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Crl.A.No.755 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	04.09.2024
Pronounced on	20.09.2024

CORAM :

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

Crl.A.No.755 of 2018

D.Jayakumar

... Appellant/A1

Vs.

State rep. by
The Inspector of Police,
Tirupattur Taluk Police Station,
Tirupattur, Vellore District.
(Crime No.676 of 2016)

... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the conviction and sentence imposed in S.C.No.141/2017 dated 22.10.2018 on the file of the learned III Additional District and Sessions Judge, Tirupattur, Vellore District.

For Appellant : Mr.M.Palanivel

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 dated 22.10.2018 passed against the appellant herein in SC.No.141 of 2017. In the above Sessions Case, 3 accused were tried viz., (i) Jayakumar, (ii) Udhayakumar and (iii) Pappy @ Padmavathi. Though the Trial Court acquitted the accused 2 and 3 from all the charges, an order of conviction was passed against the 1st accused under Section 302 IPC and he was sentenced to undergo life imprisonment. Thus, the first accused is the sole appellant in the criminal appeal.

2. For the sake of convenience, we may refer the litigative status as in the Trial Court. According to the prosecution case, the 1st accused Jayakumar and the 2nd accused Udhayakumar are brothers. The 3rd accused Pappy @ Padmavathi is the mother of the 1st and 2nd accused. The deceased is the neighbor of the accused. It appears that the wife of the 1st accused namely Kanimozhi was distantly related to the wife of the deceased Vijaya, thus she used to speak with her in a friendly manner. This was not liked by the 3rd accused Pappy @ Padmavathi and she suspected that PW1



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has been instigating her daughter-in-law to fight with her son (A1), which resulted in an animosity between the accused family and the deceased family. While so, on 14.10.2016 the 3rd accused has warned PW1 not to speak with her daughter-in-law Kanimozhi.

3. However, ignoring such warning, PW1 and Kanimozhi had a chat at about 7.30.p.m on 15.10.2016. Enraged by such conduct, the 3rd accused abused PW1. When this was questioned by the deceased, the 3rd accused instigated her sons, qua the accused 1 and 2, to do away the deceased. In furtherance thereof, the 1st accused stabbed the deceased with knife, and the 2nd accused attacked him with his hand. Immediately after the occurrence, when the deceased was taken to the hospital, he was declared dead.

4. Thereafter, PW1 gave her statement before the Sub Inspector of Police Ms.Nirmala [PW14], and the same was recorded by her, and registered an FIR on 15.10.2016 at about 22.00 hours in Crime No.676 of 2016. Immediately, she forwarded the same to the Investigating Officer and to the concerned jurisdictional Magistrate. On receipt of the FIR, the



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Investigating Officer [PW18] proceeded to the scene of occurrence and made arrangements to guard the occurrence spot. Again on 16.10.2016, he went to the scene of occurrence and prepared the Mahazar [Ex.P2] and rough sketch [Ex.P10], and also recorded the statement of occurrence witnesses. Thereafter, he conducted inquest upon the body of the deceased, and made arrangements for the postmortem of the body of the deceased.

5. On 16.10.2016 itself, he arrested all the accused. Immediately after the arrest, the 1st accused Jayakumar voluntarily gave a confession statement, and in furtherance of the confession statement, the weapon used in the occurrence was recovered. Thereafter, the Investigating Officer has forwarded the recovered weapon to the concerned Court under Form 95, and also made arrangements for forensic analysis. Thereafter, he recorded the statement of the postmortem Doctor [PW16] and the Sub Inspector of Police and the Doctor, who gave viscera report and report regarding Hyoid bone. Thus, after completing the investigation, he laid the final report before the jurisdictional Magistrate.

6. In pursuance thereof, all the 3 accused were tried before the



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Sessions Court.

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7. The prosecution has examined as many as 18 witnesses as PW1 to PW18, relied 13 documents as Exs.P1 to P13, and marked 5 Material Objects as M.O.1 to M.O.5 to prove their case.

8. The Trial Court after having considered the oral and documentary evidence, has found that the prosecution has miserably failed to prove the charges against the 2nd and 3rd accused and thereby, acquitted the accused 2 and 3. However, as against the 1st accused, the Trial Court has found that the prosecution has proved the charge beyond reasonable doubts, and thereby, convicted the 1st accused for the offence under Section 302 IPC, and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo 3 months Simple Imprisonment.

9. Assailing the above order of conviction, the learned counsel for the appellant/1st accused would contend that the evidence of the prosecution witnesses are not reliable, and that there are inherent improbabilities and contradictions. It was also the contention of the learned counsel for the



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appellant that, there are material contradictions in the evidence of the witnesses, which touches upon the very genesis of the occurrence. It is the further contention of the learned counsel for the appellant that the accused have been deprived of the spontaneous version of the persons, given to the Doctor [PW18], by not furnishing the accident register of the deceased. It is also further contention of the learned counsel for the appellant that the weapon relied by the prosecution, differs from one witness to another witness, and this would suffice to raise a reasonable doubt over the prosecution case. It is also the contention of the learned counsel for the appellant that the deceased was in the habit of consuming alcohol, and that by avocation, he being a carpenter, under intoxication he may have lost his control and fallen on sharp tools used for carpenting. Therefore, the injury sustained by the deceased was not an assault, but an accident, and only to conceal the said factum, the accident report was not filed. Hence, prayed to allow this Criminal Appeal.

