



Crl.A.No.1209 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.1209 of 2022

Ganesan

... Appellant/Accused

Vs.

The State
Represented by its
Inspector of Police,
Rosanai Police Station,
Tindivanam.

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., praying to set aside the judgment of conviction and sentence, dated 05.02.2015, in S.C.No.306 of 2015 on the file of the II Additional District and Sessions Court, Villupuram at Tindivanam.

For Appellant : Mr.P.G.Perumal Pandian

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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J U D G M E N T

(Judgment was delivered by **SUNDER MOHAN, J.**)

The appellant/sole accused has challenged the judgment of conviction and sentence, dated 05.02.2015, passed by the II Additional District and Sessions Court, Villupuram at Tindivanam, in S.C.No.306 of 2015. The appellant was convicted and sentenced by the trial Court as follows :

<i>Conviction</i>	<i>Sentence</i>
Section 302 IPC	Life Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for six months
Section 380 IPC	Rigorous Imprisonment for 2 years and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for one month
The sentences were ordered to run concurrently	

2.It is the case of the prosecution that, on 28.06.2015, at about 09.00 p.m., the appellant, who is the son of the deceased, aggrieved by the fact that the deceased did not pay Rs.50,000/- as demanded by the appellant, caused the death of the deceased while he was sleeping in the house by smothering the deceased with a pillow and thereafter, by hitting him with an iron rod; that thereafter, he took away cash and gold jewels from the house



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of the deceased. Further, it the case of the prosecution that the appellant took Rs.2,500/- in cash, a gold chain weighing 4 Sovereigns, a necklace weighing 2 Sovereigns and another gold chain weighing 2 Sovereigns. The prosecution case further states that one Raja (P.W.2), a neighbour of the deceased, went to the house of the deceased to give coffee to him in the morning and found the deceased lying in a pool of blood and pillow on the face of the deceased; that thereafter, P.W.2 informed the aunt of the deceased; that one Krishnamurthy, another neighbour, informed about the occurrence to the Police. Thereafter, P.W.1, who is another neighbour of the deceased, is said to have given a complaint at about 15.00 hours on 29.06.2015. The Sub-Inspector of Police (P.W.7), on receipt of the complaint, registered a case in Crime No.341 of 2015 for the offence under Section 302 IPC. The printed FIR was marked as Ex.P3.

3.The Inspector of Police (P.W.13), on receipt of the FIR, went to the scene of occurrence at about 15.30 hours on the same day and prepared the Observation Mahazar, marked as Ex.P2, and Rough Sketches, marked as Exs.P11 and P12. Thereafter, P.W.13 conducted inquest between 04.00 p.m.



and 05.00 p.m. on the same day and prepared the Inquest Report Ex.P13.

He sent the body of the deceased to the Tindivanam Government Hospital, through Constable P.W.11 for postmortem. Thereafter, P.W.13 seized the blood stained earth and earth which was not blood stained, bed-sheet and blood stained pillows through a Seizure Mahazar (Ex.P4). On 13.07.2015, P.W.13 arrested the appellant at about 08.00 a.m. in the presence of Village Administrative Officer (P.W.12) and he recorded the confession of the appellant and on the basis of the admissible portion of the confession, he seized the jewels, which are said to have been taken from the house of the deceased, from the possession of the appellant. Thereafter, he seized the weapon used by the appellant for causing the death of the deceased and examined witnesses and filed the final report for the offences under Sections 302 and 380 IPC.

4.On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.306 of 2015 and was made over to the II Additional District and Sessions Court, Villupuram at Tindivanam, for trial. The trial



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Court framed charges for the offences under Sections 302 and 380 IPC against the appellant and when questioned, the appellant pleaded 'not guilty'.

5.To prove the case, the prosecution examined P.W.1 to P.W.13 and marked Exs.P1 to P14 and produced 8 Material Objects as M.Os.1 to 8. When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the appellant nor any document marked.

6.After considering the evidence on record and hearing either side, the trial Court, by judgment dated 05.02.2015, found the appellant/accused guilty of the charges framed against him and convicted and sentenced him as stated *supra*.

