



Crl.A(MD)No.471 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.07.2022

DELIVERED ON : 26.07.2022

CORAM :

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

Crl.A(MD)No.471 of 2019

Senthurapandi

... Appellant/
Sole Accused

Vs.

The Inspector of Police,
Kayathar Police Station,
Thoothukudi District.
(Crime No.47/2007)

... Respondent/
Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973, against the judgment and order dated 07.07.2009 made in S.C.No.337 of 2007 on the file of the Additional District and Sessions Judge, Fast Track Court No.1, Thoothukudi.



WEB COPY

Crl.A(MD)No.471 of 2019

For Appellant : Mr.R.Vinoth Bharathi

For Respondent : Mr.S.Ravi
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 0707.2009 in S.C.No.337/2007 passed by the learned Additional District and Sessions Judge (Fast Track Court No.I), Thoothukudi in and by which, the Appellant was convicted for an offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and fine of Rs.1,000/- in default to undergo 6 months rigorous imprisonment. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution in a nutshell is as follows:

- i. Senthurpandi, the appellant and Karuppasamy, the deceased are residents of Vagaithavur village, Thoothukudi. The



WEB COPY



Crl.A(MD)No.471 of 2019

appellant, in an earlier dispute had been implicated in a police case by Karuppasamy (deceased) and Kombaya Thevar [P.W-5]. Enraged over this issue, the appellant was nursing a grudge against both of them. On 12.03.2007 at about 6.00 p.m., Karuppasamy and Manickam [P.W-1] were looking after their cattle grazing in a dry land belonging to one Palanisamy, situate on the east of Sokendrapandiyapuram Village. Dharmar [P.W-2] came over there with his cattle. The appellant also with his cattle came there and picked up a quarrel with Karuppasamy stating that his paternal uncle Kombayathevar [P.W-5] had helped Malayazhagu [P.W-6] in giving a complaint against him and that he should mend his ways. This resulted in an altercation between the appellant and the deceased and in the melee, the appellant took out a sickle [M.O.1] and attacked Karuppasamy, due to which, Karuppasamy sustained injuries on his right side of neck, left shoulder,



WEB COPY



Crl.A(MD)No.471 of 2019

hip, abdomen, left elbow and left thumb. Karuppasamy fell down and died instantaneously and the appellant fled the scene of offence with the sickle.

- ii. Thiru.Manickam[P.W-1] went to Vagaithavur village and informed the elders about the incident and thereafter went to Kayathar Police Station at about 10.00 p.m., and gave a complaint Statement [Ex.P-1], which was recorded by a constable in the presence of Thiru.Gajenthiran [P.W-15], the Sub Inspector of Police, Kayathar Police Station. Thereafter, FIR [Ex.P10] in Crime No.47/2017 of Kayathar Police Station was registered against the appellant, for an alleged offence under Section 302 of IPC by P.W-15. P.W-15 sent the FIR to the Judicial Magistrate No.II, Kovilpatti, through the Head Constable of Police and the Magistrate received the FIR at about 1.30p.m on 12.03.2007. Thereafter, P.W-15 placed the entire records



WEB COPY



Crl.A(MD)No.471 of 2019

before Thiru.Pavulraj[P.W-16], Inspector of Police,
Kayathar Police Station.

iii. P.W-16 took up investigation, went to the scene of offence on the same day, ie., 12.03.2007, at about 11.00 p.m., and prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P11) using Petromax lamp supplied by Thiru.Kasi (P.W-8), who owns Petromax lamps shop. He also recovered bloodstained earth (M.O.2) and ordinary earth (M.O.3) and a pair of slippers (M.O.4) under the cover of a mahazar (Ex.P3) in the presence of Mariappan (P.W-9). He then conducted inquest (Ex.P12) on the body of the deceased in the presence of five witnesses one of whom was a retired Village Administrative Officer and he was examined as P.W-7. Thereafter, P.W-16 sent the body to Primary Health Centre, Kayathar for postmortem through Thiru.Senthilkumar (P.W-13), Grade-I Police Constable



