

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN
AND
THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

Criminal Appeal No.550 of 2012

Maheswaran @ Babu @ Coonnooran
S/O Subramani ..Appellant/Accused
Vs.

State rep. by
Inspector of Police,
Ukkadam Police Station,
Coimbatore District,
Crime No. 825 of 2006 ..Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment dated 30.10.2008 passed in S.C. No. 133 of 2007 on the file of Additional District and Sessions Court, FTC No.II, Coimbatore.

For Appellant :: Mr.Vimal B. Crimpson

For Respondent :: Mr.M. Maharaja,
Addl. Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C. No. 133 of 2007 on the file of Additional District and Sessions Judge, Fast Track Court No.2, Coimbatore. He stood charged for the offence under Section 398 and 302 I.P.C. By judgment dated 30.10.2008, the Trial Court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default to undergo simple imprisonment for three years for the offence under Section 302 I.P.C. and to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one year for the offence under Section 398 I.P.C. Challenging the said conviction and sentence, the appellant is 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 Mr.Faizal Rahman. He

was an electrician by profession. P.W.1, Mr. Sikander Basha is his brother. They were living as a joint family. On 16.09.2006, at about 9.40p.m., the deceased was travelling in a bus from Uppilipalayam Bus Stop towards Ukkadam in Coimbatore City Limits. P.W.26, a friend of the deceased, was also travelling in the same bus along with him. The deceased was standing near the backside entrance of the bus whereas P.W.26 was standing inside the bus in the middle. When the bus was nearing Karumbukadai Bus Stop, the deceased shouted that someone was picking his pocket. On hearing the alarm raised, P.W.26 turned towards him. The deceased caught hold of the hand of the person, who was trying to commit pickpocketing. Suddenly, the pickpocket, took out a knife from his waist and stabbed the deceased twice. The deceased lost his balance. The pickpocket (later identified as the accused herein) got down from the back entrance of the bus. The deceased also managed to get down from the bus through the back entrance. After walking a distance of about 2 to 3 feet, on getting down from the bus, the deceased fell down and fainted. P.W.26, who was, till then, holding the deceased, left him and gave a chase to catch hold of the accused. P.W.s 3 to 5, who were standing in the bus stop, on hearing the alarm raised by P.W.26, accompanied him and all of them attempted to catch hold of the accused. But, the pickpocket/accused escaped from the scene of occurrence. P.W.26 returned to the place of occurrence and all of them took the deceased in an auto to the hospital. The Doctor, at the Government Hospital, on examining the deceased, declared him dead. The dead body was then kept in the mortuary.

(ii) On getting intimation from the hospital, P.W.22, the then Sub Inspector of Police, B12 Ukkadam Police Station, rushed to the hospital and recorded the complaint given by P.W.26 under Ex-P16. On returning to the Police Station, at about 11.30p.m. on 16.09.2006, she registered a case in Crime No. 825 of 2006 under Section 398 and 302 I.P.C. Ex-P17 is the First Information Report. She forwarded both the documents to the Court, which were received by the learned Judicial Magistrate at 12.30a.m. on 17.09.2006. Then, she handed over the case to the Inspector of Police, P.W.25, for investigation.

(iii) P.W.25, the Inspector of Police, took up the case for investigation. On 17.09.2006, he proceeded to the place of occurrence and prepared an Observation Mahazar (Ex-P11) and a rough sketch (Ex-P23) the place of occurrence. Then, he recovered M.O.s 4 (bloodstained earth), M.O.5 (Sample earth), M.O.6 (bloodstained slippers), M.O.7 (bloodstained Tissue Paper) and M.O.8 (Sample Tissue Paper) under Ex-P12 mahazar, in the presence of P.W.19 and another. The bus bearing Registration No.TN 38 N 0703 was still at the place of occurrence. He prepared an Observation Mahazar (Ex-P4) in respect of the bus, especially, the place where actually the deceased was stabbed.

