



Crl.A.No.501 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 31.03.2023

Pronounced on : 18.04.2023

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.501 of 2020

Ramachandran,

... Appellant/Accused

/versus/

State Rep. by
The Inspector of Police,
Mandharakuppam Police Station,
Cuddalore District.
(Crime No.222 of 2017)

... Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 of Cr.P.C., pleased to call for the records and set aside the conviction and sentence imposed in S.C.No.185 of 2019, dated 28.09.2020 on the file of the III Additional District and Sessions Judge, Cuddalore, Virudhachalam.

For Appellant : Mr.K.Gandhi Kumar,

For Respondent : Mr.R.Kishore Kumar,
Government Advocate (Crl.Side)

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This Criminal Appeal is filed under Section 374 of Cr.P.C., against the judgment passed by the III Additional District and Sessions Judge, Cuddalore at Virudhachalam in S.C.No.185 of 2019 dated 28.09.2020.

2. The appellant herein is the brother of one Senthamizh Devi. She was married with one Senthil Murugan. Their matrimonial life of Senthamizh Devi and Senthil Murugan was not cordial. Frequently, Senthamizh Devi used to go to her parents house at old Neyveli, whenever there was quarrel between them. Likewise, a month before the occurrence, she quarrelled with her husband Senthil Murugan and went to their parents house. On 12.09.2017, Senthil Murugan with intention to pacify his wife and to bring her back to the matrimonial fold went to old Neyveli. He met his wife Senthamizh Devi at her parents house at about 8.00 p.m but he could not succeed to bring her back since there was exchange of abuse between him and the family members of his wife. Therefore, at about 10.30 p.m, Senthil Murugan returned back to his village at Melpappanapattu and told his family members that his wife had refused to come with him, also her relatives have abused him and he inturn abused them and came back. While Senthil Murugan along with Shanmugasundaram, Sivabalan and others were talking outside his



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house, the accused, who is the brother of Senthamizh Devi came in his Bajaj CT 100 two wheeler bearing Reg.No.TN-91-W-3894, took a knife kept in the bike pouch and came towards Senthil Murugan charging and abusing him with filthy language. The accused/Ramachandran stabbed Senthil Murugan on his left side scalp and left forearm. Sivabalan who is the friend of Senthil Murugan tried to prevent the attack and save Senthil Murugan. The accused/Ramachandran turned Sivabalan and stabbed him on his left rib. Shanmugasundaram, the brother of Sivabalan tried to stop Ramachandran attacking others. However, Shanmugasundaram was attacked and he sustained injury at the hands of Ramachandran. On hearing the hue and cry, neighbours came rushing. Accused Ramachandran wielded his knife towards them and threatened them to kill if they come near him. Thereafter, the accused ran away.

3. The villagers arranged for ambulance and in the ambulance, injured persons were taken to Government Hospital, Kurinjipadi. The Doctor, who examined Sivabalan declared brought dead. Senthil Murugan and Shanmugasundaram went to the Government Hospital Cuddalore and took treatment. On receipt of the memo from the hospital, the police went to the



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hospital, recorded the statement of Shanmugasundaram, who was conscious and able to talk. Based on his statement, F.I.R in crime No.222 of 2017 was registered on 13.09.2017 at about 5.30 hrs.

4. On completion of investigation, final report filed against Ramachandran for causing death of Sivabalan, abusing in filthy language, causing simple hurt to Senthil Murugan and Shanmugasundaram and for intimidating others, who tried to prevent the accused from causing injury using the weapon.

5. Based on the final report and the materials relied by the prosecution, the Judicial Magistrate has committed the matter to the Sessions Court since the offence was exclusively triable by Court of Sessions. On committal, the First Additional Sessions Court, Cuddalore, camped at Virudhachalam, framed charges under Sections 294(b), 324 (2 counts), 302 and 506(i) of I.P.C.

6. To prove the charges, the prosecution has examined 16 witnesses



(P.W.1 to P.W.16) and marked 17 exhibits (Ex.P.1 to Ex.P.17) and 15 material objects. No evidence adduced on behalf of the accused.

