



Crl.A.(MD)No.560 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
20.12.2022	04.01.2023

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

Crl.A.(MD)No.560 of 2019

1.Muniasamy, S/o.Pitchai
2.Kanagaraj, S/o.Pitchai

... Appellants

vs.

State Rep. by
Inspector of Police,
Krishnankovil Police Station,
Virudhunagar District.
(Crime No.29 of 2011)

... Respondent

PRAYER : Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to set aside the conviction and sentence imposed by the Principal District and Sessions Court, Virudhunagar District at Srivilliputhur, in S.C.No. 196 of 2011, on 02.11.2019 and allow this Criminal Appeal.

For Appellants : Mr.M.Jothibas

For Respondent : Mr.R.Meenakshisundaram
Additional Public Prosecutor



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JUDGMENT

**DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.**

This appeal is filed against the judgment of conviction against the appellants by the trial Court holding the first appellant/Accused No.1 guilty of offence under Section 302 of I.P.C. and the second appellant/Accused No.2 guilty of offence under Section 302 read with Sections 34 and 307 of I.P.C. [2 counts].

2. The case of the prosecution is that the son-in-law of the deceased Ayyasamy and the accused have agricultural land on the Eastern end of the Village and they both shared a common Well for irrigation by using separate oil engine motors for drawing water. Regarding the sharing of the water from the common Well, both the families had dispute and a month before the incident, when quarrel arose, the Village Panchayat was convened and both the parties were advised to settle the dispute amicably, but the deceased refused to heed the advice of the Mediators and continue to draw water from the common Well inspite of objection by the accused. In continuation of this previous enmity, on 13.03.2011, at about 06.30 p.m. while Ayyasamy (since deceased) and his family

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members were working in the field of his son-in-law Kundumalai, the first accused with butcher knife and the second accused with billhook [Aruval] went to the field of Ayyasamy and questioned him for irrigating his land despite objection. Then the first accused attacked Ayyasamy with butcher knife. When Ayyasamy tried to flee away from the attack, both the accused restrained him from running further. Accused No.1 attacked Ayyasamy indiscriminately all over his body, causing death. When the wife and daughter of the deceased rushed to rescue the deceased, Accused No.2 attacked Shanmugathai - wife of the deceased and Karupayee - daughter of the deceased and prevented them from rescuing the deceased Ayyasamy and also with an intention to cause their death. All the three injured persons were taken to the hospital in an Ambulance. Ayyasamy was declared brought dead. His body was sent for postmortem. The other two injured were admitted in the hospital for treatment.

3. The complaint was lodged by P.W.1 the son of the deceased. He went to the Police Station and gave the complaint, which was marked as Ex.P.1. On completion of investigation, Accused No.1 was charged for the offence under Section 302 of I.P.C. read with Section 34 of I.P.C. and Accused No.2 was charged under Section 302 read with Sections 34 and 307 of I.P.C [2 counts].

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4. The accused denied the charges and claimed to be tried. Accordingly, to prove the charges, the prosecution marshaled the witnesses. The accused not examined any witness on their behalf or filed any document. With 21 witnesses, 24 exhibits and 7 material objects for appreciation, the trial Court held that the prosecution proved the charges of offence under Section 302 of I.P.C. against Accused No.1 and 302 read with Sections 34 and 307 of I.P.C. [2 counts] against Accused No.2. While they were sentenced to undergo life imprisonment for the offence under Section 302 read with Section 34 of I.P.C., Accused No.2 was sentenced to undergo seven years of Rigorous Imprisonment with Rs.5,000 fine [2 counts] in respect of the offence under Section 307 of I.P.C. [2 counts].

5. Being aggrieved by the above conviction and sentence, the instant Criminal Appeal is filed by both the accused.

The facts unraveled through the witnesses:-

6.1. P.W.1 is the son of the deceased and witness to the occurrence and also the first informant. He had spoken about the previous enmity between his family members and the accused persons over sharing of water from the common Well.



