



Crl.A.No.14 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 16.07.2024

PRONOUNCED ON : 25.07.2024

CORAM :

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

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

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Sulochana

... Appellant/A1

v.

State represented by

Inspector of Police,

Sankarapuram Police Station,

Villupuram District.

(Crime No.832 of 2012)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, against the conviction of the appellant/A1 and sentence in S.C.No.42 of 2014 dated 07.12.2016, on the file of the learned III Additional District and Sessions Judge, Kallakurichi and set aside the conviction and sentence imposed in judgment dated 07.12.2016 and acquit the appellant/sole accused.

For Appellant : Mr.C.S.S.Pillai



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For Respondent : Mr.E.Raj Thilak
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 Accused No.1, challenging the conviction and sentence imposed upon her, vide judgment dated 07.12.2016 in S.C.No.42 of 2014, on the file of the learned III Additional District and Sessions Judge, Kallakurichi.

2.(i) It is the case of the prosecution that A1 and A2 had illicit intimacy; that the deceased was the husband of A1 and had objected to the said relationship; that a few days before the occurrence, the deceased had warned A1 and had also beaten A1; that therefore, A1 and A2 decided to do away with the deceased; that they conspired to mix pesticide in the liquor to be consumed by the deceased; that on 12.11.2012, at about 6.30 p.m., after the field work, the deceased came along with P.W.2/friend of the deceased, and asked A1 to bring brandy; that A1 came after some time with the brandy bottle after mixing pesticide in the brandy; that the deceased and P.W.2, consumed brandy; that P.W.2 felt that the brandy smelt of pesticide,



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drank very little, felt irritation in his stomach and left for his house; that the deceased succumbed to the pesticide poisoning; and that P.W.2 admitted to Government Hospital, Kallakurichi and was thereafter treated, in a private hospital.

(ii) On coming to know that the deceased died due to poisoning, P.W.1/the brother of the deceased gave a complaint [Ex.P1] to the police at 4.00 p.m., on 13.11.2012, which was registered by P.W.24, the Sub Inspector of Police, in Crime No.832 of 2012 for the offence under Sections 302 and 307 of the IPC. The FIR was marked as Ex.P15.

(iii) P.W.25/Inspector of Police took up the investigation, went to the scene of the occurrence at 6.00 p.m. on 13.11.2012 and prepared the Observation Mahazar [Ex.P16] and Rough Sketch [Ex.P17]. He conducted an inquest over the dead body of the deceased at his residence on 13.11.2012, at about 7.00 a.m., in the presence of Panchayatars, and prepared the inquest report [Ex.P18]. Thereafter, he sent the body for the conduct of a post-mortem, which was done by [PW20] the doctor attached



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to Government Hospital, Kallakurichi, who issued the postmortem certificate [Ex.P11].

(iv) On 14.11.2012, the Village Administrative Officer [PW10] produced the accused along with a special report [Ex.P3] before P.W.25/Investigation Officer. P.W.25 thereafter arrested the accused and recorded the confessions of both accused. The admissible portion of A1's confession was marked as Ex.P19.

(v) On the confession of A1, PW25 seized the material objects, namely, the “Capton brandy bottle” [M.O.1] and Mono Star empty pesticide bottle [M.O.2]. After the examination of the postmortem doctor [PW10] and the doctor [PW21], who examined PW2, he altered the charges from 302 and 307 of the IPC into Sections 302 r/w 120(B), 302 and 307 of the IPC. The alteration report is marked as Ex.P22. Thereafter, after examination of all the witnesses, filed the final report against the accused for the aforesaid offences, before the learned Judicial Magistrate, Sankarapuram.



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(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.42 of 2014 and was made over to the learned III Additional District and Sessions Judge, Kallakurichi, for trial. The trial Court framed charges under Sections 302, 120 (B) r/w 302 and 307 of the IPC against the accused, and when questioned, the accused pleaded 'not guilty'.

