



Crl.A.No.85 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2024

PRONOUNCED ON: 06.09.2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM**

Crl.A.No.85 of 2022

Udayakumar

...
Vs.

Appellant

State Rep. by
The Inspector of Police,
H-3, Tondiarpet Police Station,
Chennai.

...

Respondent

PRAYER: The Criminal Appeal has been filed under Section 374(2) of Cr.P.C against the conviction and sentence dated 20.02.2019 passed in S.C.No.302 of 2017 by the learned Principal Sessions Judge, Chennai.

For Appellant : Mr.C.Samivel

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor



Crl.A.No.85 of 2022

JUDGMENT

(Judgment of the Court is made by V.SIVAGNANAM,J.)

The accused in S.C.No.302 of 2017 on the file of the Principal Sessions Court, Chennai, is the appellant herein.

2.The Inspector of Police, H-3, Tondiarpet Police Station, Chennai, prosecuted the accused for having caused the death of Vinayagam by murdering him an offence punishable under Section 302 IPC.

3.In the trial Court, the prosecution examined 13 witnesses PW1 to PW13 and marked 12 documents Ex.P1 to Ex.P12 and also filed 3 material objects Mos1 to 3. On the side of the accused, no oral and documentary evidence were marked.

4.When the incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false, he did not choose to examine any witness nor mark any documents.



Crl.A.No.85 of 2022

5.The trial Court, on considering the oral and documentary evidence, found guilty of the accused under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-. The period of detention already undergone by the accused is given set off under Section 428 of Cr.P.C. Aggrieved by this conviction and sentence, the accused filed this present criminal appeal.

6.The prosecution case is that on 01.08.2017 at about 5.00 a.m. when the deceased named Vinayagam was sleeping at the platform in front of the house at No.17/4, Seniamman Kovil Street, Tondiarpet, Chennai – 81, the accused picked up quarrel and pushed him down and thrown the big cement stone on his head repeatedly, thereby he died. At the time of occurrence, PW2 Durai was sleeping 10ft away from that place. On seeing the occurrence, he questioned the accused and the accused ran away from the place thereafter only, public gathered. At that time, when PW1 S.P.Mohan, at about 6 or 6.15 a.m., went to have Tea, one person was lying with injuries, he enquired on Durai PW2, he stated that the accused and the deceased had assaulted each other under the influence of alcohol. The accused pushed the deceased Vinayagam and threw a stone on his head.



Crl.A.No.85 of 2022

The deceased was lying with injuries, at that time, the accused also present the occurrence place. Thereafter, PW1 S.P.Mohan went to H-3, Tondiarpet Police Station, Chennai, at 6.30 a.m. and gave the complaint Ex.P1 to the Inspector of Police PW13 N.Ravindran.

7.On receiving the complaint Ex.P1 from PW1 S.P.Mohan, PW13 The Inspector of Police, N.Ravindran, H-3, Tondiarpet Police Station, Chennai, registered the FIR Ex.P10 in Crime No.1276 of 2017 under Section 302 IPC and took the matter for investigation and went to the place of occurrence at about 6.45 a.m. and inspected the place of occurrence in the presence of witnessess PW5 Mustaq and one Habib and prepared the obervation mahazar Ex.P2, in which PW5 Mustaq and one Habib have signed and rough sketch Ex.P11. Further, he recovered the blood stained cement floor piece, ordinary cement floor piece, and bloodstained concrete stone (MO1 to M.O.3) in the presence of witnesses under mahazar Ex.P3. He enquired the witnessess Mohan PW1, Durai PW2, Mahesh PW3, Pushpalingam PW4, Observation Mahazar witnesses Mustaq PW5 and Habib and recorded their statements and conducted inquest on the dead body, which was marked as Ex.P12. Thereafter, gave a requisition letter to



Crl.A.No.85 of 2022

the Government Stanley Hospital Doctor through police constable Vijayakumar, for conducting post-mortem on the dead body.

