

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.525 of 2015

1. Umeshkumar (A2)

2. Madesh (A3)

.. Appellants/Accused 2 &3

- Vs -

State rep by Inspector of Police,
Karungalpalayam Police Station,
Erode District,
(Cr.No.37 of 2013)

.. Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned II Additional Sessions Judge, Erode in S.C.No.143 of 2014 dated 20.03.2015.

For Appellants : Mr.A.K.Kumarasamy

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellants are the accused 2 and 3 in S.C.No.143 of 2014 on the file of the learned II Additional Sessions Judge, Erode. The first accused was one Mr.Shankar. The trial Court framed charges under Sections 294(b), 302 and 506 (ii) I.P.C. against the first accused and charge under Section 302 I.P.C. against the accused 2 and 3. During trial, the first accused died and thus the charges against him stood abated. By judgment dated 20.03.2015, the trial Court convicted the accused 2 and 3 (the appellants herein) under Section 302 I.P.C. and sentenced them to undergo imprisonment for life and pay a fine of Rs.10,000/- each and in default to undergo simple imprisonment for six months. Challenging the said conviction and sentence, the

appellants / accused 2 and 3 are before this Court with this appeal.

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

2.1. The deceased in this case was one Mr.Mohanraj. He was the General Secretary of an organisation known as "Tamil Desiya Viduthalai Iyakam". The first accused Mr.Shankar and the deceased were co-accused in a murder case in connection with the death of one Sittu @ Balakrishnan. For quite sometime, the first accused and the deceased were working in a Textile Mill at Karungalpalayam. During that time, they started a trade union of the workmen. The employer paid some amount as compensation for some of the workmen who were members of the said trade union. It is alleged that the deceased had swindled a huge sum out of the same. This gave rise to the enmity between the first accused and the deceased. The first accused was running a power loom. The deceased was threatening him that he would approach the local authorities and remove the power loom as it was an encroachment on a poramboke land. This threat further aggravated the enmity between the first accused and the deceased. This is stated to be the motive for the occurrence.

2.2. The second accused is the son of the first accused and the third accused was a worker in the power loom run by the first accused. It is stated that on account of the above enmity, all the three accused decided to do away with the deceased.

2.3. On 26.01.2013 at around 07.15 p.m. the deceased had gone to a library known as "Pattali Padipagam" situated on the Cauvery Road at Karungalpalayam. It was the usual practice of the deceased to go in the evening to the said library and to sit in a particular chair in front of a particular table. As per the usual practice, on that day also, he was sitting at that particular chair and reading some papers.

2.4. It is alleged that at that time, all these three accused went into the library, all armed with weapons. On reaching the deceased, the first accused cut the deceased on his head with patta knife and also stabbed him on the stomach. When P.W.1 tried to rescue the deceased, the first accused intimidated him. Therefore he did not intervene. The second accused, who was armed with veecharuval, cut the deceased indiscriminately on his hip, neck, head and other parts of the body. The third accused who was also armed with aruval cut the deceased simultaneously on the neck, head, hands and other parts of the body of the deceased. Then, all the three accused fled away from the scene of occurrence. The deceased fell in a pool of blood with multiple injuries on his body. Immediately, P.Ws.1 and others took the deceased by means of 108 ambulance to the Government Headquarters Hospital at Erode. But the doctor declared him

already dead.

2.5. On receiving intimation from the hospital, P.W.23 the then Special Sub Inspector of Police went to the hospital, recorded the statement of P.W.1 and on returning to the Police Station, he registered a case at 11.00 p.m. on 26.01.2013 under Sections 294(b), 302 and 506(ii) I.P.C. against the accused 1 and 2 and yet another person aged about 25 years (the name of the third accused has not been mentioned in the complaint).

2.6. Ex.P1 is the complaint and Ex.P.20 is the F.I.R. He forwarded both the documents to the Court, which were received by the learned Magistrate at 02.00 a.m. on 27.01.2013.

