



CrI.A.(MD)No.93 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 19.09.2024

PRONOUNCED ON : 22.10.2024

CORAM

THE HON'BLE MR.JUSTICE **C.V.KARTHIKEYAN**
AND
THE HON'BLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

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Shek Abdullah

... Appellant

VS

State through
The Inspector of Police,
S.S.Colony Police Station,
Madurai City.
(in Cr.No.794 of 2018)

...Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records relating to the judgment S.C.No.358 of 2019 dated 01.02.2021 on the file of the 1st Additional District and Sessions Judge, Madurai to set aside the same and allow the Criminal Appeal.

For Appellant	: Mr.M.Subash Babu Senior Counsel for Mr.C.Susi Kumar
For Respondent	: Mr.A.Thiruvadi Kumar Additional Public Prosecutor



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JUDGMENT

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(Judgment of this Court was delivered by **C.V.KARTHIKEYAN, J.**)

The sole accused in S.C.No.358 of 2019 who suffered by a conviction and sentence imposed by the learned 1st Additional District and Sessions Judge, Madurai, by judgment dated 01.02.2021, by which judgment, he was convicted for offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and fine of Rs.5,000/- in default to undergo three months simple imprisonment, has filed the present Criminal Appeal.

2.On a complaint (Ex-P1) given by PW-1, Ranjani, PW-15, Saravanakumar, the then Sub Inspector of Police at S.S.Colony Police Station, Madurai, had registered an FIR (Ex-P7) in Cr.No.794 of 2018 on 07.11.2018 against the accused/appellant herein, Shek Abdullah for offences punishable under Sections 294(b) (two counts) and 302 IPC.

3.In the complaint, it had been stated that the complainant and her husband Ramesh (deceased) were residing in Door No.K-11, Ellis Nagar Housing Board, Madurai. The accused, Shek Abdullah was residing in



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Door No.K-10, Ellis Nagar Housing Board. The mother-in-law of the de-facto complainant was residing in K-2 Block. In the complaint, PW-1 stated that on 07.11.2018 in the evening at around 04.30 pm, she was in her mother-in-law's house at K-2 block. Her husband, Ramesh, was climbing the stairs towards their house in K-11. At that time, she heard noises of quarrel. She went to upstairs. She claimed that she saw the accused beating her husband. She tried to prevent him, but the accused abused her in filthy language and according to her, pushed her husband down and repeatedly stamped him on the neck portion. She stated that her husband became unconscious. She cried out. The accused then ran away. She then called the neighbours and her husband was taken to Government Rajaji Hospital at Madurai, where he was declared brought dead.

4.This complaint was received by S.S.Colony Police Station at 09.00 pm and FIR was registered as stated above for offences punishable under Sections 294(b) and 302 IPC. The copy of the FIR was received by the learned Judicial Magistrate-V, Madurai at 12.15 am on 08.11.2018. After completing the investigation, the Investigating Officer filed final report, which was taken cognizance as P.R.C. No.232 of 2019. After following due



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procedure, the learned Judicial Magistrate-V, Madurai committed the case to the Court of Sessions.

5.The trial took before the I Additional District and Sessions Court, Madurai. The said Court framed charges under Sections 302 IPC and 294(b) IPC (two counts). The accused denied the charges and claimed to be tried. To establish the charges, the prosecution examined PW-1 to PW-16 witnesses and marked Ex-P1 to Ex-P9 documents. The prosecution also produced MO-1 to MO-3, material objects. The incriminating evidence was then put to the accused and his statements were recorded under Section 313 (1)(b) Cr.P.C. On the side of the accused, Ex-D1 was marked.

6.As stated above, by judgment dated 01.02.2021, the learned I Additional District and Sessions Judge, Madurai, had convicted the accused for offence punishable under Section 302 IPC, but had acquitted him for the offence punishable under Section 294(b) IPC (two counts). The accused was sentenced to undergo life imprisonment and fine of Rs.5,000/- in default to undergo three months simple imprisonment. The accused had filed the present Criminal Appeal questioning the said conviction and



sentence.

