



Crl.A(MD)No.64 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 26.02.2024

Delivered on : .03.2024

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

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1.Veeramani
2.Anbusundaram

... Petitioners/Appellants/
Accused Nos.1&2

Vs.

State through
The Inspector of Police,
Vadamadurai Police Station,
Dindigul District.
(In Crime No.300 of 2017)

... Respondent/Respondent
Complaint

Prayer: This Criminal Appeal is filed under Section 374 of Cr.P.C., against the judgment dated 08.11.2019 passed in S.C.No.105 of 2018 on the file of the learned Additional District and Sessions Judge, Dindigul and release the petitioners/appellants and set aside the conviction and sentence imposed against them.



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For first Appellant
For Second Appellant
For Respondent

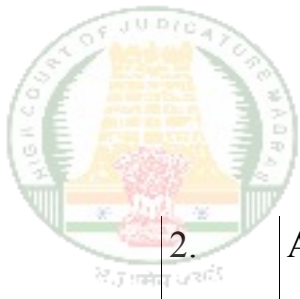
: Mr.K.Samidurai
:MR.R.Alagumani
: M/s.RMS.Sethuraman
Additional Public Prosecutor

JUDGMENT

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

This criminal appeal has been filed against the judgment passed by the Additional District and Sessions Judge, Dindigul, in S.C.No.105 of 2018 dated 08.11.2019, wherein the appellants/accused were convicted and sentenced in the following manner:

S.No.	Rank of the Accused	Offence for which convicted	Sentence
1.	A1	Section 302 IPC	Rigorous life imprisonment and fine of Rs.10,000/- and in default to undergo six months Simple Imprisonment.



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2.	A2	Section 342 IPC	Simple imprisonment for six months
		Section 302 r/w. Section 34 of IPC	Rigorous life imprisonment and fine of Rs.10,000/- and in default to undergo six months Simple imprisonment.

2.The case of the prosecution runs thus:

The accused, deceased and the de-facto complainant were close relatives. There was a land dispute in their family for a quite longer time. Due to which, there was also a panchayat between the accused and the deceased family. However, the accused did not accept the words of the pachayathars and demanded land from the deceased, which was refused by the deceased. Enraged by the refusal of the deceased Subbukalai, on 22.08.2018, at about 08.45 p.m., when the deceased was in residence, both the accused went to his residence and attacked the deceased. The second accused caught hold of the deceased and the first accused stabbed the deceased on the left and right chest, throat cavity and stomach and caused multiple injuries. As a result of which, the deceased died instantaneously.



Complaint and evidence collected in the course of investigation:

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3.Sundaralingam-P.W.1, who is the son of the deceased, gave a complaint(Ex.P.1) on 28.08.2017 at about 21.45 p.m. Based upon the said complaint, FIR(Ex.P.13) was registered by the Sub-Inspector of Police, Vadamadurai Police Station, in Crime No.300 of 2017 for the offence punishable under Sections 342 and 302 IPC. On the registration of the said FIR, the same was forwarded to the concerned jurisdictional Magistrate and the Inspector of Police(P.W.15). On the very same day at about 22.00 hours, P.W. 15 went to the scene of occurrence and prepared rough sketch-Ex.P.14 and observation mahazar-Ex.P.15 in the presence of the witnesses viz., Ammavasai(P.W.8) and one Sekar. The blood stained soil and the sample soil were collected under Ex.P.16 mahazar. Thereafter, inquest report(Ex.P.17) was also prepared. Subsequently, the body was sent to the hospital for conducting postmortem.

4.In the mean while, the first accused was arrested on 29.08.2017 at about 02.00 p.m., and the confession statement of the first accused(Ex.P.4) was also recorded. In furtherance to the confession statement, the material objects



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were discovered and the same has been forwarded to the concerned Jurisdictional Magistrate. Latter on the second accused viz., Anbusundaram surrendered before the learned Judicial Magistrate, Vendasandur on 30.08.2017. Further, on transfer of the Investigating Officer(P.W.15) the investigation was taken over and proceeded by P.W.16. He recorded the statement of the Doctors and also the occurrence witnesses and thereafter laid the charge sheet(Ex.P.22) for the offence under Sections 342 and 302 r/w. Section 34 IPC.

