



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Crl.A.(MD)No.314 of 2013

and MP(MD)No.2 of 2013

T.Velu @ Vasanth

..Appellant/Accused

Vs.

State rep.by

The Inspector of Police,

Thiruverumbur Police Station,

Tiruchirapalli

Crime No.168 of 2012.

..Respondent/Complainant

Criminal appeal filed under Section 374 of Cr.P.C. against the conviction and sentence dated 05.04.2013 passed in Sessions Case No.179 of 2012 by the Principal District and Sessions Court, Tiruchirapalli.

For Appellant : Mr.P.Sesubalan Raja

For Respondent : Mr.K.S.Duraipandian

Addl.Public Prosecutor

JUDGMENT

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

The conviction and sentence dated 05.04.2013 passed in Sessions Case No.179 of 2012 by the Principal District and Sessions Court, Tiruchirapalli are being challenged in the present Criminal Appeal.

2. The schema of the case of the prosecution is that the accused by name Velu @ Vasanth is a friend of the deceased by name Sankar. The deceased has resided in Ramalinga Complex, Navalpat road, Thiruverumbur. Due to previous animosity, with intention to slay him, the accused has taken the deceased from his residence on 29.03.2012 at about 08.00 pm. On the same day at about 11.00 pm, on the southern side of Uyyakondan Sewage channel, near railway track, the accused has attacked the deceased by using a stone and due to his overtacts, the said Sankar has passed away. After his demise, he placed the dead body in a thicket. After occurrence, one of their friends by name Periyasamy (PW1) has given a complaint to one Joseph Gnanaraj (PW19) and the same has been registered in Crime No.168 of 2012. The complaint given by the said Periyasamy has been marked as Ex.P1.

3. On receipt of Ex.P1, the Investigating Officer by name Balamurugan (PW20) taken up investigation, examined connected witnesses, conducted inquest and also made arrangements to conduct autopsy. The doctor by name Renuka Devi (PW18) has conducted autopsy on the body of the deceased and she found the following internal and external injuries:



(i) Lacerated wounds on the left parietal region of the scalp, 3 cm x 1 cm x bone deep, left side of occipital region of scalp, 2 cm x 0.5 cm x bone deep, right frontal region of scalp, 1 cm x 0.5 cm x bone deep, right temporal region of scalp, 1 cm x 0.5 cm x bone deep, right parietal region of scalp, 4 cm x 1 cm x bone deep, right eye brow 4 cm x 1 cm x bone deep, left side chin 2 cm x 1 cm x bone deep.

(ii) Contusion on both lip - dark red

(iii) Contusion of left cheek - dark red

(iv) Contusion on the centre of the chin. O/d fracture of lower jaw bone present with surrounding area bruising - dark red.

(v) Bruising of frontal, temporal, both parietal, occipital regions of scalp and both temporalis muscle - dark red.

(vi) Fissured fracture of right temporal, right parietal and right side of occipital bones present.

(vii) Depressed fracture of left temporal bone. Brain is changed into red colour semi solid mass.

(viii) Fracture base of skull into two halves along with pituitary fossa.

(ix) Multiple linear abrasions of varying lengths at varying directions present on the front of the right side of neck, back of left side of neck, back of left side of chest.

(x) A dark brown color ligature abrasion 16 cm x 3 cm on the front and left side of neck at level of thyroid cartilage on the front of neck 3 cm from the left angle of mandible. Ligature mark is absent, at the back of neck and front of right side of neck.

On bloodless dissection of neck: Bruising of soft tissues of neck - dark red. Diffusion of blood into the soft tissues of neck. Outward compression fracture of both greater cornu at the junction with the body of hyoid bone present. Fracture of laryngeal cartilages present. Haemorrhagic spots present in the mucous membrane of food pipe and wind pipe present. Contusion of oesophagus present.

4. The postmortem report has been marked as Ex.P11. After completing investigation, PW20 has laid a final report on the file of the Judicial Magistrate Court, No.VI, Tiruchirapalli and the same has been taken on file in PRC No.20 of 2012.

5. The Judicial Magistrate, No.VI, Tiruchirapalli after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions and the same has been taken on file in Sessions Case No.179 of 2012.

6. The trial court after hearing both sides and upon perusing relevant records has framed first charge against the accused under Section 364 of the Indian Penal Code; second charge under Section 302 and third charge under Section 201 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, PWs.1 to 20 have been examined and Exs.P1 to P25 and M.Os.1 to 8 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. On the side of the accused, DW1 has been examined and Exs.D1 to D3 have been marked.

