



CrL.A.No.353 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

CrL.A.No.353 of 2019

and

CrL.M.P.No.2177 of 2023

Sathishkumar

...Appellant/Single Accused

VS.

State represented by
The Inspector of Police,
Varapalayam Police Station
Erode District.
Crime No.307 of 2017

...Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, 1973, to set aside the Judgment and Order passed on the appellant/accused by III Additional District and Sessions Judge, Erode at Gobichettipalayam made in S.C.No.54 of 2018 dated 18.09.2018.



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For Appellant : Mr.C.Prabakaran

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

JUDGMENT

(Order of the Court was made by **SUNDER MOHAN,J.**)

This Criminal Appeal has been filed against the Judgment and order passed on the sole accused/appellant by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam, made in S.C.No.54 of 2018 dated 18.09.2018.

2 (i) It is the case of the prosecution that the appellant was the grand-son of the maternal uncle of the deceased; that they had property disputes since a particular property measuring ten acres in Survey No.143/1 in vemandampalayam village was settled in favour of the deceased; that the appellant was aggrieved by the said fact and there were frequent quarrels between the deceased and the appellant with regard to the said property; that on account of the said enmity on the night intervening 19th and 20th November 2017 at about 12.30 a.m., the accused attacked the deceased and his son [P.W.2] then aged 10 years, who was sleeping in the veranda



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[திண்ணை] of the house; that the appellant had cut the deceased indiscriminately with a knife, as a result of which the deceased succumbed to the injuries immediately; that the appellant attacked P.W.2 who had also suffered grievous injuries and was treated in the hospital; and that P.W.1 - wife of the deceased and mother of P.W.2, witnessed the occurrence.

(ii) P.W.1 – wife of the deceased, lodged a complaint to the respondent police at 4.00 a.m., on 20.11.2017, which was registered in Crime No.307 of 2017 under Sections 302, 307 and 506 (ii) of the IPC by P.W.25 – Special Sub Inspector of Police. The express FIR was marked as Ex.P24. P.W.26 – Inspector of Police, took up the investigation. He went to the scene of the occurrence and prepared Observation Mahazar [Ex.P3] and Rough Sketch [Ex.P25]. Then, he conducted an inquest in the presence of Panchayadars and prepared the Inquest Report [Ex.P2]. He seized a plastic mat and a bloodstained pillow in the presence of the witnesses, under Seizure Mahazar [Ex.P4]. He arrested the accused on 20.11.2017 at about 3.00 p.m., and on his confession, he seized a TVS-50 bearing Registration



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No.TN 40 0772 in the presence of the witnesses and seized the bill hook [அருவாள்] [M.O.1] under Seizure Mahazar [Ex.P6]. He also seized the bloodstained dress materials [M.O.6 and M.O.7] of the appellant under Seizure Mahazar [Ex.P8]. Thereafter, he examined other witnesses, obtained reports from the Forensic Science Experts and handed over the investigation to P.W.27 – Inspector of Police. P.W.27, after examination of the doctors and scientific experts, filed the Final Report for the offences under Sections 302, 307 and 506 (ii) of the IPC before the learned Judicial Magistrate – I, Gobichettipalayam.

(iii) On the appearance of the sole accused/appellant, the provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.54 of 2018 and was made over to the learned III Additional District and Sessions Judge, Erode, Gobichettipalayam, for trial. The trial Court framed charges u/s.302, 307 and 506 (ii) of the IPC as against the sole accused/appellant, and when questioned, the sole accused, pleaded 'not guilty'.



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(iv) To prove the case, the prosecution examined 27 witnesses as P.W.1 to P.W.27, marked 31 exhibits as Exs.P1 to P31 and material objects as M.O.1 to M.O.13. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. He did not examine any witness or mark any document.

(v) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the accused guilty of the offences under Sections 302, 307 and 506 (ii) of the IPC and sentenced him as follows:

<i>Offence under IPC</i>	<i>Sentence imposed</i>
Section 302	To undergo life imprisonment with fine of Rs.5,000/-, in default, to undergo six months SI.
Section 307	To undergo ten years RI with fine of Rs.3,000/-, in default, to undergo three months SI.
Section 506 (ii)	To undergo three years RI with a fine of Rs.2,000/-, in default, to undergo two years SI.
The above sentences were directed to run concurrently	

Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.



