



Crl.A.No.693 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.693 of 2018

Rajini

...Appellant/Sole Accused

vs.

The State Rep by,
The Inspector of Police,
Tirupattur Taluk Police Station,
Vellore District,
Crime No.17 of 2013

...Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, 1973, to call for the records of the Judgment of the Learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Vellore made in S.C.No.32 of 2014 dated 10.07.2018 and set aside the same.



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For Appellant : Mr.S.Samuel Raja Pandian

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

[Order of the Court was made by SUNDER MOHAN,J.]

This Criminal Appeal has been filed by the sole accused, challenging the conviction and sentence imposed upon him vide judgment dated 10.07.2018 in S.C.No.32 of 2014 on the file of the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court) Vellore.

2(i) It is the case of the prosecution that the appellant and P.W.1/ Shanmugam were brothers; that there was a property dispute between the deceased and P.W.1 and there was an enmity between the two families; that on 22.04.2013 at about 6:15 a.m., when the deceased (wife of P.W.1) was giving a bath to P.W.3/her son, the water used went into the house of the appellant; that enraged by that, the appellant attacked the deceased and the son of the deceased/P.W.3 with an iron rod indiscriminately, as a result of which the deceased died on the spot and P.W.3/the son of the deceased



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sustained a fracture in the hand.

(ii) P.W.1/Shanmugam, came to know through his daughter (P.W.2) about the incident and lodged a complaint [Ex.P1]. P.W.14/the Inspector of Police, in turn, registered the First Information Report at 9:30 a.m. on the same day in Crime No.243 of 2013 for the offences under Sections 302, 324, and 506 (ii) of the Indian Penal Code. The Express FIR [Ex.P.14] was sent to the learned Judicial Magistrate No.II, Thirupattur, on the same day at 11.00 a.m.

(iii) P.W.14, after registration of the FIR, took up the investigation, went to the scene of the occurrence at 10:30 a.m, and prepared Observation Mahazar (Ex.P16) and Rough Sketch (Ex.P15). He seized the bloodstained earth (M.O.2) and the earth that was not bloodstained (M.O.3) under Seizure Mahazar (Ex.P2). He thereafter conducted an inquest and prepared an inquest report (Ex.P18). He seized the saree (M.O.4), blouse (M.O.5), and petticoat (M.O.6) of the deceased and sent them under Form 95 to the Court. He thereafter sent the body of the deceased for a post-mortem. The post-mortem was conducted by P.W.13/Doctor, who issued the



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post-mortem certificate [Ex.P.13]. P.W.13 also made entries in the accident register [Ex.P12]. P.W.13 opined that the death was caused due to severe head injury.

(iv) On 23.04.2013, P.W.14 arrested the accused and, on his confession, recovered an iron rod [M.O.1], which was white in colour. Thereafter, he examined the additional witnesses and handed over the investigation to P.W.15.

(v) P.W.15 conducted further investigation, examined other witnesses, and filed the Final Report against the appellant/sole accused on 01.09.2013 for the offence under Sections 302, 326 and 506 (ii) IPC before the Learned Judicial Magistrate No.II, Thirupatthur.

(vi) 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.32 of 2014 and was made over to the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court),



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Vellore, for trial. The Trial Court framed charges u/s.302 and 307 of the IPC as against the appellant, and when questioned, the appellant pleaded 'not guilty.

(vii) To prove the case, the prosecution examined 15 witnesses as P.W.1 to P.W.15, marked 18 exhibits as Exs.P1 to P18, and marked 6 Material Objects as M.O.1 to M.O.6. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant/accused did not examine any witnesses or mark any documents on his side.

(viii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt, held the accused guilty of the offences under Sections 302 and 307 of the IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2000/- in default to undergo rigorous imprisonment for three months for the offence under Section 302 of the IPC; and sentenced him to undergo seven years rigorous imprisonment and to pay a fine of Rs.2000/-



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in default to undergo rigorous imprisonment for three months for the offence under Section 307 of the IPC. The sentences were ordered to run concurrently. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.S.Samuel Raja Pandian, the learned counsel appearing for the appellant/accused, and Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

4(i). The learned counsel for the appellant submitted that the entire case rests on the evidence of child witnesses [P.W.2 and P.W.3]; and that the child witnesses had made several inconsistent statements, and therefore, it is highly unsafe to convict the appellant on the basis of their evidence alone.

(ii) The learned counsel further submitted that the version of the witnesses with regard to the actual weapon used varies; that P.W.4 admitted both the deceased and P.W.3 to the hospital and told the Doctor that the



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deceased and P.W.3 were attacked by a wooden log [தொன்னை] by an unknown person, which is contrary to the prosecution case that a pipe was used.

