



Crl.A.No.139 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 13.12.2024

PRONOUNCED ON : 17.12.2024

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.139 of 2023

Murugavel

... Appellant/Sole Accused

v.

State represented by
Inspector of Police,
Edaikkal Police Station,
Villupuram District.
(Crime No.945/2020)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant/sole accused and sentence in S.C.No.333 of 2020 dated 30.01.2023, on the file of the learned Principal Sessions Judge, Villupuram and set aside the conviction and sentence and allow this appeal.

For Appellant : Mr.S.Saravana Kumar

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)



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JUDGMENT

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This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him, vide judgment dated 30.01.2023 in S.C.No.333 of 2020, on the file of the learned Principal Sessions Judge, Villupuram.

2.(i) It is the case of the prosecution that 3½ years before the occurrence, the appellant's sister married PW1; that the appellant's sister and PW1 had matrimonial disputes; that the appellant's sister left the matrimonial home and lived with the appellant; that the appellant went to PW1's house to question about his conduct on 14.08.2020 at about 08.15 p.m.; that there was a wordy quarrel; that the deceased, who is the father of PW1 was also in that house; that the appellant stated that he would kill PW1 and would not mind his sister becoming a widow; that he demanded the bike from PW1 given as dowry; that the appellant took a stick and tried to attack PW1; that when the deceased who was in an inebriated condition tried to intervene, the appellant pushed the deceased, as a result of which, the deceased fell on the doorstep [வாசற்படி] of the house, sustained head



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injuries and died, thereafter. On the complaint [Ex.P1] given by PW1, PW8, the Special Sub-Inspector of Police, has registered the FIR [Ex.P10] on the same day at about 9.30 p.m., in Cr.No.945 of 2020 for the offences under Sections 294(b), 352 and 302 of the IPC.

(ii) PW10 took up the investigation, went to the scene of the occurrence, prepared the rough sketch [Ex.P11] and observation mahazar [Ex.P3], conducted the inquest in the presence of the panchayathars and prepared inquest report [Ex.P12]. Thereafter, he sent the body of the deceased for postmortem, which was conducted by PW7, who issued the postmortem certificate [Ex.P8] and the final opinion [Ex.P9].

(iii) On 15.08.2020, PW10 arrested the accused in the presence of PW6, the Village Administrative Officer and her Assistant Paulraj [not examined]. He seized the two-wheeler, on the confession given by the accused and also seized the stick [M.O.1] near the bush, on the river side under seizure mahazar [Ex.P5]. He thereafter examined the other witnesses and filed a final report against the appellant for the offences under Sections



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302, 294(b), 352 and 302 of the IPC before the learned Judicial Magistrate No.I, Ulundurpet.

(iv) 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.333 of 2020 and made over to the learned Principal Sessions Judge, Villupuram, for trial. The trial Court framed charges for the offences under Sections 294(b), 352 and 302 or 304(ii) of the IPC against the appellant, and when questioned, the appellant pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 10 witnesses as P.W.1 to P.W.10, marked 15 exhibits as Exs.P1 to Ex.P15 and marked one material object-wooden log as M.O.1. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant neither examined any witness nor marked any document on his side.

(vi) On appreciation of oral and documentary evidence, the trial Court



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found that the prosecution had established its case beyond reasonable doubt and held the appellant guilty of the offences under Section 304(ii) and sentenced him to undergo simple imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months.. The trial Court found him not guilty of the offences under Sections 302, 294(b) and 352 of the IPC and acquitted him of the said charges. Hence, the accused has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.S.Saravana Kumar, learned counsel appearing for the appellant, and Mr.C.E.Pratap, learned Government Advocate (Crl.Side), appearing for the respondent/State.

