



CRL A No.629 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	20.09.2022
Pronounced on	:	02.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Appeal No.629 of 2022

1.Pappu @ Perumayee
2.Selvaraj
3.Murugesan @ Pambu Murugesan
4.Murugesan
5.Elango
6.Venkatesh @ Venkatachalam

... Appellants

Vs.

The State, represented by
Inspector of Police,
Molasi Police Station,
Tiruppur District.
(Crime No.226 of 2012)

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, praying to set aside the conviction imposed in the judgment dated 20.04.2022 made in S.C.No.2 of 2015 on the file of the learned Additional District and Sessions Court, Namakkal by allowing this Criminal Appeal.

For Appellant : Mr.N.Manoharan

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor



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J U D G M E N T

This Criminal Appeal has been filed to set aside the conviction imposed in the judgment dated 20.04.2022 made in S.C.No.2 of 2015 on the file of the learned Additional District and Sessions Court, Namakkal by allowing this Criminal Appeal.

2. The respondent registered the case against the appellants in Crime No.266 of 2012 for the offences under Sections 147, 148, 294b r/w 149, 307 r/w 149, 302 r/w 149, 323 r/w 149, 506(ii) r/w 149 of IPC. After investigation they laid a charge sheet before the learned Jurisdictional Magistrate, Tiruchengode. The learned Jurisdictional Magistrate taken charge sheet on the file in PRC No.19 of 2013. After completing the formalities the learned Jurisdictional Magistrate committed the case to the learned Additional District and Sessions Court, Namakkal, since the offences are exclusively triable by the Court of Session. The learned Additional District and Sessions Court, Namakkal took the case on file in SC No.2 of 2015 after completing the formalities framed the charges against the appellants for the above said offences.



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3. After framing the charges, in order to substantiate the about said charges, on the side of the prosecution as many as 14 witnesses were examined as PW1 to PW14 and 30 documents were marked as Exhibits P1 to P30 and 4 material objects were marked as exhibits MO a to MO 4

4. On completion of examinations of the prosecution witnesses, when a incriminating circumstance culled out from the evidence of prosecution witnesses were put to the appellants by questions under Section 313 of Cr.P.C, wherein they denied the same as false and pleaded not guilty. On the side of the defendants side, 1 witness was examined as DW1 and 7 documents were marked as D1 to D7.

5. On completion of the trial, hearing of the arguments advanced on either side and considering the materials of the trial Court found guilt of the accused. Since A2 died during the pendency of the trial, charges were abated as against A2. The A1, A3, A7 were found guilt of the offences under Sections 147, 307 r/w 149, 304(1) r/w 149 of IPC. A4 was found guilty for the offences under Sections 148, 307, 304(1) r/w 149 of IPC. A5 and A6 were found guilty for the offences under Sections 148,



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307 r/w 149, 304(1) r/w 149 of IPC. After the formalities the trial court convicted the A1, A3 and A7 for the offences under Section 147 and sentenced to undergo two years each rigorous imprisonment. A4, A5, A6 were convicted for the offence under Section 148 and sentenced to undergo three years of rigorous imprisonment. A4 was also convicted and sentenced to undergo for the offence under Section 307 and sentenced to undergo 5 years of rigorous imprisonment and pay fine of Rs.500/- each in default to undergo three months simple imprisonment. A1, A3, A5, A6 and A7 were convicted for the offences under Sections 307 r/w 149 and sentenced to undergo 5 years of rigorous imprisonment and pay fine of Rs.500/- each in default to undergo 3 months simple imprisonment. A4, A5 and A6 were also convicted for the offences under Section 304(1) and sentenced to undergo 10 years of rigorous imprisonment and pay fine of Rs.1,000/- each in default to undergo 6 months simple imprisonment. Further A1, A3 and A7 were also convicted under Section 304(1) r/w 149 and sentenced to undergo 10 years of rigorous imprisonment and pay fine of Rs.1,000/- each in default to undergo 6 months simple imprisonment.