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Being scared by the threat to his life, Ayyasamy reported the matter to the Village Headman and they called the accused persons and advised them not to pick quarrel. However, the accused did not heed to the advice. On 13.03.2011 at about 06.30 p.m. when the deceased and his family members were in the field and irrigating the land, both the accused armed with dangerous weapon, came to the place where Ayyasamy was irrigating. Accused No.1 stabbed the deceased with knife when Ayyasamy tried to flee. Accused No.2 caught hold of him to facilitate Accused No.1 to stab him again. Then Accused No.1 indiscriminately attacked the Ayyasamy (since deceased) on the right side wrist, forearm, shoulder, left side neck and head. Karrupayee, who was examined as P.W.5 (the sister of P.W.1 and daughter of the deceased) and Shamugathai who was examined as P.W.3 (the mother of P.W.1 and wife of the deceased) seeing A-1 attacking Ayyasamy rushed towards him and tried to rescue him. Accused No.2 with Aruval (billhook) attacked P.W.5 her right little finger, ring finger and head. He also attacked PW 3 with Aruval (billhook) on her head and shoulder. P.W.1, his uncle Gundumalai [P.W.2] and Sundar [P.W.4], the neighboring land owner rushed towards the injured persons. On seeing them, the accused fled towards northern direction. P.W.1 called Ambulance and in the Ambulance, all the three injured persons were



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taken to Srivilliputhur Government Hospital. The duty Doctor examined his father and declared him dead. His mother and sister were admitted in the hospital for treatment. When the Sub Inspector of Police attached to Krishnankovil Police Station came to the hospital, P.W.1 informed him about the incident. The Sub Inspector reduced the statement into writing and also read it over to him. Thereafter, he signed in the said statement and his statement reduced into writing is Ex.P.1. His uncle Gundumalai signed in the said statement as witness. His mother and sister were later shifted to Madurai Government Hospital for further treatment. The Lungi and Towel of the deceased, which he was wearing at the time of occurrence, were identified and marked as M.O.1 and M.O.2. The weapon used by the first accused to attack his father Ayyasamy (deceased) was marked as M.O.3. The weapon used by Accused No.2 to attack his mother (P.W.3) and his sister (P.W.5) was marked as M.O.4.

6.2. In the cross-examination, P.W.1 admits that 30 days prior to the incident, there was a dispute regarding sharing of water. Even after the accused threatened them not to irrigate the land by drawing water from the common Well, they continued to draw water. Thereafter, for all the days to come, both the



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accused were causing disturbance whenever they irrigated the land using the common Well. He denied the suggestion that the death of the accused's sister day prior to the incident by hanging has relevance to the incident.

6.3. P.W.2 is the uncle of P.W.1 and also son-in-law of the deceased. He shares the common Well with the accused persons. He is one of the witnesses present near the place of occurrence. He had deposed that on hearing the commotion, he rushed to the scene. He saw the accused with weapon. Accused No.1 attacked the deceased. Accused No.2 attacked his sister (P.W.3) and his wife (P.W.5). He along with P.W.1 accompanied the injured persons in the Ambulance to Srivilliputhur Government Hospital. His uncle Ayyasamy was declared dead, his wife and sister were shifted to Government Hospital, Madurai. When he was in the hospital, the Police received the statement from P.W.1 and reduced it into writing, in which, he signed as witness. He has identified his signature and the same is marked as Ex.P.2.

6.4. P.W.3 is the wife of the deceased and she is also one of the injured. She has deposed about the incident occurred a month earlier, the failure of the mediation conducted by the Village elders and the incident on 13.03.2011, leading to murder of her husband and the attack on her and her daughter.

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6.5. P.W.4 Sundar is the neighboring land owner. He has deposed about the previous enmity between the accused and the deceased family. He is a brother of P.W.2. He went to the scene of occurrence on hearing the weeping sound. He saw Ayyasamy in a pool of blood near the Well and P.W.3 and P.W.5 weeping.

6.6. P.W.5 Karupayee is the daughter of the deceased. She is one of the injured eyewitnesses.

6.7. P.W.6 is the Villager, who had spoken about the previous enmity between the accused and the deceased regarding sharing of water and the mediation conducted by the Village elders.

6.8. P.W.7 Village Administrative Officer, who went to the Sembattaiyankal Village at the request of Krishnankovil Police and accompanied the Police to the scene of crime. She and her Assistant signed as witnesses in the Observation Mahazar and Sketch. The mud with blood stained and the mud without blood stained were collected from the scene of crime. She is the witness to the Mahazar and the same is marked as Ex.P.4. She was one of the witnesses to the confession



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statement given by the accused persons, based on which, M.O.3 Knife and M.O.4 Billhook were recovered from the bush, near the water stream. The admissible portion of confession given by the respective accused persons are marked as Ex.P.5 and Ex.P.6. In the Recovery Mahazar, P.W.7 has signed as a witness and identified her signature in the Mahazar marked as Ex.P.8.

