

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 06.07.2016

CORAM:

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

Crl.A.No.619 of 2014

K.Manickam

... Appellant

vs.

State, by

The Inspector of Police,
Tiruppur Rural Police Station,
Tiruppur.

(Crime No.1255 of 2007)

...Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 30.09.2011 passed by the learned Additional District and Sessions Judge, (Fast Track Court No.V), Tiruppur, in S.C.No.87 of 2010.

For Appellant : Mr.L.Mahendran

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

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

The appellant in this appeal is the sole accused in Sessions Case No.87 of 2010, on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.V), Tiruppur. He stood charged for an offence under Sections 302 and 380 of IPC. The Trial Court by judgement dated 30.09.2011 convicted the appellant/accused for the offence under Section 302 of IPC, and sentenced him to undergo life imprisonment and convicted him for the offence under Section 380 of IPC, and sentenced him to undergo rigorous imprisonment for three years, and all the sentences ordered to run concurrently. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) The deceased in this case is one Devadoss was working as Winch Operator in Sri Udhayam Bleaching Company owned by P.W.1. The accused was also working in the same company as a labour.

Both the deceased and accused were staying together in the company. The deceased borrowed a sum of Rs.100/- from the accused and on 09.12.2007 at about 12.00 p.m., the accused demanded money, but the deceased refused, hence there was a quarrel between them. The accused threatened the deceased stating that already he committed two murders and not force him to commit another murder, then he went away. At about 11.00 p.m., after finishing his dinner, the deceased went to the winch room. The accused went out of the company for purchasing milk for bet dog and he returned to the company at about 12.30 in the night, and went to the winch room, and at about 2.00 a.m. on 10.02.2007, the watchman of the company found a T.V. was missing and hence he informed P.Ws.3 to 6 and when they are searched the T.V., at the time they found the deceased dead with severe head injuries and also found the accused missing. Immediately, they have informed P.W.1, the owner of the company, on receipt of the information, he went to the scene of occurrence. On the next day morning at about 6.00 a.m, P.W.3 went to the respondent police station and lodged a complaint.

(ii) P.W.11, the Sub Inspector of Police, working in the Tiruppur Rural Police Station, on receipt of the complaint, registered a case in Crime No.1255 of 2007 for the offence under Sections 302 and 380 of IPC and prepared FIR (Ex.P6), sent the same to the higher officials and also to the Judicial Magistrate Court.

(iii) P.W.13, the Inspector of Police, working in the Tiruppur Rural Police Station, on receipt of the FIR commenced the investigation, proceeded to the scene of occurrence, prepared Observation Mahazar Ex.P.1, drew a Rough Sketch Ex.P9 and taken photograph of the scene of occurrence and examined the witnesses recorded their statements. Then, he conducted inquest over the dead body in the presence of panchayatars, the Inquest Report Ex.P10 and sent the dead body to the Government Hospital, Tiruppur for postmortem through P.W.9 Head Constable.

(iv) P.W.12, the Doctor, working in the Government Hospital, Tiruppur conducted Postmortem autopsy on the dead body of the deceased and found the following injuries:-

External Injuries:

(1) Deformed face present (2) a depressed injury over right side of face 16 cm x 10 cm in size. It extends from right temporal region, right mastoid bone and right ear in force half of eye brow and eye and right cheek upper ankle mandible. Black disconnection of skin over the injury (3) 3 x 1 x 2 x 1 cm triangle lacerated wound over right mastoid region. (4) Abrasion with contusion are 3 cm x 5 cm over right parietal region 2 cm above the right ear. On opening of skull and face all

facial bone fracture in both sides. Fracture of occipital, temporal parietal bone. Fracture on base of the skull. Subdural haemorrhage over both hemisphere brain congested. On opening of thorax, no fracture of ribs. Heart chamber empty. Lung pale. Hyoid bone intact. On opening of abdomen stomach contain 100 gm of dark coloured digested food particles liver pale. Kidney pale. Intestine distended with gas.

He is of the opinion that the deceased would appear to have died of shock and haemorrhage due to the severe head injuries. He issued Post mortem Certificate E.P7.

(v) P.W.13, recovered the blood stained wooden log M.O.2, blood stained banian role M.O.3, blood stained cement slab M.O.4, sample cement slab M.O.5 and Chappal M.O.6 under Ex-P2 seizure mahazar in the presence of witnesses. On the same day, he arrested the accused and on such arrest, he voluntarily given confession, based on the disclosure statement Ex.P4, he recovered a black and white T.V. M.O.1 and blood stained shirt M.O.7 under Ex.P5 seizure mahazar in the presence of witness and sent the accused for judicial custody. He examined the postmortem Doctor and other witnesses and recorded their statements and after completion of investigation, he laid the charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 14 witnesses were examined and 11 documents and 9 material objects were marked.

4. Out of the witnesses examined, P.W.1 is the owner of the Bleaching Company, where, the accused was working as labour and the deceased was working as winch operator. According to P.W.1, on the date of occurrence at about 12.30 a.m., there was a quarrel between the accused and deceased and during the quarrel the accused threatened the deceased with dire consequences. At about 11.00 p.m., after finished his dinner, the deceased went the winch room. The accused went out the company for purchasing milk for bet dog and he returned at about 12.30 p.m., and went to the winch room. P.W.1 identified M.O.1 T.V., M.O.2, blood stained wooden log. P.W.2 is son in law of P.W.1. He is the witness to the observation mahazar and recovery of material objects 2 to 6. P.W.3 is the co-worker of the accused and deceased in the bleaching company. According to him, on 09.12.2007 at about 11.00 p.m., after watching the T.V., the deceased went to the winch room and the accused came to the company and went to the winch room. At about 2.00 a.m., the

