



Crl.A.No.617 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.11.2023

CORAM :

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

AND

THE HONOURABLE **MR. JUSTICE SUNDER MOHAN**

Crl.A.No.617 of 2023
and Crl.M.P.No.7670 of 2023

Aswanth

...Appellant/Accused

Vs.

State by :

The Inspector of Police,
Schoolagiri Police Station,
Krishnagiri District.

Cr.No.561/2013.

...Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374 (2) of Cr.P.C., to call for the records pertaining to the Judgment in S.C.No.105 of 2017 dated 30.03.2023 passed by the learned Additional District and Sessions Judge, Hosur, Krishnagiri District, and set aside the same.

For Appellant :: Mr.A.Balamurugan

For Respondent :: Mr. A.Gokulakrishnan
Additional Public Prosecutor

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JUDGMENT

(Order of the Court was made by **SUNDER MOHAN, J.**)

The appellant/sole accused has challenged the judgment of conviction and sentence, dated 30.03.2023, passed by the learned Additional District and Sessions Judge, Hosur, in S.C.No.105 of 2017.

2. It is the case of the prosecution that on 21.08.2013, at about 4:00 a.m., the accused and the deceased, who were working in a poultry farm, quarrelled with each other since the deceased is said to have abused the parents of the accused; that the accused is said to have inflicted cut injuries with an axe on the head and neck of the deceased, as a result of which the deceased died.

3. P.W.1 is the owner of the poultry farm. On coming to know that the deceased was found dead in his poultry farm, he made a complaint to the respondent, which was marked as Ex.P1. Based on the complaint given by P.W.1, the Inspector of Police – P.W.13, registered the FIR for the offence under Section 302 of the Indian Penal Code. The Inspector of Police –



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P.W.13, commenced the investigation, went to the scene of the occurrence, and prepared the Rough Sketch and the Observation Mahazar, which were marked as Exs.P10 and P11, respectively. Thereafter, P.W.13 conducted Inquest and the Inquest report was marked as Ex.P12. The body of the deceased was sent to Post-mortem. The Post-mortem requisition letter was marked as Ex.P2. PW7, conducted the Post-mortem and issued Post-mortem certificate – Ex.P3. Thereafter, the Investigating Officer examined the other witnesses and filed a Final Report for the offences under Section 302 of the Indian Penal Code.

4. The accused was furnished with copies of all the documents under Section 207 of Cr.P.C. On committal, the accused was tried before the Principal Sessions Court, Krishnagiri District, for the offence under Section 302 of the IPC.

5. The prosecution examined P.W.1 to P.W.14 and marked sixteen documents as Exs.P1 to P16. MO-1 to MO-6 were marked as Materials Objects. The signature of P.W.6 was marked as Ex.C.1 (Court Exhibits). The defence neither examined any witnesses nor marked



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any documents.

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6. The Trial Court found that the accused is guilty of the offence under Section 302 of the Indian Penal Code, and after questioning under Section 235(2) of the Criminal Procedure Code, it sentenced him to life imprisonment and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for six (6) months.

7. The learned counsel for the appellant submitted that it is the case of no evidence as the witnesses, namely P.W.2 and P.W.11, who were cited by the prosecution as eye witnesses, turned hostile; that except for the official witnesses, all other witnesses examined even to prove the arrest and recovery of the accused turned hostile. The learned counsel further submitted that the prosecution had taken the accused into custody on the date of occurrence, as could be seen from the evidence of P.W.1. However, the Investigating Officer had falsely deposed that the accused was arrested on the next day morning. The learned counsel therefore submitted that the Judgment and conviction are liable to be set aside and prayed for acquittal.



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8. The learned Public Prosecutor per contra submitted that the occurrence took place in the Poultry Farm of PW1, where the deceased, accused, and a few others lived and were working in the Poultry Farm; that though P.W.2 and P.W.11 turned hostile, the circumstances in the case point out only to the guilt of the accused; and that the Judgment of conviction rendered by the Trial Court is in order and need not be interfered with.

9. This Court finds that, on perusal of the records, the post-mortem conducted by P.W.7 reveals that the deceased sustained the following injuries:

External Examination:

(1) Laceration over left angle of mouth to left pinna 7 x 5 x 2 cm bone exposed.

(2) Left ear lobe absent.

(3) Laceration extending from left chin to left upto 5 cm below left ear about 8 x 5 x 4 cm exposing mandible bone.

(4) Fracture of left mandible.

