



Crl.A.(MD)Nos.462 and 477 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

and

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

Crl.A.(MD)Nos.462 and 477 of 2019

R.Ajitha

... Appellant / Accused No.3
in Crl.A(MD)No.462 of 2019

1.Reggi

2.Shaji

... Appellants / Accused Nos.1&2
in Crl.A(MD)No.477 of 2019

Vs.

State Represented by
The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
(Crime No.453 of 2014)

... Respondent/Complainant
in both cases

COMMON PRAYER: Criminal Appeals filed under Section 374 of Criminal Procedure Code, 1973, against the judgment and order dated 27.08.2019 in S.C.No.112 of 2015 on the file of the learned Additional



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District and Sessions Court (Fast Track), Nagercoil.

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For Appellants : Mr.C.Muthu Saravanan
in Crl.A(MD)No.462 of 2019 for A3

Mr.V.Baskaran
in Crl.A(MD)No.177 of 2020 for A1&A2

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor
(In both cases)

COMMON JUDGMENT

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

These Criminal Appeals have been filed against the order and judgment passed by the Additional District and Sessions Judge, (Fast Track Court), Nagercoil in S.C.No.112 of 2015, dated 27.08.2019, convicting and sentencing the appellants in the following manner:



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Sl. no.	Rank of the accused	Conviction for offence under	Sentence/Punishment
1.	A1 to A3	Section 341 IPC	One month Rigorous Imprisonment.
		Section 302 r/w 34 IPC	Life Imprisonment and a fine of Rs.5000/- each, in default, to undergo 6 months simple imprisonment.
2.	A1 and A2	Section 307 IPC	10 years Rigorous Imprisonment and a fine of Rs.2000/- each, in default, to undergo 3 months simple imprisonment.

2. The case of the prosecution is that A2 is the younger brother of A1 and A3 is the wife of A1. One month prior to the incident, Pushpalatha (P.W-1), wife of Rajan, was walking in the street and A1 is said to have made vulgar comments on P.W-1. This was once again repeated on 29.06.2014 at about 10.00 a.m. by A1 and A2. The said



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Pushpalatha informed this to her husband Rajan, who is the deceased in this case and also to P.W-2, who is the brother of the deceased. Both of them had condemned the acts of the accused persons and hence, there was a previous enmity between the parties.

3. The further case of the prosecution is that on 05.07.2014, at about 06.45 p.m., when the deceased, P.W-1 and P.W-2 were coming back to their house after going to a temple, they were restrained by the accused persons and A1 is said to have attacked the deceased with machete (M.O.1) in his head and it was blocked by the deceased with his left hand and the cut fell on his hand. Thereafter, once again A1 attacked with M.O.1 in the head of the deceased. A2 is said to have attacked the deceased with a wooden stick (M.O.2) on his right neck and right shoulder and A3 is said to have attacked the deceased with stone. When P.W-2 attempted to stop the accused persons from attacking, he was also attacked by the accused persons and he sustained injuries. The deceased and P.W-2 were taken to Marthandam Issac Hospital and from there, the deceased was shifted to the Government Hospital, Kuzhithurai. The deceased was declared dead at about 07.50 p.m. A complaint (Ex.P1)



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came to be given by P.W-1 and based on the same, an FIR was registered by P.W-13 in Crime No.453 of 2014, at about 11.30 p.m. The investigation was taken up by P.W-14 and ultimately, a final report came to be laid before the Judicial Magistrate No.1, Kuzhithurai. After serving the copies to the accused under Section 207 Cr.P.C., the case was committed to the file of the Principal District Judge under Section 209 Cr.P.C. The case was thereafter made over to the Court below.

4. The Court below framed the charges against the accused persons for offences under Sections 341, 294(b), 302 r/w 34 and 207 IPC. The prosecution examined P.W-1 to P.W-14 and marked Exhibits P1 to P22 and identified and marked M.O.1 to M.O.6. The Court below questioned the accused persons under Section 313(1)(b) Cr.P.C. by putting the incriminating material and circumstances that were gathered in the course of trial and the same was denied as false.

5. The Court below, considering the facts and circumstances and on appreciation of evidence, convicted and sentenced the accused persons in the manner stated supra. Aggrieved by the same, these



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criminal appeals have been filed before this Court.

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6. Heard Mr.C.Muthu Saravanan, learned counsel appearing for A3, Mr.V.Baskaran, learned counsel appearing for A1 & A2 and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent in both cases.

7. The prosecution has examined P.W-1 to P.W-4 as eyewitnesses. P.W-1 to P.W-4 have spoken about the incident in one voice. P.W-2 also happens to be the injured witness in this case and sustained injuries in the course of the same incident.