watch man informed him that the T.V. was found missing. Then, he and other employees were searching the T.V. at that time they found the deceased died with head injuries. He has given a complaint (Ex.P3) before the respondent police and he identified M.O.1 T.V. P.W.4 is the another co-employee in the bleaching company. According to him, he saw both the accused and deceased went to the winch room at about 12.00 p.m. P.W.5 also the another employee of the bleaching company. According to him, he saw both the accused and deceased went to the winch room in the midnight. P.W.6 is the van driver working in the bleaching company, he turned hostile. According to him, at about 12.15 p.m., the accused jumped on the gate of the company, took the wooden log, went to the winch room and after some time he threw the wooden log near the canteen and went to the T.V. room. P.W.7 is the witness to the recovery of M.O.1 T.V. P.W.8 is the mahazar witness and also recovery of material objects. P.W.9, the Head Constable, accompanied the dead body to the Government Hospital, Tiruppur and identified the dead body for postmortem. P.W.10, the Head Clerk, working in the Judicial Magistrate Court No.I, Tiruppur sent the material objects for chemical examination. P.W.11, the Sub Inspector of Police, on receipt of the complaint, registered the case and sent the FIR to the higher officials and also to the Judicial Magistrate Court. P.W.12, the Doctor, working in the Government Hospital, Tiruppur, conducted postmortem autopsy on the dead body of the deceased and issued Postmortem Certificate Ex.P7. P.W.13, the Inspector of Police, on receipt of the FIR, conducted investigation, examined the witnesses and recorded their statements, arrested the accused and recovered the material objects and after completion of investigation, he filed the charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false, he did not examined any witness nor marked any documents.

6. Having considered all the above materials, the Trial Court convicted and sentenced 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 with this appeal.

7. We have heard Mr.L.Mahendran, the learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. It is the case of circumstantial evidence. The prosecution has relied upon the following circumstances to prove

the guilt of the accused.

(i) The first circumstance relied upon by the prosecution is motive. P.W.1 is the owner of Sri Udhayam Bleaching Company, where, the accused and deceased were working. According to P.W.1, on 09.12.2012 at about 12.00 p.m., there was a quarrel between the accused and the deceased; the accused demanded money from the deceased, but he refused, hence, the accused threatened the deceased saying that already he has committed murder and do not force him to do another murder and he went away. P.Ws.3,4,5 and 6, in their evidence stated that they saw the quarrel between the accused and deceased before the occurrence. From their evidence, it would be seen that there was a previous enmity between the accused and deceased which eventually led to the occurrence.

(ii) The second circumstance relied upon by the prosecution is that the evidence of P.Ws.2,3,4,5 and 6 that they saw the accused and deceased together at the time of occurrence. All the witnesses consistently stated that at about 11.30 p.m., the deceased after finishing the dinner went to the winch room and at about 12.30 p.m. the accused came to the company and went to the winch room and only the accused and deceased were alone in the scene of occurrence and at about 2.00 a.m., the watchman informed P.Ws.2 to 6 that the T.V. was found missing and when they searched for the T.V., at that time they found the deceased dead with severe head injuries and they also found the accused missing. P.W.6, the van driver even though turned hostile, his evidence was that at about 12.15 p.m., the accused jumped the gate of the company and went inside the winch room with wooden log and after some time he went out of the winch room and threw the wooden log near the canteen. Therefore, the evidence of P.W.6 could be accepted to the extend that he saw the accused went inside the winch room with wooden log before the occurrence. Hence, it is the consistent evidence of all the witnesses that at about the time of occurrence both the accused and deceased were together in the winch room.

(iii) The 3rd circumstance relied upon by the prosecution is that recovery of M.O.1 T.V. According to P.W.2, on the date of occurrence at about 11.00 p.m., he was watching the T.V. and after watching the T.V. at about 1.00 a.m., he went to bed. At about 2.00 a.m., the watchman informed him that the T.V. was found missing. At that time when they were searching for the T.V., they found the deceased dead and also found the accused missing. Subsequently, the T.V. was recovered based on the disclosure statement of the accused and P.W.1 and 3 identified the T.V. Hence, the recovery of T.V. is one of the important circumstance.

9. Apart from that, the next circumstances relied upon by the prosecution was the conduct of the accused. Admittedly, the accused was present in the scene of occurrence at about 12.30

p.m., and thereafter he was absconding along with his bag, and the T.V. was also found missing. Subsequently, he was arrested on the next day and there is no explanation from the accused for absconding from the scene of occurrence. Hence, the conduct of the accused is another link to the chain of circumstances.

10. Considering the above material evidences, we are of the considered opinion that the prosecution has proved the guilt of the accused beyond any reasonable doubt and the proved circumstances form a chain unerringly pointing the guilt of the accused. Therefore, the trial Court rightly convicted and sentenced the accused and there is no reason to interfere with the judgment of the trial Court. Hence the appeal fails and the same is liable to be dismissed.

11. In fine, this appeal is dismissed. The conviction and sentence imposed on the appellant in S.C.No.87/2010 dated 30.09.2011 on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.V), Tiruppur, is confirmed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional District and Sessions Judge,
Fast Track Court No.V,
Tiruppur.
2. -do-Through Principal Sessions Judge,
Tiruppur.
- 3.The Inspector of Police,
Tiruppur Rural Police Station,
Tiruppur.
- 4.The Superintendent, Central Prison
Coimbatore.
- 5.The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.L.Mahendran, Advocate, S.R.No.38050

VD(CO)
BB(30/12/2016)

CrI.A.No.619 of 2014