



DATED : 11.10.2022

CORAM :

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

Crl.A(MD)No.425 of 2019

Thomas

.. Appellant / Sole Accused

Vs.

The State represented by,
The Inspector of Police,
Sedunganallur Police Station,
Thoothukudi District.

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, against the judgment and order, dated 03.07.2019 in S.C.No.400 of 2015 passed by the learned Principal Sessions Judge, Thoothukudi.



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Crl.A(MD)No.425 of 2019

For Appellant : Mr.G.Thiruvartselvan
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

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

The appellant, who was punished for offences under Section 294(b), 302 and 506(ii) IPC and was sentenced to undergo Life Imprisonment and a fine of Rs.2000/-, in default, to undergo one year Rigorous Imprisonment for the offence under Section 302 IPC, six months Rigorous Imprisonment and a fine of Rs.500/-, in default, to undergo one month Simple Imprisonment for the offence under Section 506(ii) IPC and to pay a fine of Rs.500/-, in default, to undergo three weeks Simple Imprisonment for the offence under Section 294(b) IPC, has filed this appeal against the judgment and order of the learned



Crl.A(MD)No.425 of 2019

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Principal Session Judge, Thoothukudi, made in S.C.No.400 of 2015, dated 03.07.2019.

2. The case of the prosecution is that the appellant and the deceased are brother and sister. The deceased was living with her parents along with her children. There was a family property which included immovable property and cows. There was frequent quarrel between the accused on the one hand and his father (P.W-2) on the other to partition the properties. The deceased was also asking for a share in the property. The further case of the prosecution is that on 14.03.2014, when the deceased, her mother (P.W-3), her father (P.W-2) and her son (P.W-1) were grazing the cattle at about 2.00 p.m., one Marimuthu(P.W-4) is said to have come to the scene of occurrence and he tried to load two bulls in his vehicle which was sold in his favour. The appellant came to the scene of occurrence and questioned as to how the cattle can be sold without



Crl.A(MD)No.425 of 2019

WEB COPY

any partition and he shouted that it was the deceased, who was responsible for all this and used filthy language and he is said to have attacked the deceased indiscriminately with aruval (M.O.1) on her neck, left side and right side jaw, left wrist and right upper arm. He also threatened P.W-1 to P.W-3 and thereafter, he ran away from the scene of occurrence.

3. The complaint (Ex.P1) was given by P.W-1 and it was attested by P.W-2. Based on the same, an FIR came to be registered on 14.09.2014 at 16.00 hours. The investigation was taken up by P.W-16 and on completion of investigation, he filed a final report before the Judicial Magistrate, Srivaigundam. After the copies were served on the appellant, the case was committed to the file of the Court below. The Court below framed charges against the appellant for offence under Sections 294(b), 302 and 506(ii) IPC.



CrL.A(MD)No.425 of 2019

WEB COPY

4. The prosecution examined P.W-1 to P.W-16 and marked Ex.P1 to Ex.P15 and material objects were identified and marked as M.O.1 to M.O.7

5. The Court below, on completion of the trial, questioned the appellant under Section 313(1)(b) Cr.P.C. by putting the incriminating materials that were collected in the course of Trial. The accused person denied the same as false.

6. The Trial Court, on considering the facts and circumstances of the case and on appreciating the evidence available on record, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and thereby, convicted and sentenced the appellant in the manner mentioned supra. Aggrieved by the same, the criminal appeal has been filed.



Crl.A(MD)No.425 of 2019

WEB COPY

7. Heard Mr.G.Thiruvartselvan, learned counsel appearing for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent.

8. This Court has carefully considered the materials available on record and the submissions made on either side.

9. In the present case, the important witnesses on the side of the prosecution are P.W-1 to P.W-3, who are the eyewitnesses and who speak about the incident. P.W-1 is the son of the deceased, P.W-2 is the father of the deceased and P.W-3 is the mother of the deceased.

10. P.W-1 was 16 years at the time of occurrence. He states in his evidence that on 14.09.2014 at about 2.00 p.m., he along with his mother (deceased), grandfather (P.W-2) and grandmother (P.W-3) were



Crl.A(MD)No.425 of 2019

WEB COPY

grazing the cattle in Nesamani Mariammal Garden. At that point of time, cattle merchants namely, P.W-4, P.W-5 and P.W-6 had come there for purchasing cattle and they were boarding the cows in a vehicle. The appellant had come to the scene of occurrence and was enraged and he attacked the deceased indiscriminately with aruval(M.O.1). P.W-1 was the complainant in this case and it was attested by his grandfather (P.W-2). P.W-1 also identified the blouse and saree that were worn by his mother (M.O.2 and M.O.3). He also identified the shirt and lungi that were worn by the accused at the time of occurrence (M.O.4 and M.O.5).

