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Crl.A.No.93 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2026

CORAM :

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

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1.C.Krishnamoorthy

2.A.Raj

... Appellants / Accused 1 & 2

Vs.

State Rep by
Inspector of Police,
P-5, MKB Nagar Police Station,
Chennai-600 039.
Crime No.1296 / 2017.

... 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 dated 19.10.2023 made in S.C.No.386 of 2018 passed by the learned XVI Additional Sessions Judge, Chennai.

For Appellants : 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 appellants / accused 1 and 2 challenging the judgment of conviction and sentence dated



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19.10.2023 made in S.C.No.386 of 2018 passed by the learned XVI

Additional Sessions Judge, Chennai, in and by which both the appellants were convicted under Section 302 r/w.34 IPC and sentenced to undergo Life Imprisonment and to pay a fine of Rs.2,000/- in default to undergo 1 year simple imprisonment.

2. Brief case of the prosecution is as follows:

2.1. On 03.09.2017 at about 6'O clock evening near PV colony, PW1 / Defacto complainant – Tmt.Uma Maheswari went to the deceased house and seen him. On the same day PW1 went to her sister's house / PW2's house. At that time. She received an information about her brother – Tr.Kalaivanan / deceased assaulted A1 by pelting stones. PW1 went to the deceased's house and gave advise to him. PW1 again went to PW2's house. Subsequently, on the same day, she received an information about the quarrel between the deceased with the accused near the residence of the deceased and when they reached, A1 and A2 assaulted the deceased by using bamboo sticks – M.Os.1 & 2, Cement Concrete- M.O.3, threatened the public by throwing stones and thereafter, fled away from the scene of occurrence. Public informed "108" ambulance and sent the deceased to Stanley Government Hospital for treatment. In the meanwhile, PW1



proceeded to the police station and lodged a complaint Ex.P1 before PW14.

2.2. PW2 – Tmt.Kamatchi is the sister of PW1 and she deposed similar to the evidence of PW1. PW3- Tr.Kannan deposed that on 03.09.2017 at night 11.30 p.m., he heard the shouting of women while he was in his house. He saw the deceased was lying on the floor with injuries on his head and nearby to the injured, he saw bamboo stick and stone. He informed “108” ambulance and the injured was taken to the hospital.

2.3. PW4 – Tr.Hajari Ram deposed that he is running a shop and on 03.09.2017, he saw that there was blood stains found near to his shop. PW5 – Tr.Karan deposed that on 04.09.2017, while he was walking along with elder brother Tr.Arun- PW6 near Mullai Nagar burial ground, police arrested two persons and requested them to be witnesses. The arrested persons gave confession statements and the same has been recorded by police. PW5 signed in the confession statements given by them. PW5’s signature found in the confession statement is Ex.P2 and his signature found in the Mahazar is Ex.P3. Similarly PW6 deposed the save version stated by PW5 and his signature found in the confession statement is Ex.P4 and the signature found in the Mahazar is Ex.P5.



2.4. PW9- Tr.Jayaraman, Grade I Police Constable deposed that on 05.09.2017, the Inspector of Police has given requisition to conduct autopsy on the body of the deceased. He handed over the requisition to the autopsy doctor in the Stanley Government Hospital and after conducting autopsy, he handed over the body to the relatives of the deceased.

2.5. PW11 – Tr.Madhan deposed that on 06.09.2017 at 7.00 a.m., when he was travelling along with his friend Sekar, he saw that police had enquired A2 – Raj and requested them to be witnesses for the arrest of A2. A2 has given confession statement. In the confession statement of A2, they have signed as witnesses. Based on the confession statement, A2 took them to his house at Annai Sathya Nagar and also identified Blue Colour Pant and Blood Stained Full Sleeve Shirt under Mahazar and handed over the same to the police. The signature of PW11 found in the confession statement is Ex.P6 and the signature found in Mahazar is Ex.P7 and the police has recovered M.Os.4 and 5.

2.6. PW12- Dr. Muralidharan, who conducted autopsy over the body of the deceased, deposed that on 5.09.2017, he received a requisition



to conduct autopsy and on autopsy, he noticed the following injuries:

(1) Contusion of size 15 x 10 cm on right parietal region of head.

