



Crl.A.(MD)No.230 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
26.02.2024	08.03.2024

CORAM:

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

Crl.A.(MD)No.230 of 2020

Nanthagopal

... Appellant / De-facto complainant

VS.

1.State of Tamil Nadu,
Rep. by the Inspector of Police,
Rajapalayam Police Station,
Virudhunagar District.
(Crime No.532 / 2016)

... 1st Respondent / Complainant

2.Ramadhoss, S/o.Sankaranarayanan

3.Selvaraj, S/o.Sankaiah Konar

4.Rameswari, W/o.Selvaraj

5.Rajkumar, S/o.Selvaraj

... Respondents 2 to 5 / A1 to A4

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C., to call for the records relating to the impugned judgment passed in S.C.No.213 of 2016, dated



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04.02.2020, on the file of the Additional District and Sessions Court, Srivilliputhur and set aside the same.

For Appellant	: Mr.V.Kathirvelu Senior Counsel for Mr.K.Vamanan
For R1	: Mr.RMS.Sethuraman Additional Public Prosecutor
For R2 to R5	: Mr.M.Jothibas

JUDGMENT

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

The appellant herein is the son of the deceased Seenivasan. The respondents 2 to 5 are the accused, who were tried for the murder of Seenivasan, but acquitted by the trial Court. Being aggrieved, the appeal against acquittal is preferred.

2. The facts leading to the appeal:-

2.1. The family members of the deceased and the family members of the accused live in same Village, but were not in good terms. Few years earlier to



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the occurrence, while collecting water from the common tap, quarrel erupted and ended in causing grievous injury to the appellant by the third and fourth respondents, who are husband and wife. The respondents 3 and 4 were convicted in that Criminal Case and each were sentenced to undergo two years imprisonment and to pay fine of Rs.1,000/- . They preferred appeal against the conviction and same was pending. While so, whenever the appellant used to pass the respondents, they used to spit at him or pass innuendo comments. The appellant told about this to his father [the deceased]. When the deceased questioned the respondents 2 and 3 why they behave like this, Ramadhoss, the second respondent and the respondents 3 to 5 threatened the deceased with dire consequences.

2.2. The feud later turned into a deadly attack by the respondents 2 to 5 on 11.08.2016 at 06.30 p.m. When the deceased Seenivasan was returning home, the respondents 2 to 5 restrained the deceased Seenivasan and abused him in filthy language. The second respondent Ramadhoss hit Seenivasan on his head with a wooden log. The third respondent Selvaraj hit Seenivasan on his legs with a wooden log. Rameswari, W/o.Selvaraj – fourth respondent hit Seenivasan by



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hands and their son Rajkumar - fifth respondent kicked Seenivasan and pushed him down. The injured Seenivasan was first taken to a private hospital at Rajapalayam. He was advised to be shifted to the Government General Hospital, Madurai, for specialised treatment. The appellant (P.W.1) and his mother (P.W.2) took him to a private hospital at Madurai and got him admitted. The injured died in the hospital on 13.08.2014 at 02.10 p.m.

2.3. Meanwhile, the first respondent Police on the complaint given by the appellant registered a case against the respondents 2 to 5 in Crime No. 532 of 2016, dated 12.08.2016, for offences under Sections 341, 294(b), 324 and 506 (ii) I.P.C. and took up the investigation. During the investigation, the material collected indicated that the attack on Seenivasan was with intention to cause his death. Hence, charge under Section 307 I.P.C. was added. Later, on receipt of the intimation from Vadamalayan Hospitals (P) Ltd., about the death of Seenivasan, charge under Section 307 I.P.C. altered into Section 302 I.P.C. The alteration report was prepared and sent to the Judicial Magistrate. The body was sent to the Government Hospital for postmortem. The accused were arrested on 18.08.2016 and remanded to judicial custody.



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2.4. After completion of investigation, final report was filed by P.W16 – Paul Yesudhasan. Charges against the respondents 2 to 5 / accused were framed as below:-

Charge 1: Against A-1 to A-4 for offence punishable under Section 341 I.P.C.

Charge 2: Against A-1 to A-4 for offence punishable under Section 294(b) I.P.C.

Charge 3: Against A-1 and A-2 offence punishable under Section 302 IPC.

Charge 4: Against A-3 and A-4 offence punishable under Section 323 IPC.

Charge 5: Against A-3 and A-4, offence punishable under Section 302 r/w 34 IPC.

2.5. To prove the charges, on behalf of the prosecution, 16 witnesses, 22 documents and 2 material objects relied. On the application of the accused, the medical report of the deceased maintained at Vadamalayan Hospitals (P) Ltd., Madurai, was called for and marked as Court Exhibit No.1.



