



Crl.A.(MD)No.594 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the order	Date of Pronouncing the order
14.02.2023	24.02.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.A.(MD)No.594 of 2019

Chinnakalai @ Renganathan, S/o.Muthusamy ... Appellant / Sole Accused

vs.

State Rep. by
The Inspector of Police,
Thogamalai Police Station,
Karur District.
(Crime No.472 of 2017)

... Respondent / Complainant

Prayer :- Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records in S.C.No.37 of 2018, on the file of the learned Sessions Judge, Karur, Karur District and set aside the judgment, dated 31.10.2019 and acquit the appellant of the charges levelled against him.

For Appellant	: Mr.R.Anand for Mr.N.Subramani
For Respondent	: Mr.R.Meenakshisundaram Additional Public Prosecutor



JUDGMENT

DR.G.JAYACHANDRAN, J.

The sole accused, found guilty of offence punishable under Section 302 I.P.C. by the trial Court and sentenced to undergo life imprisonment with fine of Rs.1,000/-, in default, to undergo six months simple imprisonment is before this Court as appellant.

2. The substance of accusation against the appellant – Chinnakalai @ Renganathan

The deceased Ponnambalam and the accused Chinnakalai @ Renganathan are residing next to next door. They had dispute regarding usage of the pathway near their house. On 09.10.2017 at about 01.00 p.m., Chinnakalai @ Renganathan (the accused) came in his two wheeler, bearing Registration No.TN-45-F-7654, along the Kosur Bazaar. On seeing Ponnambalam (deceased) sitting in the Sankar Chicken shop opposite to the Muniyandi Vilas Hotel, he parked the two wheeler, went to the shop and abused Ponnambalam in filthy language. Chinnakalai @ Renganathan questioned Ponnambalam, for the past five years, when he is not present, the deceased quarrelling with his mother and how dare whenever he or his mother while using the pathway, Ponnambalam (deceased) could scold Chinnakalai @ Renganathan's mother. Then, Chinnakalai @ Renganathan took the butcher knife



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lying nearby and cut Ponnambalam on his right side shoulder and cheek. This was witnessed by Thangavel [P.W.1], the supplier in the Muniyandi Vilas Hotel and two of the customers Palanivel [P.W.2] and Sakthivel [P.W.3]. Before they all rushed to the spot to rescue Ponnambalam from further attack, the accused cut Ponnambalam on the neck and ran away. Private Ambulance was called and Ponnambalam was taken to the Trichy Government Hospital in that ambulance. However, at 03.00 p.m. on the same day, Ponnambalam succumbed to the injuries and died.

2.1. F.I.R. in Crime No.472 of 2017 came to be registered based on the complaint given by Thangavel (P.W.1). According to the complaint marked as Ex.P.1, the incident occurred at about 01.00 p.m. The complainant took the injured Ponnambalam to the Hospital in the ambulance. At about 03.00 p.m., Poonambalam died. Thereafter, he came to the Police Station along with P.W.2 and gave the complaint and his complaint was registered at 16.00 hours.

2.2. The printed form of the Express F.I.R. is marked as Ex.P.14. Ananthi, Sub-Inspector of Police [P.W.16], who recorded the F.I.R. on receiving the complaint from P.W.1, has forwarded the F.I.R. copy to the learned Judicial Magistrate No.I, Kulithalai, and the same has been received by the Magistrate at her residence on 09.10.2017 at 10.00 p.m.



2.3. Dr.Saravanan [P.W.15] has conducted postmortem and given postmortem certificate, marked as Ex.P.12. He has opined that Ponnambalam has died of shock and hemorrhage due to the throat cut injury. The postmortem certificate discloses three specific cut injuries, one on the front right shoulder, another on the left side face and third one on the chin and adjoining upper part of both sides of the neck.

2.4. Apart from P.W.1, P.W.2 and P.W.3, who have witnessed the occurrence, two wives of the deceased were examined as P.W.4 and P.W.5 and they have deposed about the previous enmity between their family and the accused family regarding the pathway.

