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CrI.A.No.655 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.A.No.655 of 2018

Thamaraikannan

... Appellant

-Vs-

State rep by
Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
Crime No.903/2012.

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the judgment made in S.C.No.73 of 2014 dated 05.10.2018 on the file of Principal Sessions Judge, Namakkal.

For Appellant : Mr.S.N.Arun Kumar

For Respondent : Mr.S.Vinoth Kumar
Government Advocate (CrI. Side)

JUDGMENT

This Criminal Appeal arises out of judgment of conviction and sentence passed by the learned Principal Sessions Judge, Namakkal (Trial Court) in S.C.No.73 of 2014, dated 05.10.2018.



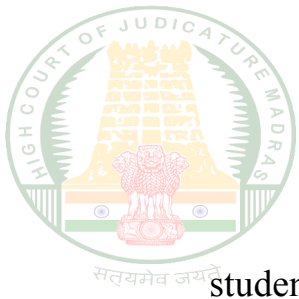
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2. During trial, the appellant/A1 was charged for offence under Section 302 of IPC and A2 was charged for offence under Section 201 of IPC. After full-fledged trial, the appellant/A1 was found guilty for offence under Section 304(ii) of IPC and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.3,000/-, in default to undergo three months Simple Imprisonment. A2 found not guilty for offence under Section 201 of IPC and she is acquitted.

3. The gist of the case is as follows:

(i) The deceased Palanisamy and A2 are husband and wife, they have three sons viz., the appellant/A1-Thamaraikannan, one Moorthi/PW4 and the defacto complainant Panneerselvam/PW1. All of them were living jointly at Thangamani Line Street, Elanthakuttai Village, Thiruchengode Taluk, Namakkal District. The deceased Palanisamy was employed as lorry Driver, his wife/A2 was working in Dhanakshimi Killavikarar Handloom and their first two sons viz., the appellant/A1 and Moorthi/PW4 were working in Rajaguru Spinning Mills, Pallipalayam, Namakkal and the third son viz., PW1/defacto complainant was a

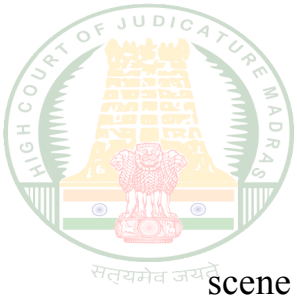


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student. The deceased Palanisamy was a drunkard, had a concubine at Varapalayam Village and spent all his earnings on drinks and to the concubine, never cared for his family. He used to come to home in a drunken state, pick up quarrel with his wife/A2 and sons and used to beat them for no reason.

(ii) While this being so, on 12.07.2012, at about 11.00 a.m., when the defacto complainant/PW1, his two brothers and their mother/A2 were at home, the deceased came in a drunken state and started abusing A2 in filthy language. When the appellant and his brother/PW4 intervened and pacified them, the deceased scolded them, abused and questioned the moral character of his wife linking her with the appellant/A1, which infuriated and provoked. The appellant hit his father/deceased with a wooden log forcibly on the left side of his head and again took a wooden log of neem tree/MO7 and hit him on his head, caused injuries to the deceased and blood started oozing from nose, ears and head. On hearing the sound, the sister-in-law of A2 Selvi/PW5 came there. PW4 and the defacto complainant came out from house and made call to 108 ambulance. In the meanwhile, A2 washed away the blood stains from the

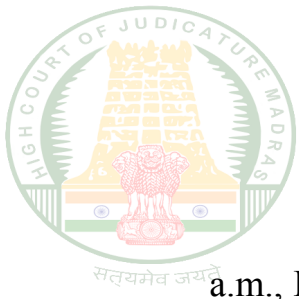


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scene of occurrence and concealed the weapons, blood stained clothes of herself and the appellant/A1. Thereafter, A2 and PW5 went to Government District Headquarters Hospital, Erode along with the deceased in 108 Ambulance, admitted the injured Palanisamy by giving false information as though the deceased fell down from TVS moped. The injured Palanisamy within few minutes of admission succumbed to the head injuries.

