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Crl.A.No.449/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.10.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CRL.A.No.449/2022

1]Kala

2]M.G.@Gandhi

.. Appellants/A1
& A2

Vs

State of Tamil Nadu
represented by
The Inspector of Police
Kambainallur Police Station.
Dharmapuri District.

.. Respondent/
Complainant

Appeal filed under section 374 [2] Cr.P.C., against the conviction imposed in the judgment dated 03.03.2022 in SC.No.189/2014 on the file of the learned Additional District and Sessions Judge, Dharmapuri.



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For Appellants : Mr.N.Manoharan
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by SUNDER MOHAN, J.]

(1)The appellants who are arrayed as A1 and A2 have come forward with the above appeal challenging their conviction and sentence imposed by the learned Additional Sessions Judge, Dharmapuri, by the judgment dated 03.03.2022 in SC.No.189/2014 convicting each of the appellants for the offence u/s.302 IPC and sentencing each of them to undergo life imprisonment and to pay a fine of Rs.5,000/- each and in default, to undergo two years rigorous imprisonment.

(2)The prosecution case in a nutshell is to be narrated here under:-

(a)The deceased Mahendran and A1-Kala are husband and wife. A2-Gandhi is alleged to be the paramour of A1. The deceased and A1 had got four children and they were residing at Mallammapuram. The deceased Mahendran is a drunkard and a spendthrift and he was aware of the illicit intimacy between A1 and A2. It is also the case of the prosecution that the deceased had given his ancestral property to



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his sister/wife of PW1. In this regard often quarrel arose between the spouses and the deceased left his wife and children and was staying separately at Pappanur. Hence, A1 and her children, who are juveniles, decided to do away with the life of the deceased.

(b) On the fateful day of occurrence, i.e., on 04.08.2009 at about 8.00 p.m., A1 informed the deceased over phone that their daughter Menaka was suffering from brain fever and hence, the deceased went to Mallammapuram to see his daughter. On 05.08.2009, during night hours, when the deceased was sleeping in front of the house, due to previous enmity, the juveniles caught hold of their father/deceased, while A1 inflicted cut injuries upon the deceased using a Koduval [M.O.1] on his face, chin and neck. A2 also inflicted injuries on the deceased with the same Koduval [M.O.1] on his face and chin. The deceased died due to shock and hemorrhage. PW1-Raja, husband of the sister of the deceased was informed about the occurrence over phone on 06.08.2009 at about 11.00 a.m. and he reached the scene of occurrence at about 12.00 Noon and he found the deceased lying dead with cut injuries.



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(c) Thereafter, P.W.1 went to the respondent police and lodged a complaint under Ex.P1. P.W.21-Sub Inspector of Police attached to the respondent police, on receipt of the complaint under Ex.P.10, registered a case in Crime No.264/2009 for the commission of the alleged offences u/s.147, 148, 302 IPC. Ex.P.10 is the Express FIR. He sent the same to the Magistrate and to the higher officials concerned.

(d) Mr. Jayamohan, Inspector of Police, on receipt of Ex.P.10 [FIR], went to the scene of occurrence. He prepared the Observation Mahazar [Ex.P.4] and a rough sketch [Ex.P.14] in the presence of the witnesses. He held inquest on the dead body of the deceased and prepared the Inquest Report. Ex.P.15 is the Inquest Report. The Investigating Officer also collected blood stained cement plaster piece [M.O.4] ; sample cement plaster piece [M.O.5] ; blood stained white colour shirt [M.O.6] ; blood stained dhoti [M.O.7] under the Mahazar [Ex.P.12]. The blood stained Koduval [M.O.1] was seized under a Mahazar [Ex.P.13]. Thereafter, he sent the dead body for postmortem through the police Constable.



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(e) Dr.Senthilkumar, P.W.17, was working as Assistant Surgeon at the relevant point of time in the Government Hospital, Harur. He conducted postmortem on the dead body of the deceased on 07.08.2009 at about 4.00 p.m. as per the requisition from the police constable. He found the following injuries:-

EXTERNAL INJURIES:-

1]Cut injury extending from back of neck right side passing through left ear, left maxillary region, right nose, right maxillary region, deep cut injury 40x3x9cm, blood ooze from the wound.

2]Cut injury extends from back of neck left side, left mandible region 20x3x4cm.

3]Cut injury extending left of the neck to the centre of the neck 10x3x3cm."

