



CRL. A. Nos.70-265/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
18.07.2024	07.08.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NOS. 70 & 265 OF 2021

Prabhu

.. Appellant in CA 70/2021

1. Jagathesan
2. Soundarrajan
3. Rajeshkumar

.. Appellant in CA 265/2021

- Vs -

The State of Tamil Nadu
Rep. By Inspector of Police
Jedarpalayam Police Station
Namakkal District.

.. Respondent

Crl. A. No.265 of 2021 filed u/s 374 (2) of the Code of Criminal Procedure praying to set aside the conviction and sentence passed against A-1, A-2 and A-4 on 8.1.2021 by the Addl. District & Sessions Judge, Namakkal under Section 304 (II) IPC in S.C. No.201 of 2018 and sentenced to undergo rigorous imprisonment for 10 years and pay a fine of Rs.25,000/- (Rupees Twenty Five Thousand) each



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with default sentence of three months simple imprisonment and acquit them of all the charges.

Crl. A. No.70 of 2021 filed u/s 374 (2) of the Code of Criminal Procedure praying to set aside the conviction and sentence passed against A-3 on 8.1.2021 by the Addl. District & Sessions Judge, Namakkal under Section 304 (II) IPC in S.C. No.201 of 2018 and sentenced to undergo rigorous imprisonment for 10 years and pay a fine of Rs.25,000/- (Rupees Twenty Five Thousand) with default sentence of three months simple imprisonment and acquit him of all the charges.

For Appellants : Mr. R.Shanmugasundaram, SC
Assisted by Ms. A.G.Shakeenaa
& Ms.Sona in CA 265/2021
Mr. N.R.Elango, SC for
Mr. H.Manivannan in CA 70/21

For Respondent : Ms. G.V.Kasthuri, APP

COMMON JUDGMENT

The conviction and sentence imposed on the respective appellants by the learned Addl. District & Sessions Judge, Namakkal, in S.C. No.201/2018 vide judgment dated 8.1.2021 is put to challenge in the present appeals by A-1, A-2 and A-4 filing C.A. No.235/2021 while A-3 has filed C.A. No.70/2021.



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2. The appellants herein were charged and tried for the offences u/s 302 r/w 34 and 294 (b) IPC and after trial, the trial court, while acquitted the appellants of the offence u/s 294 (b) IPC, however, convicted the appellants u/s 304 (II) IPC and sentenced each of the appellant to rigorous imprisonment for a period of ten years together with a fine of Rs.25,000/- (Rupees Twenty Five Thousand only) each, in default to undergo simple imprisonment for three months. The period of incarceration already suffered by the appellants were directed to be set off u/s 428 Cr.P.C. The aforesaid conviction and sentence is put in issue by the appellants by filing the present appeals.

3. The brief facts necessary for the disposal of these appeals are as under:-

The deceased and A-1 to A-4 are friends and they were in the habit of joining together and consuming liquor. On 9.6.2018, A-1 to A-4 along with the deceased had returned home after consuming liquor. At that time, the deceased was in possession of the mobile phone belonging to A-1. Thereafter, on the very same day, when A-1 to A-4 along with the deceased wanted to once again go out to consume liquor, however, P.W.1 restrained the deceased from going out. A-1 to A-4 went out to consume liquor. The deceased went out of his house after



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some time and handed over the mobile phone to A-1 and left the place.

Thereafter, searching for the deceased, the father of the deceased contacted A-1 over the mobile phone to check whether the deceased was in their company for which A-1 informed in the negative. Again P.W.1, the wife of the deceased, contacted A-1 to check about the whereabouts of the deceased and A-1 getting enraged abused P.W.1 in filthy language. P.W.1, hearing the obscene language used by A-1, feeling angered insulted A-1 and cut the phone. Angered by the act of P.W.1, A-1 to A-4 went to the house of the deceased and questioned the deceased about the conduct of his wife. In the course of the said transaction, A-1 to A-4 abused the deceased and P.W.1 in obscene words and picked up a quarrel with the deceased. In the course of the same transaction, at about 4.00 p.m., in front of the house of the deceased, A-1 and A-2 attacked the deceased on his cheek, head, back and on his chest with hands and legs. A-3 and A-4, sharing the common intention of causing death, attacked the deceased on the head while A-3 fisted the deceased on his chest and due to the said attack the deceased fell down. At that time, A-3 kicked the deceased on his chest. Since P.W.1 and the parents of the deceased were unable to ward off the attack of A-1 to A-4 on the deceased, they raise alarm and hearing the alarm, the elder brother of the



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deceased and his wife came to the place and upon seeing them, A-1 to A-4 fled from the scene of occurrence in their bike.

4. Since the deceased was feeling giddy and was vomiting, P.W.1 and the relatives of the deceased called for a car in which the deceased was taken to Kumaran hospital at Jedarpalayam for treatment. The doctor attached to Kumaran hospital, upon examining the deceased, pronounced him dead. Thereafter, P.W.1 and her relatives took the deceased to Paramathi Velur Government Hospital where upon examination, the doctor, pronounced him dead and issued Accident Register, Ex.P-9. Thereafter, P.W.1 went to Jedarpalayam Police Station and lodged the complaint, Ex.P-1.