9. The trial Court after evaluating the available evidence on record 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. The trial Court has acquitted the accused in respect of the charges framed under Sections 364 and 201 of the Indian Penal code. Against the conviction and sentence passed by the trial Court under Section 302 of the Indian Penal Code, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

10. The consistent case put forth on the side of the prosecution is that both the accused and deceased are friends and since the accused has had animosity against the deceased, with intention to murder him, on 29.03.2012 at about 08.00 pm, has taken the deceased from his residence and on the same day at about 11.00 pm, on the southern side of Uyyakondan Sewage channel, near railway track, attacked the deceased by using a stone and due to overtacts, he passed away and subsequently placed the dead body in a thicket.

11. On the side of the prosecution, for the purpose of establishing the alleged guilt of the accused under Sections 364, 302 and 201 of the Indian Penal Code, the following witnesses have been examined.

12. The defacto complainant has been examined as PW1. The father of the deceased has been examined as PW2. The witness to whom extra judicial confession has been made by the accused, examined as PW3. The persons namely Ganesan and Muniyaraj have been examined as PWs.4 and 5 and their evidence is nothing but hearsay. One Ilangovan and Baskar have been examined as PWs.6 and 7 and both of them have spoken about bloodstained shirt worn by the accused. One Manickam has been examined as PW12 and he speaks about previous occurrence. Except the testimonies adduced by the witnesses mentioned supra, no witness has been examined with regard to occurrence alleged to have taken place on 29.03.2012 at about 11.00 pm, on the southern side of Uyyakondan sewage channel, near railway track. Therefore, the entire case of the prosecution is based upon circumstantial evidence. Since the entire case of the prosecution is based upon circumstantial evidence, a primordial duty is cast upon the prosecution to prove the following aspects.

(a)motive for occurrence

(b)there must be a continuous link without missing so as to connect guilt of the accused.

13. In the instant case, some of the witnesses have spoken about the motive that existed in between the accused and deceased with regard to pissing. Some of the prosecution witnesses have stated in their



evidence that after occurrence, the accused has been seen by way of wearing a bloodstained half sleeve shirt.

14. The trial Court has invited conviction and sentence under Section under Section 302 of the Indian Penal Code only on the basis of motive as well as on the basis of the evidence given by some of the witnesses to the effect that they have seen the accused after occurrence with bloodstained half sleeve shirt.

15. The learned counsel appearing for the appellant/accused has repeatedly contended that except the circumstance spoken by some prosecution witnesses to the effect that they have seen the accused with bloodstained half sleeve shirt, no other circumstances are available against the accused so as to come to a conclusion that he has committed crime. The trial Court without considering the fact that the prosecution has not adduced acceptable /trustworthy evidence with regard to bloodstained shirt worn by the accused after occurrence, has erroneously invited conviction and sentence against him under Section 302 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are liable to be set aside.

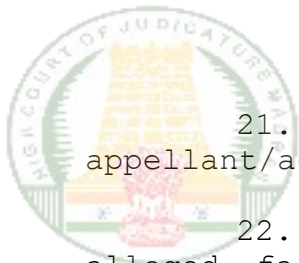
16. The learned Additional Public Prosecutor has contended with great vehemence that in the instant case motive for occurrence has been clearly established and some of the prosecution witnesses have clearly stated to the effect that after occurrence, they have seen the accused with bloodstained shirt and the trial Court after considering their evidence coupled with confession and recovery of some material objects, has rightly invited conviction and sentence against the accused under Section 302 of the Indian Penal Code and therefore, the same are not liable to be interfered with.

17. It has already been pointed out that the entire case of the prosecution is based upon circumstantial evidence. Even at the risk of repetition, the Court would like to say that if a case is based upon circumstantial evidence, the prosecution must prove that there must be a motive for committing crime. The prosecution must also equally prove that there should be a continuous link without missing so as to point out guilt of the accused unerringly.

18. In the instant case, PW1, Periyasamy and PW12, Manickam have spoken about the fact that a tussle has arisen in between the accused and deceased with regard to pissing in front of shop of one Muniyaraj and due to that a despair has been in existence between them.

19. It has already been pointed out that some of the prosecution witnesses have spoken about the alleged fact that after occurrence, they have seen the accused with bloodstained shirt.

20. Even assuming without conceding that due to pissing in front of shop of the said Muniyaraj, a despair has been in existence betwixt the accused and deceased, the Court has to meticulously analyse as to whether the prosecution has established the alleged fact to the effect that some of the prosecution witnesses have seen the accused with bloodstained shirt after occurrence.



21. The entire argument put forth on the side of the appellant/accused is based upon the said aspect.

22. On the side of the prosecution, for the purpose of proving the alleged fact that after occurrence the accused has been seen with bloodstained shirt, PW6 Ilangovan and PW7 Baskar have been examined. The specific evidence given by PW6 is that the accused has worn half sleeve blue striped while colour shirt. The specific evidence given by PW7 is that on 29.03.2012 at about 2.00 am, he has seen the accused with bloodstained shirt and through him, the same has been marked as MO1.

