



Crl.A.No.729 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	30.08.2024
Pronounced on	20.09.2024

CORAM :

THE HONOURABLE Mr. JUSTICE **M.S. RAMESH**
AND
THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

Crl.A.No.729 of 2018

Sivakumar

... Appellant/Sole Accused

Vs.

State by The Inspector of Police,
M-3, Kovilpalayam Police Station,
Coimbatore.
(Crime No.294 of 2014)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the conviction and sentence imposed against the appellant on 29.01.2018 in SC.No.195/2015 on the file of the IV Additional District and Sessions Court, Coimbatore and acquit the appellant.

For Appellant : Mr.P.Pugalenth

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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J U D G M E N T

C.KUMARAPPAN, J.

The instant Criminal Appeal has been filed against the order of conviction passed against the appellant in SC.No.195 of 2015, by the learned IV Additional District and Sessions Judge, Coimbatore.

2. For better appreciation of the prosecution as well as the defence case, it is necessary to flitter upon the prosecution story. According to the prosecution, the deceased is the paternal uncle of the accused. It is the case of the prosecution that, the accused is a drunkard and used to demand money frequently from the deceased. Whenever the deceased refused to pay, there would be a quarrel between them. While so, on 16.11.2014 at about 8.00 p.m, there was a wordy quarrel between the deceased and the accused, as the deceased refused to pay the amount to the accused. Though the accused left the scene of occurrence at that point of time, he again returned at 10.30.p.m and developed a quarrel with the deceased. Having unquenched anger against the deceased for his refusal to pay the amount for consuming liquor, the accused took the grinder stone and threw it on the deceased's face. Resultantly, the deceased succumbed to the injury on 17.11.2014 night, at the hospital.



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3. After the death of the deceased, PW1-Govindasamy proceeded to the Kovilpalayam Police station and gave a complaint on 18.11.2014 at 11.00.am to PW11-Munusamy, the Sub Inspector of Police. On receipt of the complaint, PW11 registered an FIR in Crime No.294 of 2014 for the offence under Section 302 IPC. After registering the FIR, PW11 forwarded the same to the concerned jurisdictional Magistrate, as well as to the Investigating Officer-PW12.

4. On receipt of a copy of FIR, PW12-Mr.Ilamurugan, Inspector of Police, took the investigation and proceeded to the scene of occurrence on the same day at about 11.00.am and prepared the observation mahazar [Ex.P2] and rough sketch [Ex.P20], in the presence of PW6-Manoharan and Sampath. Then, he conducted inquest upon the body of the deceased, and also made arrangements for postmortem of the body of the deceased. He also recorded the statement from the witnesses. On 19.11.2014 at about 10.30.a.m, he arrested the accused. After the arrest, the accused voluntarily gave confession statement, and the same was recorded in the presence of PW6-Manoharan. On the basis of the confession statement, a discovery of fact was effected by recovering the grinder stone, as well as the blood stained



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shirt of the accused. Thereafter, he made arrangements for forensic examination of the blood stained articles. He also recorded the statement from the postmortem doctor [PW8], as well as the forensic experts. After completion of the investigation, he laid the charge sheet against the accused.

5. Before the Trial Court, the prosecution has examined as many as 12 witnesses as PW1 to PW12, marked 21 documents as Exs.P1 to P21 and 4 material objects as M.Os.1 to 4, to prove their case. On behalf of the accused, no witness was examined and no document was marked.

6. The Trial Court, after having considered the oral and documentary evidence, has found that the accused is guilty for the offence under Section 302 IPC and convicted and sentenced him to undergo Rigorous Imprisonment for life and to pay fine of Rs.1,000/- i/d to undergo S.I for a further period of two months. Assailing the said order of conviction, the accused has preferred the instant criminal appeal.

7 (a). The learned counsel for the appellant would vehemently contend that the witnesses relied by the prosecution are not wholly reliable, and the



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testimonies of the witnesses are contradicting on material particulars. It was the further contention of the learned counsel for the appellant that the deceased is also an alcohol addict, and the injury sustained by the deceased is not that of an injury as projected by the prosecution. On the other hand, the death of the deceased was the result of his accident fall. It was further contended that, though PW1 and PW2 were declared as hostile witnesses, the learned Sessions Judge placed reliance on the evidence of those witnesses, which is contrary to law. The learned counsel would also further contend that the so called eyewitnesses are unbelievable witnesses and that there were inordinate delay in preferring the complaint.

