

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.228 of 2016

Kumar @ Rajkumar

...Appellant

Vs

State rep. By
Inspector of Police,
Mettupalayam Police Station,
Coimbatore District,
Crime No.554 of 2012.

....Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the order of conviction and sentence imposed on the appellant by the learned I Additional District and Sessions Judge, Coimbatore, in S.C.No.76 of 2013 on 13.12.2015.

For Appellant : Mr.P.Saravanan

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.76 of 2013 on the file of the learned I Additional District and Sessions Judge, Coimbatore. He stood charged for an offence under Section 302 I.P.C. After trial, by judgment dated 13.10.2015, the trial Court convicted the appellant/accused for the offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine Rs.2500/-, in default to undergo rigorous imprisonment for three months. Challenging the said

conviction and sentence, appellant/accused is before this Court with this Criminal Appeal.

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

The deceased, in this case, one Ramesh @ Rameshkumar, is the brother of one Somasundaram, P.W.11. The accused and P.W.11 are close friends. On 22.07.2012, the accused and P.W.11 were standing in front of the saloon, owned by P.W.9. The deceased came there and questioned his brother, P.W.11, about his illegal intimacy with a lady and there arose a quarrel between them. The accused, who was present there along with P.W.11, also quarreled with the deceased in support of P.W.11. Again on 28.07.2012, at about 9.00 p.m., there was a quarrel between the accused and the deceased near a TASMAC wine shop. Thereafter, at about 10.30 p.m., the accused chased the deceased and attacked him with a knife, in front of P.W.1's house. P.W.1 and his wife P.W.2, on hearing the noise, came out of their house and saw the accused attacking the deceased with knife. When they raised alarm, the neighbours came out of their houses and on seeing them, the accused ran away. Then, P.W.1 and P.W.2 informed the wife of the deceased, P.W.4. P.Ws.1, 4 and others took the deceased to Government Hospital, Mettupalayam. P.W.19, Assistant Surgeon, admitted the deceased in the hospital and gave an Accident Register, Ex.P.21. At the time of admission, the deceased was unconscious. Subsequently, at about 11.50 p.m., the deceased succumbed to injuries. Hence, P.W.19 sent a memo, Ex.P.20, to the respondent police. Then, P.W.1 went to the police station and lodged a complaint, Ex.P.1.

3. P.W.18, Sub-Inspector of Police, on receipt of the complaint, registered a case in Crime No.554 of 2012 for an offence under Section 302 IPC and sent the First Information Report, Ex.P.18, to the Judicial Magistrate court and also copies of the same to the higher officials.

4. P.W.22, Inspector of Police, on receipt of the First Information Report, proceeded to the scene of occurrence and prepared an Observation mahazar, Ex.P.2 and a Rough Sketch, Ex.P.23 in the presence of P.W.12 and another. P.W.22 also made arrangements for taking photograph of the scene of occurrence. He recovered bloodstains from the floor under a Mahazar, Ex.P.3. He also recovered a pair of chappal, under a Mahazar, Ex.P.4. Then, P.W.22 conducted inquest on the dead body of the deceased, in the presence of panchayathars and prepared an inquest report, Ex.P.24. Thereafter, he sent the dead body of the deceased for postmortem, with a requisition, through P.W.21.

5. P.W.16, Assistant Surgeon, Government Hospital, Mettupalayam, conducted postmortem on the dead body of the deceased on 29.07.2012, at 2.15 p.m., and he found the following injuries:-

" Transversely oblique stab wound noted on right side lower neck measuring 3 cm x 2 cm x pleural cavity deep. The upper medial sharp end 2 cm right to mid line to the lower blunt end is 2 cm above to the right clavicle. Both margin or the wound is regular. On dissection : the wound possess inwards, backwards medically piercing the underlying muscle, vessels, including subclavian vessels through and through and entered in Co Ru pleural cavity then piercing the apex or the right lung measuring 2 x 1 x 1 cm depth. Right pleural cavity contains 1000 ml of fluid blood and clot "

P.W.16 gave Ex.P.15, Postmortem certificate and opined that the deceased would appear to have died of shock and hemorrhage due to stab injury on the neck.

6. On 30.07.2012, the accused appeared before P.W.13, a councilor in Chikadasanpalayam village panchayath and one Arumugam, who is the president of the said village, and gave an extra-judicial confession, admitting his guilt. P.W.13 produced the accused, along with his Special Report, Ex.P.22, before P.W.22. P.W.22 arrested the accused and on such arrest, the accused gave a voluntary confession. Based on the disclosure statement, Ex.P.5, P.W.22 recovered bloodstained pant, M.O.7 and a knife, M.O.1 in the presence of witnesses under a Mahazar, Ex.P.6. Subsequently, he also seized bloodstained full hand shirt, M.O.6 under a Mahazar, Ex.P.7. P.W.22 recorded the statements of the doctor, who conducted postmortem on the dead body of the deceased and also other witnesses. On completing investigation, P.W.22 laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed a lone charge as detailed in the first paragraph of this judgment against the appellant. The appellant denied the same. In order to prove its case, on the side of the prosecution, as many as 22 witnesses were examined and 25 documents were exhibited, besides 18 Material Objects.