5.In order to prove the charge, the prosecution examined 16 witnesses and marked 23 documents and 7 material objects. On behalf of the accused, the first accused himself was examined as defence witness and on their behalf Ex.D.1 was marked.

6.The trial Court, after considering the entire facts and circumstances of the case and after analysing the oral and documentary evidence, has arrived at a conclusion that the prosecution has proved the charge beyond all reasonable doubt as against A1 and A2 and awarded the punishment under Sections 302 IPC against the first accused and 342 and 302 r/w 34 IPC against



the second accused.

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Submissions:

7.The learned counsel appearing on behalf of the first appellant would vehemently contend that the alleged occurrence took place on 28.08.2017 at about 08.45 p.m., and that there are no evidence as to the availability of light at the relevant point of time. Therefore, contended that the identity of the accused is very much doubtful. The learned counsel would further contend that the prosecution has not explained the nature of injuries and has also not explained the nexus between the alleged injury and the weapon. The learned counsel appearing on behalf of the first appellant would further contend that even the evidence of the alleged eye witness has not accounted the injury caused to the deceased. The learned counsel has further contended that according to the evidence of the postmortem doctor-P.W.11, the injury was a lacerated injury, whereas the weapon is knife. Therefore, if at all there was any injury through the weapon-M.O.1, it should have been only cut injury and not the lacerated injury and therefore, on the above grounds the prosecution case is highly doubtful, therefore, prayed to allow this appeal.



8. In addition to the above submission, the learned counsel appearing on behalf of the second appellant would contend that there was no specific overt act as against the second appellant/A2 and what was projected against the second appellant is a common intention for the committing murder of the deceased and that, there are no evidence to prove the existence of common intention. The learned counsel for the second appellant would also further contend that the trial Court ought to have considered the evidence of P.W.4 and P.W.6, who are the independent witnesses, who had not supported the prosecution case. It is also contended by the learned counsel that the trial Court did not consider the delay in registering the FIR and subsequent receipt of the same by the concerned jurisdictional Magistrate. Hence, prays to interfere with the order of the Sessions Court by allowing this appeal.

9. Per contra, the learned Additional Public Prosecutor would vehemently submit that the evidence of eye witnesses P.W.1 to P.W.3 are cogent and that, the absence of lighting will lose its significance as both the accused as well as the witness are known to each other and that, the scene of occurrence and the place in which the eye witnesses were standing in just 20



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feet. Therefore, the evidence of identity against the accused cannot be disbelieved. It was also contended by the learned Additional Public Prosecutor that even according to the evidence of P.W.4 and P.W.6, the scene of occurrence has been proved and that at the scene of occurrence there were utterances that only the accused has committed the offence and that, such portion of evidence is unchallenged. Therefore, the same would be the relevant piece of evidence and that, even the above independent witness would only support the prosecution case. Hence, he would submit that the conviction recorded by the trial Court is well merited and does not require any interference.

10. We have given our anxious consideration on the submissions made by either side.

11. The main contention put-forth by the appellants is that, in the scene of occurrence, there was no lighting. Therefore, the identity of the accused is very much doubtful. Here, P.W.1 is the son of the deceased. P.W.3 Eswari is the wife of P.W.1. Similarly, P.W.5 Sundaraj, is the brother of P.W.1.



Annalakshmi P.W.2 is the wife of P.W.5. While, we closely peruse the evidence of P.W.1, P.W.2 and P.W.3, they have categorically explained as to how the occurrence took place. According to their evidence, on 28.08.2017 at about 08.45 p.m., when the deceased was in his residence, the accused entered into the deceased house and berated him. While so, when the deceased came out of his residence, the second accused Anbuselvam caught hold of the deceased and the first accused Veeramani has stabbed the deceased on the left and right chest, throat cavity, stomach and in the legs. It was further spoken by P.W.1 that while they were rushing to the scene of occurrence just 20 feet away from their residence, the accused ran away from the scene of occurrence. In spite of the above cogent evidence, the contention of the learned counsel for the appellants that there was no lighting facility in the scene of occurrence, so as to identify the accused. But it came up through the evidence that there was lighting inside the deceased's house.

