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Crl.A.No.847 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.09.2024
Pronounced on	05.12.2024

CORAM :

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

Crl.A.No.847 of 2018

1. Mahendran
2. Sumathi

... Appellants/Accused 1 & 2

Vs.

State rep. by
The Inspector of Police,
Omalur Police Station,
Salem District.
(Crime No.642 of 2013)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, to set aside the conviction and sentence imposed on the appellants through judgement in S.C.No.64 of 2015 dated 22.11.2018 by the III Additional Sessions Court, Salem by allowing this appeal.

For Appellants : Mr. S.Jeyakumar

For Respondent : Mr. A.Gokulakrishnan,
Additional Government Pleader



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J U D G M E N T

C.KUMARAPPAN, J.

The instant Criminal Appeal has been filed by the appellants/accused 1 and 2 against the judgment of conviction passed by the learned III Additional Sessions Judge, Salem, in S.C. No. 64 of 2015, dated 22.11.2018.

2. According to the prosecution, the first accused is the sister's son of the second accused. On 01.09.2013, at about 3:30 p.m., when the deceased, Gunasekaran, was in his residence along with his wife, brother and his parents, the accused came to their house and demanded money for consuming alcohol. Since the deceased refused to part with money, there was a wordy quarrel between them. After some time, when the second accused, on knowing about the diatribe between the deceased and the first accused, was confronting the deceased at about 5:30 p.m., the first accused came to the scene of occurrence with a wooden log and assaulted the deceased on his head. The second accused, assisted the first accused, by



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holding the hands of the deceased.

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3. Immediately, after the assault, the deceased became unconscious, and was taken to the Government General Hospital, Salem at about 6:40 p.m. on the same day. However, he succumbed to the injury on the next day, viz., on 02.09.2013 at about 9:00 a.m. Based on a complaint given by PW1 (Arul Pandi), the Sub Inspector of Police, Omalur Police Station (Hariharan), PW11, registered an FIR in Crime No. 642 of 2013, for the offences under Section 294(b) and 302 of IPC.

4. After registration of the First Information Report, it was forwarded to the concerned jurisdictional Magistrate, as well as the Investigating Officer, Baskaran (PW14). On receipt of the copy of the First Information Report, PW14 (Baskaran), went to the scene of occurrence at about 11:20 a.m. on 02.09.2013 and prepared an observation mahazar and rough sketch in the presence of Karthick and Govindaraj (PW3). He also recorded the statement of witnesses PW12 (Ilavarasan), PW13 (Rajathi) and Ramesh Venkat. He then visited the Government Hospital, Salem, and conducted an inquest in the presence of PW1, the brother of the deceased, and PW2/Sasikala, the wife of the deceased, and Kala, Venkatesh, and Kanaga and made arrangements for the post-mortem.



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5. On 03.09.2013, he recorded the statement of the Doctor, Gunasekaran (PW7), who rendered first-aid to the deceased and prepared the accident register. He also recorded the statements of Doctor Jawahar (PW4), who gave the death intimation of the deceased and Doctor Gokularamanan (PW10), who conducted the post-mortem of the deceased. In the postmortem report, the Doctor found the following injuries on the body of the deceased.

“External Examination:

Injuries: No external injuries seen anywhere on the body.

Internal Examination:

O/D. Head: Scalp contusion over right fronto BI parietal region M-30x20x0.5 cms with both temporalis muscle contused. Depressed fracture over mid parietal region with comminuted fracture over fronto BI parietal region. Extra dural haemorrhage seen over both temporal region. Brain-Sub dural and sub arachnoid haemorrhage seen on the both cerebral hemisphere. Base of skull-fissured fracture over right middle cranial fossa M-7cms long and junction and left middle and posterior cranial fossa M-11 cms long.

O/D Neck: Neck structures-normal. Hypoid bone-Intact.

O/D Throat: No ribs fracture. Heart-Normal in size. Chambers contained fluid blood. Valves and coronaries-normal. Both lungs oedematous and C/S congested.

O/D Abdomen: Stomach contains 60 ML of Dark



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Greenish Brown Colour fluid with no specific odour. Mucosa C/s congested. Liver spleen, both kidneys, C/S congested. Bladder-empty. Pelvis and spinal column-intact.

Opinion:- Reserve pending chemical analysis report.

Time Since Death- The deceased would appear to have died within 6-12 hours prior to autopsy.”

6. The Investigating Officer also recorded the statement of the other official witnesses. While so, on 05.09.2013, he arrested the second accused near Thattanchavadi Bus Stand. Since the first accused had surrendered before the learned Judicial Magistrate, Attur, he took custody of the accused and recorded his voluntary confession statement, in the presence of PW5, the Village Administrative Officer (Kaliselvi) and her assistant on 12.09.2013. In pursuance of the confession statement, a discovery of fact was effected by recovering the wooden log. Thus, after completing the investigation, he laid charge sheet against the accused, for having committed the offences under Sections 294(b) and 302 of IPC.