6. Aggrieved by the said judgment of conviction and sentence, all



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the accused filed the present appeal before this Court.

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7. The specific case of the prosecution is that the daughter of the deceased Sengoda Nadar was given marriage to the son of the A1 and they were blessed with a male child, one Pravinkumar. Since the parents of the Pravinkumar died, the custody of the child was given to PW1, who is his maternal uncle. A1 is the paternal grandmother of Pravinkumar. There was a dispute between both the maternal grandfather families and paternal grandmother families of the said Pravinkumar regarding the custody of the child. On the date of the occurrence when the PW1 and the deceased Sengoda Nadar and wife of PW1, sister and PW3 were in agriculture field, all the accused came by TATA ACE vehicle with weapons and they attacked PW1. When the deceased came to rescue PW1, the accused attacked the deceased also. Due to that the PW1 and the deceased sustained injuries and later they were admitted in a Government hospital. On receiving the information, the respondent police came to the hospital and recorded the statement from the PW1 and PW2 and registered the case. Subsequently, the deceased Sengoda Nadar died and therefore the charge was altered to Section 302 from 307 of IPC.



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Later the respondent police investigated the matter and laid the charge sheet before the Jurisdictional Magistrate who took the charge sheet on file in PRC.No.19 of 2013 and committed the matter to Court of Session, since the offences are exclusively triable by the Court of Session. The learned Additional District and Sessions Court, Namakkal took the case on file in SC No.2 of 2015 after completing the formalities, the trial Court found the guilt of all the accused/appellants.

8. The learned counsel for the appellants would submit that the alleged occurrence took place on 13.11.2012 at 3.30 p.m. However, the complaint Ex. P1 was given only on 15.11.2012 at 2.30 p.m and the FIR was registered and the same was sent to the Court only on 20.11.2012 at 1 p.m. Absolutely, there is no explanation or any acceptable reason for the delay by the prosecution. The unexplained delay is fatal to the case of the prosecution. Since the delay has not been properly explained, the case was given after deliberation and also suppressed the actual facts and they have concocted the case to suit their convenience. Some of the accused also sustained injuries. However, the prosecution has not explained the injuries sustained by the accused, which is also fatal to the case of the



prosecution.

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9. Further, he would submit that the alleged occurrence took place on 13.11.2012, the injured Sengottaiyan died on 03.12.2012 at 5.30 a.m. Therefore the death was not instantaneous. The alleged injured died not due to the injury sustained by the alleged occurrence dated 13.11.2012, the same was due to only improper medical treatment. Therefore, the offences either under Section 304 or 307 of IPC would attract at the worst and this case would attract only under Section 324 of IPC. Further, he would submit that the motive for the occurrence has been projected by the prosecution that PW1 has refused to handover the custody of his sister's son Pravinkumar, who is the paternal grandson of the A1. But as per the Ex. D1, it is proved that PW1 has given a complaint dated 21.02.2013 requesting the police to get custody of Pravinkumar. Therefore, the motive as projected by the prosecution has lost its significance. Further, he would submit that PW2 and PW3 are only hearsay witnesses and they have not seen the alleged occurrence. They heard the information about the occurrence and later came to the spot. Further, they are the relatives as well as the interested witnesses. Therefore, their evidences cannot be



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given effect to that. Further, he would submit that the cause of death has not been mentioned as 'complications of head injury' as per the final opinion. He further submitted that the prosecution has neither examined the Doctor who gave treatment to the deceased nor produced the medical records to prove the nature of the treatment given to the deceased. Therefore, an adverse inference has to be drawn under Section 114 (g) of Indian Evidence Act, 1872. The Doctor/PW8 stated that deceased has given a particular version to him, while he was admitted in the hospital mentioning about one cut injury on the backside of the head but not mentioned other injuries. PW1 submitted that he was attacked by 8 persons, whereas the Doctor (PW9) stated that the deceased informed him that 4 persons attacked him with wooden log and iron rod and three other persons were present at that time of occurrence. Therefore, there is a material contradiction between the evidence of PW1 and statement given by the deceased who are occurrence witnesses and also injured witnesses. The Ex. D2 to D7 shows that the A1, A5 and A6 also sustained injuries, the prosecution has suppressed the same and they have not explained it. Therefore, the same is fatal to the case of the prosecution.



