

IN 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

Crl.A.No.302 of 2016

B.Sankar ... Appellant

Vs

The State represented by
Inspector of Police
S-9, Pazhavanthangal Police Station
Nanganallure,
Chennai - 600 114. ... Respondent

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Chengalpet, in S.C.No.36 of 2013 on 11.03.2016.

For Appellant : Mr.R.Subramanian

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

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

The sole accused in S.C.No.36 of 2013 on the file of the learned Additional District and Sessions Judge, Chengalpet, is the appellant herein. He stood charged for an offence under Section 302 IPC. The trial Court convicted him for the above offence and sentenced him to undergo life imprisonment. Challenging the above conviction and sentence, the appellant is before this Court with this appeal.

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

(i) The deceased in this case one Balakrishnan is the father of the accused. The accused is a drunkard and frequently demanding money from the deceased. When the deceased refused to

give money on 03.09.2012 at about 1.15 p.m, the accused attacked the deceased with Scissors indiscriminately and caused his death.

(ii) PW.1 - mother of the deceased lodged a complaint (Ex.P19) to the respondent police.

(iii) PW.12 - Sub-Inspector of Police working in the respondent police at the relevant point of time, on receipt of the complaint, registered a case in Crime No.3851 of 2012 for the offence under Section 302 IPC and prepared First Information Report (Ex.P18) and sent the First Information Report for further investigation to the higher officials.

(iv) PW.13 - Inspector of Police then working in the respondent police, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence, there, he prepared Observation Mahazar and rough sketch (Ex.P20) and recovered bloodstained dhoti, bloodstained tiles, sample tiles, one part of the scissors, and conducted inquest over the dead body in the presence of panchayatdars and prepared inquest report (Ex.P21) and sent the body for postmortem to the Government Hospital, Tambaram.

(v) PW.11 - Doctor then working at Government Hospital, Tambaram, conducted postmortem and found the following injuries:-

" EXTERNAL INJURIES:

1. Stab injury over the centre of chest (slightly towards the right) enter the thoracic cavity
2. Stab injury on the (R) nipple
3. Cut injury over the (L) shoulder
4. Stab injury over the ...
5. Stab injury on the (L) arm anterior aspect
6. Stab injury over the (L) arm posterior aspect
7. Four stab injuries over the (L) shoulder
8. Stab injury over the (R) forearm
9. Stab injury over the (L) angle of mouth, nape, neck (L) nape of neck (centre), (L) parietal scalp with # of the underlying bone.

INTERNAL EXAMINATION:

Haemopneumothorax on the (R) side +, # on the rib (R), Heart - empty, Lungs (L) laceration - pale, Hyoid - intact, Stomach contains 50 material objects of bloodstained fluid. Liver, Spleen, Kidney, Intestine - pale, Bladder - empty.

SKULL : Depressed # over the (L)
parietal scalp bone 2cm x 1 cm - Brain -
Normal, Spinal Cord - intact."

Ex.P16 is the postmortem report. PW.11 Doctor was of the opinion that the death was due to hypo-thermic shock due to pulmonary injury.

(vi) In the mean time, the accused appeared before PW.8 - now working as Assistant Section Officer in the Finance Department in the Secretariat and then working as Village Administrative Officer, Pazhavanthangal village, and gave an extra-judicial confession (Ex.P9) admitting the guilt. PW.8 recorded the statement of the accused and produced the accused before PW.13 - Investigating Officer and PW.13 arrested the accused and on such arrest, the accused voluntarily gave confession and based on the disclosure statement, PW.13 recovered one part of Scissors (M.O.5). Thereafter, PW.13 recorded the statements of postmortem Doctor and other witnesses and after completing the investigation, filed charge sheet for the offence under Section 302 IPC against the appellant.

3. Based on the above materials, the trial Court has framed charges against the appellant/accused as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the charges, the prosecution examined 13 witnesses and marked 23 documents and 10 material objects.

4. Out of the witnesses examined, P.Ws.1 to 9 have turned hostile. P.Ws.10 to 13 are the official witnesses. PW.10 - Head Constable identified the body for postmortem and after completion of postmortem, he handed over the body to the relatives. PW.11 - Doctor conducted postmortem and gave postmortem report (Ex.P16). PW.12 - Sub-Inspector of Police registered the complaint. PW.13 - Inspector of Police conducted investigation, arrested the accused and recorded the statement of witnesses and after completion of investigation, 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. The accused did not examine any witnesses nor marked any documents.

6. Considering the above materials, the trial Court convicted the accused and sentenced him as stated in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the accused before this Court.

7. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing

for the respondent and perused the records carefully.

8. In the instant case, all the material witnesses have turned hostile. PW.1 is the wife of deceased and mother of accused and she is the author of the First Information Report (Ex.P1). PW.8 is now working as Assistant in the Finance Department in the Secretariat and then working as Village Administrative Officer, Pazhavanthangal village, before whom the accused said to have given extra-judicial confession, he has turned hostile. Hence, the extra-judicial confession lost its value. In such circumstance, the only piece of evidence available against the accused is recovery of M.O.5 (one part of Scissors), based on the disclosure statement given by the accused. However, witnesses to the arrest and confession of accused have also turned hostile. Hence, the recovery of M.O.5 (one part of Scissors) was also not proved by the prosecution. Hence, absolutely there is no evidence available to prove the guilt of the accused. In the above circumstances, the appellant is entitled for acquittal.

9. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the accused on 11.03.2016 in S.C.No.36 of 2013 on the file of the learned Additional District and Sessions Judge, Chengalpet, are set aside. The appellant is acquitted and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount already paid, if any, shall be refunded to him. His bail bond, if any, shall stand terminated.

sd/
Assistant Registrar(CS III)

/true copy/

Sub Assistant Registrar

mra

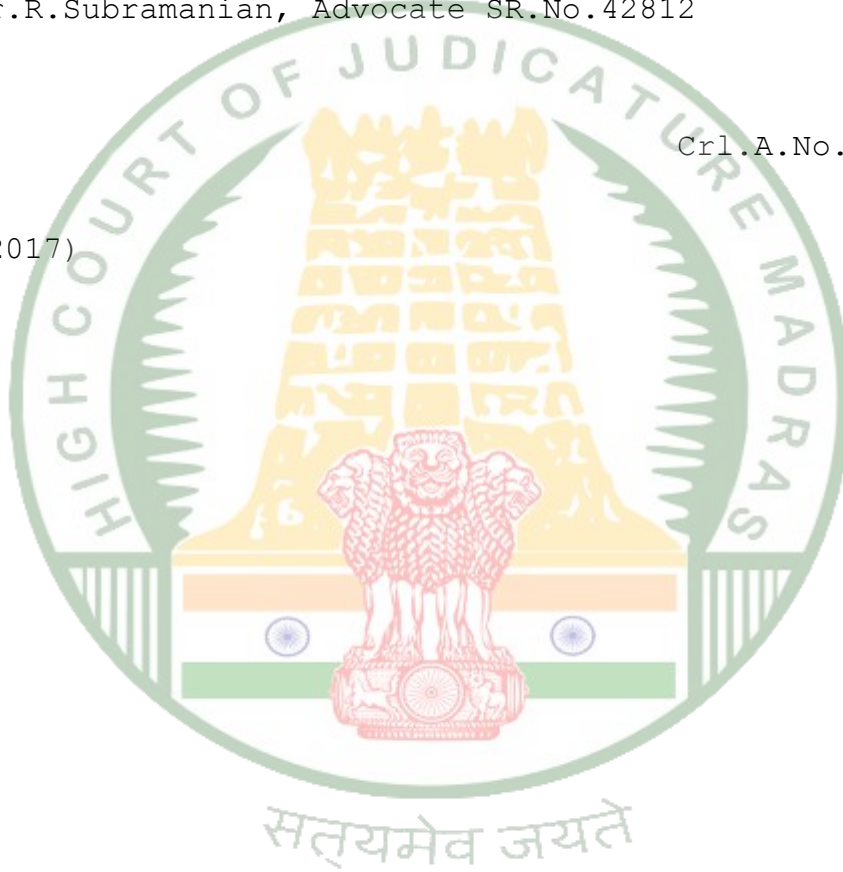
To

1. The Additional District and Sessions Judge,
Chengalpet.
2. The Inspector of Police
S-9, Pazhavanthangal Police Station
Nanganallure, Chennai - 600 114.
3. The Public Prosecutor,
High Court, Chennai.

- 4.The Judicial Magistrate, Alandur.
 - 5.The Chief Judicial Magistrate, Chengalpet.
 - 6.The Principal Sessions Judge, Chengalpet.
 - 7.The Superitendant, Central Prison, Puzhal, Chennai.
 - 8.The District Collector, Chennai.
 - 9.The Director General of Police, Mylapore, Chennai.
- +1cc to Mr.R.Subramanian, Advocate SR.No.42812

Cr1.A.No.302 of 2016

AD(CO)
GN(02/03/2017)



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