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CrI.A.No.708 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2025
PRONOUNCED ON : 03.09.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.708 of 2021

Ayyappan

... Appellant

Vs.

State rep. by
The Inspector of Police,
Poraiyar Police Station,
Poraiyar Post
Nagapattinam District.
Cr.No.753 of 2016.

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. to set aside the judgment made in Sessions Case No.177 of 2017 on the file of the Sessions Judge, District Court, Nagapattinam dated 02.12.2021 in pursuance of Crime No.753 of 2016.

For Appellant : Mr.D.Veerasekaran

For Respondent : Mr.L.Baskaran
Government Advocate (CrI. Side)



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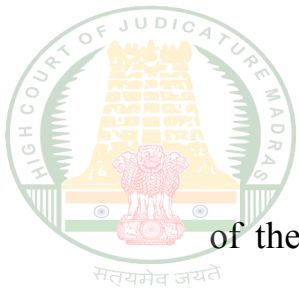
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JUDGMENT

This Criminal Appeal is filed to set aside the judgment in S.C.No.177 of 2017 dated 02.12.2021 rendered by the learned Sessions Judge, District Court, Nagapattinam.

2.The appellant/accused was convicted by the Trial Court in S.C.No.177 of 2017 by judgment dated 02.12.2021 and imposed a fine of Rs.500/-, in default, to undergo one month simple imprisonment for the offence under Section 294(b) IPC and to undergo ten years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one year simple imprisonment for the offence under Section 304(2) IPC and further, the appellant was directed to pay a sum of Rs.1,00,000/- as compensation to P.W.1 under Section 357(A) Cr.P.C. Aggrieved against the same, the present appeal is filed.

3.The case of the prosecution is that on 24.12.2016 when the defacto complainant and her husband Suresh were standing in front of their house, at that time, the appellant along with A2, who is residing in the opposite house



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of the defacto complainant and two others came there and they were in a drunken state, having a brawl between them and using foul language against the female members. The said Suresh questioned the same. The appellant is running a saw mill and A2 to A4 employed under him. It is a routine for all four person to consume alcohol, stand in the middle of the road in front of the defacto complainant's house and use abusive and foul language. On 24.12.2016 when the same was questioned by Suresh, the accused persons retorted and the appellant took a wooden log and hit the said Suresh in the centre of his head, witnessed by the defacto complainant, her father-in-law and aunt of the said Suresh, who are residing there, immediately they shouted at the accused and called for help. Thereafter, the accused fled from the scene along with the wooden log by threatening the defacto complainant. The injured Suresh taken in the Auto of P.W.8 to Thirukadaiyur Primary Health Centre, where Doctor not available hence injured taken to the Government Hospital, Mayiladuthurai at about 11.45 p.m. where the Doctor examined the said Suresh and informed, he was brought dead. On 25.12.2016 at about 5.00 a.m., the defacto complainant went to the respondent Police Station, lodged a complaint. P.W.9/Sub-Inspector of Police received the complaint and registered FIR/Ex.P8. P.W.12/Inspector of



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Police took up investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch in the presence of P.W.4 and in the presence of the witnesses collected blood stained earth and ordinary earth, thereafter went to the Government Hospital, Mayiladuthurai, conducted inquest and sent the body for Postmortem. After completion of Postmortem, the body was handed over to the family members of the deceased. On getting information about the accused near the bus stand, they were arrested in the presence of P.W.7/Village Administrative Officer and on the confession of the appellant, the wooden log/M.O.1 seized. All the accused arrested and produced for remand. The seized articles sent for forensic examination, the medical records collected, statement of witnesses recorded and thereafter, on conclusion of investigation, charge sheet filed. During trial, P.W.1 to P.W.12 examined, Ex.P1 to Ex.P13 marked and M.O.1 to M.O.5 produced on the side of the prosecution. On the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the appellant as stated above and acquitted A2 to A4 from the case.

4.The contention of the learned counsel for the appellant is that due to



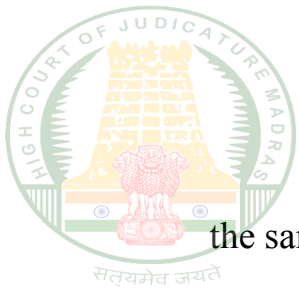
previous enmity, the appellant falsely implicated in this case. He would

submit that A2 is none other than the brother's son of P.W.2 and they have some property dispute between them. Further, A2 was employed under the appellant/A1 along with A3 and A4. It was the deceased Suresh who used to consume alcohol, pick up fight and create unpleasant situation in the Street which was questioned by the appellant. Hence there was animosity between them. P.W.1/wife of the deceased claims that the occurrence took place in front of her house, on the other hand P.W.2/father and P.W.3/aunt of the deceased both state that occurrence took place in front of A2's house. From the observation mahazar/Ex.P2 and rough sketch/Ex.P9 and from the evidence of P.W.4 and P.W.7 confirm that the distance between the house of the deceased and the house of A2 is more than 125 feet away. He would further submit that in this case the alleged occurrence is said to have taken place at about 9.00 p.m. and none of the witnesses stated about the availability of any light and with that aid, witnessed the assault. The Trial Court given its own explanation that in the observation mahazar and rough sketch there is mention about the presence of street light but no witness spoken availability of light glowing and they witnessed the assault with the aid of that light. The Trial Court adding its own notion is not proper. He