WEB COPY



Crl.A(MD)No.471 of 2019

attached to Kayathar Police Station along with a requisition (Ex.P4) in an ambulance driven by Thiru.Andrews (P.W-11).

iv. Dr.Muthusamy (P.W-10) conducted autopsy on the body of the deceased and noted the following injuries:

“ i. 14 x 6 cm bone deep oblique cut wound seen over the right parital region.

ii. 14 x 6 x 5 cm muscle deep heavy oblique cut injury seen over the right side of neck extending from 3 cm lateral to the nape of the neck 4 cm above the sternoclavicular joint and cutting the underlying vessels nerves and soft tissues.

iii. 6 x 1 x 1 cm cut wound seen over the right scapula

iv. 3 x ½ x 3 cm incised punctured wound seen over the right chest 3 cm lateral to the right ripple.

v. 6 x ½ x ½ cut wound seen over the left shoulder.



WEB COPY



CrI.A(MD)No.471 of 2019

vi. 3 x ½ cavity depth incised punctured wound noted 3 cm lateral to the right nipple with tailing of 0.5 cm seen at its lower end.

vii. 2 x ½ cavity depth incised punctured wound seen 1 cm below the left 12th rib (costal margin) with tailing of 0.5 cm seen at its lower end.

Viii. 3 x ½ x cavity depth incised punctured wound seen over the left abdomen 3 cm above the hip bone.

ix. 5 x 1 cm x bone depth cut wound seen over the back of the left elbow joint.

x. 4 x 2 x 3 cm cut wound seen over the are in between left thumb and index finger extended from the dorsal hand to the palm.

xi. Thorax contains about 1.5 litres of fluid, peritoneal cavity, contains nil collect of any type of fluid.

xii. Heart: a punctured wound 1 x ½ cm seen over the left ventricle enter in the chamber. O/D empty coronary vessels patent.

xiii. Lungs: 2 x 1 cm cut wound seen over



WEB COPY



CrI.A(MD)No.471 of 2019

the riddle lobe C/S pale.

xiv. Hyoid bone : intact. Stomach: about 400 gms of partly digested food particles, Nil specific smell, mucous congest Liver: C/S pale Spleen: C/S pale Kidney:C/S pale. Small intestine: Nil specific, bladder empty”.

In the opinion of the Dr.Muthusamy (P.W-10) *“the deceased would appear to have died of multiple heavy cut injuries over region of neck and chest.”*

- v. The appellant surrendered before the judicial Magistrate No.IV, Madurai on 14.03.2007 and was produced before the Judicial Magistrate No.II, Kovilpatti, on 22.03.2017. Thereafter, P.W-16 filed a petition along with an affidavit before the Judicial Magistrate, Kovilpatti, for police custody of the appellant and the same was allowed by Judicial Magistrate, Kovilpatti. On 23.03.2007, P.W-16 took the custody of the appellant and his police confession (admissible portion of which was marked as Ex.P6) was



WEB COPY



Crl.A(MD)No.471 of 2019

recorded, based on which he recovered a bloodstained sickle (M.O.1), bloodstained shirt (M.O.6) under the cover of a mahazar (Ex.P7) in the presence of the witnesses Varadharajan (P.W-12) and Murugan (not examined).

vi. The serology and chemical analysis reports showed the presence of human blood in M.O.1 to M.O.8 [except M.O.3(ordinary earth)] and the blood group was 'A'.

vii. PW16 examined the witnesses and recorded their statements. He collected various reports from the experts and the doctor and after completing investigation, filed a final report against the appellant for an offence under Section 302 IPC before the Judicial Magistrate No.II, Kovilpatti, in P.R.C.No.8 of 2007, who in turn, committed the case to the Court of Sessions after furnishing copies of documents to the appellants under Section 207 of the Code



WEB COPY



Crl.A(MD)No.471 of 2019

of Criminal Procedure. The learned Additional District and Sessions Judge, Fast Tack Court No.1, Thoothukudi, took up the case on file in S.C.No.337 of 2007. To the charge framed under Section 302 IPC, the appellant pleaded not guilty. Hence, the case was posted for trial.

viii. In order to establish the guilt of the appellant, the prosecution examined 16 witnesses and marked 16 documents and 9 material objects.

ix. When the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313 of the Code of Criminal Procedure, he denied of having committed any offence. However, he did not examine any witness on his side.



