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Crl.A.No.40 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2026

CORAM :

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

Crl.A.No.40 of 2022

Kadhiravan

.. Appellant

Versus

The State rep by,
Inspector of Police,
Indur Police Station,
Papparapatti Circle,
Dharmapuri District.
Crime No.215 of 2013

.. Respondent

Prayer : Criminal Appeal filed under Section 374(2) of Criminal Code of Procedure, to set aside the conviction, sentence and fine awarded against the appellant in Sessions Case No.149 of 2015, dated 14.12.2021 on the file of the Additional District and Sessions Judge, Dharmapuri and allow the appeal and consequently, acquit the appellant from all charges.

For Petitioner : Mr.J.Bharathi Raja

For Respondent : Mr.J.Subbiah,
Government Advocate (Crl. Side)



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the appellant/accused, with an intention of murdering the deceased, slapped him on his left cheek, due to which, he fell down on a pial and to the ground. The appellant/accused further pulled the deceased by his hair and repeatedly attacked him in the backside of his neck. PW1 and the deceased returned home and since he was not conscious and responding, PW1, along with her relatives, had taken him to the Government Hospital, Dharmapuri.

4. Since the deceased required advanced treatment, he was taken to the Rajiv Gandhi Government Hospital in Chennai on 04.11.2013. PW9, Special Sub-Inspector of Police, on receiving the intimation from the Government Hospital, Dharmapuri, at 6.00 p.m., had visited the hospital and found that the deceased was about to be taken to the hospital in Chennai for further treatment and he was unable to move his hands, legs and even not able to speak and was unconscious. PW9 received the complaint, Ex.P1, from PW1 on 04.11.2013 at 00.30 hours and thereafter, registered the FIR/Ex.P3, on 04.11.2013 at 6.00a.m. for an offence under Section 307 of IPC. The appellant/accused was arrested on 03.11.2013 and his confession statement was recorded in the presence of PW13 and PW14. PW12/Inspector of Police, thereafter took up the investigation and



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prepared the observation mahazar/Ex.P2 and the rough sketch/Ex.P5, in the presence of PW6. Thereafter, the statements of PW1 to PW6 were recorded. The deceased, who was taken for further treatment to Chennai, ultimately, succumbed to the injuries and died on 10.11.2013.

5. On receipt of the death information, the case was altered from Section 307 of IPC to Section 302 of IPC through the alteration report/Ex.P8 and he visited the Government Hospital, Chennai and conducted the inquest in Ex.P6. Based on the requisition in Ex.P7, the postmortem was conducted by the Doctor/PW10. After collecting all the materials, including the Chemical Analysis Report/Ex.P11, PW12 completed the investigation and filed the Final Report before the learned Judicial Magistrate, Dharmapuri. Summons were issued and by complying Section 207 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'), the case was committed to the learned Principal District and Sessions Judge, Dharmapuri and was made over to the learned Additional District and Sessions Judge, Dharmapuri.

6. On committal, the trial court took up the case and on appearance of the accused, framed the charges under Section 302 of IPC.



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On being questioned, the appellant/accused pleaded not guilty and stood trial. The prosecution, in order to bring home the charges, examined 14 witnesses i.e., PW1 to PW14 and marked Ex.P1 to Ex.P11. On completion of the prosecution evidence, when the appellant/accused was questioned under Section 313 of Cr.P.C., about the incriminating materials, he denied the same. However, there is no oral or documentary evidence produced on the side of the defence. The trial court, after hearing the arguments, on analysing the oral and documentary evidences, concluded that the charge under Section 302 of IPC against the appellant/accused is not made out, but however, found guilty for a lesser offence and thereby convicted him for the offence under Section 335 of IPC and imposed the sentence as referred above. Assailing the conviction and sentence imposed, the appellant/accused is before this Court on appeal.

7. Learned Counsel for the appellant/accused argued that, when the trial court rightly came to the conclusion that the charge under Section 302 of IPC is not established, however, merely by relying on the evidence of PW1 and the postmortem certificate/Ex.P4, had erroneously convicted the appellant. He submitted that, when the very occurrence itself has not been proved by the prosecution, thereby not established that the appellant



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had caused the injuries on the deceased beyond reasonable doubt, the conviction and sentence of the trial court is merely based on presumptions and assumptions. PW2 to PW5, who were stated to be the eye-witnesses, all turned hostile and even PW7, brother-in-law of the deceased, turned hostile and PW8, son of the deceased also did not support the case of the prosecution.