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further submitted that there are contradictions in the evidence of P.W.1 to P.W.3, who are projected as eye witnesses. P.W.1 to P.W.3 claim present in the scene of occurrence is highly improbable. It was the deceased who consumed alcohol, fell down, sustained injuries and later succumbed. He would further submit that due to previous enmity between the appellant and the family of the deceased, the appellant and others were implicated. He further submitted that M.O.1/wooden log which is normally available was produced as a weapon in this case. In the forensic report/Ex.P13, it is seen that the wooden stick is measuring about 74 cms in length and there was no detection of blood in M.O.1. Further, from the Postmortem report/Ex.P5, it is seen that there have been laceration of size 6x2x1 cm present over the center of scalp and if it is so, blood would have been oozing M.O.1 would have had some blood stains and the dress of P.W.1 who took the injured to the Hospital would have blood stains. But in this case neither the dress of P.W.1 or P.W.8/Auto Driver or anybody was produced to confirm that they were present in the scene of occurrence. In this case except for the close family members, no public examined as witness, the occurrence took place in a public road. The Trial Court having acquitted A2 to A4 disbelieving the evidence of prosecution witness on the contrary convicted the appellant on



the same set of facts which is not proper. Hence, prayed for acquittal.

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4.The learned Government Advocate (Crl. Side) submitted that on 25.12.2016 when the Sub-Inspector of Police was in a station duty, at that time, the defacto complainant lodged a complaint by stating that she got married with one Suresh and lived in Mayiladuthurai District. The appellant/A1 is running the carpenter work shop, A3 was the brother of A1, A2 and A4 were working in the said Shop. A1 to A4 daily used to consume alcohol in front of the defacto complainant's house. On 24.12.2016 at about 9.00 p.m., A1 to A4 consumed alcohol and abused the defacto complainant, her husband and female members by using foul language. When the same was questioned by the deceased, A1 to A4 attacked the deceased, A1 with wooden log. The deceased sustained head injuries. Immediately he was taken to Mayiladuthurai Government Periyar Hospital, there he was declared dead by Duty Doctor, Hence the complaint. Based on the above complaint/Ex.P8, a case was registered in Crime No.753 of 2016 for the offence under Sections 294 (b), 506(ii) and 302 of IPC against the accused person on 25.12.2016 at about 05.00 a.m. by the then Sub Inspector of Police and thereafter, the Inspector of Police took up the case for



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investigation. The Inspector of Police went to the scene of occurrence, drew rough sketch/Ex.P9 and prepared observation mahazar/Ex.P2 in the presence of witnesses, examined the witnesses and recorded their statements. Thereafter, the Inspector of Police conducted inquest on the body of the deceased in the presence of witnesses and prepared inquest report and sent the deceased body for postmortem. After completion of postmortem the body was handed over to the deceased's family members. On 25.12.2016, the Inspector of police arrested the accused Persons A1 to A4 and recorded confession statement from them and produced them before the learned Judicial Magistrate No.II, Mayiladuthurai and remanded them into judicial custody. From the confession of the appellant/A1, M.O.1/wooden stick used in the assault of the deceased seized.

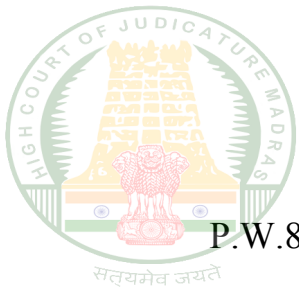
5.The learned Government Advocate (Crl. Side) would further submit that in this case the Trial Court weighed the evidence properly finding that there is a contradiction between the evidence of P.W.1 to P.W.3 with regard to the scene of occurrence. The evidence of P.W.1 is that the occurrence took place in front of her house and the evidence of P.W.2 and P.W.3 is that the occurrence took place in front of A2's house. The witnesses and the



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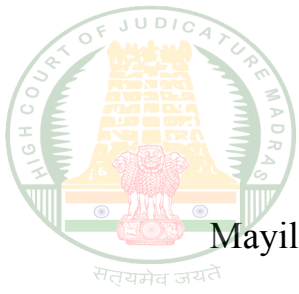
accused are known to each other and the distance between the two spots is only around 125 feet. The witnesses are rustic villagers and there cannot be accurate fixation of spot but all the witnesses clearly confirmed witnessing the assault by A1 on the scalp of the deceased. The Trial Court after analysing the facts had rightly convicted the appellant and acquitted A2 to A4 in this case. The appellant assaulting the deceased with M.O.1 is confirmed by the medical evidence, Accident Register/Ex.P4 and Postmortem report/Ex.P5. P.W.5 and P.W.6 confirmed the death of the deceased due to the injury sustained by the deceased. The injury inflicted was with such force and skull fracture of parietal and occipital bone present over the center of scalp with underlining sub-dural hemorrhage and the cause of death is due to sub-dural hemorrhage at parieto-occipital region of brain. Hence the act of the appellant in attacking the deceased using the wooden log, on the center of the head a vital part of the body is with the knowledge to cause death. Hence, strongly opposed the appeal.

