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Crl.A.No.92 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2024

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.A.No.92 of 2020

Krishna

...Appellant/Accused

vs.

State Represented by
The Inspector of Police,
Salavakkam Police Station,
Crime No.615 of 2014

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., to set aside the Judgment passed against the appellant on 18.12.2019 in S.C.No.49 of 2015 on the file of the learned Additional Sessions Judge, (Fast Track Court) at Kanchipuram, Kanchipuram District.

For Appellant : Mr.R.Anbalagan
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor
Assited by Mr.Aravind.C



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JUDGMENT

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

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This Criminal Appeal has been filed by the appellant/sole accused challenging the conviction and sentence imposed upon him vide judgment dated 18.12.2019 in S.C.No.49 of 2015 on the file of the learned Additional Sessions Judge, (Fast Track Court) at Kanchipuram, Kanchipuram District.

2 (i) It is the case of the prosecution that, on account of prior enmity, the appellant, on 06.11.2014 at about 10.20 p.m., abused the deceased and caused his death by throwing a big stone on the head of the deceased.

(ii) P.W.1, the son of the deceased, came to know that his father was found dead on a public road and rushed to the spot. He made arrangements to send the body by ambulance, to Chengalpet Government Hospital and thereafter lodged a complaint [Ex.P1] before the respondent police. On receipt of the said complaint, P.W.15, the Sub-Inspector of Police, registered the First Information Report in Crime No.614 of 2014 under Section 302 of the IPC. The said FIR was marked as Ex.P14.

(iii) P.W.16, the Inspector of Police, took up the investigation, went to



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the scene of the occurrence, and found the dead body of the deceased and a bloodstained stone near the head of the deceased. He prepared the Observation Mahazar [Ex.P3] and Rough Sketch [Ex.P2] in the presence of witnesses. He seized the bloodstained earth [M.O.1] and the earth that was not bloodstained [M.O.2], a bloodstained stone [M.O.3] and the dress materials of the deceased [M.O.4], which were lying nearby, under Ex.P4, Seizure Mahazar. Thereafter, he sought the assistance of the Sniffer Dog Squad. He conducted an inquest and prepared an inquest report [Ex.P15].

(iv) On 08.11.2014, P.W.16, examined other witnesses. On 09.11.2014, he arrested the appellant at about 12.15 p.m and recorded the confession of the accused. On his confession, he seized the bag and blood-stained dress materials of the accused. The admissible portion of his confession was marked as Ex.P5. After obtaining the report of the Forensic Science Laboratory and the examination of the other witnesses, he filed the Final Report for the offences under Sections 294(b) and 302 of the IPC before the learned District Munsiff cum Judicial Magistrate, Uthiramerur.

(v) On the 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.49 of 2015 and was made over to the learned Additional Sessions Judge, (Fast Track Court) at Kanchipuram, Kanchipuram District, for trial. The trial Court framed charges u/s. 294(b) and 302 of the IPC as against the appellant, and when questioned, the appellant pleaded 'not guilty'.

(vi) To prove the case, the prosecution examined 16 witnesses as P.W.1 to P.W.16, marked 25 exhibits as Exs.P1 to P25, and marked 25 material objects as M.O.1 to M.O.25. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant neither examined any witnesses, nor marked any documents.

(vii) On appreciation of oral and documentary evidence, the Trial Court found that the prosecution had established the case beyond reasonable doubt, held the appellant guilty of the offence under Section 302 of the IPC, and sentenced him to undergo life imprisonment, and to pay a fine of



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Rs.25,000/- and, in default to undergo six months of rigorous imprisonment.

The Trial Court directed that out of the fine amount Rs.24,000/- be given to the wife of the deceased as compensation. Hence, the appellant has preferred the appeal challenging the said conviction and sentence.

3. Heard Mr.R.Anbalagan, learned counsel appearing for the appellant, and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State.

4. The learned counsel for the appellant submitted that the case, which is based on circumstantial evidence, had not been established by the prosecution; that the witnesses examined by the prosecution to prove the last seen theory have also turned hostile; and that there is no other evidence. Hence, he prayed for acquittal of the appeal.

5. The learned Additional Public Prosecutor for the respondent/State



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submitted that the prosecution has established the case beyond reasonable doubt and all these circumstances have been fully established, forming a complete chain pointing out only to the guilt of the accused. Hence, he prayed for dismissal of the appeal.

