



WEB COPY



Crl.A.(MD) No.597 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	21.11.2023
Pronounced on	19.12.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Crl.A.(MD) No.597 of 2019

A.Chandra Mohan
S/o.Udaiyar

... Appellant

Vs.

State through
The Inspector of Police,
Marenari Police Station,
Virudhunagar District.
(Crime No.212/2010)

... Respondent

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, 1973 [Act No.2 of 1974] praying to call for the entire records connected with the Judgment in S.C.No.74 of 2011 dated 20.08.2019 on the file of the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur and set aside the conviction and sentence imposed against the appellant and acquit the appellant from all charges.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



Crl.A.(MD) No.597 of 2019

WEB COPY

J U D G M E N T

R.SAKTHIVEL, J.

This Criminal Appeal is preferred by the appellant assailing the 'Judgment dated 20.08.2019' [henceforth referred to as 'impugned Judgment' for the sake of brevity] passed by 'The Principal District and Sessions Court, Virudhunagar District at Srivilliputtur' [henceforth referred to as 'Trial Court' for the sake of brevity] in Sessions Case No.74 of 2011 in which the appellant [henceforth, referred to as Accused as per Trial Court's description for the sake of clarity and convenience] was convicted for the offence punishable under Section 302 of 'The Indian Penal Code' 1860 (Act No.45 of 1860) [henceforth, referred to as 'IPC' for the sake of brevity] and sentenced to undergo Imprisonment for Life and also ordered to pay a fine of Rs.10,000/-, in default thereof, to undergo Simple Imprisonment for a further period of 1 year and the period of imprisonment, if any, already undergone was ordered to be set off under Section 428 of Criminal Procedure Code, 1973 (Act No.2 of 1974) [henceforth, referred to as 'Cr.P.C.' for the sake of brevity].



Crl.A.(MD) No.597 of 2019

WEB COPY 2. The case of the prosecution, in brief, is as follows:-

2.1. The accused-Chandra Mohan aged 33/2010 is the nephew of the deceased-Perumal aged 52/2010. They were residing in Thiruvenkadapuram. The deceased had 50 goats and was engaged in goat-related business. The accused was an autorickshaw-driver. The deceased's goat shed was located behind the accused's house. The wife of the deceased-Ponnuthaiye and the wife of the accused-Selvamani were working at 'Akash Fire Works'. The accused, fuelled by suspicion that his wife is in a relationship outside of marriage with the deceased, often entered into heated arguments with her. Since one week prior to the incident, the accused was not returning home regularly due to the said issue.

2.2. While so, on the morning of October 7th, 2010, at 05.00 hours, the deceased as usual went to his goat shed and started to clean it and his wife and daughter (P.W.1) joined him soon after. Then, at 06.30 hours, upon hearing the accused and the accused's wife quarrel, the deceased, his wife and his daughter (P.W.1) went to the accused's house and pacified



Crl.A.(MD) No.597 of 2019

the accused after which the accused left the place. Thereafter, the deceased sat in the pial of the accused's house drinking coffee offered by the accused's wife.

2.3. Then, the accused re-appeared, took out a billhook from his autorickshaw parked in front of the house, uttered abusive words and assaulted the deceased by inflicting cut injuries using the billhook. The accused then ran away with the billhook. The deceased died instantly.

2.4. At 07.20 hours, on the aforementioned date, the wife of the deceased (L.W.1) along with her daughter (P.W.1) went to Maraneri Police Station and complained orally of the incident. The Sub Inspector of Police (P.W.9) reduced the same into writing. Then, P.W.9 registered an FIR (Ex.P.10) in Crime No:212/2010 under Section 302 of IPC at 08.00 hours.

2.5. On receiving the copy of the FIR at 09.30 hours on the aforementioned date, the Investigation Officer (P.W.12) went to the scene of occurrence at 10.15 hours and prepared Rough Sketch (Ex.P.14) and Observation Mahazar (Ex.P.2) in the presence of the witnesses



Crl.A.(MD) No.597 of 2019

Manikandan (L.W.7) and Muniraj (P.W.5). Then, the Investigation Officer (P.W.12) collected blood-stained Soil (M.O.1) and sample Soil with no blood stains (M.O.2) from the scene of occurrence under Seizure Mahazar (Ex.P.3) in the presence of the same witnesses. Thereafter, the Investigation Officer (P.W.12) conducted inquest over the dead body and prepared Inquest Report (Ex.P.15). He then sent the body for postmortem. Thereafter, the Investigation Officer (P.W.12) examined the witnesses and recorded their statements.