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3. Heard, Mr.C.Prabakaran learned counsel for the appellant and Mr.E.Raj Thilak, the learned Additional Public Prosecutor for the respondent/State.

4. The learned counsel for the appellant submitted that P.W.1 could not have been an eye witness to the occurrence; that P.W.2 had stated before the doctor who first treated him that an "unknown" person attacked him, which is contrary to the prosecution case; that the police had not acted on the intimation given by the hospital authorities and had obtained a detailed statement from P.W.1, which would make it clear that there was a deliberation and P.W.1, who had a grudge against the appellant, had falsely implicated him; and hence, he prayed for acquittal of the appellant.

5. The learned Additional Public Prosecutor, *per contra*, submitted that P.W.1 and P.W.2 - wife and son of the deceased had no reason to falsely implicate the appellant; that nothing was elicited in the cross-examination to discredit the evidence of P.W.2; and that the appellant



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was rightly convicted by the Trial Court and prayed for dismissal of the appeal.

6. We have carefully considered the rival submissions on either side and perused the materials available on record.

7. As stated earlier, the prosecution had examined 27 witnesses. P.W.1 is the wife of the deceased and an eye witness. P.W.2 is the son of the deceased and an injured eye witness. P.W.3 is the mother of the deceased and speaks about the property dispute and the motive. She had also seen the accused running with a bill hook [அருவாள்]. P.W.4 is a neighbour who came to the scene of the occurrence upon hearing the noise and spoke about his informing the others about the incident. P.W.5 is a neighbour who speaks about the dispute between the two families with regard to the property and also about going to the place of occurrence on hearing the commotion and sending P.W.2 for treatment in 108-Ambulance. P.W.6 is the brother of P.W.1 who speaks about the property dispute and takes P.W.2 to the second hospital, namely Kovai Medical Centre and



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Hospital [KMCH], for treatment. P.W.7 - the sister of P.W.1 and speaks about the motive. P.W.8 is a neighbour who had taken P.W.2 through an ambulance to Gobichettipalayam Government Hospital. P.W.9 is an Observation Mahazar witness. P.W.10 is a Village Administrative Officer who witnessed the arrest and confession of the accused. P.W.11 is an ambulance driver who took P.W.2 to the hospital. P.W.12 is the ambulance driver who took the deceased to the hospital. P.W.13 is the Village Administrative Officer who speaks about the patta details of the disputed property. P.W.14 is a photographer. P.W.15 is the Sub Register through whom the Settlement Deed [Ex.P11] is in favour of the deceased. P.W.16 is the Assistant Executive Engineer of the Tamil Nadu Electricity Board, who speaks about the fact that there was an electricity connection in the house. P.W.17 is the Doctor of the Gobichettipalayam Government Hospital who made entries in the accident register [Ex.P13] pertaining to P.W.2. P.W.18 and P.W.19 are the Forensic Science Experts. P.W.20 was a doctor who treated P.W.2 at Kovai Medical Centre and Hospital and had issued an accident register [Ex.P19]. P.W.21 is a post-mortem doctor. P.W.22 to P.W.24 are constables who assisted the investigation. P.W.25 is the Sub



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Inspector of Police, who registered the FIR. P.W.26 and P.W.27 are the Investigating Officers.

8. P.W.21 had issued the post-mortem certificate [Ex.P21] and the final opinion [Ex.P22]. He had noted the following injuries to the deceased:

“External Injuries: Horizontally placed cut injury in front of neck and both sides of neck of size 19cm x 3 x bone deep.”

He had opined in Ex.P22 that “the deceased could have died of cut injury – neck. Nothing significant has been elicited in the cross examination of the doctor to disbelieve his version. Thus, we are of the view that the prosecution has established that the deceased suffered a homicidal death.

9. It is the prosecution case that P.W.2 was also injured in the occurrence. P.W.2 was first taken to the Government Hospital Gobichettipalayam. He was first treated by P.W.17. In accident register entries [Ex.P13], he had noted the following injuries on P.W.2.

