



CrI.A.No.365 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**

CrI.A.No.365 of 2018

Chinnavedi

...Appellant

vs.

1.State represented by
Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District
Crime No.562 of 2016.

2.Periyasamy

...Respondents

Prayer: Criminal Appeal filed under Section 378 of Cr.P.C., to set aside the judgment passed in S.C.No.38 of 2017 on the file of learned Principal District and Sessions Judge, Krishnagiri, dated 07.07.2017.

For Appellant : Mr.K.Thiruvengadam

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by Mr.M.Sylvester John for R1
Mr.AR.Karthik Lakshmanan for R2

J U D G M E N T

(Order of the Court was made by K.KUMARESH BABU,J.)



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This Criminal Appeal is arising out of the judgment of acquittal of the second respondent/accused under Section 302 of IPC by order dated 07.07.2017 passed in S.C.No.38 of 2017 on the file of the Principal District and Sessions Judge, Krishnagiri. The *defacto* complainant has filed this appeal.

2. The brief facts of the case is as follows:

There was a land dispute between the appellant and the 2nd respondent/accused over construction of a house by the appellant herein in the manner obstructing the pathway to the accused property. On the day of incident i.e., 01.09.2016 at about 2.30 p.m., when the appellant was constructing the basement of his house, the accused intervened and demolished the construction and threatened to kill him. On the same day at about 3.30 p.m., when the appellant proceeded to the cement shop, the accused intervened the appellant and there arose verbal dispute and the accused cautioned the victim that he will murder him. Frightened and scared about the same, the appellant had called his paternal uncle, the victim and he reached the scene of occurrence. The accused attacked the victim on his neck forcibly and threw him on to the road, where he fell and died on the spot. The



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same was witnessed by P.W.1 to P.W.3.

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3.The first respondent police registered a case against the second respondent/accused in Crime No.562 of 2016, for the offence committed under Section 302 IPC. The first respondent police after investigation laid a charge sheet against the second respondent/accused before the Principal District and Sessions Judge, Krishnagiri and the same was taken on file in S.C.No.38 of 2017.

4. During trial, before the Trial court, on the side of the prosecution, fourteen witnesses were examined as P.Ws.1 to PW.14 and nine documents were marked as Exs.P1 to Exs.P9. Three material objects were exhibited.

5.After completing the examination of prosecution witnesses, incriminating circumstances were culled out from the evidence of prosecution witnesses and 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.



6. On completion of trial, after hearing the arguments advanced on either side and on considering the material facts, the Trial Court concluded that the prosecution failed to establish the guilt of the accused beyond reasonable doubt punishable under Section 302 IPC and acquitted the accused by extending the benefit of doubt on him. Challenging the judgment of acquittal, the *defacto* complainant has preferred the present Criminal Appeal.

7. Heard Mr. Thiruvengadam, learned counsel appearing for the appellant, learned Additional Public Prosecutor Mr. R. Muniyapparaj, assisted by M. Sylvester John appearing for the first respondent and Mr. A. R. Karthik Lakshmanan, learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel appearing for the appellant/complainant would contend that on 01.09.2016, at about 4.00 p.m., when the victim was sitting on the under pass near Bannihallipudhur bus stand, the accused with an intention to cause death of the victim had held on his shirt collar tightly in the front side of his neck and hit his neck with his hand saying die with this and pushed him onto the road, the victim collapsed and died on the spot.



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9.He would submit that the victim has sold his two (2) cents of land to the father of the accused before 6 years of the incident and when P.W.1-Chinnavedi started construction of his house in one cent of land which belongs to him, the accused told P.W.1 to leave the way for his property and to construct the house and had demolished the basement construction done by the appellant. Further the accused stated that he will not leave P.W.1 without killing him. On the same day at about 3.30 p.m. when P.W.1 proceeded to buy cement, the accused obstructed his way and threatened him. P.W.1 has informed the incident to his paternal uncle and at about 3.30 p.m. when the victim has reached the scene of occurrence the accused had attacked the victim by catch holding his shirt collar and tightened the same, thereby the victim died out of suffocation.

10.He would further submit that on the same day of the incident P.W.1 had given a complaint to Kaveripattinam Police Station at about 18.00 hours. On 02.09.2016, postmortem was conducted by P.W.6-Dr.Sathishkumar, at about 11.10 A.M., and had submitted his report that the deceased would appear to have died of asphyxia due to compression over the



neck. Further the report of the Doctor clearly suggest that all his internal organs were normal, there was bluish discoloration of finger nails of the victim and dark red contusion were seen on upper part of right and left side of the neck muscles.

