



Crl.A(MD)No.248 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.12.2024

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl.A(MD)No.248 of 2020
and
Crl.M.P(MD)No.3900 of 2020

Murugan

... Appellant/Accused No.1

Vs.

The State rep. by

The Inspector of Police,

Bodi Town Police Station,

Then District.

(in Cr.No.558 of 2015)

...Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code to call for the entire records connected to the Judgment in S.C.No.24 of 2016 on the file of the Additional District and Sessions Judge, Fast Track Court, Theni, dated 31.01.2020 and set aside the conviction and sentence imposed against the appellant.



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For Appellant : Mr.A.K.Azagarsami

For Respondent : Mr.E.Antony Sahaya Prabahar,

Additional Public Prosecutor

JUDGMENT

(Judgment of this Court was delivered by **R.POORNIMA, J.**)

This Criminal Appeal is filed against the conviction and sentence passed against the appellant/accused No.1 in the judgment dated 31.01.2020 passed by the Additional District and Sessions Judge, Fast Track Court, Theni in S.C.No.24 of 2016 by convicting and sentencing the appellant for the offence punishable under Section 341 IPC and sentenced to undergo one month rigorous imprisonment and to pay a sum of Rs.500/- in default, to undergo one month simple imprisonment and for the offence under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a sum of Rs.5,000/- in default, to undergo one year simple imprisonment.

2. The case of the prosecution is as follows:

(a) The complainant, Balamurugan is the brother of deceased

Ramar. Ramar married Parvathi (Accused 2) and two female children



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were born out of their wedlock. Parvathi had illegal intimacy with one Murugan, (Accused 1). The deceased Ramar warned his wife against indulging in such activities but she did not listen to him. She separated from him and started living with the accused in a separate house. The complainant and others advised her, but to no avail.

(b) In this connection, a complaint was lodged in All Women Police Station. But the problem was not solved. Ramar (deceased) questioned the accused and blamed him for ruining the reputation of his family. A quarrel erupted between them. Parvathi instigated Murugan to kill Ramar so that they can live happily. Both the accused and Parvathy had previous enmity with the deceased Ramar.

(c) On 12.8.2015 at 7.15 a.m., Ramar (deceased) came in a T.V.S scooty from South to North. When he came near the house of Murugan A1, Murugan intercepted him and quarreled with him. After hearing the noise, the complainant, his wife-Kasturi, Sister-Parameshwari, Balamani, Ranjith and Karthik came to the place of occurrence and witnessed the accused abusing Ramar saying: “ஏன்டா தேவடியா மகனே நீ செத்தா தாண்டா நானும் உன் மனைவியும் சேர்ந்து



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வாழ முடியும்”. Therafter he assaulted Ramar and pushed him down. He sat on him and pushed his head against a stone repeatedly. When they tried to prevent him, he sped away in his TVS Excel motorcycle. Ramar had sustained grievous injuries on his body and his nose and ears were bleeding.

(d) Immediately, they had taken him to the Government Hospital. After examining him, the doctor informed that he was brought dead. Hence, the complaint was lodged. It was marked as Ex.P1 and the signature of P.W.1 was marked as Ex.P.2.

(e) P.W.17, Thiru.Sagadevan, Sub Inspector of Police, Bodi Town Police Station, after receipt of the complaint, registered FIR in Cr.No.558 by 2015, for the offence under Sections 341, 290(b), 302 r/w. 109 IPC and the same was marked as Ex.P8. The original FIR was sent to the Judicial Magistrate, Bodi and copies were forwarded to concerned higher officials. He had handed over the file to the Inspector of Police for investigation.



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(f) P.W.19, Thiru.Balaguru, Inspector of Police, after receipt of the case file, went to the place of occurrence at about 9.15 a.m., prepared observation mahazar Ex.P3, rough sketch Ex.P.11 in the presence of witnesses Manikandan, Kandasamy and thereafter, on the same day, at about 9.45 a.m., recovered blood stain stone pieces - MO1 in a recovery mahazar Ex.P4.

