



Criminal Appeal No.717 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.10.2023

Pronounced on : 02.11.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Appeal No.717 of 2017

Arul

...Appellant/Accused

Vs.

State Represented by
the Inspector of Police,
Kanchi Taluk Police Station
Crime No.516 of 2013.

...Respondent/Complainant

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure
against the conviction and sentence passed by the District and Sessions
Judge No. II, Kanchipuram, in S.C.No.18 of 2014 dated 29.06.2017.

For Appellant : M/s.R.Anbalagan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



JUDGMENT

The appellant has challenged the Judgment of conviction and sentence imposed on him dated 29.06.2017 passed by the learned District and Sessions Judge No.II, Kanchipuram in S.C.No.18 of 2014. The appellant was convicted and sentenced by the Trial Court as follows:-

<i>Conviction</i>	<i>Sentence</i>
Section 304 (ii) IPC	To undergo Ten years Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for Six months.
Section 506 (ii) IPC	To undergo Three years Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for Three months.
The sentences were ordered to run concurrently	

2. The case of the prosecution is that on 07.08.2013, at about 8:45 p.m., on account of prior enmity, the appellant near the house of his brother, one Manoharan, slapped the deceased, pushed him on the cement road, and stamped him on the chest and the neck of the deceased and caused his death. It is also alleged that during the course of the same transaction, the appellant threatened P.W.1 - the wife of the deceased, that he would cause her death as well.



3. P.W.1 - the wife of the deceased, gave the complaint/Ex.P1, to the Police, which was registered in Crime No.516 of 2013. The FIR was registered on 08.08.2013, at about 1:30 a.m., for the offence under Section 302 IPC. The said FIR was marked as Ex.P3. The Sub Inspector of Police - P.W.5, registered the said FIR. P.W.9 - the Inspector of Police, took up the investigation. On 08.08.2013, at about 6:00 a.m, P.W.9 went to the scene of occurrence and prepared the Observation Mahazar - Ex.P6. He thereafter went to Kanchipuram Government Hospital, Kanchipuram, where the body of the deceased was kept, and conducted the Inquest. The report was marked as Ex.P8. Thereafter, P.W.7 - Doctor, conducted post-mortem and issued a post-mortem certificate – Ex.P4. The Doctor found the following injuries:

External Injuries

Laceration 2 x 1 x 1 cm on (L) little finger.

Internal Examination

(1). Hyoid bone intact.

(2). Thoracic # (L) 1 to 5 ribs.

(3). Heart 250 gm c/s congested.

(4). Lungs ® Lung 580 gm. 2 puncture wounds 1 x 1 cm each. (L) Lung



480 gm one puncture wound 6 x 2 cm present.

(5). Stomach contains 100 ml yellowish liquid with undigested food.

(6). Liver 1350 gm c/s congested.

(7). Both kidneys 100 gm each c/s congested.

(8). Spleen – 110 gm.

(9). Brain – 1250 gm c/s congested No#.

The Doctor had further opined that the cause of death was due to Hemorrhagic shock and injury to vital organs in thorax (Lungs). Thereafter, P.W.9 examined the witnesses and recorded their statements. The accused was arrested on 08.08.2013 at about 12:30 p.m. The express FIR reached the learned Magistrate at about 12.12 p.m., on 08.08.2013. P.W.10 continued the investigation and filed the final report for the offence under Sections 302 and 506 (ii) IPC against the accused.

4. The case was committed to the Court of learned District and Sessions Judge No. II, Kanchipuram. The Trial Judge framed charges under Sections 302 and 506 (ii) of IPC against the appellant.



5. To prove the case, the prosecution examined ten witnesses as P.W.1 to P.W.10 and marked ten documents as Exs.P1 to P10. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the appellant, nor any document was marked.

6. After considering the evidence on record and hearing either side, the Trial Court, by Judgment dated 29.06.2017, found the appellant/accused guilty of the offences under Section 304 (ii) IPC and 506 (ii) IPC and convicted and sentenced him as stated *supra*.