11.The learned counsel would further submit that, P.W.1 to P.W.3 are the eye witnesses to the incident and they have deposed that the accused had attacked the victim and pushed him onto the road, due to which the victim had died. It is further submitted that P.W.7 and P.W.8 in their examination had deposed that on 01.09.2016, at about 2.30 p.m., there was a dispute between the accused and P.W.1 at the time of construction of the basement where all intervened and warned the accused/appellant. Therefore, it is submitted that the eye witnesses had corroborated by the medical evidence that due to the attack on the neck of the victim by the accused, the victim had collapsed and died, hence the judgment of the Court below is liable to be set aside.

12.Per contra, learned counsel for the second respondent/accused would contend that the victim had himself fallen from the under pass. P.W.1 to P.W.3 of the prosecution witnesses have not testified that the accused had



heavily hit on the neck of the deceased or had tightened the collar of the victim's shirt. He would further submit that the victim had no external injuries. There is no sign that the victim was strangled, as there was no mark on the neck of the victim. The postmortem report suggest that the victim had died out of suffocation. The doctor has also testified that there was no possibility of asphyxiation due to the neck injury. The Doctor did not say that the hit on the neck caused asphyxiation. The complaint given by the P.W.1 did not allege hit or punch on the neck.

13.He would further submit that it is well evident from the prosecution witnesses statements that there is no dispute between the victim and the deceased. There was only quarrel between the P.W.1 and the accused.

14.He would further submit that P.W.4-Mallappan, the son of the victim had deposed in his cross examination that there was a land dispute between the accused and P.W.1, this dispute started 6 years prior to the incident. It is further submitted that there was no dispute between the victim and the accused, as the victim did not sell any land to the accused and when there is no dispute between them, there arises no need for the accused to



attack the victim.

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15.He would further submit that, P.W.3-Shivakumar in his examination had deposed that when the accused had attacked and pushed the victim onto the road, P.W.3 had held the victim without falling and made him lie on the road and had given water to him. Further P.W.2-Madhesh in his examination had deposed that when the accused had grabbed the shirt collar of the victim, the victim had grabbed the lungi of the accused and both dragged each other about 2 feet away and when the deceased fell down, the accused went to attack P.W.1, on seeing this the deceased stood up immediately and asked why are you hitting my son. Hence the testimony of two eye witnesses are contradictory to each other and contra to the evidence of PW-1.

16.He would further submit that there is no motive established and the prosecution has failed to prove its case beyond reasonable doubt, the benefit of doubt given by the Trial Court is right. Hence, there is no need to interfere with the findings of the Trial Court and prayed for dismissal of the appeal.



17.The learned Additional Public Prosecutor would also submit that the judgment of the Court below does not call for any interference and the evidences of PW-1 to PW-3, who were the eye-witnesses have given contradictory evidences which do not support the case of the prosecution. Hence, the prosecution has also not preferred any appeal.

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

19.The alleged incident had been primarily witnessed by PW-1 to PW-3. A perusal of the deposition of PW-1 to PW-3 would clearly lead to a irresistible conclusion that they were not cogent and supporting the case of the prosecution. There are very many discrepancies in the deposition of the three aforesaid witnesses, who had claimed to be present during the alleged incident which only creates a doubt on the case of the prosecution.

20.Further, the post-mortem report also do not point out to any external injuries that the victim had been inflicted. Both Ex.P1, the First Information Report and the evidence of PW-1, who only supported Ex.P1 would show that the second respondent herein had forcibly attacked the victim and had



thrown him on the cement road which would definitely be caused injuries on the victim, atleast bruise injury on the victim. Such is not the post-mortem which also creates a doubt as to the manner in which the alleged incident had taken place creating a doubt on the evidence of PW-1, who is the appellant herein. Further, the Doctor, who had been examined, had supported the post-mortem report and had specifically deposed that the victim had died due to asphyxia. She had also clearly admitted that the death could not have occurred due to the red contusion on the neck portion, which is the only injury that had been noted during the post-mortem.

21.Further, the Court below heard in detail, evaluated each and every allegation which was made by the prosecution and had given a detailed findings and reasonings that such allegation as contemplated by the prosecution does not prove the case beyond reasonable doubt whereby it had acquitted the second respondent herein.

22.Apart from the findings and reasonings given above, we also do not find any infirmity in the order of acquittal passed by the Court below.



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23.In fine, the Criminal Appeal is dismissed and the order made by the

Court below in S.C.No.38 of 2017 is confirmed.

(R.S.K.,J.) (K.B.,J.)
21.09.2023

Index: yes/no
Speaking order:yes/no
pbn



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To
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1. Principal District and Sessions Judge, Krishnagiri District
2. The Public Prosecutor,
High Court of Madras, Chennai – 104.
3. State represented by
Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District



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R.SURESH KUMAR, J.
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