(iii)PW1 lodged the complaint/Ex.P20 and FIR/Ex.P21 in Crime No.903 of 2012 was registered by the Sub Inspector of Police/PW12, for offence under Sections 302 and 201 of IPC against the appellant/A1 and his mother/A2. The Inspector of Police/PW15 took up investigation, went to the scene of occurrence, prepared Observation Mahazar/Ex.P3, Rough Sketch/Ex.P23 in presence of witnesses Sivakumaran/PW6 and one Senthilkumar, seized blood stained chunnam scrapping/MO1, unstained chunnam scrapping/MO2, blood stained blue colour dustbin/MO3 and blood stained blue colour Muram/MO4 under Seizure Mahazar/Ex.P4 and seized blood stained soil/MO5 and unstained soil/MO6 under Seizure Mahzar/Ex.P5. On 13.07.2012, at about 05.00



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a.m., PW15 went the Government Hospital, Erode, conducted inquest on the body of the deceased in presence of Panchayathars, namely, Raja, Vadivel, Chinnasamy, Mohan and Sankar and prepared Inquest Report/Ex.P25 and he examined other witnesses, recorded their statements, sent requisition/Ex.P16 to the Government District Headquarters Hospital, Erode to conduct postmortem. The accused/A1 and A2 appeared before PW7/VAO and gave confession statements/Exs.P6 & P7. PW7 recorded the confession statements, produced the accused before PW15 along with Special Report/Ex.P8. PW15 arrested the accused in presence of PW7/VAO and Village Assistant, recorded the confession statement of the accused/Exs.P12 & P14. Pursuant to the confession statements, MO7, MO8, MO9, MO10, MO11, MO12 & MO13 were seized from the sugarcane field under Seizure Mahazar/Exs.P11 & P13. Thereafter, the accused were sent to judicial custody and all the Material Objects/MO1 to MO15 were sent to the Court under Form 91. The seized articles forwarded for forensic examination. The body was produced to the Postmortem Doctor/PW9, who conducted autopsy and issued Postmortem certificate/Ex.P17 and gave final opinion/Ex.P19 that the deceased would have died due to the



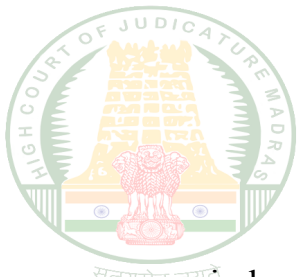
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head injury sustained.
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(iv) On transfer of PW15, PW16 took up further investigation in Ex.P21, examined the witnesses, recorded their statements, sent the viscera of the deceased for chemical analysis to the Salem Forensic Science Laboratory as per order of Judicial Magistrate, Thiruchengode/Ex.P28 and thereafter, he examined the postmortem Doctor/PW9, recorded her statement. On receipt of postmortem certificate/Ex.P17, biological reports/Exs.P29 & Ex.P30 and serological report/Ex.P31, PW16 filed charge sheet before the Trial Court.

4. During the course of trial, on side of the prosecution, 16 witnesses examined as PW1 to PW16 and 31 documents marked as Exs.P1 to P31 and produced 15 Material Objects. On the side of the defence, no witness examined and no document marked.

5. The accused were questioned under Section 313 Cr.P.C., about the incriminating materials, they denied the same. After full-fledged trial, the Trial Court acquitted A2, but convicted the appellant/A1, vide

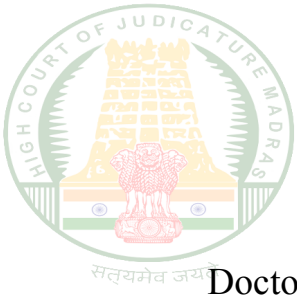


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judgment, dated 05.10.2018. Aggrieved against the judgment of conviction and sentence, the appellant/A1 is present before this Court by way of this Criminal Appeal.

