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Crl.A.No.704 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :16.06.2022

Pronounced on :22.06.2022

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.A.No.704 of 2016

Ratnasamy

.. Appellant

/versus/

State by
The Inspector of Police,
Thiyagadurgam Police Station,
Thiyagadurgam.
Crime No.350 of 2012.

.. Respondent

Prayer: Criminal Appeal has been filed 374(2) of Cr.P.C., praying to call for the records pertaining to the judgement rendered by the III Additional Sessions Judge, Villupuram at Kallakurichi in S.C.No.211 of 2013 dated 15.09.2016 and set aside the same allowing the appeal.

For Appellant :Mr.A.G.Rajan

For Respondent :Mr.S.Udaya Kumar
Government Advocate(Crl.Side)



Crl.A.No.704 of 2016

WEB COPY

ORDER

On 02/06/2012 at about 18.30 hours, the respondent police registered a case in Crime No.350/2012 for the offence under Section 302 IPC, on receipt of a written complaint from one Annammal, W/o Arulappan reporting about the death of her husband Arulappan at about 17.30 hours.

2. In the complaint, she has stated that her husband and his brother Rathinasamy have 80 cents of land each and sharing a common well for irrigating the said land. They agreed to share the well water in turns. However, there used to be frequent quarrel among them about the turn. On 02/06/2012, it was their turn, so on that day evening she and her husband went to the field to irrigate the sugarcane field. While her husband was in the field, she went to the nearby river bunk to tie the cattle. By that time, Rathinasamy, Susaiammal, Antonysamy and Karmalmary (A-1 to A-4) came to their field and picked quarrel with her husband. On hearing the commotion, she rushed to the field. She saw Rathinasamy tried to divert the water to his land claiming that it was his



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turn to draw water and her husband tried to prevent it. Then, Rathinasamy hit her husband with the back of the spade/pick axe (manvetti) on her husband's head and husband fell down. When she tried to stop Rathinasamy hitting her husband further, Rathinasamy and other 3 accused hit her and her husband repeatedly with hands. On hearing her scream, Arokiysamy and his wife came to rescue them. The villagers gathered soon after and took her husband body in a cot to her house. They called ambulance. The doctor, who came in the ambulance, tested Arulappan and declared dead.

3. The respondent police, on registering First Information Report based on the above complaint, took up the investigation immediately. PW-13 [Tr.Suresh Babu], the Inspector of Police attached to the respondent police rushed to the place, where the body was kept. He prepared the Observation Mahazar and then, conducted inquest between 7.15 p.m to 9.00 p.m. He forwarded the body of Arulappan to Mundiayampakkam Government College Hosptial for autopsy. The next day, on 03/06/2012 at about 12.45 p.m, all the 4 accused surrendered before the Village Administrative Officer. He along with a memo handed



Crl.A.No.704 of 2016

WEB COPY

over the accused persons to the Inspector of Police. The accused were arrested on 03/06/2012 at about 1.00 p.m and remanded to judicial custody.

4. On completion of investigation, final report was filed against four accused. Charges under Section 352 IPC against all the 4 accused; under Section 302 IPC against A-1 (Rathinasamy) and under Section 302 r/w 34 IPC against A2 to A-4 were framed.

5. To prove these charges, the prosecution examined 13 witnesses. (PW-1 to PW-13) and marked 12 exhibits (Ex.P-1 to Ex.P-12). The spade/pick axe (manvetti) recovered from the scene of crime was marked as M.O.1. In defence, the Doctor who treated the accused for the injuries sustained during the fight was examined as DW-1 and the accident register marked as Ex D-1.

6. The trial Court, on appreciation of evidence, held that A-2 to A-4 found not guilty of offences under Sections 352 and 302 r/w 34 IPC. Whereas, Rathinasamy (A-1) at spur of moment in the sudden quarrel



Crl.A.No.704 of 2016

WEB COPY

had caused the death of Arulappan. His act falls under the fourth exception to Section 300 IPC. He therefore was liable for culpable homicide not amounting to murder punishable under Section 304(1) IPC.

7. With this finding, the trial Court sentenced A-1 to undergo Rigorous Imprisonment for 7 years and pay a fine of Rs.3000/- In default, to undergo 3 months Simple imprisonment. For the offence under Section 352 IPC, he sentenced to pay a fine of Rs.500/- in default, to undergo one month Simple Imprisonment. The period of sentence undergone is ordered to be set off.

8. The said judgment of conviction and sentence is challenged in this appeal on the ground that, the trial Court erred in not appreciating the defence evidence and the admission of PW-10, the Village Administrative Officer(VAO), which goes to prove that the prosecution has not investigated the crime properly and suppressed the vital evidence like the intimation given by the Village Administrative Officer, which is the first information received by the police and the injuries sustained by the accused at the hands of the deceased. Knowing well, if those



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evidence are placed before the Court, it will prove that the deceased was the real aggressor and the provocateur, the Investigating Officer (P.W-13) suppressed those evidence and laid the final report.

