

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

Criminal Appeal No.175 of 2018

Mayee @ Mayakannan
S/o.Perumal

... Appellant/A2

Vs

The Inspector of Police,
Erode North Police Station,
Erode District.
Crime No.174/2013

...Respondent/Complainant

Criminal Appeal filed u/s.374(2) Cr.P.C. against the judgment of learned I Additional District and Sessions Judge, Erode, passed in S.C.No.63 of 2016 on 08.12.2017.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.K.Prabhakar
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by C.T.SELVAM, J]

This appeal arises against the judgment of learned I Additional District and Sessions Judge, Erode, passed in S.C.No.63 of 2016 on 08.12.2017, convicting appellant/accused for offences u/s.302 and 364 IPC and sentencing him to life imprisonment and fine of Rs.2,000/- i/d 1 year R.I. for offence u/s.302 IPC and 10 years R.I. and fine of Rs.2,000/- i/d 1 year R.I. for offence u/s.364 IPC.

2. Prosecution case is that the accused, three in number, as also the deceased and his friends viz., PW-4 and another were taking liquor in a TASMAL shop/bar in the afternoon of

10.03.2013 when A1 removed the cellphone from the pocket of PW-4. This was noticed by deceased with the result that when A1 to A3 came outside the bar, the deceased party asked for return of cellphone which was effected. The accused, bearing a grudge against the deceased on this score, called at his residence on the night of 10.03.2013 and informing that one of the friends who had been along with the deceased at the TASMACH SHOP had called for him, took him away. PW-5, on noticing the deceased with injuries at 'Koolaiyankadu Thottam' informed PW-1, his mother, the de facto complainant. PW-1 rushed to the scene and took the deceased to hospital using 108 ambulance service. PW-1 preferred Ex.P1, complaint and a case was registered in Crime No.174 of 2013 on the file of respondent for offence u/s.307 IPC. Pursuant to investigation and filing of charge sheet informing commission of offences u/s.364 and 302 r/w 34 IPC, the case was, upon committal, tried in S.C.No.63 of 2016 on the file of learned I Additional District and Sessions Judge, Erode. The accused were tried for offences as informed in the final report.

3. Before trial Court, prosecution examined 20 witnesses and marked 41 exhibits and 9 material objects. None were examined on the side of defence nor were any exhibits marked.

3.1. PW-1, mother of deceased, spoke to accused 1 and 2 coming to her house on the night of 10.03.2013 and taking the deceased with them. Upon PW-5 informing her on 11.03.2013 that he had seen the deceased at 'Koolaiyankadu' with head injuries, PW-1 rushed and found deceased alive. He informed her that 3 persons assaulted him. PW-1 spoke to taking the deceased to Government Hospital, Erode, using an 108 ambulance. After being referred by Doctors, deceased was taken to Kovai Medical Center, Erode, on 11.03.2013 where the deceased died on 13.03.2013 at about 10.15 a.m. PW-1 also spoke to preference of Ex.P1, complaint.

3.2. PW-4 deposed that while he, deceased and another were taking liquor, the accused party were also taking liquor, A1 took PW-4's cell phone from his pocket which was noticed by deceased. After accused party left the bar, deceased informed him that A1 had taken his cellphone. Immediately, they went outside and demanded return of cellphone. A2 returned the cellphone.

3.3. PW-5 spoke to informing PW-1, mother of deceased, that the deceased was lying with head injuries at 'Koolaiyankadu'.

3.4. PW-6, wife of deceased, spoke to rushing to Government Hospital, Erode, on receiving information from PW-1 and taking the deceased to KMCH Hospital wherein the deceased died on 13.03.2013 at about 10.15 a.m.

3.5. PW-7, spoke to attesting Ex.P2, observation mahazar and Ex.P29, Seizure Mahazar [MO-1 - blood stained earth, MO-2 - sample earth and MO-3 - big black stone].

3.6. PW-12, Photographer, spoke to having taken photographs at the scene of crime and handing over the same to police.

3.7. PW-13, Doctor, Government Hospital, Erode, spoke to treating the deceased as an inpatient and issuing Ex.P16, Accident Register.

3.8. PW-14, Head Constable, spoke to submitting the First Information Report and Alteration Report to Court and of handing over the body of deceased to Doctor towards conduct of postmortem.

3.9. PW-15, Bench Clerk (Grade II), spoke to receipt of material objects seized in the case and various reports obtained.

3.10. PW-16, Doctor, KMCH Hospital, spoke to the injuries sustained by deceased, treatment given to him and of declaring him dead on 13.03.2013 at about 10.50 a.m. PW-16 also spoke to issuing Ex.P21, Accident Register, Ex.P22, Death Summary and Ex.P23, Death Intimation Report.

3.11. PW-17, Sub-Inspector of Police, spoke to visiting the Government Hospital, Erode, upon obtaining 'Assault Intimation', enquiring PW-1, registration of Crime No.174 of 2013 for offence u/s.307 IPC and of forwarding Express F.I.R to Court. PW-17 also spoke to handing over Ex.P24, First Information Report to PW-19, Sub-Inspector of Police for investigation.