8. The evidence of PW1 cannot be relied on as there is glaring discrepancy even in respect of the quarrel and the possibility of any alleged occurrence. There is inordinate delay in lodging the complaint and further, there has been a huge delay even in registering the FIR/Ex.P3, for which, no proper explanation has been given. The prosecution failed to mark the Accident Register and the discharge summary from the Government Hospital, Dharmapuri and also had failed to produce the Accident Register from the Government Hospital, Chennai, which would go to show that the entire allegations made in the complaint are factually incorrect. The prosecution has also not chosen to examine anyone of the Doctors who had treated the deceased either at the Government Hospital, Dharmapuri or at the Government Hospital, Chennai. Even the Doctor/PW10, who issued the postmortem certificate/Ex.P4, had explained the injuries which are



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either surgical or antemortem and even in respect of the injury Nos.4 and 5 the same would have resulted only due to hitting on the pial, which is not supported by the complaint or by the evidence of PW1. Further, when the FIR itself was registered only on 04.11.2013 at 6.00 a.m, strangely, the appellant was arrested on 03.11.2013 itself, based on which, the confession statement was recorded in the presence of PW13 and PW14 who did not support the case of the prosecution.

9. Per *contra*, learned Government Advocate (Crl. Side) for the respondent argued that, when PW1, eye-witness, had clearly spoken about the appellant slapping the deceased, due to which, the deceased had fallen down and the appellant had further inflicted injuries on the backside of the neck which are supported by the evidence of the Doctor, PW10 coupled with the postmortem certificate/Ex.P4, the trial court, relying on these materials, which are not disputed by the appellant by offering an explanation, had rightly convicted the appellant and imposed the sentence, which is justified. Even though the other witnesses have turned hostile, when the evidence of PW1, coupled with the Doctor's evidence, amply establishes the guilt of the appellant, even though the charge under Section 302 of IPC was not found attracted, and since the injuries caused falls



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within the provision of Section 335 of IPC, the appellant has been rightly convicted for the offence under Section 335 of IPC.

10. There has been no delay and immediately, after the intimation received from the hospital, PW9, from his station which is located at quite some distance, had visited the hospital and on receipt of the complaint/Ex.P1, on returning to the Police Station, had immediately registered the FIR and sent to the learned Judicial Magistrate and this cannot be construed as an inordinate delay. He further contended that when the deceased had succumbed to the injuries and died, the inquest was conducted by the Investigating Officer and on request, the postmortem was conducted and the postmortem certificate, in Ex.P4, has been marked and the Doctor, who conducted the postmortem, PW10, had been examined, who had clearly spoken about the injuries found on the body and therefore, the non-examination of the Doctors, who treated the deceased, would not be fatal to the case of the prosecution.

11. Heard the rival submissions and perused the materials available on record.



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12. It is alleged that there has been a quarrel and fight between the appellant/accused and the deceased on 03.11.2013 at 5.00 a.m. The case of the prosecution is that the deceased along with PW1 demanded the accused to return back the sum of Rs.500/-, which was borrowed from him. At that time, the accused had spoken something vulgarly against the wife of the deceased, due to which, there was a sudden quarrel. The accused who was not having any intention to return the money, but however, since had developed enmity with the deceased, with an intention of murdering him, slapped the deceased, due to which, the deceased fell down. The accused even then had still pulled the hair of the deceased and had also kicked in the neck and back of the deceased. The occurrence is stated to have happened at 5.00 a.m. in the tea shop of PW2, in the presence of PW3 to PW5, who were in the tea shop.

