



Crl.A(MD)No.508 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 23.02.2024

Delivered on : 18.03.2024

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

AND

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

Crl.A(MD)No.508 of 2019

Dhaya @ Dhayanithi

... Appellant/Sole accused

Vs.

State represented by
The Inspector of Police,
Orathanadu Police Station,
Thanjavur District.
(Crime No.30/2003)

... Respondent/Complaint

Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the judgment dated 22.8.2019 passed in S.C.No.264 of 2016 on the file of the learned III Additional District and Sessions Judge, Pattukottai, Thanjavur District.

For Appellant : Mr.N.Anandkumar
For Respondent : M/s.R.Meenakshi Sundaram
Additional Public Prosecutor

JUDGMENT



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DR G. JAYACHANDRAN,J.

AND

C.KUMARAPPAN,J.

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The present criminal appeal has been filed by the instant appellant, who is one among the four accused in Crime No.30 of 2003, against whom a judgment of conviction dated 22.08.2019 was passed in S.C.No.264 of 2016, by and in which, the accused was convicted for life imprisonment under Section 302 IPC, by the III Additional District and Sessions Judge, Pudukkottai, Thanjavur District. In respect of other three accused, since the appellant was absconded, the case was splitted up and separate trial in S.C.No.2 of 2008 was conducted.

2.The case of the prosecution runs thus:

On 17.01.2003, at about 05.30 p.m., there was a deliberation before Rasu Pullavarayar house about the construction of Santhiamman Temple. While so, the father of the deceased Dinesh Kaliyaperumal(since deceased) intervened and suggested them, that such deliberation may be resumed after releasing the bulls as time is going on. Enraged by such intervention of the Kaliyaperumal, one of the accused in Crime No.30 of 2003 Panneerselvam pushed down him. Hence, the deceased Dinesh rushed to help his fallen father and helped him to



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stand. On seeing the deceased Dinesh, Panner Selvam exhorted the other accused viz., Veerasamy and another Kaliyaperumal to kill Dinesh. When Veerasamy and Kaliyaperumal caught hold of the deceased Dinesh, the present appellant Dhaya @ Dhayanithi, who was the first accused in Crime No.30 of 2003, has attacked the deceased on his head with iron rod and caused grievous injury. Due to which, the deceased Dinesh sustained multiple head injuries and fracture in the skull. Immediately after the occurrence, the deceased was taken to Vinothagan Hospital, Thanjavur. On receipt of information at about 12.30 midnight of 17/18.01.2003, P.W.12-Muthuramalingam, the Special Sub-Inspector forwarded the information to one Mr.Thomas, the Special Sub-Inspector. On receipt of such information, the Special Sub-Inspector of Police Mr.Thomas reached the Vinothagan Hospital and received complaint from the deceased Dinesh's father Kaliyaperumal(since deceased) at about 05.00 a.m, which was marked as Ex.P.8.

2.2.On receipt of such complaint, the FIR in Crime No.30 of 2003 was registered at about 06.30 a.m. Immediately on receipt of such FIR, the Investigating Officer-P.W.14, rushed to the scene of occurrence and in the presence of the witnesses viz., Maruthu and Senthil prepared observation



Mahazar and rough sketch-Ex.P.10. He also recovered blood stained crushed stone and sample stone. After that, he reached the hospital where the deceased Dinesh was admitted and examined the complainant late Kaliyaperumal (P.W.1), the deceased's brother Rajagopal(P.W.2), Muruganantham(P.W.4) and one Kokila(P.W.5), besides he also examined other witnesses in the hospital. Since the deceased died on 20.01.2003 at about 8.45 p.m, he sent alteration report-Ex.A.11 altering the charge from Sections 342, 324 and 307 IPC to Sections 342, 324, 307 and 302 IPC and has also conducted inquest. Thereafter he made arrangement for postmortem.

2.3.It is the further case of the prosecution that on 21.01.2003, at about 14 hours, in the presence of one Theivasigamani(P.W.8) and Thirunavukarasu(P.W.14) Inspector arrested the appellant and recovered the blood stained iron pipe-M.O.6. He also examined the doctor, who has treated the deceased Dinesh and also the doctor who has conducted the postmortem. After examining the witnesses, he laid a charge sheet against the present appellant and the other three accused, against whom, a separate sessions trial was conducted in S.C.No.2 of 2008.



3. Before the trial Court, on the side of the prosecution, 14 witnesses were examined as P.W.1 to P.W.14, and 13 documents were marked as Ex.P.1 to Ex.P.13, besides 2 material objects were marked as M.O.1 and M.O.2. No defence witnesses were examined.

4. The trial Court, after having considered the oral and documentary evidence, has found that the accused was guilty under Section 302 IPC and imposed the punishment of life imprisonment with fine of Rs.25,000/-, and in default to pay the fine amount, further period six months imprisonment was ordered.

