



Crl.A.No.815 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2024

CORAM :

THE HON'BLE MR.JUSTICE SUNDER MOHAN

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Settu,

...Appellant/Single Accused

vs.

State represented by
The Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District
(Crime.No.28/2017)

...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to set aside the Judgment and Order passed on the appellant/accused by the learned Principal Sessions Judge, Krishnagiri made in S.C.No.103 of 2017 dated 18.12.2017 and to acquit the appellant.

For Appellant : Mr.C.Prabakaran

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 18.12.2017, in S.C.No.103 of 2017, on the file of the learned Principal Sessions Judge, Krishnagiri.

2(i). It is the case of prosecution that the deceased was employed under the appellant and was engaged in the job of cutting sugarcane for the appellant; that on 11.01.2017, when the deceased went to a function and returned to the house at about 5:30 p.m., the accused and the family members of the deceased were standing in front of the house; that the deceased asked the accused as to why he did not pay advance money for the Pongal festival though the other employees were given the advance money; that the appellant had told the deceased that he had already received Rs.28,000/- and since he was not working properly, he was not entitled to advance money; that the deceased insisted for the advance money; that the appellant had attacked the deceased by hands, pushed him on the floor and kicked him on the hip, chest and the head of the deceased, as a result of which, the deceased died on 11.01.2017, at about 8:00 p.m.



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2(ii). It is the further case of prosecution that P.W.1/wife of the deceased, gave a complaint to P.W.17/the Sub Inspector of Police, at about 5:00 a.m on 12.01.2017, stating that the appellant attacked the deceased at about 5:30 p.m., and thereafter, the deceased was found lying dead with a saree tied around his neck at about 8:00 p.m., on the same day. The First Information Report was registered initially under Section 174 of the Criminal Procedure Code.

2(iii). P.W.18/the Inspector of Police, took up the investigation, went to the scene of the occurrence, and prepared the Observation Mahazer and Rough Sketch (Ex.P14). He thereafter seized the saree, which was found around the neck of the deceased. He conducted the inquest over the dead body in the presence of Panchayatars and prepared the Inquest Report/Ex.P15. He sent the body of the deceased for a post-mortem. PW7/Doctor conducted the post-mortem and issued the post-mortem certificate/Ex.P5. P.W.7 found the following injuries on the deceased:

External Injuries:

1. Abrasion of dark blood stain @ right chest wall measuring in size 4 X 4m.



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2. *Diffused swelling @ occipital measuring in size 4 X 4 cm.*

3. *Partial ligature mark like dark blackish and redness of neck irregular at front of the neck @ 6 X 1/2m.*

(iv) On 12.01.2017, P.W.18 filed an alteration report, altering the offence into Section 302 of the IPC. The alteration report was marked as Ex.P16. On the same day, P.W.18 arrested the appellant and, on his confession, recovered a bike said to have been used by the appellant to abscond. Thereafter, after examining other witnesses and recovering material objects under seizure mahazar, P.W.18 filed the Final Report on 19.04.2017 for the offence under Section 302 of the IPC before the learned Judicial Magistrate – I, Krishnagiri.

(v) 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.103 of 2017, and made over to the learned Principal Sessions Judge, Krishnagiri, for trial. The trial Court framed charges u/s.294 (b) and 304 (II) of the IPC as against the appellant, and when questioned, the appellant pleaded 'not guilty'.



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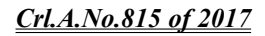
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(vi) To prove the case, the prosecution examined 18 witnesses as P.W.1 to P.W.18 and marked 23 exhibits as Exs.P1 to P20 and 5 material objects as M.O.1 to M.O.5. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the appellant/accused, nor any document marked.