7. Before the Trial Court, the prosecution examined as many as 15 witnesses as PW1 to PW15, marked 15 documents as Exs.P1 to P15, and 3 Material Objects. On behalf of the accused, neither documents, nor



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material objects were marked, and no witnesses were examined.

8. The Trial Court, after considering the oral and documentary evidences, found that the charges against both the accused had been proved beyond reasonable doubt, and sentenced them to undergo life imprisonment, with fine. Aggrieved by the said order, both the appellants have preferred the instant Criminal Appeal.

9. The learned counsel appearing for the appellants would contend that, though PW1 (Arulpandi), the brother of the deceased, and PW2 (Sasikala), the wife of the deceased, were allegedly present at the time of occurrence, both of them did not accompany the deceased, which causes a reasonable doubt to the prosecution's case. He would further contend that though PW3 was not an eyewitness, he accompanied the deceased and had stated before the Doctor that the occurrence was on 01.09.2013 at about 3:30 p.m., whereas the prosecution projected a case as if the occurrence had taken place at about 5:30 p.m. The learned counsel would further contend that, though PW3 (Govindaraj) had categorically deposed before the Court that he did not inform anything about the occurrence to the Doctor, Gokulakrishnan (PW7), he referred in the AR copy [Ex.P6] that on



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the instruction of PW3 (Govindaraj), the entry was made.

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9.1. Top of all, it is the contention of the learned counsel for the appellants that there was a huge delay in registration of the First Information Report, and that there independent witnesses were examined. The evidences of PW12 and PW13, who are the alleged eyewitnesses are highly doubtful, as their Section 161 Cr.P.C. statements reached the Court, after a period of 10 months from the date of recording. It is the further submission of the learned counsel for the appellants that the Trial Court did not consider the above reasonable doubts in it's right perspective and has erroneously convicted the accused and therefore, prayed to interfere with the order of the Trial Court by allowing the present appeal.

10. Per contra, the learned Additional Public Prosecutor would vehemently contend that PW1 and PW2's act of not accompanying the deceased to the hospital by itself cannot be a reasonable doubt, as each one of them may react differently to a particular situation. It is the further submission of the learned Additional Public Prosecutor that the occurrence was a daylight occurrence and the witnesses are wholly reliable witnesses. Hence, he urged before this Court that there are no grounds to interfere



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with the order of the Trial Court.

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11. We have given our anxious consideration to either side submissions.

12. The entire prosecution case rests upon, PW1 and PW2's evidence. PW1 is the brother of the deceased, and PW2 is the wife of the deceased. According to the prosecution, there were two incidents on 01.09.2013: one at 3:00 p.m. between the first accused and the deceased. The offshoot of the first occurrence, was the fatal incident, where the first and second accused killed the deceased at 5.30.p.m. It is the specific contention of the appellants that, if PW1 and PW2 were at the scene of occurrence, they would have definitely accompanied the deceased; and their failure to accompany the deceased would be a reasonable doubt.

13. It is an admitted case that PW1, the brother of the deceased, and PW2, the wife of the deceased, did not accompany the deceased, whereas one PW3 had taken the deceased to the hospital. According to PW1, at the time of occurrence, PW2/Sasikala and PW12 and PW13, [their maternal aunt and uncle] and his parents were present at the scene of occurrence.



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The fatal occurrence took place at 5:30 p.m. In spite of the presence of so many persons, no one thought it fit to give a police complaint, until the death of the deceased. The complaint came to be registered on the next day, on 02.09.2013 at 9:00 a.m. The following statement of PW1 would make his evidence become highly untrustworthy. For ready reference, his admission is extracted as follows:-

“என் அண்ணனை சம்பவத்திற்கு பின்னிட்டு மருத்துவமனைக்கு நான்தான் அழைத்து சென்றேன். போலீசார் விசாரணையில் என் அண்ணனை அழைத்து சென்றதாக சொல்லியிருக்கிறேன். சாட்சி பின்னிட்டு நான் அழைத்து செல்லவில்லை என்றும் என் பெரியப்பா, பெரியம்மா, அப்பா, அம்மா, மாமா ரமேஷ் ஆகியோர்கள் அழைத்து சென்றதாக கூறினார்....”

14. He would further state that there was an occurrence only at about 3:00 p.m. Though in his chief examination, he states that there were two incidents, one at 3:00 p.m. and another one at 5:30 p.m, during cross-examination, he would state that there was only one occurrence at 3:00 p.m. His cross examination reads as follows:-

“3 மணிக்கு ஒரு சம்பவம் நடந்தது. வேறு சம்பவம் நடக்கவில்லை.”