13. Admittedly, the appellant/accused and the deceased, including PW2 to PW4, are all natives of A.Sekkarapatti village and all of them were residing in Chennai and running rickshaw for their livelihood. Due to Deepavali festival, all of them went to their village. It is alleged that the accused had called the deceased over phone to come to the tea shop to receive back the sum of Rs.500/- borrowed by him. When the



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deceased, along with his wife, PW1 went to the tea shop, there arose a quarrel, in which, the accused had injured the deceased. Pursuant to the injury, the deceased was taken for treatment to the Government Hospital at Dharmapuri on the same day i.e., on 03.11.2013 at 3.00 p.m. An intimation was given from the hospital, which was received by PW9 and on receipt of the complaint/Ex.P1 from PW1, the FIR/Ex.P3 came to be registered.

14. During trial, PW2, the tea shop owner, had deposed that there was some dispute in the shop at around 10.00 a.m or 11.00 a.m. Eventually, PW2 to PW5, who are stated to be eye-witnesses, have turned hostile. PW7, the brother-in-law of the deceased, also turned hostile. PW8, the son of the deceased, is a hearsay witness, whose evidence also does not support the case of the prosecution.

15. The case rests only on the evidence of PW1, the wife of the deceased. PW1 deposed that since the accused had borrowed the sum of Rs.500/- from her husband, the deceased went to the tea shop at 5.00 a.m. to get back the money. PW1 also accompanied her husband. When the deceased asked the accused to repay the money, the accused shouted at the deceased saying badly about PW1 and children. Again, when the deceased



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demanded for return of the money, the accused refused to pay back and stating that he will finish-off the deceased, slapped the deceased on the left side cheek. Immediately, the deceased fell unconscious and PW1 also fell dizzy. PW1 tried to give water to the deceased and he was not able to swallow. The deceased asked PW1 to take him to the hospital immediately and save his life. However, since it was a festival day, PW1 had returned back to the house and prepared food. It became 2.00 p.m. in the afternoon and only thereafter, she had taken the deceased to the hospital at around 3.00 p.m. Since the deceased required further treatment, he was taken to the Rajiv Gandhi Government Hospital in Chennai. In the cross-examination, PW1 stated that there were around 20 to 30 persons in the shop and she was able to name only shop owner, PW2, PW7 and PW8, i.e., her brother and son, who were present in the shop. She had further stated that since she fell unconscious, she was able to regain consciousness only around 2.00 p.m. Therefore, she had taken her husband to the hospital only at 4.00 p.m.

16. It is to be noted that in the complaint/Ex.P1, PW1 had stated that since the accused did not repay the money, her husband had shouted at the accused that he can get money by sending his wife, due to which, the



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accused got agitated and there was a wordy quarrel which resulted in the accused slapping the deceased, but as per her evidence, the accused shouted at the deceased to send his wife and children and earn money, which instigated the fight.

17. The occurrence is alleged to have happened on 03.11.2013. Except PW1, none of the witnesses supported the case of the prosecution. Even the evidence of PW1 is inconsistent, unreliable and untrustworthy. It is not explained as to why the accused had called the deceased to the tea shop at 5.00 a.m. in the morning on the festival day to return back the sum of Rs.500/- in the village, when, admittedly, both the deceased and the accused are staying in Chennai driving rickshaw and returned the village only on the previous day. No materials were filed on the side of the prosecution to show that actually there was a call from the side of the accused, which led to the deceased and PW1 going to the tea shop on the alleged date of occurrence.

18. When the occurrence is stated to have happened at 5.00 a.m., there is no explanation as to why the deceased was taken to the hospital for treatment only at 4.00 p.m. PW1 gives an inconsistent statement that she



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had prepared the food due to the festival, till 2.00 p.m. and thereafter, she had taken her husband to the hospital, but, whereas, in the cross-examination, she had stated that she fell unconscious and only after regaining the consciousness at 2.00 p.m, she had taken her husband to the hospital. PW1 was not able to name anyone, who were present in the shop. Even PW2 to PW4, who were not named by PW1 but allegedly present at the time of occurrence, had turned hostile. PW1 had only stated that she remembered the presence of PW2 who is the tea shop owner himself and her brother and her son, PW7 and PW8. When, admittedly, PW1 alone had gone along with her husband to receive back his money from the accused, there is no possibility for PW1 to see PW7 and PW8 at the time of occurrence. Even as per the evidence of PW7 and PW8, they were not present in the shop at the time of occurrence. Therefore, the very occurrence and presence of PW1 in the tea shop at the time of occurrence is doubtful.

