



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 02.02.2015

CORAM:

**THE HONOURABLE MR.JUSTICE A.SELVAM**  
**and**  
**THE HONOURABLE MR.JUSTICE T.MATHIVANAN**

CRIMINAL APPEAL(MD)No.125 of 2014

S.Gopakumar .. Appellant/Sole Accused

Vs.

The State of Tamil Nadu,  
Rep. By The Inspector of Police,  
Kulasekaram Police Station,  
Kanyakumari District. .. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, 1973, to set aside the Judgment, dated 24.01.2014 passed in Sessions Case No.18 of 2013 by the District and Sessions Court, Kanyakumari District at Nagercoil.

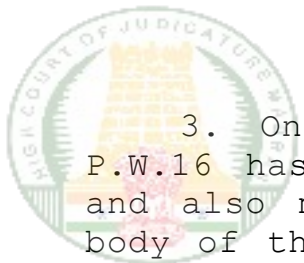
For Appellant : Mr.N.Dilip Kumar  
For Respondent : Mr.K.S.Durai Pandian  
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J)

The convictions and sentences, dated 24<sup>th</sup> day of January, 2014 passed in Sessions Case No.18 of 2013 by the District and Sessions Court, Kanyakumari District at Nagercoil are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that on 20.10.2011, during night hours, the accused being the relative of the deceased by name Sankaranarayanan has stayed in his house and for the purpose of stealing money during early hours, he entered into the room where the deceased has slept. On seeing the entry of the accused, the deceased has made a queer noise and in order to slay him, the accused has taken a knife and stabbed on the person of the deceased repeatedly and due to overtacts, he passed away and during the course of occurrence, the accused has caused injury to one Sajith, who is none other than the son of the deceased. After occurrence, the other son of the deceased by name Sathish has given a complaint to the Sub-Inspector of Police (P.W.13) and the same has been registered in Crime No.556 of 2011. The complaint given by the said Sathish has been marked as Ex.P.1.



3. On receipt of Ex.P.1, the Investigating Officer viz., P.W.16 has taken up investigation, examined connected witnesses and also made necessary arrangements to conduct autopsy on the body of the deceased and Doctor by name Velmurugan, viz., P.W.11 has conducted post mortem and he found the external and internal injuries on the body of the deceased:-

"1) 10 X 1 cm X visceral depth oblique cut injury seen over the upper half of neck. Its right end is 2-1/2 cm below the right side of chin. Its left end is 3-1/2 cm below the left side of chin.

2) 11 X 2-1/2 cm X visceral depth oblique cut injury seen over the left side of upper half of front of neck.

3) 8 X 1 X 2 cm cut oblique injury seen over the front of neck found overlapping the previous injury No.2.

4) 6 X 1/2 X 1/2 cm cut injury found 2 cm below the injury No.3. On examination of injury No.1, 2 and 3 the underlying neck vessels (blood) nerves, wind pipe and food pipe found cut at that side.

*All the above said injuries are reddish in colour."*

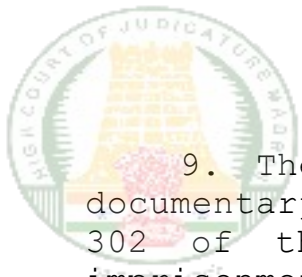
4. The post-mortem report has been marked as Ex.P.7. After completing investigation, P.W.16 has laid a final report on the file of the Judicial Magistrate Court, Padmanabhapuram and the same has been taken on file in P.R.C.No.3 of 2012.

5. The Judicial Magistrate, Padmanabhapuram, after considering the fact that the offences alleged to have been made by the accused are triable by Sessions Court has committed the same to the file of the Court of Sessions, Kanyakumari Division and the same has been taken on file in Sessions Case No.18 of 2013.

6. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed first charge against the accused under Section 457 of the Indian Penal Code, second charge against him under Section 397 of the Indian Penal Code, third charge against him under Section 302 of the Indian Penal Code and fourth charge against him under Section 307 of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

7. On the side of the prosecution, P.Ws.1 to 16 have been examined and Exs.P.1 to P.19 and M.Os.1 to 4 have been marked.

8. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. However no oral and documentary evidence has been let in on the side of the accused.



9. The trial Court, after contemplating both the oral and documentary evidence, has found the accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause and he has also been found guilty under Section 307 of the Indian Penal Code and sentenced him to undergo seven years rigorous imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. The trial Court has acquitted of the charges framed under Sections 457 and 397 of the Indian Penal Code. Against the convictions and sentences passed by the trial Court under Sections 302 and 307 of the Indian Penal Code, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

10. The sum and substance of the case of the prosecution is that the accused is a relative of the family of the deceased. On 20.10.2011, during night hours, the accused stayed in the house of the deceased and during early morning with a view to steal money from the room of the deceased, he has gone there and since the deceased has made queer noise and in order to slay him, the accused has taken a knife and repeatedly attacked on his person and due to his overtacts, the deceased has passed away and during the course of occurrence, the accused has also caused injury to one of the sons of the deceased by name Sajith.

11. Before analysing the rival submissions made on either side, the Court has to look into as to whether the prosecution has adduced acceptable evidence so as to come to a conclusion that the appellant/accused has committed offences punishable under Sections 302 and 307 of the Indian Penal Code.

12. The entire case of the prosecution hinges upon Ex.P.1, wherein it has been clearly stated about the occurrence. The author of Ex.P.1 by name Sathish, one of the sons of the deceased, has given clear evidence to the effect that in the place of occurrence, the accused has attacked his father by using a knife (M.O.1). The other son of the deceased, by name, Sajith (injured witness) has been examined as P.W.2 and his specific evidence is that in the place of occurrence, the accused has attacked his father by using M.O.1 and he has also caused injury to him.

13. The mother of P.Ws.1 and 2 and wife of the deceased by name Rajeswari has been examined as P.W.3 and her specific evidence is that on hearing queer noise of her husband, she has come out from the room, where she slept and found that the accused has attacked on the person of her husband. The other witness by name Pratheepan-P.W.4 has stated in his evidence that on the date of occurrence, he has seen the accused.

<https://hcservices.courts.gov.in/reserve> Doctor, who conducted autopsy has been examined as P.W.11 and his specific evidence is that death would have occurred due to injuries sustained by the deceased.



15. The other Doctor by name Geethadevi, who treated P.W.2, has been examined as P.W.15 and her specific evidence is that she found the injury mentioned in Ex.P.13 on the person of P.W.2.

16. As stated earlier P.Ws.1 and 2 are the sons of the deceased and P.W.3 is his wife. At this juncture, it has to be borne in mind that the entire occurrence has taken place inside the house of the deceased and P.Ws.1 to 3. Considering the fact that the entire occurrence has taken place inside their house, except the inmates nobody could have seen the occurrence and therefore, the evidence given by P.Ws.1 to 3 cannot be discarded merely on the basis that independent witnesses have not been examined. Further, the prosecution has chosen to examine P.W.2, injured eye witness. Since P.W.2 is an injured eye witness, more weight can be given to his evidence. Further, the evidence given by P.Ws.1 to 3 have been clearly corroborated by the medical evidence adduced by P.Ws.11 and 15 coupled with Ex.P.7 and Ex.P.13. Therefore, it is quite clear that the prosecution has proved the occurrence in respect of the charges framed against the accused under Sections 302 and 307 of the Indian Penal Code.

17. The learned counsel appearing for the appellant/accused has raised the following points so as to set aside the convictions and sentences passed against the appellant/accused under Sections 302 and 307 of the Indian Penal Code.

(i) The appellant/accused has not stayed in the house of the deceased on the date of occurrence.

(ii) The wife of P.W.1 by name Roopavathi is closely related to the accused and she has not been examined.