(vii) To prove the case, the prosecution examined 25 witnesses as P.W.1 to P.W.25, marked 22 exhibits as Ex.P1 to Ex.P22, and marked 2 Material Objects as M.O.1 and M.O.2. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them, they denied the same. The accused did not examine any witnesses or mark any documents on their side.

(viii) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant/A1 guilty of the charge under Sections 302 and



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307 of IPC and found her not guilty under Section 120(b) r/w 302 of the IPC. The trial Court found A2 not guilty of any of the charges levelled against him. Accordingly, the appellant/A1 was convicted and sentenced as follows:

Offence under Section	Sentence imposed
302 IPC	To undergo life imprisonment and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for six months.
307 IPC	To undergo rigorous imprisonment of 7 years and to pay a fine of Rs. 3000/- in default to undergo a further period of simple imprisonment of six months
The sentences were ordered to run concurrently.	

Hence, she has preferred the instant appeal challenging the said conviction and sentence.

3. Heard, Mr.C.S.S.Pillai, learned counsel for the appellant/A1, and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the respondent/State.

4. The learned counsel for the appellant/A1 submitted that P.W.1, the brother of the deceased was not in talking terms with the deceased and he



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had lodged a complaint belatedly on the next day at 4.00 p.m., on surmises and conjunctures and also to deny A1, her share in the property of the deceased; that the circumstances have not been conclusively established; that though the trial Court had rightly acquitted A2 ought to have acquitted A1 as well; that the alleged extra judicial confession given by the accused was not marked; that the nature of treatment given to P.W.2 and as to whether he has consumed poison, had not been proved by the prosecution; and that the evidence of the children of the deceased are tutored versions and they were under the care and custody of P.W.1., and prayed for acquittal.

5. The learned Additional Public Prosecutor *per contra* submitted that the evidence of P.W.2 and other witnesses who have been examined as P.W.4, P.W.5, P.W.7 to P.W.9, and P.W.12 to P.W.16 have spoken about the illicit intimacy between A1 and A2; that the fact that the deceased died due to poisoning has been established by the medical evidence and the evidence of P.W.2; that the recovery of the brandy bottle, and the empty container of the pesticide on the confession of A1, all conclusively establish that the deceased died due to poisoning, which was administered by A1; and



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that the judgment of the trial Court need not be interfered with.

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

7. (i) As stated earlier, the prosecution had examined 25 witnesses. P.W.1 is the brother of the deceased and lodged the complaint the next day afternoon at 4.00 p.m. He also spoke about the motive and the fact that the appellant [A1] had illicit intimacy with A2. P.W.2 is the neighbour of the deceased, and according to the prosecution, he consumed liquor with the deceased on the fateful day and has stated that when the deceased asked A1 to bring the liquor bottle, she brought it, seven minutes later and as the brandy smelt of pesticide, he did not drink it fully. He was examined by the police 13 days later. According to P.W.2, he was unconscious for a period of 13 days.

(ii) P.W.3 is the daughter of the deceased and speaks about her father and P.W.2 consuming liquor on the fateful evening and that her mother mixed pesticide in brandy and gave it to her father. She was 11 years old at



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the time of the examination and 8 years old at the time of the alleged occurrence. P.W.4 is the elder sister of P.W.3 and corroborates the evidence of P.W.3. She also speaks about the motive and the quarrel between the deceased and A1, a few days before the occurrence concerning the relationship. P.W.5 is an hearsay witness, as regards the occurrence and speaks about the motive. P.W.6 is the friend of P.W.2, who had taken P.W.2 to the hospital after he complained of burning sensation in the stomach. P.W.7 is a villager, and he is a nephew of the deceased and speaks about the motive, and he is a hearsay witness as regards the occurrence. P.W.8 is also a villager, who speaks about the motive, and he is an uncle of P.W.2.