4. The learned counsel for the appellant would submit that the eyewitnesses viz., PW1 and PW5, who supported the prosecution case, cannot be believed; that two other witnesses viz., PW2 and PW4, did not support the prosecution case; that the earliest version of the witnesses is that the appellant attacked the deceased with a stick on the chest, as a result of



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which, he fell down unconscious; that pursuant to the postmortem report, the version of the witnesses changed viz., that the appellant pushed the deceased and he fell down on the doorstep [வாசற்படி]; that as a result, he sustained head injuries; and that the manner in which the occurrence took place has also been changed by the witnesses and in the light of the above contradictions, it would be highly unsafe to believe the evidence of the interested witnesses, PW1 and PW5 to convict the appellant.

5. The learned Additional Public Prosecutor *per contra* submitted that the prosecution case has been established beyond reasonable doubt and merely because there are minor contradictions, the evidence of eyewitnesses viz., PW1 and PW5 cannot be disbelieved and hence, the judgment of the trial Court does not call for any interference. Accordingly, he prayed for dismissal of the appeal.

6. We have carefully considered the rival submissions and have perused all the relevant records.



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7. As stated earlier, the prosecution had examined 10 witnesses. PW1 is the son of the deceased and is an eyewitness; PW2 is another eyewitness, who was treated hostile by the prosecution, since he did not support the prosecution case on certain aspects; PW3 is the observation mahazar witness; PW4 is another eyewitness, who turned hostile; PW5 is an eyewitness, who supported the prosecution case; PW6 is the Village Administrative Officer, who had witnessed the arrest and confession of the appellant; PW7 is the doctor who conducted postmortem and prepared the postmortem report [Ex.P7] and issued the final opinion [Ex.P9]; PW8 is the Special Sub Inspector of Police, who had registered the FIR; PW9 is the Constable, who had assisted the investigation; and PW10 is the investigating officer.

8. The above description of witnesses would make it clear that the prosecution case rests on the evidence of four eyewitness of whom two turned hostile. PW5 turned hostile completely. PW2 had given a different version stating that there was a quarrel between PW1 and the appellant and they were involved in fighting each other. He would also state that he did not



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notice as to how the deceased fell down. Thus, we are left with the evidence of PW1 and PW5.

9. PW1 in the complaint would state that the appellant had assaulted the deceased with a stick on his chest, as a result of which the deceased fell down unconscious. PW10, the investigating officer had admitted that the earliest version recorded by him is to the effect that the appellant had attacked the deceased with a stick on the chest. The relevant portion of his evidence reads as follows:

“...என்னுடைய பிரேத விசாரணை அறிக்கையில் 9வது காலத்தில் எதிரி மூங்கில் பெடலில் உள்ள தடியை எடுத்துக்கொண்டு வாதியை அடிக்க முற்பட்ட போது அதை தடுக்க வந்த வாதியின் அப்பா பழனிவேலுவை தடியால் நெஞ்சில் அடித்ததால் அவர் மயங்கி கீழே விழுந்து இறந்ததாக குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான்....”

10. PW10 had also admitted that the investigation revealed that the deceased came to the house in an inebriated condition and PW1 had told during investigation that the deceased sustained injury because, the appellant had attacked the deceased with a stick on his chest. The relevant



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portion reads as follows:

“....பழனிவேல் மது அருந்திவிட்டு வந்திருந்தார் என்று குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான். அசா! என்னிடம்

வீட்டிலிருந்து கட்டையை எடுத்து வந்து அடித்தார் என்று சொல்லியுள்ளார் என்றால் இல்லை மூங்கில் படலில் இருந்து கட்டையை எடுத்து அடித்ததாக சொல்லியுள்ளார்....”

11. However, in the deposition, PW1 would give a different version about the occurrence and would state that the accused pushed the deceased with his left hand and he fell down and sustained head injuries. The relevant portion of his evidence reads as follows:

“.....அப்போது எதிரி மேற்சொன்ன சாட்சிகளை தள்ளிவிட்டு விட்டு என் தந்தையை இடது கையால் கீழே தள்ளிவிட்டார் அப்போது என் தந்தையார் வாசல்படியில் உள்ள இருப்பு கேட்டில் இடித்து நிலைதடுமாறி வாசல் படியின் கீழே விழுந்துவிட்டார்....”

