

THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12.07.2016

CORAM:

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

Crl.A.No.651 of 2015

Harish @ Bella Bodiya ... Appellant

vs.

State,by
The Inspector of Police,
Ponneri Police Station.
(Crime No.445 of 2012)

... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 12.08.2015 passed by the learned IV Additional District and Sessions Judge, Ponneri in S.C.No.9 of 2014.

For Appellant : Mr.C.Sivakumar

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

JUDGMENT

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

The appellant in this appeal is the sole accused in Sessions Case No.9 of 2014, on the file of the learned IV Additional District and Sessions Judge, Ponneri. He stood charged for an offence under Section 302 of IPC. The Trial Court by judgement dated 12.08.2015 convicted the appellant/accused, for the offence under Section 302 of IPC and sentenced him to undergo life imprisonment and no fine amount was imposed. There are three accused in this case and in respect of A-1, the case was split up, and A-1 alone faced the trial. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) The accused and deceased are absconding accused from Odissa State. They are working as labourers in a Hollow Block Brick Company belongs to P.W.2 at Eliyembedu Village. All of them staying in the company premises. Due to the previous

enmity, there was a wordy quarrel between the deceased and accused and on 02.08.2012 at about 12.00 p.m., while the deceased was sleeping in his room, the other two accused were hold the deceased and the appellant/accused assaulted with iron spade on his face and caused his death. On the next day morning, P.W.4, the co-employee of the deceased, he is also from Odissa came to the room at about 7.00 a.m, and found the deceased dead with injuries and immediately he informed the same to P.W.1, the watchman. Immediately, P.W.1 informed the same to the Manager and also the owner of the company. On receipt of the message, P.W.2, the owner of the company along with the manager lodged a complaint before the respondent police.

(ii) P.W.10, the Inspector of Police, working in the Ponneri Police Station, on receipt of the complaint (Ex.P9) from one Siva Thiyagarajan, the Manager of the Company(not examined), registered the case in Crime No.445 of 2012, for the offence under Section 302 of IPC, prepared FIR (Ex.P10) and sent the same to the Judicial Magistrate Court. Then, he proceeded to the scene of occurrence, prepared Observation Mahazar Ex.P1, drew a rough sketch Ex.P11, and recovered M.O.1 Blood stained Plastic mat, M.O.2 sample plastic mat in the presence of witnesses. He conducted inquest over the dead body of the deceased in the presence of Panchayatars and the inquest report is Ex.P12, after the inquest he sent the dead body to the Government Hospital, Ponneri, for posrtmortem. He also informed the same to the family of the deceased at Odissa State.

(iii) P.W.7, the Doctor, working in the Government Hospital, Ponneri, conducted the postmortem autopsy on the dead body of the deceased and found the following injuries:-

Moderately built male body in a decomposed state lying over the Postmortem Table. Eyes closed. Mouth partially closed. Fracture of right temporal, frontal right maxilla. Right side mandible present. The decomposed brain matter exposed at the head injury site. Maggots noted at the wound site. Whole the skin B macerated. All the internal organs are under putrefactive.

He is of the opinion that the deceased would appear to have died of severe head injuries.

(iv) P.W.9, continued the investigation and arrested the accused on 08.08.2012 and on such arrest, he has voluntarily given confession, based on the disclosure statement Ex.P3, he recovered iron spade M.O.1, in the presence of the witnesses and sent the accused for judicial custody, he examined the witnesses and recorded their statements, then handed over the investigation to P.W.11. P.W.11, the Inspector of Police, working in the Ponneri Police Station, after receipt of the case records, continued the investigation, examined the Postmortem Doctor and recorded his statement, and after completion of

investigation, he laid the charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 11 witnesses were examined and 12 documents, and 3 material objects were marked.

4. Out of the above witnesses examined, P.W.1 is the watchman of the company. According to him, on the date of occurrence, in the morning, P.W.4 informed him that the deceased was found dead in the house and he informed the same to the owner and manager of the company. P.W.2 is the owner of the company. After came to know about the occurrence he along with the Manager went to the police station and the Manager has given a complaint Ex.P9. P.W.3 is the witness to the mahazar, arrest of the accused and recovery of M.O.1 blood stained plastic mat, sample plastic mat and M.O.3 Iron spade. P.W.4 is the co-employee of the deceased and he is from Odissa. According to him, on 02.08.2012, there was a quarrel between the deceased and accused and he compromised between them and on the next day morning, the deceased found dead in his room. He informed the same to P.W.1 and others. P.W.5, the Head Clerk, working in the Judicial Magistrate Court sent the material objects for chemical examination. P.W.6, the Special Sub Inspector of Police, working in the respondent police, identified the dead body for postmortem. P.W.7, the Doctor, working in the Government Hospital, Ponneri, conducted postmortem autopsy on the dead body of the deceased and issued Postmortem Certificate Ex.P5. P.W.8 is the Scientific Officer working in the Forensic Department. He examined the viscera and submit his report Ex.P6. P.W.9, the Deputy Director, Forensic Department, Chennai examined the material objects and submit his report Ex.P7. P.W.10, the Inspector of Police, working in the respondent police, on receipt of the complaint, registered the case, commenced the investigation, examined the witnesses and recorded their statements, arrested the accused, recovered the material objects and handed over the investigation to P.W.11. P.W.11, the Inspector of Police, working in the respondent police, continued the investigation, examined the postmortem Doctor and recorded his statement and after completion of investigation, he filed the charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witness and no document was marked on his side.

6. Having considered all the above materials, the Trial Court convicted the accused for the offences as stated in first

paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

7. We have heard Mr.C.Sivakumar, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. It is the case of no evidence. The case is mainly based on the circumstantial evidence. The one and only circumstance relied upon by the prosecution is the evidence of P.Ws.2 and 4. According to P.W.4, all the accused and deceased were staying in the same room in the company. Prior to the occurrence on 02.08.2012, there was a quarrel between the accused and deceased and he compromised them. According to P.W.2, on 02.08.2012, there was a wordy quarrel between the accused and deceased and they are speaking in Oriya language. Except the above two evidences, there is no other evidence available to prove the guilt of the accused.

9. We are conscious of the legal position that in a case based on circumstantial evidence, the circumstances projected by the prosecution are to be proved beyond reasonable doubts and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused and there should not be any other hypothesis, which is inconsistent with the guilt of the accused. Keeping this broad principle in mind, if we analyse the facts of the present case, the prosecution did not prove any circumstance which unerringly pointing the guilt of the accused. Even from the evidence of P.Ws.2 and 4, we cannot presume that due to the quarrel, the accused have murdered the deceased. In the above circumstances, we are of the considered view that the prosecution has failed to prove the case beyond any reasonable doubt. Hence, the accused is entitled for acquittal.

10. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed by the learned IV Additional District and Sessions Judge, Ponneri, in Sessions Case No.9 of 2014 is set aside and the appellant/accused is acquitted and bail bond, if any, executed by him shall stand cancelled and the fine amounts paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The IV Additional District and Sessions Judge,
Ponneri.

2 do through:

The Principal District and Sessions Judge, Thiruvallur

3.The Inspector of Police,
Ponneri Police Station,
Ponneri.

4 The Superintendent, Central Prison, Puzhal, Chennai

5 The District Collector, Tiruvallur

6 The Director General of Police, Mylapore 4

7 The Judicial Magistrate No.I, Ponneri

8 The Chief Judicial Magistrate, Thiruvallur

9.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.C. Sivakumar, Advocate, S.R.No.38618

ks(CO)
md(28/02/2017)

Cr1.A.No.651 of 2015



WEB COPY