



Crl.A.(MD).No.39 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.03.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

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Gurunathan

..Appellant/Accused No.1

Vs.

State represented by
The Inspector of Police,
Munneerpallam Police Station,
Tirunelveli City.
(Crime No.260 of 2014)

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code to call for the records in S.C.No.688 of 2016 dated 27.11.2020 on the file of III Additional District and Sessions Court, Tirunelveli, set aside the judgment and acquit the appellant/1st accused herein.

For Appellant : Mr.N.Mohideen Basha
For Respondent : Mr.RMS.Sethuraman
Additional Public Prosecutor



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JUDGMENT

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

The present Criminal Appeal is filed against conviction and sentence rendered by the III Additional District and Sessions Court, Tirunelveli, in S.C.No.688 of 2016 vide judgment dated 27.11.2020, on the ground that the Trial Court has erred in convicting the accused for the offence under Section 302 IPC, solely based on the unreliable and unbelievable evidence of P.W.1.

2. The brief facts of the case, as unravelled by the prosecution evidence is that, the accused 1, 2 and 3 are father, brother and mother of the deceased Karthikeyan @ Karthick. It is the case of the prosecution that the deceased purchased a house in Plot No.32 at J.J.Nagar in the name of his father/A1, Gurunathan and after few years, the deceased wanted the property back. On the fateful day (29.07.2014 at 10.00 PM), when he went to the house of his father and asked for the document, there was quarrel between the deceased and his father. Infuriated by the choice of words used by the deceased, his father/A1 took a billhook and attacked the deceased on the left upper arm and caused a deep cut injury. A2, the brother of the



deceased, soon thereafter, took the billhook from his father/A1 and caused multiple injuries to the deceased. On hearing the cry of the deceased, his wife, P.W.1, came to the spot and on seeing her husband being brutally attacked, she immediately fainted. It is the case of the prosecution that she regained her consciousness on the next day at about 7.00 AM and thereafter, she called ambulance. The injured was admitted in the Government Hospital at about 8.00 AM on the next day. On receipt of the intimation, the Police reached the hospital and recorded the statement of the injured, which is marked as Ex.P1. Based upon the same, FIR was registered. Thereafter, had continued the investigation. The accused persons were arrested and based on the confession statement of the accused, the weapon used by the accused was recovered under Mahazar. The blood stained clothes were also recovered and they were marked as M.O.1 to M.O.6. The injured, who was admitted in the hospital, succumbed to the injuries on 01.08.2014 at 7.15 AM.

3. The postmortem certificate, Ex.P11, reveals that the deceased has sustained the following injuries:



“1)An oblique suture of length 8cms seen in front of lower part of right thigh. On removal it measures 8 x 2 x 4cms. It cuts underlying soft tissues.

2)An oblique suture of length 3cms seen in inner aspect of lower part of right thigh. It lies 5cms inner to injury no.I. On removal of suture it measures 3 x 2 x 1cm.

3)An infected laceration of size 10 x 7 x 5cms seen in upper part of inner aspect of right leg. Underlying soft tissues appears necrosed and right tibia and right fibula found fractured and in multiple pieces.

4)A partly healed abrasion of size 8 x 2cms seen in front of lower part of right leg.

5)A vertical suture of length 10cms seen in front of middle of left leg. On removal of suture it measures 10 x 2cm x bone deep and margins of the wound appears lacerated. Underlying both bones of left leg found fractured in to multiple pieces.

6)An oblique suture of length 18cms seen in front and sides of left upper arm. On removal of suture it measures 18 x 3cm x bone deep. Underlying soft tissues appears necrotic and left humerous found cut at site.

7)An oblique suture of length 3cms seen in back of middle of left upper arm. It lies 3cms below injury no.6. On removal of suture it measures 3 x 1 x 2 cms. It cuts underlying soft tissues and they appears necrotic.



8) *A horizontal gapping cut injury of size 3 x 2 x 1cm, seen in middle of inner aspect of left index finger. It cuts underlying soft tissues and tendons.*

9) *A horizontal gapping cut injury of size 3 x 2 x 1cm seen in middle of inner aspect of left 3rd finger. It cuts underlying soft tissues. It is in line with injury no.8.*

10) *An oblique gapping cut injury of size 4 x 2 x 1cm seen in inner aspect of base of left index finger. It cuts underlying soft tissues and tendons.*

11) *An oblique gapping cut injury of size 1 x 1 x 1cm seen in inner aspect of left 4th finger.*

12) *A scratch abrasion of length 17cms seen in left hip region.”*

4. After completion of investigation, final report was filed and based on the materials, the case was committed to the Court of Sessions. The Trial Court framed charges under Section 294(b) IPC and Section 302 IPC as against A1 and A2. Before committal, A3 died on 24.06.2016 and therefore, the charges were framed only against A1 and A2.

