

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.633 of 2014

Senthil @ Senthilkumar

..

Appellant

Vs

State rep. By  
Inspector of Police,  
Moolanur Police Station,  
Erode District,  
Crime No.164/2005

..

Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the judgment dated 14.03.2011 passed in S.C.No.101 of 2009 on the file of the Additional District Judge, Fast Track Court No.3, Dharapuram.

For Appellant : Mr.M.Sankar

For Respondent : Mr.M.Maharaja,  
Additional Public Prosecutor

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JUDGEMENT

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

The appellant is A1 in S.C.No.101 of 2009 on the file of the learned Additional District and Sessions Court No-3, Dharapuram. He stood charged for offences under Sections 120(b), 364 and 302 IPC. By judgment dated 14.03.2011 the trial Court convicted and sentenced him to undergo imprisonment for life

and to pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for 6 months each for the offences under Sections 120(b), 364 and 302 IPC. The trial Court ordered the above sentences to run concurrently. Totally, there are two accused, since A2 was absconding, the case was split up, A1 alone faced trial. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased in this case one Jayaraman was working as a fitter in Anangoor Textile Mill at Anangoor. This appellant was also working in the same mill. There was a dispute between the deceased and the appellant. Therefore, the appellant/accused and the absconding accused, namely, one Kumar have conspired to murder the deceased. On 20.07.2005, at about 12.30 p.m., they took the deceased to the terrace of the mill and attacked him with iron rod and caused his death. P.W.2, supervisor of the said mill, on 23.07.2005, while going around the mill, found some foul smell coming from the terrace and with the help of torchlight, he went to the terrace and saw the dead body of the deceased. Immediately, he informed the same to the Manager and the owner of the mill, namely, Ramasamy and he lodged a complaint before the respondent police on 24.07.2005, at 8.30 a.m. Based on the complaint (Ex.P2), P.W.22, a Sub-Inspector of Police, registered a case in Crime No.164 of 2005, for an offence under Section 302 IPC against the appellant and the another accused, Kumar. Ex.P.21 is the First Information Report. He forwarded both Ex.P.2 and Ex.P.21 to the Court, which were received by the learned Jurisdictional Magistrate at 11.00 am on 24.07.2005.

3. P.W.23, Inspector of Police, on receipt of the First Information Report, took up the case for investigation and went to the scene of occurrence and prepared observation Mahazar (Ex.P.12) and Rough Sketch (Ex.P.22). He conducted inquest on the dead body of the deceased, on 24.07.2005, between 11.30 am to 2.30 p.m., in the presence of panchayathars and prepared Inquest Report (Ex.P.23) and recorded the statement of the other witnesses. Since the body was in a decomposed stage, he requested the Doctor, Government Hospital, Dharapuram, to conduct postmortem on the dead body at the place of occurrence.

4. P.W.14, Doctor, working at Government Hospital, Dharapuram, conducted postmortem on the body of the deceased in the mill itself and found the following injuries:-

" External injuries:

1) 6 cm x 4 cm x 1 cm injury in the L parieto occipital region of the scaop with

decomposed edges present. 2) 4 cm x 3 cm lobe in the L parieto occipital region of the skull corresponding to the injury NO.1 seen. Brain coming out of the hole.

On Dissection of the scalp and opening the skull, the fracture bone from the injury NO.2 extending through the parital and frontal bone for 22 cms towards midline. posteriorly 15 cms in length involving the L posterior cranial fossa. Membranes normal except over the Injury No2 where tear of the membrane seen. Brain liquefied and coming out through injury No.2. Hyoid-intact.

Throat:

Ribs normal. Heart empty 180 gms. C/s. Shows muscle decomposition. Lungs R 250 gms L 220 gms in spongy and decomposed state.

Abdomen :

Distended. On opening hissing noise heard due to gas. Stomach contains 150 ml of partially digested rice particles, liver 800 gms, spongy and decomposition, spleen decomposed, intestines distended with gas and fluid, kidneys each 120 gms partially decomposed, bladder empty.

Ex.P.4 is the Postmortem certificate. He gave final opinion that the deceased would appear to have died due to skull and brain injuries between 72 to 96 hours prior to the time of postmortem.

5. The death of the deceased was informed to P.W.1, father of the deceased and he received the body. On 07.08.2005, at 7.30 a.m., P.W.23, arrested the accused, at Karaiyur. On such arrest, he voluntarily gave a confession and based on the disclosure statement, he recovered blood stained iron rod(M.O.3) under Mahazar (Ex.P.12). He also recorded the statement of other witnesses. On completion of investigation, P.W.23, laid charge sheet against the accused.

6. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 23 witnesses were examined and 23 documents were exhibited, besides 14 Material Objects.

7. Out of the said witnesses, P.W.1 is the father of the deceased. The death of his son was informed to him. After receiving the information, he went to the mill and identified the body and after postmortem he received the body. P.W.2 is the Supervisor of the textile mill. His evidence was that he found the body of the deceased in the terrace in the night hours



and informed the same to the Manager and the owner. P.W.3 is the Accountant in the Textile Mill, According to him, the deceased and the accused did not attend their work after 20.07.2005. P.W.4, who is also an employee of the mill, saw the accused and the deceased sitting together at about 12.30 p.m., on 20.07.2015. Thereafter, at about 1.30 p.m., the appellant/accused and A2 came to the room and took their bag and went away, he has lastly seen the accused and the deceased together.

