



Crl.A.No.416 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.416 of 2019

Prabakaran

...Appellant/Accused

VS

State by
Inspector of Police,
Vellagoundampatti Police Station,
Cr.No.65 of 2021

...Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, 1973, to call for the records in SC No.05/2016 on the file of Principal Session Judge, Nammakkal and set aside the judgment and conviction imposed on the appellant and consequently to acquit the appellant from the charges framed by the Trial Court.

For Appellant : Mr.V.Ramamurthy

For Respondent : Mr.Raj Thilak

Additional Public Prosecutor



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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 accused challenging the conviction and sentence imposed upon him vide judgment dated 10.04.2018 in S.C.No.05 of 2016 on the file of the learned Principal Session Judge, Namakkal.

2. For the sake of convenience, the accused is hereinafter referred to as the 'appellant'.

3 (i). It is the case of the prosecution that the appellant was the grand-son of the deceased; that the appellant's father, who is son of the deceased was a drunkard; that therefore, the deceased was controlling the family; that the deceased prevented the appellant from studying; that the deceased was also having an illicit affair with the appellant's mother; that therefore, the appellant decided to do away the deceased; that on 06.04.2013, at about 5.30 a.m., when the deceased went out of his house to attend the nature's call, the appellant attacked the deceased with a sickle [கொடுவாள்] on the neck and head of the deceased and caused grievous



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injuries; and that thereafter, the deceased succumbed to the injuries at 07.45 a.m., on 06.04.2013.

(ii) The complaint, [Ex.P14] was lodged by the wife of the deceased/P.W.1, stating that she came to know from her neighbour that her husband was done to death, and she took her husband to the hospital, and her husband died since the treatment was not successful.

(ii) P.W.12/Sub Inspector of Police, registered the FIR in Crime No.65 of 2013, for the offence under Section 302 of the IPC, and the FIR was marked as Ex.P15.

(iii) P.W.14/Inspector of Police took up the investigation. On 06.04.2013 at about 10.40 a.m., he went to the occurrence place and prepared Observation Mahazar, [Ex.P8] and Rough Sketch, [Ex.P17], in the presence of the Village Administrative Officer [P.W.6] and his assistant. He seized the blood-stained earth and the earth that was not blood-stained under the Seizure Mahazar [Ex.P5]. He conducted an inquest over the dead



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body between 12.30 p.m. and 3.30 p.m., in the presence of Panchayathars and prepared the inquest report [Ex.P18]. He made a request to conduct a post-mortem, which was conducted by a doctor, [P.W.10], who had issued the post-mortem certificate [Ex.P11] and the Final Opinion [In Viscera Report] [Ex.P13]. He seized the blood-stained dress materials of the deceased and sent it to the learned Magistrate by Form 91 [Ex.P19]. On 07.04.2013, at about 09.30 a.m., P.W.5, Village Administrative Officer went to the police station along with the appellant, who is said to have given a dying declaration to him. The extra-judicial confession was marked as Ex.P2 and the special report of P.W.5 was marked as Ex.P3. The Investigating Officer thereafter, arrested the appellant and recorded the confession, and on his confession, the admissible portion of which is marked as Ex.P6, he seized the blood-stained block and green checked lungi [M.O.2] of the appellant besides the sickle [அருவாள்] [M.O.1] under Seizure Mahazar [Ex.P5]. He obtained the reports of the Forensic Science Laboratory, examined the other witnesses, and filed the Final Report before the learned Judicial Magistrate No.1, Namakkal, for the offence under Section 302 of the IPC.



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(iv) 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.05 of 2016 and was made over to the learned Principal Sessions Judge, Namakkal, for trial. The trial Court framed charges under Section 302 of the IPC against the appellant, and when questioned, the appellant pleaded 'not guilty'.

(v) To prove the case, the prosecution examined 14 witnesses as P.W.1 to P.W.14, marked 30 exhibits as Ex.P1 to Ex.P30, and marked 9 Material Objects as M.O.1 and M.O.9. When the appellant was questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same. The appellant did not examine any witnesses or mark any documents on his side. The medical report of the appellant has been marked as a Court Exhibit viz., Ex.C1.

(vi) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt and held the appellant guilty of the charge under Section 302 of the IPC.



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Accordingly, the appellant was convicted and sentenced to undergo life imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one year for the offence under Section 302 of the IPC. Hence, he has preferred the instant appeal challenging the said conviction and sentence.

4. Heard, Mr.V.Ramamurthy, learned counsel appearing for the appellant, and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

5. The learned counsel for the appellant submitted that P.W.1 to P.W.3, who are examined by the prosecution proved the motive turned hostile. P.W.4, who had seen the appellant with a sickle [கொடுவாளி] on the morning of the date of occurrence cannot be believed as his evidence is artificial. P.W.5 is the Village Administrative Officer, who is said to have recorded the extra-judicial confession. He also cannot be relied upon as he was a stranger to the appellant, and there was no reason for the appellant to give a confession to the Village Administrative Officer when the



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investigation was going on. That apart, the extra-judicial confession is not corroborated by any evidence and is neither voluntary nor truthful.