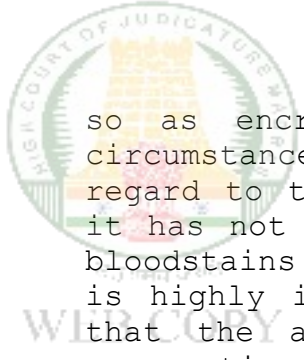
23. On the side of the prosecution, Mos.1 to 8 have been marked. MO1 is nothing but half sleeve blue striped while colour shirt. But the same has not been subjected to chemical examination.

24. The specific evidence given by PW7 is that he has seen the accused with bloodstained shirt and the same has been marked as MO1. If really, both PWs.6 and 7 have seen the accused with bloodstained white colour half sleeve shirt, definitely the same should have been sent to chemical examination. The specific evidence given by the Investigating Officer is that MO1 has not been subjected to chemical examination. At this juncture, the Court has to look into Ex.P24, chemical examination report, wherein it is stated that item No.1 is an irregular small stones, item No.2 is also an irregular small stone, item No.3 is a torn dirty white jean trousers and item No.4 is a silken violet, white and black cross striped full sleeve shirt. Except these items, other material objects including MO1 have not been sent to chemical examination. Therefore, it is quite clear that for the purpose of proving the alleged fact that PWs.6 and 7 have seen the accused with bloodstained half sleeve white shirt has not at all been established. Since the said aspect has not at all been established, it is needless to say that there is no circumstance towards alleged guilt of the accused.

25. On the side of the prosecution, one Manikandan has been examined as PW3 for the purpose of proving the alleged extra judicial confession given by the accused. The specific evidence given by him is that on 29.03.2012 at about 08.00 pm, the accused, deceased and defacto complainant viz., Periyasamy have gone out for taking liquor and next day at about 03.00 am, the accused has come to room by wearing bloodstained shirt and told that he murdered the deceased. At that time, PW4, Ganesan has also been present. If really, the accused has come to room with bloodstained shirt and given the alleged extra judicial confession to PW3, definitely PW3 would have taken the accused to police station.

26. In the instant case, the accused has been arrested by PW20, Investigating Officer on 31.03.2012 at about 06.00 am. The occurrence has taken place on 29.03.2012 and as per evidence given by PW3, the accused has met him next day at about 03.00 am. But PW20 has arrested the accused on 31.03.2012. Therefore, the extra judicial confession alleged to have been given by the accused to PW3 cannot be accepted.

27. The specific case put forth on the side of the prosecution is that, after occurrence, PWs.7 and 3 have seen the accused with bloodstained shirt. As per evidence of PW7, MO1 is the shirt seized from the accused. But the same has not been subjected to chemical examination



so as encrust the evidence given by PWs.3 and 7. Under the said circumstances, the evidence adduced on the side of the prosecution with regard to the said aspect is nothing but confluence of confusion. Since it has not been established that the shirt of the accused has sustained bloodstains and the same is tallied with blood group of the deceased, it is highly impossible on the part of the Court to come to a conclusion that the accused has had connection with the crime. In short, the prosecution has failed to establish that after occurrence the accused has worn bloodstained shirt. Since the said aspect has not at all been established on the side of the prosecution, the entire case of the prosecution is liable to be thrown out, since the present case is based upon circumstantial evidence.

28. The trial Court without considering the vital lapse on the part of the prosecution has erroneously and also mechanically invited conviction and sentence on the basis of unworthy evidence given by the witnesses referred to supra. Therefore, viewing from any angle, the conviction and sentence passed by the trial court are not factually and legally sustainable and the same are liable to be set aside.

29. In fine, this Criminal Appeal is allowed. The conviction and sentence passed in Sessions Case No.179 of 2012 by the Principal District and Sessions Court, Tiruchirapalli are set aside. The appellant/accused is acquitted. Fine amount if any paid by him is ordered to be refunded forthwith. Connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar

To

1. THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, TIRUCHIRAPPALLI.
2. THE DISTRICT COLLECTOR, TIRUCHIRAPPALLI DISTRICT.
3. THE DIRECTOR GENERAL OF POLICE, CHENNAI.
4. THE SUPERINTENDENT, CENTRAL PRISION, TIRUCHIRAPPALLI.
5. THE COMMISSIONER OF POLICE, TIRUCHIRAPPALLI.
6. THE INSPECTOR OF POLICE, THIRUVERUMBUR POLICE STATION, TIRUCHIRAPPALLI.
7. The Addl. Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

Copy to the Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.
(For sending records to lower court)

+1cc to Mr.P.Sesubala Raja, Advocate in Sr.11432