2.7. P.W.27 took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.19 and another witness. He recovered the bloodstained earth, sample earth, a patta knife (M.O.1) and two Veecharuval (M.Os.9 and 10) from the place of occurrence. He arranged for a photographer to take photographs on the place of occurrence. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.8. P.W.20 Dr.Sivakumar conducted autopsy on the body of the deceased on 27.01.2013 at 09.20 a.m. He found the following injuries on the body of the deceased.

"External injuries:(1) Incised wound in occipital region of Head:15x3x6 cm size. (2) Incised wound in vertex of head 5x3x5 cm size. (3) Incised wound in R parietal region of head 12x2x2 cm size. (4) Incised wound in R frontal to parietal side of head 13x4x3 cm size with # R frontal of parietal bones, brain and coverings exposed. (5) Incised wound R forehead 6x2x2 cm size. (6) Incised wound R next-R ear to thyroid region 13x2x2 cm size (7) Incised wound below L ear 9x3x3 cm size exposing muscles. (8) Incised wound L forehead 6x3x2 cm size. (9) Incised wound centre of forehead 4x2x2 cm size. (10) incised wound over the nose exposing cartilage 2x1x1 cm. (11) Stab injury in Epigastric region of abdomen 4cm x 3 cm depth extending into peritoneal cavity (6 cm). (12) Incised wound L forearm 10x3x2 cm size. (13) Abrasion R chamber region 2x1 cm. (14) Incised wound R shoulder arm 10x1x1 cm size. (15) Incised wound R knee 3x3x4 cm size. (16) Incised wound L little finger with duetted terminal phalanx partially 1x1x1 cm size. (17) Incised wound L

thamar region of hand 3x2x1 cm size.

Internal Examination: Clotted blood around 1000 ml present in peritoneal cavity. Ribs intact. Heart 250 gms pale; lungs R 500 gms, L 450 gms pale. Hyoid bone intact. Stomach 100 ml of undigested food particles present. Liver 1600 gm pale. 3x2x2 cm incised wound present in L lobe of chest. Spleen 150 gms pale. Kidneys both 250 gms - pale. U.Bladder empty. Skull - # R frontal and parietal bones exposing brain and coverings. Brain 1400 gms - pale. Haematoma present R side of brain - clot around 100 ml. Spinal cord intact."

Ex.P16 is the postmortem certificate. He gave opinion that the injuries 11 and 13 could have been caused by stabbing with M.O.1 patta knife and other injuries could have been caused by M.Os.9 and 10 (Veecharuval).

2.9. P.W.27, recovered the bloodstained clothes from the body of the deceased and forwarded the same to the Court. The accused had surrendered before the learned Judicial Magistrate at Thuraiyur on 28.01.2013. On 02.02.2013, he took police custody of all the accused on the orders of the learned Magistrate. While in police custody, on 04.02.2013, the first accused gave a voluntary confession in the presence of P.W.18 and another witness. In the said confession, he disclosed the place where he had hidden a bloodstained shirt. Accordingly, the same was recovered. Then, the second accused gave a voluntary confession, in which, he disclosed the place where he had hidden a shirt. Accordingly, he produced the same and the same was recovered. Similarly, the third accused gave a voluntary confession, in which, he disclosed the place where he had hidden a shirt. In pursuance of the same, he produced the same and the same was recovered.

2.10. At the request of P.W.27, the material objects were sent for chemical examination. The report revealed that there were bloodstains on all the material objects including the clothes recovered from the accused. On completing the investigation, he laid chargesheet against the accused.

2.11. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 27 witnesses were examined, 45 documents and 19 material objects were marked.

2.12. Out of the said witnesses, P.W.1 has claimed to have witnessed the entire occurrence. He has stated that he was called by the deceased to the library. Thus, he was in the library along with the deceased. He has further stated that at

that time, the first accused alone came and attacked the deceased. In his evidence, he has not stated anything against these two appellants. He has not even stated that these appellants were at least present at the place of occurrence. Though, he was expected to speak about the presence and participation of these two accused (appellants herein), in his evidence, he has not whispered anything about these two accused. P.W.2 has stated that on 26.01.2013 around 07.00 p.m. he found these accused running on the road near the place of occurrence. P.W.3 has also stated so.

