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CRL A No. 838 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-01-2026

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

CRL A No. 838 of 2023

1. Pillappa
2. Jayamma
3. Osakottappa

Appellants

Vs

The State Rep. By
The Inspector of Police,
Thally Police Station,
Krishnagiri District.
Crime No.92 of 2016.

Respondent

PRAYER Criminal Appeal filed under Section 378 of Code of Criminal Procedure, against the Conviction and Sentence passed by the Learned Additional District and Sessions Judge, Hosur in SC.No.97/2021 dated 26.06.2023 by the appellants / A1 to A3.

For Appellant(s): Mr.C.R.Malarvannan

For Respondent(s): Mr.S.Raja Kumar,
Additional Public Prosecutor

ORDER

The appeal challenges the Judgment passed by the learned Additional District and Sessions Judge, Hosur in S.C.No.97/2021, dated 26.06.2023, convicting the appellants for the offences punishable under Section 304(ii) r/w. 34 I.P.C., and sentenced them to undergo 10 years Rigorous Imprisonment for the said offence.



2.1. It is the case of the prosecution that the appellants 1 to 3 are father, mother and brother of one Chandramma respectively; that the appellants were upset with the fact that the said Chandramma had love affair with the deceased viz., Sekar; that since the deceased did not sever his relationship with the said Chandramma, the appellants asked the said Chandramma to call the deceased to their house; and that they had attacked the deceased with hands and sticks and caused the death of the deceased.

2.2. P.W.1, Rajappa, father of the deceased on coming to know that his son was done to death by the appellants, went to the house of the appellants and took the deceased to the hospital. Thereafter he lodged a complaint, Ex.P1 which was registered by P.W.12, the Sub Inspector of Police as an FIR (Ex.P17). Thereafter the investigation was taken over by P.W.13 who went to the scene of occurrence and in the presence of witnesses P.W.8 and one Papanna (not examined), prepared the Observation Mahazar and Rough Sketch which were marked as Ex.P2 and Ex.P18, respectively.

2.3. On 11.03.2016, the first and third appellants surrendered before P.W.8, the Village Administrative Officer (in short VAO) and are said to have given extra judicial confessions which were marked as Ex.P5 and Ex.P6. P.W.8 produced both the appellants before P.W.12 the Sub Inspector of Police. On the confession given by the first appellant, a wooden log was seized in a bush near



the house of the first appellant. Thereafter P.W.12, handed over the investigation to P.W.13 who in turn filed the final report. Since the said Chandramma was a juvenile, a separate final report was filed before the Juvenile Justice Board. The appellants were therefore tried for the offence under Section 302 I.P.C., @ 302, 201 I.P.C., r/w. 120 (B) I.P.C., r/w. 34 I.P.C.,

3. On the appearance of the appellants, the provisions of Section 207 Cr.P.C., were complied with, and were committed to the Court of Sessions i.e., District Munsif cum Judicial Magistrate, Denkanikottai, and the case was made over to the learned Additional District and Sessions Judge, Hosur, for trial. The trial Court framed charges against the appellants / A1 to A3 for the offences under Sections 120 (b), r/w. 302 I.P.C., Section 302 r/w. 34 I.P.C., and Section 201 r/w. 302 I.P.C., and when questioned, the accused pleaded 'not guilty'.

4. To prove the case, the prosecution examined 14 witnesses and marked Ex.P1 to Ex.P25 and marked 10 material objects as M.O.1 and M.O.10. 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.

5. The trial Court after considering the evidence on record, found the appellants guilty of the offences under Section 304 (ii) r/w. 34 I.P.C. and



sentenced as stated above. Challenging the same, the appellants have preferred the present Criminal Appeal.

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6. Mr.C.R.Malarvannan, learned counsel for the appellants would submit that the complainant and other relatives of the deceased who were examined as P.W.1 to P.W.7 turned hostile; that the prosecution has failed to establish that the occurrence took place in the house of the appellants; that the prosecution rests its case solely on the extra judicial confessions said to have been made by the appellants to P.W.8; that P.W.8's evidence does not inspire the confidence as the appellants could not have made any confession to P.W.8; that P.W.8 was a part of the investigation and had signed in the Observation Mahazar; that there was no necessity for the appellants to make the confession to P.W.8 and considering the admissions made by P.W.8 in the cross examination, the extra judicial confession cannot be relied upon; and that there is no other evidence to prove the alleged offence and therefore the impugned Judgment of conviction is liable to be set aside.

7. Mr.S.Raja Kumar, learned Additional Public Prosecutor appearing for the respondent Police, per contra would submit that the occurrence had taken place in the house of the appellants; that the Observation Mahazar would show that certain belongings of the deceased were found in the house; that there were blood stains in the house; and that the entries made in the Accident Register



would show that the occurrence took place in the house of the appellants and in the light of the such evidence which corroborate the extra judicial confession made by the appellants 1 and 3 the trial Court was right in convicting the appellants for the aforesaid offences. The learned Additional Public Prosecutor would further submit that the bike of the deceased was recovered from the house of the appellant; that P.W.4 who turned hostile, had supported the prosecution to the extent of stating that the bike that was recovered from the house belonged to him and he handed over the bike to the deceased which suggests that the deceased was attacked in the house of the appellants and prayed that the appeal may be dismissed.

