



Crl.A.(MD).No.53 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 18.07.2023

DELIVERED ON : 27.07.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

Crl.A.(MD)No.53 of 2021

Thangaraj

.. Appellant/ Sole Accused

Vs.

State,
Rep. by Inspector of Police,
Budalur Police Station,
Budalur,
Thanjavur District.
(Crime No.107/2016)

.. Respondent / complainant

Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence dated 14.10.2019, recorded by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur in S.C.No.81 of 2017 and acquit the appellant.



Crl.A.(MD).No.53 of 2021

For Petitioner : M.Karunanithi
For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by ***M.S.RAMESH, J.***)

The present appeal is against the judgment of conviction and sentence passed in S.C.No.81 of 2017, dated 14.10.2019, on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, whereby, the sole accused / appellant was convicted for the offences under Sections 449, 302 and 324 of the Indian Penal Code and sentenced to undergo 10 years of Rigorous Imprisonment for the offence under Section 449 I.P.C., and fine of Rs.5,000/-, in default of which, to undergo 1 year Simple Imprisonment; life sentence for the offence under Section 302 I.P.C., and fine of Rs.5,000/-, in default of the payment of fine, to undergo 1 year Simple Imprisonment; and 1 year Rigorous Imprisonment for the offence under Section 324 I.P.C. All the sentences were ordered to run concurrently and the period of imprisonment already undergone, was ordered to be set-off under Section 428 Cr.P.C.



Crl.A.(MD).No.53 of 2021

2. The facts that are germane for deciding the present appeal can be summarised as follows:

2.1. The appellant had married the deceased Vijayalakshmi as his second wife, about 11 years prior to the date of the crime. For the past three years, prior to the occurrence, the appellant had been suspecting the fidelity of his deceased wife, owing to which there had been frequent quarrels and about 2 months before the incident, the deceased Vijayalakshmi had deserted the appellant and went to the house of her mother viz., Minnalkodi.

2.2. In this situation, on 27.05.2016 at about 11.00 a.m., the appellant had trespassed into the house of the mother of the deceased and her sister-in-law and demanded his wife Vijayalakshmi to reconcile with him. When the deceased Vijayalakshmi had refused to come, he had demanded the Thali back and while doing so, he had dragged her towards the backyard, by holding the deceased's Thali chain, hair and saree and pushed her down with an intention to commit murder. Accordingly, he had taken a knife which he had concealed in his hip and had caused cut injuries in her right jaw, right shoulder, head, left breast and right forearm and thereby committed the offence of murder.



Crl.A.(MD).No.53 of 2021

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2.3. During the occurrence, when the deceased's sister-in-law had attempted to stop him, the appellant caused a cut injury on her hand. Thus, the appellant was charged for the offences under Sections 449, 302 and 324 IPC and accordingly, was convicted and sentenced by the Sessions Court, as referred to above.

3. Before the trial Court, the sister-in-law of the deceased, Kamalam, who was an injured eyewitness was examined as P.W.1 and the police complaint she had given was marked as Ex.P1. The deceased mother, Minnalkodi was examined as P.W.2. Immediately, after the incident, the neighbours viz., Saravanan and Arumugam, who had rushed to the scene of crime and witnessed the deceased lying on the floor, were examined as P.W.3 and P.W.4 respectively. One Kalyanasundaram, who had seen the accused running from the scene of occurrence, was examined as P.W.6. The daughter of the deceased Muviyarasi, who had identified the two wheeler of her father, was examined as P.W.9. The Doctor, Udhayabanu, who had conducted the postmortem, was examined as P.W.10 and the postmortem report and his opinion were marked as Ex.P7 and Ex.P8 respectively.



Crl.A.(MD).No.53 of 2021

Thiru Jegatheesan, Sub Inspector, who had registered the FIR was examined as P.W.12 and the FIR was marked as Ex.P9. The Doctor Rengasamy Ravindran, who had treated P.W.1 was examined as P.W.15 and the accident report and wound certificate were marked as Ex.P10 and Ex.P11 respectively. The investigation Officer was examined as P.W.17.