7.Challenging the conviction and sentence, the accused has preferred this Criminal Appeal.



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8.The learned counsel for the appellant submitted that the case is based on circumstantial evidence and the prosecution had not established the circumstances conclusively and that, in any case, the circumstances do not point out to the guilt of the accused.

9.The learned Additional Public Prosecutor, *per contra*, submitted that the prosecution has established the case beyond reasonable doubt and the circumstances relied upon by the prosecution, namely, recovery of gold jewels and the motive of the appellant, which point out only to the guilt of the accused and prayed for dismissal of the appeal.

10.It is seen from the evidence of postmortem Doctor (P.W.10) and the Postmortem Certificate (Ex.P7) that the deceased sustained the following injuries :

“External injuries :

1. Lacerated wound @ side and mid forehead about 3 x 1 x 1 cm.

2.Depression of the face noted. Bleeding nose present. Nasal,



ethmoid bone fractured. Both Maxilla fractured about 7 x 3 x 2 cm noted.

3.Lacerated wound above the (L) eyebrow about 2 x 1 x 1 cm.

4.Lacerated wound (L) cheek about 1 x 1 x 1 cm noted.

5.Abrasion ® side lower lip about 2 x 2 cm red and abrasion upper lip 3 x 2 cm noted.

6.Contusion (L) cheek about 5 x 5 cm. Maxilla Abnormal mobility.

7.Lower jaw 3 blood filled sockets due to loss of teeth – edentulous man.

Internal Examinations :

Head : Skull at ® frontal bone about 2 x 1 cm subarachnoid hemorrhage about 10 x 10 cm over the frontal and parietal lobes of ® cerebral hemisphere. Base of skull – separation of basi occiput and basi sphenoid. About 500 gms of clotted blood over the base of skull.

Neck : Hyoid intact. Thorax ribs intact. Lungs intact. C/s. Pale. Heart chambers empty.

Abdomen : All viscera in position.

Stomach : empty. Intestine distended with gas and fecal matter.

Liver, spleen, kidneys intact. C/s.pale. Bladder empty. Spinal cord intact.”



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WEB.COM The postmortem Doctor (P.W.10) had opined as follows :

“The deceased would appear to have died of shock and hemorrhage due to massive head injury sustained by him about 18-24 hours prior to autopsy.”

11.Thus, from the evidence of Doctor and the other evidence, the prosecution established that the deceased died due to homicidal violence. The appellant has not disputed the said fact. However, the question is whether the prosecution has established beyond doubt the involvement of the appellant in the offence of Section 302 IPC.

12.P.W.1 is a neighbour of the deceased and had deposed that, on 28.06.2015 at about 09.30 p.m., the appellant and the deceased were fighting with each other; that the appellant had threatened the deceased that he would commit murder of the deceased if he did not pay the money demanded by him; that thereafter, both the deceased and the appellant went into the house of the deceased. P.W.1 would further state in her deposition that, on information from one Raja (P.W.2), she went to the house of the



deceased the next day morning and found the deceased lying dead and lodged a complaint.

13.P.W.2 is another neighbour, who would speak about the incident that took place on 28.06.2015, namely, that the deceased and the appellant were fighting with each other and the appellant demanded money from the deceased; that at about 04.00 a.m. the next day morning, he saw the appellant going out of the house with a bag and thereafter, when he went to the house of the deceased, he saw the deceased lying in a pool of blood.

14.P.W.3 is the other neighbour of the deceased, who also speaks about the incident that took place on 28.06.2015. He also would state that he saw the appellant going out of the house of the deceased at about 04.00 a.m.

15.P.W.4 is the student who helped P.W.1 to write the complaint which was registered as Ex.P1. She admittedly is not an eye-witness.



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WEB COPY 16.P.W.5 is the witness for the Observation Mahazar prepared by P.W.13. P.W.6 is the Head Clerk of Judicial Magistrate Court No.1, Tindivanam, who had sent the seized articles to the Forensic Sciences Laboratory on the orders of the learned Judicial Magistrate No.1, Tindivanam. P.W.7, the Sub-Inspector of Police, registered FIR on the complaint given by P.W.1.