8. The learned counsel appearing on behalf of the appellants submitted that P.W-1 to P.W-4 could not have witnessed the incident and even if the incident had taken place, the genesis of the case has been suppressed, since admittedly, A2 sustained serious injuries in this incident. In order to develop their submissions, Ex.P1 complaint was brought to the notice of this Court. It is stated in the complaint that the incident had taken place near the house of Shaji (A2). Whereas in the



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course of evidence, P.W-1 to P.W-3 have specifically stated that the incident took place near the house of one Stephen. Insofar as P.W-4 is concerned, he did not specifically state as to where the occurrence took place. The attention of this Court was also drawn to the evidence of P.W-9, who was the doctor, who gave the death intimation and through whom Ex.P9-Accident Register was marked. This witness had stated that the occurrence had taken place at about 06.45 p.m on 5.7.2014 at Varikode Nethaji Mandram.

9. The learned counsel also drew the attention of this Court to the evidence of P.W-14, who was the Investigation Officer, who explained in the course of cross-examination, the place where the occurrence took place based on Ex.P19-Rough Sketch and Ex.P20 Inquest report. In Ex.P19- Rough Sketch, the house of Stephen is identified as Serial No.2, the house of Shaji (A2) has been identified as Serial No.11 and Nethaji Mandram has been identified as Serial No.14. All these three places are located in such a way that the very place of occurrence throws a suspicion and consequently, according to the learned counsel for the appellants, the version of P.W-1 to P.W-4 as if they saw



the incident becomes doubtful.

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10. The learned counsel for the appellants also brought to the notice of this Court the evidence of P.W-6, who was the arrest and recovery witness, who also states that the police enquired him in the scene of occurrence, which was in front of the house of Shaji (A2).

11. According to the learned counsel for the appellants, the place of occurrence has a lot of significance in this case since A2 was badly injured and the complaint given by A2 against the accused persons was not even produced or investigated by the police. P.W-13, who was the police officer, who registered the FIR has specifically stated that a complaint was given by A2 and no FIR was registered. During the course of cross-examination, P.W-13 has stated that she recorded the statement of A2 and had handed over the statement and the wound certificate of A2 to P.W-14, who is the Investigation Officer. The Investigation Officer did not care to record the statement of P.W-13 or produce the statement recorded from A2 and the wound certificate. However, after his cross examination was completed on 02.08.2018, he was again recalled on



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10.07.2019 and for the first time, Ex.P22 was marked as if a statement was given by A2 and it contained only inculpatory statement of A2 and it was a made up document to cover up the lapse on the part of P.W-14 and this document was never ever produced at any point of time during the entire trial.

12. It is significant to take note of the evidence of P.W-10, who was the doctor who treated A2 and through whom Exhibits P10 and P11 were marked. This doctor has stated that A2 had informed him that he was attacked in his house by known persons with a knife and as a result of the same, A2 sustained the following injuries:

- “ 1.Lacerated wound-scalp left parietal region 7 x 1 cm.
- 2.Avulsed wound left earlobe & skin loss.
- 3.Lacerated wound back of left earlobe 1 x 1 cm.
- 4.Contusion in front of left ear.”

13. It is also clear from the police intimation given by the hospital that A2 had sustained the injuries due to an assault. Unfortunately, the injuries sustained by A2 was not even investigated



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and P.W-13 did not even register an FIR. To cover up the lacuna, Ex.P22 was introduced at a later point of time and this document is completely unreliable. It is further curious that Ex.P22 has been signed by both A1 and A2. It is stated as if it was received on 06.07.2014 and whereas there is absolutely no explanation as to why it was not produced before the Court by P.W-14 till 10.07.2019 and that too after taking a stand that the statement of P.W-13 is not filed before the Court and the statement recorded from A2 by P.W-14 along with the wound certificate was held back from the Court.

14. P.W-1 and P.W-2 took a stand as if the deceased did not consume any alcohol and whereas it is clear from the evidence of P.W-11, who is the doctor who conducted the postmortem that there was sufficient level of alcohol content (Ethyl alcohol) in the intestine, liver and pancreas. It is not known whether the deceased, under the influence of alcohol, developed a fight with the accused persons resulting in a melee and that ultimately led to the incident. As rightly contended by the learned counsel for the appellants, the genesis of the case has been suppressed by not investigating the injuries sustained by A2 in order to



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find out who was the real aggressor.

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15. The learned Additional Public Prosecutor explained the topography by placing reliance upon Ex.P6-Observation Mahazar and Ex.P19-sketch read with the evidence of the Investigation Officer, P.W-14. The learned Additional Public Prosecutor submitted that the place of occurrence has been specifically noted in the sketch and in the Observation Mahazar, all the places that were pointed out by the learned counsel for the appellants are in the same locality and hence, the discrepancy found in the exact place where the incident took place, does not discredit the evidence of P.W-1 to P.W-3. It was submitted that if the presence of P.W-1 to P.W-4 has been established and there is no improbability of their presence in the scene of occurrence, the other small discrepancies cannot overshadow the eyewitness version given by these witnesses. It was further submitted that the prosecution never attempted to conceal the fact that A2 also sustained injuries and all the relevant documents were placed before the Court.



