

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.10.2018

Pronounced on : 21.02.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.722 of 2008 and
Crl.M.P.No.1 of 2008

1.Govindaraj,
S/o.Ramasamy

2.Akilandeswari,
W/o.Govindaraj

... Appellants/Accused Nos.1 & 2

Versus

State by,
The Inspector of Police,
Perumanallur Police Station,
Coimbatore District.
[Crime No.43 of 2007]

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, to call for the records and set aside the Judgment dated 16.09.2008 in S.C.No.147 of 2008, on the file of the V Additional Sessions Judge, Fast Track Court, Coimbatore at Tirupur.

For Appellants : Mr.P.S.Kothandaraman

For respondent : Mrs.V.Saratha Devi,
Government Advocate [Crl.Side]

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JUDGMENT

This Criminal Appeal filed to set aside the Judgment dated 16.09.2008, made in S.C.No.147 of 2008, on the file of the Additional District and Sessions Judge, Fast Track Court No.V, Coimbatore.

2. The appellants are accused Nos.1 and 2 in S.C.No.147 of 2007, charged for an offence under Section 302 IPC against 1st appellant/A1 and for the offences under Sections 341, 302 r/w 34 of IPC against the 2nd appellant/A2.

3. The F.I.R in Crime No.43 of 2007 came to be registered against the appellants by the respondent Police, on completion of the investigation charge sheet was filed before the learned Judicial Magistrate No.II, Tiruppur in P.R.C.No.15 of 2007 and thereafter committed the case for trial. The learned Additional District and Sessions Judge, Fast Track Court No.V, Coimbatore in S.C.No.147 of 2008 tried the case and rendered its Judgment.

4. The learned Additional District and Sessions Judge, Fast Track Court No.V, Coimbatore in S.C.No.147 of 2008, dated 16.09.2008 had convicted the appellants and sentenced them to undergo Rigorous

Imprisonment for five years each under Section 304 (Part II) and 304 (Part II) r/w 34 respectively, aggrieved against the same, the present Criminal Appeal has been filed.

5. The contention of the prosecution is that, the prosecution has examined PW1 to PW13. PW1 is the mother of the deceased Sampath. PW2 and PW3 are the sister and brother of deceased, PW4 is the Village Administrative Officer. PW5, PW6 & PW7 are the neighbours. PW8 is the Head Clerk of Judicial Magistrate Court No.II, Tiruppur. PW9 is the Post-mortem doctor. PW10, who is the Constable handed over FIR to the learned Judicial Magistrate No.II, Tirupur and PW11, who is the Constable had gone to the hospital received the complaint and registered an F.I.R. PW12 is the Causality Medical doctor. PW13 is the Investigating Officer in this case.

6. The prosecution, to prove the case had examined Ex.P1 to PW.20 are marked and M.O.1 to M.O.6 have been recovered in this case.

7. The case of the prosecution is that the deceased Sampath is the son of PW1-Kannammal and they were residing at Thattankuttai village. The 1st appellant is the sister's son of PW1 and 2nd appellant is the wife of 1st appellant and they were residing at the eastern side of the house of PW1

and normally, the 2nd appellant used to converse with other male neighbours. On seeing it, the deceased questioned the conduct of 2nd appellant and there was constantly quarrel in this regard. On 05.03.2007, when the deceased was cleaning the electric pillar near his house, there was a quarrel between the deceased and the 2nd appellant. On 08.03.2007, at about 05.40 p.m, when the deceased was standing in front of his house, the 2nd appellant passed through the way, at that time the deceased had uttered some words about the 2nd appellant and she went to her house and complained to 1st appellant about the same, so the 1st appellant took a wooden reaper along with 2nd appellant beat him with wooden reaper in his head. On seeing this PW1, who is the mother of the deceased rushed to the scene and shouted loudly. At that time, PW2 and PW3, who are the sister and brother of the deceased who were coming near the house of PW1 in TVS 50 bike heard the cry of their mother and rushed to the scene and saw the 2nd appellant caught hold the hands of the deceased and the 1st appellant beating the deceased with wooden reaper and thereafter they fled away from the scene of occurrence.

8. PW5, PW6 & PW7 were living nearby the house of the deceased saw the 1st appellant running away with a wooden reaper along with 2nd

appellant from the scene of occurrence. Thereafter, PW1 and PW2 took the deceased in a car and admitted into the Government Hospital at Tiruppur. PW12, who is the Doctor treated the deceased at about 06.20 p.m found lacerated injuries measuring 5 cm X 2 cm over the scalp deep and bleeding through the nose and there was a swelling over the right eye. PW12, advised to take the deceased Sampath to Government Medical College and Hospital, Coimbatore for further treatment. But even before, PW1 and PW2 could take the deceased to Coimbatore, the victim died at 08.00 p.m. On receipt of the information from the Government Hospital, Tiruppur, the Head Constable attached to the respondent Police gone to the hospital, received the complaint and forwarded the same to the Higher officials and to the learned Judicial Magistrate No.II, Tiruppur.