(viii) The Trial Court, after considering the evidence on record, found that the appellant was guilty, convicted the appellant/accused, and sentenced him as follows:

Sl.No.	Offence	Sentence imposed
1	304(II) of IPC,	To undergo 10 years of RI and to pay a fine of Rs.3,000/- in default to undergo 6 months of RI.
2	294(b) of IPC	To undergo 3 months of RI and to pay a fine of Rs.1,000/- in default to undergo 1 month of RI.
The sentences imposed are directed to run concurrently.		

Hence, the accused has preferred the appeal challenging the said conviction and



3(i). The learned counsel for the appellant would submit that the eyewitnesses cannot be believed as there is an inordinate delay in lodging the complaint by P.W.1. The presence of Police on the night of the occurrence has been admitted by the witnesses, and in fact, P.W.17, who recorded the First Information Report, himself admitted that he recorded the statement from P.W.1 on the day of occurrence. The learned counsel therefore submitted that the First Information Report, which came into existence the next day belatedly, cannot be treated as first information and that the earliest information has been suppressed by the prosecution.

(ii) The learned counsel further submitted that the prosecution has suppressed the fact that the deceased had committed suicide by hanging, and a vague, improbable version is given by P.W.1 stating that the deceased was found dead with a saree around his neck.



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(iii) The learned counsel further pointed out the averments in the alteration report and the evidence of the Doctor in the cross-examination to substantiate his submission.

(iv) Further, the learned counsel for the appellant would submit that the family members of the deceased and the appellant had a grudge against each other on account of the land dispute, and therefore, the appellant has been falsely implicated and has prayed for acquittal of the accused.

4. Per contra, the learned Additional Public Prosecutor submitted that P.W.1 to P.W.3's evidence would show that the appellant had attacked the deceased and pushed him on the floor and thereafter kicked him all over the body; that the defence has not elicited any information in the cross-examination to disbelieve their version; that the evidence of the Doctor, who conducted the post-mortem, also corroborates the evidence of the ocular witnesses;



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and therefore, submitted that the Judgment of the Trial Court does not call for any interference.

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

6. P.W.1 to P.W.3 are the close relatives of the deceased. P.W.1 is the wife of the deceased. P.W.2 is the daughter of the deceased. P.W.3 is the son of the deceased. P.W.4 is the son-in-law of the deceased, who took the deceased by auto to the hospital at about 8:00 p.m. P.W.5 is the elder brother of the deceased who came to know of the occurrence from P.W.1. P.W.6 is the witness to the observation mahazar. P.W.7 is the post-mortem Doctor. P.W.8 is a witness for the Observation Mahazar. P.W.9 to P.W.13 are the neighbours of the deceased who were examined to show that there was a wordy quarrel between the appellant and the deceased. However, all these witnesses turned hostile, as they had stated that they all came to know from P.W.1 that the deceased died due to hanging. P.W.14 is the Village Administrative Officer, who signed as a witness in the Seizure Mahazars (Exs.P10 and P11). P.W.15 and P.W.16 are the head constables who assisted the Investigating Officer. P.W.17 is the



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Sub-Inspector of Police who recorded the First Information Report. P.W.18 is the Investigating Officer.

7. From the above narrative, it would be clear that the case rests on the evidence of eye-witnesses viz., P.W.1 to P.W.3, and that of the post-mortem Doctor/P.W.7. As stated earlier, P.W.1 to P.W.3 are closely related to the deceased. The occurrence is said to have taken place at about 5:30 p.m., the deceased did not die immediately thereafter. It is the version of the prosecution that the deceased was found lying dead at about 8:00 p.m. by P.W.1. The deceased was taken to the hospital immediately thereafter, as seen from the evidence of witnesses, including P.W.4, who had taken the deceased to the hospital. The Doctor who first treated the deceased has not been examined by the prosecution. It is also found in the evidence of the witnesses that an intimation was given to the Police on the same evening about the occurrence.