6.Learned counsel for the appellant submitted that in this case, the deceased is none other than the father of the appellant/A1, defacto complainant/PW1 and PW4 and husband of the acquitted accused/A2. In this case, the eye witnesses/PW1 & PW4 and other material witnesses, namely, PW1 to PW5 not supported the case of the prosecution. Learned counsel further submitted that the deceased Palanisamy never cared for his family. He always used to come in a drunken state, spent all his earning to his concubine. On the date of occurrence, the deceased was in a drunken state, came in TVS moped in a rash and negligent manner, lost balance and fell down. Due to which, he sustained head injuries. PW5, the sister-in-law and A2 took the injured Palanisamy to the Government District Headquarters Hospital, Erode, informed the Casualty Doctor/PW13 about the injury sustained by the deceased. PW13 admitted the injured and issued Accident Register/Ex.P22. The other Casualty Doctor/PW8 issued death intimation/Ex.P15, the Postmortem

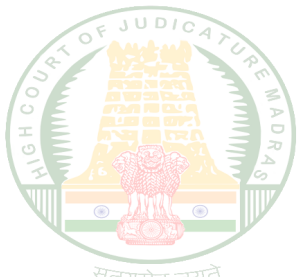


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Doctor/PW9 issued Postmortem certificate/Ex.P16 confirming the death due to head injury. Further, he admits that such injury is possible due to rash and negligent riding and fall. The Viscera Report/Ex.P18, Biological and Serological Report/Exs.P29 to P31 confirm the deceased was in a drunken state at the time of death and presence of ethyl alcohol.

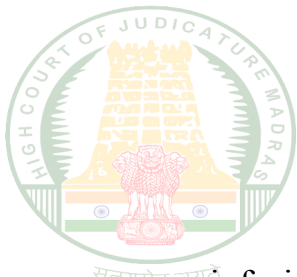
7.The defacto complainant/PW1 in his evidence admits his signature in the complaint/Ex.P20, but disowns the writings. In this case, the Trial Court proceeded on presumption and assumption on the ground that PW7/VAO, before whom the appellant/A1 and his wife/A2 gave admission statements/Exs.P6 & P7. In this case, FIR/P21 registered on 12.07.2012, at about 07.00 p.m., by that time, the investigation commenced as admitted by PW15/Investigating Officer. PW15 reached the scene of occurrence on the same day at about 08.30 p.m., examined the witnesses, collected the Material Objects at about 10.00 p.m. The alleged confession statements/Exs.P6 & P7 is of no consequence. From the alleged confession statements/Exs.P12 & P14 recorded by the Investigating Officers, some Material Objects were seized. This seizure of Material Objects is of no consequence since these Material Objects are



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commonly available articles. Further, the blood grouping could not be proved except it was human blood. Added to it, from Form 91/Ex.P26, it is seen that the seized Material Objects produced before the Court two months after seizure i.e., during September 2012. The Trial Court convicted the appellant/A1 herein on the ground that the burden was upon the accused to prove, what happened as per Section 106 of the Indian Evidence Act. He further submitted that in this case, A2 was acquitted. On the contrary with the same set of facts, A1 convicted. Hence, he prayed for acquittal of the appellant/A1.

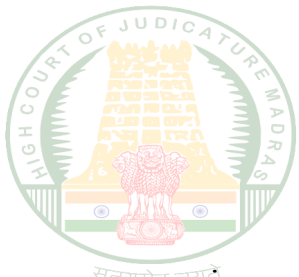
8.Learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that in this case, the deceased is none other than the father of the appellant/A1, defacto complainant/PW1, PW4 and husband of A2. On 12.07.2012, at about 11.00 a.m., the deceased went home in a drunken state. Since the food was not served immediately, he got wild and scolded his wife/A2. At that time, the appellant/A1 and PW4, who were present, questioned the same. Annoyed over the same, the deceased abused the appellant/A1 and commented about the chastity of wife/A2 linking with the appellant/A1. The appellant/A1 got