5. P.W.13, the Sub Inspector of Police when he was on duty at 22.00 hours at Jedarpalayam Police Station on 9.6.2018, P.W.1 appeared before him and gave the complaint, Ex.P-1, and on receiving the same P.W.13 registered the same in Crime No.138/2018 u/s 302 IPC and prepared the printed FIR, Ex.P-15, which was forwarded to the jurisdictional Magistrate Court as also to his higher officials.



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6. P.W.14, the Inspector of Police, Jedarpalayam Police Station, at the relevant point of time, on receiving the printed FIR, Ex.P-15, took up investigation and went to the scene of occurrence at about 6.00 a.m. on 10.06.2018 and in the presence of P.W.s 5 and 6 and other witnesses, prepared observation mahazar, Ex.P-16 and drew the rough sketch, Ex.P-17. P.W.14 went to hospital mortuary, where the dead body of the deceased was kept, and conducted inquest over the dead body of the deceased at about 9.30 a.m. on 10.06.2018 in the presence of panchayatadars and witnesses and prepared inquest report, Ex.P-18. He examined P.W.s 1, 4 and other witnesses and recorded their statements. He sent the dead body of the deceased for conducting post mortem.

7. On receiving Ex.P-12, requisition for conducting post-mortem, P.W.11, the Head Constable attached to Jedarpalayam Police Station accompanied the body of the deceased to Mohan Kumaramangalam government Hospital, Salem and handed over the dead body and after completion of post-mortem, P.W.11 returned the dead body of the deceased to the relatives of the deceased.



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8. P.W.12, the Assistant Professor of Forensic Medicine, attached to Mohan Kumaramangalam Government Hospital, on receipt of the requisition along with the dead body of the deceased, commenced post-mortem at about 12.30 p.m. on 10.06.2018 and during post-mortem, the doctor noted the following :-

"Injuries :

- 1. Dark red linear horizontal abrasion over the right side of chest M-5 X 0.2 cm 3 in number one below the other just above the right nipple.*
 - 2. Linear horizontal abrasion M – 4 x 0.2 cms left side of chest above the left nipple.*
 - 3. Dark red abrasion over left arm M – 4 x 0.5 cms.*
 - 4. Dark red abrasion over right shoulder M – 1 x 0.5 cms.*
- O/D Head – Scalp – Intact. Vault – Intact. Brain – Edematous. C/s Pale. Base of Skull – Intact.*
- O/D – Thorax – Ribs – Contusion over inter costal muscles 2, 3, 4 M – 5 x 4 x 0.5 cms.*
- Heart – Normal in size. Contusion over the anterior surface of the pericardium M – 2 .5 x 1 x 0.5 cms and over the root of aorta M – 1 .5 x 0.5 x 0.5 cms.*
- Lungs – Normal in size. C/s – Congested.*



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O/D – abdomen – Stomach : Contained 50 ml of Dark brown colour fluid with no specific odour. Mucosa – C/s – Congested.

Liver, Spleen, Kidneys – Normal in size – C/S – Congested. Bladder – Empty. Pelvis – Intact.

Final Opinion :

The deceased would appear to have died of effects of blunt injury over the chest.”

After post-mortem, P.W.12 issued the post-mortem certificate, Ex.P-13 and after receipt of chemical examiner’s report, gave his final opinion under Ex.P-14, opining that the deceased would appear to have died of effects of blunt injury over the chest.

9. Continuing with his investigation, on the same day, i.e., 10.06.2018, at about 2.00 p.m., P.W.14 arrested A-2 in the presence of witnesses and A-2 came forward and voluntarily gave a confession statement, which was recorded by P.W.14. A-1, A-3 and A-4 surrendered before the Judicial Magistrate, Kodmudi, Erode District and they were taken into police custody on 25.6.2018 and they were examined. On 26.6.2018, at about 7.00 a.m., A-4 came forward and voluntarily gave a confession statement, which was recorded in the presence of



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witnesses. Likewise, A-1 and A-3 also came forward and gave voluntary confession statements, which were recorded in the presence of witnesses. On the basis of the confession statement given by the accused, on 26.6.2018, at about 10.00 a.m., the Hero Honda Splendour bike, bearing Regn. No.TN-55-K-5541, which was kept concealed in a thorny bush was recovered under seizure mahazar, Ex.P-19 and the same was forwarded to court under Form-95, Ex.P-20. P.W.14 recorded the statement of other witnesses and also P.W.8, the doctor, who attached to Paramathi Velur Hospital, who examined the deceased and pronounced him dead and recorded her statement. After obtaining legal opinion, the section of offence was altered to one u/s 302 r/w 34 IPC and P.W.14 filed the final report against the appellants.

10. To establish the charges levelled against the appellants, the prosecution examined P.W.s 1 to 14 and marked Exs.P-1 to P-20 and marked M.O.1.

11. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. on the incriminating



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circumstances appearing against them in the evidence tendered by the prosecution witnesses. They denied all the incriminating circumstances. On the side of the defence, neither any oral evidence was adduced nor any documents were marked.