6.9. P.W.8, P.W.9 and P.W.11 turned hostile.

6.10. P.W.10 Subramani has spoken about the previous enmity between the accused and the deceased family.

6.11. P.W.12 is the Junior Scientific Officer attached to Regional Forensic Lab, Ramanathapuram, has received Earth, Lungi and Towel of the deceased, Shirt and Dhoti of the accused persons, the weapon recovered from the accused persons all were sent for serological test. The test revealed that they contained human blood. His report is marked as Ex.P.9.

6.12. P.W.13 the Scientific Assistant at Chennai conducted test on those materials and gave an inconclusive report about the group of the human blood

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detected. P.W.14 received the report from the Lab and the same is marked as Ex.P.14.

6.13. P.W.12 to P.W.15 talks about the receipt of materials for Lab test.

6.14. P.W.16 is the duty Doctor, who examined Ayyasamy and declared him brought dead and intimated the fact to the Police through Ex.P.15 Memo. He also medically examined P.W.3 Shanmugathai and P.W.5 Karupayee and observed the injuries noticed on them. After providing first aid, he shifted them to Rajaji Government Hospital at Madurai, for further treatment. He conducted postmortem of the deceased body. The postmortem report is marked as Ex.P.21. Seven external injuries were noticed by him.

6.15. P.W.17, who is the Head Constable, handed over the body of the deceased to the relatives after postmortem. He collected the dress found on the body and handed over it to the Investigation Officer.

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WEB COPY 6.16. P.W.18 is the Doctor, who has medically examined P.W.3 and P.W.5 and certified P.W.3 sustained simple injury and her medical report is marked as Ex.P.18 and the medical report of P.W.5 is marked as Ex.P.19.

6.17. P.W.19 the then Head Constable attached to Krishnankovil Police Station at the time of occurrence, who received the complaint and registered F.I.R. in Crime No.29 of 2011, had deposed that after registering the F.I.R., he forwarded express F.I.R. to the learned Judicial Magistrate No.II, Srivilliputhur. Since the learned Magistrate was on leave, he went to Rajapalayam and handed over it to the in-charge Magistrate on 14.03.2011 at about 04.00 a.m. in the morning.

6.18. P.W.20, who conducted the investigation after registration of the F.I.R., had deposed about the course of investigation and handing over further investigation to his successor P.W.21.

Submission by the Learned Counsel for the Appellants:

7. The learned counsel for the appellants submitted that P.W.1 to P.W.5 are relatives of the deceased. Admittedly, there was animosity between the family



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members of the deceased and the appellants. Therefore, their evidence tainted with *mala fide*, ought not to have been relied upon. The learned counsel for the appellants further submitted that there was clear provocation for the incident and the same has been highlighted through cross-examination of the witness, who has substantially admit that the sister of the accused used to take bath in the lane adjacent to the house of the deceased the day before the incident, the deceased picked up quarrel with the accused and abused their sister for wetting the wall by taking bath near the wall. Being ashamed by that, the sister of the accused committed suicide. Therefore, there was a sudden provocation on the part of the accused when the deceased and his family members came again on the next day to pick quarrel.

8. The learned counsel submitted that the probability of the defence not been properly appreciated by the trial Court. There are material contradictions between the statement Ex.P.1 and the deposition of P.W.1. P.W.1 in his deposition has said that Accused No.2 caught hold the deceased and thereafter, Accused No.1 attacked the deceased indiscriminately over his body. It is an improvement in his deposition, which is not found either in his complaint Ex.P.1

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or in his 161 Cr.P.C. statement. There is equally material contradiction insofar as the overtact of Accused No.2. The trial Court rightly disbelieved that the accused wrongfully restrained the deceased. While so, Accused No.2 cannot be held guilty of offence under Section 302 IPC r/w. 34 IPC alleging he was sharing common intention with Accused No.1.

9. It was canvassed that, the trial Court ought to have acquitted the accused persons for want of proof regarding intention to cause death. Neither Accused No.1 nor Accused No.2 had any intention to cause death of the deceased or to cause death of P.W.3 and P.W.5. It is a case of sustained provocation brooding for quite some time and busted on the day before the occurrence when the sister of the appellants/accused died by hanging, for which, the deceased was a cause. In the said circumstances, when the deceased and his family members came to the Well to draw water, the wordy quarrel arose suddenly leading to physical assault. The version of the prosecution as spoken through P.W.1 and P.W.2 ought to be disbelieved, since no blood stained clothes from them was recovered even though they deposed that they both carried the injured as well as the deceased in the Ambulance to the hospital and their clothes stained with blood. No blood stained



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clothes were recovered from them to substantiate the claim that they accompanied the deceased to the hospital. Therefore, their evidence that they saw the occurrence and took the injured in the Ambulance has to be disbelieved.

