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Crl.A.No.83 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.08.2024
Pronounced on	20.09.2024

CORAM :

THE HONOURABLE Mr. JUSTICE **M.S. RAMESH**
AND
THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

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1. Selvam
2. Karthick
3. Tamilarasi

... Appellants/Accused 1 to 3

Vs.

State by The Inspector of Police,
Namagiripettai Police Station,
Namakkal District.
(Crime No.238 of 2015)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment dated 11.01.2019 in S.C.No.59 of 2016 on the file of the Additional Sessions Judge, Namakkal.

For Appellants : Mr.A.Padmanabhan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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J U D G M E N T

C.KUMARAPPAN, J.

The instant Criminal Appeal has been filed by the appellants jointly against the order of conviction passed in S.C.No.59 of 2016 dated 11.01.2019 by the learned Additional Sessions Judge, Namakkal. The first appellant is father of the 2nd appellant and husband of 3rd appellant.

2. According to the prosecution's case, the first appellant's father Varathappa Gounder has got 3 wives, among them, 1st appellant's mother is the first wife, and the *de facto* complainant Kanthayee [PW1] is the 3rd wife. The deceased Varathappa Gounder's 1st and 2nd wife pre deceased him. According to the prosecution, there was a civil dispute between the deceased Varathappa Gounder and the 1st appellant. It is the case of the prosecution that the first appellant has nurtured grudge and enmity with his father, on account of settling 2 acres of the property in favour of the 3rd wife's son viz., Nallathambi [PW7]. Few days prior to the occurrence, there was an altercation between the appellant's half brother Nallathambi [PW7] and himself.



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3. It appears that on the fateful day, the first appellant, his son (A2) and wife (A3) went to the scene of occurrence at about 5.30 p.m with wooden logs and attacked the deceased Varathappa Gounder indiscriminately. Further, the 2nd accused crushed the deceased's testicles, as a resultant, the deceased died on the spot. After that, PW1- Kanthayee, and PW8-Sellammal proceeded to the police station and gave a complaint [Ex.P1]. The said complaint was received by the Special Sub Inspector of Police Mr.Pichaimuthu [PW12] at about 8.30.p.m on 06.10.2015 and registered an FIR in Crime No.238 of 2015 under Sections 294(b), 506(ii) and 302 IPC. Thereafter, he forwarded the same to the concerned jurisdictional Magistrate as well as to the Inspector of Police Mr.Bharaneetharan [the investigating officer].

4. On receipt of the copy of the FIR, Mr.Bharaneetharan, the Investigating Officer [PW17] proceeded to the scene of occurrence and prepared the observation mahazar [Ex.P3] and rough sketch [Ex.P21] in the presence of witnesses. On the next day, i.e., 07.10.2015 at about 12.40.p.m, he arrested the accused, and in the presence of Mr.Gopal, Village Administrative Officer [PW10], recorded separate confession statement for



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each of the accused, and effected discovery of fact by recovering the wooden logs. He also recorded the statement of the scientific officer of the Forensic Department, and other witnesses about the occurrence. In the meanwhile, he also made arrangements to forward the recovered materials to the concerned jurisdictional Magistrate under Form 95. After his transfer, the investigation was taken by Mr.Balamurugan, Inspector of Police [PW18]. He recorded the statement of the Doctor [PW11], who conducted postmortem and given the postmortem report [Ex.P14], wherein the nature of injuries sustained by the deceased have been stated and the same are as follows:-

