

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.06.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU  
AND  
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.300 of 2015

V.Senthilkumar

..Appellant/Accused

vs

The Inspector of Police,  
Erumappati Police Station,  
Namakkal Taluk & District.  
[Crime No.337/2011]

..Respondent/Respondent

Prayer :- Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code against the conviction and sentence passed in S.C.No.7 of 2013, dated 09.04.2015 on the file of the Principal Sessions Judge, Namakkal.

For Appellant : Mr. E.Pragasam

For Respondent : Mr. M.Maharaja  
Additional Public Prosecutor  
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J U D G M E N T

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

The sole accused in S.C.No.7 of 2013 on the file of the learned Principal Sessions Judge, Namakkal is the appellant herein. He stood charged for the offence under Section 302 and 506(ii) IPC (2 counts). By judgment, dated 09.04.2015, the Trial Court, after trial, convicted the appellant/accused for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life and imposed a fine of Rs.5,000/-, in default of payment of fine, to undergo simple imprisonment for one year and convicted him for the offence under Section 506 (ii) IPC (2 counts) and sentenced him to undergo Rigorous imprisonment for one year for each count and imposed a fine of Rs.1,000/- for each count, in default of payment of fine, to undergo simple imprisonment for one month each. The trial Court has ordered the sentences to run concurrently. Challenging the above said conviction and sentence, the present appeal has been filed by the appellant/accused.

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

The deceased in this case was one Chandrakumar, brother of the accused and son of P.W.1 [Tr.Vinayagar] and D.W.1 [Tmt.Valliyammal]. There was a dispute regarding partition of their ancestral property consisting three acres of lands. P.W.1 was willing to give 1 ½ acres of land to the accused. But, he demanded entire extent of the land, hence, there was a quarrel arose between the deceased and P.W.1. On 03.08.2011, at about 3.00 p.m., the accused quarrelled with PW1 demanding him to allot the entire extent to him. On the same day, at about 12'0 clock, when P.W.1 was sleeping, along with his family members, the accused came to his house and quarrelled with him and also damaged the windows of his house. After some time, P.W.1 heard noise of the deceased, then, he came out from the house and saw the accused attacking the deceased on the occipital region of his head repeatedly with a wooden log. P.W.1 and D.W.1 tried to save the deceased, but the accused threatened them and ran away from the scene of occurrence. Thereafter, when P.W.1 and D.W.1 went near the deceased, they found him lying in a pool of blood and he was dead. On the next day i.e. on 04.08.2011, morning at about 06.00 a.m., P.W.1 informed his son-in-law P.W.2 about the occurrence and P.W.2 came to the scene of occurrence. P.W.2 took P.W.1 to the Village Administrative Officer, Thoosur, P.W.8, where he prepared a complaint and obtained signature from them, which is marked as Ex.P.1. Thereafter, both of them, along with P.W.8, went to the Erummapatti police station and lodged a complaint against the accused.

3. P.W.11- Sub Inspector of Police, working in Erummapatti police station, on receipt of the complaint, registered a case in Crime No.337 of 2011 for the offences under Sections 302 and 506(ii) IPC and she sent the First Information Report[Ex.P12] to the learned Judicial Magistrate No.I, Namakkal and informed the same to the Inspector of Police.

4. P.W.15-Inspector of Police in Erummapatti, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence, at about 08.30 a.m., prepared an Observation Mahazar [Ex.P5] and drew a Rough Sketch[Ex.P18]. He also recovered Bloodstained blanket [M.O.2], Bloodstained Cement stones [M.O.3], Sample bloodstained cement stones [M.O.4] in the presence of witnesses. Then, he conducted inquest on the dead body of the deceased in the presence of panchayatars and other witnesses, between 10.30 a.m., and 01.30 p.m., and prepared an Inquest Report [Ex.P19], He sent the dead body to the Government Hospital, Namakkal, through P.W.9-Head Constable, for post mortem. Then, he recorded the statements of other witnesses and on 04.08.2011 at about 03.30 p.m. he arrested the accused in the presence of P.W.8.

5. On such arrest, the accused gave a voluntarily confession statement and based on the disclosure statement

[Ex.P7], he recovered bloodstained wooden log [M.O.1] and Lungi [M.O.5] in the presence of the witnesses and sent all the Materials Objects for chemical examination.

