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Crl.A.No.567 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.567 of 2018

Tamilarasi

...Appellant/P.W.1 (Defacto-Complainant)

vs.

1.State by Inspector of Police,
Ariyalur Police Station,
Ariyalur District.
Crime No.250 of 2010

...Respondent/Respondent

2. Palaniyandi

3.Velyutham,

4.Dhanamani

...Accused/Respondents

Prayer: Criminal Appeal filed under Section 397 r/w 401 of Code of Criminal Procedure, 1973, to set aside the Judgment of S.C.No.11/2012 dated 13.03.2013 on the file of the learned Principal District and Sessions Judge, Ariyalur and to allow the above Criminal Appeal.

For Appellant : Mr.R.Nalliyappan



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For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor
for R1
Mr.V.Rajamohan
for R2 to R4

JUDGMENT

(Order of the Court was made by **SUNDER MOHAN,J.**)

This Criminal Appeal against the acquittal has been preferred by P.W.1/the de facto complainant.

2 (i). The case of the prosecution is that the accused/respondents 2 to 4 were digging holes near the house of the deceased and the de facto complainant on 22.03.2010 at about 7.00 a.m.; that the deceased advised the accused to dig holes at some other place, for which the accused insulted the deceased, and the first accused assaulted the deceased with a crowbar, causing head injuries to the deceased.

(ii) It is further the case of the prosecution that the statement of the de facto complainant was recorded by the Sub Inspector of Police/P.W.11 at Ariyalur Government Hospital, and a case was registered in



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Crime No. 250 of 2010 for the offences under Sections 294 (b) and 307 of the IPC.

(iii) P.W.12/the Inspector of Police, took up the investigation, prepared the Observation Mahazar [Ex.P2] and Rough Sketch [Ex.P8], and examined other witnesses. At about 3.00 p.m., on the same day, he arrested the first accused and seized the crowbar [M.O.1] under Seizure Mahazar on the confession of the first accused. After examination of all other witnesses, P.W.12 received intimation from the relatives that the deceased succumbed to injuries on 08.10.2010 and hence, he altered the offences to Sections 294 (b) and 302 of the IPC. The alteration report was marked as Ex.P9. He conducted an inquest in the presence of Panchayadaras and prepared an inquest report [Ex.P10]. Thereafter, he handed over the investigation to P.W.14, who filed the Final Report after examining other witnesses on 03.04.2011 for the offence under Sections 294 (b) and 302 of the IPC against the accused.

(iv) On the appearance of the accused/respondents 2 to 4, the



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provisions of Section 207 Cr.P.C., were complied with, and the case was committed to the Court of Session in S.C.No.11 of 2012 and was made over to the learned Principal District and Sessions Judge, Ariyalur, for trial. The trial Court framed charges u/s.294 (b) and 302 of the IPC as against the accused/respondents 2 to 4, and when questioned, the accused/respondents 2 to 4, pleaded 'not guilty.

(v) To prove the case, the prosecution examined 17 witnesses as P.W.1 to P.W.17, marked 13 exhibits as Exs.P1 to P13, and marked one Material Object as M.O.1. When the accused/respondents 2 to 4 were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused/respondents 2 to 4 did not examine any witnesses or mark any documents.

(vi) The Trial Court found that the prosecution had not established its case beyond reasonable doubt and acquitted all the accused/respondents 2 to 4.



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3. Heard, Mr.R.Nalliyappan, learned counsel for the appellant/
de facto complainant, Mr.A.Gokulakrishnan, learned Additional Public
Prosecutor for the first respondent/State and Mr.V.Rajamohan, learned
counsel for the respondents 2 to 4/accused.

4. The learned counsel for the appellant/P.W.1/de facto complainant,
submitted that the Judgment of the Trial Court is perverse; that the evidence
of eye-witnesses had been ignored; and therefore, the Judgment of the Trial
Court calls for interference.

5. The learned Additional Public Prosecutor reiterated the submissions
made by the learned counsel for the appellant/de facto complainant.
However, the State had not chosen to file an appeal.

6. The learned counsel for respondents 2 to 4/accused submitted that
the Trial Court had elaborately considered the evidence and after proper
appreciation of the evidence, had acquitted them, and therefore, no



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interference is called for.

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7. We have carefully considered the rival submissions and perused the records.

8. The law relating to the appeal against the acquittal is well settled. The Appellate Court shall not interfere with the Judgment of acquittal, unless the finding is perverse. If two views are possible and the Trial Court had taken a plausible view, the Appellate Court shall not interfere. The Hon'ble Supreme Court in ***Ghurey Lal v. State of Uttar Pradesh***, reported in ***(2008) 10 SCC 450***, reiterated this position of law. The relevant portion reads as follows:-

“70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:

1. The appellate court may only overrule or otherwise disturb the trial court's



acquittal if it has “very substantial and compelling reasons” for doing so.