8.Dr.Priyadharshini, PW8, Assistant Professor, Department of Forensic Medicine, Govt.Stanley Medical College, Chennai, conducted the postmortem upon the deceased body and found the following appearance at the post-mortum:

“Rigor mortis present all over the body. Thin build emaciated male body with dried blood stains on the face and neck. Irregular reddish abrasions (a).6 x 3 cm, 4 x 3 cm, 3 x 3 cm on the front of upper part of right side of the chest; (b). 2 x 05 cm on the left side of the chest (c). 8 x 5 cm on the left side of the forehead; (d). 7 x 2 cm on the back of right shoulder. Crush injury was found on the head and face from front to back exposing the underlying crushed muscles, subcutaneous soft tissues and facial and cranial bones; on reflection of the scalp; Dark red contusion 5 x 3 x 0.5 cm on the left side of the frontal region was found; dark red contusion of right and left temporalis muscles; dark red contusion 7 x 5 x 0.5 cm was found on the left side of the occipital region and midoccipital regions of the scalp; 8 cm



oblique fissured fracture was found on the left temporo occipital bones of the cranial vault; on removal of the calvarium; Diffuse subdural and subarachnoid hemorrhages was found all over the brain surface; comminuted fracture along with floor of right and left anterior cranial fossa. Heart was normal in size. Chambers were empty. Valves and great vessels were normal. Lungs was normal in size. Pale hyoid bone were intact. Stomach was empty; mucosa: Pale. Liver, Spleen and Kidney were Normal in size Pale. Bladder was Empty. Pelvis and spinal column were intact. The viscera was sent for chemical examination and report was received that there was no poison and alcohol. The deceased would appear to have died of shock and hemorrhage due to head injury sustained. He would have died 6 to 12 hours before the post-mortem examination.”

and opined that due to above head injuries, the deceased died and issued postmortem certificate Ex.P4.

9.The Inspector of Police, PW13 N.Ravindran took the accused from the place of occurrence, thereafter, to H-3, Tondiarpet Police Station and recorded his voluntarily statement in the presence of PW6 Sandhyalakshmi and one Ramu and arrested him after recording the statement. PW6 and one



Crl.A.No.85 of 2022

Ramu have signed in the confession statement and recovered the bloodstained shirt and lungi from the accused under Form-95. Thereafter, the accused was sent to Stanley Hospital for treating his injury as outpatient then he was remanded to Judicial custody. Further, PW13 recovered the shirt and trouser from the dead body through police constable and recovered CCTV footage, haddisk and CD containing the footage from a nearby shop. He enquired the incharge of the shop Meenakshi Sundaram PW7 and recorded his statement. Thereafter, he sent the material objects to the Court and sent to Forensic lab and received forensic reports Ex.P5 to Ex.P9 and examined PW9 Dharani, who examined materials objects and gave Ex.P5 chemical analysis report, PW10 Manivannan, who examined the Hard Disk and DVD and DVR and stated that video recordings and video content of the camera were similar and gave Ex.P6 Forensic Report, PW11 Srinivasan, who examined the blood stained on material objects and gave a report Ex.P7 forensic report and PW12 K.Thara, who examined DNA test on the blood stains of the material objects and gave a report Ex.P9 forensic report and recorded their statement. After completing the investigation, filed the final report against the accused.



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10. The learned counsel appearing for the appellant submitted that the judgement of the trial Court is contrary to law, weight of evidence and probabilities of the case and contended that the learned trial Judge erred in convicting the appellant relied upon the evidence of PW1 to PW4 and failed to note the contradiction in the evidence. The trial Court failed to note that the accused was in an intoxicated condition at the time of occurrence and also did not escape from the place of occurrence. The trial Court failed to note the fact that PW1 to PW4 deposed that the accused used cement stone to assault the deceased head. MO1 & MO2 are not to connect the accused to the crime. The trial Court failed to note the contradiction between PW1 & PW2. According to PW1, the accused was present at the place of occurrence and according to PW2, he ran away from the place of occurrence. The alleged M.Os recovered by the police are not proved which was used by the accused to hit the deceased and blood stains is found by the forensic department while examining the materials. Though PW2 Durai had seen the occurrence, he never gave any complaint with regard to the incident. Only PW1 came to the place of occurrence at about 6 a.m. To 6.15 a.m., after enquiring PW2, gave the complaint which was an unbelievable one and fatal to the prosecution case. There is a reasonable



Crl.A.No.85 of 2022

doubt about the truthfulness of the prosecution case that benefit of doubt has to be given in favour of the accused. The trial Court failed to appreciate the evidence properly and thus, reiterated the other grounds raised in the grounds of appeal and pleaded to set aside the conviction and sentence passed by the trial Court and acquit the accused.

