

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2016

CORAM:

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

Criminal Appeal No.394 of 2015

Senthil

... Appellant/Sole Accused

Vs

State rep. By
Inspector of Police,
Namakkal Police Station,
Namakkal District,
Crime No.112/2003

... 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 Principal Sessions Judge, Namakkal in
S.C.No.59 of 2013, by judgment dated 24.02.2015.

For Appellant : Mr. B.Vasudevan

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.59 of 2013 on the file of learned Principal Session Judge, Namakkal. He stood charged for the offences under Sections 302, 307 and 393 IPC. By judgment dated 24.02.2015, the trial Court convicted him under sections 302, 307 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo imprisonment for one year for the offence under Section 302 IPC, and to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- in default to undergo imprisonment for 6 months for the offence under Section 307 IPC and acquitted him from the charge under Section 393 IPC. The trial Court ordered the above sentences to run concurrently. 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

Deceased, in this case, one Thirumoorthy, is an employee in a kerosene godown at Namakkal. P.W.1 and accused are co-employees in the same kerosene godown. The accused has been removed from service four months prior to the occurrence, and the accused suspected that the deceased was instrumental for his removal from service, hence, the accused has some grievance against the deceased. While so, in the intervening night on 29.01.2003 and 30.01.2003, at about 12.00 a.m., the accused gave a cool drink by mixing intoxicated substance to the deceased and immediately the deceased went to sleep. At about 4.00 a.m., when P.W.1 went out to answer his nature calls, he saw the accused attacking the deceased with stone. When, he was trying to prevent the accused, he strangulated P.W.1 with telephone wire. But, P.W.1 escaped and came to the main road. At that time, P.W.2 came there, but out of fear, he went into hiding and after one hour, when he came back to the scene of occurrence, he found the accused missing. Immediately, he informed the owner of the godown, P.W.5 and as per the direction of P.W.5, he has given a complaint, Ex.P.1 to the respondent police.

3. P.W.19, Sub-Inspector of Police, on receipt of the complaint, registered a case in Crime No.112/03 for the offences under Sections 302 and 307 IPC and forwarded the First Information Report, Ex.P.11 to the Judicial Magistrate No.I, Namakkal. Since P.W.1 also suffered injuries, P.W.19 sent him to hospital for treatment with a memo.

4. P.W.22, Inspector of Police, on receipt of First Information Report, commenced investigation, proceeded to the scene of occurrence and prepared Observation Mahazar, Ex.P.3 and Rough Sketch, Ex.P.16. Thereafter, P.W.22 conducted inquest on the dead body of the deceased in the presence of panchayathars at the scene of occurrence and prepared Inquest Report, Ex.P.17. Then, P.W.22 sent dead body for postmortem to Government Hospital, Namakkal through P.W.13.

5. P.W.14, Doctor, working in the Government Hospital, Namakkal, at 2.45 p.m, on 30.01.03, conducted autopsy on the dead body of the deceased and he found the following injuries:

“ External Injuries :

1. Whole face stained with blood.
2. Blood and mud present on the hair of the scalp.
3. A lacerated injury below the right mandible 4cm x 2 cm x 0.5 cm.
4. A lacerated injury below the larynx 3 cm x 1 cm x 2 cm depth.
5. A lacerated injury below the right eye 2 cm x 0.5 cm x 0.5 cm.
6. Two lacerated injury on the right mandible 0.5 cm x 0.5 cm x 0.5 cm.

7. A lacerated injury lateral to the left eye
2 cm x 1 cm x 0.5 cm.
8. Three lacerated injury on the left temple
1 cm x 0.5 cm x 0.5 cm each.
9. An abrasion near the left ear, left eyes 2
cm each.
10. Two central incisors broken.
11. A lacerated injury on the inner aspect of
lower lip 0.5 cm x 0.5 cm.
12. An abrasion over the right side forehead
4 cm x 4 cm.

Ex.P.6 is the postmortem certificate given by P.W.14 and he was of the opinion that the deceased would appear to have died of shock and hemorrhage due to tracheal and head injuries.

