

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

Dated : 06.09.2022

CORAM:

**THE HONOURABLE Mrs.JUSTICE J.NISHA BANU**

**AND**

**THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH**

**Crl. A. (MD)No.467 of 2019**

Seeman

.. Petitioner/Accused No.1

Vs.

State rep by  
The Inspector of Police,  
Thalavaipuram Police Station,  
Virudhunagar District.  
(in Crime No.89 of 2016)

.. Respondent/Complainant

Appeal filed under Section 374 of Criminal Procedure Code, to call for the records relating to the judgment dated 30.08.2019 in S.C.No. 188/2016, on the file of the learned Additional Sessions Judge, Virudhunagar District at Srivilliputhur and set aside the same by acquitting the appellant and allow this criminal appeal.

|                |                                                       |
|----------------|-------------------------------------------------------|
| For Appellant  | : Mr.V.Kathirvelu for<br>Mr.K.Prabhu                  |
| For Respondent | : Mr.A.Thiruvadikumar<br>Additional Public Prosecutor |

**JUDGMENT**

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

The appellant, aggrieved by the judgment passed in S.C.No.188/2016 dated 30.08.2019, on the file of the Additional Sessions Judge, Virudhunagar District at Srivilliputhur, convicting the appellant for an offence under Section 302 IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months simple imprisonment, has filed this appeal.

2.The case of the prosecution is that the complainant namely P.W.1 is the mother of the deceased Murugan. The appellant herein (A1) is the brother of P.W.-1. A1 and A2 are said to be co-workers in a construction

site. The deceased Murugan had a love affair with one Renugadevi (P.W.-11). When a marriage proposal was mooted, A1 is said to have objected by stating that the deceased Murugan is an alcoholic and he did not have any permanent job and accordingly, the marriage proposal did not go through. The deceased seems to have repeatedly quarreled with A1 stating that he was the reason for stopping the marriage with P.W.-11. This resulted in a strained relationship between A1 and the deceased.

2.1. The further case of the prosecution is that on 20.02.2016 at about 18 hrs., A1 and A2 were working in front of a newly constructed house of A2 and at that point of time, the deceased came to that spot and on seeing him, A1 is said to have attacked the deceased with a mason scale in his head and A2 is said to have attacked the deceased with a steel rod on the head of the deceased. Thereafter, both the accused persons ran away from the scene of occurrence. This incident is said to have been witnessed by P.W.-2.

2.2. The deceased sustained injuries in his head and blood oozed out from his left nostril. He was immediately taken in an auto-rickshaw

belonging to P.W.17 and was brought to a hospital at Dhalavaipuram and from there, he was taken to a hospital at Rajapalayam Sandhaikadai. Since they refused to give treatment, the deceased was taken to the Government Hospital at Rajapalayam. The Doctor, who was examined as P.W.-18, gave the first aid treatment and also recorded the injuries sustained by the deceased in the accident Register marked as Ex.P-4. Thereafter, the deceased was referred to the Government Rajaji Hospital, at Madurai and he was admitted as an inpatient. The injured Murugan died on 23.02.2016.

2.3. In the meantime, on 21.02.2016, an information was received from the Rajapalayam Government Hospital about the incident and P.W.-12, who was the Head Constable of Rajapalayam South Police Station, went to the hospital at about 10.00 a.m. and enquired P.W.1 and the complaint was reduced to writing. Based on the same, an FIR was registered in Crime No. 89/2016 for offences under Sections 294(b), 324 and 506(ii) IPC. On the demise of Murugan, the FIR was altered to offences under Sections 294(b) and 302 IPC.

2.4. The investigation was taken over by Sub Inspector of Police, P.W. 23 and thereafter, it was taken over by P.W.26. The statement of the witnesses was recorded under Section 161(3) Cr.P.C. The Investigating Officer conducted inquest and prepared the inquest report marked as Ex.P16. He received the information that the accused persons surrendered before the Sattur Court. Steps were taken to take police custody of the accused persons and accordingly, a petition was filed before the Judicial Magistrate, Rajapalayam and police custody was granted on 25.02.2016. Based on the confession of the accused persons in the presence of witnesses, the mason scale [M.O-1] and steel rod [M.O.-2] were recovered. After collecting the postmortem report and other scientific reports, the investigation was completed and final report was laid before the Judicial Magistrate, Rajapalayam.

