

**Muthupandi Vs. The State Represented By**

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**Court :** Chennai

**Decided On :** Jan-12-2015

**Judge :** M.Sathyannarayanan

**Appellant :** Muthupandi

**Respondent :** The State Represented By

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED :

12. 01.2015 CORAM THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN Criminal Appeal (MD)No.169 of 2007 Muthupandi ... Appellant/ Accused Vs. The State represented by The Inspector of Police, Jegathapattinam, Pudukkottai District. (Cr.No.1 of 2006) ... Respondent/ Complainant Prayer : Appeal filed under Section 374 of the Code of Criminal Procedure, against the judgment passed in S.C.No.97 of 2006, dated 26.02.2007, by the Principal District and Sessions Court, Pudukkottai. !For Appellant : Mr.K.Baalasundaram ^For Respondent : Mr.P.Kandasamy, Government Advocate (Crl.Side) :

**JUDGMENT**

The appellant is the sole accused in S.C.No.97 of 2006 on the file of the Court of Principal District and Sessions Judge, Pudukkottai and he was charged for the offence under Section 302 I.P.C. for having murdered one Kottaiyan. The trial

Court, vide judgment dated 26.02.2007, has convicted him for the commission of the offence under Section 304(ii) I.P.C and sentenced him to undergo rigorous imprisonment for eight years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for four months. The trial Court also ordered set off under Section 428 of the Code of Criminal Procedure, with regard to the period of incarceration already undergone by him. The accused aggrieved by the conviction and sentence passed by the trial Court, has filed this Criminal Appeal.

2. The facts leading to the filing of this appeal, are stated as follows:

2. 1. P.W.1 - Mariappan, is the elder brother of the deceased Kottaiyan and he and his brother are engaged in catching the fish and selling it for their livelihood. The younger brother of P.W.1 is residing with his wife and his daughter, aged two years, separately. On 31.12.2005, at about 11.30 p.m., P.W.1 went to sea shore to have a look at his fibre boat and returned and while he was nearing a barber shop run by one Srinivasan, he saw his younger brother - Kottaiyan (deceased), Chinnasamy, son of Thavamani, Sekar, Kalapathu, son of Periyasamy, Murugan, were returning after seeing the cinema. At that time, the appellant/accused and one Mani @ Manikandan, a native of Nagapattinam, had engaged in a wordy altercation with regard to the celebration of the New Year and the younger brother of P.W.1 - Kottaiyan (deceased) tried to pacify them and at that juncture, the appellant/accused took M.O.1 - wooden log and hit Kottaiyan on the centre of the head as well as right side and consequently, Kottaiyan has fallen down and became unconscious. The appellant/accused ran away with the wooden log. The injured was taken to Thanjavur Medical College Hospital by the elder brother of P.W.1, namely, Gurusamy and others and was admitted on 01.01.2006 at about 06.10 a.m., and without responding to the treatment, he died at 12.15 p.m., on the same day. 2.2. P.W.9, on receipt of the information that Kottaiyan has been admitted as inpatient in the said hospital, reached the hospital at 01.00 p.m., and came to know that Kottaiyan died at 12.15 p.m. P.W.9 recorded the statement of P.W.1 and came back to Jegathapattinam Police Station at 02.00 p.m., and registered a case in Cr.No.1 of 2006 under Section 302 I.P.C. The printed F.I.R is marked as Ex.P.11. 2.3. P.W.11 was the Inspector of Police of Jegathapattinam Police Station at the relevant point of time and on receipt of the F.I.R submitted to

him by HC-569, proceeded to the scene of crime and reached the spot at about 08.30 p.m and in the presence of P.W.4 - Deivam, he prepared the observation mahazar and sketch, marked as Exs.P.2 and P.13 respectively. 2.4. On the same day, at about 09.00 p., P.W.11 collected the blood stained earth and sample earth in the presence of some witnesses under a cover of mahazar marked as Ex.P.3 and the blood stained earth and the sample earth were marked as M.O.2 and M.O.3 respectively. 2.5. P.W.11 recorded the statement of P.W.4 and P.W.9. P.W.11 received the wireless message about the death of Kottaiyan and went to Thanjavur Medical College Hospital and in the mortuary, he conducted the inquest in the presence of the panchayatdars at 07.00 a.m., on 02.01.2006. The inquest report was marked as Ex.P.14. On 02.01.2006 at about 10.30 a.m., he sent a requisition through P.W.7 to conduct the post-mortem on the body of the deceased. P.W.10 is the Police Surgeon and Professor of Forensic Medicine of Thanjavur Medical College Hospital and on receiving the request, she commenced the post-mortem at 12.00 noon on 02.01.2006 and noted the following features: "EXTERNAL INJURIES:

