



Crl. A(MD)No.478 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

CRL.A.(MD)No.478 of 2019

1.Justin

2.Alvin @ Alben @ Albert

..Appellants/Accused Nos.1 & 2

Vs.

The State rep. by

The Inspector of Police,

Kaliyakavilai Police Station,

Athencode,

Padanthalumoodu Post,

Kanyakumari District.

.. Respondent / Complainant

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PRAYER: Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, praying this Court to set aside the judgment, dated 23.03.2019 made in S.C.No.86 of 2010, on the file of the learned Additional District and Sessions Judge, (Fast Track Court), Nagercoil and allow this Criminal Appeal.

For Appellants	: Mr.S.Ramasamy for Mr.C.T.Perumal
For Respondent	: Mr.A.Thiruvadi Kumar Additional Public Prosecutor

JUDGMENT

J. NISHA BANU, J.

AND

N. ANAND VENKATESH, J.

This Criminal Appeal has been filed against the judgment of the Additional District and Sessions Court, Nagercoil, made in S.C.No.86 of 2010, dated 23.3.2019, convicting and sentencing the appellants in the following manner :-



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Sl. No.	Rank of the Accused	Provisions under which convicted	Sentence of imprisonment and fine amount
1.	A1	302 IPC 326 IPC	To undergo life imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) and in default, to undergo one year simple imprisonment To undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/- (Rupees One Thousand only) and in default, to undergo three months simple imprisonment
2.	A2	302 IPC	To undergo life imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) and in default, to undergo one year simple imprisonment

2. The case of the prosecution is that A1 and A2 are brothers and A3 and A4 are the natives of Nalloor and they are close friends of A1 and A2. A1 and A2, who belong to a political party, said to have attended a



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marriage function on 29.11.2009 at about 10.30 a.m. at Ottapanavilai, Madichal and when they were having food, the deceased Sindhumon is said to have developed a wordy quarrel, resulting in A1 being pushed down in front of others.

3. In view of the above incident, a motive was developed in the mind of A1 and A2 and on 29.11.2009, at about 4.30 p.m., the deceased was coming near the grocery shop belonging to one Mani and A1 stabbed the deceased all over the chest with a knife and A2 also caused three stab injuries on the deceased. As a result, the deceased suffered serious injuries and was taken to the Government Hospital, Kuzhithurai, between 4.30 p.m. and 5.10 p.m. on 29.11.2009. In the course of the same transaction, A1 is said to have stabbed P.W.1 on the nose, when he questioned about the incident and caused injuries to him. All the accused persons ran away on seeing the crowd gathering near the scene of crime.

4. Based on the complaint given by the brother of the deceased namely, Prabhu, who died subsequently and hence was not examined as a



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witness, an FIR came to be registered in Crime No.503 of 2009 at about 5.00 p.m. against A1 and A2 for the offence under Sections 324 and 302 of IPC. This document was marked as Ex.P16. During the course of investigation, the 3rd and 4th accused were also added for the offence under Section 212 of IPC.

5. The investigation was conducted by P.W.14 and the final report was laid against all the accused persons before the Judicial Magistrate No.I, Kuzhithurai. The case was committed to the Principal District and Sessions Court, Nagercoil and it was made over to the Court below.

6. The prosecution examined P.W.1 to P.W.14 and marked Ex.P1 to Ex.P20 and M.O.1 to M.O.10 were identified and marked. The Court also called for certain documents and it was marked as Ex.C1 to Ex.C3. The Trial Court, based on the incriminating evidence available against the accused persons, questioned them under Section 313 (1) (b) of Cr.P.C and the same was denied by the accused persons as false.



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7. The Trial Court, on considering the facts and circumstances of the case and on appreciation of the evidence available on record, came to a conclusion that charges have been proved against A1 and A2 beyond reasonable doubts by the prosecution and accordingly, convicted and sentenced them in the manner stated above. A3 and A4 were acquitted from the charges framed against them. Aggrieved by the same, A1 and A2 have filed this Criminal Appeal.

8. Heard Mr.S.Ramasamy, learned counsel for Mr.C.T.Perumal, learned counsel appearing on behalf of the appellants and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing on behalf of the respondent.

