



CRL.A.(MD). No. 337 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.01.2026

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THE HONOURABLE MRS. JUSTICE **N.MALA**

CRL A(MD). No.337 of 2017

Senthilkumar

... Appellant/Accused No.1

Vs

State rep.by

The Inspector of Police,

Thirupparankundram Police Station,

Madurai City

In Crime No.268 of 2015

... Respondent/complainant

PRAYER :- This appeal is filed under Section 374 Cr.P.C against the judgment of conviction and sentence passed by the learned IV Additional Sessions Judge, Madurai in S.C.No.51 of 2016 dated 31.07.2017.

For Appellant : Mrs.N.Juliet Latha

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl.side)



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JUDGMENT

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The above Criminal Appeal is preferred by the appellant / accused No.1 against judgment of conviction and sentence dated 31.01.2017 made in S.C.No.51 of 2016 by the learned IV Additional Sessions Judge, Madurai, convicting the appellant/A1 for the offences punishable under Sections 304(2) and 294(b) IPC and sentencing him to undergo rigorous imprisonment of 10 years with a fine of Rs.5000/-, in default, to undergo 3 years simple imprisonment for the offence under Section 304(2) IPC and to undergo three months simple imprisonment for the offence under Section 294(b) IPC.

2. The factual scenario as unfolded during the course of trial is as follows:-

(a) The case of the prosecution, in brief was that, on 26.07.2015, at about 5.00 p.m, there was a wordy quarrel between the deceased, the appellant/A1 and the second accused in a Bar regarding the loss of a cell phone, which belonged to the appellant/A1. On the same day at 9.00 p.m, when the deceased Dinesh was standing near the house of one Thalayari



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Subramani, at Pasumalai Krishnapuram, Tirupparankundram Taluk, the accused 1 and 2 demanded the cell phone and by uttering filthy language, they indiscriminately beat him. In the scuffle, the first accused slit the neck of the deceased Dinesh using a blade. He was immediately rushed to the Government Rajaji Hospital, Madurai, and on the next day at about 4.00 a.m, he succumbed to the injuries.

(b) Based on the complaint (Ex.P.1), FIR came to be filed in Crime No.268 of 2015 by P.W.26, the Sub-Inspector of Police, All Women Police Station, Tirupparankundram. On completion of investigation, a charge sheet was filed. The first accused was charged for the offences under Sections 294(b) and 302 IPC and the second accused was charged for the offences under Sections 323, 302 r/w 34 IPC.

(c) The Charge Sheet was taken cognizance by the learned Judicial Magistrate No.6, Madurai in P.R.C.No.87 of 2015. Thereafter, the case was committed to the learned Principal Sessions Judge, Madurai, as contemplated under Section 209 Cr.P.C. The case was thereafter made over by the learned Principal Sessions



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Judge, Madurai, to the file of the learned IV Additional Sessions Judge, Madurai, in S.C.No.51 of 2016. The charges were framed against the appellant/accused No.1 for the offences aforementioned. The appellant/accused No.1 denied the charges and pleaded not guilty.

3. The prosecution in order to bring home the guilt of the accused, examined 27 witnesses as P.W.1 to P.W.27 and marked 21 documents as Ex.P.1 to Ex.P.21 and marked 6 Material Objects were marked as M.O.1 to M.O.6. On the side of the defense, no oral or documentary evidence was adduced.

4. The Trial Court, on completion of trial, found the appellant/accused No.1 guilty of the aforesaid offences and convicted and sentenced him as follows:-

<i>Sl.No.</i>	<i>Conviction Under Section</i>	<i>Sentence Awarded</i>
1	294(b) of IPC	To undergo three months simple imprisonment .



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2	304(2) IPC	To undergo rigorous imprisonment of 10 years with a fine of Rs.5000/-, in default, to undergo 3 years simple imprisonment. <i>The Sentences were ordered to run conuurrently.</i>
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5. Aggrieved by the aforesaid conviction and sentence, the appellant has preferred the above Criminal Appeal for the aforesaid relief.

