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Crl.A(MD)No.397 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.09.2022

DELIVERED ON : 07.09.2022

CORAM :

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

Crl.A(MD)No.397 of 2019

Subburam

.. Appellant/Sole Accused

Vs.

State represented by,
The Inspector of Police,
Vembakottai Police Station,
Virudhunagar District.
(Crime No.138/2014)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, against the judgment and order, dated 15.07.2019 in S.C.No.22 of 2016 passed by the learned Additional District and Sessions Judge, Srivilliputhur, Virudhunagar District.



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For Appellant : Mr.K.Prabhu
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

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

The sole accused, who was convicted for an offence under Section 302 IPC and was sentenced to undergo Life Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 3 months Simple Imprisonment through judgment and order dated 15.07.2019, made in S.C.No.22/2016, passed by the learned Additional District and Sessions Judge, Srivilliputhur, has preferred this criminal appeal.



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2.The case of the prosecution is that the deceased Nagaraj had a family dispute with the appellant and there were repeated quarrels and hence the appellant had a motive to do away with the deceased. In furtherance of the same, on 14.04.2014, when the deceased returned back from Sivakasi and was getting down at Thulukankurichi bus stop and was walking near the tea shop of one Jeganathan at about 9.30 p.m., the appellant is said to have been waiting at that place, with M.O.6-knife and on seeing the deceased, he attacked the deceased in his chest, abdomen and thigh. As a result of the same, the deceased sustained grievous injuries and he died.

3. The son of the deceased, namely, P.W-1 gave a complaint, Ex.P1 at Vembakottai Police Station on 15.04.2014 at about 1.30 a.m. An FIR was registered in Crime No.138/2014 by P.W-20, who was the Sub Inspector of Police in the said police station for an offence under Section 302 IPC against the appellant. Pursuant to the same, the investigation



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was taken over by P.W-23 and he went to the scene of occurrence and prepared the spot mahazar and the sketch marked as Ex.P19 and Ex.P7 respectively. P.W-23 collected the bloodstained earth and ordinary earth under M.O.7 and M.O.8 and prepared Ex.P8 in the presence of witnesses. Thereafter, he proceeded to the Sivakasi Government Hospital and he conducted inquest on the body of the deceased and prepared an inquest report (Ex.P20) in the presence of witnesses.

4. The body of the deceased was sent for postmortem through P.W-21. In the course of investigation, the statement of witnesses was recorded under Section 161(3) Cr.P.C. The investigation officer got the information about the accused person and arrested him at about 12.15 p.m. The accused was examined in the presence of the Village Administrative Officer (P.W-8) and one Mohammed Rafiq and the accused is said to have voluntarily confessed and based on the confession, the weapon (M.O6) was recovered. The admissible portion of



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the confession was also marked as Ex.P4. The accused was brought to the police station at about 3.30 p.m., and at about 3.45 p.m., the bloodstained clothes of the accused was seized by giving him alternate clothes. It was seized under Ex.P6 and the clothes that were seized were marked as M.O4 and M.O5. The statement of the concerned witnesses was also recorded.

5.The accused person was thereafter produced before the jurisdictional Magistrate and he was remanded to judicial custody. Thereafter, on completion of recording the statement of the witnesses, the material objects that were seized were sent to the concerned Court under Form 91 with a requisition to send the same for expert opinion.

6. The investigation officer collected the postmortem report from P.W-22 and the statement of the doctor, who conducted the postmortem was also recorded. The investigation officer also recorded the statement



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of P.W-7, who is said to have given the first aid treatment to the deceased. The clothes that were found in the body of the deceased was also seized and it was forwarded under Form 91 to the concerned Court with the request to sent it for collecting the serology report. Those clothes were marked as M.O1 and M.O3.

7. The investigation was thereafter continued by P.W-24 and on completion of investigation, the final report was filed before the Judicial Magistrate No.II, Sattur. The case was committed to the file of the Principal District and Sessions Court, Srivilliputhur and it was made over to the learned Additional District and Sessions Judge. The charge was framed against the accused person for an offence under Section 302 IPC.

