



Crl. A(MD)No.383 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 30.01.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HON'BLE MR JUSTICE SUNDER MOHAN

Crl. A(MD)No.383 of 2020

A.Alaguraj

: Appellant

Vs.

The State through,
The Inspector of Police,
Sivakasi East Police Station,
(In Crime No.920 of 2009)

: Respondent

PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, to call for the records pertaining to Sessions Case No. 106 of 2011 dated 17.10.2019 on the file of the Mahila Court (Fast Track) Virudhunagar District at Srivilliputhur and by allowing the appeal and to acquit the appellant.

For Appellant

: Mr.C.M.Arumugam

For Respondent

: Mr.A.Thiruvadikumar
Additional Public Prosecutor



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JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
SUNDER MOHAN,J.

The appeal preferred by the sole accused, who was found guilty for an offence under Sections 302 and 307 of IPC for causing death of one Shanmugathai stabbing her to death and attempt to murder her husband Vellaichamy.

2. The brief facts of the case is unravel through the prosecution witness is that, on 01.11.2009 at about 2.15 p.m., while Shanmugathai (since deceased) and her husband Vellaichamy (P.W.3) were talking in the Varanda of their house, the appellant Alaguraja herein picked quarrel with them and then went to his house, came with knife and stabbed Shanmugathai as well as Vellaichamy. Shanmugathai died on her way to hospital. Vellaichamy (P.W.3) survived from the attack after being treated for 28 days as inpatient. The neighbours, P.W.1(Anthony Raj @ Anthony Muniraj), the tea shop owner and others came to the spot, they over powered



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the accused and detained him. Thereafter informed the police, who registered the case arrested the accused and took up the investigation. The accused was remanded to judicial custody.

3. Ex.P1, the complaint was initiated by P.W.1 Anthony raj @ Anthony Muniraj a tea shop owner. According to him, he saw the accused stabbing P.W.3 with knife, when he called the deceased for help, she said she was also stabbed and fell on the ground. P.W.1 produced the knife to the police station along with the complaint. Based on the statement given by P.W.1, P.W.14-Vellaipandian Sub-Inspector of Police has registered a FIR (Ex.P9) at about 04.00 p.m., and forwarded it to the concerned Judicial Magistrate on the same day at 06.00 p.m.,

4. On completion of investigation, the Final Report was filed by the respondent police. The learned Judicial Magistrate taken it on file assigning P.R.C.No.9/2010. After furnishing the copies to the accused, committed it to the Sessions Court, Virudhunagar. The case was made over to the Fast Track Mahalir Court, Virudhunagar. Charges under Sections 302



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and 307 IPC framed against the accused. The accused denied the charges and claimed to be tried.

5. To substantiate the charges, the prosecution has examined 16 witnesses, marked 14 exhibits and two Material Objects. On behalf of the defence, Accident Register of the deceased Shanmugathai was marked as Ex.D1.

6. P.W.1 (Anthonyraj @ Anthony Muniraj) has given a statement Ex.P.1 and set the criminal law into motion. He has spoken about the overt act of the accused causing fatal injury to the Shanmugathai and grievous injury to Vellaichamy.

7. P.W.2(Christhuraj @ Raja) is the neighbour, who came to the spot on hearing the commotions and he is the person who disarmed the accused using a stick and apprehend him.



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8. P.W.3 (Vellaichamy) husband of the deceased Shanmugathai also an injured in the melee, sustained stab injury at the hands of the accused. The wound certificate is Ex.P7. Dr.Chitra (P.W.12) who treated him has deposed that P.W.3 has sustained stab injuries in his stomach and back. The front stab has pierced his lungs. The back stab has pierced his large intestine.

9. P.W.4 (Arokiamary) sister of Shanmugathai (since deceased) another witness to the occurrence, who corroborates rest of the eye witnesses about the occurrence.

10. P.W.5 Rani and P.W.6 Amutha are the neighbouring residents who claims to be an eye witnesses to the occurrence and they have deposed about what they saw on the date of occurrence in corroboration with each other. P.W.7 (son of the deceased Shanmugathai) and P.W.3 Vellaichamy who corroborates the evidence of P.Ws.5,6 & 7.



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11. P.W.8 and P.W.9 are signatories to the Observation Mahazar but they did not support the case of the prosecution. Hence, they were treated as hostile witnesses. Other witnesses, who are the official witnesses, namely, forensic expert, doctors and investigating officers.