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infuriated, taken the cot frame wooden log, attacked the deceased on the left side of his head. Since the cot frame wooden log broke, he took neem tree wooden log and again attacked the deceased on his head. Due to which, the deceased sustained grievous injuries on his head and he fell unconscious, the blood oozing from his nose, mouth and ears. On hearing the sound, PW5, the sister-in-law came to the scene, took the deceased along with A2 to the Government District Headquarters Hospital, Erode. PW13, the Casualty Doctor examined the deceased, issued Accident Register/Ex.P22. Within few minutes of admission, the injured succumbed. After which, PW8, the Casualty Doctor sent the death intimation/Ex.P15 to the respondent Police Station. Thereafter, the defacto complainant/PW1 went to the respondent Police Station, lodged the complaint/Ex.P20. PW12, the Sub Inspector of Police, registered FIR/Ex.P21 in Crime No.903 of 2012 and forwarded the same to PW15 and other superior officers. PW15, the Inspector of Police took up investigation, visited the scene of occurrence at about 08.00 p.m., in presence of PW6 and another witness, prepared Observation Mahazar/Ex.P9, Rough Sketch/Ex.P23, examined the witnesses present in the scene of occurrence, recorded their statements, conducted inquest



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in presence of Panchayathars, made a request to PW9 for Postmortem. In the meanwhile, on the next day i.e., 13.07.2021, the appellant/A1 and A2 voluntarily appeared before PW7/VAO, gave confession statements/Exs.P6 & P7. PW7/VAO produced the accused before the Investigating Officer/PW15 along with the confession statements/Exs.P6 & P7 and report/Ex.P8. The accused, before PW15, gave confession statements/Exs.P12 & P14. Pursuant to confession, Material Objects seized under Seizure Mahazars and produced before the concerned Court and thereafter, sent to forensic examination.

9.PW9 is the Postmortem Doctor, who conducted autopsy on the deceased, issued Postmortem Certificate/Ex.P17 and gave final opinion/Ex.P19 confirming that '*the deceased would appear to have died due to head injuries*'. Thereafter, PW15 got transferred. PW16 took up further investigation, examined the medical witnesses/PW8, PW9 & PW13 and collected documents, namely, the Postmortem Certificate/Ex.P17, final opinion of PW9/Ex.P19, Biological Reports and Serological Report/Exs.P29 to P31 and filed final report before the Trial Court.



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10. Before the Trial Court, PW1 to PW16 examined and Exs.P1 to P31 marked and MO1 to MO15 produced. During trial, PW1 and PW4, who are sons of the deceased and brothers of the appellant and PW2, PW3, PW5 who are local villagers and closely related with the accused, not supported the case of the prosecution, turned hostile. The Trial Court finding that the occurrence took place inside the house and blood stained articles were seized inside the house, the recoveries have been made based on the confession statements/Exs.P12 & P14 of the accused and finding that the accused gave no explanation invoking Section 106 of the Evidence Act, rightly convicted the appellant/A1 for offence under Section 304(ii) of IPC considering the facts and circumstances of the case. Hence, the judgment of the Trial Court is reasonable one, which need not be interfered with.

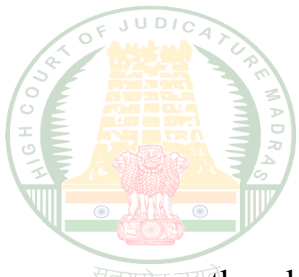
11. This Court considered the rival submissions and perused the materials available on record.



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12. In this case, the witnesses for Material Objects, namely, PW1 to PW5 and eye witnesses to the occurrence, namely, PW1 & PW4 not supported the case of the prosecution. PW5 is the sister-in-law of A2, who took the deceased to the Government District Headquarters Hospital, Erode along with A2. PW5 informed PW13/Casualty Doctor that the deceased fell from the TVS moped and sustained head injury. At the time of death, the deceased was in drunken state, presence of ethyl alcohol in his viscera are confirmed by the Scientific Officer's report Ex.P18. From the Accident Register/Ex.P22, it is seen that there is only one injury on the skull of the deceased, but the prosecution projected the case as though the deceased was attacked twice, first time with the cot frame wooden log and second time it was with neem tree wooden log. Hence, the overtact attributed does not correlate with the medical evidence.