ON DISSECTION OF HEAD: Diffuse extensive and widespread areas of contusion seen over the entire region of scalp with 50 g of subscalpal haematoma and edema in right parietal region. Vault: Left squamo temporal bone fractured in multiple pieces with surrounding fracture haematoma. Duramater intact. Massive subdural and Subarachnoid haemorrhage seen over surfaces of both cerebrum and in cerebellum. Base of skull found fractured in middle cranial fossa of 14cm length from left temporal petrous bone to the sphenoidal region.

(2) Swelling of both eyes and right cheek noted. On dissection of underlying soft tissues found contused with right eye periorbital edema with subconjunctival haemorrhage and left eyelid edema. Right mandible and cheek bones found fractured into multiple pieces. Crack fracture of left mandible noted. Multiple tooth absent in both jaws and fracture of right upper central incisor teeth noted. Base of tongue and floor of mouth found contused.

(3) Multiple abrasions of varying sizes 1-2 x 1-2 cm in the left forearm noted.

PW12 issued the Postmortem Report – Ex.P8. He has opined that the deceased appears to have died of blunt injuries to the region of head and face and the Death would have occurred 24 – 36 hours prior to autopsy.

2.7. PW13 – Tr.J.Sintha Sahul Hameed – Scientific Officer deposed that he has received samples through police constable viz., stomach and



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contents, intestine and contents, liver and kidney, blood and preservation saline. After chemical analysis, he had given certificate that the above said items were examined whether alcohol or any other poisonous item was detected in any of them. He has issued a report to that effect in Ex.P9- Medical Report.

2.8. PW14 – Tr.Prakashkumar, Sub-Inspector of Police deposed that on 04.09.2017, he has received a complaint at about 00.30 hours from PW1, based on which he registered a case in Cr.No.1296 of 2017 for the offences under Sections 341, 294(b), 336, 307 and 506(ii) IPC. He registered an F.I.R. in Exp10. He went to the Scene of Occurrence and prepared Observation Mahazar – Ex.P12 and drawn Rough Sketch – Ex.P11 in the presence of witnesses PW10-Tr.Sasikumar and PW7-Tr.Samson. He has also recovered from the scene of occurrence, M.O.3 – Cement stone, blood stained cement concrete, unstained cement concrete under Mahazar-Ex.P13 in the presence of same witnesses. He examined the witnesses and recorded their statements. He received an intimation from Stanley Government Hospital at 12.30 p.m. that the deceased died at 9.30 a.m. in the hospital. PW14 altered the Sections to 341, 294(b). 336, 302 and 506(ii) IPC. The Alteration Report is Ex.P14.



2.9 PW14 received the Accident Register copy – Ex.P15 and Mortuary Label – Ex.P16. He conducted inquest over the body of the deceased in the mortuary in the presence of witnesses and prepared the Inquest Report – Ex.P17. He nominated the police constable Mr.Jayaraman to proceed further for conducting autopsy.

2.10. PW14, in continuation of his investigation, on 04.09.2017 at 18.45 hours, he arrested A1- Krishnamoorthy, near Mullai Nagar burial ground in the presence of PW5- Tr.Karan and PW6- Tr.Arun. A1 voluntarily gave confession statement and the same has been recorded. In pursuance of the confession statement, A1 handed over blood stained bamboo sticks – M.O.1 & M.O.2, Blood Stained Shirt – M.O.4 and Blue Colour Pant – M.O.5 under Mahazar- Ex.P19. The admissible portion of the confession statement of A1 is Ex.P18. He has sent A1 to judicial custody and forwarded the case properties to the Court.

2.11. PW14, in continuation of his investigation, on 06.09.2017 he has arrested A2 – Raj near Kallukadai junction in the presence of PW11- Madhan and one Sekar. On enquiry, A2 voluntarily gave confession statement and the same has been recorded. The admissible portion of the



confession statement of A2 is Ex.P21. In pursuance to his confession statement, A2 took them to his house and identified blood stained brown colour full hand shirt and blood stained blue jeans pant under Mahazar Ex.P22. Thereafter, he has sent A2 to judicial custody and sent the case properties to the Court under Form 95 – Ex.P23. He has examined the witnesses and recorded their statements. He has taken steps to send the materials for forensic examination. Thereafter, he was transferred to some other police station.

2.12. PW15- Saravanan – Inspector of Police, deposed that he continued with the investigation consequent upon the transfer of PW14. He examined the witnesses and recorded their statement and after completion of investigation, he laid the Charge Sheet against the accused under Sections 341 and 302 r/w. 34 IPC.