12. That apart, PW1 and PW5, who supported the prosecution also contradicted each other as to how the occurrence took place. According to PW5, the appellant pushed all three persons, PW2, PW4 and PW5 and thereafter, pushed the deceased and the deceased fell on the doorstep



[வாசற்படி]. The relevant portion of his evidence reads as follows:

“...அப்போது நான், ராஜசேகர், மணிகண்டன் ஆகியோர் சென்று தடியை பிடுங்கினோம். எதிரி எங்கள் மூவரையும் தள்ளிவிட்டார். பிறகு அசரின் தந்தையை எதிரி நெட்டிதள்ளினார். அப்போது அவர் சிமென்ட் கட்டை படியில் விழுந்து இறந்துவிட்டார்...”

13. However, PW1 in the above extracted portion would state that the deceased fell on the iron grill gate and thereafter fell down. PW1 had made yet another admission in the cross-examination that they first thought of taking the deceased to the hospital; that however, they changed their mind midway and returned home, fearing that the doctors would conduct postmortem; and that when the police came to know of the said fact, they came to his house. The relevant portion of his evidence reads as follows:

“....என் தந்தை அடிப்பட்டவுடன் உளுந்தூர்பேட்டை அரசு மருத்துவமனைக்கு சென்றோமா என்றால் நாங்கள் என் தந்தையை எடுத்துக்கொண்டு சென்றோம் ஆனால் பாதி வழியிலேயே அவரை உடல் கூறு செய்வார்கள் என்று வீட்டிற்கு எடுத்து கொண்டு வந்துவிட்டோம். அந்த விவரம் தெரிந்து போலிஸார் என் வீட்டிற்கு வந்தார்களா என்றால் ஆம் வந்தார்கள். அதன் பின்பு என் தந்தையின் உடலை முண்டியம்பாக்கம் அரசு மருத்துவமனைக்கு எப்போது அனுப்பி வைத்தார்கள் என்றால் 9.30 மணிக்கு போலிசார் வந்து அதற்கு பிறகு 10, 10.30க்கு அனுப்பிவைத்தார்கள்....”



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14. The above deposition of PW1 raises a serious doubt with regard to the manner in which the occurrence took place. If the version of the witnesses is true, there is no reason why they should fear the conduct of the postmortem. Be that as it may. The above deposition also falsifies the version that PW1 went to the police station at 9.30 p.m. Thus, the genesis and origin of the occurrence have been suppressed. That apart, it is the admitted case of the prosecution that the deceased was in an inebriated condition and the doctor, who conducted postmortem confirms the said fact, which is also supported by his final opinion [Ex.P9], in which it is stated that ethyl alcohol was deducted in stomach, intestine, liver, kidney, brain and blood.

15. Therefore, considering the inconsistent version of PW1 and the above conduct of not admitting the deceased in the hospital; contradictions with regard to the manner in which the FIR was registered; and other discrepancies discussed above, this Court is of the view that it is highly unsafe to record the conviction on the basis of the above evidence and



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therefore, the appellant is entitled to benefit of doubt and deserves to be acquitted.

16. As a result, this Criminal Appeal is allowed, and the appellant is acquitted of the charge. The conviction and sentence passed in S.C.No.333 of 2020, dated 30.01.2023 on the file of learned Principal Sessions Judge, Villupuram, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

17.12.2024

Index : yes/no
Speaking /Non-speaking order
Neutral citation : yes/no
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To

1. The Principal Sessions Judge,
Villupuram.

2. The Inspector of Police,
Edaikkal Police Station,
Villupuram District.

3. The Superintendent,
Central Prison, Cuddalore.



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4. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN,J.

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Pre-delivery judgment in
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