



Crl.A.(MD)No.48 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
29.02.2024	19.03.2024

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

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1.Nellaiyappan, S/o.Lakshmanan
2.Bathirakali, S/o.Senaiyappillai

... Appellants/ A1 and A3

vs.

State Rep. by
The Inspector of Police,
Thattapparai Police Station,
Thoothukudi District.
(Crime No.67 / 2016)

... Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records in S.C.No.106 of 2017, on the file of the I Additional District and Sessions Court, Thoothukudi, Thoothukudi District, and set aside the judgment dated 11.11.2019 and acquit the appellants/accused of the charges.



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For Appellants

: Mr.N.Anandakumar
for Mr.Veilmuthu

For Respondent

: Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

JUDGMENT

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

This Criminal Appeal is preferred by the appellants against the judgment of conviction and sentence, dated 11.11.2019, made in S.C.No.106 of 2017, on the file of the I Additional District and Sessions Court, Thoothukudi, Thoothukudi District.

2. The respondent Police registered the case in Crime No.67 of 2016 under Sections 294(b), 323, 307, 302 and 506(ii) I.P.C. as against Nellaiyappan, S/o.Lakshmanan; Durkaiammal, W/o.Nellaiyappan; Siva Perumal, S/o.Nellaiyappan; and Bathirakali, S/o.Senaiyappillai, in connection with the homicidal death of one Muthulakshmi and for causing simple injuries to Muthusamy [P.W.1] and Ammal [P.W.2], who tried to save Muthulakshmi from the dreadful attack and for intimidating the injured witnesses of dire

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consequences and abusing them in obscene language. On completion of investigation, charges were framed under Section 302 I.P.C. as against A1 to A3 ; Section 324 I.P.C. as against A2 and A3; and Sections 506(ii) and 294(b) I.P.C. as against A1 to A3. The fourth accused Sivaperumal was held to be a juvenile in conflict with law and hence, the case against him was spilt up.

3. To prove the charges, the prosecution has examined 18 witnesses, marked 32 exhibits and 6 material objects. On the side of the defence, one Tmt.Megala, Village Administrative Officer was examined as D.W.1 and two documents were marked.

4. The case of the prosecution is that the daughter of the first accused Nellaiyappan was married to the son of the deceased Muthulakshmi. The first accused owed a sum of Rs.21,000/- to his son-in-law Muthukumar [P.W.5]. Since he did not pay that money, Muthulakshmi lamented about this to the third accused Bathirakali, who is the eldest son-in-law of Nellaiyappan. Infuriated by the fact that Muthulakshmi has insulted him by demanding money, which the first accused owed to his son-in-law, on 14.07.2016 at about 05.30 p.m., Nellaiyappan, his wife



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Durkaiammal along with their eldest son-in-law Bathirakali armed with weapon, went to the Public water tap, where the deceased Muthulakshmi was collecting water, abused her with obscene words, A1 attacked Muthulakshmi with Aruval on her head, Bathirakali (A3) attacked Muthulakshmi with stick. Both A1 and A3 abused her and told that she should not be let alive. Hearing the scream of Muthulakshmi, her sister Ammal [P.W.2] came to the spot to save her sister. Siva Perumal, the minor son of A1, attacked her on her head with stick. A2 Durakaiaimmal attacked Ammal [P.W.2] with stick on her left shoulder. On hearing the news, Muthusamy [P.W.1], the brother of Muthulakshmi and Ammal came to the spot. He was also attacked by Bathirakali (A3) and Siva Perumal, who was a juvenile in conflict with law, attacked Muthusamy with wooden stick on his shoulder. On hearing the scream of the injured persons, the Villagers rushed to the spot. On seeing the public, the assailants, Nellaiyappan, his wife Durkaiaimmal, and their son Siva Perumal and son-in-law Bathirakali after threatening fled. Since Siva Perumal was a juvenile in conflict with law, the case against him was spilt up to be tried by the Juvenile Justice Board.



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5. A2 was acquitted from all the charges. A1 and A3 also acquitted from all the charges, except the charge under Section 302 I.P.C. For the offence under Section 302 I.P.C., Nellaiyappan (A1) and Bathirakali (A3) were convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/- each, in default, to undergo one year rigorous imprisonment.

