



Crl.A.No.677 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM :

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.A.No.677 of 2024

and Crl.M.P.No.11959 of 2024

Balaji ... Appellant/A1

v.

The State Rep. by its,
Inspector of Police,
D-3, Ice House Police Station,
Triplicane, Chennai District.
(Crime No.167/2022) ...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to set aside the conviction and sentences passed by the learned V Additional Sessions Judge at Chennai in S.C.No.252 of 2023 vide judgment dated 23.04.2024 and acquit the appellant herein from the charges.

For Appellant : Mr.F.Wellington
for Mr.R.Shankar
For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)



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JUDGMENT

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This Criminal Appeal has been filed by A1, challenging the conviction and sentence imposed upon him, vide judgment dated 23.04.2024 in S.C.No.252 of 2023, on the file of the learned V Additional Sessions Judge at Chennai.

2.(i) It is the case of the prosecution that the defacto complainant, was running a petty shop near his house; that on 10.04.2022 at about 8.00 p.m., the appellant/A1 and A2 one Yuvaraj went to the shop of the defacto complainant with an intention to extort money; that they asked for a cigarette packet; that the defacto complainant asked for money; that the appellant/A1 and A2 asked him as to how dare he could ask for money as the other shopkeepers in the market were frightened of them and abused him in filthy language; that thereafter they robbed Rs.1,000/- from the cash box and attacked the defacto complainant with a knife and thereafter, fled from the scene.

(ii) On the complaint given by the defacto complainant, marked as Ex.P1, an FIR [Ex.P5] was registered on 10.04.2022 by PW5, the Sub



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Inspector of Police, attached to the respondent police for the offences under Sections 294(b), 336, 427, 324, 307 and 392 r/w 397 of the IPC. PW7 took up the investigation, went to the scene of the occurrence, prepared the observation mahazar [Ex.P8] and rough sketch [Ex.P9], examined the witnesses, obtained the Accident Register [Ex.P6] for the injuries sustained by the defacto complainant and filed the final report against the accused for the offence under Sections 294(b), 427, 324, 392 r/w 397 and 506(ii) of the IPC, before the learned II Metropolitan Magistrate, Egmore, Chennai.

(iii) On the appearance of the appellant, the provisions of Section 207 Cr.P.C., were complied with, and was committed to the Court of Sessions i.e., Principal Sessions Judge, Chennai, and the case was made over to the learned V Additional Sessions Judge, Chennai, for trial. The trial Court framed charges against the appellant/A1 for the offences under Sections 294(b), 392 r/w 397, 394 and 506(ii) r/w 34 of the IPC and against A2 for the offences under Sections 294(b), 427, 392 r/w 397 r/w 34 and 506(ii) r/w 34 of the IPC, and when questioned, the accused pleaded 'not guilty'.



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(iv) To prove the case, the prosecution examined 7 witnesses as P.W.1 to P.W.7, marked 19 exhibits as Exs.P1 to Ex.P19 and marked 2 material objects as M.O.1 and M.O.2. When the accused were questioned, u/s.313 Cr.P.C., on the incriminating circumstances appearing against them they denied the same. The accused neither examined any witness nor marked any document on their side.

(v) On appreciation of oral and documentary evidence, the trial Court found that the prosecution had established its case beyond reasonable doubt and held the appellant/A1 guilty of the offences under Sections 294(b), 392 r/w 397, 394 and 506(ii) r/w 34 of the IPC and sentenced him as follows:

Offence under Section	Sentence imposed
294(b) IPC	To pay a fine of Rs.1,000/-, in default to undergo SI for one month.
392 r/w 397 IPC	To undergo RI for seven years and to pay a fine of Rs.5,000/- in default to undergo SI for three months.
394 IPC	To undergo RI for seven years and to pay a fine of Rs.5,000/- in default to undergo SI for three months.



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506(ii) r/w 34 IPC

To undergo RI for three years and to pay a fine of Rs.1,000/- in default to undergo SI for one month.

However, the trial Court acquitted A2, as he was not found guilty of the charges levelled against him. Hence, A1 has preferred the appeal challenging the said conviction and sentence.

3. Heard, Mr.F.Wellington, learned counsel appearing for the appellant/A1, and Mr.C.E.Pratap, learned Government Advocate (Crl.Side), appearing for the respondent/State.

