



Crl.A.No.772 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.02.2024

PRONOUNCED ON : 23.02.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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R.Mahendran

... Appellant/sole accused

v.

The State of Tamil Nadu,
Rep. by The Inspector of Police,
V6-Kolathur Police Station,
Chennai.

(Crime No.1218/2013)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant and sentence in S.C. No.254 of 2017 dated 15.11.2018, on the file of the learned Principal Sessions Judge, Chennai, and set aside the conviction and sentence imposed in judgment dated 15.11.2018 and acquit the appellant.

For Appellant

: Mr.John Sathyan,Sr. Advocate



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for Mr.P.Raja

For Respondent

: Mr.A.Gokulakrishnan

Additional Public Prosecutor

JUDGMENT

(Order of the Court was delivered 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 15.11.2018 in S.C.No.254 of 2017 on the file of the learned Principal Sessions Judge, Chennai.

2. For the sake of convenience, the accused is hereinafter referred to as 'appellant'.

3(a). It is the case of the prosecution that the deceased and the appellant are cousin-brothers; that the deceased was a Doctor practising medicine, had a clinic and was well to do; that there was a monetary transaction and due to that there was enmity between the appellant's family and the deceased's family; that the deceased was also in the habit of talking



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ill of the appellant's wife; that due to the said reason also, on 28.06.2017, at about 11.00 p.m., when both the deceased and the appellant went to the terrace of the house of the deceased and consumed liquor; the appellant made the deceased consume excessive alcohol; and that thereafter the appellant slapped the deceased, strangled his neck with a mobile phone charger wire and threw the body of the deceased into the water sump.

(b) It is the further case of the prosecution that the next day morning, i.e., on 29.06.2017, PW2-sister of the appellant found her brother missing and informed PW1 her uncle; that PW1 lodged a complaint [Ex.P1] on 30.06.2017 at about 9.00 a.m., which was registered by PW16 in Cr.No.944 of 2017 for 'man missing' [Ex.P14]; that thereafter PW16 received information that the body of the deceased was found in the water sump in his house and altered the provision to Section 174 Cr.P.C., and treated the case as 'suspicious death'. He prepared the Observation Mahazar [Ex.P3] and the Rough Sketch [Ex.P15] and then recorded the statement of one Arun Kumar PW9, who according to the prosecution, saw the appellant dragging a person at the night of 28.06.2017 on the house of the deceased.



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(c) On 30.06.2017, PW16 conducted an inquest over the dead body of the deceased in the presence of the panchayatars and prepared the inquest report [Ex.P17]. He sent the body for a postmortem and PW15-Doctor conducted a postmortem and issued a postmortem certificate [Ex.P13], wherein he had opined that the deceased would appear to have died due to drowning with evidence of ethyl alcohol consumption.

(d) Thereafter, a statement [Ex.P2] of PW2 under Section 164 Cr.P.C., was recorded. PW16 examined the other witnesses. On 02.07.2017, he arrested the appellant and on his confession, seized a cell phone [M.O.1] and a cellphone charger wire [M.O.2] under Seizure Mahazar [Ex.P5]. He thereafter altered the offences to Sections 302 and 201 of the IPC. He sent the alteration report [Ex.P16] to the learned Magistrate. He thereafter took the appellant into police custody and on the further confession given by the appellant, seized the green coloured (Signature Brand) whisky bottle [M.O.4] and a glass [M.O.5] under Seizure Mahazar [Ex.P9]. On 03.10.2017, he filed the final report against



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the appellant for the offence under Section 302 of the IPC before the learned
V Metropolitan Magistrate, Chennai.

(e) 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.254 of 2017 and was made over to the learned Principal Sessions Judge, Chennai, for trial. The trial Court framed charges u/s.302 of the IPC as against the appellant and when questioned, the appellant pleaded 'not guilty'.

(f) To prove the case, the prosecution examined 16 witnesses as P.W.1 to P.W.16, marked 17 exhibits as Exs.P1 to P17, and marked 5 Material Objects as M.O.1 and 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. The appellant/accused neither examined any witnesses, nor marked any documents.