11. On carefully going through the evidence of P.W-1, it can be seen that it was in line with the complaint given by him at the earliest point of time and in the cross-examination, his version of having seen the incident has not been discredited. The learned counsel for the appellant pointed out to certain discrepancies on the place of occurrence and the



CrL.A(MD)No.425 of 2019

WEB COPY

manner in which the complaint was given and in the considered view of this Court, these discrepancies do not touch the root of the case and it does not discredit the evidence of P.W-1.

12. P.W-2 and P.W-3 are the unfortunate parents of the deceased and the accused. They also explained the incident in the manner it was explained by P.W-1. The learned counsel for the appellant by pointing out to the cross-examination of P.W-3 attempted to state that P.W-2 and P.W-3 had gone to the place of occurrence only after they were informed by P.W-1. However, when a specific suggestion was made to P.W-3 in this regard, he specifically denied the same and reiterated that she along with her husband were present at the time of occurrence. These two witnesses are none other than the parents of the accused and they have no axe to grind against the accused and foist a case against him. Their evidence is natural and cogent and the discrepancies pointed out by



CrI.A(MD)No.425 of 2019

WEB COPY

the learned counsel for the appellant was due to age factor (P.W-2 was aged about 75 years and P.W-3 was aged about 73 years) and they deposed after nearly two years from the date of incident.

13. It is true that P.W-3 was recalled after nearly two years for further cross-examination and she had made certain statements contrary to the earlier statement and which weakens the case of the prosecution. It is not necessary for this Court to take into consideration the subsequent cross-examination that took place after two years and the Apex Court in *Akil v. State (NCT of Delhi)* reported in **2013 (3) SCC CrI 63** has specifically dealt with a situation like this and held that a cross-examination conducted after a long lapse of time and where the witness goes back on the earlier statement, the same has to be disregarded by Courts. The said judgment was followed by this Court in *Dharmaraj v. The Inspector of Police, Athanakottai Police Station,*



Crl.A(MD)No.425 of 2019

WEB COPY

Pudukkottai District, reported in **2015 (2) LW (Crl) 458**.

14. In view of the above, this Court holds that the evidence of P.W-1 to P.W-3 who are the eyewitnesses sufficiently explains the manner in which the occurrence had taken place and the involvement of the appellant.

15. Insofar as the appreciation of ocular evidence is concerned, the Apex Court in a recent judgment in ***Shahaja alias Shahajan Ismail Mohd. Shaikh v. State of Maharashtra*** reported in **2022 SCC Online SC 883** has held as follows:

“ 27. The appreciation of ocular evidence is a hard task. There is no fixed or straight-jacket formula for appreciation of the ocular evidence. The judicially evolved principles for appreciation of ocular evidence in a criminal case can be enumerated as under:



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CrL.A(MD)No.425 of 2019

I. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief.

II. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the



WEB COPY



CrL.A(MD)No.425 of 2019

possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

VII. Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

VIII. The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind whereas it might go unnoticed on the part of another.

IX. By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.

X. In regard to exact time of an incident, or the time duration of an occurrence, usually, people make



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CrL.A(MD)No.425 of 2019

their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

XI. Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

XII. A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him.



Crl.A(MD)No.425 of 2019

WEB COPY

XIII. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Unless the former statement has the potency to discredit the later statement, even if the later statement is at variance with the former to some extent it would not be helpful to contradict that witness.”

16. It is clear from the above that while assessing the evidence of eyewitnesses, the Court must only be satisfied in the circumstances of the case that it is possible to believe their presence to have witnessed the incident and there is nothing inherently improbable or unreliable in their evidence. Both these tests have been satisfied through the evidence of P.W-1 to P.W-3.

17. The FIR was registered by P.W-11 and the same was also sent within a reasonable time to the concerned Judicial Magistrate Court at Srivaikundam. Hence, there is no question of any deliberation before



Crl.A(MD)No.425 of 2019

WEB COPY

the complaint was lodged against the appellant.

18. Insofar as the injuries sustained by the deceased, the same has been spoken by P.W-14 through whom the postmortem certificate(Ex.P9) has been marked. The injuries as recorded in the postmortem certificate are extracted hereunder:

“1. An oblique gapping heavy cut injury of size 8 x 1.5 x bone deep seen in left side of forehead. It cuts underlying scalp and left side of frontal bone.

2.A horizontal gapping cut injury of size 5 x 1 cm x bone deep seen in left parietal region. It cuts underlying scalp.

