



Crl.A(MD)No.394 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.07.2022

DELIVERED ON : 26.07.2022

CORAM :

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

Crl.A(MD)No.394 of 2019

Mani alias Kasimani

... Appellant/

Accused No.2

Vs.

State represented by,
The Inspector of Police,
Ambasamudram Police Station,
Tirunelveli District.
(Crime No.290/2013)

... Respondent/

Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, against the judgment and order dated 17.07.2019 made in S.C.No.337 of 2015 on the file of the IV-Additional Sessions Judge, Tirunelveli.



WEB COPY

CrL.A(MD)No.394 of 2019

For Appellant : Mr.R.Vinoth Bharathi

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **R.HEMALATHA, J.**]

This criminal appeal has been filed against the judgment and order dated 17.07.2019 made in S.C.No.337 of 2015 passed by the IV-Additional Sessions Judge, Tirunelveli, in and by which, the appellant was convicted for the offences punishable under Sections 302 and 506(ii) IPC and sentenced as under:

Section of Law	Sentence of imprisonment	Fine amount
302 IPC	Life Imprisonment	Rs.5,000/- in default, to undergo simple imprisonment for four years.
506(ii) IPC	Rigorous Imprisonment for three years	Rs.2,000/- in default, to undergo simple imprisonment for one year.

The sentences were ordered to run concurrently. Challenging the said conviction and sentence, the appellant (A2) has come up with this Criminal Appeal.



CrL.A(MD)No.394 of 2019

WEB COPY

2. The careful glance into the prosecution case reveals the following facts:

- i. The deceased Kumar was living with his wife Thenmani (P.W-1) in Brhamadesam village of Ambasamudram Taluk. They were having a 'provision cum vegetable' shop and used to procure goods from the local market. There was a running feud between two groups of the residents of the village, one group led by one Arumugam and the other by the fourth accused Sankara Nayinar @ Ice Murugan. These two groups were basically belonging to the same community and were also inter-related. Their quarrel was centred around the conduct of the festival of the local temple, namely, “Muppidathi Amman Temple” and also regarding the auction Chit conducted amongst them in the village. These two issues had caused such a huge divide in the village that 60 households belonged to the Arumugam group and 40 to Sankara Nayinar(A4) group. The victim and his wife



WEB COPY



CrI.A(MD)No.394 of 2019

(P.W-1) were the members of Arumugam group. There were complaints and counter complaints of embezzlement of funds, damaging concrete public space for private purpose etc., and finally there was a memorandum of understanding of compromise between the two groups in the presence of Tahsildar, Ambasamudram on 17.01.2013 and was signed by the representatives of both the groups. On 22.10.2013 when the auction for the chit was conducted by Arumugam group, a few namely, Mayamperumal (A1), Ramalingam (A2), Ganapathi Sundar (A8), his wife Kalavathi and Natarajan (A7) belonging to Sankara Nayinar group entered the auction place and started bidding for the chit when the victim Kumar was in charge of conducting the auction objected to this which resulted in heated arguments. They had threatened the victim with dire consequences while leaving the auction place. Subsequently as per the P.W-1's deposition all the accused had assembled in Kanagaraj's



WEB COPY



Crl.A(MD)No.394 of 2019

(A6) house and conspired to kill the victim which P.W-1 claims that she was aware of it.

ii. On 24.10.2013, at about 8.30 a.m., when the victim and P.W-1 went to the local market to buy vegetables from the shop belonging to one Chandran (P.W-3), the accused, viz., Mayamperumal (A1), Kasimani (A2, the appellant herein) and Ponnudurai(A3) armed with bill hooks (M.O-1 to M.O-3), attacked the victim causing grievous injuries to him, P.W-1 screamed for help and she was threatened by them. The other accused Sankara Nayinar (A4), Kanagaraj (A6), Natarajan (A7), Sundar (A5), Ramalingam (A9) and Ganapathy @ Ganapathy Sundaram (A8) wanted to know whether the victim was alive or dead. After satisfying themselves that the victim was dead, they fled the scene of offence with bill hooks. This incident was witnessed by Nalayiram Muthu (P.W-2) and shop keepers Chandran