6. P.W.12-Doctor, working in the Government Hospital, Namakkal, conducted post-mortem on the dead body between 3.15 p.m. and 4.15 p.m. and issued post mortem certificate[Ex.14], wherein the following injuries were noted-

"Appearance found at the post-mortem:

Moderately build male body lies on its back eyes closed, mouth closed.

External injury: 2x3 cm contusion over Right ear 2x3x5 cm, 4x5x7 cm lacerated wound over occipital region.

Skull bone fracture Right side perital region 'L' shaped fracture, Fracture Base of skull bone

Brain: Lacerated perital lobe blood clott

Throat: Ribs intact heart c/s intact and pale other organs lunge, liver, spleen, kidney intact c/s pale, stomach 250 ml of undigested food present, intestine distended with gas, bladder empty.

Opinion as to cause of death: Due to shock and haemorrhage, due to head injury. Time of death 12-18 hours. prior to the Post-mortem."

7. PW12 opined that the deceased would have died of shock and hemorrhage, and due to head injuries. Thereafter, P.W.15 continued the investigation and recovered bloodstained white shirt [M.O.6], Banian [M.O.7] and Dhoti [M.P.8] of the deceased. He recorded the statements of the post-mortem Doctor and other witnesses. After completion of investigation, he filed charge sheet on 02.09.2011 against the accused for the offences punishable under Sections 302 and 506 (ii) IPC.

8. Based on the above materials, the Trial Court framed charges as mentioned in para No.1 of this Judgment. During questioning, the accused denied the charges. In order to prove the guilt of the accused, on the side of the prosecution, as many as 15 witnesses were examined and 23 documents and 9 material objects were marked. On the side of the accused, DW1, mother of the accused was examined.

9. Out of the witnesses examined, PW.1 is the father of the deceased. He is an eye witness to the occurrence. According to him, there was a dispute in respect of the partition of the property and out of three acres of land belonged to their family, he was willing to give 1½ acres to the accused, whereas he demanded entire extent of the land and quarrelled with P.W.1 and since he refused to give the entire extent of land, the accused decided to murder the

deceased, so that he could take the entire extent of land. It is his further evidence that on 03.08.2011 at about 03.00 p.m., the accused quarrelled with him and on the same day at about 12 '0 clock in the midnight, the accused again came to his house and caused damage to the windows of his house and after hearing such noise, he came out of the house and saw the accused attacking the deceased near a temple with wooden log and caused his death. He has further deposed that he waited till morning and informed his son-in-law-P.W.2 that the accused murdered the deceased, P.W.2 thereafter, came to the scene of occurrence and on 04.08.2011 at 06.00 a.m. both of them went to the office of the Village Administrative Officer P.W.8 and prepared the complaint, then lodged the complaint before the respondent Police Station.

10. P.W.2 is the son-in-law of P.W.1. According to him, after receiving information, he reached the scene of occurrence and at about 6.00 or 06.30 a.m. on 04.08.2011, he took P.W.1 to the office of the Village Administrative Officer [PW8] and prepared a complaint and lodged the same before the respondent police. P.W.3 is the sister's son of P.W.1. He has stated that he came to the scene of occurrence at 06.30 a.m.. P.W.4 is a neighbour and he turned hostile during trial. P.W.5 is another neighbour, he only saw the dead body after the occurrence. P.W.6 is the Head Constable in the respondent police. He sent First Information Report to the Judicial Magistrate Court No.1, Namakkal. P.W.7 is a neighbour and he turned hostile. P.W.8 is the Village Administrative Officer, who prepared the complaint and also a witness to the mahazar at the time of arrest of the accused and during recovery of Material Objects. P.W.9 is the Head Constable, who carried the dead body to the hospital and identified the dead body to the Doctor, who performed post mortem. P.W.10 is the Junior Assistant, Fast Track Mahila Court, Namakkal, who sent the Material Objects for chemical examination. P.W.11 is the Inspector of Police, Erummapatti Police Station, who registered First Information Report. P.W.12 is the Doctor, working in the Government Hospital, Namakkal and conducted post-mortem on the dead body and given medical opinion. P.Ws.13 and 14 are working as Deputy Directors in the Forensic Science Department, Salem, examined Material Objects and gave report. P.W.15 is the Investigating Officer, who conducted the investigation, arrested the accused, recovered the Material Objects and after completion of investigation, filed the charge sheet.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On the side of the accused, one witness was examined as D.W.1 but no documents were marked. D.W.1 has stated that on 04.08.2011 at about 06.00 a.m., when she went out from her house to purchase match box, she saw the dead body of the deceased near a temple. Thereafter, P.W.1 and the accused came there, then somebody called the police and the respondent police came to the scene of occurrence.

