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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN
AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.71/2014

Tower Murugan @ Murugan ... Appellant/Sole Accused

Versus

The State by
The Inspector of Police
Nambiyur Police Station
Erode District.

... Respondent/Complainant

Appeal filed under section 374 Cr.P.C., against the judgment made in SC.No.124/2012 on the file of the learned I Additional Sessions Judge, Erode dated 07.12.2012.

For Appellant : Mrs.Sumithra Vasudevan
Legal Aid Counsel

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by S.NAGAMUTHU, J.,]

The appellant is the sole accused in SC.No.124/2012 on the file of the learned I Additional District and Sessions Judge, Erode District. He stood charged for the offence u/s.302 IPC. By judgment dated 07.12.2012, the Trial Court convicted him for the offence u/s.302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one year. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

[A] The deceased in this case, was one Mr.Raman. Both the accused and the deceased belong to Nambiyur village. P.W.1 is the younger brother's son of the deceased. There was a long



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standing dispute between the accused and the deceased in respect of a land and also in respect of a social boycott. It is alleged that on 04.03.2012, at 17.15 p.m., in front of the ration shop, at Gandhipuram Road, the accused cut the deceased repeatedly with an aruval.

[B] P.W.1 was attending the function in the same village. At about 17.00 hrs., one Raja informed P.W.1 over phone that the deceased had been cut by the accused near the ration shop. Immediately, P.W.1 rushed to the place of occurrence and found the deceased almost dead. Thereafter, he took the deceased to the Government Hospital, Gobichettipalayam. P.W.8, the doctor attached to the said hospital, after examining the deceased, declared him dead. The doctor also intimated the same to the Police. The Death Intimation is marked as Ex.P.2 and the Accident Register is marked as Ex.P.3. The dead body was thereafter kept in the Mortuary. Subsequently, P.W.1 went to Nambiyur Police Station and made a complaint under Ex.P.1.

[C] P.W.18, the then Special Sub-Inspector of Police attached to the said Police Station, received the complaint from P.W.1 on 04.03.2012 and registered a case in Cr.No.54/2012 for the offence u/s.302 IPC. Ex.P.1 is the complaint and Ex.P.15 is the FIR. He forwarded both the documents to the Court concerned which were received by the learned Magistrate on 05.03.2012 at 05.10 hrs.

[D] The case was taken up by P.W.19, the then Special Sub Inspector of Police on 04.03.2012 at 22.00 hrs. He proceeded to the scene of occurrence at about 07.00 hrs on 14.03.2012 and prepared the Observation Mahazar [Ex.P.6] and also prepared a Rough Sketch [Ex.P.16] in the presence of P.Ws.12 and another witness. He also recovered the blood-stained earth [M.O.2] and the sample earth [M.O.3] under a Mahazar in the presence of the same witnesses. He summoned the services of P.W.14, to take photographs at the place of occurrence. M.O.5 series is the photographs taken at the scene of crime. On 05.03.2012, at 02.30 hrs., he went to the Government Hospital, Gobichettipalayam and held inquest on the dead body of the deceased in the presence of Panchayatdars and witnesses and prepared Ex.P.17 [Inquest Report]. He sent the dead body of the deceased for postmortem.

[E] P.W.9, Dr.Ramesh Babu, attached to the Government Hospital, Gobichettipalayam, conducted autopsy on the body of the deceased on 05.03.2012 at 11.00 hrs. He found the following injuries:-



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"External Injuries:-

[1] Incised wound middle of the upper part of the neck oblique 8x2x5 cms. O/D. Larynx divided upto oesophagus, jugular bones and muscles divided.

[2] Incised wound in the left wrist oblique 5x1/2x12 cm.

Internal Examination:-

Heart-250gms. All chambers empty. Lungs-[right] 270gms [left] 220 gms. C/s.Pale. Lungs-1200gms c/s.pale. Spleen-200gms pale. Kidneys-Each 250 gms pale. Abdomen- Partly digested food particles. No specific smell. Skull-Membranes intact. Brain-1100 gms pale."

Ex.P.5 is the Postmortem Certificate. He gave opinion that the death of the deceased was due to the injury to larynx and trachea. He further gave opinion that the said injury could have been caused by a weapon like M.O.1-aruvai.

[F] P.W.19, during the course of investigation, had summoned the services of P.W.15 to take photographs of the dead body of the deceased in the Mortuary in various angles. M.O.6 series is the photographs taken at the Mortuary. On getting information, P.W.19 went to Vemmandampalayam Bus Stop on 05.03.2012 at 11.00 hrs., and arrested the accused in the presence of P.W.13 and another witness. On such arrest, the accused gave a voluntary confession, in which, he disclosed the place where he had hidden the aruvai [M.O.1] and the blood stained shirt [M.O.4]. In pursuance of the same, he took the police and the witnesses to a bush near Karupparayan temple and from the place of hide out, he produced M.O.1 [aruvai] and M.O.4 [blood stained shirt]. P.W.9 recovered the same under a Mahazar in the presence of the same witnesses. The Investigating Officer recovered the cloth worn by the deceased, viz., M.Os.7 to 10, under a Mahazar. Thereafter, he returned to the Police Station and forwarded the accused for judicial remand and also handed over the material objects to the Court for chemical analysis, which revealed that there were human blood on all the material objects including the aruvai. On completion of the investigation, he laid the charge-sheet against the accused.

