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Crl.A.No.285 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.09.2024
Pronounced on	22.10.2024

CORAM :

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

Crl.A.No.285 of 2019

Dillibabu

... Appellant/Accused No. 1

Vs.

State rep. by Inspector of Police,
C2, Periya Palayam Police Station,
Tiruvallur District.
Crime No. 685 of 2012

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to call for the entire records connection with S.C. No. 81 of 2015 on the file of I Additional Sessions and District Judge, Tiruvallur and set aside the conviction and sentence imposed by the I Additional Sessions and District Judge, Tiruvallur in S.C. No. 81 of 2015 dated 28.03.2019.

For Appellant : Mr. T.S.N.Prabhakaran

For Respondent : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

JUDGMENT



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C.KUMARAPPAN, J.

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The instant Criminal Appeal has been filed by the first accused against the order of conviction passed in S.C. No. 81 of 2015.

2. Originally, there were two accused, but the trial Court acquitted the second accused. Hence, the instant criminal appeal has been filed by the first accused.

3. The brief facts which give rise to the instant Criminal Appeal are that the deceased, Venkatesan, is the husband of the second accused. The second accused is a Nurse by avocation. While so, the first and second accused developed an illicit intimacy. After knowing the illicit intimacy, the deceased Venkatesan questioned the first accused and quarrelled with the second accused. Since both of them felt that the deceased is the obstacle for their illicit intimacy, they planned to do away him and hatched a conspiracy. In furtherance thereof, on knowing the movement of deceased in his two wheeler, on 20.12.2012 at about 7:15 p.m., the first accused waylaid him, and assaulted him on his head with a wooden log. As a result,



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the deceased died on the spot.

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4. After the occurrence, PW1, the brother of the deceased, gave a police complaint to PW16, the Inspector of Police. On receipt of the police complaint, he registered an FIR on 21.12.2012 at about 3:00 a.m. in Crime No. 685 of 2012, and also made arrangements to forward the same to the concerned jurisdictional Magistrate. After that, he proceeded to the scene of occurrence and prepared an Observation Mahazar in the presence of Manikandan (PW7) and Raju (PW8) and recorded their statements. He also collected blood-stained soil, as well as sample soil, and recovered one blood-stained wooden log, and two other plain wooden logs, and prepared a Recovery Mahazar in the presence of the very same witnesses.

5. Thereafter, he conducted an inquest on the body of the deceased at the Government Hospital, Tiruvallur, and made arrangements for the post-mortem examination. He also collected the dress materials of the deceased and made arrangements to forward them to the concerned jurisdictional Magistrate. He then recorded statements from Velu (PW1), Selvam (PW2), Murugan (PW3), Saravanan (PW4), Karthick (PW5), Muthu (PW6),



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Karunanithi (PW9), Prasath (PW11), Meenakshi (PW14), and other witnesses. On 22.12.2012, he arrested both the accused between 9:00 a.m. and 11:30 a.m. after the arrest, they voluntarily gave confession statements. In pursuance of the confession statements, the vehicle used by the first accused was recovered and he also identified the place of occurrence. Thereafter, he sent an alteration report and recorded statements from the forensic experts, and doctor who conducted the post-mortem. Eventually, after concluding the investigation, he laid the charge sheet against both the accused under Sections 302 read with 109 of the IPC.

6. Before the Trial Court, the prosecution examined as many as 16 witnesses as PW1 to PW16, marked 17 documents as Exs.P1 to P21, and 11 Material Objects.

7. The Trial Court, after considering the oral and documentary evidences, found the first accused guilty of the offence under Section 302 IPC. However, acquitted the second accused from all charges.

8. Assailing the said order of conviction, the learned counsel



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appearing for the appellant/first accused, vehemently contended that the entire case rests upon the evidence of PW9 and PW10, and that the other witnesses have not supported the prosecution's case. It was further contended that there was no recovery or discovery of fact through the accused, and even the recovery of the alleged blood-stained wooden log at the scene of occurrence does not scientifically establish the existence of bloodstains. It is further contended by the learned counsel for the appellant/first accused that the deceased would have sustained head injuries due to a road accident. Moreover, there is no ocular evidence except PW9 and PW10, namely Karunanithi and Murugan, whose statements recorded under Section 161 Cr.P.C. reached the court after a period of one year. Therefore, the learned counsel for the appellant/first accused contends that the conviction of the first accused is based on doubtful testimony. It was further contended by the learned counsel for the appellant/first accused that the trial court, without appreciating the evidence of PW9 and PW10 in its right perspective, believed their statements as such, and laid the conviction. Furthermore, it is contended that as found by the trial Court the alleged motive has not been proved. Thus prayed to allow this Criminal Appeal.