(iii) The person, who has written Ex.P.1 by name Akash has not been examined.

(iv) One Babu has been examined as P.W.6 and his specific evidence is that police have come to the place of occurrence in between 03.30 a.m to 04.00 a.m whereas, Ex.P.1 has been given at 05.00 a.m.

(v) With regard to time of admission of P.W.2, vital discrepancies are available in between the evidence of P.Ws.1 and 2.

(vi) The trial Court has acquitted the accused in respect of the charges framed under Sections 457 and 397 of the Indian Penal Code and therefore, the accused is entitled to get acquittal with regard to remaining charges.

<https://hcservices.ecourts.gov.in/hcservices/>

(vii) The Police have not seized blood stained earth as well as blood stained shirt of the deceased.



(viii) The accused has taken active part in Bharathiya Janatha Party and just prior to occurrence, Panchayat Election has been conducted and due to political motive some other person might have murdered him and the accused has been falsely roped in. The specific evidence given by P.W.3 is that her family has not been maintaining concordial relationship with the family of her parents.

(ix) Inconsistent evidence is available in between P.Ws.1 and 2 with regard to M.O.1-knife.

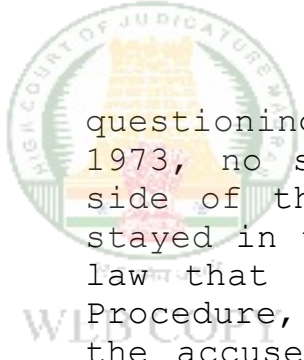
(x) No uniformity in the evidence given by P.Ws.1 and 2 with regard to infliction of injuries by the accused on the body of the deceased. Independent witnesses have not at all been examined.

(xi) The brother of the defacto complainant viz., P.W.2 has given inconsistent evidence with regard to role alleged to have been played by one Akash in writing Ex.P.1.

18. Per contra, the learned Additional Public Prosecutor has sparingly contended that in the instant case, occurrence has taken place inside the house of the deceased and P.Ws.1 to 3 and P.W.2 is an injured eye witness and all of them have uniformly and consistently stated about the presence of the accused at the time of occurrence and also his overtacts made on the person of the deceased and in fact their evidence has been clearly corroborated by medical evidence and further during the course of questioning under Section 313 of the Code of Criminal Procedure, 1973, the accused has not specifically stated that on the date of occurrence, he has not stayed in the house of the deceased and the trial Court, after considering the overwhelming evidence available on the side of the prosecution, has rightly invited convictions and sentences against the accused under Sections 302 and 307 of the Indian Penal Code and further simply because the accused has been acquitted in respect of the charges framed under Sections 457 and 397 of the Indian Penal Code, he is not entitled to get acquittal in respect of the remaining charges and therefore, the convictions and sentences passed against the accused by the trial Court under Sections 302 and 307 of the Indian Penal Code are not liable to be interfered with.

19. The first and foremost contention putforth on the side of the appellant/accused is that the appellant/accused on the date of occurrence has not stayed in the house of the deceased.

20. It is an admitted fact that the accused is related to the family of the deceased. The acceptable/trustworthy evidence adduced by P.Ws.1 to 3 is that on the date of occurrence, the accused has stayed in their house and further, as rightly pointed out by the learned Additional Public Prosecutor that during



questioning under Section 313 of the Code of Criminal Procedure, 1973, no specific explanation has been offered nor given on the side of the accused that on the date of occurrence, he has not stayed in the house of the deceased. It is a pristine principle of law that questions under Section 313 of the Code of Criminal Procedure, 1973 are not empty formalities and it is a chance to the accused to explain the circumstances which are favourable to him. In the instant case, in fact the accused has observed obmutescence at the time of asking relevant questions under Section 313 of the Code of Criminal Procedure, 1973. Therefore, the first and foremost contention putforth on the side of the appellant/accused is sans merit.