12. The trial court, on consideration of oral and documentary evidence and other materials, while acquitted the appellants of the charge u/s 294 (b) IPC, however convicted the appellants u/s 304 (II) IPC instead of 302 r/w 34 IPC and sentenced them as aforesaid. Aggrieved by the said conviction and sentence, the present appeals have been filed by the appellants.

13. Mr. Shanmugasundaram, learned senior counsel appearing for the A-1, A-2 and A-4 submitted that the complaint, though is alleged to be lodged at about 10.00 p.m. on 9.6.2018 by P.W.1, however, the same was sent to the jurisdictional Magistrate Court only on the subsequent day, though the jurisdictional Magistrate Court is only about 2 hours travel from the police station. The delay in sending the complaint along with the FIR creates a doubt with regard to the veracity of the evidence tendered by the prosecution



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witnesses and also casts a doubt on the manner in which the deceased has met his death.

14. It is the further submission of the learned senior counsel that it is the case of the prosecution that initially the deceased was taken to Kumaran Hospital, where he was attended to by the doctor, who pronounced him dead. However, no accident register copy was issued by the said doctor, nor the said doctor has been examined before the court. However, inspite of the fact that the doctor at Kumaran hospital had pronounced the deceased dead, the relatives as well as P.W.1 had taken the deceased to Paramathi Velur Government Hospital, where P.W.8 examined the deceased and pronounced him dead and AR copy, Ex.P-9 was issued. It is the submission of the learned senior counsel that though the police station was hardly about a kilometre from Kumaran hospital and inspite of the fact that the doctor at Kumaran Hospital, according to the prosecution, has declared the deceased dead, however, the relatives of the deceased, without going to the police station had taken the body of the deceased to Paramathi Velur Government Hospital, which act of the relatives and P.W.1 casts a serious doubt with regard to the death of the deceased.



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15. It is the further submission of the learned senior counsel that when no accident register had been issued by the first doctor, who treated the deceased at the earliest point of time, in the absence of examination of the said doctor to establish that the deceased was dead when he was examined, the further examination by P.W.8 and the opinion that the deceased had died and the accident register, Ex.P-9, issued in respect of the deceased cannot be the basis to hold that the deceased was dead when he was initially treated by the doctor at Kumaran Hospital.

16. In this regard, learned senior counsel placed reliance on the Tamil Nadu Medical Code, which prescribes that in respect of post-mortem and wound certificate, the exact copies to be sent, which would carry the Form in which the certificate is issued along with the number, which is consecutively numbered. However, in the present case, the said procedure has not been followed, which creates a doubt with regard to Ex.P-9, issued by P.W.8.



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17. It is the further submission of the learned senior counsel that the likelihood of the deceased having been alive and had he been given proper treatment at the earliest point of time, the deceased would have survived cannot be ruled out as the persons, who had accompanied the deceased in the Omni van to the private hospital have not been examined and the distance of the private hospital and non-utilisation of an ambulance had caused the death of the deceased had not been clearly revealed, as the first aid availability in the omni van had not been established.

18. It is the further submission of the learned senior counsel that there are contradictions in the evidence of P.W.s 1 to 3 with regard to the persons, who had witnessed the attack and the said contradictions, in the absence of any independent witness is fatal to the case of the prosecution. It is the further submission of the learned senior counsel that the contradictions in the evidence of P.W.s 1 to 3 clearly reveal that the story of the attack is clearly cooked up theory woven by the prosecution for reasons best known to them.



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19. It is the further submission of the learned senior counsel that the alleged injuries sustained by the deceased at the hands of A-1 to A-4 are simple injuries, which cannot lead to death. However, the prosecution had not established that the injuries sustained by the deceased had caused his death, as P.W.12 coupled with Exs.P-13 and P-14 only indicate that blunt injury was the cause of death. However, there is no allegation of any attack with any weapon and in such circumstances, merely hitting with hand, as alleged, cannot lead to the death of the deceased and, therefore, the death of the deceased attributed to the attack by the accused has not been established. However, the trial court without considering the aforesaid materials had erroneously convicted the accused and sentenced them, which is wholly perverse and illegal and, therefore, the same deserves to be set aside.

20. In support of the aforesaid submissions, learned senior counsel placed reliance on the following decisions :-

- i) *Raghunath – Vs – State of Haryana & Ors. (2003 (1) SCC 398);*
- ii) *Dharam Singh & Ors. – Vs – State of Punjab (1993 Supp. (3) SCC 532);*



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- iii) *Kanakarajan – Vs – State of Kerala (2017 (13) SCC 597);*
- iv) *Harijana Thirupala & Ors. – Vs – Public Prosecutor, High Court of AP, Hyderabad (2002 (6) SCC 470); Murugan & Ors. – Vs – State (Crl. R.C. No.1524 of 2004);*
- v) *Thangarasu – Vs – State (Crl. A. No.147 of 2018 – Dated 26.11.2019 - MHC)*

21. Mr. N.R.Elango, learned senior counsel appearing for A-3, while adopting the submissions of the learned senior counsel appearing for A-1, A-2 and A-4, further submitted that no specific overt act has been attributed to the accused by the prosecution witnesses. In fact, P.W.1 has merely spoken that all the accused attacked the deceased, but the specific overt acts to each accused had not been attributed. In the absence of any specific overt act to the accused, convicting the accused u/s 304 (II) IPC is impermissible.