2.13. The prosecution, in order to establish the guilt of the accused, had examined 15 witnesses, marked 24 exhibits and produced 5 material objects. Upon completion of prosecution side evidence, when the accused were questioned under Section 313(1)(b) CrPC with regard to incriminating circumstances appearing against them, they pleaded not



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guilty and also not chosen to examine any witness on their side. The Court below, upon appreciation of oral and documentary evidences, has found the appellants guilty under Section 302 r/w. IPC and convicted and sentenced them as stated above. Aggrieved over the same, the appellants / accused 1 and 2 have preferred the present criminal appeal.

3. The learned counsel appearing for the appellants would submit that the complaint and the F.I.R were sent to the Court concerned with 17 hours delay and no explanation was offered by PW14 / I.O. in this regard. Further the exhibits and the seized material objects were also sent to the Court concerned with delay and the Investigating Officer / PW14 has not explained about the reasons for the delay. The recovery witnesses also not supported the prosecution case. The defacto complainant / PW1 was not able to say about the details of treatment ward and the doctor who have given treatment and further, she has not even made any attempt to provide nursing to her brother / deceased to save his life, which is highly doubtful and the hospital records also does not show her name as the person who brought her brother to the hospital. The Trial Court failed to note that PW1 has mentioned about the motive between A1 with the deceased, though the same was not proved by the prosecution by



producing evidence and she has not deposed about the reasons as to why she came to her sister's house as well as the deceased house on the alleged fateful day.

4. The learned counsel appearing for the appellants would further submit that PW2 admitted that the complaint itself was scribed by the police and she also admits that till raising the complaint, both she and her sister / PW1 have no knowledge about the names of the accused, however, surprisingly the names of the accused were found in the complaint, which shows that the prosecution has foisted a false case and projected a false theory against the appellants / accused. Since the Accident Register and the Mortuary Label for the deceased contains unknown persons and further the AR and the Treatment doctors were not enquired by the Investigating Officer, further the place of occurrence in the Accident Register / Ex.P15 and Mortuary Label – Ex.P16 differs from the version of PW1 and PW2, it creates doubt about the prosecution case. PW3 deposed that the material objects were recovered from the scene of occurrence and it was found in the place where the alleged occurrence had happened, however PW5, PW6 and PW11 deposed difference version with regard to the arrest and recovery. PW14, in his cross examination,



deposed contradictory to the evidence of PWs.1 and 2 elucidated and it is the admitted evidence of PW14 that only on 03.05.2018, Inquest Report was sent to the Court concerned and he has not shown eye witnesses name in the Inquest Report and the person, who has signed in the Inquest Report is the person, who was examined as PW11- Tr.Madhan. Prosecution has miserably failed to prove the case beyond reasonable doubt and there are material contradictions between the evidence of the eye witnesses and therefore, the impugned judgment of the Court below is liable to be set aside.

5. *Per contra*, learned Additional Public Prosecutor appearing for the respondent would submit that the prosecution has proved the case beyond all reasonable doubt. PWs.1 and 2 are eye witnesses to the occurrence and they clearly deposed that her brother Kalaivannan / deceased had assaulted A1 by pelting stones and again PW1 went to the deceased house. PW1 deposed that on 03.09.2017 at 22.00 hours and pacified them and again on the same day, they went to the deceased house at 23.30 hours and by that time, when they reached home, they received an information about the quarrel between the deceased and the accused and when they reached, they saw A1 and A2 assaulted the deceased with



M.O.s.1 to 3 and threatened the public by throwing stones and therefore, public fled away from the scene of occurrence and thereafter, public informed “108” ambulance and sent the deceased to Stanley Government Hospital. In the meanwhile, PW1 proceeded to the police station and lodged a complaint – Ex.P14. Further PW1 deposed that the recovery of material objects from the accused in pursuance of the confession statement of the accused has been clearly established. The evidence of PWs.1 and 2 corroborate with the evidence of the Doctor – PW12. Upon appreciating the oral and documentary evidence, the Trial Court rightly found the appellants/guilty under Section 302 r/w. 34 IPC and convicted and sentenced him, which does not warrants any interference.

6. We have considered the submissions made on either side and perused the entire materials available on record.

7. PW1 and PW2 are sisters. According to the prosecution, it is alleged in the complaint – Ex.P1 that on 03.09.2017 at about 6’O Clock in the evening near PV colony, PW1 went to deceased house and seen him. After that, on the same day, she went to PW2’s house. At that time, PW1 received an information that the deceased assaulted A1 by pelting stones.