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(g) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt, held the appellant guilty of the offence under Section 302 of the IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-. Hence, the accused/appellant has preferred the appeal challenging the said conviction and sentence.

4. Heard, Mr.John Sathyan, learned senior counsel appearing for the appellant/accused, and Mr. A. Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

5. (i) Mr.John Sathyan, the learned senior counsel for the appellant submitted that the case which is based on circumstantial evidence, has not been established by the prosecution; and that the prosecution has relied upon the following circumstances viz., (i) motive; (ii) last seen by PW2 and PW9; (iii) extra judicial confession said to have been given by the appellant to PW11; and (iv) the arrest and recovery of material objects from the



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appellant.
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(ii) The learned senior counsel submitted that the motive has not been established by the prosecution; that the witnesses who support the prosecution case regarding the circumstance of last seen cannot be believed; that the extra judicial confession is neither voluntary nor truthful, since

PW11 is a stranger to the appellant; that in any case, the appellant could not have given the extra judicial confession on 02.07.2017 when there is evidence to show that the appellant was taken into custody on 01.07.2017 itself and hence, prayed for acquittal of the appellant.

6. The learned Additional Public Prosecutor *per contra* submitted that the prosecution has established all the circumstances that form a complete chain pointing out only to the guilt of the appellant and prayed for dismissal of the appeal.

7. We have carefully considered the rival submission and perused all



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the relevant materials available on record.

8. PW1 is the uncle of the deceased, who gave a complaint on the information given by PW2 that the deceased was missing; PW2 is the sister of the deceased, who according to the prosecution saw the deceased and the appellant going to the terrace for consuming liquor and they were last seen together; PW3 and PW4 are the parents of the deceased who speak about missing of their son; PW5 is the brother of the deceased, who speaks about the alleged money transaction between the family members and had stated that, that could be a reason for the commission of the offence; PW6 and PW7 are the observation mahazar witnesses; PW8 is a hearsay witness; PW9 is a cab driver who had seen the appellant dragging a person at the night on 28.06.2017; PW10 is the witness to the arrest and confession and recovery from the appellant; PW11 is the witness who speaks about the extra judicial confession said to have been made by the appellant to him on 02.07.2017 at about 06.00a.m; PW12 is another witness to the second confession and the seizure mahazar [Ex.P9]; PW13 is the finger print expert; PW14 is the Scientific Officer; PW15 is the postmortem doctor; and



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PW16 is the inspector of police, who registered the FIR, conducted the investigation and filed the final report.

9. The motive of the appellant to do away with the deceased according to the prosecution is two fold. Firstly, the deceased had obtained some loans, in the name of the medical shop run by the appellant and handed them over to PW5 the brother of the deceased. Secondly, the deceased was in the habit of talking ill of the wife of the appellant. The second motive viz., that the deceased insulted the wife of the appellant, has not been established by the prosecution.

10. As regards the motive relating to the money transaction, the prosecution has examined PW5. PW5 would state about the monetary transaction and would vaguely depose that it could possibly be the motive. A reading of his deposition would show that PW5 himself is not sure of the said motive. That apart, there is no other evidence let in by the prosecution, to show that the appellant had a grudge against the deceased relating to the said money transaction. Therefore, in our view, the prosecution has not



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conclusively established the motive alleged against the appellant.

11. As regards the last seen, the prosecution had examined PW2, the sister of the deceased, who was living with him, to show that the deceased came home late on 28.06.2017 at about 11.00pm and when she opened the door, she saw the appellant standing near a car and both of them went into the house, and thereafter, her brother i.e., the deceased was found missing.

12. It is the case of the prosecution that PW2 informed PW1 that her brother was missing. However, she had not informed PW1 that the deceased came along with the appellant on 28.06.2017 at 11.00 p.m., and that both went into the house together. PW1 confirms this in the cross examination, which is extracted hereunder for better appreciation.