WEB COPY



Crl.A(MD)No.471 of 2019

x. The learned Additional District and Sessions Judge after analyzing the oral and documentary evidence adduced on both sides found the appellants guilty of an offence under Section 302 IPC, convicted and sentenced him as stated in paragraph No.1. Challenging the same, present appeal is filed by the appellant along with a petition to condone the delay of 3724 days under Section 5 of Limitation Act in Crl.M.P(MD)No.8184 of 2019. The said petition was allowed on 30.09.2019

3. The case of the prosecution rests on the evidence of Manickam [P.W-1] and Dharmar [P.W-2], who are eye witnesses to the occurrence. According to P.W-1, when he and Dharmar took cattle for grazing, they were confronted by the appellant, who was in an angry mode. The appellant warned the deceased to advise his paternal uncle Kombayathevar [P.W-5] to exercise restraint in the matter of the complaint given by Malayazhagu [P.W-6]. This started heated arguments



Crl.A(MD)No.471 of 2019

WEB COPY

between them which further broke into a brawl and fisticuffs. The appellant attacked Karuppasamy with a sickle causing grievous cut injuries and the victim collapsed and died instantaneously. The version of P.W-1 was corroborated by P.W-2 in all material particulars and both of them had withstood the testimony of cross examination, despite the fact that these two witnesses were cross-examined after one year of their examination in chief.

4. In the light of the eyewitness account of P.W-1 and P.W-2, the prosecution case is on a very strong foundation and nothing much could be done by the appellant's side to cause any dent to the prosecution theory. However, Mr.R.Vinoth Bharathi, learned counsel for the appellant contended that

1. The eye witnesses [P.W-1 and P.W-2] are close relatives of the deceased and therefore could not be relied upon as much as an independent witness.
2. Motive for the murder of Karuppasamy was not proved



WEB COPY



Crl.A(MD)No.471 of 2019

since Kombaya Thevar (P.W-5) turned hostile to the prosecution.

3. The postmortem report shows 10 injuries whereas depositions of P.W-1 and P.W-2 do not support the number of injuries found on the body of the deceased.

4. Though the eyewitnesses P.W-1 and P.W-2 had contended that the time of occurrence was 6.00 p.m., on 12.07.2007. Dr.Muthusamy, who conducted autopsy on the body of the deceased did not mention the approximate time of death of the deceased and hence, it is not safe to believe the versions of P.W-1 and P.W-2.

5. Witnesses play an indispensable role in serving justice which rests on the principles of truth and unbiased. The conclusiveness and truthfulness of the testimony runs in favour of the witness as they are made under oath. Therefore, witnesses play a pivotal role in the delivery of justice from the very point a criminal trial begins. One should



Crl.A(MD)No.471 of 2019

WEB COPY

understand the difference between 'Related witness' and 'Interested witness'. A related witness is some one having a relation with the prosecuted person or victim. For example, a husband giving testimony of his wife's death can be regarded as testimony by a related witness. On the other hand, an interested witness refers to some one having direct interest in the result of the litigation, expecting to gain some benefit out of it. The general presumption is that a related witness would not falsely testify against an innocent person as they would prefer to see the real culprits getting punished. It is settled law that relationship of a witness cannot be a ground to determine the credibility of the testimony. Moreover, nothing was suggested to P.W-1 and P.W-2 that they had enmity with the appellant. In fact the line of cross-examination in the trial Court was that the deceased had several enemies and that at the instance of Kombaya Thevar (P.W-5), a false case was foisted against the present appellant. This was stoutly denied by P.W-1. In fact, P.W-5 did not support the case of the prosecution and turned hostile. Therefore, it cannot be said that P.W-1's evidence is untrustworthy. Pertinent it is to



Crl.A(MD)No.471 of 2019

WEB COPY

point out that the key witnesses of the prosecution though were examined in chief on 20.06.2008 were cross-examined on 12.06.2009, i.e., after a year.