11.The learned Additional Public Prosecutor appearing for the respondent submitted that the evidence against the accused is enough to prove the charges. The decision of the trial Court is as per terms and dictum of law and there is no reason to interfere with the finding of the trial Court and pleaded to dismiss the appeal as it has no merit.

12.We have considered the matter in the light of the submissions made by the learned counsel for the accused/appellant as well as the learned Additional Public Prosecutor appearing for the respondent and considered the evidence on record.

13.Among 13 witnesses, PW2 Durai is an eyewitness to the occurrence. At the time of occurrence, he was sleeping along with the



Crl.A.No.85 of 2022

deceased and the accused in the same platform. The other witnesses namely PW1 S.P.Mohan, PW3 Magesh, PW4 Pushpalingam, deposed about the occurrence, they clearly stated that the accused assaulted the deceased Vinayagam with stone and thereby, he sustained injury and died.

14. There is no reason to reject their evidence with regard to the occurrence. Apart from this, the accused is present in the place of occurrence, while the Inspector of Police came to the spot. The Inspector of Police PW13 took the accused from the place of occurrence itself. Further, CCTV footage near the place of occurrence was taken by PW13 the Inspector of Police/Investigating Officer and it was tested by the Forensic department. In this regard PW10 Manivannan gave evidence before the Court. For better appreciation, his evidence is reproduced hereunder:

“நான் தற்போது சென்னை தடய அறிவியல் பிரிவில் உதவி இயக்குனராக பணிபுரிகிறேன். கடந்த 09.08.2017 அன்று 15வது பெருநகர நடுவர் ஜார்ஜ் டவுன் அவர்களால் அனுப்பப்பட்ட மூன்று முத்திரையிடப்பட்ட காகிதபொட்டலங்கள் சரியான முத்திரையுடன் ஆய்வுக்காக பெறப்பட்டன.



CrI.A.No.85 of 2022

அவற்றிலிருந்த ஆர்டு டிஸ்க் ஒன்றும், டி.வி.டி ஒன்றும், டி.வி.ஆர் ஒன்றும் மாதிரிகள் 1 முதல் 3 வரை குறியிடப்பட்டு ஆய்வு செய்யப்பட்டன. மேலே குறிப்பிடப்பட்ட பொருட்களில் டி.வி.டியில் காணப்படும் காணொலி காட்சியும் மாதிரி ஒன்று மற்றும் 3 ஆன டி.வி ஆரில் பதிவு செய்யப்பட்ட காணொலி காட்சியும் ஒன்று தானா என்ற நோக்கில் ஆய்வுசெய்யப்பட்டு அறிக்கை வழங்கப்பட்டுள்ளது. டி.வி.டியில் காணப்படும் காயொலியானது 01.08,2017 அன்று காலை 11 மணிக்கு உருவாக்கப்பட்டிருந்தது. அதில் காணப்படும் காணொலியில் விடியற்காலை 5 மணி முதல் 5.10 மணிவரை காயொலி பதிவு செய்யப்பட்டிருந்தது. குறிப்பிட்ட காணொலியானது ஒரு வயதான தோற்றமுடைய ஆண் நபரை மற்றொரு ஆண் நபர் கல்லால் அடித்தும் காயப்படுத்தியும் அவர் இறக்கும்வரை பல முறை அடித்து கொல்லும் சம்பவம் படமாக்கப்பட்டிருந்தது. குறிப்பிட்ட சம்பவங்களில் நேரம் வாரியான நடவடிக்கைகள் அறிக்கையில் Screen shot களாக கொடுக்கப்பட்டுள்ளது. டி.வி.ஆரில் ஆய்வு செய்ததில் அது வேலை செய்யும் நிலையில் இருந்தது. அதில் குறிப்பிட்ட நாளன்று பதிவாகியிருந்த காணொலி காட்சியில் எந்த ஒரு மாற்றும் இல்லாமல் பதிவாகியிருந்தது. அதிலிருந்த Backup வசதியை பயன்படுத்தி குறிப்பிட்ட நேரத்திற்கு சமாராக 10 நிமிடங்கள் நகல் எடுத்து அதை டி.வி.டியில் காணப்படும் காணொலியோடு ஒப்பிட்டு ஆய்வு செய்ததில்