“INJURIES

- 1) LACERATION M-1XIXMUSCLE DEEP NOTED OVER BACK OF RIGHT LOWER ARM 2CMS ABOVE RIGHT ELBOW
- 2) PARALLEL CONTUSION OF SIZE M-24CMS WITH CENTRAL PALLOR OF 2CMS NOTED VERTICALLY OVER BACK OF RIGHT CHEST
- 3) CONTUSION OF SIZE M-5X3XMUSCLE DEEP NOTED OVER BACK OF LEFT UPPER CHEST
- 4) CONTUSION OF SIZE M-7X3XMUSCLE DEEP NOTED OVER BACK OF MIDDLE OF LEFT CHEST M-5CMS BELOW THE PREVIOUS INJURY
- 5) CONTUSION M-10X3XMUSCLE DEEP NOTED OVER BACK OF LOWER LEFT CHEST 6CMS BELOW THE PREVIOUS INJURY
- 6) CONTUSION M-7X3XMUSCLE DEEP OVER BACK OF UPPER



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LEFT ABDOMEN 7CMS BELOW PREVIOUS INJURY.

- 7) *SWELLING DEFORMITY NOTED OVER RIGHT LOWER FOREARM O/D FRACTURE OF UNDERLYING BOTH BONES WITH SURROUNDING SOFT TISSUE CONTUSION.*
- 8) *SWELLING DEFORMITY NOTED OVER LEFT LOWER ARM O/D FRACTURE OF UNDERLYING BONE WITH SURROUNDING SOFT TISSUE CONTUSION*
- 9) *SWELLING DEFORMITY NOTED OVER LEFT UPPER LEG O/D FRACTURE OF UNDERLYING BOTH BONES WITH SURROUNDING SOFT TISSUE CONTUSION.*
- 10) *SWELLING DEFORMITY NOTED OVER FRONT OF RIGHT KNEE O/D FRACTURE PATELLA INTO TWO HALF WITH SURROUNDING SOFT TISSUE CONTUSION.*
- 11) *MULTIPLE SUPERFICIAL SURFACE INCISIONS ALL OVER THE BODY REVEALS*
- A) *CONTUSION M-30X7XBONE DEEP OVER FRONT OF RIGHT LEG*
- B) *CONTUSION M-40X10XMUSCLE DEEP OVER BACK OF LOWER THIGH AND RIGHT LEG*
- C) *CONTUSION M-27X7XMUSCLE DEEP NOTED OVER BACK OF LEFT LEG*

INTERNAL EXAMINATION:

O/D HEAD :-SCALP- NORMAL, CRANIAL VAULT INTACT.,BRAIN- EDEMATOUS, C/S CONGESTED. BASE OF SKULL-INTACT.

O/D NECK: NECK STRUCTURES-NORMAL. HYOID BONE-INTACT.

O/D THORAX- RIBS-INTACT. HEART NORMAL IN SIZE, C/S CHAMBERS CONTAINED FLUID BLOOD. VALVES AND CORONARIES-NORMAL. LUNGS-BOTH LUNGS C/S CONGESTED.

O/D ABDOMEN: STOMACH-CONTAINED 300GMS OF PARTLY



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*DIGESTED COOKED FOOD MATERIAL WITH NO SPECIFIC ODOUR
C/S CONGESTED.. LIVER, SPLEEN AND BOTH KIDNEYS- NORMAL
IN SIZE, C/S CONGESTED.. BLADDER - EMPTY. PELVIS, SPINAL
COLUMN-INTACT
VISCERA PRESERVED AND SENT FOR CHEMICAL ANALYSIS.
OPINION: **RESERVED PENDING CHEMICAL ANALYSIS
REPORT."***

The Doctor [PW11] opined that the deceased would have died out of shock and hemorrhage of the injury sustained by him. The Investigating Officer [PW18], after completing his investigation, has laid the charge sheet against the first accused for the offences under Sections 294(b), 506(ii), 302, 302 r/w 34 IPC and Section 302 r/w 34 IPC.

5. In order to prove the charges, the prosecution examined as many as 18 witnesses as PW1 to PW18, relied 27 documents as Exs.P1 to P27, and marked 4 Material Objects as M.O.1 to M.O.4. On behalf of the defence, no witness was examined and no document was marked.