(iii) P.W.9, an auto driver, speaks about the illicit intimacy and that one day on 11.11.2012, when he was talking with his friend Dhanabalan, A1 came and showed him, a pesticide container and asked him if it would kill any person, and that she also told him that her husband was abusing her after consuming liquor frequently. P.W.10 is a Village Administrative Officer, who is said to have recorded the Extra Judicial Confessions of A1 and A2. Though P.W.10 is said to have recorded the statements, as could be



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seen from the special report [Ex.P3], the prosecution had not chosen to mark their statements. P.W.11 is the village assistant who assisted P.W.10/Village Administrative Officer.

(iv) P.W.12 is the villager, who had taken P.W.2 to the hospital along with P.W.6. P.W.13 is running a tiffin shop and had spoken about the quarrel between A1 and the deceased, near his shop three days before the occurrence, where the deceased had attempted to assault A1. P.W.14 is another witness who spoke about the quarrel between A1 and the deceased and about his holding mediation talks between the two of them. P.W.15 is a hearsay witness and speaks about the quarrel between the deceased and A1, three days before the occurrence. P.W.16 is the daughter of the deceased. She is a hearsay witness and corroborates the evidence of P.W.3. P.W.17 is the mother of P.W.2 and speaks about the treatment given to her son. P.W.18 is the wife of P.W.2 and speaks about the treatment that was given to her husband.

(v) P.W.19 is the Observation Mahazar witness, and P.W.20 is the



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post-mortem Doctor. P.W.21 is the Doctor who treated P.W.2 and made entries in the Accident Register [Ex.P12]. P.W.22 is the Scientific Officer at the Forensic Science Laboratory and has detected the pesticides in the internal organs of the deceased. P.W.23 is the Sub Inspector of Police, who assisted the investigation. P.W.24 is the Sub Inspector of Police, who registered the FIR. P.W.25 is the Investigation Officer.

8. The prosecution relies upon the following circumstances to show that the appellant/A1 administered poison to the deceased since she had illicit relationship with A2 (acquitted by the Trial Court) and the deceased was an hindrance to the said relationship.

(a) The evidence of P.W.1, P.W.5, P.W.7 to P.W.9, P.W.13 and P.W.14 to show that the appellant/A1 had an illicit intimacy and also that three days before the occurrence, the appellant fought with the deceased near a tiffin shop and had vowed to cause the death of the deceased by administering poison;

(b) The evidence of P.W.2, P.W.3 and P.W.4 to prove that the



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appellant/A1 mixed poison in the brandy and gave it to the deceased;

(c) The medical evidence to show that the deceased died due to Monocrotophos poisoning; and

(d) The extra judicial confession said to have been made by A1 and A2 to P.W.10, the Village Administrative Officer.

9. (i) Before we discuss the circumstances relied upon by the prosecution, we would like to examine the genesis and origin of the case.

(ii) PW1, the brother of the deceased, who admits in his cross examination that he was not on talking terms with his deceased brother, had given a complaint on the next day at 4.00 p.m. The said FIR was sent to the Judicial Magistrate on the same day on 13.11.2012 at 8.00 p.m. It is PW1's version that he came to know through PW4, the daughter of the deceased that A1 and A2, administered poison by mixing it with brandy, consumed by the deceased. According to PW1, he went to the house of the deceased, the same evening. In the cross examination, he stated that he delayed the filing



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of the complaint since there was a marriage in his family and the next day was the Diwali festival. The explanation, in our view, is unacceptable. If PW1 had known the same day evening that the deceased died due to poisoning, a festival or marriage would not deter him from making a complaint. His conduct is unnatural.

(iii) Be that as it may. In the complaint, PW1 stated that he came to know that both A1 and A2 administered poison, however, there is no evidence to show that A2 was in the house of the deceased, at the relevant point in time. Therefore, the trial Court had acquitted A2 of the charges against him. But the question is whether PW1 and the other witnesses, who are said to have been in the house and witnessed the mixing of poison in the brandy bottle by A1, can be believed.