இரண்டு காரணாலிகளும் எல்லா விதமான பண்புகளிலும் ஒத்து இருந்தன. மேலும் டி.வி.டியில் காலை 11 மணியளவில் குறிப்பிட்ட காரணாலி நகல் எடுக்கப்பட்டிருந்தது என்று கண்டறியப்பட்டது என நான் வழக்கு பொருட்களை ஆய்வு செய்து அறிக்கை வழங்கினேன். அந்த அறிக்கை அ.த.சா.ஆ.6 ஆகும்.”

15.Further, the evidence of PW2 Durai is corroborated with other prosecution witnesses. The evidence of PW1 S.P.Mohan, P.W.3 Magesh, PW4 Pushpalingam and PW10 Manivannan, proved the fact that the accused assaulted the deceased Vinayagam with stone and caused severe injury. In this regard, PW8 Dr.Priyadharshini, who conducted Postmortem upon the deceased body, opined that the deceased would appear to have died of shock and hameorrhage due to head injury and gave postmortem certificate Ex.P4. It proves that the accused died due to his head injuries that injury was caused by the accused.

16.The expression “beyond reasonable doubt” does not mean beyond all the doubt. The Supreme Court in *State of Punjab Vs. Ramdev*, (AIR 2004 SC 1290) criticized the tendency of Courts to acquit the accused



giving undue weightage to insignificant circumstances and flimsy grounds.

The Court observed:-

***“An unmerited acquittal on benefit of doubt does no good to society. If prosecution has succeeded in making out a convincing case for recording a finding as to accused being guilty, the Court should not lean in favour of acquittal by giving weightage to insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where non reasonably exists. A doubt has to be reasonable doubt and not an excuse for finding in favour of acquittal. An unmerited acquittal encourages and evolves in the society, a feeling of being the prawn for easy prey, more so when victim of crime is helpless woman or minor children.*”**

17.The prosecution satisfactorily proved that the accused did cause the injuries found on the person of deceased, that the accused intentionally inflicted those injuries and that the injuries were sufficient in the ordinary course of nature to cause death and the death was actually caused. The requirements of clause thirdly of Section 300 IPC (Sec. 101 of the Bharatiya Nyaya Sanhita, 2023) are fully satisfied and the offence committed is that of murder punishable under Section 302 IPC (Sec.103 of



Crl.A.No.85 of 2022

The Bharatiya Nyaya Sanhita, 2023).

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18.In view of the above, the charge against the accused is proved beyond all reasonable doubt and we do not find any justifiable ground to interfere with the findings of the trial Court based upon the proper appreciation of the evidence let by the prosecution and there is no merit in the criminal appeal.

19. In the result, the criminal appeal fails and the same is dismissed and conviction and sentence dated 20.02.2019 imposed on the accused by the trial Court in S.C.No.302 of 2017 is hereby confirmed.

Index: Yes/No
Internet: Yes/No
sms

(S.M.S.J) (V.S.G.J)
06.09.2024

To



Crl.A.No.85 of 2022

1.The Inspector of Police,
H-3, Tondiarpet Police Station,
Chennai.

2.The Principal Sessions Judge,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

S.M.SUBRAMANIAM,J.
AND
V.SIVAGNANAM, J.

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Crl.A.No.85 of 2022

Pre-delivery Judgement in
Crl.A.No.85 of 2022

06.09.2022