(iii) The learned counsel also submitted that there was a wordy quarrel, and therefore, it cannot be said that the accused was guilty of the offence of murder.

5. (i) Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor, *per contra*, submitted that merely because P.W.4/neighbour had informed the Doctor that a wooden log was used, it would not falsify the prosecution case; and that the recovery of the weapon and the evidence of eyewitnesses would show that the prosecution case has been established.

(ii) The learned Additional Public Prosecutor further submitted that even in the FIR, it is stated that the deceased was attacked by a white pipe, and therefore, the entries in the accident register would have no relevance in



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the circumstances of this case.

6. We have carefully considered the rival submissions on either side and perused the evidence on record.

7. P.W.1 is the husband of the deceased, who came to know of the occurrence from P.W.2 and P.W.3. He lodged the complaint [Ex.P1]. P.W.2 is the daughter of the deceased, and she is an eyewitness to the occurrence. P.W.3 is the son of the deceased and an injured eyewitness to the occurrence. P.W.4 is the neighbour who took the deceased to the hospital and turned hostile. P.W.5 is a hearsay witness. P.W.6 is a Mahazar Witness for Ex.P2. P.W.7 is the Doctor who treated P.W.3/son of the deceased. He had certified that P.W.3/son of the deceased, sustained grievous injuries and had issued Ex.P4/medical certificate. P.W.8 is the Court Clerk who received the articles sent under Form 95. P.W.9 is the Corpse Constable. P.W.10 speaks about the motive and the enmity between P.W.1 and the accused. P.W.11 is the Village Administrative Officer, who witnessed the Seizure of M.O.1/iron pipe, on the confession of the



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appellant. P.W.12 is the Assistant Director of the Forensic Science Laboratory, who analysed the bloodstained cloths. P.W.13 is the post-mortem Doctor. P.W.14 is the Inspector of Police, who registered the FIR and conducted the investigation. P.W.15 is the Investigation Officer, who filed the Final Report.

8. P.W.13, conducted post-mortem on the deceased. She issued Ex.P.13/post-mortem certificate. She found the following external injuries on the deceased:

External Injuries:

- 1.Fracture Right forearm both bone.*
- 2.Laceration over ocephital region 8 x 2 x 3 cm.*
- 3. Laceration over ocephital region 6 x 2 x 2 cm.*
- 4. Laceration over Right ear 1 x 1 x 1 cm.*
- 5. Contusion over Right neck.*

passed motion.

On Dissection:

Head scalp – Laceration over ocephital region 8 x 2 x 3 cm, 6 x 2x 2 cm

Skull – Fracture ocephital bone, Brain – Blood clots @



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occipital lobe.

Neck :- Hyoid bone normal, blood clots @ Right neck.

Thorax : ribs-normal, lungs – normal, heart – empty

Abdomen : Stomach – Empty, Liver – normal,

Spleen – normal, Kidneys – normal,

SI – Motion, uterus – Empty"

She had opined in Ex.P.13 that the deceased died due to a severe head injury. P.W.13 further opined that the injury mentioned in Ex.P13 could be caused by a weapon like M.O.1, which is an iron rod. Apart from eliciting from the Doctor that the deceased could have sustained injuries to her head due to a fall from a staircase, the defence has not discredited the evidence of the post-mortem Doctor in any manner. There is no other evidence to establish the defence of the accused that the deceased sustained injury due to a fall. Thus, the medical evidence, coupled with the other evidence on record, prove that the deceased died due to injuries sustained in a homicidal violence.

9. P.W.2 and P.W.3 are the children of the deceased. P.W.2 was aged



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thirteen years and was studying fifth grade, when she was examined in Court. The occurrence took place in the year 2013, three years prior to her examination. The accused is the paternal uncle (father's brother) of P.W.2. The voir dire questioning made by the Trial Court suggests that she was capable of understanding the nature of the questions and deposing before the Court. The relevant questions and answers read as follows:

"கேள்வி — நீ இப்பொழுது எங்கு வந்திருக்கிறாய் என்று தெரியுமா?

பதில் — நீதிமன்றம் என்று தெரியும்.

கேள்வி — எதற்கு வந்துள்ளாய்?

பதில் — சாட்சி சொல்ல வந்துள்ளேன்.

கேள்வி — நீதிமன்றத்தில் சாட்சி சொல்வதற்கு யாராவது கட்டாயப்படுத்தினார்களா?

பதில் — இல்லை."

Her evidence is very cogent, and she speaks about her witnessing the attack made by the appellant on the deceased, i.e., her mother, by using an iron pipe. She also speaks about the attack made by the appellant on her brother who was examined as P.W.3. The defence was unable to discredit her



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version in the cross-examination.