2.6. After completion of investigation, P.W.12 filed Final Report under Section 302 of IPC against the accused before the Judicial Magistrate, Sivagasi. The Judicial Magistrate registered the case on file as P.R.C.No.3 of 2011. After furnishing copies under Section 207 of Cr.PC to the accused, he committed the case file to the Trial Court under Section 209(a) of Cr.P.C, since the offence under Section 302 of IPC is exclusively triable by Sessions Court. The Trial Court after receiving the case file, assigned Sessions Case No.74 of 2011, framed charge under Section 302 of IPC, read over and explained the charge to the accused in Tamil. Since the accused pleaded not guilty, trial was ordered.



Crl.A.(MD) No.597 of 2019

WEB COPY

2.7. To prove its case, the prosecution examined P.W.1 to P.W.12 (Witnesses) and marked Ex.P.1 to Ex.P.15 (Documents) and M.O.1 to M.O.7 (Material Objects).

2.8. The Trial Court after hearing either side, concluded that the prosecution has proved the offence under Section 302 of IPC against the accused. Accordingly, the Trial Court convicted and sentenced the accused as stated *supra* in paragraph no.1.

2.9. Feeling aggrieved with the conviction recorded and sentence imposed by the Trial Court, the accused has preferred this Criminal Appeal under Section 374(2) of Cr.P.C.

Arguments

3. Mr.R.Alagumani, learned counsel appearing for the accused argued that the Trial Court has failed to consider the fact that the prosecution has failed to explain the motive behind the alleged offence; that the accused and the deceased are relatives and there were no brooding conflict between them and that P.W.1 is an interested witness and her



Crl.A.(MD) No.597 of 2019

evidence has not been corroborated by other witnesses. He further argued that though the prosecution examined P.W.2 & P.W.3 as ocular witnesses, they have not supported the case of the prosecution; that P.W.1 is living with her husband in a nearby village and therefore her presence in the scene of occurrence is doubtful; that the accused's wife (L.W.1) was not cited as a witness and examined by the Investigation Officer (P.W.12) and no explanation was offered in this regard; that the arrest and recovery is doubtful as P.W.1 has deposed in her evidence that the accused was present in the police station at 07.30 hours on the day of occurrence.

3.1. In support of his arguments, he relied on the following authorities:

- i. *Vadivelu Thevar and another Vs. State of Madras*, reported in 1957 SCC OnLine SC 13 : AIR 1957 SC 614.
- ii. *Ramamurthi and another Vs. State through the Inspector of Police, Sethur Police Station (Rural)*, dated 06.02.2002 passed by the Madras High Court (Principal Seat of this Court), in Crl.A.No.218 of 2004.
- iii. *Laloo and another Vs. State of U.P.*, reported in (2002) 9 SCC 431.
- iv. *R.Baskar Vs. State by Inspector of Police, Perambalur Police Station*, reported in 2013 (3) MWN (Cr.) 16 (DB).



Crl.A.(MD) No.597 of 2019

v. *Muthaiah Vs. State rep. by Dy. Superintendent of Police, Krishnankovil Police Station, reported in 2009 (2) MWN (Cr.) 163 (DB).*

Accordingly, he prayed to allow this Criminal Appeal, set aside the impugned Judgment and acquit the accused from the charge.

4. In response to the arguments of the learned counsel for the accused, Mr.A.Thiruvadikumar, learned Additional Public Prosecutor argued that the wife of the deceased who lodged Complaint (Ex.P.9) passed away before the commencement of trial; that P.W.1 has signed as identifying witness in Complaint (Ex.P.9); that the evidence of P.W.1 qua natural witness is reliable and trustworthy; that the prosecution examined the Sub Inspector of Police (P.W.9) who received the oral complaint from the deceased's wife, reduced it into writing and registered the FIR (Ex.P. 10); that the Investigating Officer (P.W.12) recorded the statement of the deceased's wife and P.W.1 under Section 161(3) of Cr.P.C and he has clearly deposed to that effect; that the prosecution thus, proved the Complaint (Ex.P.9).