(iv) From the complaint, it is seen that PW4 herself was not in the house at the relevant point in time. However, in her deposition in Court, PW4 had deposed as if she had witnessed her mother pouring brandy into two glasses and giving it to the deceased and PW2. PW4 would further add



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that her father told her that A1 mixed poison in the brandy bottle and that the deceased shouted for help. If PW4, knew even at that time that the deceased was given poison, there is no reason why the deceased was not taken to the hospital immediately. Admittedly, the body of the deceased was in his house until the next afternoon. That apart, PW4 had admitted in her cross examination that she, did not know as to what happened inside the house and that she along with her sister-PW3, were playing outside and came to know only later as to what had happened. PW3 is the younger sister of PW4 and her presence in the house at the relevant point in time is falsified by PW4's evidence. Therefore, we are of the view that neither PW4 nor PW3 can be believed, as regards the fact that they saw A1 giving brandy to the deceased and PW2.

(v) We are left with the evidence of PW2, who is said to have consumed liquor along with the deceased on the fateful day. According to PW2, who was the neighbour of the deceased, they both went out of the house in the morning to do agricultural work; that in the evening they decided to consume liquor in the house of the deceased and they both went



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to the deceased's house; that the deceased asked A1 to bring the brandy bottle and A1 took seven minutes to bring the brandy bottle along with some snacks; that PW2 could smell pesticide in the brandy and therefore, he did not drink the liquor fully; and that the deceased consumed the brandy and cried for help. He would further add that he also felt uncomfortable and had burning sensations in the chest and stomach and went to his house and thereafter, he was taken to the hospital by his friend.

(vi) It is PW2's further version that he was first admitted to Kallakurichi Government Hospital and he was then unconscious and subsequently, he was taken to another hospital, where he was taking treatment for 13 days and till then he was unconscious. However, we find that the prosecution had not produced any hospital records relating to the treatment given to PW2 for 13 days. There is also no medical record to confirm PW2's version that he was unconscious for 13 days and therefore, the police could not examine him for 13 days. The prosecution, however, had marked the extract of the Accident Register [Ex.P12] at Government Hospital, Kallakurichi, in which it is stated that he had alcohol intake since



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morning with 'suspected poison intake'. It is also seen that the doctor had advised his admission and he had been suffering from severe respiratory asthma. It is also recorded in the Accident Register that PW2 was drowsy and answered irrelevantly and that he was bought by one Senthil-PW12. Thereafter, there is no evidence to show that PW2 was treated by a private hospital for 13 days. PW12, also does not state about any such treatment taken in the private hospital. PW6 who is said to have accompanied PW12 while taking PW2 to the hospital, also does not say anything about such treatment. Therefore, in our view, we are unable to accept the explanation offered by PW2 for his belated examination. That apart, the prosecution has not produced the medical record to confirm whether PW2 had also consumed the same type of poison, (though there is a reference to suspected poisoning in his Accident Register) which is said to have been consumed by the deceased and detected in his internal organs.

(vii) We also find from the evidence that the deceased and A1 were not in a good relationship, and therefore, the prosecution version that he asked A1 to bring a brandy bottle for his consumption along with his friend



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appears to be improbable. The defence had also suggested to the witnesses that it is not usual in a village to expect a lady of the house to serve liquor to the husband and such a version is opposed to our culture. We do not wish to make any comment on such a suggestion, made by the defence. However, we find from the evidence that the witnesses have all admitted that the deceased was never in the habit of consuming liquor at home, especially with an outsider, PW2. PW6 and PW12 the friends of the deceased, had admitted this fact in the cross examination. That apart PW18, the wife of PW2 had also stated that her husband had never gone to the house of the deceased for consuming liquor. The entries in the Accident Register [Ex.P12] in respect of PW2 state that he has had alcohol intake since morning and he was taken to the hospital at 9.20 p.m.

(viii) Considering all the above facts, we are of the view that the prosecution had not established the fact that A1 had mixed poison in the brandy and gave it to both the deceased and PW2. PW1 and the witnesses had proceeded on the premise that both A1 and A2 mixed poison, which is falsified. In our view, the evidence of PW2, PW3 and PW4 does not inspire



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confidence, to believe the said circumstances.

