



Crl.A.No.330 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2026

CORAM :

**THE HON'BLE MR. JUSTICE P.VELMURUGAN
and
THE HON'BLE MR. JUSTICE M.JOTHIRAMAN**

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Rajeeb Dhathi

... Appellant / Accused

Vs.

State Rep by
Inspector of Police,
F-1, Chintadripet Police Station,
Chennai-600 002.
[Crime No.1385/2016]

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374 (3) of Criminal Procedure Code, 1973 praying to set aside the judgment of conviction and sentence made in S.C.No.200 of 2017 dated 15.07.2019 passed by the learned XVIII Additional Sessions Judge, City Civil Court, Chennai.

For Appellant : Mr.S.Vijayaraghavan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor
Assisted by
Ms.M.Arifa Thasneem

JUDGMENT

(Judgment of the Court was made by M.Jothiraman, J.)

This criminal appeal has been filed by the appellant / sole accused challenging the judgment of conviction and sentence dated 15.07.2019 made in S.C.No.200 of 2017 passed by the learned XVIII Additional



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Sessions Judge, City Civil Court, Chennai, in and by which the appellant was convicted under Section 302 IPC and sentenced to undergo Life Imprisonment and to pay a fine of Rs.10,000/- in default to undergo 1 year rigorous imprisonment.

2. Brief case of the prosecution is as follows:

2.1. PW1- Ramesh deposed that he is working as Security Filed Officer in the Anna Salai Metro Station of L&T and he knows the accused, who had been working as security under him. The deceased Arunkumar Katchap was also a security under him. On 06.12.2016 early morning, when he was on patrol, he saw the deceased and the accused standing near Anna Salai, Hindu Office and fighting with each other. He called both of them and compromised them. Again at early morning 5'0 Clock, he saw the deceased lying near the sub-way unconscious with blood stained head injuries and he took him in an auto to the Government Hospital. PW1 further deposed that already there was dispute between the deceased and the accused in respect of money transaction.

2.2. PW1 enquired the deceased regarding the injuries and he told him that the accused had hit him on his head with stone and he sustained



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head injury. On 07.12.2016, PW1 gave complaint under Ex.P1 and on 09.12.2016, when he had gone to see the deceased in the hospital, he saw the Sub Inspector of Police enquiring him and the deceased explained the incident in Hindi and he translated the same to the Sub Inspector of Police. On 14.12.2016, he got the information that the deceased died at around 5.40 p.m. in the hospital.

2.3. PW14- Mr.G.N.Kumar, Sub Inspector of Police deposed that on 07.12.2016 he received a complaint from PW1, based on which he registered an F.I.R. in Cr.No.1385 / 2016 under Sections 324 and 506(ii) IPC. The F.I.R. is Ex.P15. PW14 went to the occurrence place and prepared Observation Mahazar – Ex.P16 and Rough Sketch – Ex.P17 in the presence of PW4 – Tr.Gopalakannan and PW5- Tr.Kumar. PW14 arrested the accused on 08.12.2016 near Anna Salai Simson bus stand and obtained confession statement and the same has been recorded in the presence of one Vikram and PW6-Murali. In pursuance of the confession statement, the accused took them to a place near Anna Salai, Hindu Office near the sub-way and identified M.O.1-Black Stone jelly and handed over the same to PW14 and the same has been recorded under Mahazar – Ex.P3. The accused was sent to judicial custody. PW14 received



information that the deceased died despite treatment and hence, he altered the Section to 302 IPC. The alteration report is Ex.P18.

2.4. PW20- Sivamani, Inspector of Police, who has taken up further investigation has deposed that he had gone to Rajiv Gandhi Government Hospital on 15.12.2016 and in the presence of Panchayatdars, he conducted inquest over the body and prepared the Inquest Report Ex.P19. He sent a requisition through Head Constable – Mr.Prabha Sankar for conducting postmortem of the body of the deceased and seized blood stained dress of the deceased under Form 95 – Ex.P20. He recorded the statement of the postmortem doctor and witnesses and filed a petition for police custody and took the accused under police custody on 21.12.2016. During investigation, the accused voluntarily gave confession statement, which was recorded in the presence of PW7- Tr.Dillibabu and one Jiyavudeen. On the basis of the confession statement of the accused, PW20 seized Black Violet stripe white shirt – M.O.2 in the presence of PW7 and Jiyavudeen and he has also examined the said witnesses.

