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Crl.A.No.100 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 19.09.2024

ORDERS DELIVERED ON: 23.10.2024

CORAM

THE HON'BLE MRS.JUSTICE S.M.SUBRAMANIAM

AND

THE HON'BLE MRS.JUSTICE N.MALA

Crl.A.No.100 of 2022

Mohan @ Oomaiyan

... Petitioner

VS.

The State by Inspector of Police,
Ammamet Police Station,
Salem District,
Crime No.842 of 2017.

... Respondent

Prayer: Criminal Appeal is filed under Section 374(2) of CrI.P.C., to admit the appeal and set aside the conviction and sentence imposed on the appellant by the Judgment dated 2.07.2021 passed in S.C.No.248 of 2018 on the file of the III Additional District and Sessions Judge, Salem by allowing the present Criminal Appeal.

For Appellant : Ms.D.Jeevitha for Mr.R.Nalliyappan

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor

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Crl.A.No.10

J U D G M E N T

(Order of the Court was made by N.MALA,J.)

This Criminal Appeal is filed to admit the appeal and set aside the conviction and sentence imposed on the appellant by the Judgment dated 2.07.2021 passed in S.C.No.248 of 2018 on the file of the III Additional District and Sessions Judge, Salem by allowing the present Criminal Appeal.

2.The accused in Sessions case No.248 of 2018 before the III Additional District Judge and Sessions Judge, Salem, is the appellant. The appellant was charged for offence punishable under Section 302 IPC on the allegations that on 25.12.2007 at about 05.00 p.m. the accused out of professional rivalry and with intention to cause death stabbed the victim Selvam, with a 'Soora kathi' in the veranda of the Municipality School Noon Meal Centre at Athiselvam Street, Ammapet. After elaborate trial, the learned District Sessions Judge finding the accused guilty of the offence under Section 302 IPC, convicted and sentenced him to undergo life imprisonment alongwith fine of Rs.5,000/- in default of payment of fine, six months Rigorous Imprisonment under Section 235 (2) Cr.P.C.



Crl.A.No.10

WEB COPY

3.The prosecution case in brief is as follows:

The deceased Selvam was the son of the defacto complainant, Chinnappan, who was examined as PW1. The deceased was married to Sagunthala, PW5 and was living with her at Kondalampatty. The deceased was doing masonry work for a living. The accused was also a mason. The accused felt that the deceased Selvam was hi-jacking his clients and therefore he developed animosity against him. The accused due to professional rivalry threatened the deceased that he would kill him, if he interfered with his work. As the rift between the two deepened, the accused decided to murder the deceased at appropriate time. On 25.12.2017, when the accused was in Mannar Palayam Wine Shop, the deceased bought a brandy bottle and went off. The accused seeing that the deceased was alone and in drunken state, decided that it was an appropriate time to finish the deceased. The accused went to his home brought a 'Soora kathi' and hid it in his hip. The accused searched for the deceased and found him lying in the veranda of the Municipality School Noon Meal Centre at Athiselvam Street, Ammapet. The accused with an intention to cause death forcibly stabbed the deceased, by uttering “இத்தோட செத்து போடா நாயே”. On the next day (i.e.) on 26.12.2017 at 06.00 a.m., the neighbour, of the deceased's father informed him that his son was



found dead near Sengunthar Thirumana Mandapam in a Municipality School Noon Meal Centre, veranda. The father of the deceased, thereafter lodged a written complaint (Ex.P1), with the Ammapettai Police Station, Salem.

4.PW9, the then Sub Inspector of Police, registered the written complaint and filed the FIR, Ex.P5. PW9 informed the Inspector of Police, PW17, about Crime No.842/17. PW17 took up the case for investigation. PW17 visited the scene of crime on 26.12.2017 at 09.15 a.m. along with Ratinam (PW7) and one Devendiran. PW17 prepared the rough sketch (Ex.P19) and the observation Mahazar (Ex.P2). He conducted inquest over the dead body of the deceased Selvam. He examined witnesses Selvam, Ravi (PW6) and others. He seized from the scene of crime blood stained earth (M.O.1) and earth sample (M.O.2) under Mahazar (Ex.P8). He also seized the cycle under Ex.P9 Mahazar. On the basis of secret information received by him, he apprehended the accused on 27.12.2017 at 6.30 a.m. in the presence of witnesses. On the basis of the confession of the accused, PW17 recovered the cycle token, a knife, blood stained lungi and shirt which were used by the accused at the time of the occurrence in a Mahazar in the presence of the witnesses. Thereafter the cycle from Anbu Cycle stand was recovered under Mahazar. PW17 sent the recovered properties along with form 19 to the concerned Court. He recorded the statements of the witnesses and took steps for chemical examination of articles recovered by him as per Ex.P23.