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10. The nature of injuries and number of injuries spoken to PW8 and PW9 are totally different. The Ex.P17 was issued by the PW8 and Ex.P19 was issued by PW9, but the prosecution has not explained as to how both the Doctors have noted different injuries on the body of the deceased. The prosecution has tried to prove the cause of death by producing post-mortem certificate Ex. P22 and final opinion as Ex. P23 and serological report as Ex. P24 and also examined PW11, but there is no explanation for the non-examination of the Doctors who treated the deceased and also for non-production of medical records. Further, he would submit that the arrest and recovery of MO 1 to MO 3 pursuant to the disclosure statement Ex.P6 to Ex.P8 have not been established by the prosecution. The learned trial Judge has wrongly given effect to the recovery under Section 27 of Evidence Act. He further submitted that the confession statement given by A1 to A3, A4 to A6 are inadmissible. Based on the inadmissible confession, conviction cannot be recorded.

11. The death of the deceased was not due to the alleged brutal attack made by the accused and it cannot be termed as a murder. Even assuming that the prosecution case is proved, the accused could be held



responsible only for the individual injuries caused by them and they cannot be liable either under Section 307 of IPC and 304 of IPC. The withholding of the medical records of the deceased would lead the inference under Section 114 (g) of the Indian Evidence Act, 1872. The trial court failed to appreciate the entire evidence and failed to consider that there was no specific overt-act against the each individual accused and no witnesses has spoken about the individual attack made the individual accused and the injury sustained by the PW1 and deceased were individually identified. The Judgment of conviction and sentence passed by the trial court are perverse which wants interference of this Court.

12. The learned Additional Public Prosecutor would submit that there is a strong motive for the commission of offence by the appellants. Even otherwise, the motive has not been established, the eye witnesses and the injured witnesses in this case have spoken about the occurrence. Therefore, the motive is immaterial. Further he would submit that admittedly the daughter of the deceased was given to the son of A1 and they had been blessed with a male child. Admittedly, the parents of the Pravinkumar were no more at the time of the occurrence. The custody of



said Pravinkumar was with PW1 and the deceased. A1, who is the paternal grandmother demanded custody of the Pravinkumar, which leads for the motive of occurrence. PW1 is the injured witness who has clearly spoken about the occurrence and specific overt-act against the individual accused. The other injured witness Sengoda Nadar also made a statement before the Doctor while he was admitted in the hospital, which also clearly proves that the appellants caused injuries on him. However, he died two months later, the weapons used by the appellants are deadly weapons and the injuries sustained by the deceased was also vital in nature. Since, the injured person died only after two months and not immediately after he sustained injuries, the trial Court had not convicted the appellants for the offences under Section 302 of IPC and converted the offence to 304(1) r/w 149 of IPC. The trial Court rightly appreciated the entire evidence. Though PW2 and PW3 are occurrence witnesses and PW1 is the injured witness and the affected person, the medical evidence corroborated the injury sustained by the PW1 and the deceased and the post-mortem certificate also proves that the deceased died due to the injury sustained to him by the appellants. There is no medical evidence to show that the death of the deceased was due to the improper medical



treatment. Therefore, in the absence of any such medical evidence, the appellants cannot say that the death was due to improper medical treatment and say the offence would not attract under Section 304(1) of IPC. The trial Court established the motive as well as the occurrence and injury sustained by PW1 and deceased and due to the injury one of the injured Sengoda Nadar died.