9. We have carefully gone through the materials available on record and considered the submissions made on either side.



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10. In the present case, one Prabhu, who is the brother of the deceased was the informant, who set the Criminal Law in motion by giving the complaint (Ex.P1). P.W.1 is an eye witness to the incident and was also an injured witness, who attempted to stop the accused persons from attacking the deceased and in the said process, sustained stab injury in the nose, by A1. The knives used by A1 and A2 were marked as M.O.1 and M.O.2 in this case.

11. P.W.2, who is the cousin brother of P.W.1 was also an eye-witness in this case and he speaks about the attack made on the deceased and P.W.1. This witness also speaks about hiring the services of P.W.8 and the deceased was taken in the car to the Vettumani Government Hospital. Since there was a breakdown of the car, an ambulance was called for from Issac Hospital and the deceased was taken to the Government Hospital. On examining the deceased, the doctor declared him to have been brought dead. P.W.2 had accompanied the above said Prabhu when the complaint was lodged and hence the complaint was marked through P.W.2 as Ex.P1.



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12. PW 3 is also an eyewitness to the occurrence and he speaks about the deceased being attacked by A1 and A2 and the attack made on P.W.1 and thereafter, the deceased being taken to the hospital. Similar is the evidence of P.W.4.

13. P.W.5 is the brother of the deceased and he talks about the altercation that took place in the marriage function between A1 and the deceased. He also speaks about the incident as was done by P.W.3 and P.W.4.

14. P.W.6 is the Village Administrative Officer in whose presence A2 to A4 were arrested and the recovery was effected and the relevant documents were marked through him as Ex.P4 and Ex.P7. M.O.1 and M.O.2 was also recovered in his presence.

15. P.W.7 is the witness to the Observation Mahazar marked as Ex.P8 and M.O.8 and M.O.9 respectively.



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16. P.W.8 is the driver, who drove the car in which the deceased was taken to the hospital and this car broke down midway and thereafter, the deceased was taken in an ambulance belonging to the Issac Hospital.

17. P.W.9 is the doctor, who treated A2 on 29.11.2009 at 9.25 p.m. and he was brought by A1 on the ground that he was assaulted by two known persons. The injuries noted down by PW-9 was also spoken when he tendered evidence in Court.

18. P.W.10 is the doctor, who declared the death of the deceased on 29.11.2009 at 5.10 p.m. and Ex.P.11- Accident Register and Ex.P12 were marked through P.W10.

19. P.W11 is the doctor, who conducted the autopsy on the body of the deceased and the post-mortem report was marked as Ex.P14 and the final opinion was marked as Ex.P13. The following injuries were recorded by P.W12 in the postmortem certificate :-

"1. A stab injury 3 cms medial to the left nipple



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2 cm x 1 cms margins clear c tapering ends depth 9 cms.

2.A stab injury on the right side of the chest 1/2 cm x 1/2 cm margins, clear ends are tapering with a depth 1/2 cms over the sternum 2 cm lateral to the xphisternum.

3. A incised wound 2 x 1 cm margin clear ends are tapering with a depth of 1/2 cm in the middle on the lower part of the left axilla.

4. A coma shaped stab injury 3 1/2 cm x 1/2 cm margins clear ends are tapering with 3 1/2 cms depth over the left scapula.

5. A laceration 1 x 1/2 cm on the lower end of the post axillary wall.

6. A laceration 2 x 1 cms on the upper part of the post axillary wall.

7. A stab injury 3 x 1 cms margins clear end are tapering with a depth of 3 cms on the left loin.

8. A stab injury 2 1/2 cm x 1/2 cm margins clear ends are tapering on the ape of the left axilla c 1 cm depth.

9. A stab injury 3 x 1/2 cm margin clear ends are tapering c 5 cms depth on the left supra claviculer region."



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20. As per the final opinion, the deceased is said to have died of shock and haemorrhage due to injuries to the vital organs.

21. P.W.12 is the doctor belonging to the Issac Hospital, who speaks about the treatment given to the deceased. Ex.P15 which is the wound certificate was marked through P.W12.

22. P.W13 is the Sub-Inspector of Police, who received the complaint from the above said Prabhu and registered the FIR marked as Ex.P16.

23. P.W14 is the Investigation Officer, who speaks about the various steps taken in the course of investigation till the final report was filed before the concerned Court.