10. The prosecution had examined a few witnesses to establish that A1 and A2 had an illicit relationship, which was objected to by the deceased and that three days before the occurrence, they had quarrelled near a tiffin shop run by PW13. PW13 would further state that the deceased had beaten A1 and taken her to his house after he saw both A1 and A2 together.

11. The other circumstances relied upon by the prosecution is the extra judicial confession said to have been given by both A1 and A2 to the Village Administrative Officer [PW10] on 14.11.2012. PW10 is a total stranger to both the accused. The prosecution had not explained as to how and why both accused chose to give a confession to a total stranger. That apart, in his special report, sent to the investigating officer, marked as Ex.P3, PW10 had stated that he had enclosed the statements of both accused A1 and A2. However, strangely, the statements said to have been recorded by PW10 were not marked by the prosecution. This raises a doubt with regard to PW10's version that both A1 and A2 gave the extra judicial



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confession to him. As stated earlier, the voluntariness in any case is doubtful, as PW10 was a total stranger to them.

12. The viscera examination revealed that the stomach and intestine contained Monocrotophos and ethyl alcohol. Postmortem doctor had opined that the deceased would have died of monocrotophos poisoning. In our view, the prosecution had established motive and the deceased died due to poisoning. However, it did not establish that A1 had mixed poison with brandy and given it to the deceased and PW2.

13. Further, the recovery of the empty brandy bottle [M.O.1] and empty pesticide bottle [M.O.2] from the house of the deceased also does not appear to be believable. It is the case of the prosecution that PW25 conducted an inquest over the dead body of the deceased on 13.11.2012 and also searched the premises. That apart, PW7, the nephew of the deceased had stated in his cross examination that the police had taken the brandy bottle from PW14, who found it beneath a lemon tree in the house. Therefore, in our view, the prosecution case that the material objects were



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recovered, based on the confession of A1, is also doubtful.

14. That apart, as stated earlier, PW1 had proceeded on the basis that both A1 and A2 mixed poison and gave it to the deceased and had stated so in his belated complaint. There is no evidence to establish the involvement of A2. The evidence of other witnesses PW2, PW3 and PW4 in this regard, is unbelievable. There was no necessity for such a huge delay in lodging the complaint, if PW1 was so sure that his brother died of poisoning. The belated FIR, in our view, raises doubt with regard to the prosecution case and hence none of the witnesses would be of any use to prove the case. In this regard, we rely upon the following observations of the Hon'ble Supreme Court in ***Marudanal Augusti vs State Of Kerala*** reported in (1980) 4 SCC 425.

“The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the FIR is held to be fabricated or brought into existence long after the occurrence and any number of witness could be added without



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*there being anything to check the authenticity of
their evidence.”*

Thus, we are of the view that the prosecution has not established all the circumstances conclusively and the circumstances established by the prosecution do not form a complete chain.

15. For the above reasons, we are of the view that it would be highly unsafe to convict the appellant on the basis of the evidence adduced and the appellant/A1 is entitled to benefit of doubt. Therefore, the judgment of conviction and sentence passed by the trial Court, is liable to be set aside.

16. As a result, this Criminal Appeal is allowed, and the appellant/A1 is acquitted of all the charges. The conviction and sentence passed in S.C.No.42 of 2014, dated 07.12.2016 on the file of learned III Additional District and Sessions Judge, Kallakurichi, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.



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

25.07.2024

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Index : yes
Speaking order
Neutral citation : yes
dk/ars

To

1. The III Additional District and Sessions Judge,
Kallakurichi

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

3. The Superintendent,
Women Special Prison, Vellore.

4. The Public Prosecutor,
High Court, Madras.



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M.S.RAMESH,J.

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ars

Pre-delivery judgment in
Crl.A.No.14 of 2019

25.07.2024