“இறந்த நபரின் தங்கை கொடுத்த தகவலின் அடிப்படையில் தான் புகார் கொடுக்கப்பட்டது என்றால் சரிதான். இறந்த நபரின் தங்கை எதிரியுடன் இறந்த நபரை பார்த்ததாக என்னிடம் சொல்லவில்லை என்றால் சரிதான். இறந்த நபரும் எதிரியும் மாடிக்கு சென்றதாக என்னிடம் சொல்லவில்லை என்றால் சரிதான். இறந்தவரின் தங்கை எதிரியை பார்த்ததாக என்னிடம் சொல்லவில்லை என்றால் சரிதான்.”



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Therefore, PW2's version that both of them went to the terrace for drinking appears to be an afterthought. That apart, the investigating officer [PW16] had admitted in the cross examination that the statement of PW2 was sent to the Court only on 15.07.2017, although she was examined on 30.06.2017.

13. The prosecution also relied upon the evidence of PW9, the cab driver, who is said to have seen the appellant dragging a person on 28.06.2017 at about 11.00pm. However, in the cross examination, he stated that he went to the police station on 30.06.2017 at 10.30 a.m., to inform the police of this fact after seeing the appellant in the television when the news relating to the murder was telecast. It is no one's case that the investigation fixed the appellant as accused on 30.06.2017 and there was a news telecast on that day. PW16, the investigating officer had stated that he recorded the statement of PW9 on 02.07.2017. However, there is nothing in the evidence to show as to how, he discovered PW9 as a witness to the appellant dragging a person. His statement has reached the Court on 11.09.2017. That apart, the conduct of PW9 of not questioning the act of the appellant immediately and not informing the police, is improbable and opposed to



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human nature. Thus, we are of the view that examination of PW9 appears to be an afterthought and hence, no reliance can be placed on his evidence.

14. The other circumstance relied upon by the prosecution is the extra judicial confession said to have been made by the appellant to PW11, who was known to the appellant. The extra judicial confession is said to have been made on 02.07.2017 at about 6.00 a.m. The prosecution has not established the nature of the relationship between PW11 and the appellant or why the appellant reposed confidence in PW11 to make a confession.

15. Be that as it may, PW1 would state in the cross examination that the appellant was taken to the police station for inquiry on 01.07.2017, kept in the police station and thereafter was remanded to judicial custody on 02.07.2017. PW2 also would state that on 01.07.2017 the appellant was taken to the police station for inquiry. She would also add that till then, he also assisted them in their search for the deceased.



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16. Therefore, PW11's evidence that the appellant gave an extra judicial confession on 02.07.2017 cannot be believed. It is well settled that the reliability of the extra judicial confession would depend on the person to whom the confession is made and in this case considering the circumstances shown by the defence that the appellant was taken to custody on 01.07.2017, PW11's evidence cannot be accepted.

17. As regards the recovery said to have been made on 02.07.2017, the same also cannot be believed as the case of the prosecution that the appellant was arrested on 02.07.2017 at Villivakkam is falsified by the evidence of PW1 and PW2, who stated that the appellant was in the police station on 01.07.2017. Therefore, the alleged recovery cannot be used as a circumstance against the appellant.

18. In view of the above infirmities in the evidence, we are of the view that the circumstances have not been fully established by the prosecution and there is no chain of circumstances, pointing out only to the guilt of the appellant. Therefore, the conviction and sentence imposed on the appellant



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are liable to be set aside.

19. Accordingly, the Criminal Appeal is allowed and the appellant is acquitted of the charge. The conviction and sentence imposed upon the appellant in S.C. No.254 of 2017 dated 15.11.2018, on the file of the learned Principal Sessions Judge, Chennai, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

(M.S.R.,J.) (S.M.,J.)
23.02.2024

Index : yes/no
Neutral citation : yes/no
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M.S.RAMESH,J.
AND
SUNDER MOHAN,J.
ars

To

1. The Principal Sessions Judge,
Chennai.

2. The Inspector of Police,



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V6-Kolathur Police Station,
Chennai.

3. The Superintendent,
Central Prison, Puzhal, Chennai.

4. The Public Prosecutor,
High Court, Madras

Pre-delivery Judgment in
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