4. The learned counsel for the appellant submitted that the depositions of P.W.3 and P.W.4 would clearly establish that both of them were not present in the scene of crime and therefore, they cannot be treated as eyewitnesses. Insofar as the testimony of P.W.1 is concerned, he submitted that the complaint (Ex.P1) given by her was not from the mouth of P.W.1, as evidenced from the contents of the documents and therefore, the complaint itself is highly doubtful. He further submitted that the complaint is an after thought, since as per the testimony of P.W.1, the accused was already in custody at the time of giving the statement, which is contradictory to the testimony of the other witnesses. Insofar as the evidence of P.W.2 is concerned, he stated that there is a contradiction in her statement with regard to the arrival of police at 12.00 clock, to the scene of crime.



Crl.A.(MD).No.53 of 2021

5. Apart from the same, he has also placed an alternative submission that, even otherwise the appellant had only come to the scene of occurrence for taking back his wife and since there was no premeditation to commit the murder and was only on account of sudden provocation, the trial Court ought to have convicted him either, under part (i) and part (ii) of Section 304 of IPC.

6. Per contra, the learned Additional Public Prosecutor submitted that even if no credibility can be given to P.W.3 and P.W.4, the evidence of P.W.2 and P.W.1, who are eyewitnesses, requires to be relied upon and the appellant had not discredited their evidence and hence, there statement cannot be doubted. He further submitted that the evidence of P.W.1, who is an injured eyewitness, stands in a higher pedestal and cannot be doubted on account of some minor contradictions. In support of such submissions, he placed reliance certain decisions of the Hon'ble Supreme Court of India.

7. Some undisputed facts relating to the occurrence are that the deceased is the second wife of the appellant and there had been several domestic quarrels between them. In connection with these quarrels, the



Crl.A.(MD).No.53 of 2021

deceased had also left the appellant's house about two months prior to the occurrence.

8. On the fateful day, the appellant had trespassed into the house of P.W.2 and P.W.1 and had demanded the deceased to reconcile with him. When refused, he had dragged her by holding her Thali chain, hair and saree and pushed her down. He had immediately taken a knife (M.O.1), concealed in his hip and had indiscriminately cut the deceased. All these facts had been clearly spelt out by both P.W.1 and P.W.2 and there are absolutely no contradictions in these statements. The Doctor P.W.10, who had conducted the postmortem and submitted his report (Ex.P7) as well as his opinion (Ex.P8), had corroborated the cut injuries found on the body of the deceased, with that of the statements made by P.W.1 and P.W.2.

9. It is also the testimony of P.W.1 and P.W.2 that when the appellant had inflicted the knife injuries on the deceased with M.O.1, P.W.1 had attempted to stop him, when the appellant had caused cut injuries to her hand. P.W.15-the Doctor, who had treated the injured P.W.1, had also given the accident report (Ex.P10) and wound certificate (Ex.P11). As per Ex.P10



Crl.A.(MD).No.53 of 2021

and Ex.P11, a lacerated wound in the left thumb and index finger of P.W.1 was affirmed. The evidence let in by the Doctors, viz., P.W.10 and P.W.15 was also not discredited by the appellant. When the evidence of the eyewitnesses is totally consistent with the medical evidence, such an evidence of the eyewitnesses cannot be disbelieved. It is a settled proposition that unless the medical evidence goes so far, that completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.

10. In the case of *Yogesh Singh Vs. Mahabeer Singh* reported in (2017) 11 SCC 195 and the case of *Prabhu Dayal Vs. State of Rajasthan* reported in (2018) 8 SCC 127, the Hon'ble Supreme Court had held that minor contradictions in the deposition of the eye witnesses, which do not go to the root of the matter, cannot be considered to be material contradictions while appreciation of evidence. These aforesaid two decisions came to be relied upon in a recent decision of the Hon'ble Supreme Court in the case of *Rakesh and another Vs. State of Uttar Pradesh and another* reported in



Crl.A.(MD).No.53 of 2021

(2021) 7 SCC 188.