Ex.P.6 is the Postmortem Certificate wherein the doctor, after obtaining the Bone Case Report under Ex.P7, has opined that the deceased would appear to have died of shock and hemorrhage due to cut injury of vital organs. Ex.P8 is the Final Opinion of P.W.17.

(f) Mr.Jayamohan, the investigating officer continued his investigation and examined the other witnesses ; recorded their statements. The first accused surrendered before the Judicial Magistrate, Harur on



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7.8.2009 and remanded to Judicial custody. Mr. Jaymohan the investigation officer took police custody of the first accused and recorded her confession statement on 21.8.2009. He arrested the second accused and the juveniles alleged to be involved in the occurrence on 7.9.2009. Pursuant to the confession statement of A2/M.G.@ Gandhi, the admissible portion of which is marked as Ex.P.11, he recovered M.O.1-Billhook. He also examined the doctor [P.W.17] who has conducted the postmortem and received the Post Mortem Certificate [Ex.P.6]. He has given a requisition to the Magistrate Court for sending the material objects for chemical examination. After the receipt of the Biological Report [Ex.P.16] and Serological Report [Ex.P.17] and after completion of the investigation, he handed over the case file to P.W.22 for further investigation.

(g) P.W.22, Mr.Anbazhagan, the Inspector of Police, continued the investigation and recorded the statements of P.Ws.14, 15, 16,18, 19, 20 and 21 individually. On completion of investigation, he filed separate charge sheets against both the accused for the offence



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u/s.302 IPC and against the juveniles.

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- (h) The prosecution in order to bring home the charge against the accused, examined P.Ws.1 to 22, filed Exs.P.1 to 20 beside marking M.Os.1 to 8.
- (3) When the accused were questioned under section 313 Cr.P.C., in respect of the incriminating materials appearing against them through the evidence adduced by the prosecution, the accused have come forward with the version of total denial and they have stated that they have been falsely implicated in the case. They have not chosen to examine any witness nor marked any documents on their side.
- (4) The learned Trial Judge, on consideration and appreciation of the evidence adduced by the prosecution, has found the accused / appellants guilty and convicted and sentenced them as stated above. Hence, the present appeal.
- (5) This Court has given its careful and anxious consideration to the rival contentions put forward by either side and also thoroughly scrutinised the entire evidence available on record and perused the impugned Judgment of conviction.



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(6)It is seen that the prosecution has established the fact through the evidence of the P.W.17, the postmortem doctor and the other evidence on record that the deceased died due to homicidal violence. The said fact is not disputed by the appellants herein.

(7)The next question is whether the appellants and the juveniles said to be involved were responsible for causing the death of the deceased.

(8)It is the case of the prosecution that the complaint given by PW1, Exhibit P1 led to the registration of FIR (Ex.P10). PW1 had stated in the complaint that he came to know around 11 am on 6.8.2009 that the first accused along with her minor children caused the death of the deceased; that he went to the scene of occurrence at about 12 noon; that he found the deceased dead with cut injuries; that he came to know that the second accused had assisted the other accused in causing the death of the deceased; and that the son P.W.2 had dropped the deceased at the house of the accused on 05.08.2009 and returned the same day to his house. The FIR was registered at 13.00 hours and sent to the learned Magistrate at 5.30pm on the same day. P.W.1 in his deposition before the Court would however state that P.W.2 after dropping the deceased had stayed in



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the house of the accused and P.W.2 informed him the next day after the registration of the FIR that he (P.W.1) witnessed the occurrence. P.W.1 had not explained as to how he came to know that the deceased was done to death by the accused when he gave the complaint. Even according to P.W.1, P.W.2 informed him that he witnessed the occurrence after he had lodged the complaint. P.W.1 had not stated as to who told him about the occurrence over phone. Be that as it may. It is the evidence of P.W.13 the Village Administrative Officer that he had gone to the scene of occurrence at 11.00 a.m. at 06.08.2009 on information that the deceased was found dead. He would further state that when he went to the scene of occurrence there was no one present there. Thereafter he went to the police station and gave information to the police. It is seen that the prosecution had not placed the said information on record. It is the version of P.W.13 VAO that only on his information the police came to know of the occurrence. Thus we find that the prosecution has suppressed the FIR given to the Police by the Village Administrative Officer. Further, as stated earlier it is not clear as to how P.W.1 came to know that the accused were responsible for the death. P.W.1 in his deposition before



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the Court had taken a contrary stand stating that P.W.2 after dropping the deceased at the house of the accused had stayed there along with the deceased and witnessed the occurrence. This version is an improvement and has been made to project P.W.2 as an eyewitness to the occurrence which is highly improbably going by the versions of P.W.1 and P.W.2.