6. We have carefully considered the rival submissions and perused all the relevant materials available on record.

7. As stated earlier, the prosecution has examined sixteen witnesses on their side. P.W.1 is the son of the deceased, who lodged the complaint. P.W.2 is another son of the deceased, who corroborates the evidence of P.W.1. P.W.3 is the nephew of the deceased, who went to the scene of the occurrence subsequently. P.W.4 is the wife of the deceased. P.W.5 is the witness to the seizure of the material objects seized from the scene of occurrence, namely M.O.1 to M.O.8. P.W.6, P.W.7, and P.W.8 turned hostile. They were examined by the prosecution to show that the appellant and the deceased were last seen together in a bus quarelling with each other. P.W.9 is a passerby, who came to know that the deceased was attacked by



somebody. P.W.10 is another nephew of the deceased, who deposed that the appellant and the deceased were together in a bus.

8. P.W.11 speaks about the prior enmity between the appellant and the deceased. P.W.12 and P.W.13 are the witnesses to the confession of the accused and the Seizure Mahazars. P.W.14 is the doctor who conducted the postmortem and issued postmortem certificate [Ex.P13]. PW15 is the Sub Inspector of Police who registered the FIR. P.W.16 is the Investigation Officer who filed the final report.

9. It is seen from the evidence that P.W.1 came to know that his father was lying dead and had lodged a complaint. In the complaint, he stated that somebody had attacked the deceased with a stone. The deceased was thereafter taken to the hospital, and the postmortem was conducted by P.W.14/Doctor. P.W.14 found the following injuries:

“1.Reddish brown crush injury seen over the left temporal region involving the left ear lobe (pinna) and temporal region of head O/D



comminuted fracture seen over right and left feet parts temporal bone Dura torn beneath the above mentioned regions both cerebral hemispheres found crushed beneath the fracture area: fissure fracture (Transverse) seen over anterior and middle granial fussa

(2) Fracture seen over 2nd to 8th right and left side ribs along its lateral curvature with surrounding areas of contusions.”

He had opined that the deceased died due to multiple injuries suffered by him. Thus, the prosecution had established that the deceased suffered a homicidal death.

10. It is the prosecution case that the deceased and the appellant travelled in a bus together, and there was a wordy quarrel between the appellant and the deceased in the bus, which was witnessed by the conductor and driver of the bus [P.W.6 and P.W.7], respectively, and thereafter, both alighted from the bus at Mathur junction. However, both P.W.6 and P.W.7 turned hostile. Further, P.W.8, who was examined to



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establish that the appellant threatened and demanded money to consume liquor, turned hostile. The circumstance of last seen together has not been established by the prosecution. It is seen that P.W.10, who was travelling in the bus, in which, the deceased and the accused travelled on the night of 06.11.2014 stated that he saw both the appellant and the deceased alighting from the bus at Mathur junction. P.W.10, who claims to be a relative of the deceased, had not informed anybody about his seeing the appellant and the deceased together, even after he came to know that the deceased was done to death. There is no reference to the deceased travelling in the bus along with the appellant in the complaint given by P.W.1. If P.W.10 had really seen the deceased together with the appellant in the bus, the said fact would have been stated in the complaint. He is an interested witness and closely related to the deceased. Therefore, the evidence of P.W.10 does not inspire confidence.

11. The other witnesses relating to the prior enmity also do not help the prosecution in any manner. It is the evidence of P.W.11, who was a resident of the same village, that the appellant used to roam around the



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village as a “Vagabond,” threatening the villagers, demanding money from them, and used to eat in hotels without paying the bills, and therefore, the villagers were unhappy with the deceased. Hence, the prosecution case that the appellant alone had a motive to do away with the deceased is also doubtful.

12. We find that though the prosecution had established that the deceased suffered homicidal death, it has failed to establish that the appellant was responsible for the same. It is trite that in a case of circumstantial evidence, the prosecution has to prove all the circumstances conclusively, and the circumstances should point out only the guilt of the accused/appellant and rule out any other hypotheses. There is no such evidence in the instance case, and therefore, the judgment and conviction imposed on the appellant/accused by the learned Additional Sessions Judge (Fast Track Court) at Kanchipuram, Kanchipuram District, are liable to be set aside.



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13. In the result, this Criminal Appeal is allowed, and the appellant is acquitted of the charge u/s.302 of the Indian Penal Code. The conviction and sentence passed in S.C.No.49/2015 on the file of the learned Additional Sessions Judge (Fast Track Court) at Kanchipuram, Kanchipuram District, *vide* Judgment dated 18.12.2019 are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

(M.S.R.,J.)

(S.M.,J.)

06.06.2024

Speaking / Non-Speaking Order

Neutral Citation : Yes / No

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Copy to:-

1.The Additional Sessions Judge, (Fast Track Court) at Kanchipuram, Kanchipuram District.

2.The Superintendent of Prison,
Central Prison at Puzhal.

3.The Inspector of Police,
Salavakkam Police Station,.

4.The Public Prosecutor,



High Court, Madras.

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