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11. The grounds raised by the appellant in questioning the evidences of P.W.1 and P.W.2 are not so major contradictions and discrepancies that can be thrown out, when they had consistently established that they were present and witnessed the scene of occurrence. As stated above, the injuries sustained by the deceased also matches the statements made by these two eyewitnesses.

12. There is yet another aspect of this matter. P.W.1 in the present case is an injured eyewitness and the testimony of an injured eyewitness is a greater evidentiary value than that of the regular eyewitness. In ***Jarnail Singh Vs. State of Punjab*** reported in (2009) 9 SCC 719, the Hon'ble Supreme Court had placed reliance on ***Shivalingappa Kallayanappa Vs. State of Karnataka*** reported in (1994) SCC (Cri.) 1694 and held that the deposition of the injured witness, should be relied upon, unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established, in case it is proved that he suffered the injury



during the said incident. Likewise, in ***State of Uttar Pradesh Vs Kishan Chand*** reported in **(2004) 7 SCC 629**, a similar view was taken by holding that the witness who sustained injury at the time and place of occurrence, lends support to his testimony that he was present during the occurrence and unless nothing can be elicited to discard his testimony, it should be relied upon. Following the aforesaid decisions, in ***Abdul Sayeed Vs. State of Madhya Pradesh*** reported in **(2010) 10 SCC 259**, the Hon'ble Supreme Court had held that the testimony of an injured witness should be placed in a higher pedestal. The relevant portion of the order reads as follows:

“30.The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an in-built guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”



13. In a very recent judgment of the Hon'ble Supreme Court in the case of ***Balu Sudam Khalde and another Vs. The State of Maharashtra*** reported in **2023 SCC OnLine SC 355**, the aforesaid principles were summed up in the following manner:

“26. When the evidence of an injured eye-witness is to be appreciated, the undernoted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.



(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

14. The appellant was unable to canvass before us as to how the testimony of P.W.1-injured witness cannot be relied upon on the basis of any major contradictions or discrepancies. By applying the ratio laid down by the Hon'ble Supreme Court in the aforesaid decisions, we have no hesitation to come to the conclusion that the appellant could not discredit the evidence of the injured eyewitness (P.W.1). The trial Court had also properly appreciated the evidences of these eyewitness and had convicted the appellant and sentenced him for the offence under Sections 449, 302 and 324 IPC.

15. In the testimony of P.W.1 and P.W.2, both these eyewitnesses had deposed that the appellant had inflicted knife injuries on the deceased in her right jaw, right shoulder, head, left breast and right forearm. There were no contradictions on these statements made. P.W.7 is the mahazar witness through whom, the observation mahazar (Ex.P2) and the blood stained knife



(M.O.1), blood stained earth and unstained earth from the scene of occurrence (M.Os.4 and 5) were seized through the seizure mahazar (Ex.P3). The learned counsel for the petitioner placed reliance on the biological and serological reports (Ex.P18 and Ex.P19) and pointed out that the result of the grouping test conducted by the forensic lab is inconclusive and therefore, the prosecution has failed to connect M.O.1 in this case. As observed by us in the earlier portion of the order, the defence had miserably failed to discredit the injured eyewitness, as well as the other eyewitnesses and there is no satisfactory explanation with regard to the appellant's presence in the scene of occurrence, as well as the injuries caused by him on the deceased as stated by these eyewitnesses. In the absence of the same, the minor discrepancies, with regard to the inconclusive report on the blood samples in Ex.P18 and Ex.P19, becomes insignificant and does not go to the root of the matter, so as to discredit the evidence of these eyewitnesses. In ***Yogesh Singh V. Mahabeer Singh*** reported in (2017) 11 SCC 195; ***Prabhu Dayal Vs. State of Rajasthan*** reported in (2018) 8 SCC 127 and ***Rakesh and Another Vs. State of Uttar Pradesh and Another*** reported in (2021) 7 SCC 188, the Hon'ble Supreme Court had held that minor contradictions which do not go to the root of the matter and/or such contradictions are not



material contradictions, and the evidence of such eyewitnesses cannot be brushed aside and/or disbelieved.

