



Crl.A.(MD)No.38 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
23.02.2024	08.03.2024

CORAM:

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

Crl.A.(MD)No.38 of 2020

1.G.Murugesan
2.M.Mahalakshmi

... Appellants/ A1 and A2

vs.

The State Rep. by
The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar District.
(Crime No.623 / 2012)

... Respondent / Complainant

PRAYER : Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the judgment in S.C.No.136 of 2013, on the file of the Additional District and Sessions Court, Srivilliputhur, Virudhunagar District, dated 26.11.2019, against the appellants/A1 and A2 and allow this appeal.



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For Appellants : Mr.I.Pinaygash

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

JUDGMENT

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

The appellants are brother and sister. They were tried in connection with the homicidal death of Mareeswaran, who is none other than the husband of the second appellant / A2 and brother-in-law of the first appellant / A1. The first appellant / A1 was charged for the offences under Sections 449 and 302 I.P.C. The second appellant / A2 was charged for the offences under Sections 342 and 302 read with Section 34 I.P.C.

2. To prove the charges, the prosecution examined 16 witnesses, marked 11 exhibits and 6 material objects.

3. The trial Court, by judgment dated 26.11.2019, found the appellants/accused guilty and convicted and sentenced them as below:-



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Accused Rank	Section of law	Punishment
A1	449 I.P.C.	To undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo two months rigorous imprisonment.
	302 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months rigorous imprisonment.
A2	302 r/w. 34 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo six months rigorous imprisonment.

As far as the charge under Section 342 I.P.C. as against the second appellant / A2 is concerned, the trial Court found her not guilty and acquitted her from that charge. The period of sentence imposed on the first appellant / A1 was ordered to run concurrently. The period of sentence already undergone by the appellants/accused was ordered to be set off under Section 428 Cr.P.C.

4. Challenging the said conviction and sentence, the appellants/accused have filed the appeal.



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5. The case of the prosecution:-

5.1. The deceased Mareeswaran and the second accused are husband and wife. For both, their earlier marriage broke and this is the second marriage. Eversince, the marriage in the year 2010, they were not keeping good relationship, so got separated. The second accused lodged complaint against the deceased and his family members before the All Women Police Station, Virudhunagar, alleging cruelty. Subsequent to the complaint, they both compromised and decided to reunite. Separate nuclear family was set up at Thiruthangal. Members of both the family agreed not to disturb them by making visit. However, after few months, the first accused, who is the brother of the second accused, started visiting his sister, which was objected by the deceased. Frequently, there was quarrel between them in this regard.

5.2. On 16.11.2012, the day before the incident, the deceased told his brother P.W.1 that the second accused is very quarrelsome and he is unable to tolerate. However, P.W.1 advised the deceased to ignore and on the same day night at about 10.00 p.m., P.W.1 went to the deceased house to see him. At that time, the first accused was also present. The deceased and the first accused were



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quarrelling and that the first accused threatened to kill the deceased by wielding a knife. P.W.1 pacified them and returned to his home. The next day *i.e.*, on 17.11.2012, the deceased did not turn up to the barber shop, which has been run by P.W.1. To know what happened to his brother, P.W.1 went to the house of the deceased at about 12.30 p.m. When he opened the house door, saw his brother dead with cut injuries. Then P.W.1 went to the Thiruthangal Police Station and informed about the murder of his brother Mareeswaran and his suspicion about A1 and A2. His complaint was reduced into writing (Ex.P1) and the F.I.R. in Crime No.623 of 2012 was registered for the offence under Section 302 I.P.C.

5.3. Mr.Sundarapandian (P.W.14), Inspector of Police, Sivakasi Police Station in-charge of Thiruthangal Police Station, on receiving information about the registration of F.I.R. regarding the murder of Mareeswaran, went to Thiruthangal Police Station at about 15.00 hours collected copy of the F.I.R. from Malaiaarasi, the Sub-Inspector of Police (P.W.13) and took up the investigation. He reached the scene of crime at 15.30 hours, prepared Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P10) in the presence of independent witnesses K.Karuppaiah (not examined) and Muthuramalingam (P.W.6). In the presence of



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the same witnesses, soil with blood stain (M.O.2) and without blood stain (M.O.3) were collected under Mahazar (Ex.P3). The Investigating Officer (P.W.14) arranged for photographs of the scene of crime (8 in numbers). Conducted inquest to ascertain the cause of death and prepared the Inquest Report (Ex.P.11). The body of the deceased Mareeswaran was sent for postmortem through Head Constable Ayyanar (P.W.8).

5.4. On the next day, *i.e.*, on 18.11.2012, based on the information received, A1 and A2 were arrested while they were near Thiruthangal Mariamman Temple. Based on their information, Knife concealed under a rock was recovered in the presence of Muthaiah, Village Assistant (P.W.7) and Rajamohan, the Village Administrative Officer (not examined). The admissible portion of the confession statement leading to discovery of fact, marked as Ex.P4. The recovered knife was marked as M.O.1. The Recovery Mahazar is Ex.P5.