22. It is the further submission of the learned senior counsel that though it is the allegation of the prosecution that the prosecution witnesses were not able to help the deceased from the attack of the accused, as the accused were threatening them, however, it is the case of the prosecution that the deceased was attacked outside the house and such being the case, definitely neighbours



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would have been there and the prosecution witnesses along with the neighbours could have over powered the four accused persons. However, no effort seems to have been made by the prosecution witnesses to save the deceased and, therefore, the act of the prosecution witnesses creates a serious doubt on the version projected by the prosecution.

23. It is the further submission of the learned senior counsel that though A-1 and A-2 are alleged to have come on a motor cycle to the house of the deceased, which motor cycle had been seized by the investigating agency, however, the manner in which A-3 and A-4 had reached the scene of occurrence has not been spelt out by the prosecution and the absence of the same creates a doubt on the presence of A-3 and A-4 at the scene of occurrence.

24. It is the further submission of the learned senior counsel that the accident registry copy has to contain the serial number as per entries made in the concerned register. But in the case on hand, the serial number is conspicuously absent, which creates a doubt on the accident register, Ex.P-13. It is therefore the submission of the learned senior counsel that the accident register had been



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prepared posterior in point of time to suit the convenience of the prosecution.

Further, the absence of the earliest accident register, ought to have been issued by Kumaran Hospital and non-examination of the said doctor also creates a grave doubt on the version projected by the prosecution.

25. The contradictions in the evidence of the prosecution witnesses coupled with the non-examination of the doctor, who examined the deceased at Kumaran Hospital and also the driver of the omni van and in the absence of any independent witnesses, who had witnessed the occurrence, the findings rendered by the trial court is wholly perverse and arbitrary and the same requires interference at the hands of this Court.

26. Per contra, learned Addl. Public Prosecutor appearing for the respondent submitted that the contradictions pointed out by the appellants does not in any way affect the root of the prosecution case. Merely because there are certain contradictions with regard to the persons, who were present at the scene of occurrence at the relevant point of time, the same would in no way hamper the evidence of the prosecution witnesses when otherwise the said evidences are



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cogent and convincing. Further, the prosecution witnesses have no axe to grind against the appellants and it is not the case of the appellants even that there was any enmity between the appellants and the deceased. Such being the case, the deceased and the appellants having been friends, no motive with regard to enmity has been projected by the appellants and in the absence of any material to prove the same, the case of the appellants on the ground that there are contradictions in the evidence of the prosecution witnesses does not merit acceptance.

27. It is the further submission of the learned Addl. Public Prosecutor that P.W.1 and the relatives of the deceased had taken the deceased to Kumaran Hospital, where he was pronounced dead. However, the said witnesses, being illiterate villagers, out of sheer curiosity that taking the deceased to the Government Hospital could result in the deceased being brought back to life, had taken the step of taking the body of the deceased to the Government Hospital. Merely because the deceased was taken to the Government Hospital inspite of the fact that he was pronounced dead at Kumaran Hospital cannot be the basis to doubt the prosecution version. Further, upon examining the deceased, P.W.8,



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the doctor attached to the Government Hospital, Paramathi Velur had pronounced the deceased dead and had issued the AR Copy, Ex.P-9.

28. It is the further submission of the learned Addl. Public Prosecutor that the Tamil Nadu Medical Code is a procedure code, which prescribes the procedure to be adopted by the medical practitioners and it has no statutory force and mere infraction of the medical code would not render the prosecution, a cooked up version in the absence of any material which clearly establishes the same. Merely because the number is not shown in Ex.P-9 would not invalidate Ex.P-9 when P.W.8, the doctor, who had issued Ex.P-9 had deposed about issuing Ex.P-9.

29. It is the further submission of the learned Addl. Public Prosecutor that non-examination of independent witnesses would in no way be fatal to the prosecution version so long as the witnesses examined by the prosecution has spoken in unison about the occurrence and their evidence have withstood the test of cross examination. The attack had been perpetrated in the house of the deceased, where it was witnessed by the family members and after hearing the



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alarm and P.W.s 2 and 3 coming to the rescue, the appellants have fled away from the scene of occurrence. The trivial contradictions in the evidence of P.W.s 1 to 3 would not in any way affect the case projected by the prosecution.

30. It is the further submission of the learned Addl. Public Prosecutor that the reason for cause of death had been clearly established through the evidence of P.W.12, the doctor, who performed post-mortem and issued Exs.P-13 and P-14, opinion that the blunt injuries on the chest of the deceased had led to the death of the deceased. P.W.1 had spoken about the attack perpetrated by the appellants on the deceased and there is a clear deposition by P.W.1 that all the appellants attacked the deceased on the chest. The said evidence of P.W.1 coupled with the evidence of P.W.12 and Exs.P-13 and P-14 clinchingly prove that the attack on the deceased by the appellants had been the cause of death.