8. P.W.5 and P.W.6 are employees of the mill, also saw the accused and the deceased talking together near the canteen on the date of occurrence. P.W.7 is also an employee of the textile mill. His evidence was that there was a quarrel between him and the appellant, at that time, the deceased intervened and warned the accused that he will inform about him to the owner. P.W.8 and P.W.9 have also spoken about the quarrel between the accused and the deceased. P.W.10, the Supervisor working in the mill, he overheard both the accused conspired to murder the deceased.

9. P.W.11, is the Manager working in the mill, on information that the body of the deceased was found in the terrace, he along with the owner of the mill saw the dead body and lodged a complaint. P.W.12 is a watchman in the mill. P.W.13 is the Assistant Manager of the Mill. Their evidence was that after date of occurrence, both the accused and the deceased not turned up for duty. P.W.14, Doctor, spoken about the postmortem conducted and the final opinion given regarding the cause of death. P.W.15, Shift Supervisor of the mill, has also spoken about the fact that after 20.07.2015, the accused and the deceased did not turn to duty. P.W.16, Village Administrative Officer, P.W.17, Village Assistant and P.W.18, Village Administrative Officer, Alampalayam, all turned hostile. P.W.19, photographer, has taken photographs of the dead body at the Anagoor Textile Mill. P.W.20, Head Constable, who handed over the dead body of the deceased to his relatives, turned hostile. P.W.21 is the Head Clerk of the Court who forwarded the Material Objects for chemical analysis. P.W.22, Sub-Inspector of police, has spoken about the registration of the case. P.W.23, Investigation Officer, has spoken about the investigation done by him and filing of final report in this case.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness or mark any documents.

11. Having considered all the above materials, the trial

Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

12. We have heard Mr.M.Sankar, 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.

13. The learned counsel for the appellant would submit that there is no eye-witness to the occurrence and the case is mainly based on circumstantial evidence. Except, the evidence of co-workers that they saw the accused and the deceased together before the occurrence, there is no other circumstance to prove the guilt of the accused. Apart from that, the author of the First Information Report/complaint, namely, the owner of the Textile Mill was not examined and it is fatal to the prosecution case. Hence, sought for the acquittal of the accused.

14. Per contra, the learned Additional Public Prosecutor submitted that both the deceased and the accused were working in the same mill and it was the evidence of the co-workers that there was a quarrel between the deceased and the accused and they have seen the deceased and the accused together soon before the occurrence. The material weapon M.O.3, which was used for the occurrence, was also recovered on the disclosure statement of the accused. Hence, the above said circumstances was clearly proved by the prosecution. Thus, according to the learned Additional Public Prosecutor, there is no merit in the criminal appeal and the same is liable to be dismissed.

15. We have considered the above submissions.

16. It is the case of circumstantial evidence. 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 analyze the facts of the present case.

17. The first circumstance relied upon by the prosecution, namely, motive that there was a quarrel between the accused and the deceased in the Textile Mill and second circumstance is the last seen together theory that P.Ws.5 to 8

saw the accused and the deceased speaking together and also had dinner together immediately before the occurrence and the other circumstance is the recovery of material objects, namely, iron rod.

18. So far as motive is concerned, it is an evidence of P.W.7 that when the accused was quarreling with him, the deceased intervened and warned the accused that he will inform it to the owner. P.W.8 also says about the quarrel between the accused and the deceased. P.W.10 says about the conspiracy between the accused to murder the deceased, but, the date of quarrel was not known, it was the evidence of P.W.4 that soon before the occurrence both the accused and the deceased were talking together in front of the canteen and also it is the evidence of P.W.5 that the deceased and the accused were jointly had dinner in the canteen. P.W.6 also saw the accused and the deceased taking dinner in the canteen at about 12.15 p.m. Hence, from the evidence of P.W.4, 5 and 6, it is clear that soon before the occurrence all of them jointly had dinner and were also talking together. In view of their evidence, the alleged motive has lost significance.

19. The next circumstance, namely seeing the accused and the deceased together is concerned, all of them are working in the same mill and they are having dinner together in the canteen and talking in front of the canteen as all of them are employees in the same mill and it is natural that they are having dinner together in the canteen, from that we cannot presume anything against the accused.

20. Third circumstance, namely, recovery of iron rod M.O.3, on the instance of the accused. The prosecution did not take any steps to ascertain whether the steel rod contain any finger prints of the accused and it matched with the accused, and as per the reports of forensic department, the blood group found in the iron rod all could not be ascertained, hence, it raises a grave suspicion. In the above circumstance, we are of the considered opinion that the prosecution failed to prove the guilt of the accused. Hence, the accused is entitled for acquittal.

21. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Additional District and Sessions Judge, No.3, Dharapuram, in S.C.No.101 of 2009, by the judgment dated

14.03.2011 are hereby set aside. The appellant/accused is acquitted of the

charges levelled against him and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To,

1. The Additional District And Sessions Judge, Fast Track Court No. 3 Dharapuram.
2. The Public Prosecutor, High Court, Madras.
3. The District and Sessions Judge, Erode.
4. The District Collector, Erode.
5. The superintendent, Central Prison, Coimbatore.
6. The Director General of Police, Mylapore, Chennai.
7. The Judicial Magistrate, Dharapuram.
8. The Superintendent of Police, Erode District.
9. The Inspector of Police, Moolanur Police Station, Erode District.

Copy To

The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.Sankar, Advocate, S.R.No. 33762

+1cc to Mr.\*, Advocate, S.R.No.

+1cc to the Government Pleader, S.R.No.

(CO)

CA(/01/2016)

Cr1.A.No.633 of 2014