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Crl.A.No.203 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	18.09.2024
<i>Pronounced on</i>	17.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

Crl.A.No.203 of 2019

Babu @ Thilagar Babu

... Appellant

Vs.

State rep. by,
 The Inspector of Police,
 Valavanur Police Station,
 Villupuram District.
 Crime No.262/2013

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the conviction and sentence passed against the appellant/accused in S.C.No.610 of 2013 dated 05.02.2019 on the file of the learned Additional District Judge, (Fast Track Court), Villupuram.

For Appellant : Mr.R.John Sathiyam,
 Senior Advocate
 for Mr.S.Senthil Kumar

For Respondent : Mr.A.Gokulakrishnan,
 Additional Public Prosecutor



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JUDGMENT

C.KUMARAPPAN, J.

The instant Criminal Appeal has been filed against the order of conviction and sentence dated 05.02.2009 passed in S.C.No.610 of 2013, by the learned Additional District Judge (Fast Track Court), Villupuram, wherein, the accused was convicted for the offence under Section 302 IPC and was sentenced to undergo life imprisonment, along with a fine of Rs.10,000/-, in default to undergo 6 months simple imprisonment, and for the offence under Section 324 IPC, he was sentenced to undergo 1 year rigorous imprisonment, along with a fine of Rs.3,000/-, in default to undergo 1 month simple imprisonment.

2. For the sake of convenience, the parties in the appeal are addressed according to their ranks in the trial Court.

3.1. For better understanding of the prosecution's case, we deem it appropriate to flitter the facts of the case. According to the prosecution, the deceased and the accused were close relatives and that there were property disputes between them since 2004, and that there were also previous squabbles many times, between the accused and the deceased.



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While so, on 22.04.2013 at about 02.10 P.M., when the deceased and his wife Rohini were standing in their garden, the accused came with a billhook and abused the deceased and intimidated him to withdraw the complaint filed against him. Since the deceased refused to withdraw the complaint, the accused attacked the deceased with a billhook and caused injuries on his head and right side ear. When the wife of the deceased intervened, the accused had also caused injury to her, and fled away from the scene of occurrence. After the attack, the deceased became unconscious and was lying in a pool of blood. Thereafter, he was taken to Mundiyaambakkam Government Hospital, but the doctors at the hospital declared him dead. After coming to know about the occurrence, the deceased's son namely Elanaganar went to the hospital and thereafter, he and his mother went to the Police Station to give a complaint.

3.2. Based on the complaint (Ex.P1) given by the wife of the deceased – Rohini (P.W.1), an F.I.R. (Ex.P15) was registered in Crime No.262 of 2013 by the Inspector of Police (P.W.15), and he went to the scene of occurrence. Since it was night time, P.W.15 could not effectively inspect the scene of occurrence and therefore, he again went on the next day i.e. on 23.04.2013 and prepared observation mahazar



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(Ex.P16) and rough sketch (Ex.P17) in the presence of Prabu (P.W8) and Ramesh (P.W.9). Thereafter, he collected sample soil, as well as the blood stained soil and the same were marked as M.O.2 and M.O.3. At about 9.00 to 11.00 A.M., he proceeded to Mundiambakkam Government Hospital and conducted inquest upon the body of the deceased and prepared inquest report (Ex.p19). He also recorded the statements of P.W.1 – Rohini, P.W.2 – Sundharam, P.W.3 – Nagappan, P.W.4 – Venkatesan, P.W.5 – Murugan and P.W.6 - Elanaganar. Thereafter, he made arrangements for sending the body for post-mortem.

3.3. In the meanwhile, at about 12.00 P.M., P.W.15 arrested the accused and the accused had voluntarily given a confession statement in the presence of P.W.10 – Sampath, and P.W.11 – Anbazhagan, and thereafter, effected the discovery of facts by recovering the billhook, and the same was forwarded to the jurisdictional Magistrate under Form-95. He had also made arrangements for the forensic examination of the weapon. Thereafter, he had also recorded the statements of the forensic expert (P.W.13) – Jeyanthi, post-mortem doctor (P.W.12) – Dr.Geethanjali and P.W.14 – Dr.Viruthagiri, who gave treatment to P.W.1 – Rohini.



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3.4. Before the Trial Court, the prosecution had examined 15 witnesses, namely P.W.1 to P.W.15, marked 20 documents as Ex.P.1 to Ex.P.20 and apart from that, 4 material objects M.O.1 to M.O.4 were also marked. On behalf of the accused, neither witness was examined nor document was marked.

3.5. On completion of the trial, when the incriminating evidences let in by the witnesses were read over and explained to the accused under Section 313 Cr.P.C., he denied the same claiming it to be a false case foisted against him.

3.6. The Trial Court, on appreciation of the oral and documentary evidences before it, as well as the material objects, had come to the conclusion that the prosecution has proved the case beyond reasonable doubt and thus, had found the accused guilty of having committed the offence under Sections 302 & 324 of IPC and thereby convicted and sentenced him, as stated above.