Crl.A.(MD) No.597 of 2019

4.1. He further argued that the Investigation Officer (P.W.12) collected M.O.1 and M.O.2 from the scene of occurrence; that the blood stains found in M.O.1 matches with the blood of the deceased and thus, the prosecution has proved the place of occurrence.

4.2. He further argued that the prosecution proved the arrest and the admissible portion of the confession of the accused (Ex.P.5) and the recovery of blood-stained 'white shirt with yellow stripes' (M.O.3) and billhook (M.O.4); that the blood stains found in M.O.3 and M.O.4 matches with the blood of the deceased; that the prosecution thus connected the accused with the crime.

4.3. Further, he submitted that P.W.1 is a rustic witness and hence minor contradictions, discrepancies or omissions in her evidence shall have no impact in this case; that the evidence of P.W.1 coupled with the recovery of M.O.3 and M.O.4 clearly connects the accused with the crime; that the Trial Court considered the evidence and materials on file and rendered the impugned Judgement and therefore, there is no reason to interfere with the same.



Crl.A.(MD) No.597 of 2019

4.4. In support of his arguments, he relied on the following authorities:

- i. *State of U.P. Vs. Harban Sahai and others*, reported in (1998) 6 SCC 50.
- ii. *Bipin Kumar Mondal Vs. State of West Bengal*, reported in (2010) 12 SCC 91.
- iii. *Kusti Mallaiah Vs. State of Andhra Pradesh*, reported in (2013) 12 SCC 680.

Accordingly, he prayed to dismiss this Criminal Appeal and confirm the conviction recorded and sentence imposed on the accused by the Trial Court.

5. This Court has perused the case file and heard the arguments of either sides. The following points arose for consideration:-

- i. Whether the presence of P.W.1 in the scene of occurrence at the time of occurrence is proved beyond reasonable doubt?
- ii. Whether the evidence of P.W.1 is reliable, believable and trustworthy?
- iii. Whether the prosecution has proved the charge levelled against the accused under Section 302 of IPC beyond reasonable doubt?



Crl.A.(MD) No.597 of 2019

Discussion and Decision for Point No.(i), (ii) and (iii):

6. In this case, the Investigating Officer (P.W.12) examined 4 witnesses as eye witnesses namely, Ponnuthaiye (L.W.1), P.W.1-Muthuvadivu, P.W.2-Maari and P.W.3-Oorkaalan. Admittedly, Ponnuthaiye (L.W.1) passed away before the commencement of trial. P.W.2 and P.W.3 have not supported the case of the prosecution. Hence, the prosecution's case is rested on the evidence of P.W.1, the evidence of the Investigating Officer (P.W.12) and the Village Administrative Officer (P.W.7) with regard to arrest, confession and recovery. As per Section 134 of the Evidence Act, conviction can be recorded based on the solitary evidence if it is reliable, believable and trustworthy. In this regard, the Judgment of the Hon'ble Supreme Court in *Vadivelu Thevar's* case [*Vadivelu Thevar and another Vs. State of Madras, reported in 1957 SCC OnLine SC 13 : AIR 1957 SC 614*] is considered as *locus classicus* in appreciation of evidence. Paragraphs 11 & 12 of the Judgment read thus:

“11. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian



Crl.A.(MD) No.597 of 2019

Evidence Act, has categorically laid it down that “no particular number of witnesses shall, in any case, be required for the proof of any fact”. The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence— 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim that “Evidence has to be weighed and not counted”. Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime,



would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a



Crl.A.(MD) No.597 of 2019

single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such



Crl.A.(MD) No.597 of 2019

exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.”

6.1. P.W.1-Muthuvadivu is none other than the daughter of the deceased. She deposed that her mother passed away; that the deceased's goat shed (ஆட்டுத் தொழுவம்) is located near the accused's house; that there is no brooding conflict between the deceased and the accused; that the accused and his wife would often have heated arguments; that on October 7th, 2010, the deceased went to the goat shed to collect cow dung and she (P.W.1) along with her mother joined him soon after; that upon hearing the accused and his wife quarrel, she, her mother and the deceased went to the accused's house; that she pacified the situation after which the accused left the place; that the accused's wife then offered coffee to the deceased and the deceased drank coffee sitting in the pial of accused's house; that she and her mother were near the deceased; that while so, the accused re-appeared, uttered abusive words, took out a billhook (M.O.4) from the autorickshaw parked in front of the house and inflicted cut



Crl.A.(MD) No.597 of 2019

injuries using the billhook; that she and her mother raised alarm and people nearby rushed to the spot; that the accused ran away; that the deceased died instantly in a pool of blood; that her mother then preferred a complaint wherein she signed as an identifying witness, at Maraneri Police Station.