9. The Inspector of Police rushed to the scene of occurrence, prepared Observation Mahazar and Rough Sketch, seized the blood stained earth and ordinary earth in the presence of PW4-Village Administrative Officer and thereafter, he conducted inquest at Government Hospital, Tiruppur on 09.03.2007 and sent the dead body for Post-mortem through the police and after completion of Post-mortem, the dead body was handed over to the relatives of the deceased. Thereafter, the Investigating Officer along with VAO had apprehend accused A1 and A2 near the Tiruppur bus

stand while they were about to leave to Gobichettipalayam. On arrest of the appellants, they have given a confession statement and reaper wood M.O.1 was recovered.

10. The contention of the learned counsel for the appellants is that the deceased was not in a clear state of mind and he was taking treatment for his mental disorder. In fact, he had taken treatment as in-patient in Government Hospital, Kilpauk at Chennai at the instance of the police, since he was creating trouble in the village and picking quarrel with everyone. On 05.03.2007, the deceased picked up quarrel with the 2nd appellant and there was some exchange of blows and thereafter, on the intervention of the villagers, they were pacified and separated. During the fight he had sustained injuries, earlier to he had fell down from the electric post and had sustained severe head injuries, for which, he had taken treatment and sutured were given for the injuries. Further, he submitted that on 08.03.2007, the deceased fell down from the electric post, thereby sustained head injury and other injuries and due to which he died. Since, earlier there was a fight between the appellants and the deceased Sampath, hence, the appellants have been falsely implicated in this case.

He further contended that PW1 admits about her son not in a normal state of mind and in fact, the deceased wife and his children deserted the

deceased, because of his behaviour in wrong activities. Since, PW1 was working as a sweeper in the police station known to the respondent Police, that is the reason for the appellants being made as the accused in this case without proper investigation. Further, PW2 and PW3 are the sister and brother of deceased they would state that they are living separately and on knowing about the incident on 05.03.2007 and they had come on 08.03.2007 for enquiry, at that time, the occurrence is said to have taken place. Further, there are vital contradictions in the evidence of PW1 to PW3, which would lead to show that they were not present during the occurrence and they are not eye witness to the occurrence.

11. He further contended that the specific case of the prosecution is that, the 2nd appellant had caught hold the hands of the deceased and the 1st appellant had assaulted the deceased from the back side with wooden reaper in the parietal region of the head. The evidence of PW12, doctor is that, if a person attacked on the back side of the head, the injuries could not caused on the face and on the front side of the face to the deceased. In this case old sutures were found in the left fore head and this sustained injuries were not caused by the appellants and no explanation is found for the same.

12. Further the learned counsel for the appellants submitted that PW5, PW6 & PW7 are the neighbours of PW1 all these witnesses have stated that they have not seen the occurrence proper and they would only state that appellants ran away from the scene of occurrence, further PW2 and PW3 have are not residing in the village and have stated that they came to know about the occurrence only from others. He further contended that the evidence of the witnesses are contra to the medical witnesses, which would falsely the version of the prosecution case. Further, the deceased earlier to the occurrence had sustained injuries on his head with sutured injuries has been suppressed. He further submitted that, PW4 is the witness for Observation Mahazar, Rough Sketch and the Seizure Mahazar for blood stained mud etc and also witness to the arrest of the appellants and the recovery of the material object. The signature found in the Seizure Mahazar Ex.P3 and Ex.P5 seems to be in variation and Ex.P4 and Ex.P5 are one and their authenticity is a questionable one.

13. He further submitted that PW12 is the Causality Medical Doctor attached to the Government Hospital, Tiruppur stated that as per Ex.P16, Accident register, in which it is mentioned that the deceased was attacked by one known person and he sustained head injury on the frontal portion this witness had categorically stated that sutures were found. PW12,

mentioned in the records that there was no injury on the parietal region and also stated that, if a person who is not in stable mind attempting suicide and had a fall from the electric post, injuries on the head as found on the deceased was possible and fatal. PW9, Post-mortem doctor in his evidence had categorically stated that he had not treated the deceased while he was in patient and he only conducted the Post-mortem between 12.05 p.m to 1.00 p.m at Government Hospital, Tirupur. The following injuries were found as follows:-

“External:

1. Haematoma over right orbit.
2. Periorbital contusion left eye
3. Sutured wound 2 cm X ½ cm over left side forehead.
4. Another sutured wound 5 cm X ½ cm over left parietal region
5. Sutured wound 4 cm X ½ cm over left temporal region of the scalp.