5.5. On the receipt of the request from Thiruthangal Police Inspector, Dr.Vijayakumar (P.W.10) conducted autopsy on the dead body of Mareewaran. He has opined the death was due to haemorrhagic shock of vital organ injury and



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brain injury. The following 6 injuries were noticed on the body of the deceased:-

"1. A vertical cut injury over left Fronto Parietal Area Scalp 13 x 2 cm cutting scalp entire bone depth with brain matter protruding out margin regular, tailing lower end, bleeding present.

2. Another cut injury over left parietal prominence 10 x 2 cm cutting scalp, partially cutting bone depth, regular margin, tailing lower end, bleeding present.

3. Another vertical cut injury over occipital area scalp 13 x 2 cm cutting scalp, entire skull table with brain matter protruding out, bleeding present, regular margin, tailing inferior end.

4. Another cut injury, horizontal, regular margin, no tailing 16 x 2 cm from medial end of right clavicle crossing midline in the lower part of the neck upto middle of right clavicle, cutting muscles of neck, carotid artery and trachea completely.

5. Laceration of Parieto occipital lobe of brain present left side.

6. A puncture wound left side of the chest at nipple level 1 x 1 x 1 cm, left hemothorax present."

6. The submissions made by the learned counsel on either side considered.

7. According to the prosecution, P.W.1, the brother of the deceased is the first informant. He came to know from the neighbours by name, Pitchai,



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Balasubramaniam and Subramaniam that A1 and A2 together killed Mareeswaran and left the house on previous night. Whereas, Pitchai alone was examined by the prosecution as P.W.12, and even he did not support the case of the prosecution, hence, he was treated as hostile. Apart from P.W.1, the mother of the deceased as P.W.2, the younger brother of the deceased as P.W.3 and the elder brother of the deceased as P.W.5 were examined. All speak about the discord between the deceased and the second accused. However, they are the residents of different Village and they came to know about the death of Mareeswaran only through P.W.1.

8. The prosecution had examined the residents of the neighbouring houses. They are, P.W.4 and P.W.12. They both turned hostile. Therefore, the case of the prosecution that they saw A1 and A2 at midnight leaving the house of the deceased after committing the murder, not proved. The trial Court has convicted the appellants / A1 and A2 based on the evidence of P.W.1, who had seen the deceased and the accused persons together alive on 16.11.2012 at 10.00 p.m. On the next day, the deceased was found dead with cut injuries. The accused persons were absconding. The Village Assistant [P.W.7] is a witness to the arrest of the



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accused persons. He is also the witness for the confession statement of A1 and the recovery of knife (M.O.1). The said knife been identified by P.W.1, who saw the accused wielding the knife and threatening the deceased on 16.11.2012.

9. Being the case of circumstantial evidence, the point for consideration is, whether the evidence of P.W.1 and the recovery of knife based on the confession statement given by A1 is sufficient enough to hold the prosecution case proved beyond reasonable doubt.

10. In this regard, it is relevant to consider the submission made by the learned counsel for the appellants that P.W.1 is not a reliable witness. Being the brother of the deceased, he is an interested witness. He has animosity against A2, since she had given a criminal complaint against his brother, mother and sister. While P.W.4 Shanmugavel, the neighbouring resident and P.W.12 – Pitchai, another neighbour turned hostile, the uncorroborated evidence of P.W.1 cannot be the basis for convicting the appellants / A1 and A2.



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11. It is also to be noted that while the confession statement and recovery of Knife (M.O.1) was done in the presence of Rajamohan, Village Administrative Officer. The said Village Administrative Officer was not examined, but only his Assistant was examined as P.W.7 and no plausible reason or explanation has been given for non-examination of the Village Administrative Officer. Thus, the extra judicial confession supposed to have given to the Village Administrative Officer, is an unreliable piece of evidence. The sole testimony of P.W.1 without any corroboration regarding the last seen theory, cannot help the case of the prosecution any further to infer that A1 and A2 have committed the murder of Mareeswaran.

12. In the cross-examination of witnesses, it has been suggested that after the dispute with the deceased, A2 had left to her parents' house and did not return to join her husband [deceased]. Though there is no strong evidence to believe this, it creates a doubt whether A2 was really with the deceased on the day of occurrence. The disjoint circumstances without corroboration, fails to clear the test of proof beyond doubt. Thus, the circumstances projected by the prosecution has not formed a complete chain to unerringly pinpoint towards the guilt of the accused without the possibility of any other hypothesis.

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13. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the appellants by the learned Additional District Sessions Judge, Srivilliputhur, Virudhunagar District, in S.C.No.136 of 2013, on 26.11.2019, are set aside. Fine amount paid if any, by the accused is ordered to be refunded to them. Bail bonds are ordered to be cancelled.

Index : Yes
NCC : Yes / No
smn2

[G.J., J.] & [C.K., J.]
08.03.2024

To

- 1.The Additional District Sessions Judge,
Srivilliputhur, Virudhunagar District.
- 2.The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar 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
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