6. Though P.W-5 turned hostile to the prosecution, the evidence of Malaiyazhagu (P.W-6) is clear on the aspect of motive. P.W-6 had categorically stated that the appellant picked up a quarrel with her when she took her cattle for grazing and on account of this, she lodged a complaint with the police. Her further evidence is that her husband and Kombaya Thevar (P.W-5) accompanied her. Nothing useful was suggested to P.W-6 during the course of cross-examination to discredit or disbelieve her versions.

7. The sequence of events, as to the number of times the victim was attacked causing multiple injuries cannot be recalled with mathematical precision by any one, much less the present witnesses, except for the conclusion that the attack was a murderous one and the



Crl.A(MD)No.471 of 2019

WEB COPY

mission of killing the victim was accomplished. Moreover, the eyewitness account cannot be said to be inconsistent with the medical evidence in the instant case. In fact, the doctor had opined that the victim died due to multiple cut injuries on his neck and chest.

8. Though Dr.Muthusamy did not mention the approximate time of the death of the deceased in his certificate Ex.P5, there is nothing to show that the deceased died several days back. Moreover, P.W-1 and P.W-2 had categorically deposed that the victim died at about 6.00 p.m., on 12.07.2007. The FIR was also sent to Judicial Magistrate No.II, Kovilpatti, on the same day, ie., on 12.07.2007. There is no delay in registering FIR since it is in evidence that the place of occurrence is 12 kms from Vagaithavur village. In fact, the investigation officer had acted swiftly and recovered the material objects at about 11.30 p.m., on the same day, that is, on 12.07.2007 with the aid of petromax light and P.W-8, the owner of the petromax light had also deposed that the police got a petromax light from his shop and went to the scene of offence. In



Crl.A(MD)No.471 of 2019

WEB COPY

fact P.W-16, during the course of cross-examination stated that he got intimation from the Police Station at about 11.00 p.m., when he was near Vagaithavur turning road and immediately rushed to the spot. In the circumstances, it is clear from the versions of P.W-1 and P.W-2 that the victim died at about 6.00 p.m., on 12.07.2007 and hence, this contention is not material and is insignificant.

9. As already observed, P.W-1, P.W-2 and P.W-6 have deposed clearly and cogently the offence committed by the appellant and they also withstood the testimony of cross examination eventhough P.W-1, P.W-2 and P.W-6 were cross-examined after one year from the date of their chief examination.

10. The appellant went missing immediately after the occurrence and surrendered before the learned Judicial Magistrate No.IV, Madurai, on 14.03.2007, i.e., after two days of the occurrence. It is appropriate to point out that the jurisdictional Magistrate in the instant case is Judicial



Crl.A(MD)No.471 of 2019

WEB COPY

Magistrate No.II, Kovilpatti. The appellant also did not explain even in his 313 Cr.P.C., statement about his absconding from his village. In the circumstances, the appeal fails and is to be dismissed.

11. In the result,

(i) This Criminal Appeal stands dismissed.

(ii) The conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court No.1, Thoothukudi, against the appellant in S.C.No.337 of 2007 dated 07.07.2019, is hereby confirmed.

[P.N.P., J.] & [R.H., J.]
26.07.2022

Index : Yes/No
Internet : Yes/No
PJJ

To
1.The Additional District and Sessions Judge,
Fast Track Court No.1,
Thoothukudi.



Crl.A(MD)No.471 of 2019

WEB COPY

- 2.The Inspector of Police,
Kayathar Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A(MD)No.471 of 2019

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

PJL

Judgment made in
Crl.A.(MD)No.471 of 2019

26.07.2022