



Crl. A(MD)No.430 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

Dated : 20.09.2022

CORAM:

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU
AND
THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH

Crl. A. (MD)No.430 of 2019

Maruthan

.. Petitioner/Sole Accused

Vs.

State rep by
The Inspector of Police,
Varusanadu Police Station,
Theni District.
(in Crime No.169 of 2014)

.. Respondent/Complainant

Appeal filed under Section 374(2) of Criminal Procedure Code,
against the judgment and order dated 21.08.2018 passed in S.C.No.112 of
2015 on the file of the Additional Sessions Judge (Fast Track), Theni.

For Appellant : Mr.AR.Jeya Ruthran

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor



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JUDGMENT

J.NISHA BANU
AND
N.ANAND VENKATESH

The appellant, who was convicted for an offence under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs. 5,000/-, in default, to undergo six months simple imprisonment by the Sessions Judge Court (Fast Track), Theni in S.C.No.112/2015 through judgment dated 21.08.2018, has filed this appeal.

2. The case of the prosecution is that the deceased had an illicit relationship with the wife of the appellant and hence, there was a previous enmity between the parties. A complaint is said to have been given by the wife of the deceased [P.W.-4] before the Andipatti All Women Police Station on 01.11.2014 and this complaint was enquired by P.W.24 on 03.11.2014. The enquiry is said to have been completed in the evening and the deceased along with his father and P.Ws. 1 to 5 went to a hotel situated at the main



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road. At that point of time, the deceased is said to have come to the road to attend nature's call and he is said to have been attacked by the appellant with a hammer [M.O.-1] in his head. As a result, the deceased sustained grievous head injuries and he died on the spot. The complaint was given on 03.11.2014 at about 8.00 p.m. by the father of the deceased and it was also attested by P.W.-1. Based on the same, an FIR [Ex.P12] came to be registered by P.W.-27 and the investigation was taken up by P.W.-28. On completion of the investigation, the final report was laid and the case was committed to the trial Court.

2.1. A charge for an offence under Section 302 IPC was framed against the appellant. The prosecution examined P.Ws.1 to 28 and marked Exs.P1 to P.18 and also identified and marked M.Os.1 to 6 to substantiate their case. The incriminating circumstances that were collected in the course of trial, were put to the appellant, while questioning under Section 313 (1) (b) of Cr.P.C. and the appellant denied the same as false.



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3. The trial Court, considering the facts and circumstances of the case and on appreciating the evidence available on record, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and hence, convicted and sentenced the appellant in the manner stated supra.

4. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the State.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The main foundation is laid by the prosecution by relying upon the evidence of P.W.1 to P.W.5, who are said to be the eyewitnesses to the incident. All of them state that they attended the enquiry conducted by P.W.24 and this enquiry was also attended by the appellant. On completion of the enquiry, they came to a hotel and at that point of time, the deceased crossed the road and all of a sudden, the appellant attacked the deceased in his head with a hammer. When P.W.1 to P.W.5 were cross-examined, it



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became very clear that they did not see the incident and they came to the scene of occurrence only after the incident. P.W.-1, in his cross-examination, states that he assumed that the appellant was hiding and all of a sudden attacked the deceased. Even though the FIR came to be registered at about 8.00 p.m. on 03.11.2014, this witness states that he saw the appellant in the police station between 8.00 p.m. and 9.00 p.m. on 03.11.2014 and M.O.1 was also available in the police station.

7. Insofar as P.W.2 is concerned, he is the brother of the deceased and he talks about the body of the deceased being taken in an ambulance on the next day after the date of incident at about 1.00 p.m. This witness further states that the appellant along with his parents were also present, when the enquiry was conducted by P.W.24.

8. Insofar as P.W.3 is concerned, he is the brother-in-law of the deceased and he also confirms the fact that he gave a statement to the police to the effect that he came to the spot only after the incident. Similarly P.W.4, who is the wife of the deceased and who gave the complaint against



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the deceased, gives a different version that she is not sure as to whether the appellant and his wife participated during the enquiry conducted by P.W.24. The most surprising part of her evidence is that she admits that she did not even participate in the enquiry conducted by P.W.24. In such an event, it is not known as to how she travelled with others after the enquiry to the hotel.

