



Crl.A.(MD)No.205 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.01.2025

CORAM

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

Crl A (MD)No.205 of 2021

Samikannu @ Andisamy

... Appellant

Vs.

State Rep. by,
The Inspector of Police,
Thuvrankurichi Police Station,
Trichy District.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the judgment passed by the Sessions Judge, Tiruchirappalli Division, Tiruchirappalli in S.C.No.195 of 2014 dated 09.01.2019.

For Appellant : Mr.N.Anandakumar

For Respondent : Mr.E.Antony Sahaya Prabahar,
Addl. Public Prosecutor.



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JUDGMENT

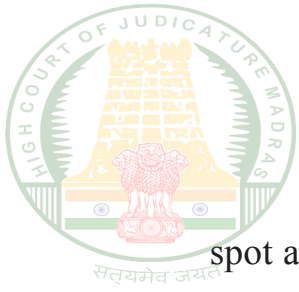
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(Judgment of the court was delivered by G.R.Swaminathan, J.)

This criminal appeal is directed against the judgment dated 09.01.2019 made in S.C.No.195 of 2014 on the file of the Sessions Court, Tiruchirappalli. By the impugned judgment, the appellant was found guilty of the offence under Section 302 of IPC and sentenced to undergo life imprisonment and fine of Rs.1,000/-.

2.The case of the prosecution is as follows:-

Vellaisamy was the father of the accused. On 15.10.2013 at around 01.00 am when Vellaisamy was sleeping in his house, the accused went to him and picked up quarrel and hacked him on his head with billhook. Vellaisamy died on the spot. Ex.P1 / complaint was lodged by P.W.1 / Ragupathi Raja, the brother of the accused, before the Sub Inspector of Police, Thuvarankurichi Police Station at 08.15 am on 16.10.2013. It was registered as Crime No.213 of 2013. P.W.17 was working circle Inspector, Thuvarankurichi. He went to the occurrence



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spot at 08.45 am and prepared Ex.P5 / observation mahazar and Ex.P15 /

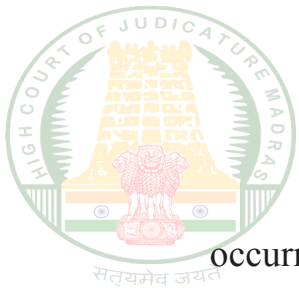
rough sketch. He collected blood strained earth samples from the spot and few other articles under Ex.P6 / seizure mahazar. He examined the material witnesses and recorded their statements. Inquest was then conducted and Ex.P16 is the inquest report. Body was sent to Government Hospital, Manapparai for conducting postmortem. In the meanwhile, the accused surrendered before the Village Administrative Officer / P.W.9, Ikkaraikosikurichi Village. Based on his report, the accused was arrested at 01.00 pm. Based in his disclosure statement / Ex.P9, M.O.1 / billhook was seized at 03.15 pm under Ex.P10 / seizure mahazar. After obtaining forensic report and examining medical witnesses, final report was filed against the accused on 19.12.2013. The final report was taken on file by the learned Judicial Magistrate, Manpparai in P.R.C.No.1 of 2014 and it was committed to Principal Sessions Court, Tiruchirappalli and taken up for trial in S.C.No.195 of 2014. Charge was framed against the accused under Section 302 of IPC. The accused denied the charge and claimed to be tried.



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3.On the side of the prosecution, P.W.1 to P.W.17 were examined and Exs.P1 to P21 and M.O.1 to M.O.8 were marked. On the side of the defence, Ex.D1 and D2, letters sent to DLSA, High Court, Madurai and Hon'ble Chief Minister and other higher officials were marked. After considering the evidence, the trial Court vide judgment dated 09.01.2019 found the accused's guilty and sentenced him as mentioned above. Questioning the same, this criminal appeal has been filed.