16. All the ocular witnesses have spoken about the injuries caused by the appellant on the deceased which corroborates to the antemortem injuries in the postmortem certificate (Ex.P7). P.W.10, the Doctor, who had conducted the postmortem, also affirmed these injuries. The postmortem certificate (Ex.P7) also ratifies these five injuries in the following manner:

“THE FOLLOWING ANTE MORTEM INJURIES WERE NOTED:

1) *An oblique gaping heavy cut injury of size 20 cm x 6 cm x 4 cm noted over right side lower jaw and right side upper and middle part of neck. It cuts underlying soft tissues, muscle, major vessels, nerves, body of right mandible and cervical vertebrae No.3 and 4 on its right side.*

2) *An oblique gaping heavy cut injury of size 5 cm x 3 cm x bone depth noted over outer aspect of upper 1/3rd of right arm.*

3) *An oblique gaping heavy cut injury of size 4 cm x 2 cm x bone depth noted over back of right wrist.*

4) *An oblique gaping heavy cut injury of size, 3 cm x 2 cm x 1 cm noted over outer aspect of left breast.*



Crl.A.(MD).No.53 of 2021

5) An oblique gaping heavy cut injury of size 4 cm x 2 cm x 3 cm noted over left shoulder. It cuts underlying soft tissues, muscles and left acromio – clavicular joint.”

The defence could not discredit these statements of P.W.1, P.W.2 and P.W.10. On a conjoint appreciation of these depositions, read in conjunction with Ex.P7, we are unable to discredit the statement of the two ocular witnesses.

17. The learned counsel for the appellant had made an alternative plea that on the date of occurrence, the appellant had gone to the house of the deceased, only to reconcile with her and owing to the commotion therein, he had caused the death and therefore that, at the most, he could be convicted only for culpable homicide not amounting to murder. We are not in agreement with such a submission. The testimonies of P.W.1 and P.W.2 have clearly established that the appellant had come prepared to the scene of crime with the knife concealed in his hip and even though there was no grave or sudden provocation from the deceased, he had voluntarily inflicted the injuries from the knife concealed which is likely to cause death. By taking into account the repeated stabbing and cutting the deceased with the



Crl.A.(MD).No.53 of 2021

knife in five places at right jaw, right shoulder, on the head above her left ear, left breast and right forearm, which overt acts have been corroborated through the testimonies of P.W.1 and P.W.2 and substantiated through postmortem report (Ex.P7) through the testimony of the Doctor (P.W.10), it can only be inferred that the appellant had come to the crime scene with pre-meditation to commit the murder and hence, the crime will not amount to culpable homicide, not amounting to murder.

18. The aforesaid injuries, we are unable to rule out the possibility that the appellant had intended to cause only a formal injury that might caused death owing to such indiscriminate infliction of the injuries on vital parts of the deceased body. Hence, this is not a case which could file either under part (i) or Part (ii) of Section 304 of IPC.

19. The trial Court, having properly analysed the testimony of the injured / eyewitnesses, had convicted the appellant. We do not find any reason to interfere with the conviction and the sentence imposed therein.



Crl.A.(MD).No.53 of 2021

20. In the result, there are no merits in the present appeal and accordingly, the Criminal Appeal stands dismissed and the conviction and sentence passed in S.C.No.81 of 2017, dated 14.10.2019, on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur, is confirmed.

(M.S.R.,J.) (M.N.K.,J.)
27.07.2023

NCC : Yes
Index : Yes

vsm

To

- 1.The Inspector of Police,
Budalur Police Station,
Budalur,
Thanjavur District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.A.(MD).No.53 of 2021

M.S.RAMESH, J.
and
M.NIRMAL KUMAR,J.

vsm

Crl.A.(MD)No.53 of 2021

27.07.2023