6. The learned counsel appearing for the appellant/A1 submitted that as per the prosecution case, the loss of cell phone was the only motive for the crime, which motive was neither believable nor proved. The learned counsel submitted that in the absence of any evidence regarding the loss of the cell phone, the motive stood unproved. The learned counsel for the appellant submitted that the trial court failed to note that not only the presence of the ocular witnesses at the scene of the crime was doubtful but also that their evidence was untrustworthy. The learned counsel submitted that the allegation of the prosecution was that the crime was committed in a residential area and therefore failure to examine independent witness was fatal to the prosecution's case. The learned counsel further submitted that the evidence of the prosecution



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witnesses with regard to the identity of the weapon used in the crime, was also inconsistent. The learned counsel submitted that whereas P.W.1 referred to the weapon as a "blade"; P.W.2 in her evidence referred to it as "knife blade"; The Village Administrative Officer/P.W.14, who attested the Athatchi, Ex.A.8, in his evidence stated that "knife" was recovered on the basis of the admitted portion of the confession statement of the accused Ex.P.7. The learned counsel submitted that as the prosecution failed to prove the charges against the appellant beyond reasonable doubt, the judgment of the trial court deserved to be set aside.

7. Per contra, the learned Government Advocate (Crl.side) appearing on behalf of the respondent/State submitted that the contention of the learned counsel for the appellant that there were various contradictions and inconsistencies in the evidence of the prosecution witnesses is untenable. The learned State counsel submitted that the contention of the appellant's counsel that the presence of the ocular witnesses P.W.1 and P.W.2 at the scene of the occurrence is doubtful is also without substance since the presence of the ocular witnesses in the scene of the crime was neither disputed nor were the ocular witnesses



cross examined by the defense counsel on this aspect. With respect to the contradictions regarding the weapon used in the crime is concerned, the learned State counsel submitted that P.W.1, P.W.2 and P.W.14 consistently stated that a blade was used in slitting the throat of the deceased and that in any event, from the admissible portion of the confession of the accused, M.O.1 was recovered which is a blade. The learned State counsel submitted that minor discrepancies in the evidence of prosecution witnesses could be ignored. The learned State counsel also submitted that P.W.13, the Doctor, who conducted post-mortem, submitted a final opinion, Ex.P.12, in which it was categorically stated that the deceased would appear to have died of shock and haemorrhage due to neck injury and by complications thereof. The learned State counsel submitted that the evidence of P.W.19, the Doctor, who initially treated the deceased, was corroborated by the evidence of P.W.2. The learned State counsel concluded by stating that the trial court, on proper appreciation of the entire materials on record, and by a well considered judgment, convicted the appellant and therefore, in the absence of any perversity in the judgment of the trial court, interference of this Court is not required. He prayed for dismissal of the appeal as meritless.



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8. This Court gave its anxious consideration to the submissions made on either side and carefully perused the materials available on record.

9. It is seen from the materials on record that on 26.07.2015, at about 5.00 p.m, there was a wordy duel between the deceased and the accused regarding loss of a cell phone in a Bar. The loss of cell phone according to the prosecution was the motive for the crime which took place on 26.07.2015 at 9.00 p.m, near the house of one Thalayari Subramani, at Pasumalai Krishnapuram, Tirupparankundram Taluk. The accused physically assaulted the deceased by uttering abusive words and slit the neck of the deceased using a blade. The deceased was rushed to the Government Rajaji Hospital, Madurai. However, on the next day at 4.00 a.m, he succumbed to the injuries. Hence, the Inspector of Police, Tirupparankundram Police Station registered a case in Crime No.in Crime No.268 of 2015. After completion of investigation, a charge sheet was filed and both the accused were charged for the offences under Sections 294(b) and 302 r/w 34 IPC. After completing the formalities,



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the case was taken by the learned Principal Sessions Judge, Madurai, in S.C.No.51 of 2016.