(ii) The learned counsel further submitted that the blood group in the dress materials seized from the appellant could not be ascertained and the blood group in the dhoti of the deceased was found to be an A group. The blood group in the sickle [கொடுவாள்] also could not be matched with that of the blood group of the deceased.

(iii) The learned counsel further submitted that in the Accident Register [Ex.P9], it is recorded that the deceased had a fall over the fence. He therefore submitted that the circumstances have not been fully established. Hence, he prayed for the acquittal of the appellant.

6. The learned Additional Public Prosecutor for the respondent/State, *per contra*, submitted that the prosecution has established its case beyond reasonable doubt; that the extra-judicial confession is voluntary and truthful and it is corroborated by the other evidence adduced on the side of the prosecution. Hence, he prayed for dismissal of the appeal.



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7. We have carefully considered the rival submissions and perused the materials available on record.

8. The prosecution had examined 14 witnesses, as stated earlier, to prove its case. P.W.1 is the wife of the deceased. P.W.2 is the son of the deceased and the uncle of the appellant. P.W.3 is the neighbour of the deceased. All three witnesses turned hostile. P.W.4 had seen the appellant with sickle [கொடுவாளி] at about 5.00 a.m., and was going towards his house. The prosecution relied upon her evidence as one of the circumstances. P.W.5 is the Village Administrative Officer, who recorded the extra judicial confession of the appellant. P.W.6 is another Village Administrative Officer, who witnessed the arrest and confession of the appellant. P.W.7 is the neighbour of the appellant, who had gone to the house of the deceased on hearing the shouts of P.W.1. P.W.8 is the tea shop owner, who stated that the appellant was aggrieved by the fact that the deceased did not permit him to study. P.W.8 had stated that he heard the conversation between the appellant and the deceased, wherein the deceased refused to allow him to study, and the appellant is said to have told the



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deceased that he would kill him one day. P.W.9 is the doctor, who made entries in the Accident Register [Ex.P9]. P.W.10 is the doctor who conducted the post-mortem. P.W.11 and P.W.13 are the constables who assisted the investigation. P.W.12 is the Sub-Inspector of Police who registered the FIR and P.W.14 is the Investigating Officer.

9. P.W.1 to P.W.3 as stated earlier, had turned hostile. The motive is sought to be established through the evidence of P.W.8, the tea shop owner. P.W.8 is a stranger to the family of the appellant and the deceased. It is not P.W.8's version that, after coming to know of the murder, he went to the police station to inform as to the conversation between them. There is no explanation by the prosecution as to how the police discovered P.W.8 as a person, who heard the conversation between the appellant and the deceased. The witness was examined, according to the investigating officer, on 09.04.2013. Therefore, in our view P.W.8's evidence cannot be considered proof of the motive for the appellant to commit the offence.



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10. The other evidence relied upon by the prosecution, is the evidence of P.W.4. According to the prosecution, P.W.4 had seen the appellant with a sickle [கொடுவாள்] walking towards his house on the morning of 06.04.2013, at about 5.00 a.m., However, P.W.4 would state in the cross examination that the place was very dark, when she saw the appellant. She would further state that the appellant was wearing a red coloured t-shirt, which is contrary to the prosecution case that the appellant was wearing a blue colour t-shirt on the date of occurrence. In our view, P.W.4's evidence by itself would be of no avail to the prosecution, since she also admitted that it is usual for the villagers to carry a sickle for cutting wood.

11. The extra-judicial confession, said to have been recorded by P.W.5 on 07.04.2013 in our view, also cannot be believed. According to P.W.8, he came to know that the appellant was arrested on 06.04.2013 itself. Further, P.W.5 is a total stranger to the appellant. It is well settled that the extra-judicial confession given to a stranger would be a weak piece of evidence, and the voluntariness of the said statement is also doubtful. There is no necessity for the appellant to approach a stranger and give a



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confession containing minute details. In any case, we find that in the facts of the instant case, the extra judicial confession cannot be the sole basis for the conviction, especially when it is given to a stranger and its voluntariness is in doubt.

12. Further, Exs.P28 and P29 would show that the blood group in the sickle [கொடுவாளி] and the dress materials of the appellant could not be ascertained, and therefore, it could not be compared with the blood group of the deceased.

13. Above all, we find that P.W.1, the wife of the deceased, P.W.2, the son of the deceased and uncle of the appellant and P.W.3, a neighbour who was close to the family who had allegedly witnessed the occurrence have turned hostile.

14. In the light of the above facts, we are of the view that the circumstances, have not been conclusively established, and in any case, they do not form a complete chain, so as to point out only the guilt of the



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appellant. Hence, the conviction and sentence imposed on the appellant, are liable to be set aside.

15. In the result, the Criminal Appeal is allowed and the appellant is acquitted of the charge. The conviction and sentence imposed upon the appellant in S.C.No.05 of 2016 dated 10.04.2018, on the file of the learned Session Judge, Namakkal, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bonds, if any, executed shall stand discharged.

(M.S.R.,J.) (S.M.,J.)
02.07.2024

Internet : yes
Index : yes/no
Neutral citation : yes/no
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Copy to:

1. The Principal Session Judge,
Nammakkal

2. The Inspector of Police,
Vellagoundampatti Police Station,

3. The Public Prosecutor,
High Court, Madras.



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