3.12. PW-18, Doctor, who conducted postmortem on the body of deceased, stated that deceased would have died due to head and other injuries sustained.

3.13. PW-19, Inspector of Police, who conducted initial investigation in the case, spoke to visiting the scene of crime, preparation of mahazars, examining witnesses, arrest and recording confession of A3, obtaining various reports, seizure of material objects and forwarding the same to Court under Form 91, of handing over investigation to PW-20, Inspector of Police, on his resuming duty.

3.14. PW-20, Inspector of Police, spoke to arrest of A1 and A2, recording of their confessions, seizure of material objects and forwarding the same to Court under Form 91, examining witnesses, alteration of First Information Report on the basis of death intimation of deceased, conducting inquest, obtaining

various reports and on completion of investigation, filing a charge sheet informing commission of offences u/s.364 and 302 r/w 34 IPC, before learned Judicial Magistrate, Erode.

3.15. PWs.2, 3, 8, 9, 10, 11 have been treated hostile.

4. On questioning u/s.313 Cr.P.C., appellant/A2 denied charges. On appreciation of evidence, oral and documentary, trial Court, under judgment dated 08.12.2017, convicted appellant/A2 for offences u/s.302 and 364 IPC and sentenced him to life imprisonment and fine of Rs.2,000/- i/d 1 year R.I. for offence u/s.302 IPC and 10 years R.I. and fine of Rs.2,000/- i/d 1 year R.I. for offence u/s.364 IPC. Hence, this appeal.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor for respondent. Perused materials on record.

6. The deceased was admitted into hospital by PW-13, Doctor. At the time of his admission, he was in unconscious state as Ex.P16, Accident Register, would reveal. Deceased died on 13.03.2013. Ex.P22, Death Summary, informs the cause of death as 'sudden cardio respiratory arrest'.

7. PWs.2 and 3 have been projected as eye witnesses to the occurrence wherein the deceased was set upon by the accused. They have turned hostile with the result that the prosecution case would rest totally on circumstantial evidence. While the injuries suffered by deceased viz., (i) 15 x 6 x 3 cms on the head with bone protruding (ii) a lacerated wound measuring 6 x 5 x 5 cms on the right side of the head and (iii) cut injury measuring 5 x 2 cms on the left side of the ear, inform the case to be one of homicidal death, the prosecution case goes no further than suggesting possibility of the involvement of the accused in the crime since PW-1, mother of deceased, has spoken to her son going along with the accused on the night of 10.03.2013 on being told that one Muthu @ Muthaiyan had called for him. The evidence of PW-1 to the effect that her son, the deceased, muttered the names of accused as persons who had set upon him totally is unacceptable given the entry in Ex.P16 Accident Register that he was in unconscious state. Even if this Court is to accept the prosecution case of the accused accompanying the deceased, this Court, with no definiteness can attribute the commission of the offending acts resulting in death, to the accused particularly since there absolutely is no evidence of the time of occurrence. To repeat, the projection of PWs.1 and 2 as eye witnesses to the occurrence has failed. In the circumstances, the finding of conviction arrived at by trial Court has no legal basis as once the prosecution case boils down to one of circumstantial evidence, the circumstances put forth

should form a continuous chain with every link thereof pointing to no inference other than the guilt of the accused. Such standard has not been met. A finding of acquittal finds further support on consideration of the evidence of PW-13, Doctor and Ex.P16, Accident Register, relating to the deceased. Ex.P16 is a carbon copy. The date thereof has been altered to 11.03.2013. The original date has been not merely strike out but has been strenuously effaced. Similarly, the date of occurrence has again, with much pains, been altered to 10.03.2013. The entry in Ex.P16 regards the manner in which the patient suffered injury again, as against the usual mode of running horizontally left to right, is in perpendicular manner at the bottom right of the page, suggesting tutored and doctored writing. Doctor - PW-13's explanation in cross that having been on night duty on 10.03.2013, he, by force of habit acquired through the day, had wrongly entered the date as 10.03.2013 and thereafter altered to reflect 11.03.2013 does not merit acceptance since he has admitted to altering the date against the entry for 'nature of injury and treatment' as 10.03.2013 in the place of 11.03.2013, which again is very conspicuous on the face of Ex.P16, Accident Register. If the force of habit had led to his wrongly entering the date at the top of Ex.P16, Accident Register, as 10th instead of 11th the same would not have permitted him to subsequently make an entry of the date 11th and then alter the same to 10th. The falsity does not stop there. In Ex.P16, the time of admission has been noted as 07.00 a.m. We have Ex.P21, Accident Register, entry of the Kovai Medical Center, Erode, which informs inpatient admission as 11.03.2013 at 12.25 p.m. and as 'brought by his wife Mrs.Chitra' i.e. PW-6. The entries therein read as 'alleged H/o ? assault (yesterday night around 11.00 p.m. one known person and two other people brought him outside @ Periyasemur. Patient was found unconscious with multiple injuries over head in his village, Periyasemur in the morning around 6.30 a.m.'. The admission of deceased at Kovai Medical Center, Erode, as informed in Ex.P21, the treatment afforded as also failure of heart and subsequent declaration of death on 13.03.2013 at 10.50 a.m. has been spoken to by PW-16, Doctor. This makes utterly false Ex.P16, Accident Register. PWs.1 and 6, mother and wife of deceased, have deposed to deceased first having been admitted at Government Hospital, Erode, by his mother-in-law on 11.03.2013 using the 108 Ambulance Services and that thereafter, he was shifted to Kovai Medical Center, where, after being in ICU for two days, he expired on 13.03.2013. PW-13, Doctor, has spoken to the admission of deceased at the Government Hospital, Erode, on 11.03.2013 at 07.00 a.m. and that he was treated, that he had suffered cut injuries to the front of the head, forehead and left ear which had been cut into two. His evidence is in keeping with Ex.P16, Accident Register, which we have herein above discussed and found false. Significantly, there is no evidence save the say-so of PWs.1 and 6, mother and