10. P.W.1 and P.W.6 are the aunts of the deceased. P.W.2 is the sister of P.W.1. P.W.3 is the husband of P.W.1. P.W.4, P.W.5 and P.W.7 are the mother, the wife and the father-in-law of the deceased. P.W.8 is the neighbour. P.W.12 and P.W.13 are the attesting witnesses in seizure mahazar Ex.P.6. P.W.14 is the Village Administrative Officer. P.W.15 is the father of P.W.1 and P.W.2. P.W.16 is the salesman in the Bar. P.W.17 is an ex-employee of the Bar. P.W.18 is the Head Constable. P.W.19 is the Doctor, who initially treated the deceased. P.W.20 is the Doctor, who gave death intimation. P.W.21 is the Head Constable, who handed over alteration report to the higher officials and the Judicial Magistrate. P.W.22 is Grade-I police. P.W.23 is the Doctor, who conducted post-mortem. P.W.24 is the Scientific Officer from Forensic Department. P.W.25, who attested the observation mahazar. P.W.26 is the Sub Inspector of Police. P.W.27, the Inspector of Police, who prepared the alteration report.



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11. The learned IV Additional Sessions Judge, Madurai, after a full-fledged trial, based on the evidence both oral and documentary adduced by the prosecution, convicted and sentenced both the accused as aforementioned.

12. There are four limbs to the argument of the learned counsel for the appellant/first accused. They are:

- (i) Motive for the crime is not proved;
- (ii) Doubt on the presence of ocular witnesses in the scene of the crime;
- (iii) Failure to examine independent witnesses;
- (iv) Lack of clarity regarding the weapon used in the crime.

13. Motive for the crime:

To prove the motive for the crime, the prosecution examined P.W. 16 and P.W.17 both of whom were present in the Bar at the time of the wordy clash. P.W.16 in his cross examination clearly stated that the accused along with other persons was engaged in a wordy duel regarding the loss of cell phone and for that reason they were all sent out of the



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Bar. P.W.17, the Bar attender categorically stated that he attended the table, where the deceased and the accused sat and that he served them.

That the accused and the deceased visited the Bar is not denied by P.W.17. Therefore, through the evidence of P.W.16 and P.W.17 as corroborated by the evidence of P.W.1 and P.W.2, it is clear that there was a wordy clash between the accused and the deceased over the loss of a cell phone and hence, the prosecution's case that the loss of cell phone was the motive for the crime stands proved. In the present case, the commission of offence is proved by the prosecution through the strong evidence of ocular witnesses, P.W.1 and P.W.2 and therefore, this Court is of the view that lack or adequacy of motive is not important. The Hon'ble Supreme Court's judgment in **State of Uttar Pradesh and Kishanpal in (2008) 16 SCC 73** and others can be usefully referred to here. The Hon'ble Supreme Court in paragraph No.39 of the judgment held as follows:

"39.The motive may be considered as a circumstance which is relevant for assessing the evidence but if the evidence is clear and unambiguous and the circumstances prove the guilt of the accused, the same is not weakened even if the motive is not a very strong one. It is also settled



law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available because even if there may be a very strong motive for the accused persons to commit a particular crime, they cannot be convicted if the evidence of eyewitnesses is not convincing. In the same way, even if there may not be an apparent motive but if the evidence of the eyewitnesses is clear and reliable, the absence of inadequacy of motive cannot stand in the way of conviction".

14. Presence of ocular witnesses:

The trial court pointed out that there was no serious dispute regarding the presence of the ocular witnesses, P.W.1 and P.W.2, in the scene of occurrence. The suggestion put to P.W.1 and P.W.2 that they were not present in the scene of the crime was denied by them. Even though the learned counsel for the appellant contended that P.W.1 and P.W.2 were not eye witnesses and that the credibility of their evidence was suspect, the evidence on record speaks otherwise. P.W.1 to P.W.2 testified that all three persons (i.e) the accused as well as the deceased were drunk at the time of the crime. The post-mortem report (Ex.P.11) corroborates their statement that the deceased and the accused were