9. The learned counsel for the appellant also submitted that, the First Information Report was sent to the Judicial Magistrate only on 03/06/2012 with delay of nearly 12 hour. The cause for delay in forwarding the First Information Report was not explained. The delay causes strong suspicion about manipulation and embellishment. More so, the case of the defacto complainant found to be false, in so far as implicating A-2 to A-4 in the crime.

10. The learned counsel for the appellant further submitted that the post mortem report[Ex.P-6] does not disclose any external injury on the head. PW-7[Dr.Keethanjali], the doctor who conducted the autopsy had opined that the deceased would appear to have died of head injuries sustained. When confronted with this contradiction, the Doctor has deposed that the injuries were internal. The internal hemorrhage in cerebral had caused the death. Thus, her opinion in Ex.P-7 is contrary to



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her oral evidence. The trial Court failed to appreciate this contradiction.

11. The learned counsel thus submitted that, the deceased was in fact the assailant, who caused two lacerated wound on the accused using M.O.1. As a defence, the accused pushed him. The deceased fell down and due to other medical reason, he died. To the post mortem Doctor it was suggested that the cerebral hemorrhage caused internally without any sign of external injury could have caused due to high blood pressure. To this suggestion, the Doctor has opined positively. Therefore, he pleaded that the prosecution has failed to prove the guilt beyond doubt.

12. The learned Government Advocate (Crl.Side) appearing for the 1st respondent/State submitted that the evidence of PW-1 and PW-2, who were at the scene of occurrence, had deposed about the overt act of the appellant and the recovery of M.O-1 used by the appellant to cause the injuries is proved through independent mahazar witnesses. The trial Court after appreciating the evidence including the wound certificate Ex.D-1 relied by the defence had rightly concluded that the injuries received by the accused are simple in nature and mere fact that the



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injuries on the side of the accused person not explained by the prosecution by itself cannot be a sole basis to reject the testimony of the prosecution witnesses. Therefore, he sought for dismissal of the appeal.

13. The scrutiny of the deposition of the prosecution witnesses, this Court finds that the only eye witness to the occurrence is PW-1, who is the wife of the deceased. PW-2 came to the scene of occurrence only after the incident occurred and he has deposed when he came to scene of crime he saw, PW-1 was holding her husband and weeping. He gave water and then informed the villagers. Therefore, the finding of the trial Court that PW-2 was the witness to the occurrence, is not factually correct. According to PW-1, she and her husband went to the field to irrigate. The appellant came there and picked quarrel and tried to divert the water course to his field. There is no evidence that when the accused came to her field, he was carrying pick axe. Therefore, it is clear that the pick axe belongs to the deceased, who came to the field first for drawing water from the common well and for irrigating he should have been necessarily carrying the pick axe to lead the course of the water through the channel.



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14. It is also to be noted that, the prosecution has not proved that the cerebral hemorrhage without causing any external injury could be caused by using weapon like M.O-1. Not even a suggestion to the Post mortem Doctor [PW-7] to infer that with M.O.-1 one can cause the fatal injury without any sign of injury externally on the scalp.

15. When Ex.D-1-wound certificate of the accused and the evidence of DW-1 is examined in the light of the above fact, this Court finds, the accused had sustained laceration on the scalp and laceration on the left forearm. To the doctor [DW-1], the accused has informed that he was assaulted by a known person using pick axe (manvetti) over head and left fore arm on 02/06/2012 at around 5.00 pm at his field.

16. The trial Court erred in not considering the evidence placed before it properly. The post-mortem report of the deceased does not have any sign of external injury caused with M.O.-1. Contrarily the injuries found on the accused carry tell-tale evidence to infer those injuries might have been caused with weapon like M.O.-1 as claimed by the



Crl.A.No.704 of 2016

WEB COPY

appellant/accused. The trial Court instead being carried away by the fact that those injuries are simple in nature and need not be explained, ought to have considered the probability of the defence case.

17. The Investigating Officer [PW-13] admits in the cross examination that he came to know that the accused was admitted in Kallakurchi hospital on 02/06/2012 at about 6.40 p.m but he did not investigate about this and file documents connect to this fact.

18. Thus, it is clear that the prosecution has failed to do proper investigation and had knowingly suppressed the real fact. The unexplained 12 hours delay in forwarding the FIR to the Judicial Magistrate coupled with the fact that the suppression of earlier information alleged to have forwarded by the Village Administrative Officer causes serious doubt about the uncorroborated evidence of PW-1. The trial Court failed to appreciate the evidence in proper perspective and that has led to miscarriage of justice.



Crl.A.No.704 of 2016

WEB COPY

19. As a result, ***this Criminal Appeal is allowed.*** The judgment of the trial Court viz., III Additional District and Sessions Court, Kallakurichi is set aside. The appellant is set at liberty. Fine amount, if any paid shall be refunded. The bail bond if any executed shall stand cancelled.

22.06.2022

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Index:yes/no

To:

- 1.The III Additional Sessions Judge, Villupuram at Kallakurichi.
- 2.The Inspector of Police, Thiyagadurgam Police Station, Thiyagadurgam.
- 3.The Public Prosecutor, High Court, Madras.



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Crl.A.No.704 of 2016

Dr.G.JAYACHANDRAN,J.
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delivery Judgment made in
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