Then, on the same day, at 6 a.m., in the presence of Panchayatdhars and witnesses, he conducted inquest on the body of the deceased in the mortuary of Government Hospital, Coimbatore. Ex-P25 is the inquest report. Then, he sent the body for postmortem.

(iv) P.W.23, Dr. Edwin Joe, conducted autopsy on the body of the deceased on 17.09.2006 at 8.10a.m. He found the following injuries:

"The following antemortem injuries are seen in the body:

1. An oblique stab wound 2.5 x 0.5 cm seen on the left side chest 6 cms below nipple. The upper lateral end is blunt. The wound passes obliquely inwards and backwards and has entered the left pleural cavity. Then it has pierced the lower lateral aspect of pericardium 1.5x 0.5 cms and has pierced the lower lateral aspect of the left ventricle 1.5 x 0.25 cm and has entered the cavity. The total length of the wound tract is about 9 cms. The margins of the wound is clean cut. Left pleural cavity contains 300 ml of blood with clots. Pericardial sac contains about 50ml of blood with clots.

2. An oblique stab wound 2.5 x 6.5 cms seen on the left side lower abdomen seen 13 cms left of umbilicus. The wound has passed backwards, inwards and upwards in the muscle plane to a depth of 6 cms. The upper lateral end is blunt. The margins of the wound is clean cut.

OTHER FINDINGS:

- Right Pleural cavity empty.
- Lungs - cut section pale
- Heart already described in injury column
- Hyoid bone - intact
- Stomach contains about 10gm of mucous fluid, no specific smell, Mucosa pale.
- Small Intestine contains about 40 ml of bile stained fluid, no specific smell.
- Liver, Spleen, Brain & Kidneys - cut section pale.
- Urinary bladder - empty."

Ex.P19 is the postmortem certificate. According to P.W.23, the injuries found on the deceased would have been caused by a knife like M.O.1. He further opined that the deceased would appear to have died of shock and haemorrhage due to injury No.1 with corresponding internal injuries sustained by him.

(v) P.W.25, during the course of investigation, recovered bloodstained cloth material from the body of the deceased after the postmortem was over. He examined many more witnesses and recorded their statements. On 23.09.2006, the accused was arrested at 7p.m. near flower market at Coimbatore, in the presence of P.W.20 and another witness. On such arrest, the accused gave a voluntary confession statement, in which he disclosed the place where he had hidden the half-sleeved shirt and a pant and a knife (M.O.s 1, 9 and 10). They were recovered under a mahazar in the presence of the same witnesses. On returning to the Police Station, P.W.25 sent the accused for judicial remand and forwarded the case properties also to the Court. Then, he made a request to the learned Judicial Magistrate No.2, Coimbatore (P.W.24) to conduct a test identification parade in the prison, in which P.W.s. 3, 4, 5 and 26 participated. All these witnesses correctly identified the accused as the assailant, who inflicted injuries on the deceased. Then, at the request of P.W.25, the material objects were sent for chemical analysis. The report revealed that there were bloodstains on all the material objects including the knife. Ex-P8 is the Chemical Analysis Report, Ex-P9 is the Serology Report and Ex-P10 is the blood-grouping report. On completing the investigation, he laid the charge sheet against the accused on 28.12.2006.

(vi) Based on the above materials, the Trial Court framed appropriate charges as detailed in the first paragraph of the judgement. The accused denied the same.

(vii) In order to prove the case, on the side of the prosecution, as many as 26 witnesses were examined and 25 documents were marked, besides, 15 material objects.