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PW1 went to the deceased house and gave advice. PW1 went to PW2 / sister's house. On the same day, PWs.1 and 2 received an information about the quarrel between the deceased and the accused nearby the residence of the deceased. After they reached, A1 and A2 assaulted the deceased by using M.Os.1 and 2 -Bamboo stick and M.O.3 – Concrete stone and also threatened the public by throwing stones and the public fled away from the scene of occurrence. Public called “108” ambulance and sent the deceased to Government Stanley Hospital.

8. In the meanwhile, PW1 proceeded to the police station and gave complaint – Ex.P1 before PW14/ Investigating Officer. PW14 registered the case in Cr.No.1296 of 2017 for the offences under Sections 341, 294(b), 336, 307 and 506(ii) IPC on 04.09.2017 at 00.30 hours. Further it was stated that on 04.09.2017 at about 9.30 hours, due to the injury sustained at the hands of the accused, the deceased died in the Stanley Hospital and on receiving information about the same, PW14 altered the Sections to 302 r/w. 34 IPC.

9. The prosecution has relied upon the evidence of PW1 to prove the motive and the same was not proved by the prosecution by producing



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direct evidence. PW1 has not deposed the reasons as to why she had come to her sister's house / PW2's house as well as deceased house on the fateful day. PW1 admitted in her evidence that she is residing far away from the scene of occurrence. PW2 admitted that the complaint itself was scribed by police and also admitted that till raising the complaint, both PWs.1 and 2 have no knowledge about the names of the accused. However, in the complaint, the name of the accused were found, which creates doubt over the prosecution case.

10. Ex.P15 is the copy of Accident Register and Ex.P16 is the copy of Mortuary Label received by PW14 / Investigating Officer from the Stanley Medical College Hospital. It is seen from Ex.P15 that the occurrence time was mentioned as 04.09.2017 at 12.15 a.m. and as a known person, male aged 35 years and in the address column, it was mentioned as unknown. Further, it is seen that the injured was brought through "108" Vyasarpadi Ambulance and intimation was also given to the police. It was also mentioned that the alleged assault was on 04.09.2017 at 12.00 a.m. @ PV colony, 20th Street near Balaji Pawn Shop. It is also seen from Ex.P16 – Mortuary Label that the name of the deceased was mentioned as unknown, Guardian's name as unknown and address column



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as not known. It was also mentioned as unknown mode of injury / head injury / poly trauma and the same has been recorded by one Dr.Madhusudhanan on 04.09.2017.

11. PW2, in her evidence, admitted that she and her sister / PW1 both have not stayed in the hospital the whole night. Further, they deposed that they never stated about ward details, bed number where their brother / deceased had taken treatment at Stanley Medical College Hospital. Further, both PWs.1 and 2 have not deposed about the exact time and place of occurrence and according to the prosecution, the exact place of occurrence, as shown in the Rough Sketch – Ex.P11 was 1st Street, Annai Sathya Nagar Main Road, No.656-C. Further it is the evidence of PWs.1 and 2 that the occurrence place was 20th Street, Annai Sathya Nagar. According to the prosecution, occurrence said to have happened in front of one Mathaji Pawn shop and further in the Accident Register – Ex.P15 itself, it was mentioned as Balaji Pawn shop.

12. PW12 – Autopsy Doctor admitted in his cross examination that in Ex.P15 and Ex.P16, the name of the injured person was mentioned as unknown and the address was also mentioned as not known and also



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mentioned as “Non-Paying, No Jewels” has been mentioned as per the Postmortem Certificate issued by PW12. The age of the deceased was mentioned as 23 years, but in his cross examination he has admitted that his brother died on 04.09.2017 at 9.30 am and unknown mode of injury and also mentioned as Aspiration Asphyxia.

13. As per Exs.P15 and P16 viz., Accident Register copy for the deceased and Mortuary Label, it was shown as unknown person (no deceased name). Further, the AR and treatment doctor were not examined by the Investigating Officer. Further, as per Exs.P15 and P16 the alleged occurrence place differs from the evidence of PW1 and PW2 which creates doubt about the prosecution case.