(g) He examined the witnesses, Balamurugan, Kasturi, Balamani, Parameshwari, Ranjith, Kandhaswamy, Manikandan, Nagaraj and recorded their statements separately.

(h) On 12.08.2015, from 12.15 hours to 13.45 hours, P.W. 19 conducted inquest on the dead body in the presence of Panchayatars and inquest report Ex.P12 was prepared. Thereafter, he sent the dead body through Constable Sudhakaran to the Government Hospital along with a requisition letter for postmortem.

(i) P.W.16 Dr.Ravindran conducted autopsy and found the following injuries on the dead body :



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“The body was first seen by the undersigned at 2.00 P.M., on 12.08.2015. Its condition then was rigor mortis present in all from limbs. Post-mortem commenced at 2.00 P.M. on 12.08.2015. Appearance found at the post-mortem body of a male aged 44 years moderately nourished, tongue, inside the mouth, teeth 8/8----- 8/8 with nasal bleed on the both the nostrils seen externally.

1. External Injuries:

1) Contusion on the left Parietal region 6 X6 cm.

2) Nasal bleeding from both the Nostril Seen.

2. Internal examination:

Skull- Fracture left parietal skull bone seen 20ml of clotted blood seen between the skull bone and the dura. Brain congested in cut section.

Spine and Vertebra Intact.

Thorax:

Pleura, Pericardium, lung intact and Pale on C/S.

Heart: Chamber contains clotted blood.

Abdomen:

Stomach contain partial digested food with no specific odour. Spleen, Kidney, Liver, pale on C/S larynx, Hyoid bone normal.

The deceased would appear to have died of



*injury to vital organ-brain- extradural bleed and died
before 7 to 8 hours prior to autopsy.”*

and produced the postmortem certificate – Ex.P7.

(j) On 17.10.2015, P.W. 19 received the postmortem certificate.

(k) On 12.08.2015, at about 4.00 p.m., he arrested the accused No.1 Murugan, near Kaliamman Temple and recorded his confession statement and recovered the two wheeler – M.O.3 in the presence of the same witnesses at 17.35 hours in a recovery mahazar.

(l) On the same day, at about 18.40 hours he arrested the accused No.2 Parvathi near Bodi bus stand.

(m) He recovered the clothes worn by the deceased, viz., blood stained half slack white shirt, brief with sticker DSP in Form-95. The accused was sent to remand, the material objects were sent to the Court in Form-95.



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(n) On 13.08.2015, he examined witnesses Prabhu, Karthik and Vasanti and recorded their statements separately.

(o) On 24.08.2015 he sent a requisition letter to the Magistrate with a request to forward the material objects for chemical analysis through Constable Sudhakaran.

(p) As per biological report -Ex.P9, blood stain was deducted on item Nos.1, 2 and 3 (white shirt, torn white sleeveless banian, piece of stones,) and not on item No.4 (piece of stones without blood stain)

(q) Grouping test was conducted vide the serology report Ex.P.10, and it was found that items Nos.1 to 3 belonged to 'B' group.

(r) The Investigating Officer, thereafter, examined Dr.Ravindranath, Scientific Officer -Mani and Sub Inspector of Police-Sagadevan and recorded their statements. He further examined the other witnesses Manikandan, Amrithalingam, Sudhakar, Shanti and recorded their statements.



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(s) On 17.10.2015, he completed the investigation and filed the final report against A1 and A2 for the offence under Sections 341, 294(b), 302 and 109 IPC.

3. On receipt of the records, the Judicial Magistrate, Bodinayakanur took up the case in P.R.C.No.27 of 2015 and issued summons to the accused. After appearance of the accused, copies of all the entire records were furnished to him free of costs under Section 207 Cr.P.C.