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16. On a careful consideration of the evidence available on record, it is abundantly clear that the incident had taken place and as a result of the same, the husband of the deceased died, A2 and P.W-2 sustained injuries. Since the injury sustained by A2 was not even investigated, the genesis of the occurrence has been suppressed. If the same had been investigated, the place where the occurrence took place, the real aggressor and the manner in which the melee happened would have become more clearer. However, there is absolutely no clarity on these vital facts.

17. There is also a doubt on the so called arrest and recovery. P.W-14 has stated in his evidence that the recovery took place at 4.15 p.m. on 06.07.2014. Whereas, Ex.P5 shows that the recovery had taken place at 3.00 p.m. That apart, Form 91 which was sent to the Court was returned by the Court stating that the property did not accompany Form 91. Hence, the manner in which the recovery is sought to be established through P.W-14 is highly doubtful.



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18. It is also seen from the evidence of P.W-3 and P.W-4 that the statement was recorded from them by the police in the Government Hospital and it was also signed by them. These statements were never produced before the Court and if actually such statements had been taken from P.W-3 and P.W-4, there was no occasion for P.W-1 to go to police station late in the night at about 11.30 p.m. Hence, the earliest version about the incident as given by P.W-3 and P.W-4 is also not available.

19. From the overall evidence available on record, it is clear that the genesis of the case has been suppressed and as a result, the way in which the case is sought to be projected by the prosecution, becomes very doubtful and unreliable.

20. The postmortem doctor, who was examined as P.W-11 had recorded the following injuries:

- “ 1) 6 x 1cm x bone depth laceration seen over the left front region extend upto left parietal region.
- 2) 2 x 1/2 cm x bone depth laceration seen over the left parietal region.



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- 3) 3 x 1/2 cm x bone depth lacerated injury seen over the left parietal region close to the mid line.
- 4) 8 x 4 cm abraded contusion seen over the right side of neck.
- 5) 3 x 2 cm abraded contusion seen over the right supra clavichord region.
- 6) 3 x 2 cm abrasion seen over the right axilla.
- 7) 2 x 1 cm abrasion seen over the inner aspect of right foot.
- 8) 5 x 2 cm abrasion seen over the inner aspect of right great toe.
- 9) 1 x 1/2 x 1/2 cm laceration seen over the left index finger.
- 10) 1 x 1 cm abraded laceration seen over the left hand near 2nd and 3rd space."

The final opinion given by P.W-11 is that the deceased had died due to shock and haemorrhage, due to head injury and the chemical report marked as Ex.P14 shows that the deceased had consumed ethyl alcohol prior to death.

21. A2 is said to have attacked with a wooden stick and A3 is said to have attacked with a stone. The doctor was not shown any of these material objects in order to ascertain whether the injuries caused to the deceased can be attributed to the wooden stick and the stone (which



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was not even recovered). The Apex Court in ***Amar Singh v. State (NCT of Delhi)*** reported in **(2021) 3 SCC (Cri) 784** has held as follows:

“28. Dr M.S. Sagar in his post-mortem report has opined that the cause of death was due to shock due to multiple ante-mortem injuries caused by sharp-edged weapon and Injuries 11 and 14 were individually and collectively sufficient to cause death in ordinary course of nature. He further opined in his statement that injuries have been caused by sharp-edged weapon and since no weapon was shown to him, he has not given any opinion. Admittedly the tip of knife which was recovered on the disclosure statement of appellant-accused Inderjeet Singh, was broken and it was not pointed but blunt. Whether the type of stab and incised wound found on the body of the deceased could have been inflicted by a knife with a broken tip, is in our opinion, extremely doubtful. The opinion of the doctor has not been obtained as to whether such injuries could have been caused by knife with a broken tip by showing him the same.

29. In the facts and circumstances of the case, this was serious lapse on the part of the investigating officer. Though normally minor lapses on the part of the investigating officer should not come in the way



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of accepting eyewitness account, if otherwise reliable. But in the circumstances of the case at hands where the conduct of sole eyewitness is unnatural and there are various other surrounding circumstances which make his presence at the site of incident doubtful, such a lapse on the part of the investigating officer assumed significance and is not liable to be ignored.