6. Nellaiyappan (A1) and Bathirakali (A3) preferred the Criminal Appeal challenging the judgment of conviction and sentence imposed on them. Pending appeal, the first appellant / Nellaiayppan (A1) died. Death Certificate produced by the learned counsel for the appellants indicating that Nellaiyappan died on 19.07.2021. Hence, the appeal against A1 shall stand abated.

7. The learned counsel appearing for the second appellant / third accused [Bathirakali] submitted that the motive attributed for the occurrence found to be false in view of the evidence given by the Village Administrative Officer, who was examined as D.W.1. The first accused do not have any agricultural land to pay the son of the deceased for ploughing the land using his tractor. P.W.1 to P.W.4 and P.W.6, who claim to be witnesses to the occurrence, are in fact, the



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brother, sister and close relatives of the deceased. They are interested witnesses and therefore, their testimony has to be viewed with suspicion.

8. The learned counsel further submitted that the complaint [Ex.P1] given by P.W.1 and attested by P.W.2 does not speak about the presence of P.W.3, P.W.4 and P.W.6 in the scene of occurrence. The testimony of P.W.1, who is one of the injured witnesses, does not tally with the medical evidence. The evidence of P.W.5 Muthukumar, the son of the deceased falsifies the evidence of P.W.1, since P.W.5 had deposed that at the time of occurrence, he was not in the scene of occurrence, he was loading cotton along with P.W.1 about one kilometre away from the scene of occurrence. Only on hearing the news, he went to the spot. The son of the deceased had an estranged marital relationship with the daughter of the first accused and there was a criminal complaint lodged by the daughter of the first accused against the son of the deceased. Therefore, to wreak vengeance, the accused were roped in the murder of Muthulakshmi.

9. The learned counsel further submitted that the contradiction between the evidence of P.W.1, P.W.2 and P.W.5 not been taken note by the trial Court for



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appropriate appreciation of evidence. The earliest complaint was received from P.W.6, but that complaint was suppressed, and with delay, the present F.I.R. has been registered after 15 hours of the occurrence, which throw doubt about the prosecution case. There is correction in the time regarding the receipt of the F.I.R. copy by the learned Judicial Magistrate. The delay in registering the F.I.R. and forwarding it to the learned Judicial Magistrate renders the case of prosecution unbelievable even at the inception.

10. The learned counsel representing for the second appellant further submitted that out of four accused, Siva Perumal, being a minor, been tried before the Juvenile Justice Board, A2 was acquitted by the trial Court for want of evidence. Among the remaining two accused, the prime accused namely, A1 died pending appeal. The second appellant, who is the third accused, is the remaining person, who suffers conviction. The overt act attributed to the second appellant would at the most attract only the offence under Section 323 I.P.C., for causing simple injury to Ammal [P.W.2].



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11. The learned counsel also submitted that the witnesses have not identified the weapon used by the second appellant / A3 nor there is material to show that he shared the common object to kill Muthulakshmi along with the first accused.

12. Per contra, the learned Additional Public Prosecutor submitted that all the four accused belonging to the same Village, had joined together and picked quarrel with Muthulakshmi, who was collecting water in the public tap. They used obscene and abusive words against Muthulakshmi. While the first accused Nellaiyappan was carrying Aruval, others were carrying Casuarina Stick. Muthusamy [P.W.1], one of the injured witnesses, specifically deposed before the trial Court that apart from causing deadly injury on Muthulakshmi, the second appellant / A3 [Bathirakali] attacked Ammal [P.W.2] with Casuarina Stick and when he tried to question that, the second appellant / A3 along with Siva Perumal [juvenile] attacked him over the shoulder and left hand. Similarly, P.W.2 had spoken about the overt act of the second appellant / A3 and the abusive language he used while causing injury to Muthulakshmi.