5. To prove the charges, the prosecution has examined 19 witnesses, marked 25 exhibits and 6 material objects. Pending trial, A2, Kannan also



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died on 22.12.2017. Thus, the trial proceeded only against the surviving accused, namely, the father of the deceased.

6. The Trial Court, on appreciation of evidence, convicted A1 for the offence under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.1000/-, in default, to undergo three months simple imprisonment. As far as the first charge under Section 294(b) IPC, he was acquitted by the Trial Court. Being aggrieved by the conviction and sentence, the first accused has preferred the present Criminal Appeal.

7. The learned counsel appearing for the appellant would submit that the Trial Court has erred in relying upon the evidence of P.W.1/wife of the deceased, who claims to be the eye witness to the occurrence. On cumulative assessment of her deposition, the probability of her being present in the scene of occurrence is highly doubtful and furthermore, the scene of occurrence itself was not clearly established by the prosecution. While the observation mahazar states that the scene of occurrence is the house of A1, the P.W.1 in the cross-examination had stated that her husband



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was found injured in the residence of one Ganapathy, who is her sister-in-law and the said Ganapathy is a resident of Bombay. That apart, the evidence of P.W.1 that on seeing the incident, she got fainted and regained her consciousness only on the next day at around 6.30 to 7.00 AM, is also highly unbelievable. It is also pointed out that P.W.1 had deposed that when she regained consciousness, she saw the villagers in the spot. If it is true, there is no explanation on the side of the prosecution as to why the injured was not taken to the hospital by the villagers and no villagers had been examined in this connection.

8. The learned counsel for the appellant specifically submitted that the prosecution has miserably failed to mark the copy of the Accident Register and also failed to examine the Doctor, who admitted the injured in the hospital. Though P.W.1 stated that the injured was taken in an ambulance, there is no evidence to show as to who called the ambulance and who was the ambulance driver. Regarding the long gap between the incident alleged to have taken place on 29.07.2014 at 10.00 PM till 30.07.2014 at 8.00 AM when Ex.P1 was recorded, there is no explanation on the side of the prosecution. This doubt gets amplified by the fact that the



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FIR had reached the Court only at 8.15 PM on that day, though from the police station, the Judicial Magistrate Court is hardly 45 minutes drive in a two wheeler.

9. The learned counsel also submitted that the reading of Ex.P1 complaint, which is alleged to have been given by the injured/deceased himself to the Police, would clearly show that A1 also had sustained injury. However, the Police has not enquired and placed material before the Court as to how the accused sustained injury. Further, in the complaint, it is specifically stated that when the injured/deceased raised alarm on being attacked, his wife and the villagers rushed to the spot and on seeing the villagers, the assailants fled. However, the Police has recorded the statement of the victim on the next day and thereafter, registered FIR, forwarded the same to the Court belatedly after manipulating and embellishing the facts. The learned counsel further submitted that even if the police version is to be taken as a gospel truth in toto, the appellant herein/A1 had caused only one injury on the left arm and it is neither a vital part nor sufficient to cause death. Hence, the learned counsel for the appellant prayed to set aside the conviction and allow the appeal.



10. Per contra, the learned Additional Public Prosecutor appearing for the respondent submitted that the evidence of P.W.1 is wholly reliable and there is no reason to suspect her testimony. The occurrence took place in the house of the accused and the injured is none other than the son of the first accused/appellant. Hence, it is their burden to explain as to why a severely injured person in the house was left unattended for more than 10 hours. Further, the statement of the injured person, who died subsequently due to the injuries, has to be considered and treated in a higher pedestal and more so, when the statement was witnessed by P.W.1, who affixed her signature in Ex.P1. The weapon and clothes recovered were sent to serological test and it has been ascertained that the blood found in those materials are human blood, which belongs to 'B' group. Therefore, the prosecution has proved that the crime has been only committed by the appellant/first accused and none else.

