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Crl.A.No.732 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 09.06.2023]

[Pronounced on : 04.09.2023]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.A.No.732 of 2017

Kothandan @ Kothandapani

... Appellant/accused

.. Vs ..

State rep by
Inspector of Police,
Palur Police Station,
Kancheepuram District.
(Crime No.27 of 2013)

... Respondent/complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed by the S.C.No.169 of 2013 on the file of the learned Principal Sessions Judge, Kancheepuram District at Chengalpattu on 07.11.2017 and acquit the appellant herein from the charges.

For Appellant : Mr.S.Sasikumar

For Respondent : Mr.L.Baskaran
Government Advocate (Crl.Side)



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JUDGMENT

The convicted sole accused is an appellant herein. The learned Principal Sessions Judge, Kancheepuram District has convicted the appellant herein in S.C.No.169 of 2013 for offence under Section 304(2) of IPC and sentenced to undergo 10 years of rigorous imprisonment and also to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for six months.

2. The case of the prosecution in brief is that on 21.02.2013 at about 06.00 pm, one Suganraj while chatting with his friend Ilavarasu at Konganancheri Bus Stop, at that time the accused drew the TATA Ace Vehicle in rashly very close to Suganraj. When it was questioned he scolded him with filthy language. Hence, there was a previous enmity. Due to that enmity on 24.02.2013 at about 14.00 hours near Konkancherri Peralamman Temple, the Accused scolded Suganraj with filthy language and assaulted him with Velikathan wooden log on his head and due to the grievous injuries sustained by him, he died on



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24.04.2013 at 21.30 hours. Hence, the Inspector of Police, Chengalpattu Taluk Police Station has filed charge sheet against the accused Under Section 294(b), 302 IPC.

3 (a). The prosecution has examined 14 witnesses as PW.1 to PW.14 and marked Ex.P.1 to Ex.P.15. Material Objects 1 to 10 have been marked. No witness was examined and no document has been marked on the side of the defence.

3 (b). During the trial, PW.1, PW.2, PW.3 and PW.4 have turned hostile. PW5 is the grand mother of the deceased. PW.6 turned hostile. PW7 is a hearsay witness. PW.8 is attestor of the seizure mahazar. PW.9 is another attestor of the seizure mahazar of the properties of the deceased. PW.10, PW.11 and PW.14 are the police witnesses, while others are medical witnesses.

4. On consideration of both oral and documentary evidences, the learned Sessions Judge, though the charge against the accused was framed under Section 302 IPC, based upon the reasons stated therein, has scaled down the charges to 304(ii) IPC and convicted and sentenced as stated supra and hence, the appeal.

5. The trial Court framed the charge under Section 302 IPC and



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based on the evidence, has convicted the accused for the offence under Section 304 (ii) of IPC.

6. On a combined reading of the medical witnesses PW.12 Dr.S.Mugilvizhi and PW.13 Dr.Anandhi, coupled with Ex.P.5 Seizure mahazar, Ex.P.10 Postmortem Certificate, Ex.P.11 Toxicology Report and Ex.P.12 Serology Report, the trial Court has rightly come to the conclusion that the deceased Suganraj died due to the homicidal violence. And based upon the report of the Ex.P.2 and Ex.P.13 coupled with police witnesses has concurred with the respondent police that the scene of the crime is at Konkancherri Peralamman Temple.

7. Heard the learned counsel for the appellant/accused and the learned Government Advocate (Crl.side) for the respondent/complainant.

8. Admittedly, PW.1 & PW.7, parents of the deceased have turned hostile. In support, the revenue witness PW.9 deposed regarding his part of the investigation touching upon the recovery of materials. Medical witnesses PW.12 & PW.13 medical witnesses have deposed regarding conducting of the admission of the injured person and declared that he is a dead and conducting of the postmortem and issuance of Ex.P.10



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postmortem certificate. With regard to the private witnesses PW.1 to PW.9 as stated supra, except PW.5 Thilagam, the grand mother, none have deposed in support of the case of the prosecution has seems significance. In fact, own mother of the victim fairly gave the evidence that she only saw her son was lying on a pool of blood and she has not witnessed the occurrence, so also the father of the deceased.

9. PW.5 Thilagam, the grand mother of the deceased also deposed regarding the assault by the accused. In the cross examination, she has submitted that there was a huge crowd and only after going through the crowd, she realized that her grand son was injured and lying on the floor. She has not seen the accused in the company of the deceased or not seen the accused committing the act of assault on the body of the deceased. At this juncture, it remains to be stated that the investigation officer PW.14 R.Balasubramani in the cross examination has stated that,

“சாட்சி திலகம் அளித்த வாக்குமூலத்தில்
தான் போய் பார்த்தபோது கீழே கிடந்த
சுகன்ராஜ்-ஐ எதிரி வேலி காத்தான் கட்டையால்
அடித்துக்கொண்டு இருந்ததாக கூறவில்லை.”

And hence, I find that the contention of the learned counsel for the



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appellant that the version of the PW.5 in the chief examination suffers from material contradiction as she has made improvement during the examination in the court is found to have force.