8. Out of the witnesses examined, P.W.1 is the nephew of the accused and also a relative of the deceased. According to him, on 28.07.2012, at about 10.30 p.m., while he was

standing in front of his house, the accused chased the deceased with a knife and in front of his house, he attacked the deceased near his neck and at the time, the deceased caught hold of the shirt of the accused and shouted by saying that the accused was attacking him and cried to save him and on seeing this, he and his wife, P.W.2, raised alarm and thereafter, neighbours came out of their house and on seeing them, the accused ran away with a knife and then, they informed the occurrence to the wife of the deceased and after that, he, along with the wife of the deceased, took the deceased to the Government Hospital, Mettupalayam and the deceased succumbed to injuries at about 11.50 p.m. and thereafter, he lodged a complaint, Ex.P.1, to the respondent police.

9. P.W.2 is the wife of P.W.1. She is also an eyewitness to the occurrence and she has corroborated the evidence of P.W.1. P.W.3 is the mother of the deceased. She is only a hearsay witness. P.W.4 is the wife of the deceased. According to her, after hearing the news, she rushed to the scene of occurrence and saw the deceased in a pool of blood near P.W.1's house, then, she, along with P.W.1 and others, took the deceased to the hospital, where he succumbed to injuries at 11.50 p.m.

10. P.Ws.5 to 8 are residents near the scene of occurrence. According to them, after hearing the alarm raised by P.Ws.1 and 2, all of them came out of their houses and saw the accused standing there with a bloodstained knife and on seeing them, the accused pushed the deceased down and ran away from the scene of occurrence. P.W.9 is the owner of the saloon. He had spoken about the motive. According to him, on 22.07.2012, at about 7.00 p.m., while the accused and P.W.11 were speaking in front of his shop, the deceased came there and questioned his brother, P.W.11 about the illicit intimacy with a lady and at that time, the accused quarreled with the deceased in support of P.W.11.

11. P.W.10 is yet another important witness. He is running a hotel in front of his house and the son of the accused is running a shop, selling meat. According to him, on 28.07.2012, at about 9.45 p.m., the accused came to the shop owned by his son and took a knife, M.O.1, from there and went away. P.W.11 is the brother of the deceased and also a friend of the accused. He has spoken about the earlier quarrel between the accused and the deceased on 22.07.2012. P.W.12 is the witness to the Observation mahazar and also a witness to the recovery of material objects. P.W.13 is the councilor in the

Village Panchayath and according to him on 30.07.2012, at about 10.00 a.m., the accused appeared before him and the President of village panchayath and gave a voluntary confession admitting his guilt. P.W.13, along with Village President, produced the accused before the respondent police. P.W.13 is also a witness to the confession statement of the accused and also a witness to the recovery of M.O.1 knife and M.O.7, pant.

12. P.W.14, Head Constable, Sniffer Dog Department, has spoken about the engaging of sniffer dog in the investigation. But, no evidence could be collected during such investigation. P.W.15, Assistant Director in the forensic Science Lab, Coimbatore, examined the bloodstained material objects and gave a report, Ex.P.13. P.W.16, Doctor, conducted postmortem on the dead body of the deceased and gave postmortem certificate, Ex.P.15. P.W.17, photographer, has spoken about taking photographs of the deceased at the scene of occurrence. P.W.18, Sub Inspector of Police, has stated that he registered the case and sent the First Information Report to the court and also copy of the same to the higher officials. P.W.19 is the Doctor, who admitted the deceased in the hospital and gave treatment to the deceased. According to him, at about 11.15 p.m., wife of the deceased brought the deceased to the hospital and at that time, the deceased was unconscious and she told him that she was not aware as to who assaulted her husband and he issued Accident Register, Ex.P.21, regarding injuries sustained by the deceased. P.W.20, Head Constable, has deposed that he handed over the First Information report to the Judicial Magistrate Court, Mettupalayam. P.W.21 is the Police Constable, who accompanied the dead body of the deceased to the Government Hospital, Mettupalayam for postmortem and after postmortem he handed over the same to the relatives. P.W.22, Inspector of Police, has stated that he conducted investigation, recorded the statements of the witnesses, arrested the accused and after completion of investigation, he laid charge sheet.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. He did not choose to examine any witness, however, on his side, hand writing of P.W.1 was marked as Ex.D.1.

14. Having considered all the above, the trial Court found the Appellant/accused guilty under the said charge and accordingly, sentenced him, as detailed in the first paragraph of this judgment. Aggrieved over the same, Appellant/accused is before this Court with this Criminal Appeal.

15. We have heard Mr.P.Saravanan, learned counsel appearing for the appellant and Mr. E.Raja, learned Additional

Public Prosecutor appearing for the State and we have also perused the records, carefully.