12.Further, it is pertinent to mention here that the both the accused were known persons to the deceased as well as to the witnesses and there are electricity service connection in the nearby building just 20 ft., away from the



scene of occurrence. Therefore, the evidence of P.W.1 that the first accused has caused injuries and the second accused caught hold the deceased, cannot be suspected. P.W.2, Annalakshmi, who is the brother's wife of P.W.1, and P.W.3 Eswari, who is the wife of P.W.1 have categorically reiterated the version of P.W.1 and corroborated his evidence.

13. According to the arguments of the appellants, P.W.4 and P.W.6 are the independent witnesses. Therefore, their evidence ought to have been considered by the trial Court. Though such argument appears to be in favour of the appellants, in reality such argument only supports the prosecution case. Because according to Section 6 of the Indian Evidence Act, the fact in issue as to form part of the same transaction are relevant. Here, immediately after the occurrence, when P.W.4 and P.W.6 rushed to the scene of occurrence, the deceased was lying on the floor, and in the same transaction, it was spoken in the place of occurrence that the accused has caused murder. This portion of evidence is unchallenged. Though this evidence is not substantiative piece of evidence, this is sufficient to corroborate the evidence of P.W.1, P.W.2 and P.W.3. Further the first illustration of Section 6 of Evidence Act, is squarely



applicable to this case. Therefore, while harmoniously cogitating the evidence of the witness P.W.1 to P.W.3 along with the evidence of the Independent witnesses P.W.4 and P.W.6, this Court can safely conclude that the prosecution has proved the charge beyond reasonable doubt.

14. According to the evidence of P.W.11-postmortem doctor, the following injuries have been found on the body of the deceased:

“External Injuries:

- 1. Lacerated wound 6 x 2 x 4 cm., over the Right Shoulder*
- 2. Lacerated wound 6.5 x 3 x 4 cm., over the Right Chest in Sub-Clavicular region.*
- 3. Lacerated wound 4 x 3 x 4 cm., over the Left Clavicle region.*
- 4. Lacerated wound 1 x 1 x 1 cm., over the Left Arm*
- 5. Lacerated wound 7 x 4 x 5 cm., over the Left Forearm*
- 6. Lacerated wound 6 x 2 x 2 cm., over the Left Wrist*
- 7. Lacerated wound 6 x 2 x 4 cm., over the Left Chest in Lower region*
- 8. Lacerated wound 3 x 2 x 3 cm., over the Neck*
- 9. Lacerated wound 2.5 x 2 x 2 cm., over the Epigastric*



region.

10.Lacerated wound 7 x 3 x 4 cm., over the Left Thigh with open fracture of Femur present.

11.Lacerated wound 4 x 3 x 3 cm., over the Left Buttocks/Gluteal region.”

Based upon the above injury, it is contended by the learned counsel for the appellants that the weapon used is a knife, whereas the injuries are lacerated. Therefore, there is no nexus between the weapon and the injuries. Hence, submitted that the same causes serious suspicion in the prosecution case.

15.The learned counsel for the first appellant has also relied upon the judgment of this Court in ***Samuthravel and others-Vs-The State represented by the Inspector of Police, Pettai Police Station, Tirunelveli District***, reported in ***2019(2)L.W(crl.)584***, which has been subsequently followed in ***Vellankani-Vs-State represented by the Inspector of Police, Cantonment Police Station, Trichy District***, reported in ***2019(2)L.W(crl.)901***, and would contend that, when the contradiction between the ocular evidence and the medical evidence is too wide, and when the same is improbablises the ocular testimony, then the



same becomes a very relevant factor in the process of evaluation of evidence and also fatal to the prosecution case. But while musing the above ratio, it is obvious that in the reported judgment, the Court has disbelieved the presence of ocular evidence, and only in that context, the variance between the ocular evidence, and the doctor's evidence with regard to nature of injury has been given a credence in favour of the accused. But in the case on hand, this Court believes the ocular witnesses (P.W.1 to P.W.3), and that their evidence was also corroborated by the independent witnesses P.W.4 and P.W.6.