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13. The learned Additional Public Prosecutor further submitted that P.W.4 has spoken about the fact that the deceased Muthulakshmi had reminded Nellaiyappan [A1] through Bathirakali [A3] about Rs.21,000/- payable to Muthukumar [P.W.5], son of Muthulakshmi [deceased]. After some time, he had seen Nellaiyappan [A1] with Aruval, Bathirakali [A3], Siva Perumal [juvenile] and Durkaiammal [A2] with stick near Amman Kovil. Durkaiammal has scolded the deceased saying that because of her, her daughter was not able to join with her husband [Muthukumar]. Nellaiyappan [A1] had attacked Muthulakshmi on the head with Aruval. The second appellant [Bathirakali] hit Muthulakshmi on her head with wooden stick. P.W.5 is the son of the deceased and son-in-law of the first accused. The evidence of P.W.3 is corroborated by the evidence of P.W.4 regarding the reminder of due payable through A3 and after some time, the accused persons gathering with weapons. P.W.4 also deposed that the second appellant / A3 had attributed one injury on the head of the deceased using stick.

14. The learned Additional Public Prosecutor submitted that P.W.5 is the son of the deceased and also son-in-law of the first accused. He has spoken about Rs.21,000/- payable by his father-in-law [A1], for which, the deceased and her



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sister [P.W.2] reminded it through the second appellant / A3, who is the another son-in-law of A1. P.W.5 was not at the scene of occurrence. He came to the occurrence spot after hearing the news. In the cross examination, he had deposed that at the time of occurrence, he was one kilometre away, loading cotton along with P.W.1. However, the doctor attached to the Government Medical College Hospital, Thoothukudi, had given a wound certificate to Muthusamy [P.W.1], indicating that he sustained injury on the left shoulder and left forearm and the said injuries are simple in nature. P.W.1 claims that the injuries caused by the second appellant / A3 and others.

15. The learned Additional Public Prosecutor also submitted that Ammal [P.W.2] is another injured witness, who is also attributed overt act to the second appellant / A3 for causing injury on Muthulakshmi. While P.W.1 claims that he ran first to save his elder sister and got injured, P.W.2 says that she first ran to save her sister followed by his brother P.W.1. Either way, both have sustained injuries in the incident and their Accident Registers were marked as Exs.P13 and P11 respectively. The admission in the cross examination of P.W.5 though appears to have demolished the case of P.W.1, making doubt about his presence in the



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scene of occurrence, the injuries sustained by him and injuries sustained by P.W.2, another injured person, who had spoken about the presence of P.W.1, would clearly show that they were present in the scene of occurrence and had sustained simple injuries. The weapon used were recovered under Mahazar in the presence of Pitchai Kannan [P.W.7] and one Manickam [not examined], who is common relative for both the accused and the deceased. The statements of witnesses Muthusamy [P.W.1], Ammal [P.W.2] and Muthukumar [P.W.5] were recorded under Section 164 Cr.P.C. by the learned Judicial Magistrate [P.W.8] and their evidence and previous statement substantially been reiterated before the Court on oath and these witnesses have sustained in the cross examination.

16. Heard the learned counsels. Records perused.

17. The injury found on the body of the deceased is as below:-

"A split laceration of size 8 cms x 0.5 cm x bone deep seen centre of the top of head.

On dissection of scalp, skull and dura:- Forehead and entire scalp contused. A linear fracture of length 12 cms seen over the mid frontal bone. Sagittal and coronal sutures separated. Sub arachnoid



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haemorrhage seen over the entire left cerebrum. Sub dural haematoma of weight about 50 gms seen over the left cerebrum. A fracture of length 10 cms seen in the left middle cranial fossa."

18. From the evidence of Dr.Suirya Prathiba [P.W.12], Casualty Medical Officer, Thoothukudi, we also find that the first appellant / A1 [Nellaiyappan] was brought to the Hospital by his daughter Lakshmi for treating the injury he sustained. As per the Accident Register [Ex.P17], he had sustained a lacerated wound of size 2 x 0.5 x 0.5 c.m. on his right great finger and he has complained pain on his left thigh.