WEB COPY



Crl.A(MD)No.394 of 2019

(P.W-3) and Ganesa Murthy(not examined). Immediately after the incident, all the shops were shut down and P.W-1 was stranded without knowing how to proceed until she was told by some unknown person to give a police complaint. According to her, she bought a sheet of paper from a nearby shop and sought the help of another unknown person to write the complaint (Ex.P1) which was handed over to Ambasamudram Police Station at about 10.00 a.m.

iii. Thiru.Ramalingam (P.W-15), the then Special Sub Inspector of Police, Ambasamudram Police Station received the complaint (Ex.P1) from Thenmani (P.W-1) on 24.10.2013 at about 10.00 a.m. and registered an FIR (Ex.P17) in Crime No.290/13 for the offences punishable under Sections 147, 148, 294(b), 302 and 109 IPC against all the accused, including the appellant and sent the FIR to Court which was received by the jurisdictional Magistrate at 3.00 p.m., on the



WEB COPY



CrL.A(MD)No.394 of 2019

same day, ie., 24.10.2013.

iv. Thiru.Ponnusamy (P.W-16), Inspector of Police, Ambasamudram Police Station, took up investigation in Crime No.290/13, went to the scene of offence on the same day at 11.00 hours and took photographs (M.O-13). He also prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P20) in the presence of the witnesses Velusamy(P.W-5) and Narayanan(not examined). He then conducted inquest (Ex.P21) on the body of the deceased and thereafter sent the body for postmortem through Thiru.Balasubramanian (P.W14), Grade-I Police Constable attached to Ambasamudram Police Station along with a requisition (Ex.P19). He then recovered bloodstained earth (M.O-6) and ordinary earth (M.O-7) from the place of occurrence under the cover of a mahazar (Ex.P3) in the presence of the same witnesses.



CrL.A(MD)No.394 of 2019

WEB COPY

v. Dr.Saravanan (P.W-9) conducted autopsy on the body of the deceased at about 3.00 p.m., on the same day and found the following injuries:

“ i. 12 x 5 cm cut injury below 4 cm of the left ear.(first injury).

ii. 8 x 7 cm cut injury below the first injury.

iii. 25 x 10 cm cut injury bone deep beneath the left jaw.

iv. 12 x 10 cm cut injury on the left shoulder.

v. 17 x 10 cm cut injury in the front side of the stomach through which small intestine protruding out.

vi. Heart chambers: empty.

vii. Lungs, Spleen, Liver, Kidney, Stomach: pale.

viii. Stomach : empty.



WEB COPY



CrL.A(MD)No.394 of 2019

ix. Small Intestine: punctured.

x. Skull :no damage.”

In the opinion of Dr.Saravanan (P.W-9),

“the deceased would appear to have died due to multiple injuries in the intestine.”

In his evidence, the doctor has clearly stated that the injuries on the deceased could have been caused by use of the weapons M.O-1 to M.O-3. He further confirmed that the small intestine was protruding out with serious cut injuries on the stomach and intestine. The postmortem certificate was marked as Ex.P8.

vi. On 24.10.2013 at about 5.00 p.m., P.W-16, arrested the accused namely, Sankara Nayinar(A4), Sundar(A5), Kanakaraj(A6) and Ganapathy(A8) near Ayyanar Junction on Ambasamudram-Tenkasi Road and recorded their police confessions based on which he altered the Sections to 147, 148, 294(b), 302, 109 and 120(b) IPC and sent the alteration



WEB COPY

Crl.A(MD)No.394 of 2019

Report (Ex.P22) to Court.

vii. P.W-16 also sent the dresses worn by the deceased to Forensic Laboratory through Court under Form 95. Thereafter, the accused were sent for judicial custody.

viii. On 25.10.2013, P.W-16 arrested the accused Mayamperumal(A1) and Natarajan(A7) behind Chinna Sankaran temple auditorium, Ambasamudram and recorded their police confessional statements (admissible portion of which was marked as Ex.P4) based on which he recovered a motorcycle bearing Registration No.TN-76L1461 (M.O-8), a bloodstained bill hook (M.O-1) and a bloodstained shirt (M.O-9), a bloodstained lungi (M.O-10) under the cover of a mahazar (Ex.P5). He produced the accused before the concerned Magistrate, who remanded them to judicial custody.