6. P.W.22 recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased and also other witnesses. He also recovered the black stone, M.O.1 and telephone wire M.O.3 under Mahazar, Ex.P.4. Since, he was transferred, he handed over investigation to P.W.23. P.W.23 searched for the accused, but the accused was absconding. In the above circumstances, P.W.23 filed an absconding charge sheet against the accused on 05.12.2003.

7. Subsequently, after 10 years, on 22.04.2013, the appellant appeared before P.W.21, Village Administrative Officer, incharge of Namakkal Town and he voluntarily gave an extra judicial confession stating that since at the instance of the deceased he was removed from the service, he gave a cold drink mixing an intoxicated tablet to the deceased and murdered him by hitting him with a stone. When P.W.1 intervened the accused tried to strangle him by using telephone wire, but P.W.1 managed to escape. P.W.21 after recording the statement of the accused, produced the accused before P.W.24 Inspector of Police, P.W.24, along with his Special Report, Ex.P.15. Thereafter, P.W.24 arrested the accused and remanded him to judicial custody.

8. Based on the above materials, the trial Court framed 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 24 witnesses were examined and 20 documents were exhibited, besides 11 Material Objects.

9. Out of the said witnesses, P.W.1 is the injured eyewitness in the occurrence. He is an co-employee of the accused and the deceased. According to him, on the date of occurrence, the accused gave cold drinks to the deceased and after taking the cold drink the deceased went to sleep and at about 4.00 a.m., in the morning, he saw the accused attacking the deceased with a stone and when he tried to prevent the

accused, he also strangled P.W.1 with telephone wire. But, somehow, P.W.1 escaped from the place and informed his owner about the incident. Thereafter, he lodged a complaint, Ex.P.1.

10. P.W.2 turned hostile. P.W.3, who is an customer, came to the godown for filling up kerosene and saw the accused, deceased and P.W.1 in the godown. P.W.4, another customer, also saw all of them there. P.W.5 is the owner of the godown. According to him, he terminated the accused from the service four months prior to the occurrence. On 30.01.2003, at about 5.00 a.m., P.W.1 informed him that the accused murdered the deceased. Then, he asked P.W.1 to lodge a complaint. P.W.6, a cleaner, working in the lorry, went to the godown on the date of occurrence and received salary from P.W.1. At that time, she saw the deceased and the accused together.

11. P.W.7 is brother of the deceased. After hearing the news, he went to the scene of occurrence and saw the dead body of the deceased at the scene of the occurrence. P.W.8, Village Administrative Officer, is a witness to the Observation Mahazar and also a witness to the recovery of material objects. P.W.9, 10 and 11 turned hostile and they have not supported the prosecution case. P.W.12 is a friend of the accused, from whom the accused borrowed a TVS 50 on the date of occurrence. P.W.13, Head Constable, accompanied the dead body of the deceased to Government Hospital, Namakkal and identified the dead body for postmortem and after postmortem, he handed over the dead body to the relatives of the deceased.

12. P.W.14, Doctor, conducted postmortem on the dead body of the deceased and gave opinion with regard to the cause of death. P.W.15, doctor, admitted P.W.1 and gave treatment to him and issued an Accident Register, Ex.P.8. P.W.16, then professor in the Mohan Kumaramangalam Medical College Hospital, Salem, examined the hyoid bone and reported that hyoid bone was intact. P.W.17 photographer taken photographs of the dead body of the deceased at the scene of occurrence.

13. P.W.18 turned hostile. P.W.19, Sub-Inspector of Police, has spoken about the registration of the case. P.W.20, Head Clerk, Judicial Magistrate Court, No.I, Namakkal, received the material objects and sent the same for chemical examination. P.W.21 is the Village Administrative Officer, Namakkal, before whom, the accused appeared and gave an extra judicial confession. P.W.22, Inspector of Police, on receipt of the First Information Report, conducted investigation, recovered material objects, recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased and other witnesses. Thereafter, since he was transferred, handed over the investigation to P.W.23. P.W.23, continued the investigation and after completion of investigation, he laid chargesheet against the accused on

05.12.2003. P.W.24, Inspector of Police, arrested the accused and remanded him to judicial custody.

14. 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 witness. On his side, a memo for including additional witnesses by the prosecution has been marked as Ex.D.1.

15. 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.