6.Considering the submissions made and on perusal of the materials, it is seen that in this case the eye witnesses projected are P.W.1/wife of the deceased, P.W.2/father of the deceased and P.W.3/aunt of the deceased.



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P.W.8 is the Auto driver who came to the scene of occurrence, took the deceased to the Hospital. There are vital contradiction in the evidence of P.W.1 to P.W.3 with regard to the place of assault. The evidence of P.W.1 is that the assault took place in front of her house and the evidence of P.W.2 and P.W.3 is that assault took place in front of A2's house. It is more than 125 feet distance between the two places. Further from the rough sketch, it is seen the road takes a curve, the house of the deceased and A2 cannot be viewed simultaneously standing in one place. Hence the presence of P.W.1 to P.W.3 is highly doubtful. It is projected that A2 to A4 were employed under the appellant/A1 in the saw mill, after their work they used to consume alcohol and stand in the middle of the road in front of A2's house, use abusive and foul language against the female members. On 24.12.2016 at about 9.00 p.m. A1 to A4 shouting using abusive and foul language which was questioned by P.W.1's husband Suresh, at that time, there was a wordy altercation and the appellant is said to have assaulted the said Suresh with a wooden log/M.O.1 available near the scene of occurrence. It is one blow attack and Suresh fell down, P.W.1 to P.W.3 came there, shouting to rescue the said Suresh and took him in the auto of P.W.8 initially to Thirukadaiyur Primary Health Centre, no Doctor available and Suresh taken to



Mayiladuthurai Government Hospital where he was pronounced dead. From

the evidence of P.W.1 to P.W.3, it is seen that there are two different versions given by the witnesses about the scene of occurrence. In the scene of occurrence, there is a mention about the light post in the rough sketch as well as in the observation mahazar but neither P.W.1 to P.W.3 nor the Investigating Officer in their evidence stated, attack by appellant using M.O.1 witnessed with the aid of glowing light. The Trial Court has given its own reasoning. Further, the house of the deceased Suresh is on the branch road and the house of A2 is on the other side. Hence, the evidence of P.W.1 to P.W.3, who are the projected eye witnesses to have witnessed the assault is highly doubtful. M.O.1/wooden log which is said to have been used in the assault by the appellant sent for forensic examination and the forensic report/Ex.P13 records that in the broken wooden stick measuring 74 cms in length, no blood stain detected. In the Postmortem report/Ex.P5, it is recorded that there was laceration of size 6x2x1 cm over the center of scalp. If it is so, blood would have oozed from the laceration wound, blood stain will be available in the wooden stick. P.W.1 and P.W.8 took the deceased to the Hospital in a Auto travelled for some time, there is no blood stained clothes of both produced which creates doubt about the presence of P.W.1 in



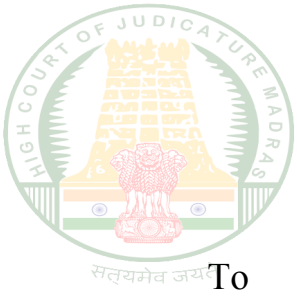
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the scene of occurrence at the time of assault which is further fortified as could be seen in Ex.P4 in which it is recorded that the deceased Suresh brought by Kolanjiappan. The said Kolanjiappan not examined. Further, in this case the occurrence took place at about 900 p.m. in the night hours in a public road, but no public witness examined except the family members of the deceased. The evidence of P.W.1 to P.W.3 is with contradictions does not inspire confidence, their presence is highly doubtful and hence, the benefit of doubt to be extended to the appellant. The prosecution had miserably failed to prove the case beyond all reasonable doubt.

7.In the result, the Criminal Appeal is allowed setting aside the judgment of the trial Court, dated 02.12.2021 in S.C.No.177 of 2017. The appellant/accused is acquitted from all the charges levelled against him. The bail bond, if any, executed shall stand cancelled. Fine amount, if any, paid, shall be refunded to him.

03.09.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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To
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- 1.The Sessions Judge,
District Court, Nagapattinam.
- 2.The Inspector of Police,
Poraiyar Police Station,
Poraiyar Post
Nagapattinam District.
- 3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

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Pre-delivery judgment in

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