4. Since the offence was exclusively triable by the Sessions Court, the learned Judicial Magistrate committed the case records to the Principal District and Sessions Judge, Theni, under Section 209(A) Cr.P.C. for further action.

5. The Principal District Judge, Theni received the case records, numbered it as S.C.No.24 of 2016 and made over it to the Additional District and Sessions Judge, Fast Track Court, Theni for disposal according to law.



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6. After receipt of the case records, the learned Additional District and Sessions Judge, Fast Track Court, Theni framed charges against the accused under Sections 341, 294(b), 302 and 302 r/w.109 IPC. The charges were read over and explained to the accused. The accused denied the charges and claimed to be tried. Therefore, the case was posted for trial.

7. In order to prove the case of the prosecution, on the side of the prosecution, P.W.1 to P.W.19 were examined and Ex.P1 to Ex.P12 were marked. Material Objects M.O.1 to M.O.5 were produced. On the side of the accused, no witness was examined.

8. After full trial, the trial Court acquitted A2 from the charges and convicted the appellant/accused No.1, for the offence punishable under Section 341 IPC and sentenced him to undergo one month rigorous imprisonment and to pay a sum of Rs.500/- in default, to undergo one month simple imprisonment and for the offence under Section 302 IPC, sentenced to undergo imprisonment for life and to pay a sum of Rs.5,000/- in default, to undergo one year simple imprisonment, against which, the present Criminal Appeal has been filed on the following among other grounds:-



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(i) That the manner in which the occurrence was narrated by the eyewitnesses is full of contradictions.

(ii) Since the eyewitnesses are close relatives of the deceased, the trial court ought to have approached the testimonies and evidence of P.W1 to P.W. 6 with great care and caution as has been mandated by a catena of decisions rendered by the Apex Court

(iii) That the Doctor -P.W.16's evidence does not corroborate the prosecution case.

(iv) That the motive was not established by the prosecution.

(v) That the trial Court failed to consider that the time of registration of Ex.P.1 was at about 8.30 a.m. But the same was sent to concerned Judicial Magistrate only at about 3.00 p.m., after a lapse of 7 hours.

(vi) That the arrest and recovery witnesses were totally falsified by P.W.8's evidence and hence, the judgment of the trial Court is liable to be set aside.

9. The learned Additional Public Prosecutor appearing for the respondent states that the prosecution case rests on the eyewitnesses. P.W.1 to P.W.6, the eyewitnesses to the occurrence, supported the



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prosecution case. The medical evidence corroborated the testimonies of the eyewitnesses. The occurrence took place on 12.08.2015 at about 7.15 a.m., FIR was registered at about 8.30 p.m., and FIR reached the Court at 3.00 p.m., on the same day. There was no delay in registering the FIR as it was also registered at the earliest point of time, and on the same day, it reached the concerned Judicial Magistrate.

10. The motive for the occurrence was spoken about by the witnesses. The accused was arrested and his confession statement was recorded and materials objects were seized. The prosecution proved the case beyond all reasonable doubt. He submitted that there was no need to interfere with the judgement of trial Court and prayed for dismissal of the Criminal Appeal.

11. Heard the learned counsel on either side and perused the materials available on record.

12. Now this court has to decide whether the judgement rendered by trial Court is proper or liable to be set aside.



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13. On careful perusal of the entire records, the prosecution case that unfolded from the evidence of P.W.1 to P.W.19 is as follows:

(i) P.W.1, the complainant and an eyewitness to the occurrence stated that his sister-in-law and the accused had illegal intimacy. His brother, Ramar cautioned his wife, but she did not listen to him. Ramar informed the same to the complainant and others. They also advised her but she did not listen to anybody. Both the deceased and the second accused (sister-in-law of the complainant) were living separately for the past one month.

