IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 26.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
and
THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Crl.A.No.649 of 2015

1.Muthu @ Sakthivel
2.Boominathan ... Appellants

vs.

State,by
The Inspector of Police,
Koothanallur Police Station,
Thiruvarur District.
(Crime No.356 of 2012) ...
Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 13.10.2015 passed by the learned District and Sessions Judge, Thiruvarur, in S.C.No.92 of 2014.

For Appellant : Mr.R.John Sathiyan for
Mr.Swamy Subramanian

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

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

The appellants in this appeal are the accused 1 and 3 in Sessions Case No.92 of 2014, on the file of the learned District and

Sessions Judge, Thiruvarur. Totally, there are four accused in this case. The accused 1 and 2 stood charged for the offences punishable under Sections 302 and 302 r/w 34 IPC; the 3rd accused stood charged for the offences punishable under Sections 341, 302 and 302 r/w 34 IPC and the 4th accused stood charged for the offences punishable under Sections 341 and 302 r/w 34 IPC. The Trial Court, after trial, by judgement dated 13.10.2015 convicted the appellants/accused 1 and 3 for the offence under Section 302 IPC, and sentenced them to undergo life imprisonment and to pay a fine of Rs.1,000/-each, in default, to undergo rigorous imprisonment for one year and acquitted the 2nd accused for the offences under Sections 302 and 302 r/w 34 IPC and acquitted the 3rd accused for the offence under Sections 341 and 302 r/w 34 IPC and acquitted the 4th accused for the offences under Section 341 and 302 r/w 34 IPC. Challenging the above said conviction and sentence, the appellants/accused 1 and 3 are before this Court with this appeal.

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

(i) The deceased in this case was one Tamil Azhagan. There was a previous enmity between the deceased and the family of A-1. The deceased said to have murdered one Singaravelu, the brother of the first accused and in retaliation, the first accused

with the help of other accused planned to murder the deceased. In execution of the same, on 08.08.2012 at about 10.50 a.m., while the deceased along with one Prabhakaran were travelling in a mini bus and A1 and A2 followed them in a motor cycle. After seeing A1 and A2, the deceased and Prabhakaran get down the bus and started to run and at that time A3 and A4 caught hold the deceased, A1 attacked him with aruval on his neck and shoulder and A2 and A3 also attacked him with aruval indiscriminately and caused death of the deceased. Then the deceased was taken to the Government Medical College Hospital, Thiruvarur. P.W.16-Doctor working in the Government Medical College Hospital, Thiruvarur, admitted the deceased. At that time, the deceased was conscious and informed the Doctor that two persons attacked him. He issued Accident Register (Ex.P19).

(ii) P.W.13-Sub Inspector of Police working in the respondent police, on receipt of the information from the Hospital, went to the Government Hospital and recorded the statement (Ex.P14) of the deceased and based on the statement of the deceased, registered a case in Crime No.356 of 2012 for the offences under Sections 341, 307 of IPC and prepared first information report (Ex.P15), sent the same to the Judicial Magistrate Court and copies of the same to the higher officials.

(iii) P.W.18-Inspector of Police attached to the

respondent6 police, on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P23), drew Rough Sketch (Ex.P22). He recovered Blood stained soil (M.O.5), Sample soil (M.O.6) and one pair of chappal (M.O.7) in the presence of witnesses. He examined some witnesses and recorded their statements. On the same day at about 3.40 p.m., the deceased succumbed to the injuries and hence P.W.18 altered the case into one under Sections 341 and 302 of IPC, alteration report is (Ex.P25) and sent the same to the Judicial Magistrate Court. Then, P.W.18, went to the Government Hospital and conducted inquest over the dead body of the deceased in the presence of Pachayatdars and prepared inquest report (Ex.P26). After postmortem, he handed over the dead body to the relatives of the deceased.

(iv) P.W.17-then Doctor working in the Government Medical College Hospital, Thiruvarur. He conducted postmortem on the dead body of the deceased and he found the following injuries:-

> External Injuries:
>
> 1.Sutured would below left ear(9cm x 2cm muscle depth) size. (2) Cut wound 8cm x 2cm x bone depth (Nape of neck). (3) Sutured wound left shoulder 10cm x 4 x Bone depth size. (4) Cut wound behind right occipit 10cm x 4cm x

bone depth. (5) Cut wound below right pinna (3cm x 2 x 2 cm) (6) Cut wound neck right 4cm x 2cm x 2cm. (7) Cut wound behind the neck 6cm x 4 cm x 2cm. (8) Sutured wound right shoulder back side 6 x 2 x 2cm. (9) Multiple scratch abrasion left shoulder back side. (10) 2 sutured cut wound behind left shoulder back (4cm x 2 cm x 2 cm & 3cm x 2cm x 2cm. (11) Right scalpular region - scratch abrasion present. (12) Cut wound is left-shoulder (5cm x 2cm x bone depth). (13) Cut wound (6cm x 2cm x bone depth) left arm near deltrid. (14) Cut wound left upper over (8cm x 5cm x bone depth) (Bone fracture old exposed out side present).