19. When it is the case of the prosecution that the deceased was taken to the Government Hospital, Dharmapuri on 03.11.2013, the hospital would have entered the Accident Register. In the Accident Register, the Doctor would have noted down the observation of the patient and the



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injuries found. Thereafter, it is stated that the deceased was taken to the Government Hospital at Chennai on the next day i.e., on 04.11.2013. The Government Hospital, Dharmapuri would have discharged the deceased and the Accident Register and the discharge summary of the deceased from the Government Hospital, Dharmapuri would have been vital documents to show the injuries on the deceased and the treatment given to him based on the reasons for discharge.

20. The prosecution has not chosen to bring on record these vital materials, when, admittedly, they registered a case under Section 307 of IPC initially. When the case was registered and these documents were available, the prosecution for the reasons best known to them, have not brought these documents on record in the trial. Even after the deceased was taken to the Rajiv Gandhi Government Hospital, Chennai for the treatment, he was given treatment till 09.11.2013 and ultimately, he died only on 10.11.2013. The Accident Register from the Government Hospital, Chennai had also not been brought on record, as, at least, that would show the injuries noted and the condition, in which, the deceased was brought to the hospital on 04.11.2013. It is also strange to note that the prosecution has not examined any of the doctors either in the Government Hospital,



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Dharmapuri or the Doctor at the Government Hospital, Chennai, who had treated the deceased. The Doctors, who had treated, would have been in a better position to explain the condition of the deceased and the injuries sustained by him. Further, when the occurrence is on 03.11.2013 and the deceased had died only on 10.11.2013 and it is not that the deceased was unconscious throughout, no statement was recorded from the deceased either at Dharmapuri or at Chennai. Further when PW1 had taken the deceased to Government Hospital, Chennai, on 03.11.2013 night itself, the statement recorded by PW12 from PW1 at Dharmapuri is not possible and on the face of it ought to have prepared later.

21. PW9 deposed that they got the intimation from the hospital at 6.00 p.m on 03.11.2013. When that is so, there is no explanation as to why the complaint/Ex.P1, was received from PW1 only on 04.11.2013 at 00.30 hours and further, the FIR came to be ultimately registered only at 6.00 a.m. The reason for period taken from the alleged time of occurrence at 5.00 a.m. on 03.11.2013 and the ultimate FIR which came to be registered only on 04.11.2013 at 6.00 a.m, absolutely is silent. There has been no explanation on the side of the prosecution for the delay caused in receipt of the complaint and the registration of F.I.R. PW9, further in his



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evidence, has stated that at the time when he visited the hospital, the deceased was not available and he found them in a car while they were about to proceed for Chennai and the deceased was in an unconscious stage without any movement in his hands and legs and therefore, he received the complaint from PW1. It is admitted by PW9 that all these details were not furnished in the statement recorded and no explanation or reasons is available for the delay in receiving the complaint and subsequent registration of FIR.

22. It is also to be noted that the alleged confession statement of the accused came to be registered on his arrest. As per the confession statement recorded, the accused was arrested on 11.00 a.m. on 03.11.2013 itself in the presence on PW13 and PW14. When the FIR/Ex.P3 itself was registered only on 04.11.2013 at 6.00 a.m., there is no explanation on the part of the prosecution as to how the accused was arrested even on 03.11.2013 at 11.00 a.m. PW14, the Village Assistant, in whose presence the confession statement was recorded, had admitted that the statement was not recorded after the arrest of the accused near bus stand, but, the statement was recorded at the Police Station. The evidence of PW14 and the time of arrest of the accused would make it clear that the entire arrest



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and the confession statement recorded by the prosecution might not have been come into existence as stated, but, however, might have been subsequently prepared in support of the case of the prosecution.