31. It is the further submission of the learned Addl. Public Prosecutor that all the witnesses are interested witnesses and, therefore, their testimony should not form the basis for rejecting the case of the prosecution as all the witnesses have spoken about the attack on the deceased and moreso, when the incident



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had happened in the house of the deceased, there arises no necessity for the prosecution to examine independent witnesses and only where the evidence of the prosecution witnesses is doubtful, resort to be made to look for independent testimony, but in the case on hand, the evidence of the witnesses having withstood the cross-examination, the non-examination of independent witnesses cannot be a ground to doubt the case of the prosecution.

32. In fine, it is the submission of the learned Addl. Public Prosecutor that the prosecution through cogent and convincing testimony had established not only the cause of death but the persons, who were instrumental in causing the death of the deceased and the court below, rightly appreciating all the materials has found the appellants guilty and convicted and sentenced them, which conviction and sentence does not warrant any interference at the hands of this Court and, accordingly, prays for dismissal of the appeals.

33. This Court gave its anxious consideration to the submissions made by the learned senior counsel appearing for the appellants as also the submissions of the learned Addl. Public Prosecutor appearing for the respondent and also



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perused the materials available on record as also the decisions relied on, on behalf of the appellants.

34. The fact that the deceased died due to homicidal violence is proved through the evidence of the doctor, P.W.12 coupled with Exs.P-13 and P-14, which conclusively establish that the blunt injuries caused on the chest of the deceased had led to his death. Therefore, this Court concludes that the deceased died due to homicidal violence.

35. However, the fact remains that though the prosecution has charged the appellants for the offence u/s 302 r/w 34 IPC, however, considering the nature of injuries coupled with the manner and the occasion in which the injuries were suffered, the section of offence was altered to one u/s 304 (II) IPC and the appellants were convicted and sentenced under the above provision to ten years rigorous imprisonment together with fine.

36. Two submissions of the appellants go hand in hand, that there is delay in lodging the FIR, though the police station was about a kilometre away from



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Kumaran Hospital to where the deceased was taken for treatment and the absence of accident report given by Kumaran Hospital casts a serious doubt about the condition of the deceased when he was taken to the said hospital and, therefore, the appellants cannot be fastened with the culpability of causing the death of the deceased.

37. Initially, after the alleged attack on the deceased, P.W.1, the wife of the deceased along with her relatives had taken the deceased to the Kumaran Hospital, where, according to the prosecution the deceased was pronounced dead. However, to establish the same, neither the doctor had been examined nor any accident register had been filed. However, after coming to know of the death, P.W.1 had, thereafter, taken the deceased to the Government Hospital, Paramathi Velur, where P.W.8 had examined the deceased and pronounced him dead and accident register, Ex.P-9 was issued.

38. The accident register, Ex.P-9, according to the appellants is not issued as per the Tamil Nadu Medical Code, as it does not contain the ledger and folio number as also the serial number, which are to be recorded consecutively, while



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issuing the accident report and the said report, therefore, is fabricated, for the purpose of this case.

39. Though such an argument has been advanced, however, the author of the accident register had been examined as P.W.12, who has deposed about the issuance of the accident register. P.W.12 has clearly spoken about the issuance of the accident register, which was issued by her and had also admitted the signature in the accident register. In such a scenario, merely because the accident register does not carry the ledger and folio number as also the serial number, which is mandated as per the Tamil Nadu Medical Code, the said procedural irregularity alone cannot be the basis to negate the accident register, Ex.P-9, when P.W.12, who has issued the said Ex.P-9, has deposed in clear terms that it was she who had issued the accident register.

40. Further, it is to be pointed out that merely because at the earliest point of time when the deceased was taken to Kumaran Hospital, where he was alleged to have been pronounced dead and which hospital did not issue any accident register, the same would in no way be a bar to accept the accident



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report issued by P.W.12, when the deceased had been immediately shifted from Kumaran Hospital to Government Hospital, Paramathi Velur, as could be evident from the time of commission of offence and time of admission of the deceased, as is evidenced by Ex.P-9, AR copy.

41. It is to be pointed out that the foremost thought that would have run in the mind of P.W.1 at the material point of time when she had taken the deceased from Kumaran Hospital to Government Hospital, Paramathi Velur, would have been to hear from the Government Hospital that the deceased could be brought back to life. Even wife, who takes her husband to the hospital would be under the belief that she could bring her husband back to life, if anything untoward had happened to him. Therefore, when P.W.1 had shifted the deceased from Kumaran Hospital to the Government Hospital, the necessity for obtaining an accident register copy from Kumaran Hospital would not have been in her mind. Even otherwise, it is to be pointed out that P.W.1 is not a well educated lady to be aware about the legal necessities in cases of this nature and, therefore, it cannot be expected of her to obtain the said document from Kumaran Hospital. It would have been better if the doctor, who had attended on



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the deceased at Kumaran Hospital, and who knows about medico-legal cases, had issued the accident register copy to P.W.1. However, the failure of the doctor at Kumaran Hospital to issue the accident register copy to P.W.1 cannot be put against the prosecution to hold that the deceased would have been alive at the said point of time.

