



Crl. A(MD)No.607 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 24.01.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HON'BLE MR JUSTICE SUNDER MOHAN

Crl. A(MD)No.607 of 2019

Marimuthu

: Appellant

Vs.

State rep. by
The Inspector of Police,
Vilathikulam Police Station,
Tuticorin District.
(In Crime No.120 of 2014).

: Respondent

PRAYER: Criminal Appeal is filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the judgment dated 02.12.2019 made in S.C.No.254 of 2015 on the file of the I Additional District and Sessions Court, Tuticorin.

For Appellant

: Mr.C.Mayilvahan Rajendran

For Respondent

: Mr.S.Ravi
Additional Public Prosecutor



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JUDGMENT

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

The appeal filed by the sole accused, who was found guilty for an offence under Section 302 of IPC.

2. The case of the prosecution is that on 28.04.2014 at about 10.30 hours, the deceased, who was mentally ill, had been peeping into the house of the accused and watching the wife of the accused taking bath which has provoked the accused and attacked the deceased with iron rod (M.O.1) and caused his death. The occurrence was witnessed by P.W.2 (Minor.Velmurugan) aged about 12 years, who informed the mother of the deceased (P.W.1). P.W.1, thereafter, went to the police station and gave a complaint and the same was marked as Ex.P1. Pursuant to the complaint, FIR was registered for the offence under Section 302 IPC in Cr.No.120 of 2014.



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(i) The investigation was taken up by the Investigating Officer and pursuant to the investigation, on 29.04.2014 at about 13.00 hours the accused was arrested and in the presence of the Village Administrative Officer, the accused gave a confession statement leading to recovery of weapon used for attacking the deceased and also blood stained cloths. The said Material Objects were recovered under the mahazar. After collecting the evidence and recording the statement of the witnesses, final report was filed along with the Observation Mahazar, Postmortem Report and Forensic Reports.

(ii) The learned Judicial Magistrate, Vilathikulam, taking note of the fact that the offence is exclusively triable by the Court of Sessions, committed the case to the District and Sessions Court, Tuticorin after furnishing the copies of documents relied by the prosecution. The learned trial Judge framed the charges under Section 302 IPC and 506(ii) IPC against the accused. The accused denied the charges and claimed to be tried.



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3. Accordingly, to prove the charges, the prosecution has examined 19 witnesses, marked 20 Exhibits and 8 Material Objects. Incriminating evidence against the accused was put to him under Section 313 Cr.P.C., and opportunity was given to him to marshal evidence on his behalf. D.W.1 Tmt.Kalpana was examined on the side of the accused and Ex.D1 was marked.

4. The trial Court, on appreciating the evidence let in by the prosecution and response of the accused to the incriminating evidence against him, arrived at a conclusion that the accused is guilty of offence under Section 302 IPC and acquitted him from the charge under Section 506(ii) IPC for want of evidence. The trial Court has convicted and sentenced the accused as under:

Offence under Section	Conviction and Sentence
302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for one year.



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5. The said judgment of conviction is challenged in this appeal on the ground that the case of the prosecution is highly improbable and P.W.2-minor boy might not have witnessed the occurrence since his presence in the school on the date and time of occurrence been proved by the accused by examining the Head Master of the school as D.W.1 and marked the attendance register Ex.D1.

6. The learned counsel appearing for the appellant would contend that P.W.1 and P.W.6 are only hearsay witnesses and they reached the scene of occurrence on hearing the P.W.2, who alleged to have witnessed the occurrence. Since the presence of P.W.2 itself is highly doubtful consequential evidence of P.W.1 and P.W.6 has to be ignored.

7. The learned counsel for the appellant further submits that postmortem report marked as Ex.P3 indicates that scalds injuries all over the body and there is no possible explanation by the prosecution, how the deceased sustained this scalds injuries. The external injuries noticed by the



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postmortem doctor does not have a corresponding internal injuries. Therefore, the cause of death as found in the postmortem report Ex.P3 is doubtful.

8. Learned counsel for the appellant further submitted that the alleged confession statement and recovery of Material Objects M.O.6 to 8 not been substantially proved through the independent witnesses. More particularly, P.W.11 the Village Administrative Officer, who is signatory to the Observation Mahazar, confession statement and recovery mahazar, has not supported the case of the prosecution and he was treated as hostile witness. For the above said reason, the learned counsel for the appellant would submit that the trial Court judgment suffers with serious infirmity and therefore, has to be set aside.

9. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the evidence of P.W.2 is quite natural and he has explained his presence in the scene of occurrence in the



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chief examination, the contra evidence let in by D.W.1 and Ex.D1 attendance register need to be ignored.

10. Learned Additional Public Prosecutor contended that on the face of Ex.D1, improbablise the case of the defence since for the entire month, the attendance register does not indicate even one absentee and it is suggested to the D.W.1 that his school is getting aid from the Government so to ensure grant of aid attendance is marked to all the students entrolled whether they attended the school or not.

11. As far as the evidence of P.W.1 and P.W.6, the learned Additional Public Prosecutor submitted that they were present nearby the scene of occurrence and they have rushed to the scene soon after they heard from P.W.2 about the murderous attack. P.W.1 has deposed that she saw the accused and when she tried to prevent the accused causing injury to her son she tried to go near him but the accused threatened her with dire consequences and thereafter, ran away. Similarly P.W.6 the other eye witness also had deposed that she saw the occurrence. Hence, the learned



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Additional Public Prosecutor submitted that even if evidence of P.W.2 is not wholly reliable, evidence of P.W.1 and P.W.6 suffice to hold the accused guilty of committing murder.

12. Heard the learned counsel appearing on either side and perused the materials available on record.

13. P.W.1 is the first informant who set the criminal law into motion. According to her complaint, at the time of occurrence, she was in the field of Marimuthu engaged in burning wood coal. At the time, P.W.2-Minor Velmurugan came and informed about the incident. Then she rushed to the place of occurrence and tried to save her son but the accused after causing multiple injury ran away with iron rod.

14. Even in the complaint, P.W.1 has stated about the previous enmity between her son (deceased) and the accused. It is stated that 6 months prior to the incident, her son was peeping the bath room of the accused, where the accused's wife was taking bath. When the accused tried



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to attack her son, her son escaped. Taking grudge over it, the accused has attacked her son.

15. Before the Court, P.W.1 has almost reiterated the content of her complaint Ex.P1. In the cross-examination, she admits that in the field there about 20 workers along with her, but only she and her sister came to the spot after hearing the P.W.2 about the incident.

16. She has deposed that when she went to the spot she saw her son bleeding and when she reached the place her son was lying on supine position face towards the west. This would clearly show that P.W.1 has reached the spot only after her son has lost his breath and the probability of seeing the accused attacking her son is remote.

17. Likewise, P.W.6 the sister of P.W.1 also has reached the scene of occurrence only after the death of the deceased and not before that. That is a reason why, P.W.6 is not certain about the seat of injury caused by the accused. While perusing the postmortem report marked as Ex.P3, this



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Court finds that the injuries which does not correlate with the evidence of P.W.1 and P.W.6 or P.W.2. The prosecution is silent about the scalds injuries found over the face, anterior chest wall, upper limbs and lower limbs.

18. The explanation given by the postmorem doctor examined as P.W.10 regarding the scalds injuries are not convincing since it is contrary to the explanation given by Modi's in its Medical Jurisprudence and Toxicology regarding the scalds injuries. The cumulative assessment of the evidence, this Court finds that the presence of P.W.2 in the scene of occurrence is highly doubtful in view of the evidence of D.W.1 and Ex.D1. His presence at the scene of occurrence at 10.30 a.m., is disproved through the evidence given by the headmaster of the school and the attendance register marked as Ex.D1.

19. The testimony of P.W.1 and P.W.6 are equally doubtful since the overtact of the accused spoken by them in the testimony does not correspond to the injuries found on the body of the deceased. The case of the prosecution regarding confession and recovery of incriminating material



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such as blood stained cloth and iron rod not been supported by their own witnesses particularly, the Village Administrative Officer, who was examined as P.W.11 but turned hostile.

20. For the above reasons, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellant/accused, by the learned I Additional District and Sessions Court, Tuticorin, made in S.C.No.254 of 2015, dated 02.12.2019, is set aside and the appellant/accused is acquitted of all the charges. The fine amount, if any, paid by him, shall be refunded to him.

[G.J., J.] & [S.M., J.]
24.01.2023

NCC : Yes
Index : Yes/No
Internet : Yes
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To

- 1.The I Additional District and Sessions Court,
Tuticorin.
- 2.The Inspector of Police,
Vilathikulam Police Station,
Tuticorin District.
- 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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