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Crl.A(MD)No.446 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : **11.10.2022**

DELIVERED ON : **14.10.2022**

CORAM :

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

Crl.A(MD)No.446 of 2019

Karuppaiah Kannan

.. Appellant / Sole Accused

Vs.

The State represented by,
The Inspector of Police,
Karuppayurani Police Station,
Madurai City.
(Crime No.88 of 2015)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, 1973, against the judgment and order, dated 23.07.2019 in S.C.No.539 of 2016 passed by the learned I-Additional District and



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Sessions Judge, Madurai.

For Appellant : Mr.M.Jegadeesh Pandian

For Respondent : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

JUDGMENT

J.NISHA BANU,J.

and

N.ANAND VENKATESH, J.

The appellant, who was convicted for an offence under Section 302 IPC and sentenced to undergo Life Imprisonment and to pay a fine of Rs.5000/- and in default, 3 months simple imprisonment, has filed this Criminal Appeal against the order and judgement passed by the 1st Additional District and Sessions Judge, Madurai, made in S.C.No.539 of 2016, dated 23.07.2019.



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2. The case of the prosecution is that the deceased Vadamugam was the son of P.W-1 and he was working as a watchman in the land belonging to the father of P.W-2. The further case of the prosecution is that the appellant is cultivating land on the south of the grove belonging to the father of P.W-2 and he used to get into the land belonging to the father of P.W-2 and take away mangoes and coconut. The appellant was warned several times in this regard and on one such occasion on 29.04.2015, at about 01.00 p.m., the appellant entered into the land and was trying to take away the rope from the motor pump set room and he was warned by the deceased.

3. It is the case of the prosecution that the repeated warnings given by the deceased created an enmity and hence, the appellant decided to do away with the deceased. Accordingly, the appellant entered the grove on 29.04.2015 at about 04.00 p.m. and scolded the deceased in



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filthy language and attacked him with aruval (M.O.3) and caused cut injuries in the neck, shoulder, finger and right leg. The deceased is said to have died in the place of occurrence itself.

4. A complaint (Ex.P1) was given by P.W-1 on 29.04.2015 at about 06.15 p.m. and an FIR came to registered by P.W-13 in Crime No. 88 of 2015. The investigation was taken up by P.W-16. On completion of investigation, the final report was filed before the Judicial Magistrate No.II, Madurai. The appellant was served with the copies under Section 207 Cr.P.C and the case was committed to the file of Principal District and Sessions Court, Madurai under Section 209 Cr.P.C. The case was thereafter made over to the Court below.

5. The Court below framed charges under Sections 302 and 506 (ii) IPC. The prosecution examined P.W-1 to P.W-16 and marked



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Ex.P1 to Ex.P18 and identified and marked M.O.1 to M.O.6. The incriminating materials and circumstances gathered in the course of the evidence was put to the appellant under Section 313(1)(b) Cr.P.C and the same was denied as false.

6. The Court below on considering the facts and circumstances of the case and on appreciation of the evidence available on record, came to a conclusion that the prosecution has made out a case against the appellant beyond reasonable doubts and convicted and sentenced the appellant in the manner stated supra. Aggrieved by the same, the present Criminal appeal has been filed before this Court.

7. The learned counsel for the appellant submitted that the presence of P.W-1 and P.W-2 in the scene of occurrence is highly unbelievable. It was further submitted that the arrest and recovery of the



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just because there are some discrepancies as pointed out by the learned counsel for the appellant. Insofar as the appreciation of evidence of the eyewitnesses, the learned Additional Public Prosecutor heavily relied upon the Judgment of the Apex Court in ***Shahaja alias Shahajan Ismail Mohd. Shaikh v. State of Maharashtra*** reported in **2022 SCC Online SC 883**. The learned Additional Public Prosecutor further submitted that the distance between the place of the occurrence and the police station is 12 kms and the distance between the police station and the Court is 10 kms and considering the same, there wasn't any exorbitant delay and in view of the clear evidence given by P.W-1 to P.W-3, there was no need for any deliberation to intentionally rope in the appellant. The learned Additional Public Prosecutor further submitted that the injuries sustained by the deceased and as noted in the postmortem certificate is in line with the version given by P.W-1 to P.W-3 and such injuries are caused if a person is attacked with aruval. The learned Additional Public Prosecutor also relied upon the serology report wherein the shirt of the appellant



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which contained blood stains matched with the blood group of the deceased. The learned Additional Public Prosecutor concluded his arguments by submitting that there are absolutely no grounds to interfere with the Order and Judgment passed by the Court below and sought for the dismissal of the Criminal Appeal.