16.At this juncture, this Court deems it appropriate to refer the judgment of the Hon'ble Supreme Court in *M.P.-Vs-Dharkole alias Govind singh*, reported in *(2004)13 SCC 308*, wherein the Hon'ble Supreme Court has held that, where the medical evidence was at variance with the ocular evidence, then the testimony of the eye witness should be decided independently and if the same was found trustworthy, the same could not be discarded merely because it is at variance with medical opinion. Therefore, in the case in hand, when the ocular evidence inspires the confidence of this Court, even if there was any variance in the expert opinion the same would loose it's significance.



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Even the judgment of the Hon'ble Supreme Court in *State of Uttar Pradesh-Vs- Abdul Karim and Others* reported in (2007) 13 Supreme Court Cases 569, is not applicable to the facts of this case.

17.As a matter of fact, this Court could not find any variance between the ocular evidence and the medical evidence. According to the doctor(P.W.11) who conducted the postmortem has deposed before the Court that the injury inflicted upon the deceased could be possible through the weapon-M.O.1. At this juncture, it is also pertinent to mention here that the defence suggested by the accused was, fall from the upstairs. However, such suggestion was denied by the postmortem doctor-P.W.11 and he explained that if there had been any fall from the first floor, there could also be an injury in the head, which is absent in the instant case.

18.Though the learned counsel for the first appellant would contend that even the observation mahazar did not refer about the existence of lighting, this Court is not in a position to accept such submission in view of the previous acquaintance between the accused and the witnesses, and that, their presence



within 20 feet from the scene of occurrence. The above instances would definitely sufficient to identify the accused.

19.It was also contended that there are no evidence to prove the common intention for the second accused. Here the enmity between the accused and the deceased have been spoken by P.W.1 to P.W.3, which was also corroborated by P.W.4 and P.W.6. The learned counsel for the second appellant would contend that framing of charges under Section 302 r/w. 34 IPC without framing the similar charge to the first accused is fatal to the prosecution and in this regard, he has relied upon the judgment of the Hon'ble Supreme Court in ***Sadhasivam-Vs-State by Inspector of Police***, reported in ***1991 SCC Online Mad603***. But in that case, it was the case under Section 149 IPC. Therefore, the facts of the said case are not applicable to the present case.

20.The learned counsel would also contend that there are no proof about the overtact of the second accused and in respect of the possession of knife by the first accused. But in our case, through the prosecution witness, previous enmity between the accused and the deceased has been spoken.



Furthermore, the factum of common intention is psychological fact, and the same could be formed in a minute before the actual happening of the incident.

Here from the very act of the second accused, in caught hold of the deceased, the common intention could be very much discernible. Therefore, this Court is of the view that the conviction imposed by the trial Court cannot be found faulted.

21.The learned Additional Public Prosecutor would also invite the attention of this Court in respect of the defence of alibi set up by the first appellant, but the trial Court has given an elaborate finding that such defence has not been proved to the satisfaction of the Court. We are also affirm with the finding recorded by the trial Court. Thus, this Court is of the firm view that the prosecution has proved the charge beyond reasonable doubt and hence, this Court could not find any merit in this appeal.

22.In the result, this Criminal Appeal is dismissed. As a result of which, the bail bonds executed by the appellants shall stand cancelled. The appellants shall surrender before the trial Court within 15 days from today, to



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

**(G.J.,J.) (C.K.,J.)
.03.2024**

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

To

- 1.The Additional District
and Sessions Judge,
Dindigul.
- 2.The Inspector of Police,
Vadamadurai Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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