additional District & Sessions Judge,
Palani.
- 2.The Inspector of Police
Keeranur Police Station,
Dindigul 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
AND
R.HEMALATHA, J**

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Judgment made in
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02.09.2022