WEB COPY



CrI.A(MD)No.394 of 2019

ix. On 26.10.2013, the present appellant (A2) was arrested at about 11.45a.m., near Ambasamudram Railway Station and recorded his confessional statement (admissible portion of which was marked as Ex.P6), based on which he recovered bloodstained dresses (M.O-11 & M.O-12) and a bill hook (M.O-2) which were hidden by him beneath a thorny bush behind Omega Mill compound under the cover of a mahazar (Ex.P7) in the presence of Ramasamy (not examined) and Palvannan (P.W-8).

x. On 29.01.2014 at about 11.00 a.m., Ponnudurai (A3) went to the office of the Village Administrative Officer, Tmt.Anuradha(P.W-11), Bramhadesam village and gave an extra-judicial confessional statement which was recorded by Tmt.Anuradha(P.W-11), Village Administrative Officer in the presence of Tmt.Muniammal, Village Assistant,



WEB COPY



Crl.A(MD)No.394 of 2019

Bramhadesam village. Thereafter, P.W-11 produced the accused before the Inspector of Police, Ambasamudram Police Station. She also handed over the extra-judicial confessional statement of A3(ExP13). P.W-16 arrested Ponnudurai(A3), on 29.01.2014 and on the basis of A3's police confession (admissible portion of which was marked as Ex.P13), he recovered a bloodstained bill hook (M.O-1) which was hidden in a thorny bush near Esakkiamman Temple under the cover of a mahazar (Ex.P14) and sent him for judicial custody.

- xi. Thereafter P.W-16 examined the witnesses, doctor and experts and recorded their statements and also collected various reports from experts. After completing investigation, he filed a final report against the accused for the offences under Sections 147, 148, 294(b), 302, 109, 120(b) and 506(ii) IPC before the Judicial Magistrate, Ambasamudram,



WEB COPY



Crl.A(MD)No.394 of 2019

in P.R.C.No.12 of 2015, who in turn, committed the case to the Court of Sessions after furnishing copies of documents to the accused under Section 207 of the Code of Criminal Procedure. The learned IV-Additional Sessions Judge, Tirunelveli, took up the case on file in S.C.No.337 of 2015. To the charges framed for the offences under 147, 148, 294(b), 302, 109, 120(b) and 506(ii) IPC, all the accused including the appellant pleaded not guilty. Hence, the case was posted for trial.

xii. In order to establish the guilt of the accused, the prosecution examined 16 witnesses and marked 22 documents and 14 material objects.

xiii. When the accused including the appellant were questioned with regard to the circumstances appearing in evidence against them under Section 313 of the Code of Criminal



CrL.A(MD)No.394 of 2019

Procedure, they denied of having committed any offence. However, they did not examine any witnesses on their side.

xiv. The learned IV-Additional Sessions Judge after analyzing the oral and documentary evidence adduced on both sides found the appellant guilty of the offences under Sections 302 and 506(ii) IPC, and convicted and sentenced him as stated in paragraph No.1. The other accused were acquitted by the learned Sessions Judge. Challenging the conviction and sentence passed by the trial Court, present appeal is filed by the appellant.

3. This is yet another case of murder caused due to rivalry between two groups of people over trivial ego issues pertaining to money and power. In this case, due to the personal ego of a handful of people, the village itself got divided into two groups, ironically for something, as holy as temple festival. According to P.W-1, her husband Kumar, who



CrL.A(MD)No.394 of 2019

WEB COPY

became the victim of the feud between the two groups was earning his livelihood through the provision and vegetable shop he owned along with his wife P.W-1. P.W-1, has narrated about what caused the divide amongst the villagers and how her husband got into trouble when he objected to the participation of a few persons(A1, A2, A7 and A8) belonging to the rival groups in the chit auction. The victim had probably done his duty of enforcing the rules governing the chit floated by the villagers. According to P.W-1, her husband preventing A1, A2, A7 to A9 from participating in the chit auction infuriated them and on the same day, they along with the other accused had conspired to eliminate him which resulted in the deadly attack on 24.10.2013. P.W-1's deposition was clear that she along with her husband went to the local market in a scooter which her husband parked outside the market and they were purchasing vegetables in P.W-3's shop. A1 to A3 armed with bill hooks suddenly confronted her husband and attacked him violently causing his instantaneous death. This incident was too sudden and unexpected that P.W-1 was helpless though the market was crowded and there would