A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court's decision. “Very substantial and compelling reasons” exist when:

(i) The trial court's conclusion with regard to the facts is palpably wrong;

(ii) The trial court's decision was based on an erroneous view of law;

(iii) The trial court's judgment is likely to result in “grave miscarriage of justice”;

(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;

(v) The trial court's judgment was manifestly unjust and unreasonable;

(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.



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(vii) *This list is intended to be illustrative, not exhaustive.*

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused."

9. The occurrence in the instant case took place on 22.03.2010 and the case was initially registered for the offence under Section 307 of the IPC. The deceased died on 07.10.2010 and thereafter, the case was altered to Section 302 of the IPC. In the instant case, the Trial Court has found that the earliest version has been suppressed by the prosecution. The First Information Report, which was registered for the offence under Section 307 of the IPC, reached the learned Magistrate at 8.10 p.m., on 22.03.2010. The Trial Court found that the FIR could not have been recorded in the manner alleged by the prosecution and the genesis and origin of the occurrence has been suppressed. The relevant observations read as follows:



“16. Before ever entering into discussion about the evidence adduced by the above witnesses the learned counsel for the accused would draw our attention to the controversies and contradictions pertaining to the birth of Ex.P1 complaint. It is the case of the Prosecution as per evidence of P.W.11 that by 7.00 A.M. on 22.3.2010 an intimation was received by the Police from Government Hospital, Ariyalur and P.W.11, the Sub Inspector of Police proceeded to Government Hospital, Ariyalur and recorded the complaint statement from P.W.1. Then he returned to the station and registered a case on it by 8.00 A.M. on that day. But P.W.1 would say in her chief examination itself that the Ariyalur Police came to Thanjavur Medical College Hospital, Thanjavur and examined her. There only she preferred Ex.P1 complaint before the Police. P.W.15 Dr.Balasubramaniyan who admitted the deceased for treatment at Thanjavur Medical College Hospital, Thanjavur would say that after admitting patient he duly intimated the same to the police concerned. In Ex.P13 also it has been clearly mentioned that the Police was



given intimation through Thanjavur Medical College Hospital authorities. So this part of evidence would show that intimation should have been given to the Ariyalur Police from Thanjavur Medical College Hospital, Thanjavur only and the police would have examined P.W.1 and would have recorded her complaint statement at Thanjavur Medical College Hospital, Thanjavur only. This part of evidence directly goes against the prosecution case. So a vital doubt arises as to when and where Ex.P1 came into existence.

17. The learned counsel for the accused would draw our attention to the other contradictions and controversies engulfing Ex.P1 and ultimately Ex.P7 F.I.R. Through P.W.1 would say in her chief examination that the police came to Thanjavur Medical College Hospital, Thanjavur and recorded her complaint statement during cross examination she would clearly admit that immediately after the occurrence she straight away went to the police station and preferred a written complaint before the police. Her specific evidence would be "நான் சொல்கிற சம்பவம்



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உடனே நான், என தம்பி செல்வராஜ், மணியரசு ஆகியோர் அரியலூர் காவல்நிலையத்திற்கு உடனே சென்றோம். சம்பவம் நடந்த உடனே 10 நிமிடத்திற்குள்ளாகவே நாங்கள் காவல்நிலையத்திற்கு போய் விட்டோம். அப்படி நாங்கள் காவல்நிலையம் போகும்போது என கணவரை அழைத்து போகவில்லை. நாங்கள் காவல்நிலையத்திற்கு போனபோது காவல்நிலையத்தில் வைத்து ஒரு புகார் கொடுத்தோம். காவல்நிலையத்தில் கொடுத்தது எழுத்து மூலமான புகார்." So it is now made clear that immediately after the occurrence that too within 10 minutes after the occurrence P.W.1 went to Ariyalur Police Station straight away and preferred a written complaint before the police. Thereafter only she came to Government Hospital, Ariyalur by 7.30 A.M. While so this written complaint preferred by P.W.1 before Ariyalur Police Station could be the first information given to the police. A vital doubt arises as to what happened to that first information in the form of a written complaint given to the police by P.W.1. If at all such an earlier complaint that too a written complaint was



preferred by P.W.1 before the police there is no need at all for the police to visit again the hospital and to record a fresh complaint statement from P.W.1. In Ex.P1 there is absolutely no reference as to when Ex.P1 was recorded. The occurrence itself alleged to have been taken place by 7.00 A.M. But quite strangely P.W.11 would say that he received intimation from the hospital by 7.00 A.M itself. It is the evidence of P.W.1 that the witnesses came to the hospital by 7.30 A.M. only. If so no intimation from hospital would have been given to police by 7.00 A.M. itself. So there are so many controversies and contradictions engulfing Ex.P1 making the same a highly doubtful and unreliable document.