3.A horizontal gapping heavy cut injury of size 14 x 3 x 1.5 cm seen in right side of chin. It cuts underlying soft tissues and right side of lower part of mandible bone.

4.An oblique gapping heavy cut injury of size 16 x 4 x 5 cm seen in left side of upper part of neck. It cuts underlying soft tissues, vessels, nerves, 4th



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Crl.A(MD)No.425 of 2019

cervical vertebra and spinal cord.

5. A horizontal cut injury of size 4 x 1 x 2 cm seen in lower part of back of neck. It cuts underlying soft tissues.

6. A horizontal cut injury of size 2 x 0.5 x 1 cm seen in back of upper part of chest. It lies 5 cm below injury No.4.

7. A scratch abrasion of length 7 cm seen in back of left side of chest and 3 cm length seen in back of left scapula.

8. A scratch abrasion of length 6 cm seen in back of right side of chest.

9. A flapping oblique gapping cut injury of size 7x2x 4cm seen in back of middle of left fore arm. It cuts underlying soft tissues.

10. An oblique gapping heavy cut injury of size 12 x 2 x 1 cm seen in inner aspect of left hand. It extends from base of left 1st thumb to left 3rd thumb. It cuts underlying soft tissues, vessels, nerves and phalanx of left thumb and left index finger. Left index finger found hanging with a tag of skin.



Crl.A(MD)No.425 of 2019

WEB COPY

11. A flapping oblique gapping heavy cut injury of size 9 x 3 x 5 cm seen in outer aspect of right upper arm. It cuts underlying soft tissues.”

19. P.W-14 has given a final opinion as to the cause of death to the effect that the deceased died due to shock and hemorrhage due to heavy cut injuries to the left side of the neck and injury No.4 is fatal in nature. The evidence of P.W-1 to P.W-3 wherein they describe the manner in which the deceased was attacked by the accused with M.O.1 aruval, corresponds with the injuries as recorded in the postmortem certificate.

20. On carefully going through the evidence of the investigation officer P.W-16, it is seen that he had visited the scene of occurrence on 14.09.2014 at about 17.30 hours and prepared the observation mahazar in the presence of the witnesses. He has also seized



Crl.A(MD)No.425 of 2019

WEB COPY

the bloodstained earth and ordinary earth (M.O.6 and M.O.7). The observation mahazar was marked as Ex.P2 and the rough sketch was marked as Ex.P14 and the mahazar witness was also examined as P.W-8. The evidence of P.W-16 also satisfies this Court on the arrest and recovery from the accused person in the presence of witnesses.

21. It is also seen from the scientific evidence that the bloodstained clothes recovered from the accused matched the blood group of the deceased and the same is clear from the serology report marked as Ex.P13. P.W-15, who was examined in this regard also speaks about the requisition received and the test conducted and report submitted to the Court.

22. It is true that the independent witnesses, namely, P.W-4 to P.W-6 did not support the case of the prosecution and they turned hostile. These witnesses turning hostile does not in any way affect the



Crl.A(MD)No.425 of 2019

WEB COPY

eyewitness version given by P.W-1 to P.W-3 just because they are related witnesses. In the present case, they are not only related to the deceased but also to the appellant.

23. In the considered view of this Court, the Court below has properly appreciated the materials available on record and rendered cogent findings while convicting and sentencing the appellant. This Court does not find any ground to interfere with the same.

24. In the result,

(i) This Criminal Appeal stands dismissed.

(ii) The conviction and sentence passed by the learned Principal Sessions Judge, Thoothukudi, against the appellant/sole accused in S.C.No.400 of 2015 dated 03.07.2019, is hereby confirmed.



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CrL.A(MD)No.425 of 2019

(iii) This Court had suspended the sentence and enlarged the appellant on bail by order dated 30.12.2020 and the appellant is, therefore, directed to immediately surrender before the trial Court on or before 31.10.2022 to undergo the remaining period of sentence, failing which, the trial Court shall take steps to secure him for undergoing the sentence.

(iv) The period of sentence already undergone by the accused/appellant is ordered to be set off under Section 428 Cr.P.C.

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

11.10.2022

Index : Yes/No

Internet : Yes/No

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Crl.A(MD)No.425 of 2019

**J.NISHA BANU, J
AND
N.ANAND VENKATESH, J**

PJL

To

1.The Principal Sessions Judge,
Thoothukudi.

2. The Inspector of Police,
Sedunganallur Police Station,
Thoothukudi District.

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

Judgment made in
Crl.A.(MD)No.425 of 2019

11.10.2022