13. The appellants, at the time of the incident used deadly weapons and they caused injury to PW1 and the deceased. Therefore the prosecution has proved its case beyond reasonable doubt. Mere non-examination of the Doctor, at the time of giving the treatment is not fatal to the case of the prosecution. It is settled that any official witness during the course of official transaction, the successor can lead the evidence of records maintained by the predecessor. Therefore, mere non-examination of the Doctor at the time of giving the treatment is not fatal to the case of the prosecution. All the medical records have been marked as Exhibits. Therefore the prosecution has proved the other materials beyond reasonable doubt and the trial Court also appreciated the evidence and convicted the accused and imposed the sentence as stated above and



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hence there is no merit in the appeal and it is liable to be dismissed.

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14. Heard the learned counsel for both sides and perused the materials on record.

15. Admittedly, the daughter of the deceased was given to the son of A1 and they had been blessed with a male child. Admittedly, the parents of the Pravinkumar were no more at the time of the occurrence. The custody of said Pravinkumar was with PW1 and the deceased. The A1 is the paternal grandmother demanded custody of the Pravinkumar and clearly there was misunderstanding between two families. According to the prosecution, on 13.11.2012 when PW1, PW2, PW3 and deceased were working in their field, the accused came in a TATA ACE vehicle with deadly weapons and attacked them. The PW1 and deceased sustained injuries and they were admitted in the hospital. A case was registered and a charge sheet was filed. Subsequently, the case was taken for trial. According to the appellants, there is no motive and motive was not substantiated. Even PW1 gave a letter to Police that he is ready to get the custody of the child, therefore the motive was not substantiated and the



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prosecution has not proved the incident as projected by them. Whereas, the accused have also sustained injuries, the prosecution has suppressed the fact. Further, PW2 and PW3 are not eye witnesses, they are only the hearsay witnesses and the interested witness. Further, the Doctor who gave the treatment to deceased was not examined and there is also contradictions with reference to the number of injuries and nature of injuries between the two Doctors (i.e.,) PW8 and PW9, that the prosecution has not proved its case.

16. A reading of the entire records, in order to substantiate the charges as mentioned above, on the side of the prosecution, totally 14 witnesses were examined as PW1 to PW14 and 4 documents were marked. Out of the 14 witnesses, one of the witness was examined as PW1, who has clearly submitted the incident and the specific overt-act caused by the appellants. The evidence of PW1 clearly shows that, on 13.11.2012 when PW1 to PW3 and deceased were working in their field, the accused came in a TATA ACE vehicle with deadly weapons and attacked them. A4 was holding wooden log, A5 was holding a stick and A6 was holding an iron rod. They all entered into the field of PW1. A1



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identified PW1 by saying that he is having the custody of the grandson namely Pravinkumar and scolded him with filthy language and directed the other accused to attack him. Thereafter, A5 attacked with a stick and A6 attacked with iron rod in shoulder, hip and all over his body. At the time, A2 and A3 kicked PW1 with their legs. When PW1 raised his voice, his father rushed to rescue him. Thereafter, A4 attacked the deceased with wooden log and A5 attacked with a stick and A6 attacked with iron rod at the deceased in shoulder, hip and all over his body. A1 also punched the deceased at his face and A2, A3 and A7 kicked him causing injuries on the deceased. When the wife of PW1, PW3 and PW4 came to the spot, the accused flew away from the place of occurrence.