1. Bleeding from left Ear and both Nostrils noted.
2. A sutured lacerated wound with intact silk sutures noted over the left side Parietal eminence area measuring 4cmx2cmxbone deep with surrounding abraded contusion.
3. An abraded contusion over the medial aspect of left elbow over an area of 8cmx4cm.
4. An abrasion of 1/2 x 1/2 cm over the back of right elbow. INTERNAL INJURIES:
5. On reflecting the scalp skin - sub scalp contusion noted over the whole of left side scalp and occipital region. An oblique fissured fracture over the whole of middle of left parietal bone found extending on to the whole of middle of left Temporal Bone, left Frontal bone and also to the base of skull. Extradural haematoma of 400 gms noted over the middle of left side Parietal and Temporal regions. On opening the vault of skull - Thick subdural and sub arachnoid haemorrhages noted over both sides cerebral hemispheres with bilateral subdural

basal blood clots. Laceration of both sides Temporal and Frontal lobes of Brain with surrounding softening and blood clots. Multiple comminuted fractures involving the whole of left middle cranial fossa, left Anterior cranial fossa and pituitary fossa. Contusion of the roof of left side orbit. Laceration of whole of left side cerebellum. Intra cerebral haemorrhages in both sides. Depressed fracture of anterior part of left Temporal bone and the adjoining left frontal bone over an area of 6x6cm. All the above mentioned injuries were of antemortem in nature most probably by some blunt weapon. Extremities .. Cyanosed. Heart .. Normal in size. All the chambers contained dark coloured fluid blood. Valves .. Normal. Coronary vessels - patent. great vessels - Normal. Lungs .. c/s both congested and oedematous. Larynx and hyoid bone .. Intact. Stomach .. Empty. Mucosa - Normal. No specific smell made out. Liver, Spleen, Kidneys .. c/s congested. Small intestine .. Empty. Mucosa - normal. No specific smell made out. Bladder .. empty pelvis - intact. OPINION: THE DECEASED WOULD APPEAR TO HAVE DIED DUE TO HEAD INJURIES INVOLVING THE VITAL ORGAN NAMELY THE BRAIN. (VISCERA WERE NOT PRESERVED FOR CHEMICAL ANALYSIS SINCE THERE IS NO DOUBT IN THE CAUSE OF DEATH OF THE DECEASED.) (extracted as such) After conclusion of the post-mortem, P.W.10 opined that the deceased would appear to have died due to head injuries involving the vital organ, namely, the brain. The post-mortem certificate given by P.W.10 was marked as Ex.P.12. 2.6. P.W.11 recorded the statements of P.W.1, P.W.2 and other witnesses. On 03.01.2006, at about 09.00 a.m., P.W.11 arrested the appellant/accused in the presence of P.W.5 - Rajendran, Village Administrative Officer and Durairaj, Village Assistant and the appellant/accused voluntarily came forward to give a confession statement and as per the admissible portion of the confession statement marked as Ex.P.5, the wooden log - R.S.Pathi log was recovered and the same was marked as M.O.1. Subsequently, he sent the appellant/accused for judicial custody after obtaining orders. 2.7. P.W.11 also forwarded the seized articles in Ex.P.15 and made a request for chemical analysis of the same under Ex.P.6. The chemical analysis reports and the serology report were marked as Exs.P.8 to P.10 respectively. P.W.11 also examined P.W.9, who registered the F.I.R and P.W.6 and recorded their statements and further, recorded the statement of P.W.10, who conducted the autopsy. P.W.11 on

completion of the investigation has filed the final report on 09.02.2006, charging the appellant/accused for the commission of the offence under Section 302 I.P.C. 2.8. The Court of Judicial Magistrate, Aranthangi, on receipt of the final report in P.R.C.No.7 of 2006, issued summons to the accused and on his appearance, furnished the copies of documents to him under Section 207 Cr.P.C., and having found that the case is exclusively triable by the Sessions Court, committed the case to the Principal District and Sessions Court, Pudukkottai. 2.9. The learned Principal District and Sessions Judge, Pudukkottai, on appearance of the accused, framed the charge under Section 302 I.P.C and questioned him and he pleaded not guilty to the charge framed against him and prayed for trial of the case. 2.10. The prosecution in order to sustain their case, examined P.W.1 to P.W.11 and marked Exs.P.1 to P.15 and also marked M.O.1 to M.O.3. 2.11. The appellant/accused was questioned under Section 313(1)(b) of the Code of Criminal Procedure, 1973, with regard to the incriminating circumstances made out against him in the evidence tendered by the prosecution and he denied it as false. 2.12. On behalf of the accused, neither oral nor documentary evidence was let in. 2.13. The trial Court on consideration of the oral and documentary evidence, found the appellant/accused guilty and convicted him under Section 304(ii) I.P.C. and imposed the sentences as stated above and challenging the vires of the same, the appellant/accused filed the present Criminal Appeal.