10. Per contra, the learned Additional Public Prosecutor would contend that, PW1 who is none other than the wife of the deceased is a natural witness, and her presence at the scene of occurrence cannot be doubted, besides her evidence is wholly reliable as she has truly spoken



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about every aspect of the prosecution case. It was also the contention of the learned Additional Public Prosecutor that the other witnesses relied by the prosecution have corroborated the evidence of PW1. This apart, the prosecution has also established the recovery of weapon, which also connected the accused to the occurrence. Therefore, it is also the contention of the learned Additional Public Prosecutor that there are no grounds to interfere with the order of the learned Sessions Judge. Hence, prayed to dismiss the appeal.

11. We have given our anxious consideration to either side submissions.

12. While looking at the case of the prosecution, the evidences of PW1-Vijaya, and PW3-Krishnan, co-brother of the deceased, and PW4-Devi, who is the wife of PW3, and PW5-Kayalvizhi, who is also related to the deceased were relied upon, to support the prosecution's case. According to prosecution, PW4 to PW7 being the eyewitnesses have spoken about the occurrence. If we look at the evidences of PW1, PW3 to PW7, they are consistent and corroborates the evidence of PW1. According to PW1, the 1st accused Jayakumar, stabbed the deceased with a knife. This factum was

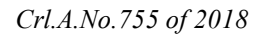


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substantiated by examining PW3, who is a neighbor and who came to the scene of occurrence on hearing the hue and cry, and when he reached the scene of occurrence, he also witnessed the assault of stabbing the deceased. In similar lines, the witnesses PW4 to PW7 have also corroborated the evidence of PW1.

13. It is the defence of the appellant that the deceased, being a carpenter, used to consume alcohol in the evening and therefore, under its influence, he had a fall on the sharp tools and sustained injury. But, this defence has no legs to stand on account of the observation mahazar [Ex.P2], which was marked through Mr.Madavan [PW10], the same does not indicate to the presence of any carpenting tools at the scene of occurrence. More pertinently, PW10, who witnessed the observation mahazar was not cross examined. Therefore, the authenticity of Ex.P2-mahazar remains unchallenged. Therefore, in the absence of any carpenting tools at the scene of occurrence, the defence put forth by the accused that the deceased sustained the injury due to fall on the carpenting tools is unacceptable, and contrary to the available evidence.

14. Even, while perusing Ex.P1-complaint, all the eyewitnesses'



15. The learned counsel for the appellant would vociferously contend that the alleged recovery is doubtful and the same could be demonstrated through the description of weapon by the confession witness PW11. As rightly contended by the learned counsel for the appellant, the PW1 refers the recovered weapon is “Soori Knife” measuring 1 foot length and 3 inches width. But the M.O.1 is a “vegetable cutting knife”. However, this discrepancy cannot make any dent in the prosecution case, as they proved the charges through eyewitnesses account, whose evidences are wholly reliable. Therefore, when there is a highly trustworthy witnesses, the discrepancy in respect of description of weapon would lose its significance. More pertinently, all the eyewitnesses identified M.O.1 as the



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weapon used in the occurrence. This also makes the evidence of confession witness PW11, insignificant. The learned counsel for the appellant would contend that all the witnesses are close relatives of the deceased. It is settled principle of law that, there is no bar to rely on the relative witnesses, as they have more particular to bring the real culprit to book. Further all the witnesses are residing near the occurrence place and therefore, their presence at the scene of occurrence is natural. As stated supra, no material or improbabilities and inherent contradictions were elicited or surfaced to doubt the veracity of the occurrence witnesses. As we already stated, all the occurrence witnesses inspires the confidence of this Court.

16. From the evidence of the prosecution witnesses, we do not find any discrepancy, inconsistency and unexplained circumstances, which touches the root of the matter. Apart from that, all the witnesses have withstood the arduous cross examination, though it is the case of the accused that he did not involve in the offence, he was not able to put forth any material so as to invoke the theory of reasonable doubts in favour of the accused. Thus, we are of the firm view that the Trial Court on correct appreciation of evidences have come to a right conclusion against the first



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accused. Therefore, we do not find any ground to interfere with the order of the learned Sessions Judge.

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

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

20.09.2024

Index:Yes

Neutral Citation: Yes

Speaking order: Yes

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To

1. The III Additional District and Sessions Judge,
Tirupattur,
Vellore District.
2. The Inspector of Police,
Tirupattur Taluk Police Station,
Tirupattur, Vellore District.
3. The Public Prosecutor,
High Court of Madras,
Chennai-104.



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and
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Pre-delivery judgment made in
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