18. Though P.W.1 has stated in her chief examination that the Ariyalur Police came to Thanjavur Medical College Hospital, Thanjavur and examined her to record Ex.P1 statement during cross examination she would change her version and would say that Ex.P1 complaint was



written at Government Hospital, Ariyalur. According to her Ex.P1 was not recorded by Police. But the same was recorded and written by Ariyalur Hospital staff. It is her evidence "அரியலூர் ஆஸ்பத்திரியில் வேலை செய்தவர்கள்தான் புகாரை எழுதினார்கள். நான் சொல்கிற புகாரை ஆஸ்பத்திரியில் இருந்தவர்கள் எழுதினார்கள். அவர்களில் யார் என்று என்னால் சொல்ல இயலவில்லை." Not stopping with that P.W.1 would further add in her cross examination "அரியலூர் போலீசாரிடம் நான் கையெழுத்து போடவில்லை." So a vital doubt arises who could be the scribe of Ex.P1. It is not the evidence of P.W.1 that she gave her complaint statement before the Ariyalur Police and the Ariyalur Police recorded her complaint statement at Government Hospital, Ariyalur. So naturally a vital doubt arises as to the authenticity of Ex.P1. The evidence of P.W.1 would go against the evidence of P.W.11. There are vital doubts as to where and when Ex.P1 came into existence. Doubt is not cleared as to who recorded Ex.P1. Apart from all the earliest first information given



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by P.W.1 within 10 minutes from the time of occurrence has been conveniently suppressed by the Prosecution. The earliest information given to Police by P.W.1 is a written complaint and the same appears to have been suppressed by the Prosecution deliberately. Once it is made clear that earlier first information was suppressed by the Prosecution then Ex.P1 loses its importance as it becomes a document legally hit u/s 162.Cr.P.C. Moreover Ex.P1 appears to be a document subsequently fabricated by the Police. Consequently Ex.P7 the F.I.R also would be a document subsequently fabricated one.”

The above findings of the Trial Court are self explanatory and we see no reason to disagree with the said findings.

10. That apart, it is seen from the aforesaid findings that the deceased was first treated at Ariyalur Hospital. However, the prosecution has not produced any medical records from the Government Hospital, Ariyalur, and no doctor who first treated the deceased at the Government Hospital, Ariyalur was examined. Ex.P13/the Accident Register at the Government



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Hospital Thanjavur, refers to entries in the Accident Register at Ariyalur Government Hospital. The relevant portion in Ex.P.13 reads as follows:

*"History and Details as per the Accident
Register Copy done at 7.35 a.m. on 22.03.2010
A.R.No.53 made in Ariyalur Government Hospital
drowsy, responds to painful stimuli BP: 100/60
dressing over scaly with clotted blood over it."*

However, the Accident Register maintained by the Ariyalur Government Hospital has been suppressed. There is no explanation as to why the earliest version was suppressed by the prosecution.

11. Considering the fact that the FIR has not been registered in the manner alleged by the prosecution and the fact that the earliest entries made in the Accident Register at Government Hospital, Ariyalur, have been suppressed, we are of the view that the finding of the Trial Court is justified. We are reminded of the observations of the Hon'ble Supreme Court in ***Marudanal Augusti vs State Of Kerala*** reported in (1980) 4 SCC 425 that if the FIR is held to be fabricated, the entire fabric of the prosecution case collapses. The relevant portion reads 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.”

Therefore, it is needless to say that the examination of other witnesses would be of no avail to the prosecution if the genesis and origin have been suppressed.

12. Thus, the Judgment of the Trial Court does not suffer from any infirmity and does not call for any interference in view of the settled position of law. Hence, this Criminal Appeal is liable to be dismissed and, accordingly, dismissed. The judgment dated 13.03.2013 made in S.C.No.11 of 2012 on the file of the learned Principal District and Sessions Judge, Ariyalur, is hereby confirmed.

(M.S.R.,J) (S.M.,J)
01.03.2024



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Index : yes/no

Neutral citation : yes/no
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To

- 1.The learned Principal District and Sessions Judge,
Ariyalur.
- 2.The Inspector of Police
Ariyalur Police Station,
Ariyalur District.
- 3.The Public Prosecutor,
High Court, Madras.

M.S.RAMESH,J.

and

SUNDER MOHAN,J.

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