[G] Based on the above materials, the Trial Court framed a lone charge against the accused as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case on the side of the prosecution, as



many as 19 witnesses were examined, 17 documents and 10 material objects were also marked.

[H] Out of the said witnesses, P.W.1, is not a witness to the occurrence. Thus, his evidence is not much useful to the prosecution. P.Ws.2 and 3, who were examined as eyewitnesses to the occurrence, have turned hostile and they have not supported the case of the prosecution in any manner. P.W.4 has given evidence only on hearsay information and he has not stated anything about the occurrence. P.W.5 is the son of the deceased and he has stated that on hearing about the occurrence, he went to the place of crime. P.Ws.6 and 7 have also stated so. P.W.8 is the doctor who declared the deceased dead on examining him at 18.30 hrs on 04.03.2012 at the Government Hospital, Gobichettipalayam. P.W.9 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.10 has also spoken only about the hearsay information. P.W.11 has spoken about he seeing the accused with the blood stained aruval at 17.30 hrs on 04.03.2012. P.W.12 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of crime. P.W.13 has spoken about the arrest of the accused and the consequential recovery of M.Os.1 and 4 on the disclosure statement made by the accused. P.Ws.14 and 15 have spoken about the photographs taken by them at the place of occurrence and at the Mortuary respectively. P.W.16 is the Police Constable who has taken the dead body to the hospital for postmortem and handed over the same to P.W.9. P.W.17 is the Head Clerk of the Court, who forwarded the material objects for chemical analysis. He has stated that according to the Report, human blood stains were found on all the material objects including the aruval. P.W.18 has spoken about the registration of the case. P.W.19 has spoken about the investigation done by him and the filing of the final report.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness nor marked any documents, on his side.

4 Having considered all the above, the Trial Court convicted and sentenced the appellant/sole accused as detailed in the first paragraph of this judgment. That is how the appellant/accused is before this Court with this appeal.

5 When the above appeal was taken up for final hearing, Mrs.K.R.Vairam, learned counsel on record, appearing for the appellant was called absent. Hence, this Court was forced to appoint Mrs.Sumithra Vasudevan, learned counsel as the Legal Aid Counsel to prosecute the matter.



6 We have heard Mrs.Sumithra Vasudevan, Legal Aid Counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

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7 As we have already pointed out, this is a case based on "no evidence". Absolutely, there is no evidence against the accused. The eyewitnesses have turned hostile and they have not supported the case of the prosecution in any manner and they have spoken only about the hearsay information. Except P.W.11, who has stated that the accused was found with the blood stained aruval somewhere, there is no other evidence. Based on the evidence of P.W.11, we cannot conclude that it was this accused who caused the death of the deceased. The prosecution relies on the recovery of the aruval based on the disclosure statement of the accused. But the connection between the weapon and the crime has not been established by the prosecution and therefore, there can be no significance attached to the same. Here is the case where there is absolutely no evidence connecting the accused with the crime. But, the Trial Court has convicted the appellant/accused on mere surmise, which is not permissible in law. In view of the above, we hold that the conviction and sentence imposed on the appellant is liable to be set aside.

8 In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant by the Trial Court for the offence u/s.302 IPC in SC.No.124/2012, vide judgment dated 07.12.2012, are hereby set aside and he is acquitted.

9 Since it is reported that the appellant is in jail, he is directed to be released forthwith, unless his presence is required in connection with any other case. Fine amount, if any paid, shall be refunded to him.

10 Before parting with the matter, this Court appreciates the role played by Mrs.Sumithra Vasudevan, the Legal Aid Counsel, appearing for the appellant, in properly projecting the case. The Tamil Nadu State Legal Services Authority, is requested to pay her the remuneration as per norms.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



To

1 The I Additional District and Sessions Judge
Erode.

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2 -Do- Through The Principal Sessions Judge,
Erode, Erode District.

3 The Judicial Magistrate, No.2,
Gobichettipalayam.

4 The Chief Judicial Magistrate
Erode.

5 The District Collector
Erode.

6 The Inspector of Police
Nambiyur Police Station
Erode District.

7 The Superintendent of Police
Central Prison, Coimbatore.

8 The Director General of Police,
Mylapore, Chennai.

9 The TamilNadu State Legal Service Authority,
Chennai.

10 The Public Prosecutor
High Court, Madras.

Crl.A.No.71/2014

kpvs[co]
srg 14/09/2016