24. The main case that was projected by the learned counsel appearing on behalf of the appellants is that the injuries sustained by A2



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was not even investigated by the Police and that completely affects the credibility of the prosecution case. That apart, the evidence of P.W1 to P.W5 had contradictions which affects the credibility of their evidence.

25. A careful reading of the evidence of P.W1 to P.W5 shows that it is clear and cogent and their testimony has not been discredited in the cross examination. The evidence of P.W1, who is an injured witness, gives more credence to the incident that was witnessed by him and this witness has not even been cross examined by A1. The place and time of occurrence has been sufficiently established by the prosecution through P.W1 to P.W5, P.W8, P.W12 and the evidence of P.W10 and P.W11.

26. It is also clear from the post-mortem report and the final opinion marked through P.W11 that the injuries sustained by the deceased in the vital organ, caused by A1 and A2 was the cause of death.

27. Even though motive becomes irrelevant in a case proved through eyewitnesses, it is also a piece of evidence which goes on to give an



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idea as to the background in which the incident took place. This has been sufficiently spoken to and established through P.W1 to P.W5.

28. In view of the above, it can be safely held that the prosecution has succeeded in establishing the place of occurrence, time of occurrence and the manner of occurrence which is in line with the medical evidence available on record. There is consistency in the evidence adduced by the witnesses and the same inspires the confidence of this Court. Accordingly, this Court finds that the prosecution has proved the case beyond reasonable doubts against the appellants.

29. Having rendered the above finding, this Court has to go into the next step of finding out whether the offence committed by the appellants will amount to a murder by bringing it within any of the four limbs of Section 300 of IPC. or the offence will fall under any of the three limbs of Section 299 of IPC. and hence can be held to be a culpable homicide not amounting to murder. This Court also must see if the facts of the present case, falls under any of the exceptions under Section 300 of IPC. It is only



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after going through this process, this Court can ascertain as to whether the appellants are liable to be punished under Section 302 IPC or under Section 304 (i) or (ii) of IPC.

30. The weapon used by the appellants and the injuries sustained by the deceased as spoken to by P.W11, clearly brings the case under the third limb of Section 300 of IPC., since it is clear that the attack was made on the deceased with an intention of causing bodily injury intended to be inflicted and is sufficient in the ordinary course of nature to cause death.

31. It is clear from the evidence of P.W1 that there was a wordy altercation between the deceased and A1 and A2 before the incident. This was in continuation to the incident that took place in the marriage function on 29.11.2009 at about 10.30 a.m. Admittedly, A1 and A2 and the deceased were not known to each other till the incident that took place in the marriage function at the time of having food. There was no premeditation on the part of A1 and A2 to murder the deceased and it was more a provocation which



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ultimately ended with the deceased being attacked by A1 and A2. There was a quarrel and there was a provocation and hence the facts of the present case can be brought under the first exception to Section 300 of IPC. and the appellants are liable to be convicted under Section 304 (i) of IPC.

32. In the result, the conviction and sentence imposed by the Court below are modified as follows:

Sl. No.	Rank of the Accused	Provisions under which convicted	Sentence of imprisonment and fine amount
1.	A1	304(i) IPC	To undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) and in default, to undergo one year simple imprisonment.
		326 IPC	To undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/- (Rupees One Thousand only) and in default, to under go three months simple imprisonment.
2.	A2	304(i) IPC	To undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) and in default, to undergo one year simple imprisonment.



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The sentences imposed on the accused No.1 are ordered to run concurrently and the period of incarceration undergone by the appellants/A1 and A2 are ordered to be set off under Section 428 Cr.P.C.

33. This Criminal Appeal is partly allowed in the above terms. The appellants have been enlarged on bail during the pendency of this Criminal Appeal. Hence, there shall be a direction to the appellants to surrender before the trial Court within a period of two weeks from today, in order to undergo the remaining period of sentence. If the appellants do not surrender, the trial Court shall take immediate steps to secure the appellants and confine them to jail, in order to undergo the remaining period of sentence.

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

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Index : Yes/No

Internet : Yes

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1.The Additional District and Sessions Judge,
(Fast Track Court),
Nagercoil.

2.The Inspector of Police,
Kaliyakavilai Police Station,
Athencode,
Padanthalumoodu Post,
Kanyakumari 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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JUDGMENT MADE IN
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