



Crl.A.(MD)No.202 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.12.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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Sudhakar

... Appellant / 1st accused

Vs.

State represented by
Inspector of Police,
K.Paramathi Police Station,
Karur District.
(Crime No.174/2019)

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, to call for the records and to set aside the Judgment passed by the Sessions Judge, Karur in S.C.No.20 of 2021 dated 17.02.2022 and acquit the appellant herein.

For Appellant : Mr.N.R.Elango, Senior Counsel
for Mr.T.A.Om Prakash

For Respondent : Mr.E.Antony Sahaya Prabahaar,
Additional Public Prosecutor.



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JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

This appeal is directed against the Judgment dated 17.02.2022 made in S.C.No.20 of 2021 on the file of the Sessions Judge, Karur. By the impugned Judgment, the trial Court while acquitting the second accused, convicted the appellant for the offence under Section 302 IPC and sentenced him to undergo life imprisonment and pay a fine of Rs.1,000/-.

2. The case of the prosecution is as follows:-

The second accused Chitra was the wife of Manoharan (deceased). Their marital relationship came under strain. The second accused developed illicit intimacy with the appellant. This was questioned by Manoharan. Since illicit intimacy continued, on 16.09.2019, Manoharan confronted and castigated the appellant. The appellant, in turn, threatened him with dire consequences. On 24.09.2019 at about 03.30 P.M, when Manoharan was returning home in a two wheeler, the first accused hit the two wheeler with his tractor bearing Registration No.TN74-K-0787. Manoharan fell down. He was repeatedly run over by

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the tractor and died. This was witnessed by Muthusamy (PW.7), Gunasekaran (PW.8) and Dharmaraj (PW.9). P.W.1/mother of the deceased lodged Ex.P1-complaint before the Inspector of Police, K.Paramathi Police Station, Karur District. Crime No.104 of 2019 was registered for the offences under Sections 302 &109 of IPC. The appellant was shown as the first accused. The wife of the deceased was shown as the second accused. According to the investigation, the crime was committed as a result of conspiracy between the accused. Final report was filed before the learned Judicial Magistrate, Aravakurichi. It was taken on file in P.R.C No.1 of 2020 and committed to the Court of Sessions Judge, Karur in S.C.No.20 of 2021. On the side of the prosecution, P.W.1 to P.W.19 were examined as witnesses. Ex.P1 to Ex.P15 were marked. M.O.1 to M.O.8 were also marked. Incriminating circumstances were put to both the accused during examination under Section 313 of Cr.P.C. The accused characterized the said circumstances as false. On the side of the accused, no evidence was adduced. After hearing both sides and considering the evidence on record, the trial Court disbelieved the charge of conspiracy and acquitted the second accused. It, however held that the prosecution had established its case against the



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first accused beyond reasonable doubt and convicted him for the offence under Section 302 of IPC and sentenced him to undergo life imprisonment. Questioning the same, this appeal has been filed.

3.The learned senior counsel appearing for the appellant reiterated all the contentions set out in the memorandum of appeal and contended that the prosecution version is inherently improbable. P.W.8 & P.W.9 who have been shown as eye witnesses could not have been present at the spot. He also contended that the nature of injuries found on the body of the deceased falsify the prosecution theory. According to the learned senior counsel, the appellant is entitled to the benefit of doubt. He called upon this Court to set aside the impugned Judgment and allow this appeal.

4.Per contra, the learned Additional Public Prosecutor submitted that the prosecution has cogently presented its case. According to him, motive for committing the crime has been fully established. He also added that the eye witnesses are credible and that their testimonies were rightly believed. He added that even if there is a discrepancy between



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the ocular version and the medical testimony, the evidence of the eye witnesses ought to be accepted. He submitted that the impugned Judgment is well reasoned and that it does not warrant interference. He called upon this Court to dismiss the appeal.

5.We carefully considered the rival contentions and went through the evidence on record.

6.P.W.1 is the de-facto complainant. She is the mother of the deceased. Ex.P1 is the complaint lodged by her. The complaint referred to the illicit intimacy between her daughter-in-law and the appellant herein. PW.1 is not an eye witness to the occurrence. The complaint contains the narration presented to her by the villagers. Her testimony regarding the occurrence has to be rejected as hearsay. Her evidence is useful only to establish motive.