6.2. P.W.1 in her cross examination deposed that she got married just 10-15 days before the date of occurrence; that after marriage, she has been living with her husband Muniaraj (P.W.5) separately at Ammapatti which is 7 kilometers away from the place of occurrence; that the distance between their goat shed and the place of occurrence is 5-10 feet; that billhook (M.O.4) and chappal were found in the scene of occurrence near the deceased's body; that she and her mother upon witnessing the occurrence, rushed towards the deceased, hugged the deceased's body and cried; that both of them bore the blood stains from the deceased on their bodies; that the police seized the blood-stained dresses of the deceased; that her mother (L.W.1) identified the accused at the Police Station at 07.30 hours on the day of occurrence. She denied the suggestions that the deceased was killed by someone else owing to previous business enmity and that her mother foisted a false complaint against the accused believing



Crl.A.(MD) No.597 of 2019

the rumour that the deceased and the accused's wife were in a relationship outside of marriage.

6.3. P.W.2 - Maari and P.W.3 - Oorkaalan are residing opposite to the crime scene and are cited as ocular witnesses. They deposed that they did not witness the incident. Though the prosecution cross-examined them after obtaining permission under Section 154 of Cr.P.C., it could not obtain anything in its favour.

6.4. P.W.4-Chandhiran is a brother-in-law of the deceased. He also did not support the case of the prosecution.

6.5. P.W.5-Muniaraj is none other than the husband of P.W.1. He is cited as a witness for Observation Mahazar (Ex.P.2), Seizure Mahazar (Ex.P.3) and Rough Sketch (Ex.P14). He deposed that at 07.15 hours on October 7th, 2010, he and one Manikandan (L.W.7) came to the scene of occurrence and at that time, police investigated the crime scene and collected M.O.1 and M.O.2 from the crime scene and that he and Manikandan (L.W.7) signed in Observation Mahazar (Ex.P.2) and Seizure Mahazar (Ex.P.3).



Crl.A.(MD) No.597 of 2019

WEB COPY

6.6. The Doctor who conducted postmortem on the body of the deceased was examined as P.W.6. He deposed that the deceased died due to massive irreversible hemorrhagic shock due to deep cut injury of major blood vessels of the neck. The Postmortem Report given by P.W.6-Doctor marked as Ex.P.4. reads as follows:

54 years old male body lies on its back symmetrical arms by the side of the body. Hands opened empty. Jaws elongated. Eye lids closed. Both lower limbs extended.

External Injuries:

1) Deep cut injury (L) side of the neck. Exposing cut injury of major blood vessels of the neck. Transection of cervical vertebra (C7), wound size 30 X 15 X 10 cm (R) side of the neck. Skin intact alone.

2) cut injury (L) mastoid area. 7 X 5 X 5 cm.

3) Cut injury base of the left (L) neck 7 X 4 X 3 cm.

4) Cut injury (L) deltoid area 12 X 9 X 5 cm.

Exposing bones and blood vessels.

5) Cut injury (R) mammary area fracture (R) ribs – 2, 3, 4 and 5. Wound size 12 X 4 X 3 cms. Hyoid bone intact. Internal organs are pale. Pelvis bones are normal.



Crl.A.(MD) No.597 of 2019

Opinion as to cause of death:

Massive irreversible hemorrhagic shock due to deep cut injury of major blood vessels of the neck. 8 to 12 hours prior to autopsy.

It is clear from the above report that the deceased died due to homicidal death.

6.7. P.W.7-Village Administrative Officer Mr.Rajendran deposed about the arrest, confession and recovery of blood-stained 'white shirt with yellow stripes' (M.O.3) and billhook (M.O.4).

6.8. P.W.8- Scientific Officer attached to Regional Forensic Science Laboratory, Ramanathapuram (RFSL) deposed that except in M.O.2, human blood of 'O' group is found in all other material objects. Biological Report (Ex.P.8) was marked through him.

6.9. P.W.9 is the Sub-Inspector of Police who recorded the oral complaint and registered FIR (Ex.P.10).



Crl.A.(MD) No.597 of 2019

6.10. P.W.10 is the Head Clerk attached to Judicial Magistrate, Sivagasi. He deposed about receiving of M.O.1 to M.O.7 and sending the same to RFSL.