(viii) Out of the said witnesses, P.W.26 was a co-passenger in the bus, in which the deceased travelled, who has vividly spoken about the occurrence. P.W.s 3,4,5 and 9 are witnesses, who were in the bus-stop, at the time, when the occurrence had taken place in the bus. They have stated that on hearing the alarm raised by P.W.26 and others, they found the accused running away from the place of occurrence. They have further stated that they joined P.W.26 and gave a chase to catch hold of the accused. But, unfortunately, they could not succeed as the accused fled away from the scene of occurrence. P.W.s 3, 4, 5 and 26 have identified the accused in the test identification parade conducted by P.W.24 on 05.10.2006. P.W.9 did not participate in the test identification parade. P.W.1 is the brother of the deceased, who has stated that on getting information that his brother was killed and the dead body was in the hospital, he went there along with P.W.2. P.W.2 has also stated the same. P.W.6 has stated that on 16.09.2006, when he was nearing Khadikraft bus stop, he found a huge crowd, at about

9.45p.m., and when he went there, he found the deceased with injuries, lying in a pool of blood. He has further stated that along with his friend, he took the deceased in an auto to the hospital. P.W.7 is the wife of the deceased, who has stated that on receiving intimation, she went to the hospital to see the dead body. P.W.8 is a Police Constable attached to Ukkadam Police Station. According to him, on 16.09.2006, at about 9.45p.m., he found the bus in question reaching the bus stop. After the bus came to a halt, he heard people shouting that a person had been stabbed. At that time, he found the accused fleeing away towards south. He has further stated that he attempted to catch hold of the accused, but could not succeed.

(ix) P.W.9 claims to be an eye-witness to the occurrence. He has stated that he travelled in the bus in question at the crucial point of time. He heard the alarm raised by the deceased and at that time, he saw the accused stabbing the deceased. But, he did not participate in the test identification parade conducted on 05.10.2006. P.W.10 has stated that at 9.45p.m. on 16.09.2006, when he was on bandobust duty, he heard an alarm and at that time, he found the accused running away from the place of occurrence. But, he was not able to catch the accused. This witness did not also participate in the test identification parade. P.W.11, the Conductor of the bus, has stated that at the time of occurrence, he was standing near the front entrance of the bus engaged in issuing tickets to the passengers. On hearing a commotion, he asked the driver to stop the bus and the bus was stopped. At that time, he saw two to three persons getting down from the bus and shouting to catch the pickpocket. P.W.12 is the cashier of the Transport Corporation, which owned the bus. He has spoken about the timing of the bus in question. P.W.13 is the Security Guard of the Transport Corporation, which owned the bus. He has stated that he was a witness to the Observation Mahazar prepared in respect of the bus. P.W.14, a cousin of the deceased, has stated that on getting information, he went to the hospital and he witnessed the clothes and other materials recovered from the body of the deceased. P.W.15 has stated that the deceased was under his employment and on 16.09.2006, he was on duty till 9.30p.m. and thereafter, left for home. P.W.16, who is an employee of Khadi Shop on N.H. Road has stated that he came to know about the occurrence on the next day, when he came for work.

(x) P.W.17 has stated that she declared the deceased dead at 10.05p.m. on 16.09.2006. P.W.18, a Forensic Expert, has stated that he analysed the material objects and gave an opinion that there were bloodstains on the same. P.W.19 has stated that he was a witness to the preparation of Observation Mahazar and rough sketch at the place of occurrence. P.W.20 has spoken about the arrest of the accused, his confession and the recovery

of M.O.s 1, 9 and 10. P.W.21 is Grade I Constable, who has spoken about handing over the body of the deceased at Coimbatore Medical College Hospital for postmortem and recovery of bloodstained clothes from the dead body. P.W.22 has spoken about the registration of the case on the complaint of the friend of the deceased. P.W.23 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.24 has spoken about the test identification parade conducted by him in which P.W.s 3, 4, 5 and 26 participated and identified the accused correctly. P.W.25 has spoken about the investigation done and the filing of final report against the accused.

(xi) When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness nor mark any document. The defence of the accused was one of total denial. Having considered all the above, the Trial Court convicted the appellant as stated in the first paragraph of the judgement. That is how, the appellant is before this Court with this appeal.

3. We have heard the learned counsel for the appellant, the learned Additional Public Prosecutor for the State and we have also perused the records carefully.