7.PW.2 is also not an eye-witness. He only wrote Ex.P1-complaint. P.W.3 & P.W.4 are also not eye witnesses. They also speak only about the motive for the occurrence. P.W.5 turned hostile. P.W.6



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signed as witness in the observation mahazar and seizure mahazar (Ex.P2 & Ex.P3). PW.7 Muthusamy who was projected as eyewitness in the complaint turned hostile. PW.8-Gunasekaran and PW.9-Dharmaraj were said to have seen the occurrence. The case of the prosecution rests entirely on their testimony. The question that calls for consideration is whether their testimonies can be believed.

8.PW.8 deposed that on the occurrence date, he and his friend Dharmaraj-P.W.9 were going to Aariyur from Kasipalayam in a two wheeler. They were riding in Nallasellipalayam road south to north. They were overtaken by the tractor driven by the appellant Sudhakar. The tractor went on the right side of the road. It hit a two wheeler coming from the opposite direction. After the rider of the two wheeler fell down, the tractor ran over him to and fro. Thereafter, the two wheeler was dragged by the tractor for a short while. The appellant then drove the tractor away from the spot. When P.W.8 & P.W.9 reached the spot, they noticed that the person who had fallen down was Manoharan who was known to them. Manoharan told PW.8 & PW.9 to inform his cousin (PW.3) who was at Paramathi. PW.9-Dharmaraj conveyed the



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message accordingly. Within 15 minutes, PW.3-Praveen came in an ambulance. Manoharan was taken in the ambulance to the hospital. PW.8 got information at around 09.00 pm that Manoharan had passed away. PW.8 was asked to come to the scene of occurrence at around 09.00 pm. PW.8 informed the police that he would come the next day. When P.W.8 reached the spot at 06.00 am the next day, he narrated the occurrence to the police.

9.The testimony of PW.9 is also broadly on the same lines. There is however one vital distinction. While P.W.8 identified the appellant as the driver of the tractor, PW.9 does not even refer to his name.

10.PW.13 is the doctor who conducted the postmortem. The requisition letter for conducting postmortem-Ex.P7, Postmortem Certificate-Ex.P8 and the final opinion-Ex.P10 were marked through the said witness. Ex.P10-final opinion records the cause of death as follows:-

“the deceased would appear to have died of aspiration of blood as a consequence of head wound (blunt trauma)”



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He testified in the Court that the ribs on both sides were found to be broken. He, however, admitted in the cross-examination that there were no external injuries corresponding to the fracture of the ribs. He also conceded that there were no blood stains or tyre marks on the clothes or body of the deceased.

11.The testimonies of PW.8 & PW.9 are to be scrutinised in the light of the medical testimony. According to PW.8 & PW.9, the appellant-A1 hit the two wheeler ridden by the deceased and the tractor ran to and fro over the deceased after he fell down on the mud road. We can take judicial notice of the fact that even a small tractor would weigh not less than 1,800 kgs. If such an object had rolled over the body of a person, and that too more than once, the body would have been literally crushed under its weight. The tyre marks would have obviously been present on the clothes as well as the body of the deceased. Our attention has been drawn to the relevant extract in Chapter 28 of “Modi : A Textbook of Medical Jurisprudence and Toxicology” (27th Edition). It reads as follows :



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“If the pedestrian is run over while lying down, he may be crushed against the road surface, resulting in fractures of bones and de-gloving of the skin over the limbs and trunk (run over or flaying injuries). The severity of crush injuries will depend on the ground. If weight of the vehicle and its clearance from “jumping” of the wheels has occurred at the moment being run over, the crush injuries will be minimum and involve only one side of the body.”

The standard work also states that patterned abrasion would be crossed by tyre marks. In this case, no such external tyre marks were found. PW.13 while conceding that if a heavy vehicle like a tractor runs over a body, the organs in the corresponding part would be crushed and that in the case on hand, no such crush injuries were found on the body. Even no external injuries corresponding to the fracture on the chest portion of the deceased was not found. The final opinion is to the effect that the death must have taken place due to blunt trauma. The medical opinion completely falsifies the ocular testimony of these two witnesses.