4. The prosecution places much reliance upon P.W.1, the injured eye-witness/wife of the deceased to prove their case. P.W.6 is the son of



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the deceased and scribe to Ex.P1 – Complaint. Though the prosecution relies upon P.W.2 to P.W.5, as an occurrence witnesses, all of them turned hostile. Therefore, there is a duty cast upon this Court, to find out whether P.W.1 is a wholly reliable witness.

5. The learned Senior Advocate appearing on behalf of the appellant/accused contended that the prosecution's case is highly unreliable, on account of delay in registering the complaint, and this delay renders P.W.1 as not wholly reliable witness. The learned Senior Advocate further contended that the deceased had also enmity with other persons and that the motive projected by the prosecution is flimsy and not reliable.

6. In order to substantiate the above contention, the learned Senior Advocate would submit that if at all P.W.1 was an eye-witness, according to her own admission, the presence of the Police personnel was found immediately at the scene of occurrence and therefore, there was every possibility for registering a complaint at the earliest point of time. Therefore, the learned Senior Advocate contended that Ex.P1 – Complaint is not the first complaint and that the delay of 7 hours in



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registering a complaint would make the narration of Ex.P1 – Complaint, doubtful.

7. Per contra, the learned Additional Public Prosecutor would vehemently contend that P.W.1, being a rustic woman, her narration about the occurrence, would inspire the confidence. Besides, the alleged presence of Police and the delay in registering the F.I.R., cannot be a ground to disbelieve the prosecution's case that too, in a peculiar circumstances, where P.W.1 was aged about 74 years, and except herself, there were no other blood relatives available at the time of occurrence. Even for argument sake the presence of Police was accepted, the fault on the part of the Police in not registering the case, cannot be a ground to disbelieve the prosecution's case, as spoken by P.W.1. It is the further contention of the learned Additional Public Prosecutor that P.W.1 is a wholly reliable witness and therefore, the finding of conviction recorded by the Trial Court is well merited and does not require any interference and hence, prays for dismissal of the present appeal.

8. We have given our anxious consideration to the submission made by either side.



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9. If we look at the evidence of P.W.1, her narration of facts are simple and straight forward. From her narration, we may be able to perceive the truthfulness. It is pertinent to mention here that in spite of arduous cross-examination, nothing was elicited and brought out to disbelieve her evidence.

10. However, the learned Senior Advocate would attack the reliability of P.W.1's evidence on the ground that P.W.6 gave a complaint only after seeing the deceased father at the mortuary and also after seeing the injuries of his father.

11. No doubt, though the occurrence took place on 22.04.2013 at about 2.10 P.M., the complaint was registered at about 19.00 hours. But, during the occurrence, P.W.1 had also sustained injury. Thus, she being an injured witness, her statement must be kept in high pedestal, if she is otherwise trustworthy. In order to subdue the trustworthiness of P.W.1, the delay in registering the complaint and P.W.6's visit to mortuary, was projected. Visiting the mortuary is a natural human conduct for every near and dear, that too, after knowing the macabre murder. Being a son,



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his natural propensity to know the condition of the injured, cannot be a ground to disbelieve his evidence. Therefore, the visit of P.W.6 to the mortuary, will in no way be considered as reasonable doubt so as to dent the prosecution's case and his credibility.

12. Coming to the delay in registering the F.I.R., we must be alive to the situation, where P.W.1 is reasonably aged and was the only person accompanying the deceased, for whom, her husband's life and condition would have been more precious than giving a complaint. Further, the prosecution has also come up with a plausible explanation for the delay. It is also pertinent to mention here that the delay in registering the F.I.R., cannot be a ritualistic formula for doubting the prosecution's case. Therefore, there is no abnormal delay and the delay was explained, as she being the only woman in their family, and waited for arrival of her son (P.W.6).

13. Apart from this, the learned Senior Advocate would also invite the attention of this Court about the Accident Register's copy of P.W.1 (Ex.P14), by which, he would urge that Ex.P14 came into existence only on 23.04.2013 at about 8.25 P.M. However, while looking at Ex.P14, we



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are able to find that the doctor had signed the Accident Register with a date as 22.04.2013 and on the next page of Ex.P14, the date of admission is shown as 22.04.2013, and the date of discharge is shown as 23.04.2013. Therefore, mere reference in Ex.P14 to the date and time as 23.04.2013, could only be an inadvertent mistake and therefore, the defence put forth by the learned Senior Advocate that P.W.1 was admitted in the hospital on the next day, is also contrary to the facts.

14. The yet another contention raised by the learned Senior Advocate is that, though P.W.1 proclaims that she is an injured witness, P.W.7, who is the son-in-law of the deceased, did not see such injury.

15. As a matter of fact, since the injury was on the abdomen of P.W.1, it is quite illogical for a son-in-law, that too in the Indian culture, to see her mother-in-law's stomach injury qua below the umbilical. But this injury otherwise was proved through Ex.P14 – Accident Register of P.W.1. Therefore, this also cannot be a ground to doubt P.W.1.