9. The evidence of P.W.5, who was an independent witness, also shows that he came to the scene of occurrence after he was informed about the incident. Therefore, it is clear that this witness also did not see the incident. It is, therefore, clear that the evidence of P.W.1 to P.W.5 cannot be taken at its face value, since it was established that they did not witness the incident and they came to the place only after the incident and saw the deceased lying dead with a head injury.

10. There is yet another reason as to why P.W.1 to P.W.4 could not have seen this incident and the same comes out of the evidence of the postmortem Doctor, who was examined as P.W.20 and through whom the postmortem certificate was marked as Ex.P-8. Before going through the



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evidence of P.W.-20, it will be relevant to extract the injuries as noted in the postmortem certificate:

“1.Head deformed.

2.Laceration of size 12 cms x 10 cms x brain deep noted on left forehead with part of brain being exposed.

3.Laceration of size 5 cms x 2 cms x bone deep noted on right temporal area of scalp.

4.Laceration of size 6 cms x 2 cms x bone deep noted on left temporal area of scalp.

5.Laceration of size 4 cms x 3 cms x bone deep noted over center of occipital area of scalp.

6.Abrasion of size 3 cms x 2 cms noted over front of right shoulder joint.

7.Abrasion of size 2 cms x 1 cm noted over left shoulder joint.

8.Abrasion of size 3 cms x 2 cms noted over front of right knee joint.

9.Abrasion of size 3 cms x 2 cms noted over front of left knee joint.”

11. It is clear from the above that nearly nine injuries were identified as ante mortem injuries. When this was put to P.W.-20, he categorically stated that there was no chance of the deceased sustaining nine injuries, if the appellant had attacked the deceased in the manner projected by the



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prosecution. According to the eyewitnesses, the appellant attacked the deceased with M.O.1 hammer in the head of the deceased. This version went against the medical evidence. In other words, there is a clear divergence between the ocular evidence and the medical evidence in this case. Whenever there is a contradiction between the ocular and medical evidence, on the circumstances of a given case, the Court has the discretion not to accept the ocular evidence. Usual reference can be made to the judgment of the Apex Court in ***Khambam Raja Reddy and another vs. Public Prosecutor, High Court of Andhra Pradesh*** reported in (2007) 1 SCC Crl.431. This judgment was followed by the Division Bench of this Court in ***Samuthravel and others v. State*** reported in (2019) 2 LW Crl. 584. In the present case, the medical evidence available totally improbabilises the ocular testimony of P.Ws.1 to 5. That is yet another reason to disbelieve the evidence of P.W.1 to P.W.5 in this case.

12. The complaint is said to have been given by the father of the deceased. There is absolutely no material available in the entire records to show through whom the complaint was marked as Ex.P.1. What is seen



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from the evidence of P.W.1 is that only his signature as the attesting party was marked as Ex.P-1. Therefore, the trial Court did not even care to properly mark the complaint and it went on an assumption that the complaint was marked and it was acted upon. The FIR was registered on 03.11.2014 at about 8.00 p.m., whereas, it reached the Court only on 04.11.2014 at 6.30 a.m. A mere delay in the FIR being sent to the Court cannot dislodge the case of the prosecution, if there are strong materials in the case. However, the shaky evidence of P.W.1 to P.W.5 and the fact that these witnesses could not have witnessed the incident, makes the delay in the FIR reaching the Court, a vital issue. The observation mahazar was prepared at 2.00 a.m. on 04.11.2014 and the documents relied on were marked as Ex.P4, Ex.P6 and Ex.P13. If that be so, there was no reason as to why the FIR reached the Court only at 6.30 a.m.

13. The most crucial evidence of P.W.-24 improbabilises the presence of the accused/appellant in the scene of occurrence, as was sought to be projected by P.W.1 to P.W.5. P.W.24 categorically states that the appellant did not participate in the enquiry. If that be so, the evidence of P.W.1 to



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P.W.5, as if the appellant also participated in the enquiry and after the enquiry, he waited near the hotel and attacked the deceased becomes highly doubtful.