17.P.W.8 is the wife of the appellant and had stated that the appellant was in the habit of committing theft in the house and that there was a case against the appellant for having stolen a bike of a lady and that he was convicted in the said case and was in jail for sometime.

18.P.W.9 is the Director of the Forensic Sciences Laboratory and had analysed the blood stains and had given the report Ex.P5, in which it is stated that the blood stain found in the pillow seized from the scene of occurrence belongs to that of the deceased and that the blood grouping in the other articles seized could not be ascertained.



WEB COPY 19.P.W.10 is the Postmortem Doctor who had opined that the death was due to the head injuries. P.W.11 is the Corpse Constable, who handed over the body of the deceased to the relatives after postmortem. P.W.12, the Village Administrative Officer, had signed as a witness in the Observation Mahazar and had assisted the Investigating Officer. P.W.13 is the Investigating Officer in the case.

20.From the above narrative, it can be seen that there are no eye-witnesses to the occurrence. The prosecution rests on the motive, namely, that the deceased and the appellant had frequent quarrels and in the evening of 28.06.2015 prior to the occurrence, the deceased and the appellant quarreled. P.W.1, P.W.2 and P.W.3 have spoken about the said fact thereby indicating that the appellant had the motive to commit the crime.

21.P.W.2 and P.W.3 have further stated in their deposition before the Court that they both had seen the accused coming out of the house of the deceased at 04.00 a.m. in the morning. However, this appears to be an



improvement, since both have admitted in their cross-examination that they had not disclosed this fact earlier to the Police. Therefore, the said circumstance relied upon by the prosecution cannot be put against the appellant.

22.The other circumstance relied upon by the prosecution is the recovery of gold jewels and the weapon, namely axe, on the confession of the appellant and it is seen that the prosecution has not let in any evidence to show that the gold jewels belonged to the deceased. Therefore, this recovery, by itself, cannot be a circumstance pointing out to the guilt of the accused in the offence of theft and murder. Unless there is some evidence to show that the gold jewels belonged to the deceased, the recovery would not lead to the conclusion that the accused took those jewels from the house of the deceased.

23.Though it is the prosecution case that the axe recovered on the confession of the appellant was blood stained, strangely, the said weapon was not sent for analysis by the Forensic Sciences Department, though the



other articles seized were sent to the Forensic Sciences Department.

Therefore, the prosecution has also miserably failed to link the weapon alleged to have been recovered on the disclosure statement of the appellant as a weapon used for the commission of the offence.

24.The other evidence of P.W.8, namely, that the appellant was in the habit of stealing valuable articles and cash from the house, is hardly sufficient to arrive at a definite conclusion that the appellant was involved in the crime. It is a fact that the evidence of P.W.8 and the evidence of neighbours P.Ws.1 to 3, which indicate that there was motive for the appellant, lead to a suspicion about the involvement of the appellant in the crime. It is trite that suspicion, howsoever high, cannot take the place of proof. In the instant case, it is seen that the prosecution has not conclusively established the circumstances relied upon by them. In any case, the circumstances do not form a complete chain and point out only to the guilt of the accused ruling out any other hypothesis. Therefore, we find that the appellant is entitled to benefit of doubt and the judgment of the trial Court is liable to be set aside.



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25.As a result, this Criminal Appeal is allowed and the judgment of conviction and sentence, dated 05.02.2015, in S.C.No.306 of 2015, passed by the II Additional District and Sessions Court, Villupuram at Tindivanam, is set aside.

26.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. Fine amount paid by the appellant, if any, shall be refunded to him.

(S.S.S.R., J.) (S.M., J.)
19.10.2023

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No



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To

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- 1.The II Additional District and Sessions Judge,
Villupuram @ Tindivanam.
- 2.The Inspector of Police,
Rosanai Police Station,
Tindivanam.
- 3.The Superintendent,
Central Prison,
Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.



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and
SUNDER MOHAN, J.

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