Internal Injuries:

On opening the Skull: Intact. Pericardium: NAD, Heart C/s contains liquid blood in all the chambers. Hyoid bone: Intact. Liver congested. Spleen congested. Kidneys Normal. Small intestine Empty. Mucosa congested. Membranes Intact.

He was of the opinion that the deceased appeared to have died due to effects and complications of shock and haemorrhage as a result of multiple injuries involving the neck and shoulder region. He issued Postmortem Certificate (Ex.P21).

(v) P.W.18 continued the investigation. On 10.08.2012, the accused 1 and 2 surrendered before the Judicial Magistrate Court, Thanjavur. He took the police custody of the accused 1 and 2 and both the accused have voluntarily given confession and

based on the disclosure statement of A1(Ex.P5), P.W.18 seizd Aruval (M.O.1) and based on the disclosure statement of A-2, he seized Aruval (M.O.2) and Motor cycle (M.O.3) in the presence of witnesses and sent the accused for Judicial Custody. Subsequently, on 27.09.2012, the 4th accused surrendered before the Judicial Magistrate Court, Tanjavur. P.W.18 took the police custody of the 4th accused and in the police custody, he has voluntarily given confession and on 02.01.2013, the 3rd accused surrendered before the Judicial Magistrate Court, Thiruvarur and he took the police custody of the 3rd accused and in the police custody the 4th accused voluntarily given confession and based on the disclosure statement (Ex.P10), he seized Aruval (M.O.8) in the presence of witnesses. He sent the accused for judicial custody. He examined the postmortem Doctor and some other witnesses and recorded their statements and after completion of investigation, he laid the charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed above. But the accused denied the same as false. In order to prove the case of prosecution, as many as 18 witnesses were examined and 30 documents were exhibited and 8 material objects were marked.

4. Out of the above witnesses examined, P.Ws.1 to 9 have turned hostile. P.W.9 is the Village Administrative Officer. He is the witness to the observation mahazar and also recovery of material objects. P.Ws.11 and 12 have turned hostile. P.W.13 is the Sub Inspector of Police attached to the respondent police, who registered the case and prepared FIR and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials. P.W.14 is the Head Constable. According to him, he identified the dead body of the deceased for postmortem. P.W.15 is the Assistant Director, working in the Forensic Laboratory, Thiruvarur. According to him, he examined the blood stained material objects and gave report (Ex.P17). P.W.16 is the Doctor. In his evidence that he admitted the deceased in the Hospital and gave Accident Register(Ex.P19). P.W.17 is the Doctor, working in the Government Medical College Hospital, Thiruvarur. According to him, he conducted postmortem on the dead body of the deceased and gave Postmortem Certificate (Ex.P21). P.W.18 is the Inspector of Police attached to the respondent police, who conducted investigation, examined the witnesses and recorded their statements, arrested the accused and recovered the material objects and after completion of investigation, he laid the charge sheet against the accused.

5. When the above incriminating materials were put to

the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. The accused did not examine any witnesses and no document was marked on their side.

6. Having considered all the above, the Trial Court convicted the appellants/accused for the offences as stated in the first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

7. We have heard Mr.R.John Sathiyan, learned counsel appearing for the appellants and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. It is a case of no evidence. All the material witnesses have turned hostile. P.W.10 was the Village Administrative Officer. He only the witness to the observation mahazar and recovery of materials objects viz., M.Os.1,2 and 3. In his evidence, he stated that he could not identified the accused. But, in his cross examination, he admitted that he seeing the accused only at the time of signed the mahazar and he did not see previously. Hence, the recovery of material objects cannot be believed. The other witnesses are only the official witnesses. Since all the material

witnesses have turned hostile, there is no evidence available to prove the guilt of the accused.

9. In the above circumstances, in the absence of any evidence to prove the guilt of the accused, the trial Court, convicted the accused 1 and 3 only based on the statement of the deceased before P.W.13, the Sub Inspector of Police, who recorded the statement. In his cross examination, P.W.13 stated that he did not record the statement and he does not know who recorded it and the signature found in the statement was not his signature. Therefore, the evidence of P.W.13 is not believed. Hence, it is unsafe to rely upon the statement said to have given by the deceased before P.W.13, Sub Inspector of Police. In the above circumstances, we are of the considered view that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt and hence the appellants are entitled for acquittal.

10. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellants in S.C.No.92 of 2014 dated 13.10.2015 on the file of the learned District and Sessions Judge, Thiruvarur is set aside and the appellants/accused are acquitted of all the charges levelled against them and bail bond, if any, executed by them shall stand cancelled and the fine

amounts paid by them is ordered to be refunded forthwith.

(S.N.J.,)

(V.B.D.J.,)

26.07.2016

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To

1.The District and Sessions Judge,
Thiruvarur.

2.The Inspector of Police,
Koothanallur Police Station,
Thiruvarur District.

3.The Public Prosecutor,
High Court, Madras.

S.NAGAMUTHU.J.,

and

V.BHARATHIDASAN.J.,

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