7. The trial Court, on considering the evidence held that, the death of Sivabalan is due to culpable homicide not amounting to murder and the accused deserves to be convicted for offence under Section 304 (i). of I.P.C. Whereas, for want of evidence acquitted the accused from the charge under Section 506(ii) of I.P.C. Based on the wound certificates Ex.P.6 and Ex.P.7 of Senthil Murugan and Shanmugasundaram respectively held that, the accused has caused hurt using weapon to attack Senthil Murugan and Shanmugasundaram and hence, punishable under Section 324 of I.P.C (2 counts). Hence, the trial Court has convicted the accused with the following charges, which reads as below:-

<i>Accused</i>	<i>Offence under Section</i>	<i>Conviction and sentence imposed by the trial Court</i>
Ramachandran	294(b) of I.P.C	To pay fine of Rs.100/-, in default one week S.I.
	324 of I.P.C (2 counts)	Sentenced to undergo 1 year R.I
	304 (i) of I.P.C	Sentenced to undergo 10 years R.I and to pay fine of Rs.1000/-, in default to undergo three months S.I.

The period of sentence ordered to run concurrently. The period of imprisonment already undergone by the accused shall be set off under Section 428



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8. The Learned Counsel appearing for the appellant submitted that the case of the prosecution ought not to have believed by the trial Court since there is no independent witness to the occurrence. P.W.1 to P.W.3 are all close relatives of the deceased and their evidence are unreliable. P.W.3 Manimaran, residing that, half a kilometre away from the place of occurrence, could not been an eyewitness to the occurrence, which alleged to have taken place during night at 10.30 p.m. The complaint came to be registered on the next day of occurrence and it was forwarded to the Magistrate only at 12.00 noon on 13.09.2017. The delay in registering the F.I.R and forwarding it to the Judicial Magistrate remains unexplained. The weapon alleged to have been used for the crime not been recovered. M.O.2 (knife) is not the weapon seized under the mahazar according to P.W.8, who is one of the witnesses to the seizure. P.W.1 the defacto complainant as well as injured person also not identified the weapon alleged to have been used by the accused. The prosecution miserably failed to examine the independent witness Ramachandran, who according to the defacto complainant was present at the time of occurrence.



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9. The Learned Counsel appearing for the appellant further submitted that when the presence of P.W.3 at the place of occurrence is highly doubtful and the weapon alleged to have been used by the accused not been identified by the witnesses, the probability of fixing the appellant wrongly as the accused is not ruled out. Based on the evidence of interested witness the appellant has been convicted. Admittedly, Senthil Murugan P.W.2 had a strained relationship with his wife Senthamizh Devi. The accused is the elder brother of Senthamizh Devi. P.W.2 Senthil Murugan admits that, before this incident, he went to the parental house of his wife and had wordy quarrel with them. Therefore, it was P.W.2, who is the aggressor and provoker. Further, the delay in registering the F.I.R and forwarding it to Judicial Magistrate also had caused prejudice to the accused since there was every possibility of manipulating the evidence.

10. Per contra, the Learned Government Advocate (Crl.Side) appearing for the respondent/state submitted that, the prosecution has proved the guilt of the accused through the witnesses and through documents. Due of efflux of time, the witnesses was not able to identify the weapon which is marked as



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M.O.2. However, that is not fatal to the case of the prosecution since two of the injured witnesses P.W.1 and P.W.2 had identified the assailant and the nature of injury sustained by them. Ex.P.6 and Ex.P.7 are Accident Registers of P.W.1 and P.W.2 respectively which proves that, they sustained injury due to assault by the accused. Further, Sivabalan, who died due to fatal injury caused by the accused, is the brother-in-law of P.W.1. There is no necessity for P.W.1 or P.W.2 to wrongly implicate the accused for the death of Sivabalan. Therefore, Learned Counsel submitted that, the trial Court has rightly concluded that the incident had taken place in the fit of anger without any premeditation and convicted the appellant for offence under Section 304(i) of I.P.C instead of 302 of I.P.C. So no further concession required in this case.

