



Crl.A.No.283 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 21.09.2023**

CORAM:

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR  
and  
THE HON'BLE MR.JUSTICE K.KUMARESH BABU**

**Crl.A.No.283 of 2018**

Chinnan @ Chinnapi

...Appellant

vs.

State Rep. by  
The Inspector of Police,  
Bargur Police Station,  
Anthiyur Taluk,  
Erode District.  
(Crime No.23 of 2015)

...Respondent

**Prayer:** Criminal Appeal filed under Section 374 (2) Cr.P.C., against the Judgment of conviction and sentence of the accused made in S.C.No.32 of 2016 on the file of IV Additional District and Sessions Court, Bhavani dated 27.02.2018 and to set aside the same.



Crl.A.No.403 of 2016

For Appellant : Mr.Kaithamalai Kumaran  
For Respondent : Mr.R.Muniyapparaj  
Additional Public Prosecutor  
Assisted by Mr.M.Sylvester John

## **J U D G M E N T**

**(Judgment of the Court was delivered by K.KUMARESH BABU, J.)**

The appellant is the sole accused in S.C.No.32 of 2016 on the file of the IVth Additional District Sessions Court, Bhavani. He stood charged for the offence under Section 302 of IPC. By judgment dated 27.02.2018, the Trial Court convicted the appellant/accused under the charge and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 302 IPC. Challenging the said conviction and sentence, the appellant/accused is before this Court with this appeal.



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2.The case of the prosecution in brief is as follows:

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The victim along with his wife is engaged in agriculture and rearing of goats and cattle and were residing in Bargur-B village, Velambattiputhur, Anthiyur Taluk. The accused is the younger brother of the victim. The defacto complainant is the wife of the deceased. One year prior to the incident, the defacto complainant and the deceased had brought one proposal for marriage to the accused from Karnataka, and the marriage was also fixed. But after 6 months, the accused had stopped the marriage arrangements stating that he did not want to marry the girl arranged by the family and he insisted on looking for another proposal.

3.On 08.06.2015 at about 9.45 A.M., when the victim was preparing to take the goats for grazing, the accused shouting at the deceased that *"you will not arrange marriage for me as long as you are alive, you will not let me be at peace, I will be at peace only if you die"*, had attacked the victim with an sickel on his left



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side of the neck. The deceased had suffered a severe cut injury and bleeding heavily, had died on the spot. The accused had ran away with the sickle from the scene of occurrence.

4.The respondent Police registered a case against the appellant/accused in Crime No.23 of 2015 for the offence committed under Section 302 IPC. The respondent police after investigation laid a charge sheet and filed a Final Report against the appellant/accused before the IVth Additional District Sessions Court, Bhavani and the same was taken on file in S.C.No.32 of 2016.

5.During trial, on the side of the prosecution, fifteen witnesses were examined and twenty documents were marked as Exs.P1 to P20 and seven material objects were exhibited.



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6. After completing the examination of prosecution witnesses, incriminating circumstances were culled out from the evidence of prosecution witnesses and the questions were put before the accused under Section 313 Cr.P.C., and the same was denied by the accused as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was let in.

7. On completion of trial, after hearing the arguments advanced on either side, considering the material facts, the Trial Court concluded that the guilt of the accused is proved beyond reasonable doubt, and the accused is liable to be punished under Section 302 IPC and convicted. Challenging the judgment of conviction, the accused has preferred the present Criminal Appeal.

8. Heard Mr. Kaithamalai Kumaran, learned counsel appearing for the appellant and learned Additional Public Prosecutor Mr. R. Muniyapparaj, assisted by M. Sylvester John appearing for the respondent and perused the materials available on record.



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9.Learned counsel appearing for the appellant/accused would submit that

the prosecution has failed to prove the case beyond reasonable doubt. The story as laid down by the prosecution is that the accused, the own brother of the deceased, has attacked the victim with an intention to cause death for the reason that the victim has not arranged the marriage of the accused is unbelievable. He would submit that the victim had an previous enmity with one Jawarayan, who was the first husband of the defacto complainant and Amavasa Gounder, who is the neighbour of the victim. He would also submit that in the cross examination of the P.W.1 she has deposed that Jawarayan has stated that he would kill P.W.1, this clearly shows that he has an enmity towards P.W.1. The death of the victim might have been caused by any of these persons and not by the appellant herein.

10.He would further submit that if the incident had been witnessed by P.W.1 and P.W.2, they might have gone near the deceased and have tried to take him and there are chances of blood stains to be left in their dresses. But in this



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case, the wife and daughter had not gone near the victim, this itself is sufficient to state that both P.W.1 and P.W.2 were not present at the scene of occurrence or the murder might have happened somewhere else, the body alone might have been put near the house. He would also submit that P.W.2 in her examination had deposed that the accused after causing death of the victim had gone to the Police Station, but P.W.1 had deposed that he ran away from the scene of incident, these statements are contradictory and moreover P.W.2 in her cross examination had deposed that she has got married to one Murugan, if that being so there are no chances of the presence of P.W.2 at the scene of incident. Hence the benefit of doubt has to be given to the accused as the prosecution has failed to prove the case beyond reasonable doubt and the judgment of the Court below is liable to be set aside. He would also submit that no material evidence has been led by the prosecution to substantiate the motive alleged. He would also draw the attention of this Court that the relevant material object was not sufficient to cause such injury as that the Medical Officer was not even examined to that aspect.