3. Mr.K.Baalasundaram, learned Counsel for the appellant/accused, made the following submissions:

3. 1. P.W.1 cannot be an eyewitness. Even as per his own version in Ex.P.1 as well as his oral testimony, the place of occurrence has also been shifted as it is not clear from the evidence as to whether near a tea stall or not. 3.2. P.W.1 who happened to be the elder brother of the deceased, is an interested witness and his oral testimony is full of infirmities. In the absence of corroboration, his testimony cannot be the sole basis to arrive at a conclusion that the appellant/accused is guilty of the offence. 3.3. The Accident Register copy pertaining to the deceased was not marked and since the said document ought to have come into existence at the earlier point of time and in the event of the said document being marked, it would disclose the nature of the injury. It cannot be concluded that the deceased

died on account of the attack with a wooden log by the appellant/accused. 3.4. P.W.9 who registered the F.I.R has deposed that on receipt of the information, he proceeded to Thanjavur Medical College Hospital, but the intimation received by him was not marked. 3.5. According to P.W.1, the injured was initially taken to Manamelkudi and later on, shifted to Thanjavur Medical College Hospital and the materials relating to the treatment given at Manamelkudi Hospital were not seized and the concerned Doctor who treated him was also not examined. 3.6. The post-mortem certificate marked as Ex.P.12 would also disclose a sutured lacerated wound, but no proper explanation has been offered as to the circumstances in which, the said lacerated wound was sustained and sutured. 3.7. Even according to P.W.1, the occurrence was witnessed by Chinnasamy, son of Thavamani, Sekar, Kalapathu, son of Periyasamy, Murugan, who accompanied his younger brother - the deceased Kottaiyan, but none of them was examined as a witness and except the uncorroborated testimony of P.W.1, the prosecution has failed to produce any substantial materials to show that it was the appellant/accused who committed the offence/murder. 3.8. It is also highly doubtful as to whether M.O.1 was used by the appellant/accused to attack the deceased, as according to the witnesses, it was R.S.Pathi log, whereas M.O.1 - was Casuarina tree log and the alleged use of M.O.1 was also doubtful and the prosecution has failed to offer any plausible explanation as to the said discrepancy. 3.9. Though according to the prosecution, the occurrence took over near a tea stall and also in front of a barber shop, either the owner of the tea stall or the owner of the barber shop was not examined by the prosecution. 3.10. In sum and substance, it is the submission of the learned Counsel for the appellant/accused that in the light of the above said infirmities which have shaken the very foundation laid down by the prosecution, the trial Court has committed a grave error in convicting the appellant/accused under Section 304(ii) I.P.C and ought to have acquitted him as the prosecution has failed to prove its case beyond any reasonable doubt.

4. Per contra, Mr.P.Kandasamy, learned Government Advocate (Criminal Side) for the respondent has drawn the attention of this Court to the oral and documentary evidence and would submit that the prosecution has proved its case beyond any reasonable doubt by examining P.W.1, the elder brother of the deceased who was an eyewitness and his oral testimony is in consonance with his complaint under

Ex.P.1. The younger brother of P.W.1 - the deceased Kottaiyan died of homicidal violence was established by the testimony of P.W.10, who conducted the post-mortem and the post-mortem certificate was marked as Ex.P.12. The scientific evidence marked as Exs.P.8 to P.10 would also prove that the deceased was attacked and he sustained injuries.

5. Insofar as non-examination of other eyewitnesses, who had accompanied the deceased at the relevant point of time, it is the submission of the learned Government Advocate (Criminal Side) for the respondent that if the testimony of a solitary witness is believable and trustworthy, then it can be the sole basis to record conviction and the trial Court has precisely done and therefore, it cannot be found fault with.

6. As regards the submission made by the learned Counsel for the appellant/accused that the nature of the wooden log, i.e. R.S.Pathi log, whereas what was seized is Eucalyptus tree log and therefore, the said wooden log could not have been used for committing the offence, it is the submission of the learned Government Advocate (Criminal Side) for the respondent that R.S.Pathi oil is a very famous brand of use for treating the pain and it is extracted from the Eucalyptus tree and therefore, the local people used to say that R.S.Pathi log and also invited the attention of this Court to M.O.1 and would submit that the said log was used by the appellant/accused to commit the offence and there cannot be any doubt as to the usage of the said weapon for committing the offence.