7(b). It was also contended by the learned counsel for the appellant that the so called eyewitnesses, though had seen the occurrence, their conduct in not safeguarding the deceased, and also not taking immediate steps to give first aid to the deceased is an unnatural conduct. Further, this unnatural conduct, coupled with the factum of delay in registering the FIR, would raise serious doubts in the prosecution case. He therefore, contended that the case projected by the prosecution is highly unbelievable and prayed to interfere with the order of conviction by allowing the instant criminal appeal.



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8. Per contra, the learned Additional Public Prosecutor would submit that PW1 to PW3 are the witnesses, who spoke about the motive, and also PW4 and PW5 have categorically narrated about the occurrence and implicated the accused with the occurrence. It was also the contention of the learned Additional Public Prosecutor that the recovery has been established by examining PW6, and that the nexus between the occurrence and the recovered materials have been proved through the scientific evidence. Therefore, the learned Additional Public Prosecutor would contend that there are no grounds to interfere with the order of conviction of the learned Sessions Judge. Hence, prayed to dismiss the criminal appeal.

9. In order to prove the prosecution case, the prosecution relied upon the evidence of PW1 to PW3. The witnesses PW1-Govindasamy, PW2-Subramani and PW3-Aruchamy are the resident of Kallipalayam Village, in the same vicinity, where both the accused and deceased live and are also related to them. According to the prosecution, the occurrence took place in the residence of the deceased on 16.11.2014 at about 10.30.p.m. By examining PW1 to PW3, the prosecution has demonstrated that the issue was started at 8.00.pm itself, while the accused demanded money for



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consumption of alcohol. However, the learned counsel for the appellant would contend that PW1 and PW2 were declared as hostile witnesses and therefore, their evidence does not have any evidenciary value.

10. It is pertinent to mention here that merely because, these witnesses were declared as hostile, that does not mean that the evidence of those witnesses loses its evidenciary value. The evidence of the hostile witness is equally relevant and to be treated on par like any other testimony, subject to its reliability. Though PW1 and PW2 turned hostile, they had spoken about the motive of the accused against the deceased. PW1 has stated that at about 7.00.pm on 16.11.2014, there was a wordy quarrel between the accused and the deceased, and such quarrel is a routine affair. He further stated that when he was witnessing such an occurrence, the other witnesses, PW2-Subramani and PW3-Aruchamy were also present along with him, and they have also corroborated PW1's evidence. Therefore, if we look at the evidence of PW1 to PW3 harmoniously, it is apparent that on 16.11.2014 qua prior to the occurrence, there was a wordy quarrel between the accused and the deceased. It is also pertinent to mention here that unfortunately on 17.11.2014 the accused mother died in the hospital. In this regard, PW1 and PW3 had



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further spoken about the accused's meaningful absence in the funeral ceremony of his mother, which took place on 17.11.2014.

11. At this juncture, the learned counsel for the appellant would draw the attention of this Court about the inordinate delay in registering the FIR. However, this Court is of the firm view that the delay in registering the complaint has been duly explained by PW1. He stated that, on seeing the deceased was lying in a pool of blood on 17.11.2014 at about 7.00.a.m, he made arrangements to admit the deceased in the hospital, and that on the very same day, the mother of the accused also passed away and there was a funeral for her on 17.11.2014. More pertinently, on 17.11.2014, the deceased was alive. Therefore, the above instances, qua the death of the accused's mother and the condition of the deceased, that too in a case where squabbles is a routine affair, and that when the issue was between the relatives qua between the uncle and nephew, it may not be serious affair for the neighbour. Here, we must also keep on of our mind that there are no evidence as to the availability of other family member to the deceased. Therefore, though there was a delay in registering the complaint, from the statement made by PW1, the same has been explained and the reason given by PW1 is plausible and



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liable to be accepted. Therefore, the defence put forth by the learned counsel for the appellant that there was inordinate unexplained delay in registering the FIR cannot have any traction in his favour.

12. Transcending the above explanation, still there is an explanation for delay in giving complaint. While reading the testimony of PW1 to PW3, their testimony is lingering with the fear psychosis in substratum, against the accused. Furthermore, the squabbles in the house of the deceased is a daily affair and therefore, it was quite natural for any neighbour not to take it seriously. Therefore, as stated supra, the delay in registering the FIR was sufficiently explained.