7. Challenging the conviction and sentence, the accused has preferred this Criminal Appeal.

8. The learned counsel for the appellant submitted that the prosecution suffers from several infirmities and all the non-official witnesses examined by the prosecution are close relatives of the deceased; that the learned Trial Judge failed to consider the evidence in the



proper perspective. The learned counsel also pointed out the delay in registration of the FIR and in dispatching the same to the learned Magistrate.

9. Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor, per contra submitted that P.W.1 is a rustic villager and minor contradictions in her evidence would not affect her testimony in any manner; and that the prosecution had established the case beyond reasonable doubt and there is no reason to interfere with the Judgment of conviction.

10. Heard the learned counsel for the appellant as well as the learned Additional Public Prosecutor for the respondent/state and perused the materials available on record.

11. On perusal of the records, it is seen that the deceased sustained injuries, which have been confirmed by the post-mortem report – Ex.P4, issued by the Doctor - P.W.7. The Doctor had also opined that the cause of death was due to the Hemorrhagic shock due to the injuries in the lungs. There is no dispute on behalf of the appellant with regard to the said fact.



Therefore, from the evidence of the Doctor and the other evidence on record, the prosecution had established that the death of the deceased was due to homicidal violence.

12. The next question is whether the appellant was the cause of the said homicidal death. It is the prosecution case that P.W.1 and the deceased went to meet the appellant, and the appellant was enraged by the conduct of the deceased in asking the phone number of his son who went along with the brother of the appellant to Chennai for doing construction work and that the appellant therefore attacked the deceased in her presence.

13. P.W.2 is the brother of the deceased, and he would admit that he went to the scene of the occurrence based on the information given by P.W.1, his sister-in-law. P.W.3 is the nephew of the deceased, and he was also examined as an eyewitness to the occurrence, and according to the prosecution, P.W.3 also witnessed the occurrence. P.W.4 was a witness in the confession statement said to have been given by the appellant to the Police. P.W.5 is the Sub - Inspector of Police, who registered the FIR. P.W.6 is the



corpse constable. P.W.7 is the post-mortem Doctor. P.W.8 is a close relative of the deceased and said to have been assigned as a witness in the Observation Mahazar. P.W.9 and P.W.10 are the Investigation Officers in this case. Thus, it can be seen that P.W.1 and P.W.3 are the eyewitnesses to the occurrence.

14. The prosecution has not established the motive for the occurrence in a clear and cogent manner. It is not clear as to why the appellant had a grudge against the deceased for asking the phone number of his son, who went along with the appellant's brother to Chennai for doing labour work.

15. Be that as it may. P.W.3 in the re-examination had come up with the version that the appellant was aggrieved by the fact that the deceased did not pay the money to him for consuming alcohol. It appears to be an afterthought, as it is not the case of the prosecution that the non-payment of money demanded by the appellant was the motive for the appellant to cause the death of the deceased. However, this Court is conscious of the fact that motive may not be wholly relevant in a case which is based on eyewitnesses.



16. P.W.3 claims himself to be an eyewitness. However, it is seen from the evidence of P.W.1 and her complaint which is marked as Ex.P.1, that she has not spoken to about the presence of P.W.3 in the occurrence. It is her case that she went along with the deceased/her husband, to the house of the brother of the appellant. Further, P.W.3 in his cross-examination would state as follows:

"நான் சத்தம் கேட்டு சம்பவ இடம் போன விசயத்தை போலிசாரிடம் சொன்னேன். போலிசார் எவ்வளவு நேரம் கழித்து போனீர்கள் என்று கேட்டார்கள். ஆனால் எவ்வளவு நேரம் கழித்து போனேன் என்று எழுதினார்கள் என்று தெரியாது."

The above answer in the cross-examination coupled with the fact that P.W.1 had not spoken to about the presence of P.W.3 makes P.W.3, an unreliable witness. His presence is highly doubtful, and therefore, his evidence cannot be said to be in support of the prosecution case.