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2.5. After appreciating the evidence, the trial Court found that the prosecution failed to prove the charges beyond reasonable doubt. As a concomitant, all the accused were acquitted, vide judgement dated 04.02.2020. Against the order of acquittal, the appeal is filed by P.W.1, the son of the deceased.

3. Contention of the appellant:-

3.1. The learned Senior Counsel for the appellant primarily fault the reasoning given by the trial Court for acquittal. According to the learned Senior Counsel, the previous enmity was the motive for the attack. The prosecution witnesses including the hostile witness P.W.3 had deposed about the previous enmity between the accused family and the deceased family. It is not in dispute that based on the complaint given by the appellant, the respondents 3 and 4 were convicted and sentenced to undergo imprisonment for a term of two years. While so, the trial Court has presumed that the incident, which took place in the year 2005, cannot be a cause or motive for the incident, which happened on 11.08.2016 at 06.30 p.m. P.W.3 had also deposed that on hearing commotion outside her house, she came out and she saw the family members of Seenivasan



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WEB COPY (deceased) and the family members of Selvaraj (the second accused) were quarrelling. She saw the third accused Rameswari spitting on Seenivasan and heard second accused Selvaraj threatening Seenivasan. Then, she went inside her house, since her husband called her over phone. After some time, when she came out from her house, she saw Seenivasan lying down unconscious and his wife was lamenting that they have beaten him. Then, she informed Ashok Kumar, the second son of injured about the incident. Though P.W.3 was treated as a hostile witness by the prosecution for not supporting their case regarding the overt act of each of the accused, the portion of her evidence, which are not controverted ought to have been taken for appreciation.

3.2. The learned Senior Counsel submitted that P.W.3 is not only an independent witness, but also a natural witness. She being the nearby resident, her testimony is highly reliable. Because she was treated as hostile, the trial Court had ignored the reliable portion of her evidence, which was not contradicted by cross examination on behalf of the accused.



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3.3. Regarding the medical evidence, it is contented by the learned Senior Counsel for the appellant that the trial Court erred in misapplying the expert opinion and the decision of the Hon'ble Supreme Court rendered in **Rupinder Singh Sandhu vs. State of Punjab and others (2018 (16) SCC 475 : 2018 (2) MWN (Cr.) 341 SC)**.

3.4. The learned Senior Counsel appearing for the appellant referring to the observation of the trial Court regarding the injuries found in the postmortem report and the judgment relied to appreciate the postmortem doctor's evidence, submitted that the trial Court has misapplied the expert opinion of the facts of the case. According to the learned Senior Counsel, the Postmortem report (Ex.P.18) indicates that Srinivasan has sustained the following antemortem injuries:-

"1. Abrasion of size 2 cm x 1 cm noted on right leg.

2. Contusion measuring 2 cm x 1 cm noted on left inguinal region.

Note:- Multiple superficial incisions made all over the body, nil other injuries noted."

On dissection of scalp, skull and dura, the postmortem doctor has observed as below:-



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"Brain edematous, cerebro spinal fluid volume increased. Left internal capsule and both ventricles filled with blood clots. Brain cut section congested."

P.W.14 the postmortem doctor admits the suggestion that due to circumstances when blood pressure increases to aged persons, haemorrhage in the brain could occur, which may prevent blood circulation to the other parts of the body, leading to shortage of oxygen to the brain. These injuries been caused when the deceased was attacked by the accused persons using wooden log. The proximity between the injuries and the death coupled with the nature of injuries sustained is sufficient for the trial Court to hold that the accused persons are guilty.

3.5. Further, Ex.P.8 is the treatment summary of the patient Seenivasan issued by the Vadamalayan Hospitals (P) Ltd. The CT Scan of the patient shows that, he suffered with the basal ganglia haemorrhage with surrounding edema with midline shift. The patient on 13.08.2016 suddenly went to cardio respiratory arrest and despite of active CPR measure, the patient could not be reverted, hence, the doctor declared the patient as dead. The edema and midline shift was due to the internal cerebral bleeding as observed in Ex.P8.



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Therefore, the trial Court has failed to take note of these facts while appreciating the evidence.

