



CRL.A(MD)No.621 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2023

CORAM

**THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

CRL.A.(MD)No.621 of 2019

Selvamurugan

.. Appellant/ Accused

Vs.

The State rep. by
The Inspector of Police,
Mandapam Police Station,
Ramanathapuram District.
(Crime No.69 of 2014)

.. Respondent/ Complainant

PRAYER: Appeal filed under Section 374 of the Criminal Procedure Code, to call for the records and set aside the order and judgment of conviction dated 25.04.2018 passed in S.C.No.72 of 2015 by the learned Principal District Judge, Ramanathapuram and to acquit the appellant.



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CRL.A(MD)No.621 of 2019

For Appellant : Mr.A.Arun Prasad

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor

JUDGMENT

DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.

The appellant is the sole accused in Spl.S.C.No.72/2015 on the file of the learned Principal District Judge, Ramanathapuram. He was charged for the offence under Section 294(b) and 302 IPC. The trial Court found him guilty for offence under Section 302 IPC and convicted and sentenced to undergo Life Imprisonment and to pay a fine of Rs.25,000/-, in default, to undergo one year Rigorous Imprisonment.

2. The case of the prosecution runs as below:

On 25.04.2014, at about 2.45 p.m., the accused came to the house of one Mariappan(P.W-15) when P.W-15 and P.W-1 (husband & wife) were



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chatting in their house, the accused came there and slapped P.W-15 and picked quarrel with him. On seeing that the deceased questioned the accused. Infuriated, the accused took knife and stabbed him twice and caused serious injury due to which the deceased died on the spot. The deceased and the accused are related to each other. The witnesses for prosecution also naturally relatives, who were in the house or elsewhere were spoken about the incident.

2.1. To prove the case, the prosecution examined 24 witnesses, marked 19 exhibits and 5 material objects. P.W-1, Kaleeswari is the sister of the deceased, who is the first informant to the police.

2.2. Based on her complaint-Ex.P1, FIR (Ex.P8) came to be registered and taken up for investigation. P.W-24, Inspector of Police gone to the spot and conducted the spot inspection and prepared an observation mahazar Ex.P18 and Sketch Ex.P13. The body of the deceased sent to the hospital for postmortem where the inquest conducted. The accused was arrested near the Mandapam Railway Station on the same day at about



CRL.A(MD)No.621 of 2019

WEB COPY

23.00 hours.

2.3. Based on his confession statement, the bloodstained shirt and lungi of the accused and knife were recovered under mahazar. He was arrested in the presence of independent witnesses P.W-8 and P.W-11. Prosecution witnesses 6, 7, 9, 10, 11, 12, 16 and 17 turned hostile and did not support the case of the prosecution and the eyewitnesses P.W-12 and P.W-14 also turned hostile. However, the other eyewitness, namely, P.W-1, who is none other than the sister of the deceased, P.W-2, the mother of the deceased, P.W-3 father of the deceased have supported the case of the prosecution and corroborating the version as found in Ex.P1.

2.4. On considering the fact and circumstances, the Court below has accepted the case of the prosecution and convicted the accused for offence under Section 302 IPC. However, disbelieve the case of the prosecution as far as the charge under Section 294(b) IPC and acquitted the accused for the charge under Section 294(b) IPC.



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3. The learned counsel for the appellant submitted that the presence of P.W-1, P.W-2 and P.W-3 at the scene of crime is highly improbable and the case of the prosecution not been supported by the independent eyewitnesses, namely, PW.11 and PW.14. The evidence of P.W-1, P.W-2 and P.W-3 cannot be relied upon since they being related to the deceased. Further pointing out that the FIR came to be registered belatedly which gives room to manipulation and suspicion. The prosecution has failed to prove any strong motive to the accused to commit murder of his brother's son. When the independent witnesses are not supported the case of the prosecution, the other persons whose presence at the scene of crime is highly doubtful. The trial Court ought not to have been convicted the accused.