PW17 thereafter entrusted the file to PW18 for further investigation.

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5.PW18, Inspector Paul Pandey, visited the scene of Crime, and found that the same tallied with the observation Mahazar prepared by PW17. He examined Arulmozhi (PW11), the Head Mistress of the School, Sekhar (PW14), the employee in Anbu Cycle stand, and Ramesh (PW13), Head Constable in Ammapettai Police Station and recorded their statements. The register of Cycle stand was sent to Court in Form 19 by PW18. PW18 also recorded the statements of witnesses Dr.Natrajan (PW12) Government Hospital, Salem and Dr. Karthick, Government Hospital, Salem (PW15). The Inspector took steps to send the recovered properties for chemical examination. He examined the forensic expert Tmt.Geetha and got the report under Ex.P24. PW18 laid the charge-sheet against the accused on 25.01.2018.

6.Dr.Karthick, PW15, conducted the Post mortem on the body of the deceased Selvam. He found (1) Stab injury at about 4 x 1 cartilage deep noted over outer aspect of left lower chest, (2) Another stab injury at about 3 x 0.5 muscle deep noted over back of left abdomen. The margin of both the above injuries were regular and both ends were sharp. On internal examination he found that the scalp, cranial vault were intact. The brain was pale in colour. The neck structure was normal and the hyoid bone intact.



The thorax contained 1.5 litre fluid with blood clot. The ribs were intact. The heart was found with vertical stab injury at about 3 x 0.5 x 0.5 c.m. over lower aspect of left ventricle and the chambers were found empty. The pericardial cavity contained 250 ml of fluid blood with clot. The lungs had a vertical stab injury at about 3.5 x 0.5 x 0.5 c.m. over upper aspect of lower lobe of left lung. The right lung was normal. The stomach contained 150 ml of brown colour fluid with no specific odour. The small intestine contained 20 ml of bile stained fluid. The liver, spleen and both kidneys were found normal. The kidney bladder was found empty and the pelvish and spinal column were intact. The viscera was collected for chemical examination. The Doctor opined that the deceased would have died 12 to 24 hours prior to postmortem. PW15 filed the postmortem report, marked as Ex.P13 and opined that the deceased died due to the impact of injury (1) and haemorrhage due to stab injury and corresponding internal injuries.

7.The learned Sessions Judge examined the appellant on the incriminating circumstances appearing against him but the accused denied his involvement in the crime. The accused did not examine any witness on his side. On a consideration of the materials placed before him, the learned Sessions Judge found the accused guilty under Section 302 IPC, convicted and sentenced him as mentioned above.



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8.The learned counsel for the appellant assailed the Judgment of the Sessions Court on the grounds inter alia that the the Sessions Court failed to note that the motive for the crime was not sufficiently established and the evidence in this behalf was shaky and loose, the alleged eye witness did not state about the heinous crime to any one after the occurrence, but stated about the alleged occurrence before the respondent Police only on 26.12.2017 and hence, the same creates suspicion on the prosecution case. In any event the prosecution had miserably failed to establish its case satisfactorily and beyond doubt and therefore, the Judgment under appeal deserved to be set aside.

9.The learned Additional Public Prosecutor submitted that the Sessions Court had properly appreciated the entire evidence on record and rightly concluded that the accused was guilty of the offence under Section 302 IPC and therefore no interference was called for by this Court.

10.We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor and we have perused the materials on record.

11.PW1, the father of the deceased in his evidence clearly stated that his son



Crl.A.No.10

informed him that the accused threatened to kill him because of professional rivalry.

The said statement of PW1 is also reiterated by PW5, wife of the deceased and PW6, eye witness to the occurrence. Even the other eye witness to the occurrence who was not examined, in his 164 statement spoke about the motive for the crime. The statements of the said witnesses is cogent and consistent and hence it is clear that the prosecution has established that there was a motive for the crime and the said motive was professional rivalry.

12.The evidence with regard to the occurrence is afforded by PW6, the eye witness. PW6 stated that he was acquainted with both the deceased Selvam as well as the accused. PW6 further stated that the deceased Selvam a couple of years back mentioned to him and Selvam Aasari that the accused threatened to kill him due to professional rivalry. PW6 also stated that he and Selvam Aasari advised the deceased to be careful in his interactions with the accused. PW6 thereafter stated that on the fateful day in the evening around 06.00 p.m. PW6 and Selvam Aasari went to a tea shop near the Kalyanamandapam where they saw the deceased Selvam lying down in the Municipality School Noon Meal Centre. At that time the accused came with a knife and stabbed deceased Selvam in the region between the chest and the ribs by uttering (நீ எனக்கு தொழில் போட்டியாக வருகிறாயா). PW6 further stated that out of fear he went away from the place and later heard that the deceased Selvam died and the next



day he was enquired by the Police and he narrated the occurrence to the Police.