(9) P.W.2 is the sole eyewitness to the occurrence according to the prosecution. The conduct of P.W.2 and his version does not inspire confidence to say the least. P.W.2 would offer an explanation in his deposition before the Court for not informing about the occurrence immediately either to the Police or to his father P.W.1. He would state that he was threatened by the accused that he would be killed if he revealed the occurrence to any person and therefore, he went to a village called Eechampadi and thereafter went to the Police Station and there he met his father-P.W.1. The evidence of P.W.2 is improbable. His conduct is opposed to normal human conduct. It is not his case that he was confined by the accused. He had gone to another village and thereafter went to meet his father. Therefore, this Court is of the view that P.W.2 could not have been an eyewitness which is fortified by the version of



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P.W.1 in the complaint, who had stated that P.W.1 went to drop the deceased at the house of the accused and had returned to his house on the same day, thereby ruling out the presence of P.W.2 at the time of the alleged occurrence.

(10) Apart from the fact that P.W.1 and P.W.2 cannot be believed as stated earlier the first information given by the VAO-P.W.13 to the Police has been suppressed. Further, this court is unable to comprehend as to why the assistance of dog squad led by P.W.18 was sought for by the prosecution if P.W.2 was really an eyewitness and had named the accused during the investigation. It is also admitted that the sniffer dog used by the dog squad did not give any clue about the identity of the persons involved in the crime.

(11) Apart from the evidence of P.W.1 and P.W.2 the other witnesses examined by the prosecution are of no avail to the prosecution case. P.W.6, to whom P.W.2 is said to have informed about the occurrence turned hostile. P.W.7 the son in law of the accused and P.W.11 the witness to the confession of the first appellant also turned hostile. The other witnesses had either turned hostile or are hearsay witnesses. P.W.16



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a finger print expert had deposed that he could not get any finger print when he visited the scene of occurrence on 06.08.2009.

(12) Thus from the narration of the above facts, it can be seen that the prosecution has failed to establish that the appellants and the other juvenile accused caused the death of the deceased. The learned Additional public prosecutor would contend that since the occurrence took place at the house of the accused, they owe an explanation as to how the occurrence took place as the fact is especially within their knowledge in terms of Section 106 Indian Evidence Act. Apart from the testimony of PW.1 and P.W.2, whose versions are doubtful and unreliable, there is no evidence to show that the accused lived in the place where the body of the deceased was found. The accused had suggested to P.W.1 that he was responsible for causing the death through his henchmen and thereafter placing the body of the deceased outside the house of the accused. In order to further show that P.W.1 is not a reliable person the defence had suggested to him that on 10.07.2017 P.W.1 through his henchmen had attempted to cause the death of the first appellant and had caused the death of one of the minor children by name Vetrivel and an FIR and an



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investigation was pending though, P.W.1 was not named in the FIR. However, these are only suggestions made by the accused during the cross examination. Be that as it may. In the absence of any conclusive evidence on the side of the prosecution to establish the guilt of the accused this Court is of the view that merely because the accused remained silent, their guilt cannot be presumed. Thus, this Court is of the view that it is not safe to render a finding of guilt as against the accused since there are glaring contradictions in the evidence of the witnesses and serious infirmities in the prosecution case.

(13) In view of the above said infirmities, inconsistencies and improbabilities, we are constrained to come to the inevitable conclusion that the impugned Judgment of conviction is unsustainable.

(14) Accordingly, the criminal appeal is allowed and the conviction and sentences imposed on the appellants by the learned Additional District and Sessions Judge, Dharmapuri., dated 03.03.2022 in SC.No.189/2014 are hereby set aside.

(15) It is reported that the appellants are in jail. Hence, the



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appellants/accused are directed to be set at liberty forthwith, if they are not required in connection with any other case. The fine amount, if any paid by the appellants shall be refunded to them.

[SSSRJ] [SMJ]
12.10.2023

Index : Yes / No
Internet : Yes / No
AP
To

1. The Additional District and Sessions Judge,
Dharmapuri.
2. The Inspector of Police
Kambainallur Police Station,
Dharmapuri District.
3. The Public Prosecutor
High Court, Chennai.



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