6. The Trial Court, after having considered the oral and documentary evidence and also based upon the material objects, have arrived at a conclusion that the accused are liable to be convicted for the offence under



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Section 302 r/w 34 of IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.10,000/- each in default, rigorous imprisonment of one year each. Aggrieved with the order of the learned Sessions Judge, the appellants preferred the instant appeal.

7. Assailing the order of the learned Trial Judge, the learned counsel appearing for the appellants would vehemently contend that though PW1 would project herself as the occurrence witness, her evidence is highly unreliable, and that except her singular testimony, there are no other witnesses either to corroborate or to support the evidence of PW1. It is also the contention of the learned counsel for the appellants that, there are unexplained delay in registering the FIR, and forwarding the same to the concerned jurisdictional Magistrate. It is further contended that the accident report copy of the deceased was not marked. The learned counsel would further contend that there is no enmity between the accused and the deceased. On the other hand, it is the contention of the appellant that PW7 may have some role in the death of the deceased or it could have been the accident as the deceased was tethering his cattle at the relevant point of time. Hence, prayed to interfere with the order of Trial Court by allowing the instant criminal appeal.



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8. Per contra, the learned Additional Public Prosecutor would vehemently contend that the prosecution has established the case beyond reasonable doubts through the occurrence witness PW1 and her evidence have been corroborated through the recovery witnesses. It is the further contention of the prosecution that by examining the sisters of the accused and also by examining PW7-half brother, the prosecution has established the motive of the accused against the deceased. Therefore, the findings rendered by the Trial Court in convicting the accused is well merited and does not require any interference by this Court.

9. We have given our anxious consideration to either side submissions.

10. The prosecution attempted to prove their case through occurrence witnesses viz., PW1 to PW3. In the complaint [Ex.P1], PW1-Kanthayee has narrated as to how the occurrence took place. According to her version, at about 5.30.p.m when the deceased was tethering the cattle in the cattle shed, she [PW1] and PW2-Sellammal were talking in front of their house. While so, the accused came and attacked the deceased. Therefore, according to Ex.P1-complaint, Kanthayee [PW1] and Sellammal [PW2] qua wife of Raju



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[PW9] were initially projected as the eyewitnesses. Even, in the chief examination, PW1 reiterated the said stand.

11. During her cross examination, she has further improved her statement that PW9-Raju namely the husband of PW2-Sellammal was also present at the scene of occurrence. However, while examining Sellammal [PW2], though she speaks about the death of the deceased, did not state anything incriminating against the accused. More pertinently, she admits that she do not know as to how deceased died. Similarly, the husband of PW2, who was examined as PW9 as the witness for the observation mahazar [Ex.P3], also did not state anything incriminating against the accused, except the manner in which Mahazar-Ex.P4 was prepared. But, he admitted that there was an enmity between the accused and himself. Therefore, though PW1 projected 3 witnesses as the occurrence witnesses, now PW2 and PW9, as stated supra, did not support PW1.

12. It is the case of the defence that there was an enmity among the deceased on one side, and PW1 and her son PW7-Nallathambi on the other side. The enmity is not in serious dispute, which was even admitted by PW1



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by stating that her son PW7 had problem with the deceased about 15 days back, and that it was the accused who had intervened in support of his father qua deceased. In such an intervention, the accused had sustained injury through PW7, which necessitated 7 sutures. For ready reference, this Court deems it appropriate to extract relevant portion of the admission of PW1:-