(ii) On 12.08.2015, his brother came to his shop and when he crossed the house of the accused Murugan, the accused pushed him down. He was informed by the neighbours that both Ramar and Murugan were fighting. Himself, his sister and his wife went to the place of occurrence and witnessed the accused pushing down his brother and hitting his head against a stone. When they shouted to release Ramar, the accused fled away. Ramar's nose and mouth were found to be bleeding. They took him to the Government Hospital, Bodinayakanur. He was declared dead. Therefore, P.W.1 lodged the complaint.



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(iii) P.W.2, wife of PW1, also supported the version of the

PW1. She stated that Murugan and Ramar's wife had illegal affair. She was cautioned by all the family members but she did not listen to them. The deceased Ramar requested the second accused to come and live with him as they had two children. But Parvathy refused. She informed him that she and the accused would be happy if he dies.

(iv) On 12.08.2015 at about 7.15 a.m., Ramar came to their shop and went on the northern side. At that time, the accused stood in front of his house and shouted at Ramar that if he dies, they will live together. He then pulled him down and dashed his head towards a stone. All of them shouted to leave him. The accused escaped in TVS-Excel. The injured was taken to the Hospital and was declared brought dead.

(v) P.W.3 to P.W.6 also corroborated the evidence of P.W.1 and P.W. 2. All these eye witnesses categorically stated that the accused alone inflicted injury on the head of the deceased by hitting his head against a stone. All the witnesses spoke about the illegal affair the accused had with the wife of the deceased. All of them deposed that the deceased questioned the illegal affair of the accused and therefore, the accused had animosity towards the deceased. Therefore, the contention of the learned counsel for the appellant that the motive for the occurrence



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was not established by the prosecution is not correct. Further, motive need not be proved when the prosecution case is proved by credible eyewitnesses.

(vi) P.W.9 spoken about the preparation of observation mahazar, rough sketch and recovery of material objects viz., stone. During exam examination, P.W.9 admitted that he is not aware as to what was written in the observation mahazar. But in the chief examination, he clearly stated that the Investigating Officer visited the place of occurrence, inspected the same, prepared rough sketch and recovered material objects.

(vii) P.W.10 spoke about the arrest and confession of the accused and recovery of two wheeler – M.O.3.

(viii) P.W.13, Sudhakar deposed about the letter handed over by him to the Government Doctor for autopsy and receipt of the clothes from the dead body of the deceased. He further deposed that he handed over the material objects for chemical analysis.

(ix) P.W.14, Tmt.Shanthi, Head Clerk of the Judicial Magistrate Court deposed about the receipt of materials from the Investigating Officer and stated that she forwarded the same to the forensic lab for chemical analysis.



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(x) P.W.16, Dr.Ravindranath spoke about the injuries

sustained by the deceased Ramar. He deposed that he found contusion on the left parietal region, 6 x 6 cm, nasal bleeding from both nostrils. On external examination, he found fracture on left parietal skull bone and saw 20 ml. of clotted blood between skull bone and the dura. He stated that brain congested in cut section and opined that the deceased would appear to have died of injuries to vital organ brain extradural bleed. He admitted that if a person is hit against a stone, there is a possibility of such injury.

(xi) During cross examination, it was suggested by the appellant counsel that due to intoxication, if a person had a fallen on a stone, he would sustain such injuries. Doctor admitted his suggestion. But it is pertinent to note that the doctor has not pointed out in his postmortem report that the deceased had consumed alcohol. Further, viscera report has not been filed to show that he was under the influence of Alcohol.

14. We cannot accept the point urged by the learned counsel for the Appellant that there was delay in transmitting the FIR to the concerned Court. The FIR was registered at 8:30 A.M., but it reached



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the Judicial Magistrate Court only at about 3.00 P.M. It is pertinent to note that the counsel for the appellant did not pose any question either to the Investigating Officer or to P.W.15 or P.W.17 about the said delay in communicating the FIR to the Court. However this High Court and the Apex Court have repeatedly held in a number of decisions that delay in forwarding the FIR to the concerned Magistrate is not fatal to the prosecution case unless the accused shows that the delay caused prejudice to their case.

