



Crl.A.(MD).No.175 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.03.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

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Muthukumar @ Kumar

..Appellant/Sole Accused

Vs.

The Inspector of Police,
SIPCOT Police Station,
Thoothukudi District.
(Crime No.214/2016).

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records pertaining to the judgment dated 15.10.2019 made in S.C.No.149 of 2018 on the file of the Principal Sessions Judge, Thoothukudi and set aside the same as illegal.

For Appellant : Mr.S.Deenadhayalan
Amicus Curiae

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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JUDGMENT

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

The present Criminal Appeal has been filed by the sole accused against the conviction and sentence rendered by the learned Principal Sessions Judge, Thoothukudi in S.C.No.149 of 2018 vide judgment dated 15.10.2019, by which the accused was convicted for the offence under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for one year.

2. According to the case of the prosecution, on 24.07.2016 at about 18.00 hours to 20.30 hours, there was a wordy quarrel between the accused and the deceased. In pursuance thereof, on 24.07.2016, the accused went to Sivakumar Workshop and picked up a heavy hammer. It is the further case of the prosecution that when the accused picked up a big hammer, it was questioned by one Sethuraman, who was examined as P.W.4. Thereafter, on 25.07.2016, when the deceased was lying in the bus stop, the accused hit the deceased on his head and caused the fatal injury.



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3. After the occurrence, based on the complaint of one Mr.Rajasekar, Village Administrative Officer at 8.00 AM, an FIR was registered in Crime No.214 of 2016 for the offence under Section 302 IPC. P.W.18, the Investigating Officer received the FIR and proceeded to the scene of occurrence at about 9.00 AM and prepared observation mahazar and rough sketch at about 9.15 AM. Further, he had collected the hammer, blood stained soil and sample soil under mahazar and also conducted inquest in the presence of the witnesses between 10.40 and 12.00 hours.

4. It is further the case of the prosecution that after completion of inquest, the Investigating Officer made arrangements for the postmortem of the body of the deceased. Thereafter, the Investigating Officer recorded the statement of the witnesses and has also found the identity of the deceased. Based on the confession statement given by the accused in the presence of the Village Administrative Officer, one Mr.Selvakumar and his Assistant Mr.Kumaralingam, the accused was arrested on 30.07.2016 at about 10.15 hours and a discovery of fact was made. In pursuance thereof, the blood stained dhoti as well as the shirt of the accused have been recovered. The



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Investigating Officer, after completion of investigation, has laid the charge sheet before the Court concerned.

5. In order to prove the above charge, the prosecution has examined 19 witnesses and marked 19 documents as exhibits. Apart from that, eight material objects were also marked.

6. The Trial Court, after considering the oral and documentary evidence, has arrived at a conclusion that the prosecution has proved the charge against the accused beyond reasonable doubt and has imposed a punishment of life imprisonment for the offence under Section 302 IPC. Aggrieved by the same, the present Criminal Appeal is filed.

7. The learned counsel appearing for the appellant would vehemently contend that though this is a case arising out of circumstantial evidence, the prosecution has miserably failed to prove the complete chain of circumstances and that there are many missing links. In support of his submission, the learned counsel relied upon the decision of the Division



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Bench of this Court in the case of ***Kavitha Vs. State by the Inspector of Police reported in 2012 (2) MWN (Cr.) 563 (DB).***

8. It is the further contention of the learned counsel for the appellant that when the prosecution case heavily relies upon the picking up of big hammer from the workshop, where the accused was working, such crucial factum has not been proved by the prosecution. It is also contended by the learned counsel for the appellant that there is a serious doubt in respect of the identity of the weapon as stated by the prosecution and as proved before the Court.

9. It is also the submission of the learned counsel for the appellant that whenever any case arises out of circumstantial evidence, it is the duty of the prosecution to prove the motive for such an occurrence, whereas, in the case on hand, according to the learned counsel for the appellant, the prosecution has miserably failed to prove the motive. In view of the above submissions, the learned counsel prays this Court to interfere with the judgment of the Trial Court.



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10. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that from the evidence of the witnesses, the prosecution has proved the charge beyond reasonable doubt and that there are no contradictions in respect of the weapon identified and recovered from the spot. It is the further contention of the learned Additional Public Prosecutor that the prosecution witnesses have incisely pinpointed the involvement of the accused without there being any other hypothesis and therefore, the learned Additional Public Prosecutor prayed to dismiss the appeal.

11. We have given our anxious consideration to the submissions on either side and perused the materials available on record.

12. Since this is a case arising out of circumstantial evidence, as rightly contended by the learned counsel for the appellant, motive is the primary factor to be considered in this case. In order to prove the motive, the prosecution has examined P.W.3, who was the owner of the workshop and P.W.4, who was the watchman of the workshop. It is the case of the



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prosecution, more specifically, as per the charge framed against the accused that, in the presence of P.W.3, Lakshmana Perumal, there was a wordy quarrel between the accused and the deceased on the previous day night between 18.00 and 20.30 hours. But, while perusing the evidence of P.W.3, Lakshmana Perumal, he has not even whispered about such an occurrence in his evidence.