6.11. P.W.11 is the Head Constable who took the body of the deceased for Postmortem and he deposed that he handed over M.O.5 to M.O.7 to the Investigating Officer (P.W.12) and that he subsequently collected the same from the Judicial Magistrate and handed them over to RFSL.

6.12. The Investigation Officer (P.W.12) deposed that he went to the scene of occurrence at 10.15 hours on October 7th, 2010, and prepared Rough Sketch (Ex.P.14) and Observation Mahazar (Ex.P.2) in the presence of the witnesses Manikandan (L.W.7) and Muniraj (P.W.5); that he then collected blood-stained Soil (M.O.1) and sample Soil with no blood stains (M.O.2) from the scene of occurrence under Seizure Mahazar (Ex.P.3) in the presence of the same witnesses; that thereafter, he conducted inquest over the dead body and prepared Inquest Report (Ex.P.15); that he then sent the body for postmortem; that he thereafter examined the witnesses and recorded their statements.



Crl.A.(MD) No.597 of 2019

6.13. He further deposed that at 14.30 hours on the same day, he arrested the accused at Puliparaipatti Bus Stop in the presence of the witnesses namely, Village Administrative Officer Mr.Rajendran (P.W.7) and his assistant Sundaram (L.W.10); that the accused voluntarily gave a confession, the admissible portion of which is marked as Ex.P.5 and handed over the blood-stained 'white shirt with yellow stripes' marked as M.O.3; that then the accused led them to one Melapalayapuram Ponnusamy's farm and handed over the blood-stained billhook marked as M.O.4; that at 17.00 hours on the aforementioned date, he sent the seized objects to the Judicial Magistrate under Form 91; that then the accused was remanded to judicial custody; that he then collected the blood-stained white veshti (M.O.5), green color brief (M.O.6) and light blue striped shirt (M.O.7) from Postmortem; that the material objects were sent to RFSL and he then examined P.W.8-Vairamuthu and obtained RFSL Reports; that on October 20th, 2010, he filed final report against the accused before the Judicial Magistrate.

6.14. In his cross-examination, he admitted that neither the Rough Sketch (Ex.P.14), the Observation Mahazar (Ex.P.2) nor the evidence of Observation Mahazar witnesses shows presence of any autorickshaw near



Crl.A.(MD) No.597 of 2019

the accused's house; that P.W.1-Muthuvadivu admitted in her examination that she lives with her husband in Ammapatti Village; that neither P.W.1's mother-Ponnuthaiye (L.W.1) nor P.W.1-Muthuvadivu mentioned about the reason for P.W.1 coming to Thiruvenkatapuram (the place where the deceased and the accused live). Further, he denied the suggestion that Pulipaaraipatti Bus Stop is an active and busy place and that M.O.3 and M.O.4 were not recovered by him.

7. The accused-Chandra Mohan is the nephew of the deceased-Perumal. The deceased's goat shed was located behind the accused's house. The Investigation Officer (P.W.12) prepared Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.14) and collected blood-stained Soil (M.O.1) and sample soil with no blood stains (M.O.2) from the scene of occurrence under Seizure Mahazar (Ex.P.3) in the presence of witnesses Manikandan (L.W.7) and Muniraj (P.W.5). P.W.8's evidence shows that the blood stains found in M.O.1 matches with the blood of the deceased. Hence, the prosecution has proved the place of occurrence.

8. Admittedly, P.W.1 was married off and marital home is in Ammapatti Village 10-15 days prior to the occurrence. From the evidence



Crl.A.(MD) No.597 of 2019

of P.W.1, it can be seen that there were people around the scene of occurrence. Notably, the occurrence took place at 06.30 hours in the morning in a residential area. However, only two independent witnesses ie., P.W.2 and P.W.3 have been examined and they have not deposed about the presence of P.W.1 in the scene of occurrence at the time of occurrence. P.W.1 deposed that herself and her mother bore the blood stains from the deceased on their bodies. However, the same has not been proved. Hence, P.W.1's evidence requires corroboration. However, as stated *supra*, other witnesses have not corroborated P.W.1's evidence. Therefore, this Court is of the considered view that the presence of P.W.1 in the scene of occurrence at the time of occurrence is doubtful and has not been proved by the prosecution beyond reasonable doubt and that her evidence is not wholly reliable with regard to her witnessing the incident.