2.5. Palaniyappan [P.W.6] is the witness to the accused's confession and recovery of M.O.1 based on the information given by the accused. He has identified his signature in the recovery mahazar, marked as Ex.P.3.

2.6. Balasubramanian [P.W.7] is the owner of Muniyandi Vilas, where P.W.1 was working as a Server. He has deposed that on the date of occurrence, he went for purchase of materials for the Hotel, leaving the shop in charge of P.W.1.

2.5. Sankar [P.W.8], who is the owner of the Sankar Chicken Stall, had deposed that on 09.10.2017, the deceased Ponnambalam came to his shop at 11.00



a.m. Since he had to attend a funeral at Sukkampatti, he requested Ponnambalam to look after the shop and left. When he came back, he saw Ponnambalam dead in front of his shop with cut injuries. He had also confirmed that P.W.1 is working as a Server in Muniyandi Vilas Hotel, opposite to his shop.

2.6. Mouleeshwaran [P.W.9] is the owner of the Tea shop near the place of occurrence. He on hearing the scream, came out from his shop and saw Ponnambalam with cut injuries and the accused Chinnakalai @ Renganathan leaving the place in a motorcycle.

2.7. Vadivel [P.W.10] is a signatory to observation mahazar [Ex.P.4] and recovery mahazar [Ex.P.5]. Under Ex.P.5, the Police has collected mud with blood stain and without blood stain from the spot where the body of Ponnambalam found.

2.8. Saravanan [P.W.11] Head Constable attached to Thogamalai Police Station has spoken about the handing over of the express F.I.R. to the learned Judicial Magistrate No.I, Kulithalai, collecting the body of Ponnambalam after postmortem and handing it over to the relatives of the deceased and handing over the viscera and the dress materials of the deceased person namely, dhoti, shirt and banian, marked as M.O.3 to M.O.6 respectively to the Lab. Blood stains were found in all the apparels. Therefore, they all were sent for biological test through Sadaiyan [P.W.12], Head

Constable.



2.9. S.S.Rajendran [P.W.13] Scientific Officer, who received the viscera for analysis, has certified that there is no alcohol or poisonous substance present in the viscera. His report is marked as Ex.P.7. The biological test on the bloodstained clothes was conducted by Mrs.Sivasankari [P.W.14] Scientific Officer attached to Trichy Regional Forensic Laboratory. The control sample, which was forwarded for test to the Forensic Laboratory at Chennai, ended in inconclusive report. The request letter and the report are marked Exs.P.8 and P.9.

2.10. The trial Court considering the above evidence, has held that the accused was guilty of offence under Section 302 I.P.C., sentenced to undergo life imprisonment and pay a fine of Rs.1,000/-, in default, to undergo six months simple imprisonment. As far as the offence under Section 294(b) I.P.C. is concerned, the trial Court held that the said charge was not proved and therefore, acquitted the appellant/accused.

3. This Criminal Appeal is directed against the conviction and sentence on the ground that the evidence of P.W.1 to P.W.3 are not cogent and trustworthy. P.W.2 and P.W.3, who claim to be the chance witnesses for being presented in the scene of occurrence, are in fact, planted witnesses, being close relatives of the deceased.



4. The case of the prosecution has to be disbelieved for the reason that the evidence of P.W.1 and P.W.2 is contrary to the entry in the Accident Register, recorded at the time when the injured Ponnambalam got admitted in the Hospital. It was one Krishnan, who was taken the deceased to the Hospital and the Accident Register entry indicates that two persons attacked him. Since it is not in tune with the prosecution case, the Investigating Officer has not marked the said Accident Register. However, in the cross-examination, verifying the C.D. File, he admits that Ponnambalam was admitted in the Hospital by one Krishnan for the alleged history of assault by two known persons. While so, contrary to the earliest documents, P.W.1 in his complaint [Ex.P.1] has stated that he went to the Hospital, admitted Ponnambalam, after knowing his death, he came to the Police Station and reported about it. Further, in the Accident Register, it is stated that the incident occurred near the house of the deceased. Whereas, the prosecution has projected as if the incident took place at the Chicken shop in Kosur Market Road, opposite to Muniyandi Vilas Hotel. It is admitted that in the Accident Register entry, the Doctor has seen only two injuries. Whereas, in the postmortem certificate [Ex.P.12], three injuries are found. This also falsifies the case of the prosecution. The prosecution in order to fix the accused has wantonly suppressed the Accident Register, which is the earliest document. Krishnan, who admitted Ponnambalam in the hospital and the ambulance driver, who took Ponnambalam to the Hospital were not examined. The non-examination of these two natural witnesses is fatal to the prosecution case.