13. It is also the case of the prosecution that as per the charge sheet, on the previous day, the accused came to the workshop and took a heavy hammer. P.W.4, who was the watchman of the said workshop, has stated in his evidence that on the previous day of the occurrence, P.W.3 was not at all in station. Apart from that, in his chief examination, P.W.4 has not stated anything about picking up of hammer by the accused from the workshop. In respect of the motive, he just referred that there were certain issues between the accused and the deceased and beyond that, he has not stated anything in his chief examination, which could provoke the accused to go to an extent of doing away with the deceased.



14. Therefore, as rightly contended by the learned counsel for the appellant, on perusal of the evidence of P.W.3 and P.W.4, who are the prime witnesses to speak about the motive, this Court could not find any inference as to the existence of motive between the accused and the deceased.

15. Coming to the next circumstances projected by the prosecution is picked up the hammer from the workshop, where he was working under P.W.3. But, as rightly contended by the learned counsel for the appellant, while perusing the evidence of P.W.4, who is the prime witness to speak about the possession of the hammer with the accused, he has not even whispered anything about the presence of the accused on the previous day night to pick up the heavy hammer from the workshop. Apart from that, the contention of the learned counsel for the appellant is further vindicated through the absence of any identification by P.W.3 and P.W.4 in respect of the ownership of such hammer. Therefore, there is a missing of prime link as to the identity of the weapon used in the occurrence and its origin.



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16. The next link projected by the prosecution is that the discovery of fact of blood stained dhoti and shirt. If we look at the recovery mahazar Ex.P4, what was recovered was only the blood stained pant and a shirt, which has been marked as M.O.1 and M.O.2. Therefore, there is a wild contradiction between the discovery of fact stated in the confession statement and the material objects recovered and marked as M.O.1 and M.O.2. Furthermore, there is no reference about such dhoti in the serological report and what was recovered is only the shirt and even for the shirt, the result of blood grouping is inconclusive. Therefore, the next link of circumstances, which connects the accused is the recovery of blood stained shirt, which was also miserably failed to link the accused with the crime. Hence, the next link is also snapped in this case.

17. Apart from that, the learned counsel for the appellant would contend that there is a delay in registering the FIR and forwarding the same to the concerned jurisdictional Magistrate. In this regard, if we look at the evidence of P.W.3 and P.W.4, who are the owner and watchman of the workshop respectively, P.W.3 would state that even on 25.07.2016 at about



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6.30 AM, the Police have enquired near the workshop. Furthermore, P.W.4 has stated that on 25.07.2016 at about 6.00 AM, when he was proceeding to have tea, he found the deceased lying dead near APC College bus stop qua the shelter and he further stated that police was present even at 6.00 AM.

18. Therefore, in the above background, if we look at the registration of FIR, according to the prosecution, it is based upon the information of one Mr.Rajasekar, P.W.1, who was the Village Administrative Officer of Sankaraperi Village at the relevant point of time. P.W.1 states that he received information about the occurrence through one Chinnathai, who was examined as P.W.2, at about 7.00 AM. However, as unfurled through the evidence of P.W.3 and P.W.4 that the Police were present even prior to that, however, the registration of FIR was made based on the information of the P.W.1, Village Administrative Officer. This also causes reasonable doubt in the prosecution case.



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19. Therefore, taking into consideration of the missing links in respect of the identity of the hammer and also in respect of the absence of proof for recovery, the failure to prove the motive connecting the accused, and disclosure of fact coupled with the factum of registration of FIR belatedly, this Court is of the firm view that the prosecution has not proved the charge beyond reasonable doubt. Therefore, this Court finds merit in the appeal.

20. Hence, the judgment of conviction and sentence passed by the Principal Sessions Court, Thoothukudi in S.C.No.149 of 2018 dated 15.10.2019, is set aside and the appellant/sole accused is set at liberty. Bail bonds, if any executed by the appellant, shall stand cancelled. Fine, if any paid by the appellant, shall be refunded. Accordingly, the Criminal Appeal is allowed.

21. Though the appellant has filed the appeal by engaging a counsel, when the matter was taken up for final hearing, the learned counsel on record for the appellant did not appear and hence, this Court appointed



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Mr.S.Deenadhayalan as Amicus Curiae to assist the Court. Accordingly, the learned counsel, Mr.S.Deenadhayalan, appeared on behalf of the appellant and took us through the evidence, which are essential to appreciate the matter. This Court appreciates the efforts taken by the learned Amicus Curiae for his valid assistance to this Court to arrive at the above conclusion. The legal services authority shall pay remuneration to the Amicus Curiae as per the norms fixed by the legal services authority for a Senior Counsel.

(G.J.,J.) (C.K.,J.)
14.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The Principal Sessions Court,
Thoothukudi.

2.The Inspector of Police,
SIPCOT Police Station,
Thoothukudi District.

3.The Additional Public Prosecutor,

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Madurai Bench of Madras High Court,
Madurai.

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