14. The most shocking part in the present case is that there is absolutely no evidence as to who took the body of the deceased from the scene of occurrence and to which hospital he was taken and as to whether any accident register was prepared by the concerned Doctor. It is even more shocking that there is not even a request for postmortem that was given by the Investigating Officer. In short, there is absolutely no explanation as to what happened to the dead body of the deceased from 7 p.m., on 03.11.2014, till the postmortem was conducted by P.W.20 at about 10.40 a.m. on 04.11.2014. The investigation has been carried out in such a slipshod manner either because of the sheer ignorance in conducting investigation or to cover up the lapses. None of the witnesses (P.W.-1 to P.W.5) were able to explain as to who took the dead body of the deceased and to which hospital it was taken and as to who accompanied the dead body. Even the Investigating officer, who was examined as P.W.-28, was



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not able to explain this vital fact. This is yet another reason as to why the evidence of P.W.1 to P.W.5 is totally unbelievable and they could not have witnessed this incident.

15. This Court is only reminded of the judgment of the Apex Court in *Vadivel Thevar v. State of Madras* reported in *AIR 1957 SC 614*. For proper appreciation, Paragraph Nos.11 and 12 of the judgment are extracted hereunder:

“11. That was a case from Somaliland to which the provisions of the Indian Evidence Act (I of 1872) and of the Indian Oaths Act (X of 1873), had been made applicable. Special leave had been granted to appeal to His Majesty-in-Council on the ground that the local courts had admitted and acted upon the unsworn evidence of a girl of 10 or 11 years of age. Their Lordships upheld the conviction and sentence of death, holding that the evidence, such as it was, was admissible. In the course of their Judgment, they made the following observations (at pp. 5-6) which are pertinent to the present controversy :

"It was also submitted on behalf of the



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appellant that assuming the unsworn evidence was admissible the Court could not act upon it unless it was corroborated. In England where provision has been made for the reception of unsworn evidence from a child it has always been provided that the evidence must be corroborated in some material particular implicating the accused. But in the Indian Act there is no such provision and the evidence is made admissible whether corroborated or not. Once there is admissible evidence a court can act upon it; corroboration, unless required by statute, goes only to the weight and value of the evidence. It is a sound rule in practice not to act on the uncorroborated evidence of a child, whether sworn or unsworn, but this is a rule of prudence and not of law."

12. The decision of this Court in the case of Vemireddy Satyanarayan Reddy and three others v. The State of Hyderabad was also relied upon in support of the contention that in a murder case the court insists on corroboration of the testimony of a single witness. In the said reported decision of this Court, P.W. 14 has been described as "a dhobi boy named Gopai." He



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was the only person who had witnessed the murder and his testimony had been assailed on the ground that he was an accomplice. Though this Court repelled the contention that he was an accomplice, it held that his position was analogous to that of an accomplice. This Court insisted on corroboration of the testimony of the single witness not on the ground that his was the only evidence on which the conviction could be based, but on the ground that though he was not an accomplice, his evidence was analogous to that of an accomplice, in the peculiar circumstances of that case as would be clear from the following observations at p. 252 :

".....Though he was not an accomplice, we would still want corroboration on material particulars in this particular case, as he is the only witness to the crime and as it would be unsafe to hang four people on his sole testimony unless we feel convinced that he is speaking the truth. Such corroboration need not, however, be on the question of the actual commission of the offence; if this was the requirement, then we would have independent testimony on which to act and there would be no need to rely on the evidence of one



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whose position may, in this particular case, be said to be somewhat analogous to that of an accomplice, though not exactly the same."

16. In the present case, the evidence available on record are wholly unreliable and hence, this Court does not have any difficulty in coming to the conclusion that the prosecution has not proved the case beyond reasonable doubt and proceed further to acquit the appellant from the charge framed against him.

17. In view of the above discussion, the criminal appeal is allowed and the appellant is acquitted of the charge under Section 302 IPC. Fine amount, if any, shall be refunded to him. Bail bond shall stand terminated.

[J.N.B., J.] & [N.A.V., J.]
20.09.2022

Index : Yes/No
Internet : Yes
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To

1.The Additional Sessions Judge (Fast Track),
Theni.

2.The Inspector of Police,
Varusanadu Police Station,
Theni District.

3.The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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**J.NISHA BANU, J
AND
N.ANAND VENKATESH, J**

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Judgment made in
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