17. The injured persons were admitted in the Government Hospital, Tiruchegode at 5.30 p.m through 108 ambulance. PW1 informed that 8 persons attacked them with deadly weapons. Later, the deceased was taken to Vijaya Hightech Hospital for further treatment. PW9, the doctor one who gave treatment. From the evidence of PW1 and evidence of PW8 and PW9, it is proved that PW1 and deceased sustained injuries caused by the appellants. PW1 is the injured and eye witness who has clearly



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submitted the incident. The medical evidence of PW8 and PW9 corroborated the same. Though the learned counsel for the appellants submitted that there is a discrepancies in the number of injuries, it is well settled that, at the time of admitting the patients in Hospital, only the doctor could concentrate on the patient while giving treatment and only the subsequent Doctor who is giving further treatment can note the injuries. Mere non noting some of the injuries may not be a reason to discard the case of the prosecution. Therefore the discrepancies regarding the number of the injuries mentioned by both Doctors may not be a sole ground to discard the case of the prosecution. When the injured witness clearly identified each of the appellants and subsequent overt-act caused by the appellants and when the post-mortem report of the deceased also clearly shows the cause of death, the prosecution has proved its case beyond reasonable doubt. Even otherwise if there is discrepancies in the injured witness and medical evidence, the evidence of eye witness will prevail over the medical evidence. Therefore, in this case, the PW1 is the occurrence witness and eye witness who also sustained injuries. In order to safeguard him, when his father came to rescue and was attacked by the accused. Therefore the evidence of PW1 is cogent, natural and consistent



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and there is no reason to discard the evidence of PW1. The evidence of PW1 inspires the confidence of the Court and there is no reason to disbelieve the evidence of PW1. Though other witnesses are hearsay witnesses to convict the accused, the number of the witness is not necessary. Even if one witness inspires the confidence of the Court, the Court can record the conviction and evidence of sole witness, if it is cogent and natural.

18. In the case on hand, PW1 is the injured eye witness, who has clearly spoken about the entire incident and the specific overt-act against the accused persons and the weapons used by them. He has also spoken about the injuries sustained by him and also by the deceased and the mode of attack and that the medical evidence was also corroborated with evidence of PW1. Therefore, the trial Court has rightly appreciated the evidence of the prosecution witnesses and recorded the conviction and this Court does not find any perversity, infirmity or illegality in the judgment passed by the learned Additional District and Sessions Court, Namakkal.



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19. The learned counsel for the appellants referred to the Judgments passed by the Hon'ble Supreme Court reported in 1972 (3) SCC 393 in the case of *Thulia Kali V. The State of Tamil Nadu*, 2003 (3) SCC 355 in the case of *Rajeevan & anr V. The State of Kerala* and 2007 (12) SCC 641 in the case of *DilwarSingh V. The State of Delhi* and few other Judgments. It is made clear that there is no quarrel with the proposition of law laid down by the Hon'ble Supreme Court and various High Courts as referred to by the learned counsel for the appellants. But in the criminal cases, there is no precedent. Each case has got its own facts and merits. The citations referred to by the learned counsel for the appellants are different with the facts and circumstance of the present case. In the case on hand, as already stated, PW1 is the injured eye witness and he has spoken about the entire incident and overt-act of the accused persons and his evidence is also corroborated with the evidence of the Doctor/PW8 who treated the deceased, except some minor contradictions. Therefore, this Court finds no reason to discard the evidence of PW1. Therefore, the decisions referred to by the learned counsel for the appellants are not applicable to the present case on hand.



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This Court finds that as a appellate Court and final Court of fact finding, re-appreciated the entire facts and evidence and finds that the prosecution has proved its case beyond reasonable doubt. Therefore, there is no reason to interfere with the judgment of the trial Court. Accordingly, this Criminal Appeal is dismissed.

20.The trial Court is directed to secure all the accused to undergo the remaining period of sentence if any.

02.11.2022

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Index:Yes/No



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To

1. The Additional District and Sessions Court, Namakkal
2. The Inspector of Police,
Molasi Police Station,
Tiruppur District.
3. The Public Prosecutor Officer, High Court, Madras
4. The Section Officer, Criminal Section, High Court, Madras.



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P.VELMURUGAN, J

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**Pre-Deliver Order in
Criminal Appeal No.629 of 2022**

02.11.2022