



Crl.A(MD)No.519 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.06.2022

DELIVERED ON : 05.07.2022

CORAM :

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

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Sekar @ Rajasekar

.. Appellant/Sole Accused

Vs.

State represented by,
The Inspector of Police,
Tharuvaikulam Police Station,
Thoothukudi District.
(Crime No.12/2011)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973, against the judgment and order dated 17.11.2011 in S.C.No.121 of 2011 passed by the learned Additional Sessions Judge (Fast Track Court No.1), Thoothukudi.



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For Appellant : Mr.B.Sekar
For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **R.HEMALATHA, J.**]

The appellant has filed the present appeal against the judgment and order dated 17.11.2011 passed by the learned Additional Sessions Judge (Fast Track Court No.1), Thoothukudi, in S.C.No.121 of 2011, wherein the appellant was convicted for an offence punishable under Section 302 IPC and sentenced to undergo Life Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for one year.

2. The prosecution theory runs as follows:

- i. Tmt.Kaliammal [P.W-1] is the wife of the deceased Madasamy. Kaliammal and Madasamy had two children by name, Palanaiammal [P.W-3] and Thangamani [P.W-2]. They



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are all residing in Duraisamipuram, Thoothukudi. The appellant is the son of elder brother of the deceased Madasamy. The appellant and the deceased are neighbours. The case of the prosecution is that during 20th day of Tamil month of Margazi, 2011, the appellant was pestering his father to get him married for which his paternal uncle (deceased) had reprimanded him stating that he was unemployed and first he had to search for a job to be eligible for a marriage. On hearing this, the appellant threatened the deceased of dire consequences if he continued with such unsolicited advice. On the next day, the victim was proceeding in his bullock-cart towards his farm and was followed by his wife Kaliasammal [P.W-1] and his younger daughter Thangamani [P.W-2] carrying water pots. On the way, the appellant joined the deceased near Paramasivam Nadar land and climbed the cart. He, thereafter, picked up a quarrel with the victim blaming him for his not getting



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married and took out a bill hook [M.O-1] which he has hidden in his dress [Lungi] and attacked him on his neck causing instantaneous death. This was witnessed by both his wife Kaliammal [P.W-1] and daughter Thangamani [P.W-2].

ii. Kalilammal [P.W-1] left her younger daughter Thangamani [P.W-2] at the scene of occurrence and went home and took her elder daughter Palaniammal [P.W-3] to the Taruvaikulam Police Station and gave a statement [Ex.P-1] about the crime committed by the appellant before the police, which was reduced into writing by the police. Based on the said complaint an FIR [Ex.P-4] was registered by Thiru.Kumaran [P.W-12], Inspector of Police, Tharuvaikulam Police Station, in Crime No.12 of 2011 for an offence punishable under Section 302 IPC against the appellant on 05.01.2011 at 01.30 p.m. He sent the Express FIR to learned Judicial Magistrate, Vilathikulam, on the same day.

iii. Thereafter, Thiru.Kumaran [P.W-12] took up investigation,



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went to the scene of occurrence and prepared an observation mahazar [Ex.P-2] in the presence of the witnesses, Sivananaintha Perumal [P.W-4] and Mani [not examined]. He also prepared a Rough Sketch [Ex.P-16]. He collected blood stained earth [M.O-2] and ordinary earth [M.O-3] from the scene of occurrence under the cover of a mahazar [Ex.P-3] in the presence of the same witnesses. He also conducted inquest on the body of the deceased at the scene of occurrence between 4.00 p.m. and 5.30 p.m. in the presence of panchayatdhars. Inquest report was marked as Ex.P-17. Thereafter, the body of the deceased was sent for postmortem through Thiru.Jesus Rozoria Rajan [P.W-8], Grade-I Police Constable attached to Tharuvaikulam Police Station to the Government Hospital, Thoothukudi along with a requisition letter [Ex.P-18].

iv. Dr.Manoharan [P.W-10] conducted autopsy on the body of the deceased and found the following injuries:



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"(i) A heavy cut wound of size 23 cms x 8 cms x 8 cms seen in the left side of neck extending from left cheek 3 cms away from the left angle of mouth to the back of middle of neck. The underlying occipital bone, mandible, C3 vertebra, major blood vessels, nerves, muscles and tendons found cut.