42. In this regard, looking at the deposition of P.W.s 1 to 4, it is evident that the assault on the deceased by the appellants had taken place at about 3.30 to 4.00 p.m. on 9.6.2018 at the house of the deceased. The deceased was initially taken to Kumaran Hospital and, thereafter, taken to Government Hospital, Paramathi Velur, where P.W.8 examined the deceased and pronounced him dead and issued Ex.P-9. A perusal of the accident register, Ex.P-9 reveals that there is a clear recording that the deceased was assaulted by four known persons on 9.6.2018 at about 4.00 p.m. in his home. In this regard, a perusal of the evidence of P.W.s 1 to 3 reveal that after the attack, P.W.1 had taken the deceased in an Omni van initially to Kumaran Hospital and thereafter to Government Hospital and the deceased was produced at the Government Hospital, Paramathi Velur, within a span of 3 ½ hours. The time that could have



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taken to enlist the services of an omni van and taking the deceased to Kumaran Hospital and from there to Government Hospital clearly shows that P.W.1 had taken all efforts to save her husband from the said assault, but in vain.

43. Further, the AR copy, Ex.P-9 clearly reveals that P.W.8 had not only made a mention of the date and time in the AR copy, but also the OP No.10072 also finds a mention in the AR copy. Further, the evidence of P.W.8 in cross clearly shows that printed copies of the accident register was not available at Government Hospital, Paramathi Velur and, therefore, handwritten copies were given. Though she had admitted that the accident register should be filled up in the printed form in triplicate, however, she had clearly spoken that printed copies of accident register is not available at the Government Hospital.

44. Further, when it is the categorical deposition of P.W.8 that printed copies of accident register was not available at Government Hospital, Paramathi Velur, no material has been placed by the defence to disprove the same and in the absence of any such material, the contention that non-production of original



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accident register and the accident register copy not containing the serial number are fatal to the prosecution case does not merit acceptance.

45. Further, with regard to the contention that the conditions in the Tamil Nadu Medical Code has not been followed and, therefore, it renders the accident register, a doubtful piece of evidence also cannot be countenanced, as P.W.8 had been examined to speak about Ex.P-9, AR copy. Further, non-compliance of the prescriptions in the Tamil Nadu Medical Code would not render the prosecution a fabricated one or a doubtful one, when all the other evidence are cogent and convincing and establish clearly that the deceased had been assaulted by the appellants.

46. Further, the submission of the appellants that the accident register has been fabricated to suit the case of the prosecution is nothing but a futile attempt by the appellants to wriggle out of the situation in which they have placed themselves with regard to the attack perpetrated on the deceased.



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47. The other contention, which has been stressed is the act of P.W.1 in not taking the deceased to the nearby police station from Kumaran Hospital. It is to be pointed out that P.W.1, as the wife of the deceased would be more curious to take all steps to revive the deceased back to life even at the risk of not going to the police station to lodge a complaint. Upon hearing that the deceased had died, as the wife of the deceased, she would be more inclined to take the step of going to the Government Hospital to see whether he could be revived back from death. It would be normal act of any wife when she meets with such a calamitous situation and would not be running by the law book to get things done. Therefore, the act of P.W.1 in taking the deceased from Kumaran Hospital to Government Hospital cannot be found fault with and the procedural infirmity in not putting the police authorities on notice taking into consideration the fact that the police station was close by cannot be the basis to doubt the prosecution version when all other materials unerringly point to the commission of the offence.

48. In fact, P.W.4 in his evidence has categorically deposed that in order to save the life of the deceased, they had proceeded to the Government Hospital,



without stopping at the police station. The urgency of the witnesses in trying to save the life of the deceased is evident from the manner in which they had even not stopped before the police station to lodge the complaint, as any delay on their part would reduce the chances of reviving the deceased. Though the doctor at Kumaran Hospital had declared the deceased dead, however, as human instinct does not follow what is said, the witnesses have taken, even after hearing the deceased had succumbed and died, had taken the deceased to the Government Hospital with a faint hope of revival, but in vain. The evidence of P.W.4 in this regard clearly establish the manner in which the thought process of the witnesses had worked at the time when the deceased was rushed to the hospital, which cannot be found fault with.

49. Therefore, in the aforesaid circumstances, as projected by the prosecution, the contention that absence of AR copy from Kumaran Hospital, not lodging the complaint immediately upon information from Kumaran Hospital to the police authorities and the AR copy issued by the Government Hospital not being in the printed form cannot be the basis to discredit the prosecution version and, therefore, the contentions on the said aspect deserve to be dismissed.



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50. Coming to the contention of the appellants relating to non-examination of independent witnesses, inspite of the fact that there are many houses and shops nearby and, therefore, non-examination is fatal to the prosecution case, it is to be pointed out that the decisions which have been placed before this Court in support of the above plea are based on the facts of each case. It is to be stressed that the need for witnesses, independent or otherwise, depends on facts and circumstances of each and every case and there could be no case which could be cited as a precedent for the purpose of looking into the facts of the other case. The ratio with regard to legal proposition could alone be considered as precedent in criminal law and other than legal proposition, all other matters would depend upon the facts and circumstances of each case.