17. The next eyewitness is P.W.1, who is the wife of the deceased. Therefore, her presence at the scene of the occurrence normally cannot be said to be unnatural. However, the other infirmities in the prosecution case



and her conduct makes her version also doubtful. P.W.1 would state that the deceased was taken in an Ambulance to the Hospital after a few persons in the scene of occurrence had called the 108 – Ambulance service. It is the case of the Investigating Officer/P.W.9 that the Doctor who examined the deceased had certified that the deceased was brought dead. However, the said Doctor has not been examined. It is a fact that once the deceased is taken to the Hospital, the information would be sent to the Police. It is not clear from the evidence let in by the prosecution as to what time the deceased was taken to the Hospital. Therefore, the prosecution case that they came to know of the occurrence for the first time on the complaint given by P.W.1 at 1:30 a.m., on 08.08.2013 is unbelievable. The FIR registered at 1.30 a.m would state that the delay is attributable to the complainant in the column “reasons for delay”. P.W.1 had admitted in the cross examination that she did not know what was written in the complaint and that she affixed her thumb impression on the complaint at the instance of the Police. The relevant portion in the cross examination reads as follows:-



Criminal Appeal No.717 of 2017

"புகாரை நான் எழுதவில்லை. போலிசார்
எழுதினார்கள். புகாரில் என்ன எழுதினார்கள்
என்று தெரியாது. என்னை கைநாட்டு வைக்க
சொன்னார்கள். வைத்தேன். எனக்கு
படிக்கதெரியாது."

Further, cross examination was done by the defence, in which, she had
stated as follows:

"எனக்கு எழுத படிக்க தெரியாது. புகாரில்
என்ன எழுதினார்கள் என்று தெரியாது. சம்பவத்தை
நான் நேரில் பார்க்கவில்லை. சம்பவத்தை பற்றி
தெரியாது. சம்பவம் என்ற வார்த்தை என்ன என்று
தெரியாது. என் கணவரை அடித்தது தெரியும். என்
கணவரை யார் அடித்தார்கள் என்று போலிசார்
கேட்கவில்லை".

No doubt, P.W.1 is a rustic villager, and a few statements made in the
cross-examination without understanding the purport of the question may
not by itself shake her credibility. However, in the instant case, it is seen
that, apart from the delay in giving a complaint, the express FIR reached the
learned Magistrate, only at 12.20 p.m, the next day. No explanation has been



offered by the prosecution for the said delay. That apart, in view of P.W.1's admission that she had not given the complaint, this Court is of the view that the complaint and the FIR were not lodged in the manner stated by the prosecution. That apart, there is no evidence let in by the prosecution as to when the body of the deceased was taken from the scene of occurrence to the Hospital and as to whether the Hospital authorities had informed about the medicolegal case to the Police. P.W.1 had admitted that she did not go to the Hospital in the Ambulance which conduct is unexplained by the prosecution. All the above makes the presence of P.W.1 in the scene of occurrence highly doubtful.

18. Apart from the evidence of P.W.1 and P.W.3, the other witnesses are of no avail to the prosecution. It is trite that if an FIR is held to be fabricated or brought into existence long after the occurrence, the entire fabric of the prosecution case collapses. This Court is reminded of the observations of the Hon'ble Supreme Court in this regard in ***Marudanal Augusti vs State Of Kerala*** reported in (1980) 4 SCC 425 wherein, the Hon'ble Supreme Court had observed as follows:



“The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witness could be added without there being anything to check the authenticity of their evidence.”

19(a) This Court also finds another aspect in this case, which is worth mentioning. It is the case of the prosecution as stated earlier that the accused attacked the deceased with hands and kicked him with legs and thereafter stamped on his chest. The postmortem Doctor-PW7, on internal examination found certain injuries, which has been extracted earlier. Injuries No.2 and 4, reads as follows;

“(2) Thoracic # (L) 1 to 5 ribs.

(4) Lungs ® Lung 580gm. 2 puncture wounds 1 x 1 cm each.