4. P.W.26 has set the law in motion in this case. He has stated that he was travelling along with the deceased in the bus. He has further stated that he witnessed the entire occurrence in which the deceased was stabbed by the accused. It is his evidence that when he gave a chase along with others, after raising an alarm, he was not able to catch hold of the accused. P.W.s 3, 4, 5 and 9 are other witnesses, who have also stated that they found the accused running away from the scene of occurrence and their efforts to catch hold of him did not succeed.

5. Learned counsel for the appellant would submit that these witnesses cannot be believed because the identification made by them belatedly cannot be accepted.

6. But, we find no force in this argument at all. The accused was arrested only on 23.09.2006 and the test identification parade was held on 05.10.2006. Thus, there was no inordinate delay in holding test identification parade. Nothing has also been brought on record to show that the accused was shown to P.W.s 3, 4, 5 and 26 before the test identification parade. These four witnesses, who had enough opportunity to notice the physical features of the accused, at the time of occurrence, have identified the accused as the assailant and as the one, who fled away from the scene of occurrence. P.W.24 has followed the established procedure for holding the test

identification parade, in which also, we are unable to find any infirmity. Thus, at the earliest point of time, namely, on 05.10.2006, these witnesses have duly identified the accused as the assailant. In Court also, they have correctly identified the accused. These witnesses have no axe to grind against the accused so as to implicate him in the crime. Their presence at the scene of occurrence also cannot be doubted. From the evidence of P.W.26, it has been clearly established that it was this accused, who caused injuries on the deceased and attempted to rob him. The conduct of the accused when he was fleeing away from the scene of occurrence, with bloodstained knife, has been spoken to, by P.W.s 3, 4, 5 and a few more witnesses. We do not find any reason to reject their evidences.

7. P.W.9 was a passenger in the bus. But, he has not identified the accused during the test identification parade. Though much weightage cannot be given to the identification made by P.W.9, for the first time in Court, coupled with the identification done by P.W.s 3, 4, 5 and 26, we are of the view that we can attach importance to the identification made by P.W.9 also in Court. The Conductor of the bus, examined as P.W.11, has also stated that when he heard a cry, he asked the driver to stop the bus and the bus was stopped. Thereafter, when he came to the back entrance of the bus, he saw two or three people getting down from the bus and shouting to catch hold of the pickpocket. A cumulative appreciation of these evidences would clearly go to prove that it was this accused and this accused alone, who caused the injuries on the deceased in the bus. Learned counsel for the appellant is not able to make out any point to create even a remote doubt in the evidence of these witnesses, who are totally uninterested and unbiased witnesses.

8. The deceased was taken to the Government Hospital by witnesses, more particularly, P.W.6, in an auto. P.W.17 examined the deceased at 10.05p.m. on 16.09.2006 and declared him dead. Thus, the conduct of the witnesses in rushing the deceased to the hospital also lends assurance to their veracity. P.W.23, Dr. Edwin Joe, who conducted autopsy has opined that the injuries found on the deceased would have been caused by a weapon like M.O.1 knife. M.O.1 knife was recovered on the disclosure statement made by the accused on 23.09.2006 on his arrest in the presence of P.W.20. The chemical analyst's report also reveals that it contained human blood, corresponding to the blood group of the deceased. The disclosure statement made by the accused and the consequential recovery of M.O.1 and M.O.s 9 and 10 lends further support to the case of the prosecution. Thus, from the evidence of P.W.23, it has been clearly established that the injuries found on the deceased, which could have been caused by M.O.1 knife, were the cause for the death. According to him, the deceased died due to shock and haemorrhage due to the injuries. Thus, the prosecution has clearly proved

that the death of the deceased was caused only by the accused by inflicting injuries on his body. The Doctor has further opined that the injuries found on the deceased were sufficient in the ordinary course of nature to cause death. Of course, the accused would not have had any intention to cause the death of the deceased as the offence itself was spontaneous and on the spur of the moment, when he was caught redhanded by the deceased, at the time, when he tried to pickpocket the deceased. But, the accused was armed with a knife which he had kept concealed in his waist. There is no explanation as to why he was keeping the said knife in his possession. With the said knife, he caused injuries on the vital parts of the body of the deceased and thus, it has been established that the accused had atleast, every intention to cause these injuries and these intended injuries had been sufficient enough in the ordinary course of nature to cause death and thus, the act of the accused squarely falls under the third limb of Section 300 I.P.C.

