

Bail Slip:- The appellant / I Accused viz., Arul aged 35 years S/o. Ganesan was directed to be released on bail as per order of this court dated 23.7.2014 and made in M.P.1/14 in CrI.A.234 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 04.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.234 of 2014

Arul ... Appellant

vs.

State, by
The Inspector of Police,
Eathapoor Police Station,
Salem District.
(Crime No.388 of 2010)

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 24.03.2014 passed by the learned III Additional District and Sessions Judge, Salem, in S.C.No.25 of 2012.

For Appellant : Mr.P.Vijendran

For Respondent : Mr.E.Raja, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The appellant in this appeal is the first accused in Sessions Case No.25 of 2012, on the file of the learned III Additional District and Sessions Judge, Salem. There are two accused in this case. They stood charged as detailed below:-

Serial number of charges	Charge(s) framed against	Charge(s) framed under
1.	A1	U/s. 302 IPC
2.	A2	U/s. 302 r/w 34 IPC

2. The trial Court, after trial, by Judgment dated 24.03.2014, convicted the first accused and acquitted the second accused and sentenced the first accused as detailed

Rank of the accused	Penal provision(s) under which convicted	Sentence
A1	U/s. 302 IPC	Imprisonment for life and to pay a fine of Rs.1,500/-, in default to undergo rigorous imprisonment for three months.
A2	U/s. 302 r/w 34 IPC	Acquitted

Challenging the above said conviction and sentence, the appellant/first accused is before this Court with this Criminal Appeal.

3. The case of the prosecution, in brief, is as follows:

(i) The deceased, in this case, one Selvam was the husband of P.W.2. The first accused had illicit intimacy with P.W.2. Hence, there was enmity between the first accused and the deceased. Therefore, the first accused decided to murder the deceased. On 25.07.2010, at about 7.00 p.m., both the accused 1 and 2 took the deceased to a nearby water channel where they have consumed liquor. Later A1 and A2 pushed the deceased in to the water channel and dropped a stone on the head of the deceased and caused his death. On 26.07.2010, P.W.5, the owner of the land where the dead body was found, informed the same to P.W.1 the Village Administrative Officer. P.W.1, the Village Administrative Officer after seeing the dead body lodged a complaint [Ex.P1] before the respondent police.

(ii) P.W.18, then Inspector of Police attached to the respondent police station, on receipt of the complaint, registered a case in Crime No.388 of 2010 under Section 302 of IPC and prepared first information report[Ex.P21]. On 26.07.2010 at about 12.00 a.m., he commenced the investigation, proceeded to the scene of occurrence, prepared an Observation Mahazar [Ex.P2], drew a rough sketch [Ex.P23]. he found the cell phone from the pocket of the deceased and find out the identity of the dead body thereafter he informed the relatives of the deceased. P.W.18 conducted inquest over the dead body of the deceased in the presence of panchayadars and prepared inquest report (Ex.P22). Then, he sent the dead body to the Government Mohan Kumaramangalam Medical College Hospital, Salem for postmortem through P.W.8, Head Constable attached to the respondent police station. Later P.W.18, recovered bloodstained stone,[M.O.1], bloodstained soil [M.O.2], Sample soil [M.O.3], a pocket of tobacco [M.O.4], cash Rs.380/- [M.O.5] and white colour slip[M.O.6] under [Ex.P3] Mahazar in the presence of witnesses. He arranged the photographer for taking photographs in the scene of occurrence.

(iii) P.W.13, Doctor working in the Government Mohan

postmortem on the dead body on 27.07.2010 at about 10.32 a.m, and found the following injuries:-

Injuries:

1) Peri orbital contusion seen on both eye (Black eye). 2) Reddish brown abrasion seen on lower aspect of right cheek measuring 12 x 4 cms. 3) Another abrasion seen below the left ear M-8 cm x 5 cms. 4) Another abrasion seen on left cheek M-6 x 5 cms. 5) Laceration of nupper part of left ear with tags of skin overlying it. 6) Laceration behind left ear M - 3 x 1.5 x bone deep exposing communitted fracture of underlying bone. 7) Laceration behind lower aspect of left arm M 1 x 0.5 x bone deep. 8) Abrasion lower aspect of centre of neck M- 6 x 5 cms. 9) Abrasion seen on inner and upper aspect of left chest M -5 x2 cms. 10) Abrasion outer aspect of right hip M-4 x 3 cms.

Other findings:

Head : scalp contusion seen in left temporal region M - 8 x 6 x 0.5 cms with left temporal muscle contused M-5 x 4 x 0.5 cms vault depressed fracture over left temporal region over an area M - 6 x 4 cms with fractured pieces of bone in it diffused sun dural and sub arachnoid haemorrhage seen all over the brain surface base, hinge fracture extending from left side of middle cranial fossa to right side of middle cranial fossa M-16 cms Long. 2) Neck : All neck structures Normal hyoid bone intact. Thorax : Communitted fracture of inner aspect of left side first rib with surrounding soft tissue contused . Lungs Normal in size. C/S. Congested. Heart Normal in size4 on C/S. Chambers contained fluid blood. 4) Abdomen: Stomach contains 50 ml of brown colours fluid with specific odour, mucosa congested. Liver, spleen, kidneys normal in size. On C/s congested bladder empty. Pelvis and spinal column intact.

He was of the opinion that the deceased appeared to have died due to head injuries, and issued Postmortem Certificate [Ex.P18].