11. Heard the Learned Counsel for the appellant and the Learned Government Advocate (Crl.Side) for the respondent/State.

12. The Criminal Law has been set into motion, after the complaint been registered based on the statement given by Shanmugasundaram P.W.1. The



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First Information Report came to be registered on 13.09.2017 at 5.30 hours. The Sub-Inspector of Police, on receipt of the intimation from Government Headquarters Hospital Cuddalore, has gone to the hospital at 3.00 a.m in the morning. After examining Shanmugasundaram and Senthil Murugan, who were admitted in the hospital for the injury sustained, he found that Shanmugasundaram is in better state of mind to talk and give evidence. Therefore, recorded the statement of Shanmugasundaram between 3.15 a.m to 4.00 a.m and came back to the Police Station to registered the F.I.R at 5.30 a.m, based on the statement marked as Ex.P.1. The F.I.R is marked as Ex.P.9. Shanmugasundaram (P.W.1) has stated about the strained relationship between Senthil Murugan and his wife Senthamizh Devi.

13. On the date of occurrence i.e., 12.09.2017, P.W.2 had gone to old Neyveli to call back his wife but his attempt not only ended in futile but had paved way for the incident because P.W.2 had picked quarrel with his wife and her family members, before returning back to his home village. F.I.R has been registered and forwarded to District Munsif-cum-Judicial Magistrate, Neyveli, on 13.09.2017 at 12.00 noon as seen from the endorsement on the top of the Ex.P.9,



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which is the printed F.I.R. From the evidence of Shanmugasundram (P.W.1) the defacto complainant, it is clear that, after the incident, the injured persons were taken to Government Hospital Kurinjipadi, one of the injured Sivabalan was declared dead and other two were referred to Government Headquarters Hospital, Cuddalore. Immediately, they have gone to the Government Headquarters Hospital, Cuddalore and got admitted. The Accident Registers for P.W.1 and P.W.2 maintained at Government Hospital, Kurnjipadi is marked as Ex.P.6 and Ex.P.7 respectively. From these exhibits, it appears that P.W.1 and P.W.2 were treated at Government Hospital, Kurnjipadi, at about 12.05 a.m on 13.09.2017. The injuries found on P.W.1 and P.W.2 are recorded in the said Accident Registers marked as Ex.P.6 and Ex.P.7. Patients were referred to Government Headquarters Hospital, Cuddalore, on the same day and taken to Government Hospital at about 3.00 p.m.

14. P.W.15 Kiruba Lakshmi, Sub-Inspector of Police attached to Mantharakuppam Police Station, had deposed that, at about 1.30 a.m, she received intimation from the Government Hospital, Kurnjipadi. Knowing that, injured persons were referred to Government Headquarters Hospital, Cuddalore,



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she had gone to the Government Headquarters Hospital, Cuddalore, at about 3.00 a.m and recorded the statement of Shanmugasundaram P.W.1, who was admitted in the hospital as in-patient. She has returned back to the Station registered the F.I.R and forwarded it to the Judicial Magistrate. The time and sequence of events as narrated by P.W.1 and P.W.15 as well as mentioned in Ex.P.6, Ex.P.7 and Ex.P.15 clearly indicates that, without any unreasonable delay, case has been registered and copy has been forwarded to Magistrate. Therefore, the contention of the Learned Counsel appearing for the appellant that there was delay in registration of F.I.R and forwarding the copy of it to the Judicial Magistrate is baseless.

15. Regarding the identification of knife (M.O.2), we have two witnesses, who has suffered injury and witnessed the death of Sivabalan at the hand of the accused. The minor discrepancies or failure to identify the material object cannot be fatal when the eyewitnesses are the injured persons and the assailant been a known person, neither mistake of identity or false accusation be attributed.



16. The evidence of prosecution witnesses namely P.W.1 and P.W.2

without contradiction speaks about the motive and overt act of the accused which has caused the injuries found in Ex.P.6 and Ex.P.7. Dr.Dhanalakshmi (P.W.13), who treated P.W.1 and P.W.2 at Government Hospital, Kurinjipadi, had spoken about the injuries sustained by them and the wound certificates (Ex.P.6 and Ex.P.7) given by her. From the wound certificates, this Court is able to find that, P.W.1 and P.W.2 had sustained lacerated injuries, which are likely to be caused using weapon like knife M.O.2. Therefore, the finding of the trial Court that the accused are guilty of offence under Section 304 of I.P.C (2 counts) is substantiated by oral and documentary evidence. The oral evidence of P.W.1 and P.W.2, who are the injured witness is more reliable and acceptable. Sivabalan is the person who died. He had intervened to prevent the accused from causing further injury to P.W.2 but unfortunately, the accused has stabbed him in the vital part of the body namely left 9th metacarpal bone. The post mortem certificate which is marked as Ex.P.8 indicates that, the deceased Sivabalan had sustained the following external injuries.