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11.Per contra, learned counsel for the respondent would contend that the accused is the brother of the victim. The victim along with his wife and children were residing in velampattipudhur. The deceased has one elder sister, two younger brothers and two younger sisters. One younger brother named Chinnan, the accused herein, was engaged in rearing goats. On 08.06.2015, when the victim was taking the goats for grazing the accused with an intention to kill the victim had taken the sickle and had attacked the victim on his left side neck. In the report of the postmortem, Doctor states that the cause of death is due to severe haemorrhage, shock and extreme bleeding due to incised injury on the neck.

12.He would submit that P.W.1 and P.W.2 who are the wife and daughter of the victim were present at the scene of occurrence and had also deposed about the incident. P.W.1-Kannamma had also deposed that the accused used to quarrel with the deceased frequently for not arranging marriage for the accused. She had also deposed that before one year of the incident, marriage was arranged for the accused, but he himself had stopped it. P.W.2-Vinayaki, the daughter of the victim



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had deposed that when the accused attacked the victim, he was stating that "*only if you die my marriage will happen*". He would further submit that these depositions

of the eye witness would corroborate that the accused had enmity towards the victim and he had only caused the death. He would submit that as the case of the defence, if anyone else might have caused the death of the victim, then somebody should have seen them. But, in this case, both the eye witnesses would only corroborate that the accused had caused the act and he had run away with the sickle. Hence, there is no need to interfere with the findings of the Trial Court and prayed for dismissal of the appeal.

13.We have heard the submissions on either side and have perused the materials available on record.

14.The primary reason assigned by the prosecution for the motive of the appellant to commit the offence is that the victim being the elder brother of the appellant/accused had been delaying the marriage of the appellant, which has



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enraged the appellant to commit the offence. To drive home the case of the prosecution, the prosecution had examined P.W.1 & P.W.2 who are the wife and daughter of the victim as the only eyewitnesses. The other witnesses who alleged are not eyewitnesses, but those witnesses who came to the spot little later after the commission of the offence. Even though all the witnesses have spoken about the fight between the victim and the accused, their evidence on a thorough reading seems to be parrot-like repetition which forces us to come to a conclusion that such theory had been built up by the prosecution to create a motive to frame the appellant/accused.

15. We are also fortified to come to such a conclusion for the simple reason is that, even though the prosecution was aware of a broken marriage allegedly at the behest of the appellant/accused, they have not examined the parties who were involved in such marriage proposals to drive the theory of mens rea as formulated by the prosecution. Therefore, we are not convinced of the theory of mens rea as formulated by the prosecution.



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16. Be that as it may, the victim had been killed which according to the prosecution, had been evidenced by P.W.1 & P.W.2. According to P.W.1, the alleged incident had taken place at 9.45 A.M. and on information from the neighbours, the Police had arrived at the crime scene and recorded evidence. But on the contrary, the FIR speaks otherwise. A reading of the FIR would reveal that P.W.1 had visited the Police Station at 12.45 P.M. on the same day of the incident and had recorded her complaint. Further, there are contradictions in the evidence of P.W.1 & P.W.2, who are the wife and daughter of the deceased.

17. It is also surprising that as claimed by P.W.1 & P.W.2, who are the wife and daughter of the deceased who have been present at the time of the incident, they have not taken any efforts to save the victim. It is natural for people of such close relationships to go near the victim and try to help the victim in which process, they would have stained themselves with the blood of the victim. In the present case, there are categorical depositions during the cross examinations not only by P.W.1 & P.W.2 but also by other witnesses that the direct eyewitnesses



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did not have any blood stains even in their dresses. These findings force us to come to a conclusion that P.W.1 & P.W.2 had not witnessed the incident at the given time.

18.We are also convinced that P.W.2, who was a minor at the time of the incident had not spoken the truth on oath. She had given contrary, to the statement given by P.W.1 and had also herself during her cross-examination.

19.In view of the aforesaid findings, we are afraid that the Court below had come to an erroneous conclusion that there is a motive as alleged by the prosecution for the appellant to commit the offence. That apart, as enumerated above, the evidence of P.W.1 & P.W.2 cannot be driven through to hold that the appellant/accused had committed the crime.

20.In fine, we are of the strong view that the appellant is entitled to succeeding the appeal and the conviction & sentence passed by the Court below in



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S.C.No.32 of 2016 dated 27.02.2018 is liable to set aside. Accordingly, the

conviction & sentence passed by the Court below is set aside. Any fine paid by the

appellant shall be refunded.

21.In the result, this Criminal Appeal is allowed.

**(R.S.K.,J.) (K.B.,J.)**

**21.09.2023**

Index: yes/no

Speaking order:yes/no

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To

1.The IV Additional District and Sessions Court,  
Bhavani.

2.The Inspector of Police,  
Bargur Police Station,  
Anthiyur Taluk,  
Erode District.  
(Crime No.23 of 2015)

3.The Public Prosecutor,  
High Court of Madras, Chennai – 104.



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**R.SURESH KUMAR, J.**  
and  
**K.KUMARESH BABU, J.**

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