2.13. P.W.4 has stated only on the hearsay information. He has further stated about the preparation of the observation mahazar, the rough sketch and the recoveries of material objects including the weapons. P.W.5 has spoken about the motive. P.W.6 has spoken only about the hearsay information. P.W.7 has not stated anything incriminating. He has stated that on hearing about the occurrence, he went to the hospital and saw the deceased. P.Ws.8 to 12 have stated that they went to the hospital on hearing about the occurrence. P.W.13 has stated that he came to know about the occurrence from newspaper reports.

2.14. P.W.14 has stated about the encroachment made by the accused. P.W.15 an employee of the Erode Municipality has spoken about the encroachment made. P.Ws.16 and 17 have spoken about the motive. P.W.18 has spoken about the disclosure statements made by the accused and the consequential recoveries made out of the same. P.W.19 has spoken about the preparation of the observation mahazar and the rough sketch. P.W.20 has spoken about the postmortem conducted and his final opinion regarding the case of death. P.W.21 the learned Judicial Magistrate has stated that he conducted test identification parade conducted on 19.02.2013 at 11.30 a.m. The third accused was put for test identification parade, in which, P.W.1 identified the third accused. P.Ws.2 and 3 also identified the third accused.

2.15. P.W.22 has spoken about the photographs of the dead body taken at the place of occurrence. P.W.23 has spoken about the registration of the case on the complaint of P.W.1. P.W.24 has stated that he handed over the dead body to the doctor for postmortem. P.W.25 has stated that he handed over the F.I.R. to the learned Magistrate. P.W.26 has stated that he forwarded the material objects for chemical examination as per the orders of the learned Magistrate. P.W.27 has spoken about the investigation done and the final report filed by him.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor to mark any document on their side. Their defence was a total

denial. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, they are before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

5. In this case, P.W.1, the sole eyewitness to the occurrence, has stated as though the deceased was attacked only by the first accused. He has not whispered anything about these two appellants / accused 2 and 3. He has not even mentioned about the presence of these two accused at the place of occurrence. Thus, the evidence of P.W.1 is of no use for the prosecution so far as these appellants / accused 2 and 3 are concerned.

6. P.Ws.2 and 3 have stated that around 07.15 p.m. on 26.01.2013, they found the first accused running on the road near the library and these two appellants were also running. This was disputed by the accused. In our considered view, assuming that these two accused were running on the road, it cannot be the foundation to conclusively hold that these two accused had caused the death of the deceased. Had it been true that these two accused had entered the library along with the first accused and cut the deceased, P.W.1 would not have omitted to mention about the same.

7. Apart from these evidences, the prosecution relies on the recovery of the bloodstained clothes from these two accused based on their confession. Since the connection between the discovered objects and the crime has not been established, that also would not be helpful for the prosecution to prove the guilt of these two accused. In nut shell, in our considered view, the evidence that these two accused were found running at about the time of the occurrence could only go to raise a suspicion against these two accused. The suspicion however strong it may be, cannot take the place of proof. Thus, in our considered view, the prosecution has failed to prove the case against these appellants / accused 2 and 3 beyond reasonable doubts and therefore, they are entitled for acquittal.

8. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellants / accused 2 and 3 by the learned II Additional Sessions Judge, Erode in S.C.No.143 of 2014 dated 20.03.2015 is set aside and they are acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.

(iii) Since the appellants / accused 2 and 3 are in jail, they are directed to be set at liberty forthwith, unless their detention is required in connection with any other case.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The II Additional Sessions Judge,
Erode.
2. The Inspector of Police,
Karungalpalayam Police Station,
Erode District.
3. The Public Prosecutor,
Madras High Court.
4. The Judicial Magistrate No.1 Erode
5. The Chief Judicial Magistrate Erode
6. The Principal Sessions Judge Erode
7. The superintendent of Central Prison
Coimbatore
8. The District Collector
Coimbatore
9. The Director General of Police
Chennai-4

+1 cc to Mr.A.K.Kumarasamy Advocate sr 42475/16

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