10 (a). PW.1 is the mother of the deceased. She is not the author of the complaint. She is not an eye witness. She affixed her thumb impression in the complaint. She has fairly admitted that she does not know the contents in the FIR. She stated that one Sundaramoorthy is the author of the complaint. However, for the reasons best known, the said Sundaramoorthy who is admittedly an author is not examined by the prosecution and hence, I find that non examination of the author of Ex.P.1 Viz., Sundaramoorthy is fatal to the prosecution.

10(b). It is also to be stated that PW.1, PW.2, PW.3 and PW4 are only falls under category of hearsay witnesses. They have no knowledge about the occurrence and the person who was alleged to have been present during the alleged occurrence, PW.7 A.Chakrapani has turned hostile and also not supported the case of the prosecution.

11. In the preceeding paragraphs, this Court finds that the version of PW.5 Thilagam is bristle with contradiction and infirmities and suffers



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from embellishment accounting to contradiction, as the same is found to be at material contradiction on material facts and hence, this Court finds that it is totally unsafe to place any reliance upon her version. While she could depose that, the mother of the deceased (PW.1) was present at the time of the alleged incident, but to the contrary to the evidence, the mother of the deceased (PW.1) has deposed that, on the information being received, she reached the place of occurrence and saw the deceased on the floor with the injuries. And thus, this Court finds that the presence of the PW.1 on being informed, at the place of crime, as she deposed, is found to be at vital variation with the version of the PW.1 and hence, this Court has no other option but to hold that the evidence of PW.5 Thilagam is untrustworthy and her presence in the place of occurrence is doubtful.

12. At this juncture, it is relevant to consider the rival cases projected by the parties. As per the prosecution, on 24.02.2013, the accused scolded Suganraj with filthy language and assaulted him with wooden log on his head and subsequently, he died due to the injuries sustained there on.

13. Per contra, the suggestive case of the defence is that the said



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victim was fully drunk and in the drunken mode, he slipped and fell on the big stone in the road and sustained head injuries and died and the police have a foisted false case against him.

14. In the preceeding paragraphs, this Court finds that there is no positive evidence that is available to connect the accused with the alleged crime. Though the prosecution have projected PW.1, PW.2, PW.3, PW.4 and PW.5, the private prosecution witnesses, except PW.5, all others have turned hostile and some of them fall under the category of hearsay witnesses. The evidence of PW.5 is held to be trustworthy for the reasons stated supra.

15. At this juncture, the learned counsel for appellant/accused would contend that non-examination of the scribe of the document is fatal to the prosecution.

16. In the decision reported in (2001) 6 SCC 71 in *State of Himachal Pradesh Vs. Gian Chand*, the Hon'ble Supreme Court of India has held as under,

"Non-examination of a material witness is again not a mathematical formula for discarding the weight of the testimony available on record howsoever natural, trustworthy and convincing it may be. The charge of



withholding a material witness from the Court levelled against the prosecution should be examined in the background of facts and circumstances of each case so as to find whether the witnesses were available for being examined in the Court and were yet withheld by the prosecution. The Court has first to assess the trustworthiness of the evidence adduced and available on record. If the Court finds the evidence adduced worthy of being relied on then the testimony has to be accepted and acted on though there may be other witnesses available who could also have been examined but were not examined. However, if the available evidence suffers from some infirmity or cannot be accepted in the absence of other evidence which though available has been withheld from the Court then the question of drawing an adverse inference against the prosecution for non-examination of such witnesses may arise. "

As stated supra, all the prosecution witnesses does not able to give a nexus with the accused to the crime.

17. Further more, the author of the complaint has not been examined by the prosecution. Non examination of the author of Ex.P.1, who is admittedly living in the very same locality is found to be fatal to the prosecution. None of the witness have witnessed the occurrence. Hence, they cannot be treated as an eye witnesses. The only eye witness said to have been present at that time is none other than the author of the complaint Ex.P.1 Viz., Sundaramoorthy, admittedly he was not examined. The evidence of PW.5 Thilagam is also found to be in material



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contradiction with PW.14 and hence, I find that there is no positive evidence to connect the accused with the crime.

18. The suggesting case of the defence is that, in a wordy quarrel between the accused and the defendant, the accused who was fully drunk fell down on the stone and sustained injuries. Ex.P.11 establishes that the entire organs in the body of the deceased is filled with ethyl alcohol and the Doctors concurred that, at the time of occurrence, the deceased consumed alcohol beyond limit. The accident report of the accused is also been marked to show that he also sustained severe injuries and let support to the defence theory. Hence, I find that in the absence of any positive evidence to link the accused with the crime, this Court is of the considered view that the prosecution has not proved the case as the charge is beyond reasonable doubt and hence by operation of law, benefit of doubt goes to the accused.

19. Giving the benefit of doubt to the accused, I am inclined to allow this Criminal Appeal. Accordingly, this Criminal Appeal is allowed and the conviction and sentence passed in S.C.No.169 of 2013 on the file of learned Principal Sessions Judge, Kancheepuram District



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are set aside.

04.09.2023

mpl

Index: Yes/No

Speaking Order: Yes/No

Neutral Citations: Yes/ No

To

1. The Principal Sessions Judge, Kancheepuram District.
2. The Inspector of Police,
Palur Police Station,
Kancheepuram District.
3. The Public Prosecutor,
High Court, Madras.



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RMT.TEEKAA RAMAN,J.,

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Pre-delivery order in
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