3. The case was committed to the file of Principal District and Sessions Judge, Srivilliputhur and it was made over to the Additional District and Sessions Court, Srivilliputhur. Charges were framed against the appellant for offences under Sections 294(b) and 302 IPC.

4. The trial Court had considered the evidence of P.W.1 to P.W.26 and after analyzing Ex.P1 to Ex.P16 and M.Os.1 and 2, questioned the accused persons under Section 313 (1)(a) of Cr.P.C. on the incriminating materials that were against them and the same was denied by the accused persons.

5. On considering the facts and circumstances of the case and on appreciating the oral and documentary evidence, the trial Court found that the prosecution has established the case beyond reasonable doubt and accordingly convicted the appellant for an offence under Section 302 IPC and sentenced him to undergo life imprisonment and to pay fine of Rs.5,000/-, in default, to undergo simple imprisonment for six months.

6. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent State.

7. As a first step, this Court has to carefully analyze the evidence available on record and appreciate the evidence and come to the conclusion

as to whether the prosecution has made out a case against the appellant beyond reasonable doubt. Only on completion of this process, this Court will go to the next step of considering whether the homicide resulted in a murder or it is a culpable homicide not amounting to murder and accordingly impose the punishment.

8. In the present case, P.W.-2, P.W.6, P.W.8, P.W.9 and P.W.16 were examined by the prosecution as eyewitnesses and except P.W.2, all the other witnesses turned hostile. It, therefore, becomes imperative to first have a look at the evidence of P.W.-2. This witness is a relative of the deceased and he is also well known to the accused persons. He also states that he was aware about the strained relationship between the deceased and A1. In the course of evidence, he specifically states that A1 attacked the deceased with a mason scale on the back of his head and A2 attacked with a steel rod on the head of the deceased. This witness also speaks about hiring the services of P.W.17 and carrying the deceased initially to a hospital at Dhalavaipuram and thereafter to a hospital at Rajapalayam Sandhaikadai and ultimately to the Government Hospital, Rajapalayam.

9. The auto driver was examined as P.W.-17 and he specifically states that the deceased was accompanied only by two women and there was no male member, who travelled in the auto rickshaw. This evidence of P.W.-17 throws a doubt as to whether P.W.-2 accompanied the deceased in the auto rickshaw.

10. The prosecution did not produce any material to show or to establish that the deceased was taken to various hospitals before reaching the Government Hospital, Rajapalayam. This aspect becomes very important since the incident had taken place at about 6 p.m. and the accident register was prepared by P.W.-18 only at 11.40 p.m. There is absolutely no material to show as to what happened during this period of 5 hrs. and 40 minutes, after the incident took place.

11. In the accident register, which was marked as Ex.P.4, the name of P.W.2 has been mentioned as the person, who brought the deceased to the hospital. P.W.18, in his evidence, has stated that he was not able to

ascertain the reason for the deceased sustaining injuries. P.W.2, in his evidence, states that he informed P.W.18 about the manner in which the injuries were sustained. If P.W.2 had really stated the manner in which the injuries were sustained, there was no reason for P.W.18 not to have recorded the same in the accident register. Hence, there is a doubt as to whether P.W.2 actually saw the incident and accompanied the deceased and was present with the deceased till the deceased was treated by P.W.18 in the Government Hospital, Rajapalayam.

12. P.W.-2 in his evidence talks about the deceased being attacked by A1 with the mason scale on the back of his head. However, in the accident register, the injuries that are noted confines only to the contusion along the eyebrows. P.W.24, who conducted the postmortem, recorded the following injuries in the postmortem report, marked as Ex.P14:

“The following ante mortem injuries are noted on the body:

- 1.Abrasion 3 cm x 2 cm noted on middle of forehead.
- 2.Abrasion 2 cm x 1 cm noted on left forehead.
- 3.Abrasion 1 cm x 1 cm noted on tip of nose.