9. This court has carefully considered the submissions made on either side and the materials available on record.

10. The key witnesses in the present case are P.W-1 to P.W-3, who according to the prosecution had seen the deceased being attacked by the appellant with aruval (M.O.3). According to the learned counsel for the appellant, P.W-1 to P.W-3 were not present in the scene of occurrence and their version about the incident is false. To substantiate this submission, certain discrepancies were pointed out to the effect that



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the police was present in the scene of crime even before the complaint was given, P.W-1 was lifted after the incident only by the police, the bloodstained clothes of P.W-1 was not even recovered to prove her presence in the scene of occurrence, the evidence of P.W-15, who is the son of the deceased, improbabilises the presence of P.W-1 to P.W-3 in the scene of crime and the substantial delay in giving the complaint on the ground that they were waiting for the arrival of P.W-4, sounds very unnatural and causes a dent in the evidence of P.W-1 to P.W-3.

11. P.W-1 is the mother of the deceased. She has spoken about the motive for the incident and she describes about the attack made on the deceased in a cogent manner. She specifically states about the presence of P.W-2 and P.W-3 in the scene of crime and the fact that they waited for the arrival of P.W-4, who is the son of the deceased, before going to the police station and giving the complaint. This witness has



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also stated about the chase given to the appellant along with P.W-2 and P.W-3 after the incident and he escaping near Varichiyur Main road. On the date of incident, P.W-1 was aged about 73 years and when she gave evidence, she was aged about 76 years. Considering the age of P.W-1 and the time lapse between the incident and deposition made before the Court, there is bound to be discrepancies and this Court must only see if the discrepancy is to such an extent that it makes the evidence of P.W-1 totally unreliable. This Court is not able to come to such a conclusion on carefully going through the evidence of P.W-1.

12. P.W-2 is the son of the owner of the grove where the deceased was working as a watchman. His evidence is in line with the evidence of P.W-1. In the course of cross-examination, he was not rattled and he maintained his stand with more clarity. He also speaks about the presence of P.W-1 and P.W-3 at the time of occurrence and all of them



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waiting for the arrival of P.W-4 before the complaint was given to the police. P.W-2 is a third party and he is neither a related nor an interested witness in this case. On carefully going through the evidence of P.W-2, this Court does not find any ground to disregard the same.

13. P.W-3 is the relative of the deceased (cousin brother) and was an auto driver by profession. His version is also in line with the evidence of P.W-1 and P.W-2 and he was the one who waited till the arrival of P.W-4 and took P.W-1, P.W-2 and P.W-4 in his auto rickshaw to the police station to give the complaint.

14. P.W-15 is yet another son of the deceased, who came to the scene of occurrence after he was informed about the incident. He specifically states about the presence of P.W-1 to P.W-4 when he reached the scene of crime and he also talks about the complaint being made



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ready by P.W-4 and the presence of P.W-1 to P.W-4 in the police station. Just because P.W-1 to P.W-3 did not state about the fact that P.W-15 also accompanied them to the hospital and the police station, that does not in anyway discredit the evidence of P.W-1 to P.W-3. The evidence of P.W-15 does not contradict the material facts stated by P.W-1 to P.W-3.

15. P.W-4 is the son of the deceased, who attested the complaint (Ex.P1) given by P.W-1. He came to the scene of crime after the incident. Only after his arrival, he along with P.W-1 to P.W-3, went to the police station to give the complaint. The incident took place at about 4.00 p.m. on 29.04.2015 and the complaint was given at about 06.15 p.m. and the police station was situated about 12 kms from the scene of occurrence.



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16. The learned counsel for the appellant submitted that the version of P.W-1 to P.W-3 that they were sitting along with the dead body till the arrival of P.W-4 is totally unbelievable. It must be kept in mind that when a shocking incident takes place, each person responds to the same differently. Infact, a clear thinking process gets substantially restricted due to the shock. After the incident, the information was passed on to P.W-4, who is the son of the deceased. P.W-2 in his evidence makes it very clear that there was no use in taking any immediate action since he found the deceased dead on the spot. Hence, there is nothing unnatural to wait for the arrival of the son and thereafter to act by lodging a complaint. P.W-1 was an old lady aged about 73 years and it is not fair to expect this lady to take decisions and act promptly by rushing to the police station and giving a complaint.



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17. Insofar as the appreciation of ocular evidence is concerned, the Apex court in ***Shahaja alias Shahajan***, mentioned supra, 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:

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



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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 matter of trivial details.

III. When eye-witness is examined at length it is quite possible for him to make some discrepancies. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence.