5. Aggrieved with the same, the present appellant has filed the instant appeal.

6. The learned counsel appearing for the appellant would vehemently contend that the witnesses had contradicted their previous statement made in the another trial arising out of the same crime number, in S.C.No.2 of 2008 and that, it was also contended by the learned counsel for the appellant that immediately after the occurrence, when the deceased was admitted in the



Vinothagan Memorial Hospital, it was informed by P.W.2-Rajagopal that the deceased was attacked by two unknown persons. The learned counsel would further contend that such important piece of information has not been relied by the trial Court and has been swayed by the self serving oral evidence. The learned counsel would further contend that, though, it was contended by the prosecution that the complaint-Ex.P.8 was received at 05.00 a.m., on 18.01.2003, the entry in Ex.P.8 it reflects as 05.00 p.m., and that, FIR reached the Court on 18.01.2003 at 09.00 p.m. Therefore, contended that from the time of occurrence it took more than 24 hours to reach the FIR to the Court. Apart from that, according to the appellant there is also a discrepancy in respect of the weapon alleged to have been used in the occurrence. Therefore, the learned counsel would contend that all the above inconsistencies would cause reasonable doubt in the prosecution case, therefore prayed to give benefit of doubts to the accused. Hence, he prayed to allow this appeal.

7.Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the occurrence is a day light occurrence and that, all the eye witnesses had inspired the confidence of the Court. The learned Additional Public Prosecutor would also contend that the FIR has been



registered at about 06.30 a.m., in the morning on 18.01.2003. If at all there is any reference that the complaint was received on 18.01.2003 at 05.00 p.m., which is nothing but an inadvertent error, as there is a clear recital that the FIR was registered at 06.30 hours on 18.01.2003. The learned Additional Public Prosecutor would further contend that the mere reference made in A.R by the Doctor based upon the information of some other persons, other than the victim cannot be given much significance. The learned Additional Public Prosecutor further contended that there was no delay in receiving the complaint, while registering the FIR and for forwarding the FIR to the Court. Therefore, the learned Additional Public Prosecutor would submit that the judgment of the trial Court is well merited and does not deserve any interference by this Court.

8.We have given our anxious consideration to the submissions made by either side counsel.

9.According to the prosecution, they relied upon the eye witnesses P.W.1 to P.W.5. Mrs.Bharathi(P.W.1) is the wife of the deceased, and Rajagopal(P.W.2) is the brother of the deceased, Dhanam(P.W.3) is the mother of the deceased. Like wise Murugannatham(P.W.4) is the relative of the



deceased. However, the very presence of P.W.1 was challenged by the appellant through the evidence of the investigating officer-P.W.14. According to his evidence, P.W.1-Mrs.Bharathi came to the hospital directly on knowing the occurrence and she was not at all the eye witness. Here apart from P.W.1-Bharathi, prosecution rest upon their case based upon the evidence of P.W.2 to P.W.5 as the occurrence witnesses. All the witnesses viz., P.W.2 to P.W.4 had spoken about the presence of P.W.1 and it is pertinent to mention here that the occurrence date was immediately after the Pongal and apparently all of them were waiting to see the event of releasing bulls. Therefore, though there is a doubt raised by the appellant about the presence of P.W.1, her presence can be ascertained through the other eye witnesses. If we look at the evidence of all the eye witnesses, all of them have categorically stated that the accused had hit upon the deceased head with iron rod. However, M.O.6 was only iron pipe. Therefore, the learned counsel for the appellant would submit that the evidence of P.W.1 to P.W.5 is not tally with M.O.6 which allegedly recovered from the accused. Hence contended that there would be a serious suspicion in the prosecution case.



10. However, this Court is not persuaded with the submission made by the learned counsel for the appellant on the simple ground that though the occurrence took place during 2003, and the sessions trial was conducted in respect of the other accused in S.C.No.2 of 2008, this accused has resurfaced only during 2016. Therefore, when the witnesses were examined after a period of 16 years since the occurrence the minor discrepancy in respect of the weapon M.O.6, cannot be given undue advantage in favour of the accused. Furthermore nothing unusual to refer iron pipe as iron rod, since all the witnesses are villagers. The learned counsel for the appellant would further contend that the eye witnesses P.W.1 to P.W.4 are the relatives of the deceased and there were no independent witnesses. However, the learned Additional Public Prosecutor would invite the attention of this Court in respect of the evidence of P.W.5- Kokila who had vividly narrated the incident and her evidence appears to be very natural, and that her evidence corroborates the evidence of P.W.1 to P.W.4. Therefore this Court is of the firm opinion that through the eye witnesses, the prosecution has established the presence of the accused, and the occurrence. On seeing their evidence all the witnesses have implicated the accused with the occurrence.



11. Though the learned counsel for the appellant relying upon the entry in Ex.P.7-AR copy, as the deceased was attacked by two unknown persons, this Court cannot give credence to such entry on the following two grounds:

(i) The said information was not made by the deceased himself.