21. The second contention putforth on the side of the appellant/accused is that wife of P.W.1 by name Roopavathi is closely related to the accused, but she has not been examined and that itself would militate the case of the prosecution.

22. It is seen from the records that the said Roopavathi is the wife of P.W.1. It is also seen from the records that she has witnessed the occurrence, but the prosecution has not chosen to examine her as one of the witnesses.

23. In the instant case, P.Ws.1 to 3 are eye witnesses and P.W.2 is an injured eye witness. Considering the fact that the prosecution has chosen to examine three eye witnesses and also to avoid proliferation of evidence on the side of the prosecution, the said Roopavathi has not been examined and her non-examination would not affect the version of the prosecution at any cause and therefore, the second contention putforth on the side of the appellant/accused goes out without merit.

24. The third contention putforth on the side of the appellant/accused is that the specific evidence given by P.W.1 is that since he does not know how to write the complaint in Tamil, one Akash has written the same, but the said Akash has not been examined and further with regard to role of the said Akash, P.W.2 has given inconsistent evidence. Under the said circumstances, no reliance could be placed to Ex.P.1, complaint.

25. As stated earlier, the prosecution has set the law in motion on the basis of Ex.P.1. The specific evidence given by P.W.1 is that since he does not know as how to write complaint in Tamil, one Akash has written it, as per the dictation given by him. Of course, it is true that the said Akash has not been examined. Simply because that Akash has not been examined, the Court cannot come to a conclusion that Ex.P.1 is a concocted document and the entire case of the prosecution is liable to be set aside. <https://hcselibrary.in/hcselibrary/> Further, a suggestion has been put to P.W.2 with regard to Ex.P.1 and the said suggestion has not at all militated the case of the prosecution. Therefore, the third contention



putforth on the side of the appellant/accused also goes out without merit.

26. The fourth contention putforth on the side of the appellant/accused is that one Babu has been examined as P.W.6 and his specific evidence is that in between 03.30 a.m to 04.00 a.m on the date of occurrence, police have come to the place of occurrence. Since Ex.P.1 has been given in Police Station at about 05.00 a.m., Ex.P.1 is a concocted document.

27. It is true that P.W.6 has given such kind of evidence and he is not at all an eye witness. Simply because P.W.6 has given different time and that too contra to the time mentioned in Ex.P.1, the entire case of the prosecution cannot be rejected.

28. The fifth contention putforth on the side of the appellant/accused is that in between the evidence given by P.Ws.1 and 2 with regard to time of admission in hospital, some variance is found place and therefore, the case of the prosecution is false.

29. It is true that such discrepancies are in existence in the evidence given by P.Ws.1 and 2 with regard to time of admission of P.W.2 in hospital and that itself would not affect the case of the prosecution.

30. The sixth contention putforth on the side of the appellant/accused is that the trial Court, after perpending the evidence available on record, has not found the accused guilty under Sections 457 and 397 of the Indian Penal Code and therefore, the appellant/accused is also entitled to get acquittal of the charges framed under Sections 302 and 307 of the Indian Penal Code.

31. It is a settled principle of law that since no evidence is available with regard to particular charge, an accused cannot be mulcted with liability unnecessarily.

32. In the instant case, after analysing the available evidence on record the trial Court has acquitted the accused in respect of charges framed against him under Sections 457 and 397 of the Indian Penal Code. Simply on the basis of acquittal under the said Sections, the Court cannot come to a conclusion that the appellant/accused has not committed offences punishable under Sections 302 and 307 of the Indian Penal Code. Therefore, the sixth contention urged on the side of the appellant/accused is nothing but baseless.

<https://hcservices.courts.gov.in/services> 33. The seventh contention putforth on the side of the appellant/accused is that the Investigating Officer has not seized blood stained earth and shirt of the deceased.