CrL.A(MD)No.394 of 2019

WEB COPY

have been many onlookers. Her deposition is that the remaining accused A4 to A9 were also present in the scene of crime to ensure that her husband had succumbed to injuries and also threatened her from creating any scene. The important aspect of her deposition is that she knew all the accused and could name them in her deposition. One of the suggestions put forth to her during the cross-examination was as to how few of the accused could have disrupted the chit auction which took place on 22.10.2013, when there was a compromise arrived at by the two warring groups on 17.01.2013. It was admitted by P.W-1 that post-compromise both the groups had shared the already accumulated funds of Rs.1,70,000/- on 60:40 ratio and that, then on, both the groups started maintaining separate Account Books and Chits. In such a scenario, it was suggested that the participation of A1, A2, A7 to A9 in the auction conducted by the victim belonging to Arumugam group itself is doubtful and is only a concocted version. P.W-1 explained some of the members of other faction continued to be the members of the Chit run by Arumugam faction since it was a running Chit and the earlier members



CrL.A(MD)No.394 of 2019

WEB COPY

also continued their membership. However, this suggestion put up to P.W-1 in the cross-examination does not carry much conviction because the murder took place on 24.10.2013 and in all likelihood the trigger for the same could have been only by an incident which took place on 22.10.2013. It is also to be noted that the victim was not a leader of any faction and it was only his act of preventing A1, A2, A7 to A9 in the Chit auction that could have invited their wrath. There was also another suggestion put up to P.W-1 regarding whether the victim had any other enemies other than the accused, for which the answer of P.W-1 was in the affirmative. In fact, this reply from P.W-1 clearly shows that she did not falsely implicate the appellants when she knew that there were other enemies too.

4. P.W-2, also had deposed that he had witnessed the incident. His deposition is not very convincing for more than one reason that he has been in the heat of the controversy which led to two factions amongst the villagers. Despite being a key person in the group led by Arumugam, his



CrL.A(MD)No.394 of 2019

WEB COPY

statement that he did not go to rescue the victim lacks credibility. During the course of cross-examination, he has also mentioned about his rivalry with Sankara Nayinar (A4). It is natural for onlookers or passersby to flee from the scene, but not from the one, who had been in the thick of the controversies. It is also incomprehensible as to how P.W-2 did not even bother to help P.W-1 and left her high and dry after the murder of her husband. Strangely, P.W-1 had mentioned only 3 witnesses, who according to her were present in the scene of crime. P.W-2 was one among them. P.W-3, who was a shop keeper in whose shop P.W-1 was making purchases, turned hostile. The third eyewitness as per P.W-1's complaint (Ex.P1) is Ganesa Murthy and he was not examined on the side of the prosecution. However, notwithstanding the fact that P.W-2's deposition not being very reliable, P.W-1 was the one with the victim at the time of attack and her evidence is adequate. P.W-1 in fact described the attack by stating that A1 with a deadly bill hook had attacked her husband on the left neck and left shoulder while A2 (the present appellant) pierced the victim's stomach causing the small intestine to



Crl.A(MD)No.394 of 2019

WEB COPY

protrude out and the third accused using another bill hook cut the victim's left hand. This description matches with the medical evidence and infact the doctor P.W-9, who performed the autopsy also confirmed that the small intestine was protruding out with serious cut injuries on the stomach and intestines.

4. Mr.R.Vinoth Bharathi, learned counsel for the appellant put forth the following contentions:

- i. The very presence of P.W-1 and P.W-2 in the scene of occurrence is doubtful. The non-recovery of motorcycle which P.W-1 claims to have been used by her husband to go to the market with her is fatal to the case of the prosecution.
- ii. The visit to the market by P.W-1 and her husband is doubtful again because the vegetables for her shop could have been procured over phone and what prompted them to go to the market has not been explained properly.
- iii. The participation of A1 and the other accused in the auction



WEB COPY



CrL.A(MD)No.394 of 2019

Chit conducted by the faction led by Arumugam is a cooked up story since as early as 17.01.2013 itself the two factions got formally separated with independent accounts and chits. There was no necessity for the accused to go over to the auction allegedly held on 22.10.2013.