8. As stated earlier, the prosecution has examined 13 witnesses. P.W.1 is the father of the deceased; P.W.2 is a relative of the deceased, P.W.3 is the nephew of P.W.1. P.W.4 is the son in law of P.W.1 and P.W.5 is related to the first appellant; P.W.6 is the nephew of P.W.5 and P.W.7 is another relative. All the seven witnesses turned hostile to the prosecution. Nothing has been elicited in the cross examination to accept any portion of the evidence in favour of the prosecution. P.W.4 would state that he had lent his bike to the deceased which was seized by the Police from the house of the appellants. P.W.8 is the VAO who is said to have recorded the extra judicial confession of the appellants 1 and 3 (Ex.P5 and Ex.P6); P.W.9 has witnessed the arrest of second appellant; P.W.10 is the Doctor who has given the postmortem report. P.W.11 is the constable who



assisted the Investigation Officer; P.W.12 is the Sub Inspector of Police who registered the FIR. P.W.13 is the Investigating Officer.

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9. The Doctor P.W.11 who conducted the postmortem, had opined that the deceased died due to shock and due to the injuries sustained. The Accident Register was marked as Ex.P25. The entries made in the Accident Register (Ex.P25) by a private hospital would show that the deceased was brought dead. In Ex.P25 there is an endorsement which reads as follows:

“Assault by allegedly relatives of person with whom he was having love affair”

The deceased was brought by P.W.1 and P.W.2 to the hospital. The evidence adduced by the prosecution therefore conclusively establishes that the deceased suffered a homicidal death.

10. The next question is whether the appellants are guilty of the culpable homicide. As stated earlier, P.W.1 to P.W.7 turned hostile. All the witnesses were examined to prove that they went to the house of the appellants where they found the body of the deceased lying. They had not supported the prosecution and therefore their evidence would not be of any avail to the prosecution.

11. The other circumstances relied upon by the prosecution, is the extra judicial confession of the first and third appellants to P.W.8 (VAO). P.W.8 in his



evidence would admit that even before the appellants surrendered, he went to the place of occurrence and signed as witness to the Observation Mahazar (Ex.P2). Further, P.W.8 admits that he was not acquainted with Kannada language. He states that the appellants 1 and 3 had confessed in Kannada language and that his assistant had translated the confession made by the appellants 1 and 3 to him. In his cross examination, he admitted that the assistant also did not know Tamil fully. He had translated the version of the appellants in Urdu and Tamil. There is a footnote in the confessions which reads that the confessions which were recorded in Tamil was translated to the accused in Kannada by the assistant one Syed Jafhar. However he was not examined by the Prosecution. P.W.8 had admitted that his assistant (Syed Jafhar) did not know to read or write in Tamil. Therefore it is not known how he had translated the contents of Ex.P5 and Ex.P6 to the appellants in Kanada. That apart, the appellants had surrendered before the Village Administrative Officer, three days after the occurrence. The reason given by the prosecution is that the appellants apprehended that the Police would attack them if they surrendered before the Police. This Court finds that the said explanation also does not inspire the confidence. There was no reason for the appellants to surrender before the Village Administrative Officer and make their confession. The confessions also suffer from several infirmities. It has not been recorded verbatim as made by the appellants.



12. For all the above reasons, this Court is of the view that P.W.8 cannot be believed and consequently confessions recorded by him namely Ex.P5 and Ex.P.6, cannot be accepted to hold the appellants guilty of the offence. In any case, it is well settled that the conviction cannot be based only on the extra judicial confession without any corroboration.

13. In this case, the Observation Mahazar (Ex.P2) which was prepared by the Investigating Officer in the presence of P.W.8 states that certain belongings of the deceased were found in the house besides blood stains. The prosecution had not made any attempt to prove that those belongings belonged to the deceased. That apart, the blood stained earth was also not collected, to be sent for comparison.

14. The other circumstance relied upon by the Prosecution is the fact that the bike of P.W.4 which was lent to the deceased was seized at the time of attack. The seizure of bike alone would not be of any use to the prosecution in the light of the fact that the other circumstances have not been conclusively established by the prosecution. Therefore in view of the aforesaid reasons, this Court is of the view that the impugned judgment convicting the appellants for the aforesaid offences cannot be sustained and therefore liable to be set aside.



15. As a result, this Criminal Appeal is allowed, and the appellants/A1 to A3 are acquitted of the charges framed under Section 304(ii) r/w. 34 I.P.C. The conviction and sentence passed in SC.No.97/2021 dated 26.06.2023 on the file of learned Additional District and Sessions Judge, Hosur, are set aside. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

09-01-2026

vum

Index:Yes/No

Speaking/Non-speaking order

Neutral Citation:Yes/No

To

1. The Inspector of Police,
Thally Police Station,
Krishnagiri District.

2. The Additional District and Sessions Judge,
Hosur.

3. The Public Prosecutor,
Madras High Court, Chennai.



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SUNDER MOHAN,J.

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