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Crl.A.No.829 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.829 of 2018

1. Anjappa

2. Sasikumar

3. Harish @ Veerappa

...Appellants/Accused Nos.1 to 3

vs.

State by the Inspector of Police,
Denkanikottai Police Station,
Krishnagiri District.
Crime No.31 of 2016

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 (2) of Cr.P.C., 1973, to call for the entire records in connection with the S.C.No.187/2016 on the file of the Learned Additional District and Sessions Judge, Hosur, Krishnagiri District and set aside the Judgment dated 12.11.2018.

For Appellants : Mr.E.Kannadasan
for A1 and A3
A2 - Died

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

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

This Criminal Appeal has been filed by the accused 1 to 3, challenging the conviction and sentences imposed upon them vide judgment dated 12.11.2018 in S.C.No.187 of 2016 on the file of the learned Additional District and Sessions Judge, Hosur, Krishnagiri District.

2. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the trial Court.

3 (i). It is the case of the prosecution that the deceased and A1 were close friends; that A1 used to visit the house of the deceased to meet the wife of the deceased in the absence of deceased and hence, the deceased had a grudge against A1; that when the accused A1 to A3 and the deceased went to consume alcohol together on 12.01.2016 at about 5.00 p.m. and after they consumed alcohol at about 9.30 p.m., the deceased is said to have questioned A1 as to why he was visiting the house of the deceased in his absence and meeting his wife and thereby, causing embarrassment to him;



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that there was a wordy quarrel on account of the same, A1 is said to have taken a stone and smashed it against the back and left side of the head of the deceased; that A2 is said to have taken a stone and punched it on the stomach of the deceased; and that A3 is said to have slapped the deceased and all of them took the deceased and threw the body in the well of one Muniyappa Naidu (not examined) and caused his death.

(ii) It is further the case of the prosecution that A3 appeared before the Village Administrative Officer [P.W.1] on 15.01.2016 at about 8.30 a.m. and confessed before him that they had caused the death of the deceased; that P.W.1 recorded the said confession [Ex.P1] and took A3 along with the said confession to the Police Station and lodged a complaint [Ex.P2]; that the said complaint was registered by P.W.9, the Sub Inspector of Police, for the offence under Section 302 r/w 201 of the Indian Penal Code in Crime No. 31/2016 in Ex.P10.

(iii) P.W.10, the Inspector of Police took up the investigation and went to the scene of the occurrence on 15.01.2016 at about 10.00 a.m. and



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prepared the Observation Mahazar [Ex.P7] and Rough Sketch [Ex.P11].

Thereafter, he conducted an inquest over the body of the deceased, which was taken out from the well. The Inquest Report was marked as Ex.P12. Thereafter, he arrested A3 at 1.30 p.m., and on his confession, he arrested the other accused, namely A1 and A2.

(iv) On the confession given by A1, he seized the stone weighing 1 kg in the presence of witnesses. He thereafter, seized the dress materials and other articles from the body of the deceased and sent those articles, along with other seized articles, to the Forensic Science Laboratory after obtaining orders from the Court. Thereafter, he handed over the investigation to P.W.11.

(v) P.W.11/the Investigation Officer examined other witnesses and filed the Final Report against the accused for the offence under Section 302 r/w 201 of the IPC before the learned District Munsif cum Judicial Magistrate, Denkanikottai.



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WEB COPY (vi) On the appearance of the accused, 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.187 of 2016 and was made over to the learned Additional District and Sessions Judge, Hosur, Krishnagiri, for trial. The trial Court framed charges u/s. 302 of the IPC as against the accused, and when questioned, the accused pleaded 'not guilty'.

(vii) To prove the case, the prosecution examined 11 witnesses as P.W.1 to P.W.11, marked 15 exhibits as Exs.P1 to P15, and marked six Material Objects as M.O.1 to M.O.6. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witnesses, nor marked any documents.

(viii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established the case beyond reasonable doubt, convicted and sentenced the accused as follows:



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<i>Accused No.</i>	<i>Offence under Section</i>	<i>Sentence imposed</i>
A1	302 IPC	To undergo life imprisonment and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months.
A2	302 IPC	To undergo life imprisonment and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months.
A3	302 IPC	To undergo life imprisonment and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months.

Hence, the accused/appellants have preferred the appeal challenging the said conviction and sentences.

4. Heard Mr.E.Kannadasan, learned counsel appearing for the appellants, and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent/State. This Court also perused all the materials available on record.

5 (i). Mr.E.Kannadasan, the learned counsel for the appellants submitted that A2/second appellant is no more. Mr.A.Gokulakrishnan, the



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learned Additional Public Prosecutor confirmed the said fact on instructions and produced the death certificate, which shows that the deceased died on 28.06.2020.

(ii) The learned counsel further submitted that the case has not been proved by the prosecution beyond reasonable doubt; that apart from the evidence of last seen by P.W.2 to P.W.4 and the extra judicial confession given by A3, no other circumstances have been established by the prosecution; that the motive has not been proved by the prosecution and since there is no chain of circumstances pointing out only to the guilt of the accused, the Judgment of conviction is liable to be set aside.

6. Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor, *per contra*, submitted that the prosecution has established the case beyond reasonable doubt, that the circumstances of motive, the last-seen theory, and the extra-judicial confession given by A3, besides the arrest and recovery, would conclusively establish the involvement of the accused, and therefore submitted that the trial Court was justified in holding the accused guilty of



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the offence; hence, he prayed for dismissal of the appeal.

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

8. P.W.1 is the Village Administrative Officer before whom A3 gave a confession. P.W.2 to P.W.4 are close relatives of the deceased, who are said to have seen the deceased along with the appellants on 12.01.2016. P.W.5 is the brother of the deceased. P.W.6 is the Observation Mahazar witness [Ex.P7]. P.W.7 is the post-mortem doctor. P.W.8 is the post-mortem constable, who handed over the body. P.W.9 is the Sub Inspector of Police, who registered the First Information Report. P.W.10 is the first Investigating Officer, and P.W.11 is the Investigating Officer who filed the Final Report.

9. P.W.7, the doctor conducted a post-mortem on 15.01.2016 at about 3.00 p.m. She also noted an abrasion near the left eyebrows, measuring 3 x 2 cms. In her final opinion [Ex.P9], she had opined that the deceased died of asphyxia due to drowning. The Forensic Science Laboratory had



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also noted ethyl alcohol in the intestine, liver, kidney, and blood samples.

The Doctor had further stated during cross examination that the injuries sustained by the deceased could have been caused when the body was taken out of the well. No other external injuries were found on the deceased. It is also the definite case of the prosecution that A1 smashed the backside of the head of the deceased with a stone; however, no corresponding injury was noted in the post-mortem report.

10. Be that as it may. Even as regards the involvement of the accused, we find that the evidence let in by the prosecution does not form a complete chain of circumstances.

11. As regards motive, it is seen that P.W.2 and P.W.5 were examined by the prosecution. P.W.2 would vaguely state that he came to know that there was a dispute between the families of the accused and the deceased. P.W.5 is the brother of the deceased, who would also vaguely state that there was a dispute between the accused family and the family of the deceased. However, we find that the wife of the deceased or other material



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witnesses have not been examined by the prosecution. The evidence of the above two witnesses hardly establishes the motive. Admittedly, the accused and the deceased were friends, and there is no evidence to suggest that the deceased was forcibly taken by the accused. There is also no complaint by the family till 15.01.2016 about the missing person, when according to the prosecution, the deceased did not return home on 12.01.2016. The conduct of the witnesses, namely P.W.2 and P.W.5, who had spoken about the fact that the deceased went with the accused, is opposed to human conduct.

12. P.W.3 and P.W.4, the brothers-in-law of the deceased who had allegedly seen the deceased with the appellants, also did not make any effort to complain to the police till 15.01.2016. It is the prosecution case that the police came to know of the occurrence only on the complaint of P.W.1, who recorded the confession of A3 to . This would show that no complaint was made by the relatives of the deceased till then. The evidence of P.W.2 to P.W.5 who had deposed about the circumstances of the last seen appears to be an afterthought, and no credibility can be given to their evidence.



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13. A3 is said to have given extra judicial confession to P.W.1 on 15.01.2016. P.W.1 is a stranger to A3. There was no necessity for A3 to trust and then confess to P.W.1. Be that as it may. P.W.2 would state that the villagers questioned all the accused, and they had handed over the accused to the police. The relevant portion reads as follows:

"எதிரிகளை ஊர்காரர்கள் போலிசாரிடம் ஒப்படைத்தார்கள்;."

This evidence also raises considerable doubt with regard to the recording of confession of A3 by P.W.1. The voluntariness and truthfulness of the extra judicial confession are, therefore, highly doubtful.

14. As stated earlier, it is the case of the prosecution that the accused attacked the deceased with stones on the head and other parts of the body. However, the medical evidence belies the prosecution case. Therefore, we are of the view that none of the circumstances relied upon by the prosecution case against the accused have been established. Hence, we are of the view that the Judgment of conviction based on such evidence cannot be sustained, and therefore, the conviction and sentences imposed on the accused are liable to be set aside.



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15. Accordingly, the Criminal Appeal is allowed and the appellants are acquitted of the charges. The conviction and sentence imposed upon them in S.C.No.187 of 2016 dated 12.11.2018, on the file of the learned Additional District and Sessions Judge, Hosur, Krishnagiri District, are set aside, and the appellants are directed to be set at liberty forthwith, unless their presence is required in connection with any other case. The fine amount, if any, paid by the appellants shall be refunded. Bail bond, if any, executed shall stand discharged.

(M.S.R.,J) (S.M.,J)
07.03.2024

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

- 1.The Additional District and Sessions Judge,
Hosur,
Krishnagiri District
- 2.The Inspector of Police,
Denkanikottai Police Station,
Krishnagiri District.
- 3.The Public Prosecutor,
High Court, Madras



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AND
SUNDER MOHAN,J.
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