51. In the above context, a perusal of the evidence of the prosecution witnesses reveal that the appellants came to the house of the deceased and called upon the deceased using obscene language and started the assault. It is seen from the evidence of P.W.1 that when P.W.1 and her in-laws tried to



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intervene to save the deceased, they were threatened and, thereafter, the brother and sister-in-law of the deceased came out and upon seeing them, the appellants left the scene of occurrence.

52. The occurrence had happened in front of the house of the deceased. The assault had been carried out by the appellants on the deceased. The evidence of P.W.s 1 to 4 corroborate each other. As pointed out by the appellants, there are some contradictions in the evidence of P.W.s 1 to 4, but the said contradictions cannot be held to be fatal thereby affecting the substratum of the prosecution case. Over a period of time from the time of occurrence to the time when the witnesses depose before court, there is bound to be certain embellishments, improvements and contradictions in the evidence of the witnesses, be it interested witnesses or uninterested witnesses. The passage of time clouds the minds of the witnesses resulting in the improvements, interpolations and contradictions and so long as their evidence corroborate each other on all material aspects, their evidence cannot be discarded and in such a scenario, non-examination of independent witnesses cannot be held to be detrimental to the case of the prosecution.



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53. The decisions on which reliance had been placed on behalf of the appellants are bound by the facts and circumstances of the said case and there is no ratio laid down on legal proposition which would be binding this Court to follow the said decisions. On the facts and circumstances of the said case, the issue had been deliberated by the courts to arrive at a conclusion. However, in the case on hand, as detailed above, P.W.s 1 to 4 have spoken in unison about the attack perpetrated by the appellants on the deceased.

54. Further, P.W.s 1 to 4 have clearly deposed about the attack of the individual appellants on the deceased. Though a contention had been raised that no specific overt act had been attributed to each of the appellants, however, it is to be pointed out that the assault was spontaneous and not with the use of any weapon. The humanistic form, in the form of hands and legs had been used as the weapon and the use of hands and legs as the weapon had been evidenced from the nature of injuries suffered by the deceased on his chest, where P.W.12 had opined that the deceased would appear to have died of blunt injuries on the chest. In this regard, there is clear deposition of P.W.s 1 to 4 that the appellants



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had pushed the deceased down and had stamped him on the chest. This deposition of the witnesses makes it clear that the said assault had resulted in the death of the deceased.

55. In the aforesaid backdrop, individual overt acts cannot in any way improve the case of the prosecution and what is available on record clearly proves that the deceased was assaulted by the appellants with the use of hands and legs. In this regard, it has been reiterated by the Supreme Court that minor contradictions or inconsistencies, which does not affect the root and genesis of the prosecution case, are not to be given undue weightage for the purpose of discarding the evidence in toto. In this regard, useful reference can be had to the decision of the Supreme Court in **Waman – Vs - State of Maharashtra, (2011 (7) SCC 295)**, wherein it has been held as under :-

*“33. In **Gurbachan Singh v. Satpal Singh [(1990) 1 SCC 445 : 1990 SCC (Cri) 151]** this Court has held that despite minor contradictions in the statements of prosecution witnesses, the prosecution case therein has not shaken and ultimately accepting their statement set aside the order of acquittal passed by the High Court and restored the sentence imposed upon them by the trial court.*



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34. In **Sohrab v. State of M.P. [(1972) 3 SCC 751 : 1972 SCC (Cri) 819]** about minor contradictions in the statements of prosecution witnesses, Their Lordships have held in para 8 as under:

“8. ... It appears to us that merely because there have been discrepancies and contradictions in the evidence of some or all of the witnesses does not mean that the entire evidence of the prosecution has to be discarded. It is only after exercising caution and care and sifting the evidence to separate the truth from untruth, exaggeration, embellishments and improvement, the court comes to the conclusion that what can be accepted implicates the appellants it will convict them. This Court has held that **falsus in uno falsus in omnibus** is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered though where the substratum of the prosecution case or material part of the evidence is disbelievable it will not be permissible for the court to reconstruct a story of its own out of the rest.”



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35. It is clear that not all the contradictions have to be thrown out from consideration but only those which go to the root of the matter are to be avoided or ignored. In the case on hand, as observed earlier, merely on the basis of minor contradictions about the use and nature of weapons and injuries, their statements cannot be ignored in toto. On the other hand, we agree with the conclusion of the trial court as affirmed by the High Court about the acceptability of those witnesses, and accordingly, we reject the claim of the appellants as to the same."