10. The learned counsel for the appellants further submitted that there is contradiction regarding the place of information given to the Police. The learned counsel for the appellants also submitted that there is a delay in forwarding the F.I.R. to the Magistrate though the distance between the Police Station and Court was hardly 12 Kilometers. Therefore, the evidence on the side of the prosecution has to be disbelieved and the order of conviction and sentence has to be set aside.

11. Per contra, the learned Additional Public Prosecutor appearing for the respondent P.W.3 and P.W.5 both injured witnesses need not falsely implicate the accused persons screening the real assailants. Therefore, the contentions of the learned counsel for the accused that the evidence of P.W.3 and P.W.5 has to be disbelieved for being relative of the deceased carry no merit.



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12. The incident occurred on 13.03.2011 at about 18.30 hours and the same was reported to the Police through intimation from the hospital. Immediately, P.W.20 rushed to the hospital and recorded the statement of P.W.1 in the presence of P.W.2 and thereafter, came to the Police Station, registered the F.I.R. in Crime No.29 of 2011 and forwarded the F.I.R. to the Magistrate through Express Tapal. Marikrishnan P.W.19 who received the Tapal went to the residence of the learned Judicial Magistrate No.II, Srivilliputhur, at about 23.55 hours, midnight. Since the learned Magistrate was on leave, he proceeded to Rajapalayam, handed over the express F.I.R. to the learned Judicial Magistrate, Rajapalayam, on 14.03.2011 about 4 O' clock early morning and therefore, there is no delay attributable to any manipulation of F.I.R.

13. Though in the cross-examination of the witnesses it has elucidated that there was quarrel between the accused and the deceased, a day prior to the occurrence, regarding the sister of the accused taking bath near the compound wall of the deceased and she committed suicide thereafter, this fact, so elucidated, does not support the case of the accused for sudden provocation or for self-defence. This incident has occurred a day before the incident and on the date of

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14. The learned Additional Public Prosecutor submitted that it is an admitted fact without any denial that P.W.1 to P.W.5 are not only related to the deceased, they are also related to the accused persons. Therefore, when the injuries on the witnesses P.W.3 and P.W.5 and their ocular evidence clearly attribute to Accused No.2, who sharing the common intention with his brother, has carried dangerous weapon and in furtherance of common intention to murder Ayyasamy went to their field and facilitated Accused No.1 to attacked Ayyasamy and prevented wife and daughter of Ayyasamy from rescuing him, makes the grounds sought to assail the considered judgment of the trial Court contrary to any probability and it is untenable.

15. Heard the learned counsel for the appellants and the learned Additional Public Prosecutor for the respondent.



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16. It is a case of causing death of one person and injuries to two others. According to the prosecution, two persons used two weapons to commit the said crime. The assailants are brothers and also related to the deceased. A common Well used as a source for irrigating the land appears to be the source for the dispute also, leading to the death of Ayyasamy, the husband of P.W.3, the father of P.W.1 and P.W.5. From the evidence of the injured witnesses, it is clear that the injury sustained by Ayyasamy caused by Accused No.1. They have identified him as well as the weapon used by him. They have not whispered anything about Accused No.1. In respect of the injuries they sustained, it is the case of these two witnesses that when they tried to rescue Ayyasamy, who was brutally attacked by Accused No.1, Accused No.2 wielded the billhook and prevented them from reaching their father and in the course of preventing them, he attacked them over their body, which has caused injuries as found Exs.P.16 and P.17. Their medical reports are marked as Exs.P.18 and P.19 respectively. Their medical record indicates that they both (P.W.3 and P.W.5) were seriously injured and taken to Srivilliputhur Hospital and then shifted to Government Hospital, Madurai.



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17. As far as P.W.3 is concerned, she has sustained the injury on her right side scalp and bone depth 7.5. x 3.5 c.m size. As far as P.W.5, she has sustained fracture on her right little finger. An incise wound on the head by 7.5 x 2.5 x 2.5 c.m. Lacerated wound over her right ring finger. The Doctor opined that the injuries sustained by P.W.5 is simple in nature and in respect of P.W.5, she got discharged against advice and therefore, not able to give opinion about the nature of injury. However, the medical report reveals that P.W.5 sustained fracture on her right little finger, which falls under the definition of grievous injury.