Arrest, Confession and Recovery

9. Village Administrative Officer (P.W.7) has deposed that on October 7th, 2010, the Investigating Officer (P.W.12) arrested the accused at Pulipaaraipatti Bus Stop and the accused gave a voluntary confession, the admissible portion of which is marked as Ex.P.5. Notably, Ex.P.5 was marked with the objection of the accused. Village Administrative Officer



Crl.A.(MD) No.597 of 2019

(P.W.7) in his cross examination has deposed that he does not remember what crops were cultivated in the land of Ponnusamy situate at Melapalaiyapuram.

9.1. P.W.1 in her evidence has deposed that billhook (M.O.4) and chappal were lying in the crime scene near the body of the deceased and that when she and her mother went to the police station to lodge complaint (Ex.P.9) at 07.30 hours, the accused was present there and they identified the accused to the police. Hence, this aspect shows that the accused was in police custody on October 7th, 2010 at 7.30 hours. In these circumstances, it is highly improbable that the accused was arrested on October 7th, 2010 at 14.30 hours. Further, the alleged arrest was made in daylight in a public place. However, no independent witness was examined to prove the alleged arrest, confession and recovery. Further, neither Melapalaiyapuram Ponnusamy on whose land billhook (M.O.4) was recovered nor any other independent witness was examined with regard to the recovery of billhook (M.O.4). No reason was assigned by the prosecution for non-examination of any independent witness in this regard. Notably, Serology Report was also not marked and no reason was assigned for the same.



Crl.A.(MD) No.597 of 2019

WEB COPY

9.2. In view of P.W.1's evidence which contradicts the alleged arrest, confession and recovery, and the above narrative, the evidence of Village Administrative Officer (P.W.7) and the Investigation Officer (P.W.12) that the accused was arrested on October 7th, 2010 at 14.30 hours in Pulipaaraipatti Bus Stop and the subsequent recovery of blood-stained 'white shirt with yellow stripes' (M.O.3) and billhook (M.O.4) does not inspire confidence of this Court.

9.3. Since the arrest, confession and recovery in this case have not been proved, the argument of the learned Additional Public Prosecutor that the blood stains found in 'white shirt with yellow stripes' (M.O.3) matches with the deceased's blood loses its validity and significance.

10. This Court finds it apposite to mention here that the Investigation Officer (P.W.12) has not examined the accused's wife who is a crucial witness in this case. No reason was assigned in this regard. This aspect furthers the doubt in the case of the prosecution.



Crl.A.(MD) No.597 of 2019

WEB COPY

11. Therefore, this Court is of the view that it is unsafe to record conviction solely based on the uncorroborated evidence of P.W.1 whose presence in the scene of occurrence at the time of occurrence is doubtful. As stated *supra*, arrest, confession and recovery are not proved by the prosecution beyond reasonable doubt. The Trial Court erred in believing the evidence of P.W.1; and arrest, confession and recovery to record the conviction and impose the sentence.

12. For the foregoing reasons, this Court is of the view that impugned Judgment shall be interfered with since the prosecution has not proved the charge under section 302 of IPC levelled against the accused beyond reasonable doubt. Accordingly, Point Nos.(i), (ii) & (iii) are answered in favour of the accused and against the prosecution.

13. Resultantly,

- i. This Criminal Appeal is allowed.
- ii. The impugned Judgment dated 20.08.2019 passed by the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputtur in S.C.No.74 of 2011 is hereby set aside. Accused (appellant) is



Crl.A.(MD) No.597 of 2019

acquitted from the charge levelled against him i.e.
under Section 302 of IPC.

- iii. The bail bond if any, executed by the accused
(appellant) shall stand discharged. The fine amount if
any paid by the accused shall be refunded to him.

(M.S., J.) (R.S.V., J.)
19.12.2023

Index: Yes
Neutral Citation: Yes
Internet: Yes
Speaking order

JEN

To

1. The Inspector of Police,
Marenari Police Station,
Virudhunagar District.
2. The Principal District and Sessions Judge,
Principal District and Sessions Court,
Srivilliputtur, Virudhunagar District'
3. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.A.(MD) No.597 of 2019

M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

JEN

Pre-Delivery Judgment made
in
Crl.A.(MD) No.597 of 2019

19.12.2023