

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.A.No.752 of 2009

1.Gowthaman @ Mahendran
S/o.Chinnathambi

2.Ponnammal
W/o.Chinnathambi

... Appellants

vs

State by:
Inspector of Police,
Kolathur Police Station,
Salem District.
Crime No.66/2008

... Respondent

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure
against judgment of learned Additional District and Sessions Judge (Fast Track
Court II), Salem, passed in S.C.No.369 of 2008 on 12.10.2009.

For Appellants : Mr.S.Doraisamy

For Respondent : Mr.V.Arul
Additional Public Prosecutor

JUDGMENT

This appeal arises against the judgment of learned Additional District and Sessions Judge (Fast Track Court II), Salem, passed in S.C.No.369 of 2008 on 12.10.2009.

2. Prosecution case is that on 04.03.2008 at about 04.00 p.m., accused assaulted the deceased with bamboo sticks and caused grievous injuries, owing to which the deceased met his death. PW-1, mother of the deceased, preferred Ex.P1, complaint, to PW-13, Inspector of Police, who registered a case in Crime No.66 of 2008 on the file of respondent for offence u/s.322 IPC. Printed First Information Report is Ex.P19. PW-13 visited the scene of occurrence and prepared Ex.P12, observation mahazar and Ex.P20, rough sketch, in the presence of PW-12 and another. PW-10 seized MOs.6 and 7, blood stained concrete stone and plain concrete stone in the presence of witnesses under Ex.P13, seizure mahazar. PW-13 conducted inquest between 09.00 and 10.30 a.m. The inquest report is Ex.P21. PW-13 forwarded the body of the deceased towards conduct of postmortem. Postmortem Certificate is Ex.P4 and the same reads thus:

'Post-mortem Certificate

Regarding the body of a male aged about 35 years, named Thangavel. Requisition received at 11.30 a.m. on 5.3.2008 from the Inspector of Police, Kolathur P.S. with his letter No.66/2008

dated 5.3.2008. Body in charge of Police Constable No.HC 557 named Rajendiran.

Identification and caste marks -

(1) A Black mole Right side neck

(2) A Black mole below left ear

The body was first seen by the undersigned at 12 noon on 5.3.2008. Its condition then was RM present all 4 limbs. Post-mortem commenced at 12 noon on 5.3.2008 in mortuary, GH Mettur.

Appearances found at the post-mortem : Body of male lying on the bench. Eyes closed. Tongue kept in. Teeth 8/8/8/8. Clotted blood present over both nostrils and mouth. Contusion present over posterior aspect of skull extending upto neck. Contusion over lower lip. Right side 2 x 1 cm. Internal Examination: Ribs intact. Heart wt about 250 gms. chamber - empty. Lungs right 320 gm left 280 gm c/s congested. Liver about 1200 gm c/s congested. Stomach contain about 50 gm of undigested food particles. Intestine empty. Kidney - tach about 90 gm. c/s congested. Spleen. 100 gm c/s congested. Bladder empty. Hyoid bone intact skull. Commuted fracture over occipital bone with one fracture bone extending upto base of skull. Membrane teared with blood clot over brain surface in occipital lobe. On dissection of posterior aspect of neck. Fracture of 1st and 2nd cervical vertebra.

Visceras preserved : 1) Liver 2) stomach contents 3) Intestine 4) kidney - sample of preservative.

Opinion as to cause of death -

(a) Reserved pending report of chemical analysis.

(b) The deceased would appear to have died of about 12 to 13 hrs prior to autopsy.'

PW-13 examined PWs.1 to 4, 12 and others and recorded their statements. On 06.03.2008, PW-13 arrested first accused and recorded his confession. The admissible portion of confession statement is Ex.P18. Upon identification by first accused, PW-13 seized MO-8, TVS Champ under Ex.P14, seizure mahazar and MO-1, Bamboo stick, under Ex.P15, seizure mahazar, in the presence of witnesses. PW-13 arrested second accused and recorded her confession in the presence of witnesses. The admissible portion of confession statement is Ex.P17. Upon identification by second accused, PW-13 seized MO-1, Bamboo stick, under Ex.P16, seizure mahazar, in the presence of witnesses. PW-13 forwarded the seized articles to Court under Form-95. PW-13 forwarded MO-9 - full hand shirt, MO-10 - lungi, MO-11 - saree, MO-12 - blouse, MO-13 - inskirt, for chemical analysis. On 08.03.2008, PW-13 examined PWs.5, 6, 9 and others and recorded their statements. On 10.04.2008, PW-13 examined PWs.1 to 3 and others and recorded their statements. PW-13 examined PW-7, Doctor and PW-8, Doctor, who conducted postmortem and recorded their statements. On 27.02.2008, PW-13, upon completion of investigation, filed a charge sheet informing commission of offence u/s.302 r/w 34 IPC before learned Judicial Magistrate I, Mettur. On committal, the case was tried in S.C.No.369 of 2008 on

the file of learned Additional District and Sessions Judge (Fast Track Court II), Salem.

3. Before trial Court, prosecution examined 13 witnesses and marked 22 exhibits and 13 material objects. Two witnesses were examined on the side of defence and no exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 12.10.2009, convicted the accused for offence u/s.304(Part I) r/w 34 IPC and sentenced to 7 years R.I. and fine of Rs.2,000/- each i/d 2 months S.I. Against such finding, the present appeal has been preferred.