14. PW1 admitted that she was instructed by PW14 /Investigating Officer to bring the witness to the police station which clearly shows that the Investigating Officer used the interested witnesses for proving the alleged confession and recovery. It is an admitted evidence of PW5 that his shop is having CCTV camera and the very same CCTV was not produced by the prosecution and there is no explanation from PW14 as to the non-examination of CCTV footage.



15. As per the evidence of PW1 in her complaint – Ex.P1 that PW3 Kannan had helped the deceased to be taken to hospital, whereas PW3 has not all supported the prosecution case. The evidence of PW3 that M.Os. 1 and 2 was found in the occurrence place, however PWs.5, 6 and 11 have deposed different version with regard to recovery of M.O.1 and M.O.2. It is the specific case of the prosecution that PW3 again brought the deceased to the hospital for nursing, however it is the admitted evidence of PW3 that he has not taken the deceased to the hospital and not supported the contents of Accident Register – Ex.P15 and PW3 was not even present at the scene of occurrence at the alleged time.

16. PW3 admitted that he is very well aware about the persons who were present in and around the scene of occurrence while at the time of taking the deceased to hospital by PW3 and there is no explanation as to who prevented him to state about the name of the deceased to the Doctor in Ex.P5. He has not deposed about the exact arrival time of ambulance to the scene of occurrence.



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17. It is the evidence of PWs.5 and 6 that on 04.09.2017, both the accused were arrested by the Investigating Officer and they have confessed about the occurrence and the alleged recovery of M.Os.1 and 3. It is the case of the prosecution that A1 was arrested on 04.06.2017 and A2 was arrested on 06.06.2017. PW11 have deposed about the arrest, confession and recovery from A2, however contrary evidence has been given by PW5 and PW6.

18. According to the prosecution, PW11- Tr.Madhan's name was found in the Inquest Report- Ex.P17. It is the admitted evidence of PW11 that he has no knowledge about the deceased name and other details about the deceased. However, prior to the arrest of A2, PW11's name was found in the Inquest Report and therefore, it is clear that the Inquest Report – Ex.P17 is an afterthought.

19.PW12-postmortem doctor neither deposed about the injuries in his evidence nor about the weapons used on the body of the deceased and further in the cross examination, admitted that the name of the deceased was not known as mentioned in the Death Report / Mortuary Label – Ex.P16 and kept in the mortuary. Further, he has admitted that in Ex.P16 –



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Mortuary Label, name of the deceased was not known and so also the cause of death and further no injury was found in the leg of the deceased as deposed by PW1 and PW2 who claims to be eye witness to the occurrence.

20. PW14, in his evidence, admitted that only on 03.05.2018, the Inquest Report was sent to the Court concerned and he also admits that there is no eye witness mentioned in the Inquest Report and the persons who has signed in the Inquest Report is the person who was examined as PW11- Madhan and no material has been shown as to what kind of treatment given by the Doctor and even as per the evidence of PW15, the Inquest Report was wrongly shown as Ex.P25 instead of Ex.P24 and the Inquest Report contains Ante time incident, which creates serious doubt in the prosecution case.

21. PW1/defacto complainant has not said anything about the treatment ward or about the doctor who had given treatment to the deceased and she was not able to provide private nursing to his brother to save his life, which is highly doubtful. The first and foremost hospital record available namely Accident Register – Ex.P15 and Mortuary Label – Ex.P16, does not contain the name of PW1.



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22. In the light of the above said contradictions, this Court is of the view that the prosecution has not proved its case beyond all reasonable doubt and the judgment of conviction and sentence passed by the Court below warrants interference.

23. In the result, this Criminal Appeal stands allowed and the impugned judgment of conviction and sentence made in S.C.No.386 of 2018 dated 19.10.2023 passed by the learned XVI Additional Sessions Judge, Chennai is set aside and the appellants/accused 1 and 2 are acquitted of all the charges. Fine amount, paid if any, shall stand refunded to the appellants. Bail bonds, executed if any, shall stand cancelled.

(P.V.,J.) (M.J.R.,J.)
05.01.2026

Jvm
Index : Yes / No
Internet : Yes / No
Speaking /Non speaking Order

To
1.Inspector of Police,
P-5, MKB Nagar Police Station,
Chennai-600 039.

2.The Court of XVI Additional Sessions Judge,
Chennai-600 001.



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3.The Public Prosecutor,
High Court, Madras.

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P.VELMURUGAN, J.
and
M.JOTHIRAMAN, J.

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