“1. A laceration just below right ear about 15 x 2 cm bone depth.

2. Puncture about 1 cm over left eye brow.”



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Thereafter, he was taken to Kovai Medical Centre and Hospital, where he was treated by P.W.20. P.W.20 had noted the following injuries and had opined that it was a grievous injury.

*“Assault – Head Injury – Right Ear Bleed,
Right Occipital Laceration, CT – Displayed Fracture
Right Occipital Extension to Petromastoid Segment of
Right Temp Adjacent Pneumocephalus Haemotympanum
– Grievous Injury.”*

Further, in the wound certificate, he also opined that the injuries suffered by P.W.2 were grievous in nature. Those injuries corroborate his version that he was attacked by the appellant.

10. P.W.1's evidence is clear and cogent. According to her, the deceased and P.W.2 were sleeping outside the house in the veranda, and when she heard the dogs barking, she saw the accused standing with a bill hook [அருவாள்] near her husband, and she saw him attacking her husband on the neck and P.W.2 on the head. Apart from making a general suggestion and questioning the witness relating to previous enmity, nothing has been elicited in the cross examination to discredit her evidence. The suggestion



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made by the defence is that P.W.1 had made a false complaint since she had a grudge against the appellant due to the property dispute. We are

convinced, based on a reading of evidence from P.W.1, that her version is reliable and there was no need for her to falsely implicate the appellant if a third party had been involved.

11. Similarly, the evidence of P.W.2, the injured child witness's evidence, is also cogent and convincing. Though a detailed cross examination was done, nothing has been elicited to discredit his testimony. Though the appellant was related to the deceased, it is seen that the family members, especially the child witness - P.W.2 had not seen him earlier. In fact, P.W.7 - the sister of the deceased had herself not seen the appellant earlier. This explains why, in the first accident register recorded by P.W.17, P.W.2 stated that he was attacked by an “unknown” person. The learned counsel for the appellant submitted that this is a vital contradiction. In our view, it is not so since P.W.2, who was a child aged 10 years at the time of the attack, stated in the cross examination that he had never seen the accused earlier. In any case, we are of the view that this contradiction would not



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affect the testimony of both P.W.1 and P.W.2, which are cogent and convincing. The other witness, namely P.W.3, who was sleeping inside the house and had come up on hearing the cry of her daughter-in-law, saw the accused with a bill hook running away from the scene of the occurrence. Her evidence has also not been discredited by the defence in spite of the cross examination. P.W.5, P.W.6 and P.W.7 speak about the prior enmity between the deceased and the appellant, and they corroborate the versions of P.W.1 and P.W.2. The evidence of P.W.12 and P.W.13 - the ambulance drivers corroborates the fact that the injured and the deceased were taken to the hospital from the house. We have already discussed the evidence of the doctor who had made entries in the accident registers in respect of P.W.2 and the post-mortem doctor. Their evidence corroborates the evidence of eye witnesses [P.W.1 and P.W.2].

12. Therefore, we are of the view that the prosecution had established its case beyond reasonable doubt through the evidence of P.W.1 and P.W.2 - eye witnesses of which one of them was seriously injured. As stated earlier,



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their evidence has been corroborated sufficiently in all aspects.

The prosecution has thus established its case beyond reasonable doubt, and we see no reason to interfere with the Judgement of the Trial Court. Hence, this Criminal Appeal is liable to be dismissed and accordingly, dismissed. The judgment dated 18.09.2018 made in S.C.No.54 of 2018 on the file of III Additional District and Sessions Judge, Erode, Gobichettipalayam, is hereby confirmed. Consequently, the connected miscellaneous petition is closed.

(M.S.R.,J)

(S.M.,J)

18.06.2024

Index : yes/no

Neutral citation : yes/no

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Copy to :

- 1.The III Additional District and Sessions Judge,
Erode,
Gobichettipalayam.



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2.The Inspector of Police,
Varapalayam Police Station
Erode District.

3.The Public Prosecutor,
High Court, Madras.

M.S.RAMESH,J.

and

SUNDER MOHAN,J.

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