10. It is the evidence of P.W.1 that he came to know of the occurrence only from P.W.2, and he had lodged a complaint on the basis of her version. P.W.1 thus speaks about the presence of P.W.2 in the occurrence, even in the complaint. The occurrence took place at 6:30 a.m., in the house of the deceased and therefore, her presence in the house where the occurrence took place is natural.

11. P.W.3 is the injured eyewitness. He was nine years old at the time of the occurrence. The relevant questions and answers in the voir dire questioning made by the Trial Judge read as follows:

"கேள்வி — எந்த வகுப்பு படிக்கிறாய்?

பதில் — நான் 7ம் வகுப்பு படிக்கிறேன்.

கேள்வி — நீ இப்பொழுது எங்கு வந்திருக்கிறாய் என்று தெரியுமா?



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பதில் — நீதிமன்றம் என்று தெரியும்.

கேள்வி — எதற்கு வந்துள்ளாய்?

பதில் — சாட்சி சொல்ல வந்துள்ளேன்.

கேள்வி — நீதிமன்றத்தில் சாட்சி சொல்வதற்கு யாராவது

கட்டாயப்படுத்தினார்களா?

பதில் — இல்லை"

He was twelve years, when he was examined in Court and nine years old at the time of the occurrence. He sustained a fracture in the hand due to the attack made by the appellant. P.W.3's evidence is also cogent and would state that his father went to their agricultural land at 6:00 a.m. and he, along with his sister, were with his mother/the deceased. He was treated as an inpatient. Though an elaborate cross-examination was done by the defence, his evidence has not been discredited. P.W.6 was the Doctor who conducted surgery on P.W.3. He issued Ex.P.4/medical certificate, which reveals that surgery was conducted by him on 30.04.2013, and P.W.3 was discharged on 08.05.2013. He had also opined that the injuries sustained by P.W.3 are grievous in nature. P.W.13 made entries in the accident register [Ex.P12] in



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respect of P.W.3. The nature of the injuries against P.W.3, reveals the intention of the accused and would show that the act of the appellant would amount to an attempt to murder punishable under Section 307 of the IPC.

12. Though the other witnesses were neighbours turned hostile, the prosecution case has been established through the evidence of P.W.2 and P.W.3 and the medical evidence through P.W.7 and P.W.13. The motive has been established through P.W.1/the brother of the appellant.

13. The learned counsel for the appellant/sole accused, submitted that there is a discrepancy in the evidence of prosecution witnesses with regard to the weapon alleged to have been used by the appellant. P.W.13 had made entries in the accident register that P.W.3 was attacked by a “wooden log” [தொன்னை]. However, considering the nature of the injuries sustained by the deceased and the grievous nature of injury sustained by the injured witness/P.W.3, we are of the view that the information given to the Doctor that a [தொன்னை] was used is an error by P.W.4 and cannot nullify the



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evidence of eyewitnesses/P.W.2 and P.W.3 in the facts and circumstances of the case.

14. As stated earlier, the deceased sustained a fracture in the right forearm, both bones and two laceration injuries in the occipital region, one measuring 8 x 2 x 3 cm and the other measuring 6 x 2 x 2 cm, and a fracture in the occipital region. This injury, as rightly stated by P.W.13 could be caused by a weapon like M.O.1.

15. We also find that after the arrest of the accused and on the basis of the admissible portion of his confession, M.O.1 was seized from his residence in the presence of P.W.11/the Village Administrative Officer. His evidence is also cogent. Though, he would state that it was a white colour pipe, this would hardly make a difference in the facts of this case. P.W.11's evidence inspires confidence, and there is no reason to disbelieve his evidence regarding the Seizure of M.O.1 from the residence of the appellant.



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16. Therefore, in these circumstances, we are of the considered view that the prosecution has proved its case beyond reasonable doubt and there is no infirmity in the judgment of the Trial Court convicting the appellant for the offences alleged. Hence, this appeal is liable to be dismissed, and accordingly, dismissed. The Judgment dated 10.07.2018 made in S.C.No.32 of 2014 on the file of the Sessions Judge, Magalir Neethimandram (Fast Track Court), Vellore, is hereby confirmed.

(M.S.R.,J) (S.M.,J)
12.02.2024

Index : yes/no
Neutral citation : yes/no
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To

1.The Sessions Judge,
Magalir Neethimandram (Fast Track Mahila Court),
Vellore.

2.The Inspector of Police,
Tirupattur Taluk Police Station,
Vellore District.

3.The Public Prosecutor,
High Court, Madras.



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M.S.RAMESH,J.

and

SUNDER MOHAN,J.

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