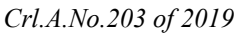
16. At this juncture, we would like to recapitulate the defence of alleged reasonable doubts projected by the appellant. (1) The learned



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Senior Advocate doubts the creditworthiness of P.W.1 on the ground that there was a delay in filing the complaint. (2) P.W.6's visit to the mortuary. (3) P.W.7's ignorance about the place of injury of P.W.1, and lastly, the arrangement of ambulance by the Police. As already discussed in detail above, these defences cannot be a ground to doubt the creditworthiness of P.W.1. Admittedly, P.W.1 sustained injury and the occurrence is a daylight occurrence, while she was present along with the deceased at the time of occurrence. Therefore, through the evidence of P.W.1, nothing has been elicited in the cross-examination to record a finding that her evidence is improbable or suspicious.

17. It is a settled principle of law that whenever an eye-witness to the occurrence is injured, due credence to his/her version needs to be accorded. The Hon'ble Supreme Court in the case of '*Abdul Sayeed Vs. State of Madhya Pradesh*' reported in '*(2010) 10 SCC 259*' had held that where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he becomes a witness that comes with a built-in guarantee of his presence at the scene of the crime, and is unlikely to spare his actual assailant in order to falsely implicate someone.



defence evidence to be elicited.

witness (P.W.1).

in the prosecution's case.

(Ex.P9), the following injuries were found in the body of the deceased:-

“I External examination: Eyes closed. Mouth closed. Tongue within oral cavity. Cut injuries seen over : (a) Vertex area of the Head oblique (R) frontal to and parental region – 16cm x 1cm x 0.5 cm (b)



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3cm above the (R) ear – over the (R) Tempora occipital regions 13cm x 3cm x 3cm exposing the underlying tissues. (c) (R) shoulder - 5cm x 1cm x 1.5cm (d) outer aspect of middle 1/3rd of (R) forearm - 6cm x 0.5cm x 0.5cm (e) outer aspect of middle 1/3rd of (L) arm - 8 cm x 0.5cm x 0.5cm (f) outer aspect of middle 1/3rd of (L) forearm - 7cm x 0.5cm x 0.5cm (g) outer aspect of (L) little finger - 4cm x 0.5cm x 0.5cm. The margins of all the above cut injuries are clean cut and regular. Underlying tissues are cut and contused. (R) fossa greenish discoloration seen.

II On opening of the Head : Scalp contused in the under seen all over the (R) side : vault fracture of the (R) temporal and occipital bones corresponding to the scalp injury. Underlying membranes lacerated in the (R) Temporal occipital region. Sub dural and sub arachnoid haemorrhage seen over the (R) side of the brain. Cut section : congested. Base : fracture of (R) middle posterior enamel tossa.

III On opening of the Thorax : Rib cage intact. Heart : Normal size. Cut section : great vessels - multiple atheromatous plumes seen in the under surface of root of Aorta. Valves and coronams intact. Chambers : empty. Both lungs normal in size. Cut section : congested.

IV On opening of the Abdomen : Stomach : About



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500 gm of partially digested yellowish green cooked rice particles seen. No specific smell mucosa intact. Liver, spleen and both kidneys : appear normal in size. Cut section – congested, bladder empty V Hyoid bone, pelvis and spinal column intact.”

According to her opinion, the deceased would have died due to head injuries.

21. Though a doubt was raised in respect of delay in registering the F.I.R., we must look at the situation where P.W.1 was alone with the deceased, while her two sons were away from the scene of occurrence because of their avocation. P.W.1 had categorically stated that though there were villagers, none of them helped her. Therefore, in such a scenario, having considered the age of the deceased, and the absence of other blood relatives of the deceased, this Court could not find any abnormal delay in registering the complaint, and as already discussed, though P.W.1 was confronted with an arduous cross-examination, nothing was elicited to discredit her credibility. Besides, she being the injured witness, her evidence attached with much more reliability, wherein she had categorically narrated the manner in which the accused had attacked her and the deceased.



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22. The Trial Court had taken into account all the facts and circumstances and had arrived at a right conclusion in convicting the accused. We are in conformity with the findings of the Trial Court that the prosecution has proved all the charges beyond reasonable doubts and thus, we do not find any ground to interfere with such well merited findings. Thus, there are no merits in the present appeal.

23. Accordingly, the Criminal Appeal stands dismissed.

[M.S.R., J] [C.K., J]

17.10.2024

Speaking order
Index: Yes
Internet: Yes
Neutral Citation: Yes

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M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

Sni

To

1.The Additional District Judge,
Fast Track Court, Villupuram.

2.The Inspector of Police,
Valavanur Police Station,
Villupuram District.

3.The Public Prosecutor,
High Court of Madras.

judgment made in
Crl.A.No.203 of 2019

17.10.2024