12. The learned counsel appearing for the appellant questioned the verdict on three grounds.

(i) According to him, P.W.1 cannot be a witness to the occurrence. Referring the rough sketch Ex.P11 and certain facts elicited in the cross-examination of P.W.1 and other witness submitted that the tea shop of P.W.1 is on the other side of the street where the incident took place. The probability of witnessing the occurrence by P.W.1 is therefore highly remote and he being the village headman and related to the injured persons, a stock witness to the police. His evidence is totally unreliable.

(ii) The second limb of the submission made by the learned counsel for the appellant is that there is a doubt about the recovery of material object M.O.1 namely the knife since there is no proper seizure mahazar and the description of the knife varies. According to the counsel,



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while the witness P.W.1 say that the knife is with wooden handle. The other witnesses indicates that the knife is with horn handle. The length of the knife as per the description in the Form-19 is 35 c.m., including the handle. Whereas, the chemical analysis report indicates that the knife is 38 c.m., and therefore the discrepancy regarding the description of knife alleged to have used to commit the offence make the case of the prosecution doubtful since it goes to the foundation of the prosecution case.

(iii) The third and last limb of the argument is that the occurrence even according to the P.W.3 was due to the sudden provocation since there was no previous enmity between the accused and the victims. While so, the learned trial Judge has substituted his view contrary to the evidence on record and has convicted the appellant guilty for offence under Section 302 and 307 IPC.

13. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that it is a case where 7 witnesses including the injured person has spoken about the occurrence and had implicated the accused. The accused was caught red-handed and he was



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WEB CO... handed over to the police along with the weapon used by him. Minor discrepancy in the cross-examination is bound to happen since the occurrence was in the year 2009 and the witnesses were examined after 10 years in 2019, cross-examination of vital witnesses was deferred and recalled and they were cross-examined 14 months after recording the chief-examination. When the substantial evidence placed before the Court clearly indicates the overt act of the accused causing death of Shanmugathai and grievous stab injuries to Vellaichamy (P.W.3) with an intention to cause death of Vellaichamy which stands unassailed inspite of incised cross-examination, the conclusion of the trial Court need to be confirmed. Referring to the evidence of P.W.3 (the injured witness), the learned Additional Public Prosecutor submitted that the evidence of the injured witness is singularly enough to convict the accused for the offence under Sections 302 and 307 of IPC, since his testimony is wholly reliable.

14. After giving anxious consideration to the rival submission, this Court finds that the deceased Shanmugathai and injured Vellaichamy (P.W.3) are husband and wife. The accused living in the opposite house.



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Few days prior to the occurrence, the accused has spit seeing Vellaichamy and this was brought to the notice of the elders and the accused was warned by the elders. This is the only provocation which we find for the accused to cause the brutal attack on Vellaichamy and Shanmugathai few days later. He has carried M.O.1 weapon with him and has stabbed them for no reason except the self claimed provocation. On hearing the cry and alarm, P.W.1 the nearby tea shop owner, P.W.2 nearby resident, P.W.7 (son of the deceased and the injured P.W.3) and others like, P.W.4, P.W.5 and P.W.6 had rushed to the spot and had apprehended the accused. Perusal of P.W.3 evidence indicates that P.W.2 present and apprehend the accused. No doubt there is some discrepancy in mentioning the measurement of the knife by the Investigating Officer and the Chemical Analyst. The manner in which the knife came to the Police Station is also doubted. In view of this Court even if the knife does not correlate with the injury caused, or variation with description of the handle or its length, the unassailed ocular evidence of P.W.3 is sufficient to hold the accused guilty of causing death of Shanmugathai with an intention to cause death and attempt to cause death of Vellaichamy. The postmortem report marked as Ex.P8 and the Accident



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Register marked as Ex.P14 indicates the nature of injury and seat of injury which is sufficient to cause the death and the injuries were caused with the knowledge and intention to cause death.

15. As far as the defence document Ex.D1 is concerned, it is the Accident Register of Shanmugathai which indicates that she was brought dead. This document will no way help the case of the defence. Even the prosecution witnesses does not say anything contrary to Ex.D1. In the said circumstances, we find no reason to interfere with the conviction and sentence imposed by the trial Court. Hence the appeal is dismissed.

16. For the above reasons, this Criminal Appeal is dismissed by confirming the conviction and sentence passed dated 17.10.2019 by the Fast Track Mahila Court, Virudhunagar District at Srivilliputhur in S.C.No.106 of 2011.

NCC : Yes/No
Index : Yes/No
am

[G.J., J.] & [S.M., J.]
30.01.2023

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To

- 1.The Fast Track Mahila Court,
Virudhunagar District at Srivilliputhur
- 2.The Inspector of Police,
Sivakasi East Police Station,
- 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.



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Judgment made in
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