Even the accident report (Ex.P6) supports the above statement of PW1. According to Ex.P6 [AR copy], the same was recorded on the basis of the statement given by PW3, where it was mentioned that the occurrence took



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place at the deceased's residence around 3:00 p.m. on 01.09.2013. But PW3 did not speak about the presence of the other eyewitnesses namely PW12 & PW13, and the parents of the deceased along with him. For ready reference, his admission is extracted hereinbelow:-

“அடிப்பட்டவரை 108 ஆம்புலன்ஸ் மூலமாக அழைத்து சென்றது நான்தான். மருத்துவர் என்னை விசாரித்தாரா என்றால் மருத்துவர் என்னை விசாரிக்கவில்லை. இறந்து போனவருடைய அம்மா மருத்துவமனை அறைக்குள் அடிப்பட்டவருடன் சென்றார் நான் வெளியே இருந்தேன். அடிப்பட்டவரை ஸ்டெச்சரில் கொண்டு சென்றார்கள் அவருடன் அவரது தாயார் சென்றார்.”

15. According to the above statement, the accident register (Ex.P6) was recorded on the instructions of the deceased mother, but fortunately or unfortunately, the deceased's mother, as well as his father, was not examined before the Trial Court. It is curious to note here that, though the occurrence took place in daylight, that too in the presence of the family members, qua the brother of the deceased, Arulpandi [PW1], the wife of the deceased, Sasikala [PW2], the parents of the deceased and their relatives PW12 and PW13, none had either accompanied the deceased, nor had thought of giving a police complaint. Though PW12 and PW13 project themselves as eyewitnesses, this Court has its own doubt to rely upon their statements, as their 161 Cr.P.C. statement reached the Court after a period



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of 10 months, viz., on 14.07.2014 from the date of recording of the statement.

16. The natural propensity of any ordinary prudent man would be to go to the Police Station to give complaint, atleast after admitting the injured in the hospital. In some cases, the Police would reach the hospital, immediately on receipt of the information about the occurrence. But, strangely, in the case in hand, neither the Police reached the hospital immediately after admitting the deceased, nor did the family members give a Police complaint until the death of the deceased. In such a view of the matter, the contention of the appellant that there is a reasonable doubt in the prosecution case, has some force.

17. According to the evidence of PW2 [wife] and PW13 (relative), there were 10 to 15 members present at the time of the occurrence. But except the close family members, no independent witnesses were examined before the Trial Court. No doubt, if the testimony of the family members is highly trustworthy, there is no requirement for any independent evidence. Here, firstly, there was a long delay in the registration of the FIR, secondly,



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the eyewitnesses, viz., PW1 and PW2, did not accompany the deceased and did not give the police complaint immediately; and thirdly, PW1 and PW2 came to the hospital on the next day. All these shortfalls would cumulatively cause a reasonable doubt about their presence at the scene of occurrence.

18. According to the prosecution, the deceased's parents were also at the scene of occurrence. But unfortunately, they were not examined as witnesses before the Trial Court. However, the prosecution examined the relatives PW12 (Ilavarasan) and PW13 (Rajathi). PW12 (Ilavarasan), projecting them as eyewitnesses, who however, did not speak about the occurrence. Though, PW13 had spoken about the occurrence, her evidence is highly untrustworthy, as there is a possibility for embellishment and improvement in her 161 Cr.P.C. statement, as it reached the Court after a period of 10 months. In this background, the non-examination of independent witnesses assumes much importance.

19. The Trial Court did not consider the above material aspects and proceeded almost with a mechanical acceptance of the evidence of the alleged eyewitnesses, without evaluating their evidence, with greater care



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and caution. As such, we are of the firm view that there are numerous reasonable doubts in the prosecution's case and those doubts would touch upon the core issue of impossibility of the presence of the alleged eyewitnesses. Thus, the judgment of the Trial Court warrants interference and accordingly, the judgment of conviction is liable to be set aside.

20. In the result, this Criminal Appeal stands allowed and the judgement dated 22.11.2018 passed by the learned III Additional Sessions Judge, Salem, in S.C.No.64 of 2015 is set aside and the appellants are acquitted of all charges. Fine amount, if any, paid shall be refunded to them. Bail bond, if any executed, shall stand cancelled.

[M.S.R., J.] [C.K., J.]
05.12.2024

Index: Yes/No
Speaking order /Non Speaking Order
Neutral Citation: Yes/No
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M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

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To

1. The Inspector of Police,
Omalur Police Station,
Salem District.
2. The III Additional Sessions Court,
Salem.
3. The Public Prosecutor,
High Court of Madras.

judgment made in
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05.12.2024