4.The learned counsel for the appellant reiterated all the grounds set out in the memorandum of grounds of criminal appeal. He submitted that the complaint / Ex.P1 was lodged belatedly. Though the occurrence had taken place at 01.00 am on 16.10.2013, it reached the magistrate only at 03.00 pm and the prosecution has not given explanation for the delay. The learned counsel contended that the genesis and origin of the case has been suppressed and the initial complaint also had been suppressed. It has been brought out in evidence that sniffer dog was pressed into service. The learned counsel contended that the fact that sniffer dog was summoned would indicate that there was no eye witness to the occurrence. If really P.W.1 and others had witnessed the



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occurrence, the question of summoning the sniffer dog would not have been arisen at all. The injury sustained by the deceased does not tally with the ocular version. He further submitted that the theory of arrest and recovery projected by the prosecution is false.

5.P.W.1 deposed that M.O.1 was recovered from the house itself. But according to the investigation officer, the accused was arrested at 02.00 pm and the billhook was recovered from some other place. The stand of the learned counsel for the appellant is that the accused was taken to police station at 11.30 am along with P.W.1. He also pointed out that Ex.P1 / complaint and the statements recorded under Section 161 of Cr.P.C., reached the Court only on 21.10.2013. He relied on the following citations:

- 1.2017 (1) MWN (Cr.) 161 (DB),
- 2.2019 (2) LW (Cr.) 510,
- 3.Crl.A.(MD)Nos.392 and 393 of 2019, dated 18.09.2017,
- 4.Crl.A.(MD)No.344 of 2016, dated 21.12.2017.

He called upon this Court to set aside the impugned judgment and allow the appeal and acquit the accused.

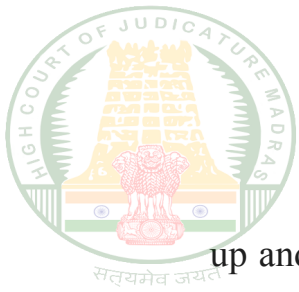


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6.Per contra, the learned Additional Public Prosecutor submitted that the impugned judgment is well reasoned and that the prosecution had proved its case beyond reasonable doubt and that interference is not warranted.

7.We carefully considered the rival contentions and went through the evidence on record. Vellaisamy, the deceased, was the father of the accused, P.W.1, P.W.2 and the husband of P.W.3. P.W.1 to P.W.3 are the eye witnesses in this case. Since Vellaisamy was murdered inside his house, it is only natural that the wife and children figure as eye witnesses. Their presence is natural. P.W.1 deposed that even though his father had made arrangements to find suitable marriage alliance for the accused, nothing worked out. The accused was addicted to liquor and he would often come home and quarrel with the father. He deposed that on 15.10.2013, his father was sleeping on the eastern veranda of the house and that at around 01.00 am, the accused came home in drunken condition and quarrelled with the father. Further P.W.1 deposed that when the occurrence was taking place, they were sleeping on the western veranda. PW.1's sister / Selvi had also come home. Selvi and P.W.1 got



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up and saw the accused hacking their father with M.O.1 / billhook. The accused ran away from the spot. In this regard, P.W.1 lodged Ex.P1 / complaint. He also identified the billhook with which Vellaisamy was killed. P.W.1 further deposed that he informed all his relatives and that the Village Administrative Officer came home at around 04.00 am. The Village Assistant came home at 05.30 am. Based on the Village Administrative Officer's information, the police also came to the spot at around 07.00 am.

8.It is true that the answers elicited from P.W.1 during cross examination do cast serious doubt regarding the time of the arrest of the accused and recovery of M.O.1. P.W.1 deposed that at around 07.00 am itself, the accused was secured by the police and that the accused handed over M.O.1 to the police. Thereafter, the police took P.W.1, the accused / Samikannu as well as M.O.1 to the station at around 07.30 am. P.W.1 further stated that they were in the police station till around 12.00 noon. Though this casts serious doubt on the police version regarding arrest of the accused and recovery of M.O.1, the entire case of the prosecution cannot be thrown out on this discrepancy.