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5. The learned counsel for the appellant submitted that while in the complaint, P.W.1 has stated that he went to the Hospital to admit Ponnambalam and after the death of Ponnambalam, he came to the Police Station and gave the complaint at 04.00 p.m. Whereas, in the chief-examination, he has categorically stated that he has not gone with Ponnambalam in the ambulance, straightaway he went to the Police Station to give the complaint. In the cross-examination, he has stated that he gave the complaint between 02.30 p.m. and 02.45 p.m. In fact, Ponnambalam died in the Hospital only at 03.00 p.m. and the complaint alleged to have been received at 04.00 p.m. as per the F.I.R. [Ex.P.14]. Whereas, P.W.2, in his chief-examination, has stated that he went in the ambulance to admit Ponnambalam in the Hospital. In the cross-examination, P.W.3 has admitted that his signature was obtained in the complaint at 07.30 p.m. in his house. So, pointing out all these discrepancies, the learned counsel for the appellant submitted that the inconsistencies between the evidence of P.W.1, P.W.2 and P.W.3 regarding their presence at the scene of occurrence and accompanying Ponnambalam to the Hospital in the ambulance creates much doubt about their credibility. In any event, there was no premeditation to commit murder even according to the prosecution witnesses. It was due to wordy altercation, the accused has taken knife in the chicken shop and has attacked the deceased. Therefore, it could at the most be of culpable homicide, not amounting to murder.



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6. Per contra, the learned Additional Public Prosecutor submitted that the evidence on behalf of the prosecution are cogent and reliable. The minor contradictions will not render their evidence unreliable. The enmity between the accused and the deceased has been consistently spoken by P.W.2 to P.W.5. They are competent witnesses to speak about the previous enmity, since they are residing in the same locality and the dispute is regarding the pathway used by the accused, which was objected by the deceased. The presence of P.W.2 and P.W.3 in the Muniyandi Vilas Hotel also natural and they are the chance witnesses. They happened to see the occurrence, since it has happened opposite to the Hotel. The failure of the Police to recover the dress materials of P.W.1, P.W.2 and P.W.3, who happened to handle the injured Ponnambalam and took him to Hospital is not a grave omission to disbelieve the presence of these three witnesses, witnessing the crime. Except doubting their credibility on the ground that they are relatives to the deceased, there is no other valid reason to discredit them. When the evidence is cogent and consistent, the finding of the Court below holding the accused guilty has to be confirmed.

7. Regarding the Accident Register, which has not been marked, but much spoken in the cross-examination of Rajasekar, Inspector of Police [P.W.17], the learned Additional Public Prosecutor submitted that in the absence of the Accident



Register, no adverse inference can be drawn based on the oral evidence of P.W.17.

Referring Ex.P.11 Biological Report received from the Forensic Department, the learned Additional Public Prosecutor submitted that the shirt of the accused and the shirt of the deceased found human blood 'O' group. P.W.17 had deposed that at the time of arresting the accused, his bloodstained shirt [M.O.9] was recovered after giving an alternate shirt.