“ஒரு தான் செட்டில்மெண்ட் என கணவர் எழுதி வைத்தார். அதில் என மகனுக்கு முழுமையாக தனது பெயரில் சொத்தை எழுதி வைக்கவில்லை என்று சொல்லி என கணவர் மீது வருத்தம். அதனால் என மகன் தன் அப்பாவுடன் சண்டை போட்டார். என கணவருக்கும் என மகனுக்கும் மேற்கூறிய சம்பவத்திற்கும் 15 நாட்களாக வயல்காட்டில் வைத்து சண்டை நடந்தது. அப்போது செல்வம் என அப்பாவை அடிக்கிறாய் கேஸ்போட்ட குப்பாயி மகன் லட்சுமியை கேட்காமல் என பிரச்சனை செய்கிறாய் என்று கேட்டபோது செல்வத்திற்கும் என மகனுக்கும் தகராறு வந்து அதில் என மகன் செல்வத்தை அடித்துவிட்டார். அவ்வாறு அடித்ததில் 1வது எதிரிக்கு தலையில் 7 தையல் போடும் அளவிற்கு காயம் ஏற்பட்டது என்பது சரிதான். செல்வம் இராசிபுரம் அரசு மருத்துவமனையில் சிகிச்சை பெற்றார்.”

13. Therefore, even according to PW1, there was enmity between PW7 and deceased about 15 days back and it was the accused, who saved the deceased from the attack of PW7. This was further corroborated by PW7-Nallathambi himself, in his cross examination. The admission of PW7-Nallathambi is as follows:-



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“.....நான் செல்வத்தை அடித்து சம்பந்தமாக ராசிபுரம் கோட்டில் வழக்கு நடந்தது.”

14. Therefore, the very motive projected by the prosecution against the deceased is some what weak. Even PW6, who is the daughter of PW1, admits the enmity between her deceased father and her brother PW7-Nallathambi. In her cross examination, PW6-Manimegalai, who is the daughter and sister of PW1 and PW7 respectively had supported the defence case of enmity between the deceased and accused on one side and PW7 on the other side. The relevant portion of the admission of PW6 is as under:-

“..... தம்பி என் அப்பாவிடம் விடுதலை ஆவணத்தில் என்னிடம் கையெழுத்து வாங்கிக் கொடுக்கவில்லை என்று சொல்லி தகராறு செய்தார். அந்த சமயத்தில் என் அப்பா என் தம்பி 2, 3 தடவை அடித்து இருக்கிறார். அந்த சமயங்களில் அடி வாங்கிக் கொண்டு என் அப்பா அவரது தம்பி வீட்டிற்கு சென்று விடுவாரா? என்றால் இல்லை. என் தம்பி என் அப்பாவை அடித்தபோது அதனை போய் கேட்ட செல்வத்தை என் தம்பி அடித்து செல்வம் அதனால் ஆஸ்பத்திரியில் சிகிச்சை பெற்றார்.”

15. It is pertinent to mention here that at the time of occurrence, though it was projected that there were 2 other persons witnessing the occurrence, the enmity between PW1's son [PW7], and the accused would



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impulse this Court to look at the evidence of PW1 with great caution and circumspection.

16. There is yet another factor which also raises the apprehension in respect of the involvement of the accused. Though it was projected that the accused has got enmity with the deceased, from the evidences of PW1 and PW6, what emerges is the enmity between the deceased and PW7. In fact this accused supported his father [deceased]. Apart from that, PW4, who on information given by PW1, when PW4 reached the scene of occurrence, PW7 was also present. Whereas, such material factum was disputed by PW7. The relevant admission of PW4 is as follows:-

“..... நான் வருதப்ப கவுண்டர் தம்பியை கூட்டி வந்தபோது கந்தாயி மற்றும் அவரது மகன் ஆகியோர் அங்கு இருந்தார்கள். அந்த இடத்தில் தடி கிடந்ததா? என்றால் நான் வரும்போது இரவு 7.00 மணி நேரம் ஆகிவிட்டது. வருதப்ப கவுண்டரை யார் ஆஸ்பத்திரிக்கு கூட்டிச் சென்றார்கள் என்பது தெரியாது.”