4. Per contra, the learned Additional Public Prosecutor submitted that the prosecution has clearly proved their case not only through P.W-1, P.W-2 and P.W-3, who are eyewitnesses but also through other independent witnesses, who were spoken about the enmity between the deceased and the accused. Referring the evidence of P.W-15 one



CRL.A(MD)No.621 of 2019

WEB COPY

Mariappan, the learned Additional Public Prosecutor would submit that soon before this occurrence, on that day, there was quarrel between the deceased and P.W-15. This was questioned by the deceased and the deceased stopped the accused attacking P.W-15 in further. Thereafter, the accused Selvamurugan has gone to his house and took his knife and when the deceased coming to Umayalpuram, near Pappa's house, on seeing him, the accused stabbed the deceased and caused his death. It is a chain of event which has been clearly established by the prosecution without any break. There is no reason for P.W-1, P.W-2 and P.W-3, who are also related to the accused by blood to fix him falsely in the case of murder. Admittedly, the witnesses have state that there is no grudge or enmity with the accused and they were cordial. While so, the evidence of P.W-1, P.W-2 and P.W-3, who are eyewitnesses, were naturally deposed upon the incident cannot be discarded.

5. Heard both sides and having considered the rival submissions, this Court finds that the law has been set into motion by P.W-1 through her statement marked as Ex.P1.



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6. The statement-Ex.P1, clearly discloses what happened on the day of occurrence and the overtact of the accused. This statement has been recorded by P.W-18, the Special Sub Inspector of Police and based on this statement FIR, Ex.P8 came to be registered at about 16.30 hours. The body of the deceased Muneeswaran been taken to Government Hospital Headquarters at Ramanathapuram for postmortem. The postmortem certificate (Ex.P7) indicates that laceration of lower aspect of left chest 20 cm from back of neck laceration on the left thigh 15cmx15cmx5cm with cut injury of muscle up to bone. The witnesses to the occurrence have stated that the accused took knife from his hip and attacked the deceased in the left thigh and left chest. This corroborates with the injuries found in the body of the deceased Muneeswaran. The presence of P.W-1, P.W-2 and P.W-3 at the time of occurrence not been impeached in the cross-examination. Merely because they are related to the deceased, their evidence cannot be discarded or doubted, more so, when the accused also related by blood. The point which this Court take for consideration is that whether the accused has murdered Muneeswaran with intention or



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knowledge to cause death. From the evidence of prosecution, particularly, from the evidence of P.W-15, we find that just before the occurrence, there was some petty quarrel in which the accused involved. Therefore, the deceased being an elderly person and the paternal uncle of the accused has interfered and prevented the quarrel. After that the accused has gone to the house of Muneeswaran. But this previous occurrence is not at the place of occurrence but elsewhere. As far as the prosecution witnesses and the charge only indicates that Mariappan, who had been taking rehabilitation treatment after being addicted to drink been questioned by the accused and that has been objected by the deceased. In the circumstances, provocation without any premeditation, the accused had attacked the deceased with the knife. He never had the intention to cause death but it was in a fit of anger in a quarrel between the family members that too in a good intention being frustrated by the conduct of Mariappan, the brother-in-law of the accused.

7. Cumulative assessment of the witnesses, this Court finds that it is case of culpable homicide not amounting to murder and therefore, the conviction under Section 302 IPC is modified into Section 304(ii) IPC.



CRL.A(MD)No.621 of 2019

WEB COPY

Life Imprisonment is modified and reduced to seven years Rigorous Imprisonment with a fine of Rs.10,000/- in default, to undergo six months Rigorous Imprisonment. The period of sentence already undergone by the accused/appellant shall be set off under Section 428 Cr.P.C., as against the substantive sentence. The respondent police shall secure the accused and commit him to prison to undergo the remaining period of sentence.

8. With the above modification, this Criminal Appeal is partly allowed.

[G.J.,J.] & [K.K.R.K.,J.]
14.02.2023

Index: Yes/No
Internet: Yes/No
NCC : Yes/No
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CRL.A(MD)No.621 of 2019

To

1.The Principal District Judge,
Ramanathapuram.

2.The Inspector of Police,
Mandapam Police Station,
Ramanathapuram District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CRL.A(MD)No.621 of 2019



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CRL.A(MD)No.621 of 2019

**DR.G.JAYACHANDRAN, J.
and
K.K.RAMAKRISHNAN, J.**

PJL

CRL.A.(MD)No.621 of 2019

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