4. Heard learned counsel for appellants and learned Additional Public Prosecutor.

5. Learned counsel for appellants submitted that appellants are brother-in-law and mother-in-law of the deceased. There was a dispute between DW-1, wife of deceased and deceased as a result of which DW-1 stayed at the appellants' house and thereafter, the deceased took away their son aged 6 years. Appellants had gone over to the house of the deceased to retrieve the child and an altercation took place when first accused took the child along with him and the deceased stopped him. It is the defence case that in the course of

such altercation the deceased fell against the wall and window of the house of one Rangappan and was thereafter taken to hospital. Learned counsel has taken this Court through the evidence of PWs.1 to 4 towards submitting that such witnesses, cited as eye witnesses, could not have witnessed the occurrence.

6. Heard learned Additional Public Prosecution on the above submissions and also perused the records.

7. It is the admission of PW-1 that neither in the complaint nor in the course of her enquiry she had informed of appellants attempting to beat her son, the deceased. The deceased and PW-1 lived together. She had not informed of her being at home at the time of occurrence nor had she spoken to the manner in which the deceased was taken to hospital. In cross, at the first instance, she had deposed to having gone over to the police station before admission of her son, the deceased, at hospital and later, of preference of complaint after his death. She has spoken to the presence of one Rangappan at the scene and that he had not informed her of what took place. PW-2 has admitted to being at the scene upon hearing a noise. PW-3 also has admitted to being at the scene upon hearing a noise and that the deceased had fallen down but he knew not how. He has also spoken to the presence of one Rangappan at the scene. The presence of PW-4 is improbablised by his admitting to not

having been examined by the police on the date of occurrence and initially deposing that the police had recorded the statement of deceased and thereafter, stating that the Doctor had recorded the statement of deceased. PW-1 is the mother of deceased while PW-2 is a relative and PWs.3 and 4 are neighbours. Through the evidence of witnesses, it is seen that one Rangappan would be a most material witness, particularly, given the defence taken. It is the evidence of DWs.1 and 2, wife and son of the deceased that the deceased used to drink everyday and torture DW-1. When the brother of DW-1 went to see the child, deceased prevented him and the brother of DW-1 pushed him owing to which the deceased dashed against a wall and sustained injuries. The defence evidence also is to be given due weightage. While on the above considerations, this Court is of the view that a finding of acquittal would be justified, the prosecution case totally is undone when Ex.P19, First Information Report, is looked into. Ex.P19, First Information Report, contains a most detailed information of the case as put forth by the prosecution and reflects that on receipt of Ex.P1, complaint, case was registered in Crime No.66 of 2008 on 04.03.2008. Column 3(b) in the First Information Report wherein the date and time of receipt of information is recorded informs receipt of information the next day i.e., 05.03.2008 at 03.00 a.m. and column 4 informs that the complaint was received in writing. Ex.P19, First Information Report has reached the Magistrate only at 05.30 a.m. on 05.03.2008. It is the admission of PW-1

that she knew not who had written the complaint and that she was not aware of the contents. The above scenario reflects the possibility of prosecution case being false. The possibility of the defence version being true cannot be ruled out.

The Criminal Appeal shall stand allowed. The judgment of learned Additional District and Sessions Judge (Fast Track Court II), Salem, passed in S.C.No.369 of 2008 on 12.10.2009, shall stand set aside. Appellants are acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

13.09.2017

Index:yes/no
Internet:yes/no
gm

To

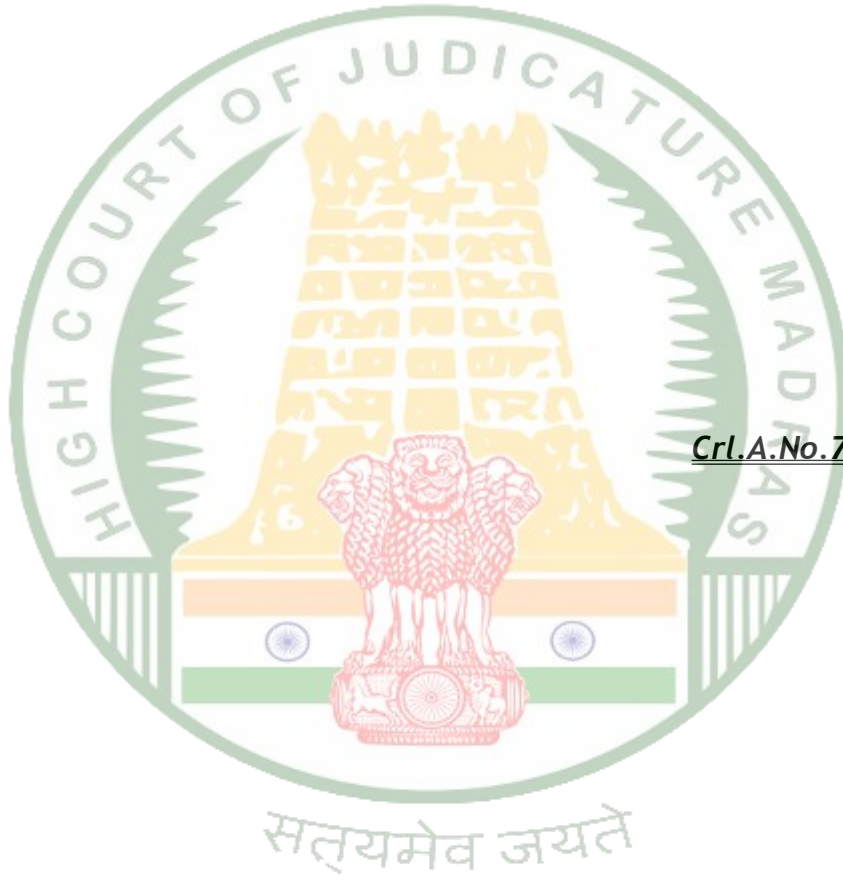
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C.T.SELVAM, J

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