(ii) The alleged informant(P.W.2) dispute such statement to the Doctor.

Therefore, when the injured was admitted in the hospital, after the fist there could have been some melee in the hospital. Further, even according to Ex.P.7-A.R report, at the time of admission, the deceased was in unconscious state. Therefore, the alleged reference about the incident by some other person other than the injured will in no way kept in high pedestal, when overwhelming ocular evidence is otherwise. Therefore, in the presence of overwhelming ocular evidence to prove the occurrence, the discrepancy found in Ex.A.7-AR report cannot be given any undue weightage.

12. It was also contended by the learned counsel for the appellant that the investigating officer-P.W.14 has deposed in the previous case viz., S.C.No.2 of 2008 that he received FIR at about 07.15 night, on 18.01.2003. Therefore, it



was contended by the learned counsel for the appellant that the evidence of the investigating officer in the present case that he received FIR in the morning 07.15 is doubtful. However, here again this Court is not persuaded with the submission made by the learned counsel for the appellant. In this case, while looking at the evidence of investigating officer- P.W.14, he reached the scene of occurrence at about 08.00 a.m., on 18.01.2003. Therefore, his previous submission in S.C.No.2 of 2008 that he reached the scene of occurrence on the night at 07.15, could only be an inadvertent mistake. Therefore, such inadvertent mistake cannot be given undue advantage to the appellant.

13.Now the next aspect is whether the death caused to the deceased was due to the injury caused by the present accused or not is to be seen. The occurrence took place on 17.01.2003 at about 05.00 p.m and the deceased died on 20.01.2003. According to postmortem report, the deceased sustained the following injuries.

External Injuries:

1.laceration 1 ½ x ½ cm muscles deep seen over the left frontal region of the scalp.

2.Punctured wound ½ x ½ cm – bone deep seen over the left side of fore head near the hair marigin situated 4 ½ cm



vertically above the outer end of left eye brow.

3. Block eye noticed on both sides.

Internal Injuries:

4. On reflecting the scalp, sub scalp contusion noted involving whole of frontal, whole of both temporal regions and both parietal regions

5. On examination – depressed multiple communicated fracture measuring 9 x 6 cm involving the left side of frontal bone and adjoining left parietal bone with radiating fissured fractures noted in the right frontal, right parietal, left parietal, left temporal bones and towards the bone of skull.

6. On removal of the skull cap dura found term corresponding to the depressed fracture for a length of 2 cms. Laceration of brain 5 x ½ cm noted with surrounding softening and blood clots involving the left fronto parietal lobe corresponding to the depressed communicated fracture. Bilateral subdural and aubarachhoid haemorrhage noted over the cerebral hemispheres. On dissection patechial hemorrhages noted over an ares of 2 x 1 cm involving the midbrain bone.”

The details of postmortem report was spoken through the doctor-P.W.11 viz., Tamilmani and he has categorically opined that the deceased died due to multiple head injuries. Therefore, the proximity between the injury and the death of the deceased has been proved by the prosecution.



14. Coming to the arrest and recovery, the prosecution relies up on the evidence of P.W.8. However, the veracity of his evidence was doubted by the appellant on the ground that he was the relative of the accused and also he is a law graduate. But, according to his admission, he completed law only during 2011. Therefore, even otherwise merely because he was a lawyer, his evidence need not be ignored. Further P.W.7's presence at the time of arrest of the accused appears to be natural and this Court could not find any discrepancy to disbelieve the discloser of fact spoken through P.W.8-Theivasigamani. Therefore, the evidence of eye witnesses coupled with the recovery evidence would unerringly and limpidly demonstrate that the prosecution has proved the charge against the accused beyond reasonable doubt.

15. Therefore, this Court is of the firm view that the finding recorded by the trial Court is liable to be confirmed as this Court could not find any ground to interfere with such well merited finding of the trial Court.

16. In the result, this Criminal Appeal is dismissed and the conviction and sentence imposed against the accused for the offence under Section 302 IPC, in S.C.No.264 of 2016, by III Additional District and Sessions Judge,



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Pattukottai, Thanjavur District, is hereby confirmed. As a concomitant, the bail bond executed by the appellant shall stand cancelled. The appellant shall surrender before the trial Court within 15 days from today, to undergo the remaining period of sentence. Failing which, the respondent Police shall secure him and commit him to prison to undergo the remaining period of sentence. Consequently, connected CrI.M.P is also closed.

(G.J.,J.) (C.K.,J.)
.03.2024

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

To

- 1.The III Additional District
and Sessions Judge,
Pattukottai,
Thanjavur District.
- 2.The Inspector of Police,
Orathanadu Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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DR G. JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.
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Crl.A(MD)No.508 of 2019
and
Crl.M.P(MD)No.8202 of 2021

.03.2024