(Emphasis supplied)

56. In the case on hand, as pointed out by the learned senior counsel for the appellants, there are few interpolations and contradictions in the evidence of the witnesses, viz., P.W.s 1 to 4. However, those contradictions and interpolations do not materially affect their evidence. P.W.s 1 to 4 have spoken in one voice when confronted about the happenings on that day when assault was perpetrated on the deceased. In spite of lengthy cross examination, no evidence fruitful or beneficial to the accused has been elicited by the defence. In such circumstances, this Court, following the proposition laid down by the Supreme Court not only in the above decision, but which proposition has been laid down in



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a catena of decisions, is of the considered view that the evidence of P.W.s 1 to 4 are cogent and corroborative on all aspects, which clearly establishes the involvement of the appellants in the commission of offence. The prosecution had established the case beyond reasonable doubt that the appellants had assaulted the deceased and caused the injuries, which ultimately led to his death.

57. Though decisions to the contra have been relied on, on behalf of the appellants, however, as discussed above, the facts and circumstances surrounding each case would form the basis for deciding the case and there could be no identical facts and circumstances so far as criminal cases are concerned. Therefore, the decisions relied on by the appellants would not stand attracted to the case on hand.

58. One other contention that has been projected on behalf of the appellants is that the injuries, even according to the prosecution, are simple in nature, which cannot lead to death and, therefore, the death which has no correlation to the injuries alleged to have been as a result of the assault by the



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appellants, can by no stretch be deemed to be the cause of death and, therefore, the appellants cannot be fastened with the death of the deceased.

59. The contention, even at the very outset, does not deserve to be entertained. In this regard a perusal of Exs.P-13, the post-mortem certificate reveals the injuries suffered by the deceased, which clearly show that injuries were suffered on the chest of the deceased. In Ex.P-14, the final opinion given by P.W.12, the expert has clearly opined that the cause of death of the deceased was on account of the blunt injury over the chest.

60. True it is that the injuries are external injuries, but the expert had opined that the death was on account of the blunt injury over the chest. The force with which the injury was caused is material to conclude as to whether the said injury would, in the natural course of events, would cause death. In this case, the medical expert, P.W.12, had opined that the blunt injury to the chest had resulted in the death of the deceased. When such is the opinion, this Court cannot substitute its opinion to the opinion of the expert on the mere contention of the defence that the injuries are simple in nature. The injury may be external,



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but the extent of the injury and its impact on the deceased, could be gauged only by the medical expert, and P.W.12, had opined as aforesaid and in the said backdrop, this Court cannot substitute its opinion to that of the expert and, therefore, the contention in this regard deserves to be rejected.

61. For the reasons aforesaid, the prosecution had established the case beyond reasonable doubt that it was the appellants who had assaulted the deceased resulting in the injuries, due to which the deceased succumbed and breathed his last. Carefully analysing all the materials, the court below had held that the act of the appellants would fall u/s 304 (II) IPC and not u/s 302 r/w 34 IPC and had sentenced the appellants as above.

62. However, in this regard, learned senior counsel appearing for the appellants that even according to the court below, there was neither premeditation nor the appellants were in their senses to know that the injuries caused by them would lead to the death of the deceased and, therefore, taking all the above into consideration, this Court may consider modifying the sentence imposed on the appellants.



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63. Considering the submissions as made by the learned senior counsel for the appellants and also taking into account the fact that the act had been perpetrated by the appellants in an inebriated state, as it is claimed that they had come back from the liquor shop, having gone there to consume liquor, but also keeping in mind the fact that their act should not be let off leniently and more so, keeping in mind the age of P.W.1, the wife of the deceased, who was aged about 21 years on the date of the incident, her matrimonial life having been robbed by the act of the appellants, any modification in the sentence of the appellants should be compensated by them so that she can lead a decent life.

64. In the aforesaid circumstances, this Court is of the considered view that modification of sentence could be considered subject to each of the appellant paying a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only) as compensation to P.W.1, totalling to a sum of Rs.10,00,000/- (Rupees Ten Lakhs only), in lieu of reduction of sentence.



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65. In the result, the criminal appeals are dismissed by confirming the conviction imposed on the appellants u/s 304 (II) IPC by the learned Addl. District & Sessions Judge, Namakkal in S.C. No.201 of 2018 vide order dated 8.1.2021. However, the sentence of rigorous imprisonment of ten years imposed on each of the appellant is reduced to a period of five years along with a fine of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand only, to be paid by each of the appellant, in all totalling to a sum of (Rupees Ten Lakhs only). Default in payment of fine, each of the appellant is directed to undergo rigorous imprisonment for a further period of fifteen (15) months. Upon payment of the total fine amount of Rs.10,00,000/- (Rupees Ten Lakhs only) by the appellants, the Addl. District & Sessions Judge, Namakkal, is directed to transfer the said amount directly to the bank account of P.W.1 through RTGS after putting P.W.1 on notice and upon receiving the bank account details of P.W.1 within a period of two weeks upon payment of such fine.

07.08.2024

Index : Yes / No

GLN



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To

1. The Addl. District & Sessions Judge
Namakkal, Namakkal District.
2. Inspector of Police
Jedarpalayam Police Station
Namakkal District.
3. The Public Prosecutor
High Court, Madras.



CRL. A. Nos.70-265/2021



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CRL. A. Nos.70-265/2021

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY JUDGMENT IN
CRL. A. NOS. 70 & 265 OF 2021**

Pronounced on



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CRL. A. Nos.70-265/2021

07.08.2024