30. *While emphasising the importance of eliciting the opinion of medical witness in such circumstances this Court in Kartarey v. State of U.P. [Kartarey v. State of U.P., (1976) 1 SCC 172 : 1975 SCC (Cri) 803] has observed as under : (SCC p. 177, para 26)*

“26. ... We take this opportunity of emphasising the importance of eliciting the opinion of the medical witness, who had examined the injuries of the victim, more specifically on this point, for the proper administration of justice, particularly in a case where injuries found are forensically of the same species, e.g., stab wounds, and the problem before the Court is whether all or any those injuries could be caused with one or more than one weapon. It is the duty of the prosecution, and no less of the Court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and his opinion invited as to whether all or any of the



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injuries on the victim could be caused with that weapon. Failure to do so may sometimes, cause aberration of the course of justice.”

31. The same has been again asserted by this Court in Ishwar Singh v. State of U.P. [Ishwar Singh v. State of U.P., (1976) 4 SCC 355 : 1976 SCC (Cri) 629] by observing as under : (SCC pp. 359 & 361, paras 5 & 8)

“26. ... It is the duty of the prosecution, and no less of the court, to see that the alleged weapon of the offence, if available, is shown to the medical witness and is opinion invited as to whether all or any of the injuries on the victim could be caused with that weapon. Failure to do so may sometimes, cause aberration of the course of justice.” [Ed.: As observed in Kartarey v. State of U.P., (1976) 1 SCC 172, p. 177, para 26 quoted in Ishwar Singh v. State of U.P., (1976) 4 SCC 355 at p. 361, para 8.] On the basis of the evidence on record it is difficult to say whether the injury to the deceased was caused by the knife with a broken tip which was ceased. These variations relate to vital parts of the prosecution case, and cannot be dismissed as minor discrepancies. In such a case, the evidence of the eyewitness “cannot be accepted at its face value”, as observed by this Court in Mitter Senv. State of U.P.



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*[Mitter Sen v.State of U.P., (1976) 1 SCC 723 : 1976
SCC (Cri) 190] ”*

22. It is clear from the above that where the opinion of the doctor has not been obtained as to whether the injuries found on the body of the deceased could have been caused by the wooden stick or the stone, more particularly, where there is a doubt in the manner in which the incident had taken place, it will be very unsafe to sustain the conviction and sentence as against A2 and A3.

23. This Court has already given a finding to the effect that an incident had surely taken place and the only doubt was the manner in which it took place. Therefore, even assuming that the deceased was the aggressor and the accused persons exercised their right of private defence, it must be seen if A1 had exceeded his right of private defence. Going by the weapon (M.O.1) used by A1 and the injuries sustained by the deceased, it is clear that A1 had clearly exceeded his right of private defence. In the course of the said transaction, P.W-2 had also sustained injuries. In view of the same, the conviction and sentence imposed against A1 deserves to be modified.



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24. The second exception to Section 300 will apply to the facts of the present case. In view of the same, this Court is inclined to alter the conviction and sentence under 302 r/w 34 IPC to one under Section 304 (ii) of IPC. It is seen that while A1 was exceeding his right of private defence, he had done it with the knowledge that it is likely to cause the death or cause such bodily injury as is likely to cause death. Accordingly, the sentence is modified to 5 years Rigorous Imprisonment with fine of Rs.5000/-, in default, to undergo 6 months Simple imprisonment for the offence under Section 304(ii) IPC.

25. Accordingly, the conviction and sentence on the accused persons is modified as follows :

Sl. no.	Rank of the accused	Conviction for offence under	Sentence/Punishment
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1.	A1	Section 304 (ii) IPC	5 years Rigorous Imprisonment and a fine of Rs.5000/-, in default, to undergo six months simple imprisonment.
		Section 307 IPC	5 years Rigorous Imprisonment and a fine of Rs.2000/-, in default, to undergo three months simple imprisonment.
2.	A2 and A3	Acquitted from all charges.	

26. In the result,

(i) Crl.A(MD)No.462 of 2019 is allowed and the bail bond executed by A3 shall stand cancelled and fine amount, if any paid by her shall be refunded to her.

(ii) Crl.A(MD)No.477 of 2019 is allowed insofar as A2 is concerned and the bail bond executed by A2 shall stand cancelled and fine amount, if any paid by him shall be refunded to him.



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(iii) Insofar as A1 is concerned, Crl.A(MD)No.477 of 2017 is partly allowed and the conviction and sentence stands modified in the manner indicated herein above and the sentence shall run concurrently.

(iv) Since A1 was granted bail during the pendency of this appeal, he is directed to 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 immediate steps to secure A1 in order to undergo the remaining period of sentence and

(v) The period of sentence already undergone by the A1 is ordered to be set off under Section 428 Cr.P.C.

[J.N.B., J.] [N.A.V., J.]
11.10.2022

Index : Yes/No
Internet : Yes
PJL

To

1. The Additional District (Fast Track),
Nagercoil.

2. The Inspector of Police,
Marthandam Police Station,



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Kanyakumari District.

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



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and

N.ANAND VENKATESH, J.

PJL

**Judgment made in
Crl.A.(MD)Nos.462 and 477 of 2019**

11.10.2022