8. The prosecution examined P.W-1 to P.W-24 and marked Ex.P1 to Ex.P20 and M.O1 to M.O8. The circumstances that appeared against the accused person in the evidence that was adduced by the prosecution



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in the course of trial, was put to the accused person under Section 313(1) (a) Cr.P.C., and the accused person denied the same as false or that he was not aware of the same.

9. The learned trial Judge, on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the prosecution has proved the commission of the offence under Section 302 IPC beyond reasonable doubts and hence questioned the accused person and ultimately sentenced the accused person to undergo Life Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 3 months Simple Imprisonment.

10. Heard Mr.K.Prabhu, learned counsel for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor for the respondents.



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

12. This Court has to first assess as to whether the prosecution has proved the case beyond reasonable doubts against the appellant, through appreciation of evidence. Only after completing this analysis, this Court can go to the next step of finding out whether the homicide is a murder or a culpable homicide not amounting to murder and accordingly, decide the punishment.

13. It is clear from the records that the deceased had two wives, who were examined as P.W-2 and P.W-11. The accused/appellant is the brother of P.W-11. There seems to be some property dispute between the deceased and P.W-11. As a result of the same, P.W-1 is said to have been living separately from the deceased.



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14. The specific case of the prosecution is that the deceased got down from the bus at about 9.30 p.m., on 14.04.2014 at Thulukankurichi bus stop and was walking towards his house. At that time, the accused, who was waiting near a tea stall attacked him with a knife(M.O6) and caused serious injuries in his abdomen, chest and right thigh. According to the postmortem report (Ex.P17), the deceased sustained the following injuries:

“(1) stab wound of size 7.5 cm x 6 cm x 6 cm seen in (L) side of chest 10 cm below (L) nipple. (2) Stab wound of size 12.5 x 3.75 x 8 cm seen over epigastric region 4 cm from midline upto stomach (3) Stab wound of size 10.5 cm x 8 cm x 9 cm over (R) side of abdomen in (R) lumbar region 8 cm below (R) costal margin with intestine protruded outside (4) Stab wound of size 12.5 cm x 7.5 cm x 8 cm over (L) side of abdomen 10 cm



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lateral to umbilicus 9 cm below (L) costal region with intestine protruded outside (5) Stab wound of size 6 cm x 5 cm x 7.5 cm over (R) thigh medial aspect of upper 1/3 of thigh (6) Lacerated wound over (L) second and fourth finger palmar aspect.”

15. As per the final opinion as to the cause of death given by P.W-18 and marked as Ex.P.18, the deceased died due to injury to the vital organs.

16. The prosecution had examined P.W-1 and P.W-3 as eyewitnesses in this case. P.W-3 turned hostile and hence the only other eyewitness available is P.W-1, who is none other than the son of the deceased. He has stated that he along with his brother were talking near the Sevalpatti main road and they saw the accused sitting in the tea stall belonging to one Jeganathan. Thereafter, at about 9.30 p.m., the deceased



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got down from the bus and was walking towards his house and all of a sudden, P.W-1 and his brother heard a sound and they saw the accused stabbing the deceased with knife in the chest, abdomen and right thigh.

17. P.W-1 in his evidence has further stated that the accused ran away from the place and he and his brother wanted to save the life of their father and hence arranged a taxi and took their father to Sivakasi hospital. The mother of P.W-1, who was examined as P.W-2 also accompanied to the hospital.

18. The Accident Register prepared at around 10.30 p.m., has been marked through P.W-7. He is a doctor, who was attached to the Government Hospital at Sivakasi and he gave the first aid treatment of the deceased. It has been specifically mentioned in the Accident Register, based on the statement made by P.W-1 that the deceased was attacked by 2 male known persons with knife on 14.04.2014 at around 9.30 p.m.