13. The Doctors, namely, PW8, PW9 and PW13 opined and confirmed that it is possible the skull injury sustained by the deceased might be due to fall from the vehicle. Added to it, at the time of death,

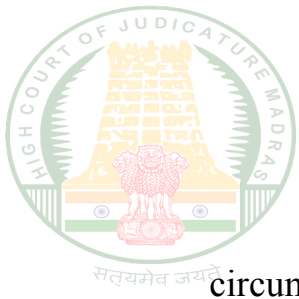


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the deceased was in a drunken state and his viscera contains ethyl alcohol, which is confirmed by Ex.P18. The confession statements/Exs.P6 & P7 recorded by PW7/VAO on 13.07.2012 is of no consequence since FIR/Ex.P21 registered on 12.07.2012, investigation commenced, investigating officer visited the scene of occurrence at about 08.00 p.m., on the same day recorded statement of witnesses, prepared Observation Mahazar, Rough Sketch, seized Material Objects by way of mahazars, which is admitted by PW12 and PW15. The Serology and Biological Reports/Exs.P29 to P31 confirm the presence of human blood in the Material Objects without grouping. This is of no consequence. The trial Court acquitted A2 for offence under Section 201 IPC. On the contrary with the same set of evidence and materials, the trial Court convicting the appellant/A1 for the offence under Sections 304(ii) of IPC, is not proper and it would amount to miscarriage of justice.

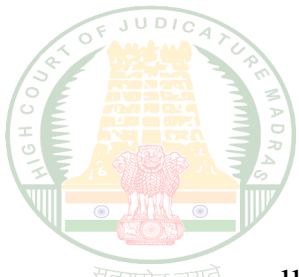
14.In this case, PW1 to PW5 not supported the case of prosecution. While that being so, their statements and contradictions ought to have been put to the Investigating Officers/PW15 & PW16 by the prosecution to discredit those witnesses and to rely upon the other



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circumstances. In this case, it has not been done and nothing elicited during trial. The Trial Court finding that it is for the accused to discharge the burden cast upon them by Section 106 of the Evidence Act, is not proper. The case projected by the prosecution is based on eye witnesses and not by circumstantial evidence. Therefore, the finding of the Trial Court will not apply on the evidence and facts of this case. In a case of circumstantial evidence, 'motive' plays an important role. If the motive, which is considered to be the starting point of the offence, is not established, then the conviction, based on the theory of last seen together only, cannot be sustained. In this case, as stated by the Trial Court, the appellant/A1 had no motive on the deceased and no premeditation in murdering the deceased. Added to it, there is no evidence on the side of the prosecution that the appellant/A1 was with the deceased at the time of occurrence. Thus, the prosecution has failed to prove the chain of events, which was the basic requirement in cases of circumstantial evidence to connect the appellant/A1 with the commission of offence. The hypothesis derived from the facts to show unerringly that the accused alone is the reason and cause for the death. In this case, no such chain of events and facts available. Therefore, the conviction of the



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appellant/A1 is legally unsustainable.

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15.As could be seen from the Indian Evidence Act, the prosecution has to prove its case against the accused on the strength of the foundation of the facts. If the prosecution successfully proves the case against the accused, then only, burden would shift on the accused as per Section 106 of the Indian Evidence Act to prove his innocence. Here, in this case, the alleged eye witnesses to the occurrence, namely, PW1 and PW4 turned hostile and there is no material or evidence to prove the appellant/A1 was with the deceased at the time of occurrence. Hence, the Trial Court shifting the burden upon the appellant/A1, is not proper.

16.In view of the above discussion, this Court holds that the prosecution has failed to prove its case against the appellant/A1. Hence, this Criminal Appeal deserves to be allowed and, is allowed setting aside the judgment of conviction and sentence, dated 05.10.2018 in S.C.No.73 of 2014 passed by the learned Principal Sessions Judge, Namakkal.



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17.The amount of fine, if any, paid by the appellant/A1, shall be refunded to him, immediately. Bail bond, if any executed, shall stand cancelled.

31.03.2023

Speaking Order/Non-Speaking Order

Internet: Yes/No

Index: Yes/No

Neutral Citation: Yes/No

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To

- 1.The Principal Sessions Court,
Namakkal.
- 2.The Inspector of Police,
Pallipalayam Police Station,
Namakkal District.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR,, J.

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