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13. The learned counsel for the appellant submitted that from the evidence of PW6 it was clear that PW6 did not inform about the crime to the Police immediately after the occurrence and therefore a suspicion arose on the presence of PW6 in the scene of occurrence. The fact that PW6 did not report about the crime to any one, in our view, does not affect the credibility of his evidence nor does it raise a doubt on his presence in the scene of crime. PW6 stated that he went away out of fear. Merely because PW6 did not report about the occurrence on the same day to the Police or to any body else cannot result in discarding his evidence or suspecting his presence in the scene of occurrence. It could be relevant to refer here the Judgment of the Hon'ble Supreme Court in the case of Lahu Kamlakar Patil and Another Vs. State of Maharashtra reported in (2013) 6 SCC 417, wherein the Hon'ble Supreme Court held as follows:

“26. From the aforesaid pronouncements, it is vivid that witnesses to certain crimes may run away from the scene and may also leave the place due to fear and if there is any delay in their examination, the testimony should not be discarded. That apart, a court has to keep in mind that different witnesses react differently under different situations. Some witnesses get a shock, some become



perplexed, some start wailing and some run away from the scene and yet some who have the courage and conviction come forward either to lodge an FIR or get themselves examined immediately. Thus, it differs from individuals to individuals. There cannot be uniformity in human reaction. While the said principle has to be kept in mind, it is also to be borne in mind that if the conduct of the witness is so unnatural and is not in accord with acceptable human behaviour allowing variations, then his testimony becomes questionable and is likely to be discarded.”

14.It is to be seen if the evidence of PW6, eye witness is reliable and credible. The evidence of PW6 is corroborated by the 164 statement recorded by PW16 under Ex.P16 Statement of the other eye witness viz., Selvam. Therefore, we find no reason to doubt the presence of Ravi, PW6 in the scene of crime. The postmortem certificate of PW15, Doctor, who conducted the postmortem corroborates the evidence of PW6. PW15 in his evidence noted the internal and external injuries found in the body of the deceased in postmortem examination and issued the postmortem certificate Ex.P13. PW15 opined that the deceased died due to the impact of injury (1) and haemorrhage due to stab injury and corresponding internal injuries at the time of death. PW6, eye witness and Selvam, the other eye witness in his 164 statement marked as Ex.P16



clearly stated that the accused had stabbed the deceased with a knife thus, the above said statements of the eye witnesses is supported by the medical evidence. Even the knife M.O.8 used in the crime by the accused was seized on the information furnished by the accused in his confession statement to PW17 in the presence of PW10, the witnesses to the seizure mahazar. M.O.8 was sent for chemical examination and it was found to contain human blood. This in our view is another factor in support of the evidence of PW6, the eye witness. The evidence of PW6 is natural, reliable and corroborated by other witnesses and evidence and therefore, we find no reason to doubt his presence in the scene of crime or discard his evidence.

15.The question that next arises is whether the conviction can be sustained on the testimony evidence of solitary eye witness. In the case of Vadivelu Thevar Vs. State of Madras reported in 1957 SCR 981 it was held as follows:

“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 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 [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-recognised 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



WEB COPY



Crl.A.No.10

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.”

16.In the present case as already stated the testimony of the solitary eye witness is found to be reliable and trust worthy. The evidence of the solitary eye witness is natural and does not suffer from any serious contradictions. As the presence of the eye witness has been established and his testimony is also found to be natural, disinterested and trust worthy, We find no reasons to reject the case of the prosecution. It is trite that when the evidence of the eye witness is found to be reliable, not giving rise to any doubt or suspicion, the Court can rely on the statement of such eye witness for accepting the case of the prosecution. Useful reference in this regard is made to the Judgment of the Hon'ble Supreme Court in 2012 (8) SCC 260.

17.For all the reasons we find no merit in the appeal and the same is dismissed.

No costs.



Crl.A.No.10

S.M.S., J. N.M., J.

23.10.2024

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Index : yes/no

Internet : yes/no

Speaking order : Non-speaking order
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To

1.The Inspector of Police,
Ammamet Police Station,
Salem District

2.The III Additional District and Sessions Judge,
Salem.

3.The Section Officer,
VR Section,
High Court, Madras.

S.M.SUBRAMANIAM, J.

and

N.MALA, J.

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Crl.A.No.100 of 2022

PRE-DELIVERY Judgment IN
Crl.A.No.100 of 2022

23.10.2024