wife of deceased on how the deceased came to be discharged from Government Hospital, Erode. There is also no evidence on the use of the 108 Ambulance services towards admitting him therein. Therefore, it would appear that the deceased never had been at Government Hospital, Erode, but had only been admitted at the Kovai Medical Centre, Erode, where he had died.

The Criminal Appeal shall stand allowed. The conviction and sentence passed by learned I Additional District and Sessions Judge, Erode, passed in S.C.No.63 of 2016 on 08.12.2017, are set aside and appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded to him. Bail bond(s), if any, executed by him shall stand cancelled. Appellant is directed to be released forthwith, if his detention is not required in any other case.

gm

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

To

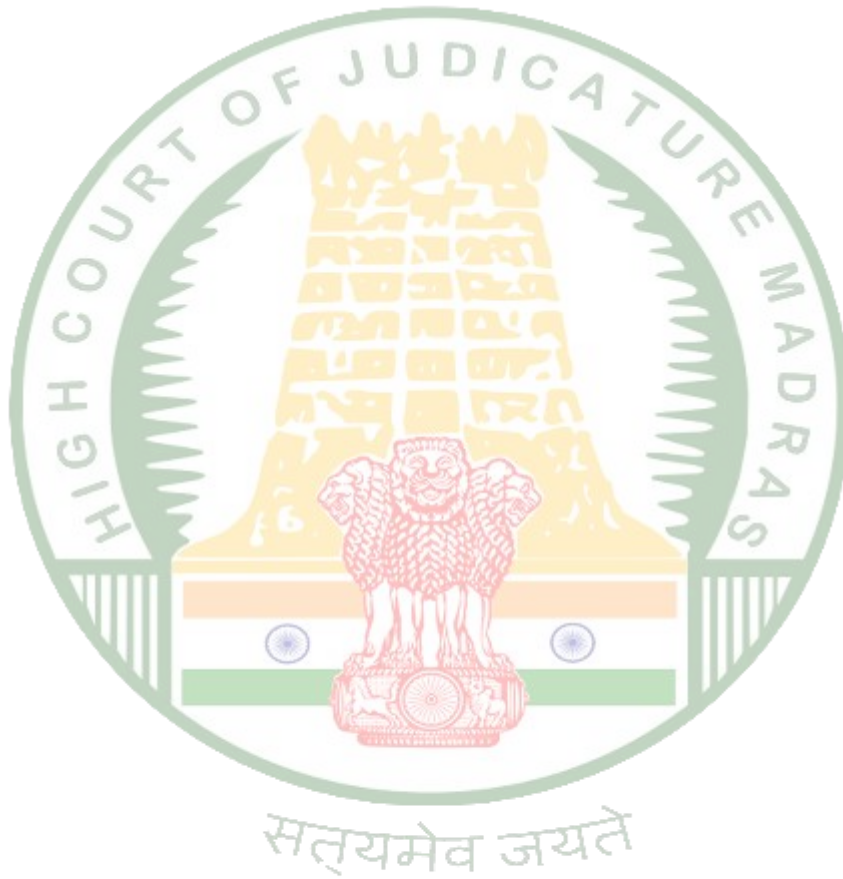
1. The I Additional District and Sessions Judge,
Erode.
2. The Principal Sessions Judge,
Erode.
3. The Chief Judicial Magistrate,
Erode.
4. The Superintendent, सत्यमेव जयते
Central Prison,
Coimbatore.
5. The District Collector,
Erode District.
6. The Director General of Police,
Mylapore, Chennai.
7. The Inspector of Police,
Erode North Police Station,
Erode District.

8. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.N.Manokaran,Advocate, SR.NO.78921/18

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kak(28/02/2019)



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