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7.The facts in a little more detail are that the accused, Shek Abdullah, was residing at Door No.K-10, Ellis Nagar Housing Board in Madurai. The deceased, Ramesh with his family including his wife, PW-1, Ranjani was residing at Door No.K-11 in the same Ellis Nagar Housing Board. In the charge, it had been stated that the deceased, Ramesh, had the habit of listening to FM music in his radio by tuning it to a very loud sound. This was often objected to by the accused. It had been further stated in the charge that the deceased often used to abuse the accused and address him in a degrading manner. It had been further stated that the deceased, Ramesh had asked the accused to purchase cigarettes which the accused refused to do. This led to further enmity between the two of them.

8.It had been further stated in the charge that on 07.11.2018, when the deceased Ramesh came back around 04.30 pm, in the evening after going out, he found the accused sitting in his doorstep. The deceased, without any provocation, abused the accused in filthy language. Words were exchanged between the two of them. This quarrel escalated into violence. It is stated



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that the accused beat the deceased. Hearing the noise, the wife of the deceased, Ranjani (PW-1), came there and it is stated that the accused abused her and pushed the deceased on the wall and when he fell down, it is further alleged that the accused stamped him on the neck.

9.The prosecution placed reliance on the evidence of PW-1/Ranjani/wife of the deceased as the only eyewitness.

10.Thereafter, the deceased was taken to Rani Hospital and thereafter, to the Government Rajaji Hospital, Madurai, where he was declared brought dead. It must be straightaway mentioned that this fact that the deceased was initially taken to Rani Hospital was not mentioned in the complaint. The prosecution also did not produce or mark as a document, the Accident Register, which was marked as Ex-D1, wherein, it had been stated that the injury took place at the house, but the name of the accused was not given as being the person responsible for causing the injury.

11.Thereafter, PW-1 had lodged a complaint before the S.S.Colony Police Station and FIR in Cr.No.794 of 2018 had been registered on



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07.11.2018 at 09.00 pm. The accused was named in the complaint. The FIR was forwarded to the learned Judicial Magistrate-V, Madurai, who received it at 12.15 am at 08.11.2018.

12.Subsequent to the registration of FIR, the investigation was taken over by PW-16, Sankar Kannan, Inspector of Police, S.S.Colony Police Station. In his evidence, he stated that he went over to the scene of crime at 09.30 pm and prepared observation mahazar, Ex-P2 and rough sketch, Ex-P8, in the presence of PW-2, Mydeen Raja and PW-3 Muthu Raman. He then recorded the statement of PW-1 Ranjani. He then recorded the statement of Sunna Beevi (PW-8) (declared hostile), Appas (PW-9) (declared hostile), Pothum Ponnu (PW-4) and Ganesan (PW-5). He further recorded the statements of Ramesh (PW-6) and Devi (PW-7). He then recorded the statements of Saravana Kumar (PW-15), Sub Inspector of Police, S.S.Colony Police Station, who registered the FIR.

13.He then conducted the inquest over the dead body of the deceased in the presence of panchayadars at the Government Rajaji Hospital, Madurai. The inquest report was marked as Ex-P9. He then forwarded the



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dead body through Pounraj, Head Constable, PW-12, for conducting postmortem.

14.The postmortem was conducted by PW-13, Dr.G.Manikandan, who issued postmortem certificate, Ex-P5 and the final opinion for the cause of death, Ex-P6. In the postmortem certificate, the ante-mortem injury was noted as dark red colour measuring 5 cm x 4 cm over the left side of the cheek. On dissection, sub scalp contusion was noticed in the size of 10 cm x 8 cm over the occipital region of the scalp. It was further noticed that there was diffuse sub arachnoid hemorrhage over both cerebral hemispheres and cerebellum.