9. Thus, in our considered view, the prosecution has proved the case beyond all reasonable doubts and the appellant is liable to be punished under Section 302 I.P.C. for having committed the murder of the deceased. Similarly, since the accused had attempted to commit robbery using a deadly weapon, he is liable to be punished under Section 398 I.P.C. also. The Trial Court has rightly convicted the accused. In the well-considered judgment of the Trial Court, we do not find any reason to interfere with and we concur with the findings of the Trial Court that the prosecution has proved the case beyond reasonable doubts. So far as sentence is concerned, the Trial Court has imposed only minimum sentence and it does not call for any interference. We do not find any merit in the appeal.

10. In the result, the appeal is dismissed. The conviction and sentence imposed on the appellant by the Trial Court is confirmed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

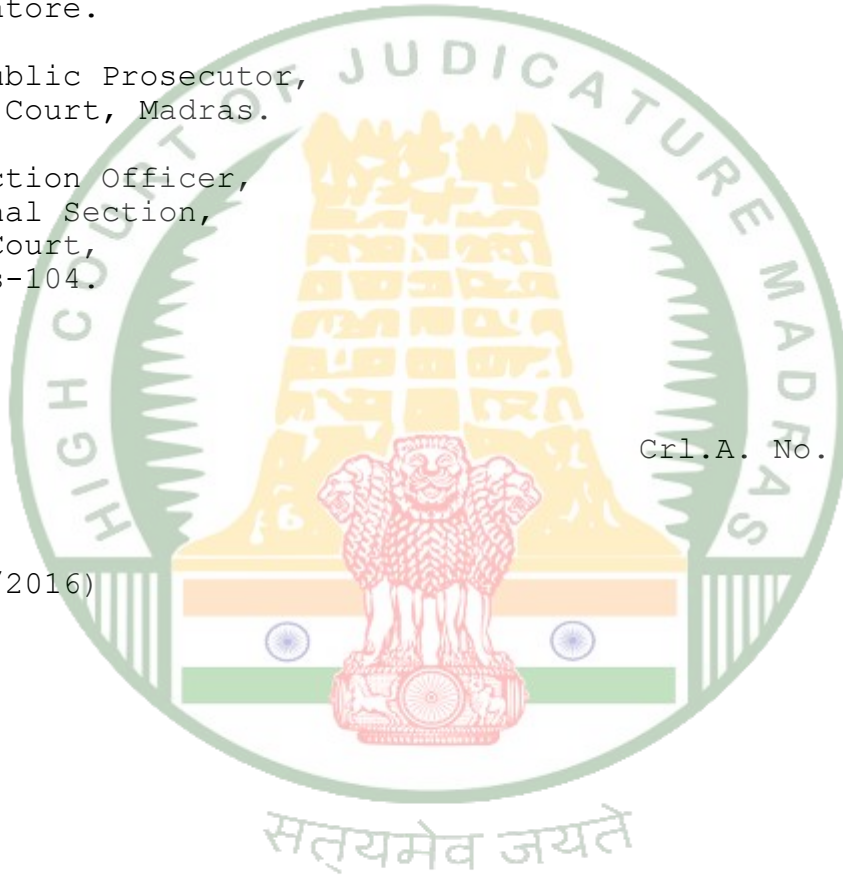
To

1. The Addl. District and Sessions Judge,
FTC No.II, Coimbatore.

2. -Do-Thro' The Principal Sessions Judge,
Coimbatore.
3. The Judicial Magistrate,
Coimbatore.
4. The Superintendent,
Central Prison,
Coimbatore.
5. The Inspector of Police,
Ukkadam Police Station,
Coimbatore.
6. The Public Prosecutor,
High Court, Madras.
7. The Section Officer,
Criminal Section,
High Court,
Madras-104.

msm(CO)
srg (21/03/2016)

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