



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU

AND

THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.74 of 2014

Kannan

.. Appellant/Accused

vs

State by Inspector of Police,
B-2 R.S.Puram Police Station,
Coimbatore
Crime No.840/2011

.. Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code against the judgment of the learned Sessions Judge, Coimbatore Division, in S.C.No.326 of 2011, dated 22.03.2012.

For Appellant : Mr. S.Pushpakaran
For Respondent : Mr. M.Maharaja, A.P.P.,

J U D G M E N T

(Judgement of the Court was delivered by S.Nagamuthu. J.,)

The appellant is the sole accused in S.C.No.326 of 2011 on the file of the learned Sessions Judge, Coimbatore Division. He was charged for the offences under Section 302 IPC and 506 (ii) IPC (2 counts). By judgment, dated 22.03.2012, the trial court convicted him under Section 302 IPC and sentenced him to undergo Imprisonment for life (No fine was imposed). 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 was one Nagaraj. The deceased used to do some sundry work in Kamarajapuram area, Coimbatore city. He used to sleep in front of a shop, known as M/s.Vikas Agencies Furniture Mart. The accused is a leper and during the relevant time, he was begging in that area. As and when the accused was in need of money, to have his food and other things, he used to demand the same from the deceased. On many occasions, when the deceased refused to part away with any amount, the accused snatched away the same from him. On 23.05.2011 at about 01.00 am, the accused wanted the deceased



to pay some amount. The deceased refused. This resulted in a quarrel. It is alleged that the deceased abused him in filthy language, called him as a beggar, a leper and a bastard. This, according to the prosecution case, infuriated the accused. Immediately, he took a cement mortar stone of heavy weight and dropped the same on the head of the deceased. The deceased died on the spot. The occurrence was witnessed by P.Ws.2 and 3. But P.Ws.2 and 3 did not disclose the same to anybody.

3. P.W.1 is the daughter of the deceased. On the next day, by around 07.00 am, when the shoppers came to the Bazaar, they found the dead body of the deceased. They informed P.W.1 about the same. P.W.1 immediately went to the place of occurrence and confirmed that her father was lying dead with injuries and then proceeded to R.S.Puram Police Station and made a complaint at 07.15 am on 23.05.2011 under Ex.P-1.

4. P.W.18, the then Special Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.840 of 2011 under Section 302 IPC. Since the assailant was not known, in the First Information Report, nothing was mentioned about the assailants. Then, he forwarded both the documents to the Court, which was received by the learned Magistrate at 10.00 am on 23.05.2011. The case was taken over for investigation by P.W.20. He went to the place of occurrence, prepared an Observation Mahazar and a rough sketch in the presence of witnesses. Then, he forwarded the body for post mortem.

5. P.W.15 conducted autopsy on the dead body of the deceased on 23.05.2011 at about 03.15 pm. He found the following injuries:-

"The following ante mortem injuries are seen in the body:

- Abrasion reddish in colour 1 x 0.5 cm, 0.5 x 0.5 cm noted over left shoulder and 4 x 0.5 cm noted over right frontal region.
- Multiple abrasions reddish in colour 0.5 x 0.5 cm seven in number noted over left side cheek and 1 x 0.5 cm five in number noted over left frontal region.
- Head and left side face found deformed from front to back.
- Burst open type of laceration 13x3 cm x cranial cavity deep with exposing brain matter noted over left fronto parietal region.

On discussion of scale, skull and Dura: Sub scalp contusion noted over entire left side of scalp and right occipital region. Depressed and comminuted fracture 19x8 cm noted over left fronto parieto temporal bones. Crack fracture 7 cm in length starting from depressed fracture



WEB COPY

noted over both occipital bone. Laceration of dura 12 x 6 cm noted over left fronto parieto temporal lobes. Diffuse sub dural and sub arachnoid hamorrhages noted over entire brain. Laceration 13x5x1 cm noted over left fronto parieto temporal lobes of brain. Skull base fracture noted over both anterior cranial fossa and middle cranial fossa. All facial bones found fractured with surrounding tissue contusion.

OTHER FINDINGS:

- Peritoneal & Pleural cavities: empty.
- Larynx and Trachea : cut section - pale.
- Hyoid Bone : Intact.
- Heart: right side chambers contain few fluid blood. Left side chambers empty. Coronaries patent.
- Stomach contains about 10 ml of mucous flud, no specific smell, mucosa pale.
- Small Intestines contain about 20 ml of bile stained flud, no specific smell, mucosa pale.
- Lungs, Liver, Spleen, Brain and Kidneys : Cut section pale.
- Urinary Bladder: empty.
- Blood Preserved for analysis.
- Viscera Preserved and sent for chemical analysis.

Opinion: The deceased would appear to have died of FACIAL and Cranio Cerebral Injuries."

6. P.W.15, the Doctor, has given opinion that the death was due to shock and haemorrhage caused by injuries found on the body of the deceased. Ex.P-7 is the post mortem certificate and Ex.P-8 is the final opinion. He examined many witnesses and made hectic efforts to find out the details of the assailant. But he was not able to make any break through. While so, P.W.2, on 02.06.2011, came forward with a statement on 04.06.2011 stating that he was present at the scene of occurrence and witnessed the entire occurrence. Thereafter, P.W.3 came forward with a statement on 04.06.2011 that he witnessed the entire occurrence. Based on the same, the case was altered into one under Section 302 IPC against the accused. Thereafter, it is alleged that the accused went to P.W.5 on 14.07.2011 at 09.00 pm and confessed the guilt to him voluntarily. Then P.W.5 took him to the Police and he was handed over to P.W.20.