12. Having considered the above materials, the Trial Court convicted and sentenced the accused as mentioned in para No.1 of this judgment. Challenging the conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

13. Heard Mr.E.Pragasam, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor and we have perused the materials available on records carefully.

14. P.W.1 is the sole eye witness to the occurrence and also the father of the deceased as well as the accused. According to him, the occurrence took place in the intervening night of 03.08.2011 and 04.08.2011, Earlier on 03.08.2011 at about 03.00 p.m., the accused quarrelled with him, thereafter, at 12'0 clock he once again came to his house and damaged the windows and beaten the deceased with wooden log on the head at about 1.00 a.m., on 04.08.2011 and caused his death. He waited till 06.00 a.m for PW2 to arrive, thereafter, he went to the office of the Village Administrative Officer along with P.W.2. From there, he went to the police station for lodging the complaint at about 07.30 a.m., in the morning. Upon registration of First Information Report, it was sent to the Judicial Magistrate No.1, Namakkal only at 05.00 p.m., There is an inordinate delay in filing the complaint as well as sending the first information report to the Court, and absolutely, there is no explanation for such inordinate delay. Apart from that, the evidence of mother (DW1) is totally contrary to the evidence of P.W.1. According to D.W.1, only in the morning at about 06.00 a.m, when she went out from her house to purchase match box, she saw the dead body of the deceased near the temple. Thereafter, P.W.1 and the accused came there, then somebody called the police and the respondent police came to the scene of occurrence. Recently a Division Bench of this Court in which, one of us is Party (S.Nagamuthu,J.) reported in (2016) 3 MLJ (Cr1)7, Arul @ Arul jothi and Others v. State by Inspector of Police, Nellikuppam Police Station, Cuddalore District, after elaborately considering the Supreme Court Judgements in this aspect, held as follows:-

"18. The facts of the present case are more or less similar. As we have already pointed out the enormous delay in preferring the complaint and also the delay in forwarding the First Information Report to the Court remains unexplained and the fact that no case was registered at the earliest point of time, though the police officers were aware of the occurrence and they were also present at the place of occurrence and because the original information which was received by the jurisdictional Police Station as soon as the occurrence was over has been suppressed, we are of the view that in the

present case also, the case of prosecution as propounded by the prosecution is highly doubtful".

Hence, the unexplained long delay creates a doubt in the prosecution case. Apart from that, the distance between P.W.1's house and the scene of occurrence is about 200 feet. According to P.W.1, there is a house belonged to One Puchi near to the place of occurrence and on the date of occurrence, the said Puchi died and large number of people gathered there. But none of them were examined by the prosecution. Except the interested witness PW1, no other evidence is available to corroborate his version and the testimony of DW1, his wife, is totally contrary to the evidence of PW1. Apart from that, there is no explanation from P.W.1 for not informing anybody or go to the police station, immediately. Even as per the P.W.1 evidence, more than 300 houses are there in and around the scene of occurrence, but none was examined by the prosecution. In the above said circumstances, it is highly unsafe to rely upon the evidence of P.W.1 to convict the accused. Hence, the appellant/accused is entitled for acquittal.

15. In the result, the Criminal Appeal is allowed and conviction and sentence imposed on the appellant by the learned Principal Sessions Judge, Namakkal, in S.C.No.7 of 2013, by the judgment, dated 09.04.2015 are hereby set-aside. The appellant is acquitted of both 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. Fine amount, if any, paid by the appellant, shall be refunded to him.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1. Principal Sessions Judge, Namakkal.
- 2.The Inspector of Police, Erumappati Police Station, Namakkal Taluk & District.
- 3.The Superintendent, central Prison,Salem.
- 4.The Public Prosecutor, Madras.

+1 cc to Mr.E.Pragasam,advocate,sr.36008.

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krd 5/1

Cr1.A.No.300 of 2015