23. The only other available material is the postmortem certificate/Ex.P4 and the evidence of the Doctor/PW10, who conducted the postmortem. The following injuries are noted in the postmortem/Ex.P4:-

“Injuries:

1. Irregular healed Abrasions with brownish black seab firmly adherent to the base: a) 4 x 3 cm on the front of right knee; b) 2 x 1 cm, 1 x 1 cm on the front of left knee; c) 1 x 1 cm on the inner aspect of left elbow; d) 5 x 1 – 0.5 cm on the left side of forehead
2. Surgical incised wound 1 x 0.5 cm x bone deep on the right temporal region of the scalp
3. Surgical incised wound 1 x 0.5 cm x bone deep on the left temporal region of the scalp
4. On reflection of the scalp: Dark red scalp deep bruising 1 x 1 cm on the left and right temporal regions of the scalp; Bony deficiency 0.2 x 0.2 x 0.2 cm on the left and right temporal bone; on removal of calvarium: Dark red Subarachnoid haemorrhage 3 x 3 cm on the surface of the parietal lobe of left cerebral hemisphere of the brain; Brain: Soft and Oedematous; cut section: Normal; Base of Skull: Intact
5. Irregular and complete fracture of the body of C5 Cervical vertebra with dislocation of C5 – C6 Cervical vertebra with surrounding soft tissue bruising and extravasation of blood; dark red diffuse bruising of the spinal cord at the level of C4, C5, C6 Cervical vertebra
6. Let Thoracic cavity: Contained 500 ml of straw colored fluid”



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24. PW10, the Doctor, in his evidence, had deposed that there had been surgical injuries found in the body which has been mentioned in the report. He admitted that the age of wound, found in the body, had not been mentioned. He also admitted that there is a possibility of the injury No.1 to happen if the person accidentally falls down.

25. Based on these materials on record, the trial court had found the discrepancies in the case of the prosecution and while disbelieving the materials and concluding that the charge under Section 302 of IPC has not been made out, however, by placing reliance on the evidence of PW1 and the injury Nos.4 and 5 found in the postmortem certificate, had convicted the appellant/accused for the offence under Section 335 of IPC.

26. When the charge against the appellant/accused is that he had entered into a quarrel with the deceased on 03.11.2013 at 5.00 a.m. and in the quarrel, he slapped the deceased, due to which, he fell down and even thereafter, the accused, by pulling the hair of the deceased, had hit him further in backside of his neck. Only when the prosecution proves beyond reasonable doubt that there had been an occurrence as alleged, the accused



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had caused injuries to the deceased, then the nature of injuries can be weighed to find as to whether the injuries caused would fall under the provision of Section 335 of IPC. In the case on hand, as referred earlier, except PW1, there is no other evidence available on record, to prove the alleged occurrence on 03.11.2013.

27. Even the evidence of PW1 is unreliable and there is huge discrepancy in respect of time, quarrel and the presence of the persons. PW1's evidence, regarding the occurrence, the injuries sustained and the subsequent treatment given, is inconsistent with her complaint and not corroborated by any other evidence. When the prosecution has not brought in the materials like the Accident Register and the discharge summary where the deceased was treated in the Government Hospital, Dharmapuri and also failed to examine any of the Doctors and the prosecution failed to prove the very occurrence in which the accused caused injuries to the deceased, it is unsafe to convict the accused by merely relying upon the injury found in the postmortem certificate. There is every probability for the deceased to have sustained injuries at any time, at any place and unless the prosecution proves beyond reasonable doubt the alleged occurrence and the injuries were caused by the accused, the conviction and sentence



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imposed by the trial court by merely relying upon Ex.P4, cannot be sustained.

28. On reappraisal of the evidences, this Court finds that the finding arrived at by the trial court in convicting the appellant/accused under Section 335 of IPC is perverse and cannot be sustained.

29. Accordingly, the conviction and sentence imposed by the learned Additional District and Sessions Judge, Dharmapuri by the judgment, dated 14.12.2021 made in S.C.No.149 of 2015, are set aside. The appellant/accused is acquitted from all the charges. The bail bonds, furnished if any, shall stand cancelled. Fine amount, paid if any, shall be refunded to the appellant/accused.

30. Resultantly, this Criminal Appeal stands allowed.

04.03.2026

Index : yes
Speaking order
Neutral Citation : yes
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To
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1. The Additional District and Sessions Judge,
Dharmapuri.
2. The Public Prosecutor,
High Court of Madras.
3. The Inspector of Police,
Indur Police Station,
Papparapatti Circle,
Dharmapuri District.



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G.ARUL MURUGAN, J.

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