15.PW-16, Sankar Kannan, Inspector of Police, S.S.Colony Police Station, then arrested the accused at 01.30 pm on 08.11.2018 in the presence of Kathar Sherif, PW-10 (declared hostile) and Arockiyadas (PW-11) (declared hostile). However, the signatures of PW-10 and PW-11 in the confession statement were marked as Ex-P3 and Ex-P4. PW-16 then recorded the statements of PW-14, Vinoth Kumar, Head Constable and PW-12, Paun Raj, Head Constable. Thereafter, final report was filed



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charging the accused for offences punishable under Sections 294(b) and 302 IPC.

16.During trial, PW-1, Ranjani, wife of the deceased stated that on 07.11.2018 in the evening at around 04.30 pm, she was in the house of her mother-in-law. Her husband, the deceased, who had gone out, returned back and was going upstairs to their residence. At that time, she heard a loud noise. She went upstairs. She claimed that she saw the accused fighting with her husband. She further stated that the accused abused her in filthy language and pushed her down and also pushed her husband down. She further stated that thereafter, the accused had stamped her husband on the neck. When she screamed out, PW-8, Sunna Beevi and her husband, Appas (PW-9) in the second floor came down.

17.PW-1 further stated that she took her husband along with PW-9, Appas, in an auto to the Government General Hospital at Madurai. However, in her cross examination, she admitted that her husband was initially taken to Rani Hospital and thereafter shifted to Government General Hospital. She further stated in her chief examination that she had



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also informed her brother-in-law, PW-5, Ganesan, who came directly to the hospital. She then gave a complaint to the S.S.Colony Police Station, which was marked as Ex-P1. She also identified the dresses worn by her husband, which were marked as MO-1 to MO-3.

18. In effect, PW-1 is the only eyewitness, who had, according to the prosecution, witnessed the occurrence. But however, even in her evidence, she stated that she was downstairs, when her husband was going upstairs. In the charge, the prosecution also brought about a conversation, between the deceased and the accused which infuriated the accused to such an incident that he pushed the deceased. The evidence of PW-1 that the accused stamped the neck of the husband is not in consonance with the postmortem report.

19. The Doctor who conducted the postmortem was examined as PW-13, Dr.G.Manikandan. In his evidence, he stated that there was a contusion injury on the left cheek and a further contusion injury, when the scalp was dissected. There were no other injuries. The certificate which he had issued was marked as Ex-P5. He had given his final opinion under Ex-



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P6. In his opinion, he had stated that the death could have caused due to head injury.

20. In this connection, it is expedient to refer to the evidence of PW-1. During cross examination, she admitted that the deceased was addicted to liquor at irregular intervals. She also stated that as a family, they had debts.

21. The only direct evidence available is with respect to the pushing of the deceased by the accused. The words spoken by the deceased prior to this incident would certainly infuriate any person. The said words have been stated in the charge and we would hesitate to even re-produce it in this judgment. The deceased, had without any provocation abused the accused using very filthy language, which language was not only insulting, but very provocative. It was at that time that the accused had according to the prosecution pushed the deceased. He had also similarly pushed, according to PW-1, herself also. The deceased had suffered head injury.

22. We hold that the evidence of PW-1 that the accused repeatedly stamped the deceased on the neck cannot be believed. In her complaint, Ex-



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P1, she had stated that particular fact but it is clear that this is not borne out from the postmortem report, Ex-P5. The evidence of PW-1 does not inspire confidence. She did not directly see the incident happening. She had rushed upstairs and according to her evidence, she was also pushed down.

23.The learned trial Judge had placed much reliance on the evidence of PW-1. According to the learned trial Judge, the postmortem report and the final report, Ex-P5 and Ex-P6, corroborate the evidence of PW-1. But a careful reading reflects otherwise. The injury suffered is owing to a fall and there is no direct evidence about the reason why the deceased fell down. The additional statement is about the accused stamping the deceased on the neck which is not corroborated by the postmortem report, Ex-P5 or the final opinion, Ex-P6. Therefore, there is always a lurking suspicion that owing to the heated quarrel between the deceased and the accused, the deceased could also have lost the balance and fallen down. That is also equally probable.

