



Crl.A.No.778 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2024

CORAM :

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.778 of 2015

Embrose

...Appellant/Accused

vs.

State by Inspector of Police
Thiruvottiyur Police Station.
Chennai.
(Crime No. 334 of 2012)

...Respondent/Complainant

Criminal Appeal filed under Section 374 of Code of Criminal Procedure, 1973, to set aside the Judgment of the learned Principal Sessions Judge, Tiruvallur, Tiruvallur District in S.C.No.219 of 2013 dated 30.11.2015 and acquit the appellant herein from the charge under Section 323 of IPC.

For Appellant : Mr.S.Suresh

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor



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JUDGMENT

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This Criminal Appeal has been filed by the accused, challenging the conviction and sentence imposed upon him *vide* judgment dated 30.11.2015, in S.C.No.219 of 2013, on the file of the learned Principal Sessions Judge, Tiruvallur.

2 (i) It is the case of the prosecution that, due to prior enmity and a dispute that arose with regard to the laying of electrical cable, the appellant/accused quarrelled with the deceased and his father and gave a fist blow on the chest of the appellant, as a result of which, the deceased swooned; and that P.W.1/wife of the deceased, took him to the hospital, where he was declared dead.

(ii) It is in the further case of prosecution that P.W.1/wife of the deceased, gave a complaint, and on receipt of the complaint, P.W.9/Inspector of Police, registered the FIR. P.W.9 took up the investigation, visited the scene of the occurrence, and prepared the Observation Mahazar/Ex.P2, and Rough Sketch/Ex.P8. He conducted an inquest prepared an inquest report/Ex.P9 and sent the body of the deceased for a post-mortem.



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P.W.8/Doctor conducted a post-mortem and issued a post-mortem certificate/Ex.P.5. P.W.9 arrested the accused. After the examination of all the witnesses, he laid the Final Report for the offence under Section 302 of the IPC.

(iii) On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with, and the case was committed to the Court of Session in S.C.No.219 of 2013 and made over to the learned Principal Sessions Judge, Thiruvallur, for trial. The trial Court framed charge u/s.323 of the IPC as against the appellant, and when questioned, the appellant pleaded 'not guilty'.

(iv) To prove the case, the prosecution examined 9 witnesses as P.W.1 to P.W.9 and marked 9 exhibits as Exs.P1 to P9. 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/accused, nor was any document marked.

(v) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt,



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held the accused guilty of the offence under Section 323 of the IPC, and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- in default to undergo 15 days of simple imprisonment, for the offence under Section 323 of the IPC.

(vi) Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence imposed on him.

3. Mr.S.Suresh, learned counsel for the appellant submitted that though the appellant was initially charged for the offence under Section 302 of the IPC, the Trial Court found that the prosecution had not established the requisite “knowledge” or “intention” to cause the death of the deceased on the part of the appellant and therefore, convicted the appellant under Section 323 of the IPC; that even with regard to the attack said to have been made by the appellant, P.W.1 to P.W.3 who claim to be the eye-witnesses had all deposed in the cross-examination that the Police had obtained signatures in blank papers that the appellant had not attacked the deceased; and that their deposition in chief was on the basis of the tutoring by the Police.



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4. Per contra, Mr.E.Raj Thilak, the learned Additional Public Prosecutor, submitted that the evidence of P.W.1 to P.W.3, establishes the prosecution case beyond reasonable doubt; that the cross-examination was conducted three months after the chief-examination and their deposition would show that they were won over by the appellant; that the Accident Register (Ex.P.4) would suggest that the deceased was pushed by one known person with hands, and this is contrary to their evidence in the cross-examination; therefore, the learned Additional Public Prosecutor submitted that the Judgment of the Trial Court need not be interfered with.

5. We have carefully considered the rival submissions on either side and perused the evidence on record.

6. This is a case where the prosecution initially charged the appellant for the offence under Section 302 of the IPC. The Trial Court found that the prosecution had not established that the appellant had committed the act with the requisite “intention” and “knowledge” to charge him for the offence under Section 302 of the IPC. However, the Trial Court found that the appellant was



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guilty of causing hurt to the deceased and convicted him for the offence under

Section 323 of the IPC. The prosecution relies on the evidence of P.W.1 to P.W.3, who are the eyewitnesses to the occurrence. Though they supported the prosecution case during their examination in chief, all three witnesses had deposed in their cross-examination that their deposition in chief was tutored by the Police. The relevant portion of the cross-examination of P.W.1/wife of the deceased reads as follows:

“என் கணவர் 22.03.2012 அன்று இரவு 11 மணிக்கு வீட்டிற்கு வந்தார் என்றால் சரிதான் அவரும்போது சோர்வாக தள்ளாடிக்கொண்டு வந்தார். வீட்டின் உள்ளே மயங்கி விழுந்துவிட்டார். நான் தண்ணீர் தெளித்து பார்த்தேன். மயக்கத்தெளியவில்லை. அதனால் ஸ்டேன்லி மருத்துவமனைக்கு கொண்டு சென்றேன். மருத்துவமனையில் என் கணவர் இறந்துவிட்டதாக கூறினார்கள். மருத்துவமனையில் என்னிடம் போலீசார் வெற்றுத்தாளில் கையெழுத்துவாங்கினார்கள். அதில் என்ன எழுதினார்கள் என்று தெரியாது. எதிரி என் கணவரிடம் சண்டை போடவில்லை. என் கணவரை மார்பில் எதிரி அடிக்கவில்லை. என் கணவர் இறந்ததற்கும் எதிரிக்கும் எந்தவித சம்பந்தமும் இல்லை. முதல்விசாரணை நான் போலீசார் சொல்லிக்



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கொடுத்து சொன்னேன். தற்போது கூறவதுதான் உண்மை.”

The other eyewitnesses, namely P.W.2/father of the deceased and P.W.3/sister of the deceased, also stated in the cross-examination that the accused did not assault the deceased.

7. The prosecution has not cross-examined these witnesses to infer that the witnesses were won over by the appellant. In such circumstances, one cannot infer that the witnesses were won over by the appellant. In any case, in view of the contradictory versions, it is highly unsafe to record the conviction on the basis of their evidence. It is also seen that the post-mortem doctor/P.W.8, who conducted the post-mortem on the deceased, stated that there were no external injuries to the deceased. In fact, in the final opinion in Ex.P6 (Toxicology Report and Opinion), the post-mortem doctor stated as follows:

“Final Opinion: The deceased would appear to have died of acute heart failure due to coronary artery disease. (Natural cause).”

Therefore, merely because there is an entry in the accident register that a known person pushed the deceased, it cannot be the basis to hold that it was the appellant who pushed the deceased.



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8. Therefore, for the aforesaid reasons, this Court is of the view that the prosecution failed to prove the case beyond reasonable doubt and the appellant is entitled to acquittal. The finding of the trial Court holding the appellant guilty for the offence under Section 323 of the IPC is liable to be set aside.

9. In the result, this Criminal Appeal is allowed, and the appellant is acquitted of the charge u/s.323 of the IPC, and he is directed to be set at liberty forthwith, unless his conviction is required in connection with any other case. The conviction and sentence passed in S.C.No.219 of 2013, on the file of the learned Principal Sessions Judge, Thiruvallur, *vide* Judgment dated 30.11.2015 are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

12.01.2024

Index : yes/no

Neutral citation : yes/no

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To

- 1.The Principal Sessions Judge,
Tiruvallur.
- 2.The Inspector of Police
Thiruvottiyur Police Station.
Chennai.
- 3.The Public Prosecutor,
High Court, Madras,
Chennai – 600 104.



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SUNDER MOHAN,J.

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