(5) (i) Laceration over centre of neck extending from left thyroid



cartilage upto left ear about 7 x 5 x 4 cm, exposing all major vessel, muscles and nerves carotid artery exposed and cut jugular vein also cut.

(5) (ii) Laceration over left shoulder joint about 15 x 7 cm bone deep exposing shoulder joint fracture of head of humerus.

(6) Fracture of shoulder joint.

(7) Laceration over back of left side neck about 7 x 5 x 2 cm bone deep.

(8) Laceration 3 x 2 x 1 cm over right side back of neck exposing the scapular bone.

(9) Laceration 7 x 3 cm bone deep over left hand exposing metacarpal bone.

(10) Laceration 8 x 3 cm bone deep over left parietal area of scalp.

Internal Examination:

1. Hyoid bone – Intact.

2. Ribs – Intact on both sides.

3. Heart with 250 gms chambers empty c/s. pale. Lungs Weight right – 380gms left 380 gms c/s pale.

4. Liver weight 1200 gms c/s pale.

5. Stomach contain semi-digested rice and ragi about 300 gms.

6. Kidney weight 90 gms each c/s pale.

7. Spleen weight 80 gms c/s pale.

8. Bladder empty.

9. Skull – Fracture of left temporal and parietal bone about 5 cm.



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10.Membranes Intact.

11.Skull brain weight 1200 gms c/s pale.

12.Base of skull intact subdural hematoma about 200 ml of blood present over left parietal area.

The Doctor had opined that the deceased died due to shock and hemorrhage due to the injury to vital vessels supplying blood to the head and body, as well as injury to the brain and multiple injuries. The evidence of the Doctor coupled with the Post-mortem certificate and the other evidence on record, confirms that the deceased died due to homicidal violence.

10. The next question is whether the appellant is the cause of the said violence.

11. The prosecution examined the following witnesses: P.W.1 is the Poultry Farm owner who admits that he came to know of the occurrence and about an earlier quarrel only later, and therefore, he is a hearsay witness. P.W.2 cited by the prosecution as an eyewitness turned hostile. Nothing has been elicited in the cross-examination to rely on his testimony. Similarly, P.W.11 is another who was cited as an eyewitness turned hostile.



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PW2 and P.W.11 have categorically stated that they did not know either the deceased or the accused. They did not say anything about the alleged occurrence or the previous wordy quarrel said to have taken place between the deceased and the accused.

12. P.W.3 speaks about seeing the deceased lying dead in the house the next morning. P.W.4 is the son of the deceased, who identified the deceased. P.W.5, who was examined by the prosecution to prove that the accused and the deceased were working in the poultry farm and he brought them to the farm, also turned hostile. P.W.6 stated that he had not signed in the Mahazer and was treated hostile. P.W.7 is the post-mortem Doctor. P.W.8 was the Constable who had assisted the Investigating Officer, during the inquest and also handed over the body of the deceased to his relatives. P.W.9 is the Mahazar witness for the observation Mahazer. P.W.10 is the witness to the confession statement said to have been given by the accused to the Police and for the recovery of the weapon. P.W.12 is a teacher who is said to have signed as a witness in the confession statement given to the Police by the appellant. P.W.13 is an Investigating Officer. P.W.14 is another Investigating Officer, who continued the investigation after P.W.13



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appellant, this is a case of no evidence, and the prosecution has failed to establish the involvement of the appellant in the crime. Therefore, the appellant is entitled to acquittal. The Judgment of the lower Court is liable to be set aside.

16. As a result, this Criminal Appeal is allowed and the judgment of conviction and sentence, dated 30.03.2023, in S.C.No.105 of 2017, passed by the Additional District and Sessions Court, Hosur Krishnagiri District, is set aside.

17. The appellant is acquitted of all the charges framed against him, and he is directed to be set at liberty forthwith unless his custody is required in connection with any other case. The fine amount paid by the appellant, if any, shall be refunded to him. Consequently, the connected miscellaneous petition is closed.

(S.S.S.R., J.) (S.M., J.)
01.11.2023

Speaking/Non-Speaking Order
Neutral citation : yes/no



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Copy to:-

1. The Additional District and Sessions Judge,
Hosur,
Krishnagiri District.
2. The District Munsif cum Judicial Magistrate – I,
Hosur.
3. The Superintendent of Prisons,
Central Prisons, Vellore.
4. The Inspector of Police,
Schoolagiri Police Station,
Krishnagiri District..
5. The Public Prosecutor
High Court of Madras,
Chennai – 600 104.



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AND
SUNDER MOHAN, J.
dk**

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