13. Here, while considering the unfortunate incident, the witnesses viz., PW1 to PW3 though did not speak about the way in which the occurrence took place, they have unequivocally have stated that the occurrence was witnessed by one Ramasamy [PW4], and Gurusami [PW5]. Those witnesses have categorically stated that on 16.11.2014 at about 10.30 p.m, when the deceased was sitting in Thinnai, the accused kicked him and threw the grinding stone on his face. When the PW4 and PW5 were



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confronted during cross examination, as to their immediate reaction to the above occurrence, they have stated that they feared for their life and hence, left the scene of occurrence.

14. It is pertinent to mention here that when a quarrel in the deceased family was routine, and when the behavior of the accused was violent, the normal propensity and tendency of any person is to firstly safeguard themselves, so as to support their family. Furthermore, every person have their own style of reaction to an incident. Therefore, since because PW4 and PW5 did not take any interest to give police complaint immediately, or make any attempt to give first aid, the same by itself does not make them as unreliable eyewitnesses.

15. It is pertinent to mention here that the description of event by PW4 and PW5 is lucid and straight forward and their evidences compliment each other. To put it differently, their evidences are corroborating each other. Therefore, we are of the firm view that the prosecution has established the charge beyond reasonable doubts against the accused.



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16. Apart from that, the prosecution has further vindicated the charge against the accused by effecting discovery of fact. It is the case of the prosecution that in the presence of PW6-Manoharan, the accused had confessed to the crime and also identified the place where he concealed the blood stained grinding stone, as well as dothis and shirt. When we look at the evidence of PW6, this Court does not find any inherent contradictions or improbabilities and as such the evidence of PW6 inspires the confidence of this Court. It was contended that when the observation mahazar was prepared at the scene of occurrence, though the existence of banana tree was mentioned, the availability of the grinding stone and the blood stained shirt which was allegedly concealed near the banana tree was not mentioned. In this regard, the learned Additional Public Prosecutor would contend that the above materials were concealed beneath the dry banana leaf and mulches and was able to be discovered, only at the instance of the accused. Therefore, on a cumulative reading of PW6 evidence, we are of the firm view that there are no reason to disbelieve such discovery of fact.

17. Further, the prosecution has also established the connection of discovered materials with the occurrence. In this regard, the prosecution has examined PW7, who is the scientific officer of the Forensic Department.



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According to his evidence, the deceased blood grouping is “O”, and same group is found in the blood stains of the grinding stone. In the dothis and shirt though grouping could not be ascertained, it was concluded that the blood stains found in those dress materials are human blood. In this regard, the prosecution relied upon Exs.P5 and P9. This scientific evidence also strengthened the prosecution case.

18. The Doctor-PW8 [Dr.Jeyasingh], who conducted the postmortem has found the following injuries in the body of the deceased:-

“1) Reddish abrasion 5x2 cm noted over top of left shoulder and 0.5x0.5 cm noted above right eyebrow.

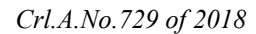
2) A oval shaped bluish contusion 8x6 cm x muscle deep noted over right temple area to cheek.

3) Bluish contusion 7x6 cm x scalp deep noted over left temporo parietal region.

3) Bluish contusion 9x7 cm noted over left preauricular region to lower cheek.

4) Sutured lacerated wound 4 cm in length noted over right cheek and 3 cm in length noted over right side chin with surrounding reddish abrasion over the area of 4x2 cm.

-Chin found deformed, on dissection the underlying both side body of mandible found fractured with surrounding tissue contusion bluish colour





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tallied with the statement of the eyewitnesses viz., PW4 and PW5.

Therefore, the postmortem certificate also strengthens the prosecution case, as to the connection between the injury and the weapon used for commission of offence. The above detailed discussion would indubitably proves the impregnable proof of the prosecution case beyond reasonable doubt. Therefore, we are of the firm opinion that the order of the conviction rendered by the learned Sessions Judge, is well merited and does not require any interference.

19. In the result, this Criminal Appeal stands dismissed.

[M.S.R., J.] [C.K., J.]
20.09.2024

Index:Yes/No

Neutral Citation: Yes/No

Speaking order: Yes/No

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- To
1. The IV Additional District and Sessions Court,
Coimbatore.
 2. The Inspector of Police,
M-3, Kovilpalayam Police Station,
Coimbatore.
 3. The Public Prosecutor,
High Court of Madras,
Chennai-104.



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

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Pre-delivery judgment made in
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