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Similarly, Ex.P3 was the Accident Register that was prepared around 11.50 p.m., and this was also marked through P.W-7. Even in this Accident Register, there is a clear mention about the assault on the deceased with knife by 2 male known persons. It is also mentioned in Ex.P3 that the deceased was brought dead. A combined reading of the evidence of P.W-7 along with Ex.P2 and Ex.P3 shows that the earliest version that was given by P.W-1 was to the effect that his father was attacked by 2 male known persons. This runs contrary to the evidence of P.W-1, who was examined as eyewitness wherein he states that it is only the accused person, who had attacked the deceased with knife. When this was put to P.W-1 during cross-examination, he was not able to give any convincing reply. If P.W-1 was clear that it was only the accused, who had attacked the deceased, there was no reason for him to state that 2 male known persons attacked the deceased, before the doctor. This is more so, since the accused is none other than his own uncle.



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19. The Accident Register marked as Ex.P3 shows that it was recorded at 11.50 p.m., at Government Hospital, Sivakasi. Thereafter the complaint is said to have been given by P.W-1 before Vembakottai Police Station on 15.04.2014 at about 1.30 a.m. Based on the same, an FIR was registered in Crime No.138/2014 (Ex.P15). The officer, who received the complaint and registered the FIR was examined as P.W-20. He states in his evidence that the distance from Thulukankurichi to Vembakottai is only 3 kms and it can be reached in 5 minutes through car or a two wheeler. He further states that the complaint was received with a delay of 4 hours and there was no reason stated for the delay. It is also seen from the evidence of P.W-7 that an enquiry was conducted by the police belonging to the outpost immediately after they came to know of the incident. While so, there is no clarity as to whether the enquiry was followed up, more particularly, when the deceased had died due to a homicide. The only material that is available is the complaint (Ex.P1) which was given by P.W-1 at about 1.30 a.m. This delay in giving the



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compliant has a significance since P.W-1 had stated to the doctor (P.W-7) at 10.30 p.m and 11.50 p.m about the attack on the deceased by 2 male known persons. However, when the complaint was given at 1.30 a.m on 15.04.2014, it was completely focused only on the accused/appellant. In the absence of any explanation for the delay of 4 hours in giving the complaint, particularly, when the police station is so near the place of occurrence, this Court has to necessarily construe that there was some deliberation before the complaint was given.

20. The FIR was registered at 1.30 a.m on 15.04.2014. However, it reached the Judicial Magistrate No.II, Sattur only at 8.00 a.m. This is clear from the evidence of P.W-16. This witness states that the distance between Vembakottai police station and the Judicial Magistrate Court, Sattur is 24 kms and it can be reached in half-an-hour in a two wheeler. He states that he went in a bus to hand over the express FIR and the complaint to the Judicial Magistrate Court. He specifically states that



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even if the bus is used as the mode of transport, it will take 50 minutes to reach the Court.

21. P.W-20, who was the Sub Inspector of Police, who registered the FIR was not able to explain as to why there was a delay of nearly 7 hours for the express FIR and the complaint to reach the Court. On carefully going through Ex.P15, the endorsement made shows that it was received at 9.00 a.m and there is an over writing and 9 has been changed as 8.

22. In a case of this nature, the delay in sending the material documents to the Court, has a lot of significance. A Division Bench of this Court in ***Re. Karunakaran and another, reported in 1975 (1) MLJ Crl 106*** has categorically held that there are certain material documents which should be despatched immediately without any delay by the investigation officer to the Court. The Division Bench also indicated the



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procedure to be followed. Such immediate despatch of the material documents to the Court was insisted since it will provide a safeguard against the subsequent fabrication of such documents in grave crimes. While identifying the material documents, the complaint and the printed form of FIR have been shown to be material documents.

23. Another Division Bench in *Sakthivel vs. State rep. By the Inspector of Police, Papparapatty Police Station, Dharmapuri District* reported in **2017 (4) MLJ CrI 715** took note of the above judgment and reiterated the importance of despatching material documents immediately to Court. It was held that even in a case whether the material documents are despatched belatedly, it is open to the investigating officer to explain the reasons for the same and it has to be elicited while examining the investigation officer. P.W-16, who was the Head Constable, who had taken the documents to the Court, was not able to really explain as to why there was a long delay in handing over the documents to the Court.