19. The learned counsel for the second appellant / A3 referring Ex.P17 and the evidence of P.W.12, submitted that one of the accused had sustained injury and the prosecution has not come up with any explanation as regard to the injury sustained by the first appellant / A1. The said injury cannot be brushed aside as simple and superficial without making a proper investigation about the cause of that injury. The suppression of the origin and genesis of the occurrence renders the case of prosecution totally unbelievable. For the said purpose, it is also



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pointed out that the F.I.R. in Crime No.67 of 2016, dated 15.07.2016, registered only at 08.30 a.m. for occurrence, which happened on the previous day at 17.30 hours. The learned Judicial Magistrate, who had received it, had made correction in time of receiving the F.I.R. copy. The corrected version indicates that learned Judicial Magistrate received it on 15.07.2016 at 02.30 p.m. in the Court. The prosecution has miserably failed to explain the delay in registering the F.I.R. and forwarding the same to the learned Judicial Magistrate. In this regard, Perumal [P.W.14], Head Constable attached to Thattaparai Police Station, had deposed that he received the F.I.R. copy on 15.07.2016 at 09.30 a.m. from the Inspector of Police and handed it over to the learned Judicial Magistrate No.I, got acknowledgment for that and gave it back to the Deputy Superintendent of Police. The Passport is marked as Ex.P22. In the Passport [Ex.P22], the time of receiving the F.I.R. copy is mentioned as 01.45 p.m. in the Court. Whereas, in the F.I.R. [Ex.P29], it is mentioned as 02.30 p.m.

20. The perusal of F.I.R., we find that there is no explanation in the column meant for the delay in reporting the complaint by the informant. The Investigating Officer, who was examined as P.W.18, admits that there is no



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explanation for the delay in registering the complaint. However, from the records we find that the injured Muthulakshmi with injuries got admitted in the Hospital at 07.30 p.m. as per Ex.P10. Ammal [P.W.2] got admitted at 07.20 p.m. as per Ex.P11 Accident Register. Muthusamy [P.W.1] got admitted at 07.25 p.m. as per Ex.P13 Accident Register. In the F.I.R., it is mentioned that on receipt of the intimation from the Hospital received at 05.30 a.m., E.Paul Isaac, Sub-Inspector of Police had gone to the Hospital and received the oral complaint between 06.15 a.m. and 07.15 a.m. and returned back to the Police Station and prepared the printed F.I.R. [Ex.P29] at 08.30 a.m. Therefore, there is no inordinate delay to suspect registration of the F.I.R. for the incident, which has brought to the notice of the Police only at 05.30 a.m. in the morning. Likewise, though there is some correction regarding receiving time of F.I.R. by the learned Judicial Magistrate, it is all within five to six hours from the time of registering the F.I.R.

21. Now, considering the overt act attributed to the second appellant, who was ranked as A3, and the opinion given by the postmortem doctor, who says that the deceased would appear to have died of blunt injuries over the head; a linear fracture of length 12 c.m. seen over the mid frontal bone; a fracture of length 10



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cms seen in the left middle cranial fossa; a contusion on the entire forehead and scalp; sub arachnoid haemorrhage seen over the entire left cerebrum; and sub dural haematoma of weight about 50 gms seen over the left cerebrum would go to show that the deceased been attacked on her head several times with blunt object namely, Casuarina Stick, which has been seen by the eyewitness used by the second appellant/A3 to attack Muthulakshmi, is sufficient to cause the death. There cannot be any doubt that the second appellant / A3 caused the said injury with intention to cause death.

22. Therefore, this Criminal Appeal is dismissed. The conviction and sentence imposed on the second appellant / A3 by the learned I Additional District and Sessions Judge, Thoothukudi, Thoothukudi District, in S.C.No.106 of 2017, dated 11.11.2019, stands confirmed.

23. In view of dismissal of this appeal, the bail bond executed by the second appellant / A3 shall stand cancelled. The second appellant / A3 shall surrender before the trial Court within 15 days from today, to undergo the



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remaining period of sentence. Failing which, the respondent Police shall secure him and commit him to prison to undergo the remaining period of sentence.

Index : Yes
NCC : Yes
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[G.J., J.] & [C.K., J.]
19.03.2024

To

- 1.The I Additional District Sessions Judge,
Thoothukudi, Thoothukudi District.
- 2.The Inspector of Police,
Thattapparai Police Station,
Thoothukudi District.
- 3.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
C.KUMARAPPAN, J.

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PRE-DELIVERY JUDGMENT MADE IN
Crl.A.(MD)No.48 of 2020

19.03.2024