24.It is to be noted that practically, all other witnesses from PW-8 to PW-11 were declared hostile. The other witnesses examined were not direct



eyewitnesses to the occurrence. There is only a suspicion that the accused pushed the deceased. It is highly improbable for PW-1 to have even witnessed the same, since she had to climb stairs on hearing the high pitched quarrel between the deceased and the accused. Even that quarrel was not the result of provocation on the part of the accused but on a result of direct provocation by the words uttered by the deceased.

25.In (2016) 10 SCC 519 (Jose @ Pappachan vs the Sub Inspector of Police), the Hon'ble Supreme Court had held as follows:

“56. It is a trite proposition of law, that suspicion however grave, it cannot take the place of proof and that the prosecution in order to succeed on a criminal charge cannot afford to lodge its case in the realm of “may be true” but has to essentially elevate it to the grade of “must be true”. In a criminal prosecution, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof and in a situation where a reasonable doubt is entertained in the backdrop of the evidence available, to prevent miscarriage of justice, benefit of doubt is to be extended to the accused. Such a doubt essentially has to be reasonable and not imaginary, fanciful, intangible or non-existent but as entertainable by an impartial, prudent and analytical mind, judged on the touchstone of reason and common sense. It is also a primary postulation in criminal jurisprudence that if two views are possible on the evidence available, one pointing to the guilt of the accused and the other to his innocence, the one favourable to the accused ought to be adopted.”



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26. We are of the opinion that the evidence of PW-1 cannot be relied on, as her evidence is partly reliable and partly unreliable.

27. In *AIR 1957 SC 614*, in the case of *Vadivelu Thevar and another -vs- State of Madras*, the Hon'ble Supreme Court while examining the case of solitary witness, held as follows:

"11.....Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial."

(Emphasis supplied)

28. In the instant case, unfortunately, the evidence of PW-1 stands uncorroborated in material particulars. She had not disclosed that she had taken her husband first to Rani Hospital and later to the Government



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General Hospital. She had not disclosed that her husband was addicted to liquor, which if disclosed would strengthen the suspicion that he could also have been off balance immediately on climbing the stairs. Her evidence that the accused stamped her husband on his neck is not in consonance with Ex-P5 and Ex-P6. In the final opinion, Ex-P6, the cause of death was noted as injury to the head and that could be caused by a free fall, not necessarily by a fall by pushing down.

29.PW-9, Appas and his wife, Sunna Beevi, PW-10, who first arrived at the scene of occurrence were declared hostile. Thus, there is only the evidence of PW-1, who, as mentioned, did not even disclose in the complaint, Ex-P1, that she had been pushed down by the accused and did not disclose that she had taken her husband to Rani Hospital and then to Government Rajaji Hospital. Her evidence does not inspire confidence. Further, Ex-D1 is quite revealing. It is an extract of the Accident Register and does not contain the name of the accused as the cause for the injury sustained.



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30.In view of all these reasons, we hold that the prosecution has failed to prove the charges beyond reasonable doubt. We further held that the conviction against the accused cannot be sustained. We further hold that therefore, the conviction and sentence imposed by the trial Court must be set aside and we accordingly set aside the same.

31.In the result, the Criminal Appeal stands allowed. The accused is directed to be set at liberty. The surety bonds executed shall be discharged. The fine amount paid shall be refunded.

[C.V.K., J.] & [J.S.N.P., J.]
22.10.2024

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

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To

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- 1.The 1st Additional District and Sessions Judge, Madurai.
- 2.The Inspector of Police,
S.S.Colony Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court, Madurai.



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C.V.KARTHIKEYAN, J.

AND

J.SATHYA NARAYANA PRASAD. J.

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Judgment made in
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