8. The learned Additional Public Prosecutor further submitted that though separate Mahazar was not drawn for recovery of the shirt from the accused, it being in the course of his arrest, there is no necessity to prepare a recovery mahazar. Referring the evidence of Palaniyappan [P.W.6], who has witnessed the arrest of the accused on 10.10.2017 at about 12 'o' clock and recovery of M.O.1 (Knife) based on the confession statement, the learned Additional Public Prosecutor submitted that the prosecution has proved the guilt of the accused not only through the eyewitnesses namely, P.W.1 to P.W.3, but also through the Material Object, like, the bloodstained shirt of the accused, proving the presence of human blood 'O' group, which tallies the deceased's blood group. The recovery of M.O.1 (Knife) concealed near a rock and recovered based on the information given by the accused and the said Knife [M.O.1] has been identified by P.W.1 to P.W.3 as the weapon used by the accused to attack the deceased. The learned Additional Public Prosecutor therefore contended that the prosecution has proved the case beyond doubt.



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9. This Court has given its anxious consideration to the rival submissions made by the learned counsels appearing for the respective side.

10. The prosecution witnesses P.W.1 to P.W.3 had spoken about the incident. They are the eyewitnesses to the occurrence. According to them, the accused, who came in his two wheeler, picked quarrel with the deceased, who was sitting in the chicken shop of Sankar [P.W.8]. In the course of their quarrel, the accused has picked a knife kept in the chicken shop and has attacked the deceased over his shoulder, cheek and neck. The attack on the neck is the fatal injury, which caused the death, according to the opinion of the Doctor, as found in the postmortem certificate [Ex.P.12].

11. The failure of the prosecution to mark the Accident Register is heavily relied upon by the appellant's counsel. No doubt, the prosecution ought to have marked the Accident Register, which would have thrown more light to the incident. But, it is not a substantive piece of evidence to decide the fact in issue. The oral evidence of eyewitnesses and the documentary evidence before the Court are more relevant and substantive in nature.



12. The learned counsel for the appellant while elucidating the entries found in the Accident Register, which was in the C.D. file of the Investigating Officer, had not asked the Court to take it on record as an exhibit. At this length of time, the Court cannot rely upon certain statement of witnesses in the cross-examination about a document, which is not marked.

13. Therefore, on cumulative assessment of the evidence, this Court holds that the accused Chinnakalai @ Renganathan had caused three cut injuries on the deceased and the injury on the neck was fatal. However, it is contended by the learned counsel for the appellant that it was not a premeditated murder, but on seeing the deceased, due to previous enmity, the accused has gone to the chicken shop, where the deceased was sitting. A wordy quarrel erupted and in the course of wordy altercation, he has picked the knife lying in the chicken shop and has attacked him. It is only grave and sudden provocation, but not pre-planned intentional murder. It falls under Exception 1 of Section 300 I.P.C. Due to long standing enmity for more than five years, sudden provocation due to sudden fight, has forced the appellant/accused to attack the deceased using the Knife [M.O.1] lying in the chicken shop. Therefore, the punishment imposed by the trial Court under Section 302 I.P.C. is altered to Section 304(i) I.P.C.

14. In fine, the Criminal Appeal is partly allowed and the conviction and sentence, dated 31.10.2019, imposed by the learned Sessions Judge, Karur, in



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S.C.No.37 of 2018, for the offence under Section 302 I.P.C. is set aside and instead, the appellant is convicted under Section 304(i) I.P.C. and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months simple imprisonment.

15. The respondent Police is directed to secure the appellant and produce him before the trial Court for being committed to the Prison for undergoing the remaining period of sentence. The period of sentence already undergone by the accused/appellant is ordered to be set off under Section 428 Cr.P.C.

NCC : Yes
Index : Yes / No
Internet : Yes / No
SMN2

[G.J., J.] [K.K.R.K., J.]
24.02.2023

To

- 1.The Sessions Judge,
Karur.
- 2.The Inspector of Police,
Thogamalai Police Station,
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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and
K.K.RAMAKRISHNAN, J.

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PRE-DELIVERY JUDGMENT MADE IN
Crl.A.(MD)No.594 of 2019

DATED : 24.02.2023