IV. Minor discrepancies on trivial matters not touching the core of the case, hyper technical approach by taking sentences torn out of context



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here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole.

V. Too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.

VI. By and large a witness cannot be expected to 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



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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 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



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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.

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.”

28. To put it simply, in assessing the value of the evidence of the eyewitnesses, two principal



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considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, the circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence.”

18. Merely because the police did not recover the blood stained clothes of P.W-1, that cannot affect the evidence of P.W-1 and at the best, it can only be stated to be a defective investigation. Similarly, the discrepancies as to the presence of the police in the scene of crime



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and the presence of the appellant in the police station and as to who actually gave the complaint, do not go to the root of the matter which will completely dislodge the evidence of the eyewitnesses. The evidence available on record does not create any doubt about the presence of P.W-1 to P.W-3 in the scene of occurrence and there is nothing inherently improbable or unreliable in their evidence.

19. The evidence of the postmortem doctor, P.W-14 along with the postmortem report marked as Ex.P11 also gains significance. The injuries that were recorded in the postmortem certificate are extracted hereunder:

“1.The wound passes backwards, downwards and inwards cutting the underlying muscles, nerves, vessels, wind pipe, food pipe and underlying cervical vertebrae **C3** measuring 1 cm x 0.5 cm x 0.5 cm and end as a point.



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2. Horizontally oblique cut injury measuring 4cm x 1cm x muscle deep noted on left side of neck, 3cm below to previous injury.
3. Vertically oblique cut injury measuring 2 cm x 0.5cm x skin deep noted on back of right ring finger.
4. Vertically oblique cut injury measuring 12cm x 1cm x muscle deep noted on outer aspect of middle 1/3rd of right leg.
5. Abrasion measuring 1cm x 1cm noted on top of left shoulder.”

20. The postmortem doctor has given a final opinion to the effect that the injury No.1 was the fatal injury which caused the death of the deceased. The above injuries are in line with the version given by P.W-1 to P.W-3 and it is also in line with the complaint (Ex.P1). Hence, the evidence of P.W-14 read with Ex.P11 corroborates the evidence of



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P.W-1 to P.W-3 on the nature of attack made by the appellant and the weapon used while committing the crime. Insofar as certain discrepancies pointed out by the learned counsel for the appellant with regard to the arrest and recovery, it is seen from the evidence of P.W-16, who is the Investigation Officer that he had gone to the place of occurrence on 29.04.2015 at about 08.00 p.m. and he has prepared Ex.P2 observation mahazar and Ex.P12 rough sketch in the presence of P.W-5. P.W-16 had also seized M.O.4 and M.O.5 under seizure mahazar marked as Ex.P3. Even prior to the visit of P.W-16 in the place of occurrence, the body of the deceased was sent to the Government Hospital. Therefore, the inquest report was prepared under Ex.P13 only on 30.04.2015 between 06.30 a.m. and 08.30 a.m. The appellant was arrested at about 12.00 p.m. on 30.4.2015 and based on his confession, the recovery of M.O.3 was made. On a careful reading of the evidence of P.W-16 along with the evidence of P.W-6, this Court is not able to hold that there was any illegality in the arrest and remand of the appellant.



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21. The shirt belonging to the appellant (M.O.6) was also sent for serology report and it is clear from Ex.P8 that the bloodstain in the shirt of the appellant matched with the blood group of the deceased.

22. The delay aspect that was pointed out by the learned counsel for the appellant with regard to the delay in the FIR reaching the Court and the delay in producing the statements recorded from the witnesses before the Court, will not have any bearing in the present case since the evidence of P.W-1 to P.W-3 has been found to be completely reliable and mere delay cannot result in throwing out the evidence of P.W-1 to P.W-3. In short, the delay does not in anyway affect the case of the prosecution.



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23. This Court also carefully went through the order and judgment passed by the Court below and the Court below has properly appreciated the evidence and rendered a correct finding to the effect that the prosecution has made out a case for murder against the appellant beyond reasonable doubts and there is no 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 I-Additional District and Sessions Judge, Madurai, against the appellant/sole accused in S.C.No.539 of 2019 dated 23.07.2019, is hereby confirmed.

(iii) This Court had suspended the sentence and enlarged the appellant on bail by order dated 01.11.2021 and the



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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.

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

14.10.2022

Index : Yes/No

Internet : Yes/No

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To

1.The I-Additional District and Sessions Judge, Madurai.

2. The Inspector of Police,
Karuppayurani Police Station, Madurai City.

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

Pre-delivery Judgment made in
Crl.A.(MD)No.446 of 2019

14.10.2022