Internal:

Transverse fracture 10 cms length across both parietal bones. Blood clots seen under the scalp over fracture side. Membranes reaptured over both hemispheres. Extensive subdural haematoma present over both hemispheres. Brain congested. He issued the certificate in Ex.P11 with an opinion that the deceased should appear to have died due to shock and haemorrhage due to head injury at about 14 to 18 hours prior to autopsy.”

14. In his evidence, he admits that while, he conducted the Post-mortem he found that there was a missing of tooth in the deceased mouth, but the mis-tooth cannot be caused due to the occurrence and hence he had not taken into account. PW9, further stated that the sutured wounds were found on the deceased further states that if a person attacked from back side, no injuries as found on the deceased could be sustained. Further, he stated that the deceased could have sustained injuries found due to fall down from the electric post.

15. PW13, the Investigating officer states that PW1 had not stated anything, about the occurrence took place on 05.03.2007 and he admits that he had not enquired any individuals with regard to the seizure of Material Objects and arrest of the appellants. Further, he is not aware of the deceased a person of mental disorder and about the earlier injuries sustained by him and in a perfectionary manner the investigation has been carried out. The lower Court failed to look into these facts and the evidence of interested witnesses are contra to the medical evidence. Hence, he prayed for acquittal of the appellants.

16. The contention of the prosecution is that, PW1 to PW3 and PW5 to PW7 have spoken about that 1st appellant attacked the deceased with a

wooden reaper and 2nd appellant caught hold the hands of the deceased. Though, they are some minor contradictions in their evidence. The evidence of these witnesses are believable and PW4, who is the Village Administrative Officer recovered all the Materials objects. Further, PW9 and PW12 are the Post-mortem doctor and Causality Medical Doctor, who have spoken about the injuries found on the deceased. Further, in the post-mortem report is that ***“the deceased should appear to have died shock and hemorrhage due to severe head injury involving extensive subdural hematoma over both hemisphere of the brain about 14 to 18 hours prior of autopsy”***. Hence, it is proved that due to the head injury. The deceased had died and the investigating officer on receipt of the information visited the scene of occurrence and recovered Material Objects and sent the same for the chemical analysis and thereafter, obtained the Toxicology report and the evidence of the witnesses are consistent and the prosecution had proved that the appellants had committed the above offence.

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17. Considering the rival submissions and on perusal of the materials and documents placed before this Court, it is seen that PW1, PW2 & PW3 are the mother, sister and brother of the deceased. PW1 had stated the initially, she was sleeping inside the house, on hearing the shout, she came

out from the house and saw the occurrence and further, she has not stated in what manner the 2nd appellant caught hold the deceased. Further, as regards PW1's evidence is contra to the medical evidence, PW2 and PW3 could not be present in the scene of occurrence, when, PW1's categorical version is that, she had taken the deceased alone to the hospital. PW2 and PW3 followed in the two wheeler on the other hand the categorical evidence of PW2 and PW3 is that they have gone along with PW.1 in the car accompanying deceased to the hospital. PW1 admits that her son was not in a proper mental state and he had taken treatment as in-patient in Government Hospital, Kilpauk, Chennai for his mental disorder. On the fateful day the deceased behaviour was abnormal at that time, the deceased was wearing underwear and Baniyan. PW1 also stated that the deceased had climbed up the post to clean the electric post which is 6 ft height and the floor around the electric pillar is sharp with rocky stones. PW9 and PW.12 the doctors have opined that, if a person who is not in stable mind attempts to commit suicide and fall from the electric pillar such injuries are possible.

18. Further on 05.03.2007, PW1 admits that the deceased had a quarrel with 2nd appellant and the 2nd appellant hit the deceased with an Iron Pipe and sutured were given for the injuries sustained by the deceased.

No witness have spoken about this and further states that she has not lodged any complaint for the same. Hence, from the Post-mortem report and the Accident Register, the sutures on the deceased is for the occurrence on 05.03.2007. PW.1 version in the complaint is that she came to know about the fight through someone and she could not specify from whom she had received such information and she does not know what is written in the complaint and she simply signed the same, without knowing the contents. Admittedly, the complaint was prepared by the PW.11 Head Constable of Perumanallur Police Station.

