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CRL.A.No.854 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.12.2022

CORAM

THE HONOURABLE Mr. JUSTICE P.N. PRAKASH
AND
THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

CRL.A.No.854 of 2022
AND
CRL.M.P.No.12084 of 2022

Velliangiri

.. Appellant/A-1

Vs.

State rep. by
The Inspector of Police
Erode North Police Station
Erode District
Respondent

..

Criminal Appeal filed under Section 374(2) Cr.P.C. to set aside the judgment and order passed by the I Additional District and Sessions Judge, Erode, in S.C.No.63 of 2016 *vide* his order dated 08.12.2017 sentencing the appellant to undergo imprisonment for life for the offence under Section 302 IPC and to undergo rigorous imprisonment for a period of 10 years of 10 years for the offences under Section 364 IPC.

For Appellant Mr.Deepan Uday

For Respondent Mr.M.Babu Muthumeeran



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For Appellant Mr. Deepan Uday
Additional Public Prosecutor

J U D G M E N T

N. ANAND VENKATESH, J.

This criminal appeal has been filed against the judgment and order 08.12.2017 passed by the I additional District and Sessions judge, convicting and sentencing the appellant (A1) as under:

<i>offence</i>	<i>Sentence</i>
Section 302 IPC	Life imprisonment and to pay a fine of Rs.2,000/-, in default to undergo one year rigorous imprisonment
Section 364 IPC	Ten years rigorous imprisonment and to pay a fine of Rs.2,000/-, in default to undergo one year rigorous imprisonment
The aforesaid sentences were ordered to run concurrently.	

2. The case of the prosecution is as under:

2.1. The accused persons viz., A1 to A3 are friends. Likewise, the deceased Muthukumar, Mohammed Rafiq (P.W.4) and Muthan were friends and they were consuming liquor in a TASMACH shop, near a bus stop at Kaniravutharkulam. At this juncture, A1 is said to have taken the mobile



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phone of P.W.4 from his pocket, which was noticed by Muthukumar and as a result, when A1 to A3 came outside the bar, Muthukumar and his friends asked A1 to return the mobile phone and later, the mobile phone was also returned to P.W.4. This incident created an enmity between the parties and the accused persons decided to do away with Muthukumar and in furtherance of their common intention, on 10.03.2013 at about 09.30 p.m., A1 and A2 went to the house of Muthukumar and told him that his friend Muthan wants to meet him. Believing them, Muthukumar accompanied them and all the three accused persons thereafter attacked Muthukumar indiscriminately and threw a stone (M.O.3) on his head.

2.2. The mother of the deceased (P.W.1) was waiting for her son back to home. One Kumaresan (P.W.5) informed P.W.1 on 11.3.1013 that Muthukumar was lying with head injuries at Koolayankadu. P.W.1 immediately rushed to that place and found that her son was lying with multiple injuries on the head and Muthukumar is said to have informed P.W.1 that A1 to A3 attacked him. Thereafter, P.W.1 took Muthukumar to Erode Government Hospital, after arranging for an 108 ambulance.



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2.3. The information was given to the police and they came to the Government Hospital and a complaint was given by P.W.1 on 11.03.2013 at about 11.40 a.m. Muthukumar succumbed to injuries on 13.03.2013 at about 10.15 a.m in the hospital.

2.4. The investigation was taken up by P.W.19 and he went to the scene of crime on 11.03.2013 at about 12.45 noon and a rough sketch (Ex.P28) was prepared in the presence of the witnesses at about 01.45 p.m. The material objects were seized from the scene of crime under a seizure mahazar marked as Ex.P29. A3 was arrested on the same day at about 05.15 p.m. and based on his confession, his bloodstained shirt was seized under a seizure mahazar.

2.5. The investigation was thereafter taken up by P.W.20 and he arrested A1 and A2 on 13.03.2013 at about 6.00 a.m. and based on their confession, he seized the clothes of A1 and A2 under a seizure mahazar and all the accused persons were remanded to judicial custody.

2.6. Muthukumar died on 13.03.2013 and hence, an alteration report



was prepared and the offence under Section 307 IPC was altered to one under Section 302 IPC. The inquest was conducted in the hospital in the presence of panchayatdars. The inquest report has been marked as Ex.P41. The I.O. after recording the statements of the witnesses and collecting the scientific reports from the Doctor and the forensic laboratory, filed the final report on 31.05.2013 before the learned Chief Judicial Magistrate, Erode.

2.7. The learned Chief Judicial Magistrate issued copies under Section 207 Cr.P.C. and the case was committed to the Principal Sessions Judge under Section 209 Cr.P.C. and it was allotted to the I Additional District and Sessions Judge, Erode.

2.8. The trial court framed charges against the accused persons for the offences under Sections 364 and 302 IPC. The prosecution examined P.W.1 to P.W.20 and marked Ex.P1 to Ex.P41 and identified and marked M.O.1 to M.O.9. The incriminating circumstances that emanated in the course of trial was put to the accused persons by way of questioning under Section 313(1)(b) Cr.P.C. and the accused persons denied the same as false.



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2.9. The Court below, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion that the charges were established beyond reasonable doubts as against A1 and A2 and convicted and sentenced them for the offences under Sections 364 and 302 IPC read with Section 34 IPC and acquitted A3 from all the charges.

2.10. Aggrieved by the above judgement and order passed by the I Additional District and Sessions Judge, Erode, A2 filed Crl.A.No.175 of 2018 before this Court. This court, on reappraisal of evidence available on record, through the judgment and order dated 19.11.2018, came to a conclusion that the prosecution did not prove the case beyond reasonable doubts as against A2 and accordingly, set aside the conviction and sentence against A2 and acquitted him from all the charges.

2.11. The appellant (A1) filed this Criminal Appeal with an enormous delay only in the year 2022 and this court directed the Registry to prepare



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the typedset of papers and post the appeal itself for final disposal *vide* order dated 12.09.2022. Such a direction was given by this Court, since the appellant (A1) is also similarly placed and whatever materials that were put against A2 were also relied upon as against the appellant.

3. Heard Mr.Deepan Uday, learned counsel for the appellant and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the respondent State.

4. There is no variation, either on facts or the materials/evidence that were relied upon by the prosecution, between A1 and A2. This court appreciated the entire evidence and came to a conclusion that the prosecution has not proved the case as against A2. The very same reasoning will equally apply to A1 also and hence, it will suffice, if the reasoning given in Crl.A.No.175 of 2018 is extracted hereunder:

“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



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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 PW13, Doctor and



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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 11 th the same would not have permitted him to subsequently make an entry of the date 11 th 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



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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.”



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In the light of the above reasoning, this Criminal Appeal stands allowed and the judgment and order of conviction and sentence dated 08.12.2017 passed by the I Additional District and Sessions Judge, Erode, in S.C.No.63 of 2016, are set aside and the appellant is acquitted from all the charges. Fine amount, if any, paid shall be refunded to him. Bail bond, if any, executed by him shall stand cancelled. The appellant is directed to be released forthwith, if his detention is not required in any other case. Connected Miscellaneous Petition stands closed.

J.]
gya

[P.N.P., J.] [N.A.V.,

16.12.2022

To
1.The I Additional District and Sessions Judge
Erode (S.C.No.63 of 2016)

2. The Inspector of Police
Erode North Police Station, Erode District
(Cr.No.174/2013)

3.The Superintendent
Central Jail, Coimbatore

4.The Public Prosecutor



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Madras High Court, Chennai



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P.N.PRAKASH, J.
AND
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