2.5. PW11- Dr.Narendar conducted autopsy on the body of the deceased. He has issued the Postmortem Report – Ex.P11 opining that the



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deceased died due to the effect of head injuries. Ex.P11- Postmortem

Report disclosed the following Ante-mortem injuries:

“1. Sutured lacerated wound 6 cm on the left parieto temporal region of the scalp; On removal of sutures, wound was 6 x 0.5 cm x scalp deep and margins were irregular and firmly adherent; On reflection of scalp, diffuse dark red contusion 18 x 16 cm x scalp deep on the left parieto temporo occipital region of the scalp; Fissure fracture 7 cm on the left temporal bone; On removal of calvarium, Duramater : Intact: Dark red Subdural hematoma 20 grams on the right parieto temporal regions of the brain; Thick film of Diffuse dark red Subdural hemorrhage on the surface and under surface of right cerebral and cerebellar hemispheres of the brain; Thick film of Diffuse dark red Subarachnoid hemorrhage on the surface and under surface of both the cerebral and cerebellar hemispheres of the Brain. Edematous ; Cut Session: Normal, Fracture 7 cm on the floor of left side of middle cranial fossa.”

2.6. PW2 – Tr.Anbazhagan deposed that he is doing tender coconut business in his mobile vehicle before the Anna Salai Hindu Office and on 06.12.2016, 2 years before at around 2.30 a.m., while he was downloading tender coconuts from the vehicle, he heard sound from Annasalai Subway. He and his son Karthick / PW3 ran away towards the subway and two North Indians were fighting and they returned back from that place.

2.7. PW3 – Tr.Karthick states that PW2 is his father and he has deposed in similar lines as that of PW2.



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2.8. PW15- Aravind alias Sneka deposed that on 06.12.2016, the former Chief Minister of Tamil Nadu died and he went to the Apollo Hospital along with his friends viz., PW16 to PW19 and when they were crossing Anna Salai in the midnight at around 2.00 to 2.30 a.m., he heard shouts for help and when he went near the place, 2 persons were quarreling and among them, one person had sustained an injury on his head and he did not understand their language.

2.9. PW20, on completion of investigation, laid the charge sheet against the accused under Section 302 IPC., which was taken cognizance in S.C.No.200 of 2017 on the file of the XVIII Additional Sessions Judge, City Civil Court, Chennai. The prosecution, in order to establish the guilt of the accused, examined 20 witnesses, marked 20 exhibits and also produced 2 material objects. After completion of prosecution side witnesses, when the accused was questioned under Section 313(1)(b) CrPC with regard to incriminating circumstances / materials against him, the accused pleaded not guilty. On the side of the defence, no witness was examined. During the course of cross examination of PW20, Ex.D1 – Accident Register copy was marked.



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2.10. The Court below found that the defence having not proved that PW1 is not the security field officer of the deceased as well as the accused and PW1 having categorically identified the accused and having made the complaint revealing the name of the accused as well as the deceased and having deposed that the deceased had informed him that the deceased had caused injury on his head using a stone – M.O.1 held that the prosecution had proved the guilt of the accused beyond reasonable doubt. The Trial Court, upon appreciation of oral and documentary evidences, found the appellant / accused guilty under Section 302 IPC and sentenced him to undergo Life Imprisonment and to pay a fine of Rs.10,000/- in default to undergo one year rigorous imprisonment. Aggrieved over the judgment of conviction and sentence, the present appeal has been filed by the appellant / accused.

3. The learned counsel appearing for the appellant / accused made the following submissions:

(i) Though the FIR was registered for the alleged offences under Sections 324 and 506(ii) IPC and the deceased was in the Government Hospital as in-patient for more than 9 days, no statement was recorded from the deceased while he was alive. PW1 has stated in the chief examination that PW14 has recorded a statement from the deceased, whereas PW14 himself



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admitted in his cross examination that no statement was recorded from the deceased.

(ii) There is no mention about the name of the father of the appellant / accused in the complaint, whereas in the FIR, the father of the accused was mentioned prior to the arrest of the accused.

(iii) Ex.D1- Accident Register Copy, marked through PW20 / Investigating Officer, clearly shows that the deceased sustained injury due to fall in the staircase steps and the prosecution has failed to examine the doctor who issued the Accident Register copy and the doctor who treated the deceased for the reasons best known to them. The Court below failed to consider Ex.D1-Accident Register Copy marked through PW20 and came to a wrong finding in convicting the appellant, which is unsustainable.

(iv) No Test Identification Parade was conducted by the prosecution, when the witnesses and the appellant do not know each other about the alleged occurrence and after a lapse of nearly 2 ½ years, only for the first time PWs.15 to 19 identified the accused in the Court and they were not at all cited as witnesses in the list of witnesses filed along with the charge sheet.