drunk. The Post-mortem report reveals that the stomach of the deceased contained 200gms of partially digested food particles with smell of alcohol mucosa-pale. P.W.1 in her evidence categorically stated that she knew the accused even before the crime. P.W.1 further stated that at the time of the occurrence, the deceased as well as the accused were drunk and that she saw the appellant/A1, slit the neck of the deceased Dinesh. P.W.1 in her cross examination stated that she saw the appellant slit the neck of the deceased with a blade. P.W.1 was thoroughly cross examined on various aspects of the prosecution's case but she stood firm and unshaken. Even though P.W.1 underwent detailed cross examination, her evidence could not be materially impeached. P.W.1's evidence stood not discredited and also inspires confidence. P.W.2 corroborated the evidence of P.W.1 in all material aspects, particularly, the date, time, the place of occurrence and the weapon used in crime. P.W.2 also stated that she saw the first accused slit the neck of the deceased with a blade like knife. Therefore, the presence of the ocular witnesses is proved by the prosecution.



15. Independent witnesses not examined:

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The contention of the learned counsel for the appellant regarding the non-examination of independent witnesses is concerned, this Court finds no merit in the same. Merely because the witnesses examined are relatives of the deceased, their evidence cannot be discarded when it is otherwise natural, cogent and trustworthy. The prosecution has adduced direct evidence through P.W.1 and P.W.2 and, though related to the deceased, their testimonies mutually corroborate each other on material particulars. In such circumstances, failure of the prosecution to examine independent witnesses is not fatal to the prosecution's case, more so, when the evidence of the eye witnesses though related, is credible and trustworthy. The Hon'ble Supreme Court has expounded the law on the subject of non-examination of independent witnesses and the weightage to be given to the witnesses, who are the relatives of the deceased. Useful reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in **Guru Dutt Pathak vs. State of Uttar Pradesh [(2021)6 SCC 116]**. The Hon'ble Supreme Court referring to its earlier judgment in paragraph No.24 held as follows:



“24. One another ground given by the learned trial court while acquitting the accused was that no independent witness has been examined. The High Court has rightly observed that where there is clinching evidence of eyewitnesses, mere non-examination of some of the witnesses/independent witnesses and/or in absence of examination of any independent witnesses would not be fatal to the case of the prosecution.”

16. Lack of clarity regarding the weapon used in the crime:

With regard to the alleged contradictions relating to the weapon used in the crime, P.W.1 described the weapon as “சிறிய மிளேடு போன்ற மடக்கு கத்தி”, P.W.2 referred to it as “சின்ன மிளேடு போன்ற கத்தி”. The learned counsel for the appellant relying on the statements of the said witnesses submitted that there was no clarity regarding the weapon used in the crime. This Court is of the view that the variations in the nomenclature are insignificant as all the witnesses consistently refer to a sharp-edged cutting weapon in the nature of a blade like knife being used in the crime. Moreover, the weapon used in the occurrence was recovered and marked as M.O.1, pursuant to the admissible portion of the confession statement of the accused (Ex.P.7). The forensic report Ex.P.13



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described the weapon used in crime as "Metal Knife-blade". The forensic report corroborates the prosecution witnesses' description and hence, the minor discrepancy in description of the weapon does not affect the substratum of the prosecution case.

17. In view of the foregoing discussions, all the grounds raised by the appellant are devoid of merit and stand rejected. The findings of the trial court reveal a proper appreciation of the oral and documentary evidence placed on record and in the absence of any perversity, the findings do not call for any interference in appeal. This Court finds that the prosecution has proved its case beyond doubt and hence the conviction is confirmed. Accordingly, the judgment of conviction passed by the learned IV Additional Sessions Judge, Madurai in S.C.No.51 of 2016 dated 31.07.2017 is confirmed. Even though the appellant's counsel prayed that a lenient view may be taken on the sentence, this Court, considering the gravity and the manner in which the offence was committed, is not inclined to interfere with the sentence imposed by the trial court.



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18. In fine, this appeal is dismissed.

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Internet: Yes/No
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To,

1.The Inspector of Police,
Thirupparankundram Police Station,
Madurai City
In Crime No.268 of 2015

2.The IV Additional Sessions Judge,
Madurai

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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N.MALA., J

CM

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