15. The Hon'ble Supreme Court held in ***State of Rajasthan vs. Daud Khan*** reported in ***2016 (2) SCC 607*** that mere delay in forwarding the FIR to the Judicial Magistrate Court is not fatal to the prosecution case. It was held as follows :

“27. The delay in sending the special report was also the subject of discussion in a recent decision being Sheo Shankar Singh v. State of U.P.5 wherein it was held that before such a contention is countenanced, the accused must show prejudice having been caused by the delayed dispatch of the FIR to the Magistrate. It was held, relying upon several earlier decisions as (2013) 12 SCC 539 follows:

“30.



31. *In this context, we would like to refer to a recent decision of this Court in Sandeep v. State of U.P.*⁶ wherein the said position has been explained as under in paras 62-63: (SCC p.132)

“62. It was also feebly contended on behalf of the appellants that the express report was not forwarded to the Magistrate as stipulated under Section 157 Cr.PC instantaneously. According to the learned counsel FIR which was initially registered on 17-11-2004 was given a number on 19-11-2004 as FIR No. 116 of 2004 and it was altered on 20-11-2004 and was forwarded only on 25-11-2004 to the Magistrate. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in *Pala Singh v. State of Punjab*⁷ wherein this Court has clearly held that (SCC p. 645, para 8) where the FIR was actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the court then, however improper or objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself justify the (2012) 6 SCC 107



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(1972) 2 SCC 640 conclusion that the investigation was tainted and the prosecution insupportable.

63. Applying the above ratio in Pala Singh to the case on hand, while pointing out the delay in the forwarding of the FIR to the Magistrate, no prejudice was said to have been caused to the appellants by virtue of the said delay.”

16. The learned counsel for the appellant further argued that the witnesses are close relatives to the deceased. A catena of decisions rendered by the Apex Court are categorical on the point that the testimonies of close relatives should not be discarded mechanically, but it should be considered with great care and caution. He submitted that the trial court did not consider the above principle while scrutinizing the evidence of P.W.1 to P.W.6.

17. We carefully considered the evidence of P.W.1 to P.W.6. Their evidences are clear, cogent and consistent. Except minor contradictions, nothing survives to suspect their credibility. There are no



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major contradictions in the evidence. Further, since the accused, the deceased and the eyewitnesses are all relatives, the eyewitnesses have no motive to falsely implicate the accused.

18. The evidence of the eyewitnesses P.W.1 to P.W.6 are clear, cogent, consistent and reliable and thus inspire the confidence of this Court. The presence of the accused in the scene of occurrence and his guilt is properly established by the evidence of eyewitnesses. The evidence of eyewitnesses have been corroborated by the medical evidence. The biological report Ex.P.9 proved that human blood stains were found in the clothes worn by the deceased as well as on the stone recovered from the place of occurrence. The serology report Ex.P.10 also proved that the blood group found in the material is group 'B'. The prosecution clearly established the guilt of the accused beyond all reasonable doubt. The trial court after taking into consideration of the materials available on record, held that the accused was guilty of the offence, and interference with the judgment of the lower Court is not warranted.



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19. On careful perusal of entire records, we conclude that there is no material available to interfere with the judgment of the trial Court. The Criminal Appeal has no merit and hence, the Criminal Appeal is liable to be dismissed.

20. Accordingly, the Criminal Appeal stands dismissed and the judgment passed in S.C.No.24 of 2016 on the file of the Additional District and Sessions Judge, Fast Tack Court, Theni, dated 31.01.2020 is hereby confirmed. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (R.P., J.)
13.12.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

RM



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To

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- 1.The Additional District and Sessions Judge,
Fast Track Court,
Theni.
- 2.The Inspector of Police,
Bodi Town Police Station,
Then District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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AND
R.POORNIMA, J.

RM

Judgment in
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