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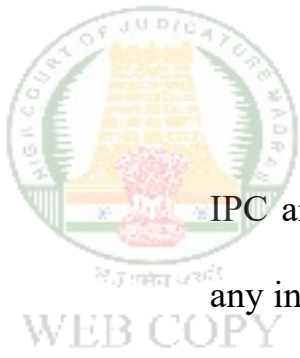


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(v) The prosecution has not chosen to examine the person who brought the injured to the hospital, when PW1 himself claims that he only took the injured to the hospital. Further PW1 has not spoken about the presence of LW4, while taking the deceased for treatment. Moreover, the name of PW1 itself is not found in the Accident Register copy. Hence, the presence of PW1 is highly doubtful.

(vi) The Court below failed to note that the prosecution cannot absolve from proving the burden and as such, the burden of proving cannot be shifted to the appellant / accused as per Section 106 of the Indian Evidence act and hence, the judgment of conviction passed by the Trial Court is liable to be set aside.

4. *Per contra*, learned Additional Public Prosecutor appearing for the respondent would submit that the evidence of PW1 is reliable and supported by the evidence of PW2 and PW3 as well as PWs.15 to 19, who are the eyewitnesses. The death of the deceased due to fatal injuries caused by the accused had been proved through the evidence of PW1. The medical evidence also corroborates with the evidence of PW1. The prosecution has proved the guilt of the appellant / accused beyond reasonable doubt based on the evidence of PWs.1 to 20. There was no delay in lodging the complaint as well as registering the FIR. The Court below has rightly found the appellant / accused guilty under Section 302



IPC and imposed Life sentence along with fine, which does not warrant any interference.

5. We have considered the rival submissions and also perused the entire materials available on record.

6. PW1 – Tr.Ramesh / complainant deposed that he is working as Security Field Officer and he knows the accused, who is working as security under him. On 06.12.2016 early morning when he was on patrol, he saw both the accused and the deceased were standing near Anna Salai Hindu Office and fighting with each other and he called them and compromised them. Again at around 5'0 Clock early morning, while he was on patrol, he saw the deceased lying near the Anna Salai Sub way unconscious with blood stained head injuries and he took him in an auto to Government Hospital and there was already dispute between the accused and the deceased with regard to money transaction. After some time, PW1 enquired the deceased regarding the injuries and he told that the appellant / accused had hit him on his head with stone and he sustained blood stained head injury. On 07.12.2016, PW1 gave the complaint – Ex.P1 before PW14. On 09.12.2016, when he had gone to see the



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deceased in the hospital, he saw the Sub-Inspector of Police, who inquired him and the deceased explained the incident in Hindi and he had translated the same to the Sub Inspector of Police. On 14.12.2016, he got the information that the deceased died at around 5.40 p.m. in the hospital.

7. It is seen from the records that Ex.D1- Accident Register copy was marked through PW20 / Investigating Officer only during cross examination, but the prosecution suppressed in filing of the said Accident Register copy and has not examined the doctor, who recorded the Accident Register copy. PW11, the Doctor who conducted postmortem, has clearly stated that when a specific question was put to him as to whether the deceased had sustained head injury while falling from the steps, he had clarified that the said injury is possible along with some abrasions and normally abrasion wounds would be healed within a week and this is a case where the deceased was in hospital for about 9 days and hence there is a possibility of disappearance of the abrasion wounds.

8. PW1, who happened to see the appellant / accused when there was a wordy quarrel between the appellant and the deceased with regard to money transaction on 05.12.2016, himself admitted in his cross



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examination that at the relevant point of time, no such person was present in the scene of occurrence and hence, the presence of PWs.15 to 19 during the occurrence is unbelievable. The deceased died on 14.12.2016, after a lapse of 9 days and it is a case of medical homicidal death in the hospital and the Doctor, who treated the deceased in the hospital was not at all examined. Further, in the Accident Register copy – Ex.D1 itself, it was mentioned that the deceased was in semi oriented condition. If such is the case of the prosecution, the deceased would have revealed the real occurrence. The deceased was in the Government Hospital as inpatient for about 9 days, but no statement was recorded while he was alive. PW14 admitted in his cross examination that no statement was recorded from the deceased, however PW1 has stated that PW14 has recorded statement from the deceased. As such, the evidence of PW1 and PW14 are totally contradictory in nature and the prosecution miserably failed to obtain any statement from the deceased.

9. The alleged occurrence is said to have taken place at about 2.30 a.m. on 05 / 06.12.2016, but the FIR – Ex.P15 came to be registered on 07.12.2016 at 10.00 a.m. and the said F.I.R reached the Court on the next day on 08.12.2016 and hence, there is a delay in registering the case and

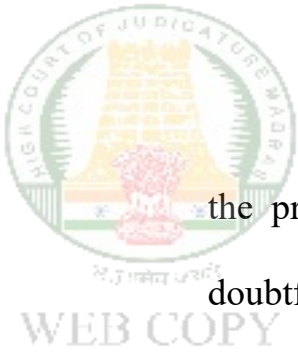


sending the same to the Court concerned, which creates serious doubt on the prosecution case.