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9. Per contra, the learned Additional Public Prosecutor contended that PW9 and PW10 had categorically spoken about the occurrence, and no grounds were elicited to disbelieve their statements. Further, the alleged theory of a road accident is falsified by the post-mortem report, as there were no other injuries except the head injury. According to the prosecution, had this been a road accident, there would have been other injuries on the body of the deceased, which is not the case here. Therefore, he prayed for dismissal of the instant criminal appeal.

10. We have given our anxious consideration to the submissions made on either side.

11. Admittedly, the law was set in motion by PW1, brother of the deceased. However, he was not an ocular witness. According to his statement, on coming to know of the death of his brother qua Venkatesan, he rushed to the scene of occurrence at about 11:00 p.m. Similarly, PW2/Selvam, PW3/Murugan, PW4/Saravanan, PW5/Karthick, and PW6/Muthu, who were projected as ocular witnesses, had not implicated the accused, but had only stated that, they came to the scene of occurrence



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after knowing the information about the death of the deceased.

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12. Though PW6 spoke about the alleged theory of illicit intimacy, the trial Court rightly found that possibility of false implication of the second accused could not not be ruled out, as he was constrained to safeguard the interest of his brother Ramamurthy, who was also one of the suspect in this case. Therefore, unless there is some evidence, corroborating the PW6's evidence, it is highly unsafe to rely upon the sole testimony of PW6, in the given peculiar circumstances. This is precisely what the trial court did, by disbelieving PW6's evidence. Therefore, we concur with the trial Court that, the alleged motive has not manifested and established in the case in hand.

13. It is pertinent to mention here that, in a case based on ocular evidence, the motive would take back seat, and not an essential factor for the ultimate conclusion. However, in a case resting upon the circumstantial evidence, the motive is also an integral and important link to the chain of circumstances. Though this case rests upon the ocular evidences, the absence of proof regarding motive, is a point in favor of the accused.



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14. As rightly contended by the learned counsel for the appellant/first accused, except PW9 and PW10, no witnesses spoke about the occurrence, though other witnesses qua PW2 to PW5 were examined as ocular witnesses. It is an admitted fact that even PW9 and PW10, who were alleged to be occurrence witnesses, they were not natural witnesses, but only a chance witnesses. Both PW9 and PW10 belong to the same Village, and were known to the deceased. But inspite of such assertion, they did not think it fit to give a police complaint. However, the trial Court found that the mere failure to give a police complaint cannot be a ground to disbelieve their evidence.

15. It is true that the conduct and reaction would vary from person to person. Though such finding of the trial Court cannot be faulted, yet their conduct would become relevant to test their standard of reliability. To put it differently the conduct of non giving Police complaint, would bring down their standard of testimonies, to neither wholly reliable nor wholly unreliable. Besides, they being chance witnesses, their evidence require corroboration. In such peculiar circumstances, as rightly contended by the



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learned counsel for the appellant/first accused, the delay of one year in sending the PW9 and PW10 statement recorded under Section 161 Cr.P.C. to the Court assumes much significance.

16. If we read the judgment of the trial court, the trial court has believed PW9 and PW10's statements as if they are wholly reliable. On close reading of the trial court judgment, the trial court did not go into the other attending factors, as discussed herein above, before basing reliance upon the evidence of PW9 and PW10. Therefore, a duty is cast upon this Court to examine whether these witnesses are of sterling quality. But we have already arrived at a conclusion that these witnesses are “neither wholly reliable nor wholly unreliable”. It is the specific case of the prosecution that PW9 and PW10, while travelling in a two-wheeler, had witnessed the occurrence by chance. While speaking about the occurrence, PW9 would state as follows:-

“....ஒரு ஆளை போட்டு அடித்துக் கொண்டிருந்தார். நான் டே டே என்ற சத்தம் போட்டுக் கொண்டு போகும்போது, பார்த்த உடனேயே உருட்டுக்கட்டை ஏரி கரை பக்கம் போட்டுவிட்டு, இரு சக்கர வாகனம் எடுத்துக் கொண்டு ஆரணி பக்கம் போய்விட்டார்....”

17. But PW10/Murugan, who drove the two-wheeler, wherein PW9



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was the pillion rider, had simply stated that he witnessed a person having a wooden log. His evidence is as follows:-

“....என்னுடைய விளக்கு வெளிச்சத்தில் பார்க்கும்போது ஒருவர் கட்டையை வைத்துக் கொண்டிருந்தார். விளக்கு வெளிச்சத்தில் யார் யார் என்று ஓடபோது (SiC) கட்டை வைத்திருந்த நபர் ஓடிவிட்டார். அவ்வாறு யார் என்று பார்க்கபோது டில்லிபாடி என்பது விளக்கு வெளிச்சத்தில் தெரியும்.....”