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The delay in despatching the documents to the Court will have significance since P.W-1 had contradicted himself with regard to the attack on the deceased person by stating that 2 male known persons attacked the deceased and later changing the version as if it was only the accused/appellant, who attacked the deceased. The delay that had occasioned in despatching the documents to the Court once again leads to subsequent deliberation and fixing the accused person.

24. The change in the stand taken by P.W-1, particularly, considering the existing family dispute between the parties, also gives a clear impression that there is suppression of the origin of the prosecution case. It is now well settled that the case of the prosecution will fail if there is suppression. Useful reference can be made in this regard to the judgement of the Division Bench of this Court in ***Ravichandran and others v. Inspector of Police, Thittakudi Police Station***, reported in **2007 (2) LW CrI 827**.



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25. The learned Additional Public Prosecutor strongly relied upon the report of the Regional Forensic Science Laboratory marked as Ex.P13, wherein the blood group of the blood found in the lungi and shirt of the accused person was found to match the blood group found in the blood found in the dhoti and shirt of the deceased.

26. This Court carefully went through Ex.P6, which was prepared in the presence of P.W-8. This document speaks about the recovery of the lungi and shirt of the accused person in the police station. There is an insertion of the word (f;l;k; ngh;l) at Clause-6 which loosely translated means checked. That apart, there is also insertion of the name Mohammed Rafiq at Column-5. He is the Assistant of P.W-8 and P.W-8 states that it was carried out in the police station.



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27. The accused person has specifically denied about the recovery of the clothes by the police and relevant questions have been put to both P.W-8 and P.W-23 in the cross examination. According to the accused person, the shirt and lungi of P.W-1 was falsely shown to belong to the accused person. P.W-1 in his evidence specifically states that when he took his father in the car, the blood stains happened both in his shirt and lungi. He further states that the police did not recover these clothes from P.W-1. Similarly, P.W-23 in his evidence also states that the bloodstained clothes of P.W-1 was not seized by him. P.W-1 was present in the police station at 1.30 a.m on 15.04.2014 and the investigation had commenced at about 3.00 a.m. The accused was arrested only around 12.15 p.m. In such a case, the investigation officer should have recovered the clothes of P.W-1 and it could have been used to corroborate the version of the prosecution that P.W-1 took the body of his father from the place of occurrence to the hospital. Explanation given by P.W-23 that the bloodstained clothes of P.W-1 was not recovered and whereas the



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bloodstained clothes of the accused alone was recovered and that too at 12.15 p.m on 15.04.2014 looks very unnatural. Even otherwise, this Court is not able to hold that the prosecution has proved the case beyond doubts merely based on the serology report without there being any other solid material against the accused.

28. The above discussion leads to the only conclusion that the benefit of doubt has to be given to the appellant and this Court holds that the prosecution has not proved the case against the appellant beyond reasonable doubts. In view of the same, this Court has to necessarily interfere with the judgment of the trial Court and acquit the appellant from the charge faced by him.

29. In the result,

(i) This Criminal Appeal stands allowed.

(ii) The conviction and sentence passed by the learned Additional



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District and Sessions Judge, Srivilliputhur, against the appellant in S.C.No.22 of 2016 dated 15.07.2019, is hereby set aside. The bail bond executed by the appellant after the sentence was suspended by this Court through order dated 24.02.2020 shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

[J.N.B, J.] & [N.A.V., J.]
07.09.2022

Index : Yes/No
Internet : Yes/No
PJJ

To
1.The Additional District and Sessions Judge,
Srivilliputhur.

2. The Inspector of Police,
Vembakottai Police Station,
Virudhunagar District.

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



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

PJL

**Judgment made in
Crl.A.(MD)No.397 of 2019**

07.09.2022