- iv. The dates 17.12.2013 and 30.12.2013 mentioned by the investigation officer (P.W-16) in his evidence as the dates on which he sent the material objects to the Courts is false as the Magistrate in his letter to the Forensic Lab had mentioned in the reference the date of requisition of the investigation officer as 03.01.2014.
- v. Non examination of Ganesa Murthy, who was also having a shop and as per the deposition of P.W-1 was an eyewitness to the occurrence, is fatal to the case of the prosecution.
- vi. The place of arrest of the appellant is also doubtful since P.W-8 deposed that it was behind Omega Mill while the Investigation Officer [P.W-16] deposed that it was in front



Crl.A(MD)No.394 of 2019

WEB COPY

of the Railway Station.

vii. All material objects were fabricated in the instant case.

5. Per contra, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor contended that the alleged deficiencies pointed out by the learned counsel for the appellant does not make any significant impact so as to aid the appellant. The eyewitness account in the instant case is clear and cogent and it matches with the medical evidence.

6. In the first place, the presence of P.W-1 at the scene of crime itself being questioned, defies logic. In fact there was a suggestion that the murder had taken place in the market as early as 6.00 a.m., itself by unknown assailants and P.W-1 on her own has spun a story that it was at 8.45 a.m., while she was with her husband in the market. If the counter version is to be believed, the police complaint would have gone much earlier and that too by any one of the shop keepers or any one in the market, when the markets got opened early in the morning itself. Non-



CrL.A(MD)No.394 of 2019

WEB COPY

recovery of the two wheeler in which P.W-1 and her husband went to the market cannot be termed as fatal to the prosecution case, because it was not used for the commission of the crime. The discrepancies pointed out regarding the dates has not been the part of the cross-examination of the investigation officer and have to be only considered as a bonafide error by oversight. Non-examination of Ganesa Murthy for whatever reason cannot be considered fatal to the prosecution case, because as it is only the quality of the prosecution evidence and not the quantity or number of witnesses which would help the prosecution to make out a solid case. In the instant case, the deposition of P.W-1 is so clear and categorical. She also withstood the testimony of cross-examination. In the light of the eyewitness account of P.W-1, the necessity of any other witnesses does not arise. It is evident from the deposition of P.W-8 that both Omega Mill and Railway station are close by and that when he was nearing the Railway Station, he found A2 being enquired by the investigation officer. Therefore, nothing much could be deciphered from this. Another contention regarding the fabrication of the material objects, the serology



CrL.A(MD)No.394 of 2019

WEB COPY

report for matching the blood had a different story to tell. The blood group found on the material objects matched with that of the deceased and therefore, this argument also fails.

7. Regarding the necessity of the accused A1, A2, A7 to A9 to go to the auction site while they were no more members of the faction led by Arumugam which was conducting the Chit auction independently, it has been already explained by P.W-1 that some of the members of the other faction continued to be the members of the Chit run by Arumugam faction since it was a running Chit and the earlier members continued their membership.

8. Thus, judged from any angle, it is clear that the appellant had committed the murder of the deceased and we do not see any reason to interfere with the conviction and sentence passed by the trial Court.



CrL.A(MD)No.394 of 2019

WEB COPY

9. In the result,

(i) This Criminal Appeal is dismissed.

(ii) The conviction and sentence passed by the learned IV-Additional Sessions Judge, Tirunelveli, in S.C.No.337 of 2015, dated 17.07.2019, is confirmed.

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

26.07.2022

Index : Yes/No
Internet : Yes/No
PJJ

To

1. The IV-Additional Sessions Judge,
Tirunelveli.

2. The Inspector of Police,
Ambasamudram Police Station,
Tirunelveli District.



WEB COPY



Crl.A(MD)No.394 of 2019

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



WEB COPY



Crl.A(MD)No.394 of 2019

**P.N.PRAKASH, J
AND
R.HEMALATHA, J**

PJL

**Judgment made in
Crl.A.(MD)No.394 of 2019**

26.07.2022