8. P.W.17/the Sub Inspector of Police, who registered the FIR the next day morning (i.e., on 12.01.2017), had stated in the cross-examination that he went to the hospital and saw the body of the deceased at about 9:00 p.m. on 11.01.2017; that he had also examined P.W.1; and that P.W.1 refused to give a complaint,



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stating that she would give a complaint only after discussing it with her relatives; and that P.W.1 confirmed the fact that she was examined by the Police on the same day evening. P.W.5 is the brother of the deceased, admitted that P.W.1 had told the Police when she was examined by the Police on 11.01.2017 that the deceased committed suicide by hanging.

9. All these would confirm that Ex.P1, which was given at 5:00 a.m on 12.01.2017, cannot be treated as the first information. The first information given to the Police has been suppressed by the prosecution. It is trite that when the genesis and origin of the occurrence have been suppressed by the prosecution, the entire fabric of the prosecution case would collapse, and the evidence of eyewitnesses would therefore would become doubtful. In this regard, we may refer to the observations of the Honourable Supreme Court in ***Marudanal Augusti vs State Of Kerala*** reported in (1980) 4 SCC 425, AIR 1980 SC 638:

“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.”

10. Apart from the fact that the witnesses cannot be believed since the genesis has been suppressed by the prosecution, we may also note the other factors that raise a serious doubt in the prosecution case. P.W.1 would state that she saw the deceased lying with a saree tied around his neck. If the deceased had died due to the alleged overt acts of the appellant, there was no reason for P.W.1 to refer to the saree around the neck. P.W.7/the post-mortem Doctor, had found a partial ligature mark of 6 X 1/2 cm, like dark blackish and redness of the neck. This, coupled with the evidence of P.W.5 that P.W.1 told the Police that the deceased committed suicide, and the averments in the alteration report/Ex.P16 that the deceased committed suicide, would make the prosecution case highly doubtful. The relevant portion of the alteration report reads as follows:

“தன் கணவரை அடிக்க வேண்டாம் என்று
சத்தம்போட்டதாகவும் பின்னர் சேட்டு சென்று விட்டான்
என்றும் தன் கணவர் வீட்டிற்கு வந்து அவர் தனியாக
இருந்த ஒரு நுழுக்குசென்று இரவு 8 மணிக்கு தன்



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சேலையை கழுத்தில் சுற்றி தூக்கி போட்டுக்கொண்டதாகவும்
பின்னர் தன் மகன் முனியப்பன் சென்று பார்த்து சத்தம்
போட்டவுடன் தானும் தனது மகள்களுடன் தன் கணவரை
சென்று பார்த்ததாகவும் தன் கணவருக்கு சுயநினைவு
இல்லாமல் இருந்ததாகவும் உடனடியாக....”

11. Further, we find that in the request to conduct a post-mortem, the Investigating Officer referred to the case as a suicide. Therefore, this Court is of the view that the prosecution case that the deceased died only due to the act of the accused cannot be believed. We are also unable to accept the version of the eyewitnesses, even with regard to the alleged assault by the appellant of the deceased at 5:30 p.m. The witnesses have a tendency to exaggerate, and it is highly unsafe to even believe that portion of the evidence with regard to the wordy quarrel and the assault said to have been committed by the appellant at 5:30 p.m.

12. It is also further seen from the evidence of P.W.1 that the appellant and P.W.5 had a land dispute. This aspect has been confirmed by P.W.2 and



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P.W.5 themselves. This would also show that a false implication cannot be ruled out.

13. For all the above reasons, we are of the view that the prosecution has not established the case beyond reasonable doubt and the appellant is entitled to acquittal. The finding of the trial Court holding the appellant guilty for the offences under Sections 304-II and 294 (b) of IPC, is liable to be set aside.

14. In the result, this Criminal Appeal is allowed and the appellant is acquitted of the charges u/s.304-II and 294 (b) 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.103 of 2017, on the file of the learned Principal Sessions Judge, Krishnagiri, *vide* judgment dated 18.12.2017 are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

05.01.2024



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Index : yes/no

Neutral citation : yes/no
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To

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



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