10. A perusal of Ex.D1- Accident Register copy marked on the side of the defence through PW20 / Investigating Officer clearly shows that the deceased sustained injury due to fall from the staircase steps and the prosecution failed to examine the doctor who made entry in the Accident Register and the doctor who gave the treatment for the reasons best known to them.

11. No Test Identification Parade was conducted by the prosecution when the witnesses and the accused do not know each other, however after 1½ years, they identified the appellant/accused in the Court.

12. There is a contradiction between the evidence of PW15 to PW19 with regard to identification of the deceased and further PW15 to PW19 could not know the age of the deceased and the specific place of injury on the deceased body. When PW1 himself clearly stated that nobody else were seen nearby the alleged occurrence place and therefore,



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the presence of PW15 to PW19 on the place of occurrence is highly doubtful.

13. Apart from the above aspect, the alleged statement recorded under Section 161(3) CrPC by PW20 / Investigating Officer from PW15 to PW19 were sent to the Court only along with the Charge Sheet and there is no Court seal and date. If it is so, the names of PW15 to PW19 would have been reflected in the charge sheet. The prosecution has not chosen to examine the person who brought the injured to the hospital, when PW1 himself admitted that he only took the injured to the hospital. According to the prosecution, LW4 – Anupam Das accompanied the deceased, while taking the deceased for treatment, moreover the name of PW1 was not found in the Accident Register copy and hence, the presence of PW1 itself is highly doubtful.

14. The Court below has not considered the Accident Register Copy – D1 marked through PW20 and came to a wrong finding in convicting the appellant / accused, which is unsustainable in law. PW6-Murali deposed that on 08.12.2016 at about 5.00 a.m., while he was in his tea shop, the police enquired the appellant / accused near to his shop. At that



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time, the appellant / accused spoke only in Hindi and someone translated the same in Tamil and the appellant / accused handed over Black Stone Jelly and as per the admissible portion of the confession statement marked as Ex.P2, M.O1 has been recovered under Seizure Mahazar – Ex.P3.

15. PW7- Tr.Dillibabu, PW8- Tr. Bikram and PW9-Tr.Ziauddin deposed that they have put his signature only in the police station and the said witness has not explained as to how the confession was typed and by whom it was drafted. From the evidence of PW6 to PW9, there is contradiction with regard to specific place of recovery of M.O.1 and M.O.2 and the said recovery witnesses are contradictory in the chief examination regarding the place of recovery.

16. The evidence of PW14, who registered the F.I.R under Ex.P15 reveals that he went to the place of occurrence and he has prepared Observation Mahazar- Ex.P16 and Rough Sketch – Ex.P17 in the presence of PW4-Gopalan and PW5-Kumar.

17. PW20- Tr.Sivamani / Investigating Officer deposed that he took further investigation in this case on 14.12.2016 and went to Government



Rajiv Gandhi Hospital on 15.12.2016 and he conducted inquest over the body of the deceased in the presence of Panchayatdars and prepared Inquest Report – Ex.P19 and he has also sent requisition letter through police one Prabha Shankar for conducting autopsy. After conducting postmortem, he has recovered Blue Colour Jeans Pant with blood stains worn by the deceased under Form 95 under Ex.P20. Further, on 21.12.2026, he has filed an application for taking the accused under police custody. On 22.12.2016, after taking the accused in police custody, he has inquired the accused, who voluntarily gave confession statement and in pursuance to the confession statement, in a room at the Chindadripet Chinna Kannan Street where the accused resided, the accused handed over Black striped shirt- M.O.2 and the same has been recovered under Seizure Mahazar.

18. There are contradictions between the evidence of PW14 and PW20, who are investigating officers in this case and there is no corroboration or cogency in their evidences. The prosecution has failed to prove the case beyond reasonable doubt and therefore, the judgment of the Court below is liable to be set aside.



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19. In the light of the reasons assigned above, this Criminal Appeal stands allowed and the impugned judgment of conviction and sentence made in S.C.No.200 of 2017 dated 15.07.2019 passed by the learned XVIII Additional Sessions Judge, City Civil Court, Chennai is set aside and the appellant/accused is acquitted of all the charges. Fine amount, paid if any, shall stand refunded to the appellant. Bail bonds, executed if any, shall stand cancelled.

(P.V.,J.) (M.J.R.,J.)
02.01.2026

Jvm

Index : Yes / No

Internet : Yes / No

Speaking /Non speaking Order

To

1. Inspector of Police,
F-1, Chintadripet Police Station,
Chennai-600 002.

2. The Court of XVIII Additional Sessions Judge,
City Civil Court, Chennai-600 001.

3. The Public Prosecutor,
High Court, Madras.

P.VELMURUGAN, J.
and



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M.JOTHIRAMAN, J.

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