(ii) A heavy cut wound of size 4 cms x 1 cm x tracheal lumen deep seen in the front of middle of neck which is 4 cms below the chin and 5 cms above the collar bone.

(iii) An abrasion of size 15 cms x 5 cms above the collar bone."

Dr.Manoharan [P.W-10] opined that *the deceased appeared to have died of shock and hemorrhage due to the heavy cut injury over the front and left side of neck, 18 - 24 hours prior to the autopsy.* Postmortem certificate was marked as Ex.P-15.

- v. Thereafter, Jesus Rozoria Rajan [P.W-8] Grade-I Police Constable handed over the dresses of the deceased, viz., T.Shirt [M.O-4] and Lungi [M.O-5] to Thiru.Kumaran [P.W-12], the Investigation Officer, who in turn, sent the



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same to the Forensic Science Laboratory, Chennai, for analysis, through Court.

vi. Thiru.Kumaran [P.W.12] examined the witnesses and recorded their statements individually and arrested the appellant at about 08.00 a.m., on 06.01.2011 near Tharuvaikulam bus stop and recorded his confessional statement (admissible portion of which was marked as Ex.P-5) in the presence of Thiru.Kannan [P.W-5], the Village Administrative Officer and one Madasamy [not examined]. Based on his confessional statement, P.W-12 recovered the bill hook [M.O-1], which was hidden by the appellant beneath a bush on the way to Vallinayagapuram Farm land under the cover of a mahazar (Ex.P-4) in the presence of the same witnesses. The appellant was thereafter produced before the Judicial Magistrate, Vilathikulam, who remanded him to judicial custody. Since P.W-12 was transferred to Dindigul, his successor, Thiru.Palani Kumar [P.W-13], took up



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investigation and verified the statements of the witnesses recorded by P.W-12. Since the witnesses gave the very same statement which they had earlier made before P.W-12, he did not record their statements separately. Thereafter, he received the Chemical Analysis Report [Ex.P-10] from the Forensic Science Department, Tirunelveli, in which it is stated by Thiru.Gajendra Varadhan [P.W-11], Assistant Director, Forensic Science Department that human blood was detected in the earth mixed with stones and vegetable matter [M.O-2], rusty metal bill hook [M.O-1], T.Shirt [M.O-4] and Lungi [M.O-5]. Soil comparison report [Ex.P-11] showed that the earth mixed with stone and vegetable matter on which were dark brown stains [M.O-2], was found to be similar to the earth mixed with stones and vegetable matter [M.O-3]. The Serology Report [Ex.P-19] stated that the blood group in the T.Shirt and Lungi was of 'A' group.



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vii. After completing investigation, P.W-13 filed a final report against the appellant on 21.04.2011 for the offence punishable under Section 302 IPC, before the learned Judicial Magistrate, Vilathikulam in P.R.C.No.IV of 2011, who in turn committed the case to the Court of Sessions, after furnishing copies of records to the appellant under Section 207 of the Code of Criminal Procedure. The learned Principal Sessions Judge, Thoothukudi, took up the case on file in S.C.No.121 of 2011 and made over the same to the Additional Sessions Court (Fast Track Court No.1), Thoothukudi. The learned Additional Sessions Judge, (Fast Track Court No.1), Thoothukudi, framed a charge under Section 302 IPC against the appellant. Since the appellant pleaded not guilty, the case was posted for trial.

viii. In order to establish the guilt of the appellant, the prosecution examined thirteen witnesses and marked nineteen



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documents and five 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, no witness was examined on his side.
- x. The learned Additional Sessions Judge, (Fast Track Court No.1), Thoothukudi, after analysing the oral and documentary evidence adduced on both sides, held that the prosecution had established the guilt of the appellant beyond reasonable doubts and convicted the appellant for an offence under Section 302 IPC and sentenced him to undergo Life Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for one year. Challenging the same, present appeal is filed by the appellant.