7. The other infirmities pointed out by the learned Counsel for the appellant/accused, according to the learned Government Advocate (Criminal Side) for the respondent, are only trivial and the same has not shaken the foundation laid down by the prosecution and in support of his submissions, placed reliance upon the decision of the Honourable Supreme Court in State of U.P. v. Krishna Master and others reported in 2011 (1) SCC (Cri.) 381. Therefore, the learned Government Advocate (Criminal Side) for the respondent would submit that since the prosecution has proved its case beyond any reasonable doubt and that the trial Court has also found that the occurrence took place in a heat of passion, instead of convicting the appellant/accused under Section 302 I.P.C, has

convicted him for the offence under Section 304(ii) I.P.C and therefore, prays for confirming the conviction and sentence passed by the trial Court.

8. In response to the said submission, the learned Counsel for the appellant/accused would submit that the appeal was called on 07.01.2014 and on that date, there was no representation on behalf of the appellant/accused and subsequently, a non-bailable warrant was issued to secure the presence of the appellant/accused, who was also arrested and produced before this Court and during the year 2011, he was involved in an accident, which resulted in amputation of his right leg below knee and alternately, contended that the said fact may also kindly be taken into consideration for reducing the quantum of sentence.

9. This Court paid its anxious consideration to the rival submissions and also perused the materials available on record.

10. The question that arises for consideration, is whether the prosecution through the oral and documentary evidence has proved the guilt of the appellant/accused beyond any reasonable doubt.

11. P.W.1 is the elder brother of the deceased and according to him, after checking his fishing boat, he was returning on 31.12.2005 at about 11.30 p.m., and on that way, he saw his younger brother - the deceased Kottaiyan accompanied by his friends and at that time, there was a wordy altercation between the appellant/accused and one Mani @ Manikandan with regard to the New Year celebration and the younger brother of P.W.1, the deceased Kottaiyan intervened and tried to pacify them and in a heat of passion, the appellant/accused took a R.S.Pathi log and hit the deceased Kottaiyan on the centre of the head as well as his right side and on receiving the attack, the deceased sustained blood injuries and became unconscious. The appellant/accused fled away from the scene of occurrence with the wooden log. The injured was taken in a car to Manamelkudi Hospital and later on, he was taken to Thanjavur Medical College Hospital and admitted at about 06.10 a.m., on 01.01.2006 and without responding to the treatment, he breathed his last at about 12.15 p.m., on 01.01.2006.

12. It is the submission of the learned Counsel for the appellant/accused that the Doctor who initially treated the injured, was not examined and the records were also not seized. In the considered opinion of this Court, the said point urged by the learned Counsel for the appellant/accused has no force at all for the reason that the immediate reaction/endeavour is to treat the injured who has sustained grievous injuries and therefore, he was immediately taken to a nearby hospital and on medical advice, he was taken to the Head Quarters Hospital, namely, Thanjavur Medical College Hospital, wherein he was admitted at about 06.10 a.m., on 01.01.2006 and without responding to the treatment, he died.

13. The non-marking of the Accident Register of the Thanjavur Medical College Hospital is also not fatal for the reason that he was unconscious and without responding to the treatment, he died on the afternoon hours on 01.01.2006.

14. P.W.10 - Doctor who conducted the autopsy on the body of the deceased has answered to a specific question as to the sutured wound, that she was not aware as to where the said suture was put. She has also deposed that she has not treated. P.W.10 would also depose that the injuries sustained by the deceased were caused by a blunt weapon and the deceased died on account of the injuries involved in the vital organ, namely, brain.

15. M.O.1 - wooden log was also recovered after arrest and based on his admissible portion of the confession statement, marked as Ex.P.5. The said material object was recovered and it was also subjected to chemical analysis and as per Ex.P.10, it was opined that the Casuarina tree log contained human blood, though the result of grouping test is inconclusive.

16. It is the forceful and vehement submission of the learned Counsel for the appellant/accused that since P.W.1 deposed that the deceased was attacked by a R.S.Pathi log, whereas M.O.1 was Casuarina tree log, it cannot be construed as the weapon used to commit the offence.

17. This Court is of the considered view that the said submission lacks merit and substance. As rightly contended by the learned Government Advocate (Criminal Side) for the respondent, R.S.Pathi oil is the local brand of oil of Eucalyptus tree

and therefore, the wooden log locally called as R.S.Pathi log and as already pointed out, in Ex.P.10 - Serological report, M.O.1 contained human blood.