34. In fact, on the side of the prosecution M.Os.1 to 4 have been marked and one of the material object is a saffron blood stained Dothi and further, M.O.4 is nothing but a blood stained green colour bed cover. At this juncture, it would be condign to look into the evidence given by P.W.7 and his specific evidence is that some of the materials have been recovered from the place of occurrence. Of course, it is true that during the course of cross-examination, he has given some nebulous answers and that itself would not pave the way for coming to a conclusion to the effect that the entire evidence is liable to be rejected.

35. It is true that the Investigating Officer has not seized the objects pointed out on the side of the appellant/accused. Mere non-seizure of blood stained earth as well as shirt of the deceased would not affect the credibility of the case of the prosecution, since the prosecution has adduced plenitude of evidence so as to point out the guilt of the accused. Therefore, the aforesaid contention putforth on the side of the appellant/accused is of no use.

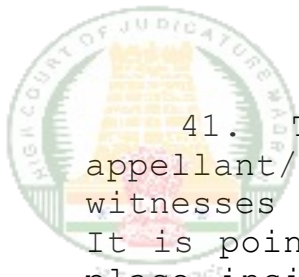
36. The eight contention putforth on the side of the appellant/accused is that the deceased has taken part in Bharathiya Janatha Party and prior to occurrence, Panchayat Election has been conducted and due to political motive with the family of mother of P.W.3, somebody might have murdered him.

37. It has already been pointed out that the accused is a relative of P.Ws.1 to 3. To put it otherwise that the accused is the son-in-law of sister of Roopavathi, who is none other than the wife of P.W.1.

38. In fact, this Court has scanned the entire evidence given by P.Ws.1 to 3 and ultimately found that no motive has been suggested to them to adduce evidence against the accused. Under the said circumstances, the eight contention putforth on the side of the appellant/accused is nothing but brain wave of the learned counsel appearing for the appellant/accused and the same cannot be given weight to.

39. The ninth contention putforth on the side of the appellant/accused is that with regard to M.O.1 inconsistent evidence is available in between P.Ws.1 and 2.

40. It is true that one of them has stated in his evidence that he has not seen M.O.1-knife in the house. Simply on the basis of flimsy contradiction which is available with regard to M.O.1-knife, the entire case of the prosecution is not liable to be



41. The next contention putforth on the side of the appellant/accused is that in the instant case independent witnesses have not been examined on the side of the prosecution. It is pointed out in many places that entire occurrence has taken place inside the house of the deceased and P.Ws.1 to 3 and that too early hours.

42. Considering the fact that entire occurrence has taken place inside the house of the deceased, P.Ws.1 to 3 and that too in early hours, no outsiders could see the occurrence. Therefore, examination of independent witnesses does not arise and further, even though P.Ws.1 to 3 are inter related to each other there is no impediment in accepting their evidence in toto. Therefore, viewing from any angle, the contentions putforth on the side of the appellant/accused cannot be accepted.

43. The trial Court, after considering the evidence available on record, has rightly found the appellant/accused guilty under Section 302 and 307 of the Indian Penal Code and in view of the foregoing elucidation, this Court has not found any illegality nor infirmity in the convictions and sentences passed by the trial Court and altogether, the present Criminal Appeal deserves to be dismissed.

44. In fine, this Criminal Appeal deserves dismissal and accordingly is dismissed and the convictions and sentences passed by the trial Court in Sessions Case No.18 of 2013 are confirmed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

- 1.The District and Sessions Judge,  
Kanyakumari District at Nagercoil.
  - 2.The District Collector, Kanyakumari District
  - 3.The Director General of Police, Mylapore, Chennai-600 004
  - 4.The Superintendent, Central Prison, Palayamkottai,
  - 5.The Inspector of Police,  
Kulasekaram Police Station,Kanyakumari District.
  - 6.The Judicial Magistrate, Padmanabhapuram  
Tirunelveli District
  - 7.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.
- +One cc to Mr.N.Dilip Kumar, Advocate, SR.No.4635

ps

RL/9c - 18/2/2015

Judgment made in

Cr1.A(MD)No.125 of 2014

02.02.2015