4. Abrasion 1 cm x 1 cm noted on lateral part of left cheek.

5. 'C' shaped surgical sutured wound 32 cm x 1 cm x brain deep noted on left fronto parieto temporal region.”

13. It is clear from the above that the injuries were only in the forehead and the final opinion marked as Ex.P.15 shows that the deceased died of cranio cerebral injuries. In view of the same, there is an apparent contradiction between the ocular evidence and the medical evidence on the manner in which the injuries were sustained by the deceased. This aspect once again throws a doubt as to whether P.W.2 was present in the scene of occurrence at the time of incident.

14. The Doctor belonging to the Government Hospital Rajapalayam, who was examined as P.W.18, has stated that when the deceased was brought to the hospital, there was a strong smell of liquor emanating from the deceased. While he was asked to explain the same, in the cross-examination, the Doctor states that if the deceased had consumed lesser

amount of alcohol, the smell will not be there after some time and the fact that there was alcohol smell even after six hrs., shows that the deceased was heavily drunk.

15. The evidence of P.W.2 does not anywhere speak about the inebriated condition of the deceased, at the time of incident. Except the *ipse dixit* of P.W.2, the presence of P.W.2 either at the time of the occurrence or immediately after the occurrence is not substantiated by any material and the only material that shows the presence of P.W.2 along with the deceased was when the accident register was prepared at about 11.40 p.m. Thus, there is absolutely no explanation as to why P.W.2 was absent for nearly five hrs. and 40 minutes. There was no enmity between P.W.2 and the Auto Driver P.W.17 and therefore, if really P.W.2 travelled with the deceased in the auto, it would have been stated so by P.W.-17. Since P.W.17 speaks about only two women, who accompanied the deceased in the auto rickshaw, the circumstances shows that P.W.2 had got involved much later after the incident took place. In view of the same, the evidence of P.W.2 as if he witnessed the incident becomes totally unbelievable.

16. The incident had taken place on 20.02.2016 at about 18 hrs., and the FIR marked as Ex.P10 came to be registered only on 21.02.2016 based on the statement recorded by P.W.22, after getting information from the Government Hospital, Rajapalayam. P.W.2 in his evidence specifically stated that he was with the deceased till 11.30 p.m. on 20.02.2016 and thereafter he returned back home. Thereafter, he never took efforts to give a complaint to the police and in fact, he came to know about the demise of Murugan only at a later point of time. This conduct of P.W.2 is quite unnatural and he is said to have witnessed the incident and hence, the natural conduct would be to give complaint to the police. However, no such effort was taken and the FIR itself came to be registered based on the complaint given by P.W.1 by way of a statement in the hospital. This is yet another aspect, which throws a lot of doubt about the evidence of P.W.2. The fact that all the other eyewitnesses turned hostile and the evidence of P.W.2 is not totally believable, due to the reasons stated above, this Court has to necessarily come to the conclusion that the prosecution failed to prove the case against the appellant beyond reasonable doubt, more

particularly, in the absence of any corroboration to the evidence of P.W.2.

17. In view of the above discussion, this Court is left with no other option except to interfere with the judgment of the trial Court and acquit the appellant from the charge under Section 302 IPC. Accordingly, this Criminal Appeal is allowed and the appellant is acquitted of the charge under Section 302 IPC. Bail bond executed shall stand terminated. The fine amount, if any, paid shall be refunded to him.

**[J.N.B., J.] & [N.A.V., J.]**  
**06.09.2022**

Index : Yes/No  
Internet : Yes  
RR

To

1.The Additional Sessions Judge,  
Virudhunagar District at Srivilliputhur

2.The Inspector of Police,  
Thalavaipuram Police Station,  
Virudhunagar 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.

**Crl. A(MD)No.467 of 2019**

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

**RR**

Judgment made in  
**Crl.A.(MD)No.467 of 2019**

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