16. Mr. P.Saravanan, learned counsel for the appellant would submit that the motive for the occurrence was not proved by the prosecution and there is a long delay in giving the complaint and there is also delay in sending the First Information Report to the Judicial Magistrate Court, and it creates doubts in the prosecution case. Apart from that, according to him, at the time of admitting the deceased in the hospital, wife of the deceased, namely, P.W.4, has stated that unidentified persons attacked the deceased and the details of the occurrence was not known to her and hence, it is an earlier statement, in which she has not implicated the accused and therefore, he contended that the prosecution has not proved the case beyond all reasonable doubts. Hence, he sought for acquittal of the appellant.

17. Per contra, learned Additional Public Prosecutor submitted that there are two eye-witnesses to the occurrence and since the occurrence had taken place in front of the house of P.Ws.1 and 2, their presence at the scene of occurrence is natural. Apart from that, he contended that P.Ws.5 to 8, residents near the scene of occurrence have also seen the accused at the scene of occurrence and after seeing them, the accused ran away from there stating that the delay in filing First Information Report has also been properly explained by the prosecution, he sought for dismissal of the appeal.

18. We have considered the rival submissions.

19. P.Ws.1 and 2 are eyewitness to the occurrence and the place of occurrence is in front of the house of P.Ws.1 and 2. The accused is P.Ws.1's mother's sister's husband. According to P.W.1 and 2 on the date of occurrence, at about 10.30 p.m., while they were standing in front of their house, they saw the accused chasing the deceased and attacked the deceased with a knife on the neck of the deceased in front of their house, immediately, the deceased caught hold of the shirt of the accused and shouted that the accused had stabbed him and cried for help and when they raised alarm, persons living around the scene of occurrence came there and on seeing them, the accused ran away.

20. P.Ws.5 to 8 are the people residing near the scene of occurrence. On hearing the noise, they have come out and seen the accused, with bloodstained knife and the deceased catching hold of the shirt of the accused and shouting. On seeing them, the accused had pushed the deceased down and ran away. The presence of P.Ws.1 and 2 and 5 to 8 is natural, as the

occurrence place is near their house. Though P.Ws.1 and 2 are closely related to the accused, P.Ws.5 to 8 are all independent witnesses. The testimony of all the above witnesses are consistent and they have vividly spoken about the occurrence. Hence, there is no reason for us to disbelieve their evidence.

21. Apart from the above, the accused has also gave an extra judicial confession before P.W.13 and the president, Village panchayath. Eventhough the extra judicial confession was not marked, P.W.13 was examined by the prosecution and P.W.13 is also councilor of the Village panchayath and he is a known person to the accused. Thus, the extra judicial confession also corroborated the testimony of eyewitnesses.

22. So far as the contention of the learned counsel for the appellant regarding the motive is concerned, P.W.9, owner of the saloon, has spoken about the earlier occurrence and P.W.10, owner of the hotel, has spoken about the earlier quarrel between the accused and the deceased in front of his shop. P.W.11, brother of the deceased, also corroborated their evidence. Hence, through their evidence, prosecution has established the motive for the occurrence.

23. So far as the delay in filing the First Information Report is concerned, the occurrence was at 10.30 p.m., and P.W.1, along with the wife of the deceased, have taken the deceased to the Government Hospital, Mettupalayam and admitted him. P.W.1 was there in the hospital with the deceased. Subsequently, at about 11.50 p.m., the deceased succumbed to injuries. Thereafter, P.W.1 has gone to the police station and lodged a complaint at about 3.00 a.m and hence, there is a delay in lodging the complaint. Since P.W.1, being an eyewitness to the occurrence and also closely related to the accused, no motive could be attributed against P.W.1 and he has no axe to grind against the accused. P.W.4 has also explained the delay in giving complaint in her cross examination. Hence, merely because there is delay, which was also explained by the prosecution, on that score, it cannot be said that it creates any doubt in the prosecution case.

24. So far as the contention of the learned counsel for the appellant regarding the statement of P.W.4, wife of the deceased, before the doctor, that some unknown persons stabbed the deceased, the statement of P.W.4 cannot be treated as a substantial evidence. It is only a formal statement of P.W.4, and it could be only used to contradict her evidence, but this aspect has not been contradicted by the defence. In the above circumstances, we are of the considered view that the prosecution has clearly proved the guilt of the accused beyond

any reasonable doubt. Hence, the appeal fails and is liable to be dismissed.

25. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. It is reported that appellant is in jail. Appellant is directed to undergo the remaining period of sentence as imposed by the trial Court.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp
Index:Yes/No
Internet : Yes/No

To

1. The I Additional District and Sessions Judge,
Coimbatore.
2. The Public Prosecutor,
High Court, Madras.
3. The Inspector of Plice
Mettupalayam Police Station,
Coimbatore.
4. The Superintendent,
Central Prison,
Coimbatore.

+1cc to Mr.Saravanan, Advocate, S.R.No.

KSJ(CO)
RS(24/02/2017)

Cr1.A.No.228 of 2016