12.In ***Ram Narain Singh v. State of Punjab (1975) 4 SCC 497***, it was laid down that if the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence, it would be a most fundamental defect in the prosecution case and unless reasonably



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explained, it is sufficient to discredit the entire case. In ***Pruthiviraj Jayantibhai Vanol v. Dinesh Dayabhai Vala (2022) 18 SCC 683***, it was held that where there is a gross contradiction between medical evidence and oral evidence, and the medical evidence makes the ocular testimony improbable and rules out all possibility of ocular evidence being true, the ocular evidence may be disbelieved. The aforesaid ratio is squarely applicable to the case on hand.

13.In the light of the medical testimony, the version projected by the so-called eyewitnesses P.W.8 and P.W.9 is liable to be rejected. There is yet another reason also. Both the witnesses claim that they knew the deceased. If that be so, they would have definitely rushed to the jurisdictional police station or accompanied the deceased in the ambulance. Even according to them, they were examined by the police only the next day. It has been elicited in the cross-examination of the investigating officer (P.W.19) that the statements recorded under Section 161 of Cr.P.C reached the Court only on 27.09.2019. This delay has not been explained. When the occurrence had taken place on 24.09.2019 at about 3:30 pm., it is strange that these two witnesses did not inform the



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police immediately and that they were available for examination only the next day morning. In normal circumstances, one of the two eye-witnesses would have been the de-facto complainant. But then, it was the mother of the deceased who lodged Ex.P1-complaint at 08.30 P.M. The occurrence had taken place at 3:30 pm. It is also admitted that he was brought dead to the hospital at 4:30 pm itself. But the FIR was belatedly registered only at 8:30 pm. It reached the judicial magistrate only on the next day at 8.25 pm. Normally, the delay in registering the FIR or the delay of the FIR reaching the Court will not be fatal. But in this case, the delay cannot be viewed in isolation. It has to be considered along with the other circumstances. The prosecution has obviously succeeded in establishing that the accused had motive. But motive by itself is not sufficient to prove the guilt (*Vide State of M.P Through C.B.I., Etc Vs Paltan Mallah, 2005 (3) SCC 169*) and that motive alone can hardly be a ground for conviction (*Vide Sunil Rai Alias Pauya & Others Vs Union Territory, Chandigarh, (2011) 12 SCC 258*).

14. There is no dispute that the accused had not died a natural death. He had obviously died due to homicidal violence. Since the wife



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of the deceased had illicit intimacy with the accused, the prosecution had built up a case that they both conspired together and caused the death of Manoharan. In order to bolster this theory, P.W.7 to P.W.9 had been set up as eye witnesses. PW.7 turned hostile. The entire case of the prosecution rests only on the testimonies of PW.8 and PW.9. P.W.8 and P.W.9 had in unison claimed that the accused-A1 killed Manoharan by running the tractor over him repeatedly. If this was true, the body of Manoharan would not have been intact at all. No tyre marks or injuries were found on the body of Manoharan. This by itself is sufficient to disbelieve the testimonies of P.W.8 & P.W.9. The court below failed to appreciate the gross discrepancy between the medical evidence and the ocular evidence of P.W.8 & P.W.9. In our view, this goes to the root of the matter and it could not have been ignored. The conduct of P.W.8 & P.W.9 also does not sound convincing. Any person, particularly someone who claims to know the deceased and who had witnessed an occurrence of this nature would have rushed to the police station to lodge a complaint. In this case, they not only did not lodge any complaint but were not even available for examination till the next day morning.



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15.A careful reading of their testimony does not inspire our confidence. Once the testimony of P.W.8 and P.W.9 is disbelieved, the entire foundation of the prosecution stands completely undermined. We are of the view that the prosecution has failed to establish its case against the accused. The impugned Judgment finding the appellant guilty is set aside. The appellant is acquitted of all charges. The criminal appeal is allowed. The fine amount, if any paid by him shall be refunded forthwith. The bail bond, if any, executed by them shall stand cancelled. No costs.

(G.R.S. J.) & (R.P. J.,)
10.12.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
rmi/skm

To:-

- 1.The Sessions Judge, Karur.
- 2.The Inspector of Police,
K.Paramathi Police Station, Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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4.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
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