18. It is the submission of the learned Counsel for the appellant/accused that the intimation received by P.W.9 - Sub-Inspector of Police attached to Jegathapattinam Police Station, was not marked. On perusal of the oral testimony of P.W.9 would disclose that he received a wireless message and therefore, he proceeded to Thanjavur Medical College Hospital and reached the Hospital at 13.00 hours and he came to know that the person who sustained injuries, died at 12.15 p.m., on 01.01.2006. In the cross- examination, P.W.9 deposed that the written information received from the Out Police Station attached to Thanjavur Medical College Hospital, was handed over to P.W.9 and though it was not marked, the remains that he also received a wireless message and accordingly, he proceeded to the said Hospital and recorded the statement of P.W.1 and reduced it into writing and came back to the Police Station and registered an F.I.R under Ex.P.11.

19. Ex.P.1 as well as the F.I.R had also reached the jurisdictional Judicial Magistrate Court without any lapse of time on the same day at about 09.00 p.m., and therefore, it cannot be construed that any interpolation or improvement was done, to have a suspicion with regard to the origin of the case.

20. It is further contended that the place of occurrence itself is doubtful. However, a perusal of Ex.P.13, rough sketch would disclose that the location of the tea stall as well as the barber shop, is mentioned and the occurrence took place in front of the barber shop owned by one Srinivasan.

21. P.W.4, is the witness to the Observation Mahazar and also to the recovery of M.O.2-blood stained earth and M.O.3-sample earth from the scene of occurrence. P.W.5 is the witness to the arrest and recovery. Though he was extensively cross-examined, nothing useful in favour of the appellant/accused or contra to the case of the prosecution, has been elicited.

22. As per Ex.P.10, as already pointed out, in the wooden log, the presence of human blood was noted in the Serological report and therefore, there is no doubt

that the said weapon was used for the commission of the offence.

23. In *State of U.P. v. Krishna Master and others* reported in 2011 (1) SCC (Cr.) 381, in paragraph 8, the Honourable Supreme Court observed that 'Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. .... The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to insignificant aspects thereof. .... In the deposition of witnesses, there are always normal discrepancies, howsoever, honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition, shock and horror at the time of occurrence and threat to the life. It is not unoften that improvements in earlier version are made at the trial in order to give a boost to the prosecution case albeit foolishly. Therefore, it is the duty of the Court to separate falsehood from the truth. In sifting the evidence, the Court has to attempt to separate the chaff from the grains in every case and this attempt cannot be abandoned on the ground that the case is baffling unless the evidence is really so confusing or conflicting that the process cannot reasonably be carried out. In the light of these principles, this Court will have to determine whether the evidence of eye-witnesses examined in this case proves the prosecution case.' 24. This Court, keeping in mind the proposition laid down in the cited judgment and after a detailed scrutiny of oral and documentary evidence, is of the considered opinion that the prosecution has proved its case beyond reasonable doubt. The trial Court has also applied its mind to the evidence tendered by the prosecution and though the appellant/accused was charged for the commission of the offence under Section 302 I.P.C., the trial Court having found that in a heat of passion, the appellant/accused took the wooden log which was lying nearby and attacked him, came to the conclusion that it is not a premeditated murder and therefore, rightly convicted under Section 304(ii) I.P.C and this Court finds no error or infirmity in the reasons assigned by the trial Court in convicting the appellant/accused under Section 304(ii) I.P.C.

25. Insofar as the alternate plea made by the learned Counsel for the appellant/accused that subsequent to the conviction, the appellant/accused was involved in an accident and his right leg was amputated below knee, this Court is able to see some force in the said submission. In pursuance of the execution of the non-bailable warrant issued by this Court, the appellant/accused was produced before this Court and this Court found that his right leg was amputated below knee and it could be taken as a mitigating circumstance to reduce the sentence of imprisonment.

26. In the result, this Criminal Appeal is dismissed, confirming the conviction under Section 304(ii) I.P.C. recorded by the trial Court in S.C.No.97 of 2006, dated 26.02.2007, on the file of the Principal District and Sessions Court, Pudukkottai, however, the sentence of imprisonment of rigorous imprisonment for eight years, is reduced to rigorous imprisonment for five years and the sentence of fine with default sentence is maintained. Index :Yes/No 12.01.2015 Internet :Yes/No rsb To 1.The The Inspector of Police, Jegathapattinam, Pudukkottai District. 2.The Court of Principal District and Sessions Court, Pudukkottai. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai. M.SATHYANARAYANAN,J.

rsb Criminal Appeal (MD)No.169 of 2007 12.01.2015

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