4. Contentions of the respondents 2 to 5:-

The learned counsel for the respondents 2 to 5 / accused submitted that the case of the prosecution that the respondents 2 to 5 attacked the deceased Seenivasan due to previous motive itself is not believable and the trial Court has rightly disbelieved the same by assigning reasons. It is unimaginable to say that there was enmity between the two families at the time of occurrence in the year 2016. The previous fight and criminal prosecution was in the year 2005 and thereafter, for more than 11 years, both the families were living in the same Village and there was no quarrel between them. There was no necessity to compel or threat the deceased or his son P.W.1 to withdraw the complaint, since the trial in the case has already been over and ended in conviction. Therefore, the prosecution case from the inception itself suffers from infirmity, illegality and embellishment, which has been recorded by the trial Court while acquitting the accused. The presence of P.W.1 at the time of occurrence itself is highly doubtful, since P.W.1 admits that he went to the spot on hearing the cry of his father, while



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WEB COPY he was engaged in the field near his house. According to P.W.1, his mother followed him and one Kamala (P.W.3), a nearby resident was present at the time of occurrence. P.W.1 has deposed that several others in the Street came to the spot when the incident took place. The complaint (Ex.P1) does not inspire the confidence to believe that P.W.1 was present at the scene of occurrence and witnessed the occurrence. His evidence was neither supported by his mother nor by P.W.3. The Court Exhibit C1, report of Vadamalayan Hospitals (P) Ltd., coupled with the opinion of experts and P.W.9 doctor to show that the acute haemorrhage at the left basal ganglia might have been caused when the person is old and suffers from hyper tension. Therefore, the learned counsel pleaded that, the order of acquittal passed by the trial Court need not be upset.

4.1. The learned counsel relying upon the judgment of the Hon'ble Supreme Court rendered in **Anwar Ali and another vs. The State of Himachal Pradesh** reported in **2020 SAR (Cri) 1122** submitted that P.W.1 and P.W.2 are interested witnesses and the enmity between the accused family and the deceased family is the cause for giving a false complaint against the respondents 2 to 5. In the absence of corroboration of independent witness, the view expressed by the



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trial Court is reasonably possible and the same need not be substituted with an alternate view.

4.2. The learned counsel submitted that P.W.3 – Kamala, the neighbouring resident had turned hostile and she had not seen who attacked the deceased, though she has spoken that on hearing the melee, she came out from the house and saw the family members of the deceased and the family members of the accused were quarrelling. She heard the first accused threatening the deceased.

5. Heard the learned counsels and perused the records.

6. P.W.11 Paulraj is an yet another witness relied by the prosecution to prove the case. However, he also turned hostile. While two independent witnesses failed to corroborate the evidence of P.W.1 and P.W.2, who are interested witnesses, we find no infirmity in the view expressed by the trial Court, as it is a probable view and no perversity could be seen. Further, the contention of the learned Senior Counsel appearing for the appellant that P.W.2 had spoken about the presence of the accused and quarrel with the deceased and later, injuries on the deceased could very well be a circumstantial evidence to hold the accused



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is guilty of charges, if not for the offence under Section 302 I.P.C., at least for the offence under Section 323 or 324 I.P.C.

7. Though the above said submission appears to be very attractive, we are not persuaded with the above submissions on the following reasons:-

On close scrutiny of P.W.3's testimony, she had only made a general reference that the family members of Seenivasan and the family members of Selvaraj were fighting with each other. She has referred the name of the third accused Rameswari as a person, who spit on the deceased and Selvaraj as the person, who threatened the deceased. Admittedly, this portion of evidence is unchallenged, as no cross-examination by the accused. Assuming that what is deposed by P.W.3 is uncontroverted and therefore, proved, her evidence does not lend any credence for the charges framed. While P.W.1 and P.W.2 are interested witnesses, their presence at the scene of occurrence as eyewitnesses, is highly doubtful. Even according to their own version that they rushed to the spot after hearing the alarm raised by the deceased coupled with the fact that the injury, which has caused obstructive hydrocephalus secondary to compression of the third ventricle might have caused even otherwise that the powerful hit on the head



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with weapon like, the wooden log. Even if the injury was caused by an act of man, for want of evidence, who caused that injury entitles the accused persons to have the benefit of doubt, which resulted in acquittal.

8. Being an appeal against acquittal, the appellate Court bound to see whether the views expressed by the trial Court are reasonably possible. If the views expressed are reasonably possible, even if another view is possible, the appellate Court cannot interfere and substitutes its view in the place of trial Court's view. It is well settled principle of law that an order of acquittal ought not to have been disturbed, unless it is perverse or with bereft of reasoning. In this regard, it is useful to refer the judgment of the Hon'ble Supreme Court in **Mallappa and Others vs. State of Karnataka (2024 SCC Online 130)**.

9. For the above said reasons, the instant appeal is devoid of merits and the same is liable to be dismissed. Accordingly, it is dismissed, by confirming the judgment of the trial Court, dated 04.02.2020, in S.C.No.213 of 2016.

Index : Yes
NCC : Yes / No
smn2

[G.J., J.] & [C.K., J.]
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To

- 1.The Additional District and Sessions Judge,
Srivilliputhur.
- 2.The Inspector of Police,
Rajapalayam Police Station,
Virudhunagar District.
- 3.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court, Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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

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PRE-DELIVERY JUDGMENT MADE IN
CrI.A.(MD)No.230 of 2020

08.03.2024