(iv) P.W.18 examined the Doctor, who conducted postmortem and recorded his statement. After postmortem, P.W.18 recovered bloodstained full hand shirt[M.O.8], Banian[M.O.9], brief [M.O.10], Lungi [M.O.11], and Black colour rope[M.O.12] from the dead body in the presence of witnesses. In the meantime, the first accused surrendered before the learned Judicial Magistrate No.I, Salem. P.W.18 took police custody of the first accused and in the police custody, the first accused has

voluntarily given confession and based on the disclosure statement,[Ex.P5], P.W.18 recovered TVS 50 XL [M.O.7] in the presence of witnesses. Based on the confession statement of A1, P.W.18 arrested the second accused. Then, he sent the accused for Judicial Custody. P.W.18 sent a requisition letter to the learned Judicial Magistrate No.I, Athur for recording the statement of P.W.2 under Section 164 Cr.P.C.. after completing the investigation, he laid the charge sheet against the accused.

4. Based on the above materials, the Trial Court framed charges as detailed above but the accused denied the same as false. In order to prove the case of prosecution, as many as 18 witnesses were examined 24 documents were exhibited and 12 material objects were marked.

5. Out of the above witnesses examined, P.W.1 is the Village Administrative Officer in Ethapoor Village. According to him, on receipt of the information from P.W.5, he reached the scene of occurrence and saw the dead body of the deceased, then he gave a complaint to the respondent police. He further stated that he is the witness to the recovery of material Objects. P.W.2 is the wife of the deceased, she turned hostile. P.W.3 is the daughter of the deceased, she also turned hostile. P.W.4 is the brother of P.W.5, who is the owner of the land where the dead body was found. According to him, on the date of occurrence, he along with his brother P.W.5 went to their agricultural land and saw the dead body and his brother informed the same to P.W.1, Village Administrative Officer. P.W.5 is the owner of the land where the dead body was found. According to him, on the date of occurrence he along with his brother P.W.4 went to their agricultural land and saw the dead body and informed the same to P.W.1, Village Administrative Officer. P.Ws.6 to 9 have turned hostile. P.W.10 is the watchman working in the agricultural Farm. According to him, he heard the information about the death of the deceased. P.W.11, the learned Judicial Magistrate No.II, Aththur, recorded the statement of P.W.2 under Section 164 Cr.P.C. P.W.12 is the Head Clerk working in the Judicial Magistrate Court No.II, Aththur. According to her, she sent the material objects for chemical examination. P.W.13 is the Doctor working in the Government Mohan Kumaramangalam Medical College Hospital, Salem, who conducted postmortem on the dead body of the deceased and issued Postmortem Certificate. P.Ws.14 to 16 have turned hostile. P.W.17-Photographer, who took the photographs of the dead body. P.W.18, then Inspector of Police attached to the respondent police, on receipt of the complaint, registered the case, conducted investigation, arrested the accused and recovered the material objects, examined the witnesses recording their statements and after completing the investigation, he laid the charge sheet.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was total denial. The accused did not examine any witnesses and no document was marked on his side.

7. Having considered all the above materials, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

8. We have heard Mr.P.Vijendran, learned counsel appearing for the appellants and Mr.E.Raja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9. It is a case of no evidence. All the witnesses examined by the prosecution have turned hostile. P.W.1 was the Village Administrative Officer, who received the information from P.W.5 and reached the scene of occurrence and saw the dead body. Then, P.W.1 lodged a complaint before the respondent police station. Based on the complaint, P.W.18, Inspector of Police, registered the case and conducted the investigation, and the accused surrendered before the Judicial Magistrate Court. On hearing the same, P.W.18 took police custody of the accused and during such custody, the accused said to have voluntarily given confession and based on the disclosure statement, P.W.18 recovered M.O.7 TVS.50 XL motor cycle said to belonged to the deceased. The trial Court mainly based on the recovery of M.O.7, TVS 50 XL motor cycle convicted the appellant/first accused. There was no other evidence made available against the accused. The trial Court failed to consider that TVS 50 XL motor cycle does not bear any registration number and there is no evidence to prove that the TVS 50 XL motor cycle belonged to the deceased. The prosecution did not examine any witness to prove that the TVS 50 XL motor cycle belonged to the deceased. Hence, we are of the view that the trial Court totally erred in holding that the motor cycle belonged to the deceased and convicted the appellant/first accused based on the above recovery.

10. We are conscious of the legal position that in a case based on circumstantial evidence, the circumstances projected by the prosecution are to be proved beyond reasonable doubts and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused. Keeping this broad principles in mind, we analyse the facts of the present case. In the instant case, absolutely there was no evidence to prove the guilt of the accused beyond any reasonable doubt. In the above circumstances, we are of the considered opinion that the appellant/first accused is entitled for acquittal.

11. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the Appellant/first accused in S.C.No.25 of 2012 dated 24.03.2014 on the file of the learned III Additional District and Sessions Judge, Salem is set aside and the appellant/first accused is acquitted of all the charges levelled against him and bail bond, if any, executed by him shall stand cancelled and the fine amounts, if any, paid by him is ordered to be refunded forthwith.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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To

1.The III Additional District and Sessions Judge,
Salem.

2.The Inspector of Police,
Ethapoor Police Station,
Salem District.

3. The Judicial Magistrate II
Athur

4. do thro the Chief Judicial Magistrate
Salem (for information)

5. The Superintendent
Central Prison,
Salem

6. The Judicial Magistrate I
Tiruchirappalli

7. The District Collector
Salem

8.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.P.Vijendran, advocate, Sr. 44323

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VD (CO)
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