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CrI.O.P.No.32369 of 2022
in CrI.A.No.SR 29502 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2023

CORAM

THE HONOURABLE Mr. JUSTICE P.N. PRAKASH
AND
THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

CrI.O.P.No.32369 of 2022
in CrI.A.No.SR 29502 of 2020

State represented by
The Inspector of Police
Kumaratchi Police Station
Cuddalore District.
(Crime No.207/2016)

.. Petitioner/Appellant/Complainant

Vs.

Shanmugavadivel

..Respondent/Respondent/Accused

Criminal Original Petition filed under Section 378(3) Cr.P.C. to grant leave to file an appeal in S.C.No.255 of 2017 dated 29.08.2018, passed by the II Additional District and Sessions Judge, Chidambaram.

For Petitioner : Mr.R.Muniyappraj
Additional Public Prosecutor



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ORDER

[Order of the Court was made by N. ANAND VENKATESH, J.]

This petition has been filed by the State seeking for granting leave to file an appeal against the judgment and order in S.C.No.255 of 2017 dated 29.08.2018, acquitting the respondent/accused from all charges.

2. Heard Mr.R.Muniyappraj, learned Additional Public Prosecutor.

3. The case of the prosecution is that the deceased Napoleon and the accused were friends and both of them were residing in the same village. The deceased is said to have developed an illicit relationship with the wife of the accused and as a result, there was a previous enmity between the deceased and the accused. The further case of the prosecution is that on 18.02.2016, at about 03.30 p.m., the accused called the deceased to the motor shed of one Kamaraj and there was a quarrel between them and ultimately, the accused strangled the deceased with a towel around the neck and as a result, the deceased died on the spot due to asphyxia.



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4. The case of the prosecution is based on circumstantial evidence. To substantiate the same, the evidence of P.W-2, P.W-8 and P.W-17 were strongly relied upon by the learned Additional Public Prosecutor.

5. Insofar as the evidence of P.W-2 is concerned, he has stated that the accused was present near the dead body immediately after the incident. This evidence was relied upon by the Court below and a finding was given to the effect that the accused was present near the dead body of the deceased. Nothing more came out of the evidence of P.W-2.

6. Insofar as P.W-8 is concerned, he was the relative of the deceased and while he was recuperating in his house, he is said to have seen the accused running towards the northern side from the motor shed. While appreciating the evidence of P.W-8, the Court below has held that P.W-8 has not moved out of his house and in the cross examination, he had admitted that the motor shed was on the northern side from his house and therefore, if at all the accused person ran away from the motor shed, it can



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only be towards the southern side. Hence, the Court below has held that the evidence of P.W-8 cannot be acted upon.

7. Insofar as the evidence of P.W-17 is concerned, the Court below, on appreciation of the evidence of this witness, has come to a conclusion that the conduct of P.W-17 is unnatural and he sounded as if the accused came running towards the motor shed after the incident.

8. In view of the above discussion, the Court below, came to a correct conclusion that the very presence of the accused near the dead body of the deceased without anything more, cannot result in the conviction of the accused person for offence under Section 302 IPC. The finding rendered by the Court below is a “possible view” and the same cannot be interfered just because there is scope for another view on the basis of the evidence available on record.



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9. The petitioner has not made out any grounds for grant of leave and we do not find any ground to interfere with the judgment and order passed by the Court below.

10. In the result, this petition is dismissed.

[P.N.P., J.] [N.A.V., J.]

(02.01.2023)

Internet: Yes
Index: Yes/No
kp

To

1. II Additional District and Sessions Judge,
Chidambaram.
2. The Public Prosecutor
High Court, Madras

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