18. Therefore, apparently, these witnesses had seen the person only through the light emanated from their two-wheeler headlight. But, more strangely, during cross-examination, PW10/Murugan had stated that though a person accused travelled against their direction, he could not see him with the aid of the light. The relevant admission is as follows:-

“....நாங்கள் செல்லும்போது எங்களுக்கு எதிராக வந்த நபரை விளக்கு வெளிச்சத்தில் பார்க்கவில்லை. எங்களை வேகமாக கடந்து அந்த நபர் சென்றார். நாங்கள் இருவரும் எங்களை வண்டியை விட்டு இறங்குவதற்காக முன்பே அடித்துக் கொண்டிருந்த நபர் கடந்து சென்றுவிட்டார்.....”

19. Though PW10 had stated that, PW9 was his pillion rider, strangely PW9 could not name the person, as to who drove the vehicle, and he was also not in a position to name the owner of the said vehicle. More



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curiously, when PW9 had attempted to secure the assailant, and who knew the deceased, was not in a position to name the person to whom he informed about the occurrence. The relevant evidence of PW9 are as follows:-

“....சென்ற இரு சக்கர வாகனத்தில் வேறொரு நபர் ஓட்டிவந்தார் நான் பின்னால் உட்கார்ந்து வந்தேன்.....
....நாங்கள் சென்ற இரு சக்கர வாகனம் யார் பேரில் உள்ளது என்பது எனக்கு தெரியாது.....
....கொலை சம்பந்தமாக போலீசாரிடம் சொல்லவில்லை. நான் கொலை நடந்த விபரத்தை கண்டிகை நபரிடம் சொன்ன நபரின் பெயர் எனக்கு தெரியாது. நான் சென்று தகவல் சொன்ன நபர் எந்த ஊரில் இருக்கிறார் என்பது எனக்கு தெரியாது.....”

20. More pertinently, no identification parade was conducted, which factum was also admitted by PW10. Further, if we harmoniously look at PW9 and PW10 evidence, it appears, as if the accused had waited for the arrival of these witnesses, so as to witness the occurrence. The presence of these witnesses suddenly on the scene when something has happened, and their disappearance after noticing the occurrence, would also cause serious doubts on the veracity of PW9 and PW10 evidences. All these factors were not considered by the trial Court.

21. Further, both PW9 & PW10, though had stated that they were



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examined by the Police on the very next day, their statements recorded under Section 161 Cr.P.C, reached the Court only after a period of one year. It is relevant to extract the admission of the Investigating Officer [PW10], in this regard:-

“....சாட்சிகள் 10 முதல் 16 வரையிலான வாக்குமூலங்களை வழக்கு பதிவு செய்யப்பட்டு ஒரு வருடத்திற்கு பின்பு தான் சம்பந்தப்பட்ட நீதிமன்றத்திற்கு அனுப்பி வைத்துள்ளேன் என்றால் சரிதான்.....”

The PW9 and PW10 were listed in the charge sheet as LW10 and LW11. Therefore, the unexplained delay in sending this 161 Cr.P.C statement of PW9 and PW10 would definitely be a factor to raise reasonable doubt in the prosecution's case.

22. Thus, while considering all the above factors cumulatively, would definitely cause reasonable doubt about the veracity of their evidence and hence, this Court finds it unsafe to place reliance upon the PW9 and PW10 evidence. As rightly contended by the learned counsel for the appellant/first accused, except the evidence of PW9 and PW10, no other witnesses spoke about the occurrence. As we have already discussed, though the other witnesses had been cited in the charge sheet as occurrence witnesses, they did not support the prosecution's case.



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23. Therefore, the findings rendered by the trial Court in relying upon PW9 and PW10, that there could be no fixed conduct between persons may be a right explanation in general context. However, when PW9 and PW10 are chance witnesses, and their conduct of ignorance about the persons whom they informed about the occurrence, not going to the Police Station after seeing such a grave occurrence, and having known the identity of the deceased and accused, not even informing their family members would all cast a grave doubt upon their conduct, which cannot be put aside as insignificant, and the above instances, would definitely render the general observation made by the trial Court, as perverse.

24. Therefore, we are of the firm view that the evidence of PW9 and PW10 cannot be relied upon. Apart from that there are no other corroborating evidences, and even the alleged weapon has no link with the occurrence. In such circumstances, we find merit in the submissions made by the learned counsel for the appellant/first accused, that the prosecution has miserably failed to prove the charges beyond reasonable doubt.



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25. In the result, this Criminal Appeal is allowed and the judgement dated 28.03.2019 passed by the I Additional Sessions Judge, Tiruvallur in S.C.No.81 of 2015 is set aside and the appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded to him. Bail bond, if any executed, shall stand cancelled.

[M.S.R., J.] [C.K., J.]
22.10.2024

Index: Yes/No

Speaking order /Non Speaking Order

Neutral Citation: Yes/No

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and
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Judgment made in
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22.10.2024