4. The learned counsel for the appellant would submit that all the witnesses in this case including the defacto complainant's nephew who was examined as PW1 turned hostile; that the evidence of the doctor [PW6] and the Accident Register [Ex.P6] would suggest that the injuries sustained by the defacto complainant was simple in nature; that the defacto complainant could not be examined in trial by the respondent, since he died pending investigation; that in the absence of any admissible evidence, the learned Judge had relied upon the complaint lodged by the defacto complainant by



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treating it as a dying declaration to convict the appellant, which is not in accordance with law; and prayed for setting aside the judgment of conviction.

5. The learned Government Advocate (Crl. Side) appearing for the respondent *per contra* submitted that though all the witnesses except the official witnesses viz., PW5 to PW7 turned hostile, the conviction was based on the complaint given by the deceased and therefore, prayed for dismissal of the appeal.

6. Considered the rival submissions and perused all the relevant records.

7.(i) As stated earlier, the prosecution examined 7 witnesses. PW1 is the victim's nephew, who had not supported the prosecution case. He had not named the accused in his deposition and he had deposed that the defacto complainant had told him that two known persons had asked for a cigarette packet and when he asked for money, they attacked him. Therefore, PW1



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was treated hostile and in the cross examination of the accused, he would admit that he was not aware of the contents of the complaint.

(ii) PW2 is the observation mahazar witness, who did not support the prosecution case and hence, treated hostile. Similarly, PW3 and PW4, who were witnesses to the confession of the accused, also did not support the prosecution case and hence, treated hostile. PW5 is the Sub-Inspector of Police, who registered the FIR. PW6, is the Doctor, who had treated the defacto complainant and found that there was a lacerated injury on the head of the deceased measuring 5x1x0.5 cm and had opined that the injury was simple in nature in the Accident Register [Ex.P6]. PW7 is the investigating officer, as stated earlier.

8. The evidence of the Doctor [PW6] would show that the injury sustained by the deceased was simple in nature. Therefore, it is not the case of the prosecution that the deceased died due to the injuries sustained by him. The prosecution has not produced the postmortem report of the deceased.



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9. Be that as it may. Since all the witnesses turned hostile, this Court in order to ascertain on what basis the trial Court had convicted the appellant, perused the judgment and found that the trial Court had found that the complaint given by the defacto complainant (since deceased) would fall within the ambit of Section 32(1) of Indian Evidence Act and portion of the evidence of PW1 in support of the prosecution case corroborated the said statement under Section 32(1) of the Indian Evidence Act.

10. The statement of a dead person would be relevant under Section 32 of the Indian Evidence Act, provided it falls within any of the clauses mentioned in Section 32(1) to (8) of the Indian Evidence Act. Admittedly, it does not fall within Clauses (2) to (8) of Section 32 of the Indian Evidence Act, Section 32(1) of the Indian Evidence Act reads as follows:

“When it relates to cause of death. - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into



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question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

11. The statement therefore, would be relevant under Section 32 of the Indian Evidence Act, only when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

12. In this case, the death of the deceased is not in question. That apart, the statement of the defacto complainant is not as to the cause of his death or the circumstances relating to his death. As stated earlier, the prosecution had not established the cause of death and in any event it is not the prosecution case that the death was caused due to the alleged act of the appellant.

13. Therefore, besides relying upon the evidence of the witnesses,



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who was treated hostile which is not corroborated by any other evidence, the trial Court had erroneously relied upon the statement, which would not fall within Section 32(1) of the Indian Evidence Act to convict the appellant. Therefore, in the absence of any legally admissible evidence, this Court is of the view that the judgment of conviction cannot be sustained and is liable to be set aside.

14. As a result, this Criminal Appeal is allowed, and the appellant/A1 is acquitted of all the charges and is directed to be released forthwith, unless his presence is required in connection with any other case. The conviction and sentence passed in S.C.No.252 of 2023 dated 23.04.2024 on the file of learned V Additional Sessions Judge, Chennai, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged. Consequently, the connected Criminal Miscellaneous Petition is closed.

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Index : yes/no
Speaking /Non-speaking order



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Neutral citation : yes/no
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To

1. The V Additional Sessions Judge,
Chennai.
2. The Inspector of Police,
D-3, Ice House Police Station,
Triplicane, Chennai District.
(Crime No.167/2022)
3. The Superintendent,
Central Prison, Puzhal, Chennai.
4. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN,J.

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