17. But, more strangely, PW7 during his chief examination deposed that he reached the scene of occurrence on 06.10.2015 at about 9 to 10.00.p.m. This aspect is also must be looked at in a suspicious manner. The



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above statement of PW4 further strengthened from the admission of PW1, wherein she categorically admitted that PW8-Sellammal, who is the scribe for Ex.P1 complaint was informed only by her son [PW7]. The relevant portion of the admission of PW1 is as follows:-

“..... எனக்கு செல் போன் பண்ண தெரியாது. எங்கள் வீட்டில் என் மகனிடம் செல்போன் இருக்கிறது. என் மகன் தான் போன் செய்து செல்லம்மாளை வரச்சொன்னார்.”

18. As per the above evidence, PW1 deposed that Sellammal was informed by her son [PW7], as she does not know as to how to make a phone call. Whereas, during chief examination, she stated that she only made a phone call to PW8-Sellammal. These are all would definitely cause a great suspicion over the evidence of PW1 and also unfurl suspicion over the involvement of PW7. Here, Except the sole doubtful testimony of PW1, there are no witnesses either supports the prosecution case or to corroborate the evidence of PW1.

19. However, the learned Additional Public Prosecutor would invite the attention of this Court about the evidence of PW10, who had witnessed the confession statement of the accused 1 to 3. Though we have our own



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reservations to believe the discovery of fact at the instance of the respective accused, through the discovered material, no connection was established between the occurrence and the weapons. According to the prosecution, these weapons were discovered near the scene of occurrence, that too with the blood stain. But it was not established whether those blood stains are human blood and whether it has got nexus with the blood grouping of the deceased. The chemical report was marked as Ex.P27 and the same was proved through PW16. According to his evidence, the grouping test is inconclusive and the blood stain found in the wooden log and the cloth pieces were disintegrated. Hence, as stated supra, there is no proof as to the connection between the recovered materials and the occurrence. Therefore, the mere finding in Ex.P19 serology report, about the detection of blood in the wooden log is not sufficient to connect the recovered materials with the occurrence without having any finding in respect of, whether the said blood is a human blood or not, and it's grouping.

20. It is pertinent to mention here that the Hon'ble Supreme Court in ***Marwadi Kishor Parmanand and another Vs. State of Gujarat*** reported in ***(1994) 4 SCC 549***, has restated the principle that the Court may convict if the



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evidence is wholly reliable, may acquit if it is wholly unreliable, and must look for corroboration if it is neither wholly reliable nor wholly unreliable. In the case on hand, PW1 at the best could only be termed as neither wholly reliable nor wholly unreliable. As found hereinabove, there are no corroboration to PW1's evidence. Except PW1's solitary testimony, there are no other witnesses to support the prosecution. Therefore, in such an event, laying conviction on the basis of doubtful testimony of PW1 is against all cannons of law.

21. However, the Trial Court, though had discussed so many legal principles, had hardly gone into the veracity and reliability of the testimony of PW1 and landed into a wrong conclusion. Therefore, we are of the firm opinion that it is highly unsafe to rely on PW1's evidence, that too when there are no strong materials to prove even the motive. More pertinently, about 15 days back, it was PW7, who had assaulted the deceased, when he was saved by the accused. Therefore, in such a background, we are of the indubitable view that the prosecution has miserably failed to prove the charges against the accused.



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22. In the result, this Criminal Appeal is allowed and the conviction and sentence passed in S.C.No.59 of 2016 by the learned Additional Sessions Judge, Namakkal, dated 11.01.2019 is set aside. The appellants are acquitted from all the charges and the fine amount paid by them will be directed to be refunded. The bail bond, if any, executed by the accused shall stand cancelled.

[M.S.R., J.] [C.K., J.]
20.09.2024

Index: Yes

Neutral Citation: Yes

Speaking order: Yes

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Note: Issue order copy on 20.09.2024

To

1. The Additional Sessions Judge,
Namakkal.

2. The Inspector of Police,
Namagiripettai Police Station,
Namakkal District.

3. The Public Prosecutor,
High Court of Madras,
Chennai-104.



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M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

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Pre-delivery judgment made in
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