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3. Mr.B.Sekar, (Legal Aid counsel), learned counsel for the appellant contended that the prosecution did not recover the bullock-cart over which the body was lying and also contended that it is highly improbable that Kaliammal [P.W-1] left her minor daughter Thangamani [P.W-2] at the scene of occurrence and thereafter went home and picked up her elder daughter Palaniammal [P.W-3] to give a complaint to the police. He further submitted that the weapon allegedly used by the appellant is 42 c.m. long and it cannot be hidden in the Lungi as alleged by the prosecution.

4. Per contra, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor submitted that the eyewitnesses to the occurrence have clearly spoken to about the entire sequence of events and nothing useful was suggested to them during the course of cross examination to discredit or disbelieve their evidence. He would therefore submit that there is no merit in the present criminal appeal.



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5. The prosecution rests its case on the two prime eyewitnesses to the murder of the victim. That the appellant was irritated by the taunts of the victim about his employment status and his marital status, the particular version which one could decipher from the depositions of the prosecution witnesses, especially P.W-1 to P.W-3.

6. The learned counsel for the appellant had raised certain doubts about the versions of both P.W-1 and P.W-2. He mainly contended that the appellant, who stopped the bullock-cart in which the victim was riding, could have sat only by the side of the victim and therefore, he could not have been in a vantage position for attacking the victim with the bill hook [M.O-1]. To substantiate his contention, he drew the attention of this Court to the injuries mentioned in the Postmortem Certificate [Ex.P-15].

7. However, the contentions of the learned counsel for the appellant appears to be too technical. There is no mention either by P.W-1 or by



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P.W-2 that the appellant, who had climbed on the cart, sat next to the victim. Moreover, P.W-1 and P.W-2 had categorically deposed that the appellant after climbing on the cart started abusing the victim and also attacked the victim with the bill hook causing fatal injuries. There is nothing to suggest that there had been either inconsistencies or contradictions in their depositions. It is pertinent to point out that for both P.W-1 and P.W-2, it was a critical moment when their close relative (husband of P.W-1 and father of P.W-2) was attacked and murdered in an unexpected manner and therefore, any doubt raised on the sequence of events will not hold good, especially, when their depositions are corroborative. As regards the contention that as to how P.W-1 had left her younger daughter in the scene of occurrence, is also not acceptable because at that critical moment, when the body of the victim was lying on the bullock- cart, it was but natural for P.W-1 to leave P.W-2 to guard the body.



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9. Another contention regarding non-recovery of the bullock-cart gets deviated when the inquest report [Ex.P-17] clearly mentioned that the dead body of the deceased was lying on the bullock-cart after the brutal attack. It was also contended that how no one in the village saw either the appellant or the victim or the witnesses near the scene of occurrence that too, when the incident allegedly took place in the broad day light, that is, about 11.00 a.m. This contention also cannot be accepted without any clear idea about the topography of the village and the location of the scene of crime. It is not also the case of the defense that there were houses in the vicinity.

10. The statement of the appellant under Section 313 Cr.P.C. also assumes importance and except denying the evidence adduced on the side of the prosecution, he has not stated anything else. In the circumstances, we do not see any reason to interfere with the conviction and sentence passed by the learned Additional Sessions Judge (Fast Track Court No.1), Thoothukudi.



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11. In the result,

(i) This Criminal Appeal stands dismissed.

(ii) The conviction and sentence passed by the learned Sessions Judge (Fast Track Court No.1), Thoothukudi, against the appellant in S.C.No.121 of 2011 dated 17.11.2011, is hereby confirmed.

[P.N.P., J.] & [R.H., J.]
05.07.2022

Index : Yes/No
Internet : Yes/No

PJL

To

1. The Additional Sessions Judge
(Fast Track Court No.1),
Thoothukudi.

2. The Inspector of Police,
Tharuvaikulam Police Station,
Thoothukudi District.

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



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

PJL

**Judgment made in
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05.07.2022