“1. Stab injury, elliptical in shape, transversely placed seen over Left side of Chest of size - 3 x 2 x 7, overlying 5th intercostal space, entering into the thoracic cavity.



(Corresponding tear seen in the blood stained shirt). Margins of the wound are clear cut and regular.”

“The rip cage not intact. Stab injury passing through left side Chest - 5th inter costal space. Fracture of underlying upper border of 6th rib seen. About 1.5 litres of blood stained fluid seen in the pleural cavity. Underlying diaphragm and pericardial sac involved in the stab injury. About 200 gm of partially clotted blood seen in the pericardial sac.”

17. The above said injuries are the cause for the death of Sivabalan.

P.W.1 and P.W.2, who are witnesses to the occurrence has identified Ramachandran as the assailant. From the scene of occurrence, a two wheeler recovered and the said two wheeler belongs to the accused, as per the R.C book marked as Ex.P.4. The witnesses have identified the said two wheeler used by the assailant the appellant herein to reach the house of the deceased and after the occurrence, the accused has left the two wheeler and fled away from the place of occurrence. From the evidence for prosecution, it is clear that, the appellant has caused the death of Sivabalan. The trial Court had concluded that, it is a culpable homicide not amounting to murder and therefore, punishable under Section 304 (1) of I.P.C. The said finding is in consonance with the evidence let in by the



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prosecution.

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18. The Learned Counsel appearing for the appellant submitted that, even after the incident P.W.2 (Senthil Murugan) not taking care of his wife and frequently driving her out from her matrimonial home. The accused/appellant is actually taking care of his sister and her children. Accused being the brother-in-law of P.W.2 (Senthil Murugan) due to unbearable torture and cruelty caused to the sister, and on provocation caused by P.W.2 who created ruckus before his house, got provoked and committed the said offence. Therefore, prayed leniency may be shown in imposing the sentence.

19. However, the Learned Government Advocate (Crl.Side) for the State submitted that, the accused has gone to the house of the deceased with premeditation and has carried knife in his vehicle and attacked the deceased as well as two others namely P.W.1 & P.W.2. Therefore, it cannot be considered as a sudden provocation or murder committed without premeditation in a sudden fight or in the heat of passion upon a sudden quarrel.



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20. Upon considering the rival submission, the age of the accused and the circumstances under which he was forced to commit the offence and the nature of injury sustained by the surviving victims, this Court is of the opinion that, for the offence proved, sentence for a period of 5 years R.I is sufficient and adequate, for the offence under Section 304(i) of I.P.C.

21. Accordingly, this Criminal Appeal is partly allowed with modification in the sentence passed by the trial Court.

<i>Accused</i>	<i>Offence under Section</i>	<i>Conviction and Sentence imposed by the trial Court</i>	<i>Sentence modified by this Court</i>
Ramachandran	294 (b) of I.P.C	To pay fine of Rs.100/-, in default to undergo 1 week S.I.	To pay fine of Rs.100/-, in default to undergo 1 week S.I.
	324 of I.P.C (2 counts)	To undergo R.I for 1 year each	To undergo R.I for 1 year each
	304(i) of I.P.C	To undergo R.I for 10 years and to pay fine of Rs.1,000/-, in default to undergo S.I for 3 months	To undergo R.I for 5 years and to pay fine of Rs.1,000/-, in default to undergo S.I for 3 months

The sentence for the above offence shall run concurrently both offencewise and countwise.



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22. In the result, this *Criminal Appeal is partly allowed*. The trial

Court is directed to secure the appellant/accused and commit him to the prison to undergo the remaining period of sentence. The period of imprisonment already undergone by the accused shall be set off under Section 428 of Cr.P.C.

18.04.2023

Index :Yes/No.
Neutral Citation :Yes/No.
Speaking order/Non-speaking order
bsm

To,

1. The III Additional District and Sessions Judge, Cuddalore, Virudhachalam.
2. The Inspector of Police, Mandharakuppam Police Station, Cuddalore District.
3. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.
bsm

Pre-Delivery judgment made in
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