16. We have heard Mr. S.B.Vasudevan, learned counsel for the appellant and Mr. E.Raja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

17. P.W.1 is an eye-witness to the occurrence. He is an co-employee of the accused and the deceased. According to P.W.1, the accused went to the godown in the intervening night of 29/30.01.2003, at about 12.00 a.m., and he gave cooldrinks to him and requested him to give the same to the deceased. After some time, the deceased went to sleep and on 30.01.2013, at about 4.00 a.m., in the morning, when he went out to answer the nature call, he saw the accused attacking the deceased with a stone. When P.W.1 tried to prevent the accused, he tried to strangle P.W.1 with telephone wire and P.W.1 some how managed to escape and went to the Trichy Main Road. At that time, P.W.2 saw him. Thereafter, as he was afraid of the accused, P.W.1 went into hiding and only after one hour, he came to the scene of occurrence, and he immediately, informed about the occurrence to the owner and on his advice, P.W.1 lodged a complaint at about 6.30 a.m.

18. P.W.1 was also referred to the hospital with a memo for treatment. P.W.15, Doctor, working in the Government Hospital, Namakkal, examined P.W.1 and found a swelling on the right side of his lower lip and he also told him that he has pain on his neck. P.W.15 issued a wound certificate, Ex.P.8. In his cross examination, P.W.15 has admitted that there was no strangulation mark on the neck of P.W.1 and only on the complaint of P.W.1, he came to know that he has pain on the neck.

19. Now, the question is whether the testimony of P.W.1, the sole eye-witness could be believed or not ?. It is a settled principle of law that the testimony of sole eye-witness can be a basis for a conviction provided the evidence is trustworthy and it is reliable. Now, we have to see the conduct of P.W.1. After occurrence, P.W.1 went to the main road, where he met P.W.2. But, he has not informed anything

to him or anybody else. Only at about 5.00 a.m., after an long time, he informed about the occurrence to the owner of the Godown-P.W.5. Thereafter he came to the scene of occurrence and lodged a complaint at about 6.30 a.m., hence, the conduct of P.W.1 is quite unnatural. After seeing the occurrence, he must have raised alarm or he would have immediately informed about the occurrence to the owner of the godown. But, P.W.1, kept quite for a long time and finally informed the owner in the morning and thus it is highly unbelievable. Apart from that, according to P.W.1, when he raised alarm, the accused strangulated him with a telephone wire and he somehow managed to escape from the accused. But, the doctor, P.W.15, who has examined him, has not found any strangulation mark on the neck of P.W.1, but he only found swelling in lower lip. Hence, the medical evidence not corroborating the oral testimony of P.W.1. Hence, it is highly unsafe to believe the evidence of P.W.1.

20. The next circumstance relied upon by the prosecution is the extra judicial confession given by the accused before P.W.21, Village Administrative Officer, Namakkal. The occurrence is said to have taken place on 30.01.2003, but, after 10 years, i.e. on 22.04.2013, the accused appeared before the Village Administrative Officer and gave a voluntary extra judicial confession. It is also highly unbelievable that a person who was hiding for nearly 10 years after the occurrence is said to have appeared before a stranger and gave a voluntary extra judicial confession. It is settled principle of law that the extra judicial confession is a very weak piece of evidence and if it is surrounded by any suspicious circumstance without any corroboration, it cannot be believed. Hence, the extra judicial confession said to have been given by the accused also cannot be believed. From the above circumstances, we are of the considered view that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt. Hence, the appellant is entitled for acquittal and the judgment of the court below is liable to be set aside.

21. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the learned Principal District Judge, Namakkal, in S.C.No.59 of 2013, by the judgment dated 24.02.2015, is hereby set aside. The appellant 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(CS V)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge,
Namakkal.
- 2.The Chief Judicial Magistrate,
Namakkal.
- 3.The Judicial Magistrate No.I,
Namakkal.
- 4.The Director General of Police,
Mylapore, Chennai.
- 5.The Inspector of Police,
Namakkal Police Station,
Namakkal District.
- 6.The Superintendent,
Central Prison,
Coimbatore.
- 7.The District Collector,
Coimbatore.
- 8.The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.B.Vasudevan, Advocate, S.R.No.44588

Cr1.A.No.394 of 2015

KJ(CO)
CA(27/02/2017)

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