18. The specific case of the prosecution is that Accused No.1 and Accused No.2 armed with weapons in furtherance of common intention, caused death of the deceased Ayyasamy. The overtact is attributed against Accused No.1 by all the eyewitnesses. The recovery of the weapon on the information given by the accused, nature of injury caused on the body of the deceased Ayyasamy, particularly, the injuries on his scalp, occipital region, face, shoulder and multiple injuries on both hands would clearly show that Accused No.1 had clear intention of causing death of Ayyasamy and has caused injuries which is sufficient to cause his death.



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19. For the offence of causing death of Ayyasamy, Accused No.2 is also held criminally liable under Section 34 of I.P.C. being an accomplice sharing the common intention. The said intention of Accused No.2 could be seen from the evidence of injured witnesses, who had spoken that when they tried to save the life of Ayyasamy lying in a pool of blood, they were brutally attacked by Accused No.2 using the billhook marked as M.O.4. Accused No.2 prevented them from reaching Ayyasamy. This act makes very clear the intention of Accused No.2. To keep P.W.3 and P.W.5 away from reaching Ayyasamy, Accused No.2 has attacked indiscriminately both P.W.3 and P.W.5 and ensured that Ayyasamy dies without any help. In the course of keeping P.W.3 and P.W.5 away from the deceased, Accused No.2 has intentionally indulged in the act of leashing violence against P.W.3 and P.W.5.

20. When the eyewitnesses also happened to be injured witnesses, their evidence cannot be disbelieved unless it is tainted with falsehood. In this case, apart from P.W.3 and P.W.5, the other three witnesses, namely, P.W.1, P.W.2 and P.W.4 also speak about the incident and the overtact of Accused Nos.1 and 2.



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21. The only point now remains to be verified whether the injury caused by Accused No.2 on P.W.3 and P.W.5 was a cause with intention to cause death or sufficient to cause death. The injuries noted are on the head and other parts of the body, they are vital organs of a person, though were simple in nature as per the medical evidence. The intention and likelihood indicates that the second appellant/Accused No.2 had knowledge that the injuries are likely to cause death.

22. The learned counsel for the appellants tried to mitigate the offence by pleading provocation. The suicidal death of the accused sister, a day prior to the incident, is relied as a provocation to cause the death of Ayyasamy. However, the prosecution has projected and also proved that the motive for the occurrence is, the dispute in connection with sharing of water from the common Well. The occurrence had also taken place only when the deceased was irrigating his land using water from the common Well. The scene of crime is also near the Well. P.W.1, the son of the deceased and eyewitnesses as well as other witnesses to the occurrence have consistently deposed that the occurrence was a consequence of the earlier dispute regarding sharing of water from the common Well. P.W.6 and P.W.10 had spoken about the previous enmity between the deceased and accused persons regarding sharing of water. While that being the reason, the death of the

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deceased sister, the day before the occurrence, could not have been the cause for any provocation that too after 24 hours. Even if it was one of the trigger, it cannot be construed as a sudden provocation to cause multiple injury on Ayyasamy all over his vital organs and his instant death and also by using force, preventing the relatives P.W.3 and P.W.5 from rescuing the injured Ayyasamy. The place of occurrence and time also gains significance to rule out any defence of provocation. The suicide death of the sister 24 hours earlier at the residence cannot be a cause for any provocation to the accused persons to carry dangerous weapon to the field next day and attack Ayyasamy, his wife Shanmugathai and his daughter Karuupayee.

23. For the said reasons, this Court finds that the conviction of the accused and the sentence passed thereof are valid and sustainable as per law. Accordingly, this Criminal Appeal is dismissed. The appellants shall be secured to undergo the remaining period of sentence. The period of imprisonment already undergone by the appellants/accused shall be set off under Section 428 of Cr.P.C.

NCC : Yes / No
Index : Yes / No
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[G.J., J.] [S.M., J.]
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To

- 1.The Principal District and Sessions Judge,
Virudhunagar District at Srivilliputhur.
- 2.The Inspector of Police,
Krishnankovil Police Station,
Virudhunagar District.
- 3.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.
and
SUNDER MOAHN, J.

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PRE-DELIVERY JUDGMENT MADE IN
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DATED : 04.01.2023

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