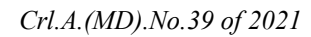
11. This Court, after hearing the learned counsels and perusing the records, finds that there is a mysterious gap in the prosecution case, insofar as the time of the occurrence and the time of recording the statement of the victim, more so the existence of improbable circumstances. The complaint,



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Ex.P1 as well as the testimony of P.W.1 clearly shows that the villagers were at the scene of occurrence soon after the occurrence. But, by not producing the copy of the Accident Register and evidence of the Doctor, who admitted the victim, a vital piece of evidence to ascertain when the victim got admitted in the hospital, is missing. If the version of the prosecution that the victim got admitted only about 8.00 AM in the hospital, is accepted, between 10.00 PM in the previous night and 8.00 AM on the next day, how and where the victim was, had not been explained.

12. More particularly, when the prosecution has failed to let in evidence regarding as to by whom and how the injured was removed from the scene of occurrence to the hospital, this Court is of the view that it is a fatal error on the part of the investigation agency in producing the material before the Court as to how the injured got admitted in the hospital. Furthermore, the evidence of P.W.1 is not consistent regarding the scene of occurrence and the case of the prosecution got damaged when the witnesses to the confession and recovery, namely, P.W.11 and P.W.14, had turned hostile and not supported the case of the prosecution. Furthermore, even according to Ex.P1 complaint, immediately on hearing hue and cry, the



13. If we look at the postmortem certificate, Ex.P11 and the nature of the injuries found on the body of the deceased, it should be a brutal attack on him causing multiple injuries. The Doctor has also opined that the death would have caused due to multiple injuries. As far as the appellant, who is the sole surviving accused, the prosecution case is that he caused a single blow causing a cut injury on the upper portion of the left arm of the deceased. When we look at the complaint, Ex.P1, given by the deceased, he admits that A1 had also sustained a cut injury on the left little finger, abrasion on the back and left knee. According to the complaint, A1 sustained these injuries when he fell down while fleeing from the scene of occurrence. The investigation is silent about this fact. The injuries sustained by the accused should also have been explained. Unfortunately, in this case, the Investigating Officer has failed to collect material regarding the injuries of the 1st accused, which is specifically mentioned in the complaint itself.



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14. Above all, the unexplained delay in forwarding the FIR to the Magistrate coupled with the the delay in registering the FIR, clearly exposes the perfunctory investigation conducted in this case. It is suffice to note that the complaint, which is the earliest document, itself is registered nearly 10 hours after the occurrence. In the complaint, it is specifically stated that on seeing the occurrence, the villagers along with the wife of the deceased, P.W.1, came to the spot and on seeing the villagers, the assailants fled. Again when we look at the testimony of P.W.1, she stated that on seeing the occurrence, she got fainted, woke up after about eight hours, i.e., about 6.30 to 7.00 AM in the morning and when she regained consciousness, she saw villagers around the place. But no Police was present. This version of the prosecution is highly unbelievable.

15. The accused persons were arrested on 30.07.2014 at 3.00 PM and only thereafter, the Police has thought fit to forward the FIR to the Magistrate, which has reached the Magistrate on 30.07.2014 at 8.15 PM. By that time, the confession statement and the material objects were recovered, but the same was not forwarded to the Magistrate along with Form – 91. Ex.P17, Ex.P21 and Ex.P24 Form-91 indicate that properties



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were received by the Judicial Magistrate – V, Tirunelveli only on 14th August 2014. This delay coupled with the fact that the independent witnesses for recovery and confession turned hostile, also gains significance to hold that the Trial Court has failed to note all these omissions and errors, which are fatal to the case of the prosecution.

16. Therefore, we hold that the conviction of the appellant/A1 is liable to be set aside. Accordingly, the judgment of conviction and sentence passed by the III Additional Sessions Court, Tirunelveli in S.C.No.688 of 2016 dated 27.11.2020 is set aside and the accused/A1 is set at liberty. Bail bonds, if any executed by the appellant, shall stand cancelled. Fine, if any paid by the appellant, shall be refunded. Accordingly, the Criminal Appeal is allowed.

(G.J.,J.) (C.K.,J.)
07.03.2024

NCC : Yes / No
Index : Yes / No
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To

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1. The III Additional District and Sessions Court,
Tirunelveli.
2. The Inspector of Police,
Munneerpallam Police Station,
Tirunelveli City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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