(L) lung 480gm one puncture wound 6 x 2 cm present.”

However, in the deposition, which is typed in vernacular the Doctor had stated as follows:

“வலது பக்கம் நுரையீரலில் 2 வெட்டுக்காயம் 1க்கு 1 செ.மீ இடது பக்க நுரையீரலில் ஒரு வெட்டுக்காயம் 6க்கு 2 செ.மீ இருந்தது”

The above version indicates that there were cut injuries.



Even assuming that it is an improper translation of what is stated in the postmortem report, this Court finds that the punctured wounds in both the lungs have not been properly explained. The Doctor would state in his examination that the injuries noted by him could be caused by stamping and kicking on the chest of any person. Unfortunately, the defence have also not cross examined the Doctor as to how the overt acts attributed to the accused could cause punctured wounds in an internal organ, when there is no corresponding injury externally.

19 (b). In Modi's Medical Jurisprudence and Toxicology, the nature of 'punctured/stab wounds' are described as follows:

“These are popularly called stabs and are termed penetrating wounds, when passing through the tissues, they enter a cavity of the body, such as the thorax or abdomen. These wounds are produced by a long piercing or stabbing instrument, such as a pin, needle, knife, scissors, bayonet, spear, dagger, pickaxe, and arrow. The point of the instrument may be sharp or blunt.

A stab wound caused by a sharp, pointed and cutting instrument has clean-cut edges, which are almost parallel, but slightly curved to each other, like an ellipse, and have sharp angles at the two extremities. This is commonly the case if the instrument has two cutting edges, an instrument



having one cutting and one blunt edge, will show a certain amount of bruising and raggedness at one end of the wound. The wound is generally wedge-shaped, if it is produced by an instrument with a thick, broad back and only one cutting edge, like an axe, and hatchet.”

19 (c). It is further referred in the said book that owing to the force of the blow, the shape of the wound made by the same weapon may differ on different parts of the body, thereby suggesting that even if an attack is made by a knife which has one inch width, the size of the punctured wound in the internal organ may be more than one inch. Be that as it may. This Court is unable to comprehend as to how the punctured wounds of the sizes mentioned in the postmortem report could have been inflicted in the absence of any external injury or weapon used. The medical jurisprudence does not suggest that a punctured wound could be caused to an internal organ viz., lungs by a kick or by a hard blow with the hands in the chest area.

19(d). It is also seen that the ribs were fractured. It is quite possible that a fractured rib or a bone had pierced into the lungs to cause the punctured wound. But, however, such an inference or deduction cannot be made by this Court in the absence of any definite expert opinion.



WEB COPY 19 (e). Unfortunately, as stated earlier, neither the prosecution nor the defence have taken pains to explain this aspect of the matter.

19 (f). However, in view of the finding of this Court that the witnesses cannot be believed, this issue would not make any difference in so far as the final decision as regards the involvement of the appellant in the instant case.

20. Therefore, this Court is of the view that the prosecution has failed to establish the guilt of the appellant behind reasonable doubt and hence, the Judgment of conviction passed in S.C.No.182 of 2014, dated 29.06.2017 on the file of District and Sessions Judge, No.II, Kanchipuram is liable to be set aside.

21. In the result, this Criminal Appeal is allowed. The appellant is acquitted of all the charges framed against him and he is directed to be set at



Criminal Appeal No.717 of 2017

liberty forthwith unless his custody is required in connection with any other case. Fine amount, if any, paid by the appellant shall be refunded. Bail bond executed shall stand discharged.

02.11.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
dk/ars

- To
- 1.The District and Sessions Judge No. II,
Kanchipuram,
Kanchipuram District.
 - 2.The Inspector of Police,
Kanchi Taluk Police Station.
Kanchipuram.
 - 3.The Public Prosecutor,
High Court, Madras.

SUNDER MOHAN, J.

dk/ars



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Criminal Appeal No.717 of 2017

Pre Delivery-Judgment in
Criminal Appeal No.717 of 2017

Dated: 02.11.2023