7. P.W.20 arrested him in the presence of P.W.6 and another witnesses. On such arrest, he gave a voluntary confession statement, as to where he had hidden the cement mortar stone. In pursuance of the same, it was recovered.



8. It needs to be mentioned that when the dead body was at the place of occurrence, a Police sniffer dog was brought to the place of occurrence. But, the same turned futile, as it could not get any clue for the investigation. On completing the investigation, P.W.20 laid charge sheet against the accused.

9. Based on the above materials, the trial court framed charges as detailed in the first paragraph of the judgment. The accused denied the same. In order to prove the case of the prosecution, as many as 20 witnesses were examined and 19 documents were exhibited, besides marking 13 Material Objects. On the side of the accused, no witness was examined, but Ex.D-1 was marked, which is a photograph taken at the scene of occurrence.

10. Out of the said witnesses, P.W.1 is the daughter of the deceased and she has stated that on 22.05.2011, in the evening, the deceased left the house to go to the Bazaar and on 23.05.2011, she found the dead body of the deceased in front of the shop, by name, M/s.Vikas Agencies Furniture Mart. P.Ws.2 and 3 claimed to be the eye witnesses to the occurrence. They have stated that in the quarrel between the accused and the deceased, the accused dropped a huge cement mortar stone on the head of the deceased and caused the death. P.W.4 has spoken about the occurrence only on hearsay information and he has not stated anything incriminating against the accused. P.W.5 has stated that on 14.07.2011, the accused came to him and made a voluntary confession admitting the guilt. Thereafter, he produced him before the Police. P.W.6 has spoken about the confession made to the Police, out of which the stone was recovered from the place identified by the accused. P.Ws.7 and 8 are the relatives of the deceased and they have spoken about the occurrence only on hearsay information. P.W.9 has stated that he found the dead body of the deceased at 09.30 am on 23.05.2011. P.W.10 has also stated so, on the same lines like P.W.9. P.W.11 has spoken about the photographs taken at the place of occurrence. P.W.12 has spoken about the fact that he brought the sniffer dog to the place of occurrence. But there was no clue obtained from the same. P.W.13 has spoken about the hearsay information. P.W.14 has stated that he kept the dead body of the deceased in the mortuary. P.W.15 has spoken about the post mortem conducted and the final opinion regarding the cause of death. P.W.16 is an expert from Forensic lab, who has given information regarding the chemical analysis conducted by him. P.W.17 has spoken about the fact that he took the dead body to the hospital for post mortem. P.W.18 has spoken about the registration of the complaint, Ex.P-1. P.W.19, the Head Clerk of the Court, has stated that she forwarded the material objects for examination. P.W.20 has spoken about the investigation done in this case and the final report filed.



WEB COPY

11. 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 choose to examine any of the witnesses, but marked Ex.D-1-photograph taken at the scene of occurrence, on his side.

12. Having considered all the above, the trial Court convicted the accused under Section 302 IPC. Challenging the same, the appellant is before this Court with this Criminal Appeal.

13. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

14. This is a case where the prosecution mainly relies on the eye witnesses on account of P.Ws.2 and 3. According to them, the alleged occurrence took place on 23.05.2011 around 01.00 am. But P.W.2 has admitted that he disclosed about the occurrence for the first time only on 02.06.2011 and P.W.3 has stated that he disclosed about the occurrence only on 04.06.2011. Absolutely there is no explanation as to why they kept mum for more than ten days. Had it been true that they witnessed the occurrence, they would have certainly informed about the same either to P.W.1 or to other relatives of the deceased or at least to the Police. The very fact that they did not disclose the occurrence to anybody, including the family members of the deceased, would go to show that their conduct is highly unnatural, which makes their evidence doubtful. Therefore, we find it difficult to act upon the evidence of these two witnesses.

15. Next comes the confession orally given by P.W.5. P.W.5 is a local political leader. According to him, on 14.07.2011, at 09.00 pm, the accused came and orally confessed. We find it difficult to believe him, because there would have been no occasion for the accused to repose confidence in P.W.5. At any rate, what was said by the accused was not recorded by him. Assuming that such a confession was orally made by the accused to P.W.5, this being a very weak piece of evidence, as it is shrouded with lot of doubts, we find it difficult to act upon the same.

16. Apart from the above, there is no other evidence against the accused so as to sustain the conviction. We cannot convict the accused on mere surmise. In such view of the matter, we find that the prosecution has not proved the case against the accused beyond all reasonable doubts. For these reasons, we hold that the accused is entitled for acquittal.

17. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant / accused by the learned Sessions Judge, Coimbatore Division, in



S.C.No.326 of 2011, by the judgment dated 22.03.2012 are hereby set-aside. The appellant / accused is acquitted and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bonds, if any, shall stand discharged.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

srk

To

- 1.The Sessions Judge, Coimbatore Division
- 2.The District Collector, Coimbatore District.
3. The Chief Judicial Magistrate, Coimbatore.
4. The Judicial Magistrate No.1, Coimbatore.
5. The Director General of Police, Chennai 600 004.
6. The Inspector of Police, B-2, R.S.Puram Police Station, Coimbatore.
- 7.The Public Prosecutor, Madras.
8. The Superintendent, Central Prison, Coimbatore.
9. The Section Officer, Criminal Section, High Court, Madras.

Cr1.A.No.74 of 2014

SAI(CO)
EU 01.7.16