19. Further, PW2 states that when she reached the place of occurrence, PW1 was sitting and the appellants ran away from the scene of occurrence. Further evidence of PW2 and PW3 is that they have come to the scene of occurrence only after the incident. The evidence of these witnesses are doubtfulness and does not inspire confidence. There are major contradictions in the evidence of PW1 to PW.3, PW5 to PW7 are neighbours, who are witness to the occurrence and PW.5 to PW.7 state that they have reached the scene of occurrence later and they have not witnessed the occurrence proper. PW4, Village Administrative Officer states that the Observation Mahazar and Rought Sketch and other articles in the place of occurrence were seized with the aid of street lights and in the

Observation Mahazar, it is mentioned that no power was not available in the scene of occurrence, PW.13 Investigating Officer states that the rechargeable tube light was used for preparation of the above documents. Since, there was no light in the scene of occurrence. Further, there is variation in signature of the PW4 in the Seizure and Confession Mahazars. The evidence of PW12, doctor is that the deceased sustained injury on the parietal region and it could have happened due to the fall from the electric pillar post and coupled with fact that the deceased was not in a normal mental state. Further, all the statements and evidence of witnesses have reached the Court below belatedly along with final report. In view of the above, the prosecution failed to prove the case. This Court finds that the prosecution has failed to prove its case beyond all reasonable doubts and the appellants are given benefit of doubt and they are acquitted.

20. In the result, the Criminal Appeal is allowed and the Judgment and conviction dated 16.09.2008 in S.C.No.147 of 2008 passed by Additional Sessions Judge, Fast Track Court No.V, Coimbatore at Tirupur is set aside. The Bail Bond if any executed stands cancelled. Consequently, the connected miscellaneous petition is also closed. No costs.

21.02.2019

VV2

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

To

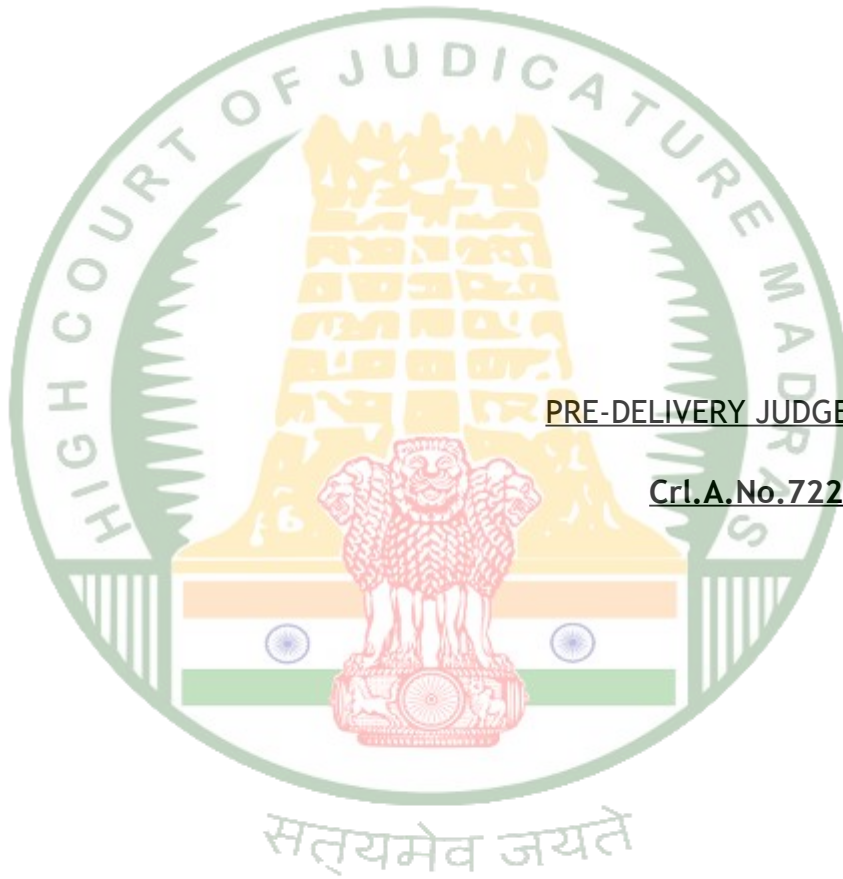
- 1.The Additional Sessions Judge,
Fast Track Court No.V, Coimbatore at Tirupur.
- 2.The Inspector of Police,
Perumanallur Police Station,
Coimbatore District.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

vv2



PRE-DELIVERY JUDGEMENT IN

Crl.A.No.722 of 2008

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