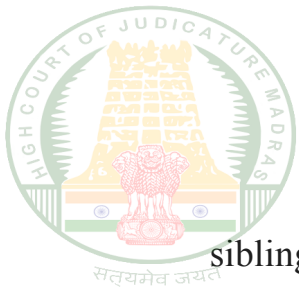
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9.P.W.2 / Selvi is the daughter of the deceased. The deceased had two wives namely, Petchiammal and Chinnammal. Samikannu @ Andisamy was her sibling. She also confirmed that Samikannu @ Andisamy / accused used to quarrel with her father for not finding suitable marriage alliance. She also corroborated the testimony of P.W.1. She categorically deposed that it was the appellant who hacked their father with Aruval. She identified M.O.1. Her testimony could not be shaken during cross examination.

10.P.W.3 / Chinnammal is the second wife of Vellaisamy. The first wife / Petchiammal was none other than P.W.3's elder sister. The accused / Samikannu @ Andisamy, P.W.1 as well as P.W.2 / Selvi were born through the first wife. Though she did not witness the accused hacking Vellaisamy, when on hearing the sound, she came to the spot saw the accused running away.

11.The evidence of P.W.1 to P.W.3 is cogent and convincing. The occurrence had taken place a little past midnight. It is quite natural to believe that P.W.1 and P.W.3 were in the house. P.W.1 and P.W.2 are



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siblings of the accused. P.W.3 was the wife of the deceased. She clearly stated that immediately after the occurrence, she saw the accused fleeing from the spot.

12.It is true that FIR was lodged only at 08.15 am. The delay in lodging of the complaint will not in any way weaken the prosecution case. The police station was located at a distance of ten kilometers from the village, where the occurrence took place. When the ocular version commands the confidence of the Court, the delay in lodging FIR can be disregarded (Vide judgment of the Hon'ble Supreme Court reported in **(2017) 11 SCC 120 (Raja Gopal Vs. Muthupandi @ Thavakkalai)**).

13.Ex.P14 is the serology report. M.O.6 and M.O.7 are the blood stained clothes of the accused. It has been established that blood group of the deceased was “A” and that this matched with the blood group of the stains found on the wearing apparels of the accused and M.O.1 / Aruval. This also further bolsters the case of the prosecution.



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14.The Hon'ble Supreme Court in the decision reported in **(2024)**

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6 SCC 799 (Chandan vs State (NCT of Delhi)) held that though nothing moves from the aspect of the manner of recovery of knife alone, if the blood of the deceased matched with the blood found in the knife. In this case, the blood group found on M.O.1 / Aruval was “A” and it matched with the blood group of the deceased. Therefore, doubt regarding recovery of M.O.1 pursuant to disclosure statement of the accused pales into insignificance.

15.In this case, no doubt, the prosecution has not presented the actual sequence of events. But on this ground, we cannot acquit the accused. It is duty of the Court to separate the chaff from the grain and find out the truth. The evidence of P.W.1, P.W.2 and P.W.3 have been found to be convincing. Therefore, when the ocular version is overwhelming against the accused, he cannot take advantage of the minor discrepancies in the prosecution. The occurrence had taken place in a remote village. Therefore, it is quite natural that the villagers would have been alerted and the Village Administrative Officer would have come to spot at 04.00 am itself, as stated by P.W.1. According to P.W.1,



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the police also came to the occurrence spot at 07.00 am. Merely because, the police have not disclosed this aspect and made it appear as if only when P.W.1 came to the station and lodged complaint and that thereafter they took up investigation, that cannot completely undermine the prosecution case. The Court below had correctly appreciated the facts and found the accused guilty. We are more than satisfied that the prosecution has established its case beyond reasonable doubt. Interference with the impugned judgment is not warranted and the criminal appeal is dismissed.

(G.R.S. J.) & (R.P. J.,)
28.01.2025

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

To:-

- 1.The Sessions Court, Tiruchirappalli Division, Tiruchirappalli.
- 2.The Inspector of Police, Thuvarankurichi Police Station, Trichy 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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G.R.SWAMINATHAN, J.
and
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